

COURT FILE NUMBER: 2401 - 02680

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED
2401-02680
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF 2669337 ALBERTA LTD.

DOCUMENT **BENCH BRIEF (STAY EXTENSION AND DISTRIBUTION ORDER AND CCAA TERMINATION ORDER)**

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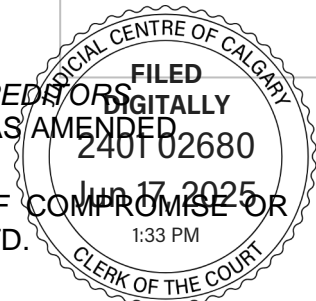


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I. INTRODUCTION

1. This Brief is submitted on behalf of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (the “**Monitor**”), of 2669337 Alberta Ltd (“**ResidualCo**”), in support of its Application seeking:
 - a. a stay extension and distribution order, substantially in the form attached as Schedule “B” to the Application (the “**Stay Extension and Distribution Order**”); and
 - b. a CCAA termination order, substantially in the form attached as Schedule “C” to the Application (the “**CCAA Termination Order**”).
2. Capitalized terms used but not defined herein shall take their meaning from the Application or the Tenth Report of the Monitor dated June 16, 2025 (the “**Tenth Report**”).

II. SUMMARY OF FACTS

3. Following the closing of the TexCal Transaction on December 11, 2024, pursuant to the Approval and Reverse Vesting Order granted in these proceedings on December 6, 2024, ResidualCo is now the sole debtor/applicant in these CCAA proceedings.¹
4. The only asset of ResidualCo is the ResidualCo Funds, and the main outstanding aspect of these CCAA proceedings is how the ResidualCo Funds should be distributed.²
5. The Monitor holds ResidualCo Funds in the amount of approximately \$2.04 million, inclusive of amounts securing the Administration Charge and the Directors' Charge.³

(i) The Claims Process

6. On February 19, 2025, the Honourable Justice Lema granted an order (the “**Claims Process Order**”) authorizing and directing the Monitor to administer the Claims Process (as defined in the Claims Process Order) in order to determine claims against the ResidualCo Funds.⁴

¹ Tenth Report at para 9.

² *Ibid* at paras 61-62.

³ *Ibid* at paras 65-66.

⁴ *Ibid* at para 11.

7. The Claims Process calls for four categories of claims, being Proprietary/Trust Claims, Post-Filing Claims, Secured Claims and D&O Claims (each as defined in the Claims Process Order).⁵
8. The Claims Process did not call for pre-filing unsecured claims because the quantum of claims in the above four categories was expected to be substantially higher than the ResidualCo Funds available for distribution, meaning there are no funds available for distribution to Original Applicants' pre-filing unsecured creditors.⁶
9. The Monitor received 71 Proofs of Claim prior to the claims bar date of 5:00 pm (Mountain Time) on March 31, 2025.⁷
10. In accordance with the Claims Process Order, the Monitor reviewed the Proofs of Claim submitted by the creditors and accepted certain claims and sent Notices of Revision or Disallowance revising or disallowing certain claims. The Monitor also made efforts to consensually resolve the classification and amount of certain claims.⁸
11. Pursuant to the Claims Process Order, if any creditor disputes the classification or amount of its claim as set forth in a Notice of Revision or Disallowance delivered by the Monitor, the creditor is required to deliver a Notice of Dispute. As of June 16, 2025, the Monitor has received one Notice of Dispute, which is from Sabre (discussed below).⁹

(ii) The Proposed Stay Extension and Distribution Order

a. Sabre Claim

12. Sabre Energy Ltd., Sabre Energy Partnership, and Sabre Oil and Gas Ltd. (collectively, "**Sabre**") submitted a Proof of Claim which asserted a Proprietary/Trust Claim in the amount of \$176,994.44 (the "**Sabre Claim**").¹⁰
13. On April 15, 2025, the Monitor requested that Sabre provide a copy of the "GCA Transfer Agreement" and the "P&S Agreement" referred to in its Proof of Claim. On April

⁵ *Ibid* at para 25; Claims Process Order, [Schedule "A" – Claims Process](#) at para 5.

