

COURT FILE NO. 2401-02680  
COURT COURT OF KING'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY  
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS, 2024  
*ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR  
HOLDINGS GP CORP., AND BLADE ENERGY SERVICES  
CORP.

DOCUMENT **REPLY BRIEF OF CONIFER ENERGY INC.**

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Commercial List Chambers Application Scheduled for the 27th day of November, 2024  
before The Honourable Justice B.E.C. Romaine

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## I. INTRODUCTION

1. This bench brief is provided on behalf of Conifer Energy Inc. (“**Conifer**”) in response to the Supplemental Brief of Law and Argument of Arena Investors LP (“**Arena**”) contesting the intention of Razor Energy Corp. (“**Razor**”) to pay part of the post-filing amounts owed to Conifer as part of the Corporate Transaction (as defined in the Affidavit #11 of Doug Bailey).

2. Conifer is a significant stakeholder of Razor. Razor relies on Conifer, as a significant amount of its production is tied into the Conifer-operated Judy Creek Gas Conservation Plant (“**Judy Creek Gas Plant**”) which is a jointly owned asset.<sup>1</sup>

3. Prior to and throughout these proceedings, Razor has chosen not to pay contractual amounts required of Razor as a co-owner and ongoing user of the Judy Creek Gas Plant, notwithstanding Razor’s clear obligation to do so under the Agreement for the Ownership and Operation of the Judy Creek Gas Plant (“**CO&O**”).

4. Given Razor’s ongoing failure to pay to Conifer any outstanding amounts, including nearly \$1.9 million in post-filing arrears (the “**Post-Filing Arrears**”), Conifer brought an application for either immediate payment of its post-filing amounts or a charge to secure such repayment before Justice Mah on September 11, 2024 (“**Conifer’s Post-Filing Arrears Application**”).

5. Razor, along with Arena, contested Conifer’s Post-Filing Arrears Application on the basis that there was no justification for immediate payment or a charge, that payment would topple Razor’s *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings, and are unnecessary given that Conifer would be paid by the Corporate Transaction.

6. In denying Conifer’s application, Justice Mah had regard for the following, “The Corporate Transaction contemplates full payment of post-filing arrears to both Conifer and CNRL (less only the deposit for future services which would not be required).”<sup>2</sup>

7. Now in contrast to the position advanced before Justice Mah, Arena argues that no amounts should be paid to Conifer.

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<sup>1</sup> Affidavit #1 of Doug Bailey sworn on February 13, 2024 [“**Bailey Affidavit #1**”] at paras 11, 40.

<sup>2</sup> *Razor Energy Corp (Re)*, 2024 ABKB 553 [“**Mah Decision**”] at para. 21 [TAB 1].

## II. STATEMENT OF FACTS

8. Conifer relies on its Statement of Facts as set out in its brief in response to Razor's application for Court approval of the Corporate Transaction, filed on November 5, 2024 ("**Conifer's Brief**"). All terms not otherwise defined have the same meaning as set out in Conifer's Brief.

9. In light of the significant Post-Filing Arrears owed by Razor to Conifer for Conifer's continued processing of Razor's Processed Gas pursuant to the CO&O Agreement, as well as Razor's clear and ongoing refusal to pay Conifer, Conifer brought Conifer's Post-Filing Arrears Application.

10. Conifer has not laid in the weeds throughout this process. On the contrary, Conifer is one of the only parties who has sought to protect its own financial interest by making an application for immediate payment or a charge for any outstanding amounts. Further, Conifer has been consistent in its expectation that Razor and any purchaser must comply with the CO&O.

11. When faced with Conifer's Post-Filing Arrears Application, Razor advised that the Post-Filing Arrears would be paid in full and that immediate payment of the Post-Filing Arrears would prevent Razor from being able to continue in the CCAA proceedings.<sup>3</sup> On this basis, Razor contested Conifer's Post-Filing Arrears Application.

12. Arena also contested this application on the basis that granting the application would put Conifer's post-filing claim ahead of Arena's secured claim and would further allow one post-filing creditor to determine the fate of the entire CCAA proceeding.<sup>4</sup> In particular, at the hearing, counsel for Arena asserted:

- (a) "... [Conifer's] business decision here to continue to process Razor's gas... [is] not a cost that actually can be borne by Razor."<sup>5</sup>;

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<sup>3</sup> Transcript from Conifer's Post-Filing Arrears Application, at 16:16-17, 17:13-16 and 18:4-31 ["**Transcript**"].

<sup>4</sup> *Mah Decision* at para 11.

<sup>5</sup> Transcript at 23:26-30.

- (b) “... if Razor is directed to pay Conifer the amounts claimed, Conifer will essentially be given the power to topple these proceedings...”<sup>6</sup>;
- (c) “... through its application, Conifer is seeking to obtain an advantage from this Court that it would not otherwise be entitled to, and that’s an elevated priority position. This is the specific type of creditor manoeuvring that a CCAA stay is designed to prevent and protect against...”<sup>7</sup>;
- (d) “Simply providing post-filing services does not implicitly entitle a party to a priority. That party must seek such an elevated position through the granting of a charge...”<sup>8</sup>
- (e) “... there is no harm to Conifer if the status quo is permitted to remain in place for at least the existing stay period.”<sup>9</sup>;
- (f) “... Razor has, in fact, confirmed that [Conifer] will be paid from the proceedings of the anticipated corporate transaction.”<sup>10</sup>;
- (g) “The Order sought by Conifer... provides a charge in favour of Conifer... there is no justification for the granting of the charge in the first place, and, secondly, Razor has numerous interested stakeholders whose interests all must be balanced here.”<sup>11</sup>;  
and
- (h) “Arena remains of the view that the only prospect of recovery here is through the corporate transaction... Razor should be permitted to stay the course and attempt to conclude that transaction for the benefit of all stakeholders.”<sup>12</sup>

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<sup>6</sup> Transcript at 23:32-24:2.

<sup>7</sup> Transcript at 24:23-26

<sup>8</sup> Transcript at 25:21-22.

<sup>9</sup> Transcript at 25:26-27.

<sup>10</sup> Transcript at 25:32-33.

<sup>11</sup> Transcript at 25:36-26:2

<sup>12</sup> Transcript at 26:4-8.

13. Justice Mah ultimately dismissed Conifer’s Post-Filing Arrears Application, relying heavily on the assertions of Razor and Arena (the “**Mah Decision**”). In particular, Justice Mah held, in part, that:

- (a) Granting Conifer’s application would likely have the effect of causing the Corporate Transaction to collapse;
- (b) Granting Conifer’s application would hasten Razor’s bankruptcy or receivership;
- (c) Granting Conifer’s application would permit the interests of a single post-filing creditor determine the fate of the entire CCAA to the detriment of remaining stakeholders, including potentially throwing Razor’s process into receivership;
- (d) The Corporate Transaction, which was scheduled to be completed and signed a “scant day away”, contemplated full payment of post-filing arrears to Conifer; and
- (e) Conifer was not left dangling for payment.<sup>13</sup>

14. Conifer has since filed a Leave to Appeal Application seeking to appeal the Mah Decision in its entirety.

15. Despite Razor’s initial proposal to advance a reverse vesting order structure that provides for no payment to Conifer and removes Conifer and other Owners’ contractual protections under the CO&O, Razor has now prepared a proposal that contemplates partial payment to Conifer for its Post-Filing Arrears in the amount of \$777,000.<sup>14</sup>

16. However, Arena now strongly objects to any payment to Conifer for Post-Filing Arrears until the Arena Indebtedness, as defined in the Supplemental Brief of Arena, filed on November 21, 2024, is paid in its entirety.<sup>15</sup> Arena asserts that the only way for Conifer to receive any payment for Post-Filing Arrears in advance of the Arena Indebtedness would be for the Court to order immediate payment or grant a charge, relying on many of the same arguments as Conifer did

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<sup>13</sup> *Mah Decision* at paras 21-22.

<sup>14</sup> Eighth Report of the Monitor, dated November 6, 2024 at para 94 (the “**Eighth Report**”).

<sup>15</sup> Supplemental Brief of Law of Arena, filed November 21, 2024, at para 16 (“**Arena’s Supplemental Brief**”).

in support of Conifer’s Post-Filing Arrears Application, despite its objection to the same application merely two months earlier.<sup>16</sup>

### III. LAW AND ARGUMENT

17. Despite Arena’s position at the Post-Filing Arrears Application that immediate payment and/or a charge in favour of Conifer was unnecessary and to the detriment of the remaining stakeholders, Arena, in Arena’s Supplemental Brief, has taken a wholly inconsistent position, to Conifer’s detriment and prejudice.

18. Canadian Courts have confirmed that such inconsistent attitudes before the Court by one party cannot stand. As stated in *BNP*, “cases do not proceed in glorious isolation, where a litigant can assume that [they] can take a position in one case and a different position in another case”.<sup>17</sup>

19. As confirmed in *Carlson (Re)*, Courts are permitted to take steps that will ensure the proper administration of justice, including by avoiding the perversion of the judicial machinery that would result if the Court permitted a litigant to take a position in one proceeding which is inconsistent with that taken in a previous piece of litigation.<sup>18</sup>

20. More recently, the Ontario Superior Court in *Malhotra*, reviewed the state of the law, similarly noting that the law prevents parties from taking inconsistent attitudes before the Courts, particularly where this inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.<sup>19</sup>

21. This is exactly what Arena has done – it has taken inconsistent attitudes before the Court to Conifer’s unfair detriment. First, it argued in part that Conifer was not entitled to any payment, but in any event, no charge or payment should be provided to Conifer as it would get paid through the Corporate Transaction, and now it seeks to rely on the lack of charge/payment to oppose the proposed payment by Razor.

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<sup>16</sup> Arena’s Supplemental Brief, *supra*, at paras 7-8, 22-23, 30 and 35.

<sup>17</sup> *BNP Paribas v Bartlett*, [2012 ONSC 5315](#) at para 34 [TAB 2].

<sup>18</sup> *Carlson (Re)*, [2010 ABQB 701](#) (“*Carlson*”), at para 25, rev’d on other grounds in *Carlson (Re)*, 2012 ABCA 173 [TAB 3].

<sup>19</sup> *Malhotra v City of Brampton*, [2023 ONSC 2291](#), at paras 169 and 173, in part citing *Carlson*, *McIntosh v Parent*, 1924 CanLII 401 (ON CA) [TAB 4]; *Iron v Saskatchewan (Minister of the Environment & Public Safety)* (1993), [1993 CanLII 6744](#) (SKCA) [TAB 5].

#### IV. CONCLUSION

22. The inconsistent positions of Arena put Conifer into a uniquely detrimental and prejudiced position. While Arena did provide multiple reasons for its opposition for relief, as with Razor, it represented to the Court that Conifer would be paid through the Corporate Transaction, which appears to be relied upon by Justice Mah.

23. Arena, itself, recognizes the impact that its opposition to Conifer's Post-Filing Arrears Application had in Justice Mah's decision to dismiss the application.<sup>20</sup> Arena should be bound to its initial position as set out in the Post-Filing Arrears Application resulting in the Mah Decision.

#### V. RELIEF SOUGHT

24. For the reasons set out above, Conifer submits that this Court should dismiss Arena's argument that Conifer should not be entitled to any repayment until the full Arena Indebtedness is repaid.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 26<sup>th</sup> day of November, 2024.

Estimated Time for  
Argument: 30 minutes

**BENNETT JONES LLP**

Per:

*Keely Cameron*

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Keely Cameron/ Sarah Aaron  
Counsel for the Respondent,  
Conifer Energy Inc.

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<sup>20</sup> Affidavit of Gregory White, filed November 5, 2024, at para 59.



## VI. TABLE OF AUTHORITIES

1. *Razor Energy Corp (Re)*, [2024 ABKB 553](#)
2. *BNP Paribas v Bartlett*, [2012 ONSC 5315](#).
3. *Carlson (Re)*, [2010 ABQB 701](#).
4. *Malhotra v City of Brampton*, [2023 ONSC 2291](#).
5. *Iron v Saskatchewan (Minister of the Environment & Public Safety)* (1993), [1993 CanLII 6744](#).