⁶ Tenth Report at para 26.

⁷ *Ibid* at para 29.

⁸ *Ibid* at paras 31-32, 51, 53; Claims Process Order, [Schedule "A" – Claims Process](#) at paras 6-7.

⁹ Tenth Report at paras 33-34; Claims Process Order, [Schedule "A" – Claims Process](#) at paras 10-11.

¹⁰ Affidavit of Sam Smith sworn May 20, 2025 (the "**Smith Affidavit**"), Appendix A, Proof of Claim.

15, 2025, Sabre provided additional documentation to the Monitor (the “**Additional Sabre Documents**”).¹¹

14. The Monitor reviewed Sabre’s Proof of Claim and the Additional Sabre Documents and determined to disallow the Sabre Claim on the basis that, in the Monitor’s view, Sabre’s Proof of Claim and the Additional Sabre Documents did not establish a valid Proprietary/Trust Claim.¹²
15. In accordance with the Claims Process Order, after receiving the Monitor’s Notice of Revision or Disallowance and sending the Monitor a Notice of Dispute, Sabre filed an application with the Court for a determination of the Sabre Claim.¹³
16. A determination of the Sabre Claim is required prior to a distribution of the ResidualCo Funds, being a finite pool of funds.

b. D&O Claims

17. Certain former directors and officers of the Original Applicants (the “**Former Directors**”) submitted a D&O Claim asserting (a) a contingent claim of no less than \$8.9 million in connection with litigation commenced by Arena Limited SPV, LLC and 405 Dolomite LLC relating to conduct alleged to have been committed by the Former Directors; and (b) a claim of approximately \$50 thousand in respect of professional fees incurred by the Former Directors prior to the date of their Proof of Claim in connection with defending such litigation.¹⁴ The Former Directors have since incurred additional professional fees and submitted additional invoices to the Monitor.¹⁵
18. Subject to its contingent nature and the availability of insurance proceeds, the Monitor is satisfied that the Former Directors' claim is a claim indemnified pursuant to paragraph 21 of the ARIO, which is secured by the Directors' Charge.¹⁶
19. Accordingly, the Monitor proposes to make distributions to the Former Directors, from time to time, in such amounts as determined by the Monitor to constitute valid claims

¹¹ Tenth Report at paras 35-36 and Appendix A.

¹² Tenth Report at para. 37; Smith Affidavit, Appendix B, Notice of Revision or Disallowance.

¹³ Tenth Report at para 38; Smith Affidavit, Appendix C, Notice of Dispute.

¹⁴ Tenth Report at paras 54-55.

¹⁵ *Ibid* at para 59.

¹⁶ *Ibid* at paras 56-59.

secured by the Directors' Charge (each such distribution, a "**D&O Distribution**"), up to the amount secured by the Directors' Charge (\$335,000).

c. Post-Filing Claims

20. The Monitor proposes to make distributions from the ResidualCo Funds in respect of accepted Post-Filing Claims to the parties and in the amounts set out in Schedule "B" of the draft Stay Extension and Distribution Order. These distributions total approximately \$1.5 million.¹⁷ The relevant creditors provided goods and services to the Original Applicants during the CCAA proceedings prior to the closing of the TexCal Transaction, when the Original Applicants had substantially exhausted their liquidity, did not have interim financing and were unable to pay post-filing operating costs.¹⁸
21. The Monitor also proposes to make distributions to the following creditors with accepted Post-Filing Claims: Big Lake County, the Municipal District of Greenview, Vulcan County (collectively, the "**Municipalities**") and Alberta Energy Regulator ("**AER**"). On the basis of discussions among the Monitor and these parties, the distribution proposed to be made to these parties will be in the amount remaining available after the distributions described in the preceding paragraph are made. Such remaining amounts will not be sufficient to pay the accepted claims of the Municipalities and the AER in full.¹⁹

d. Extension of the Stay Period

22. The relief sought by the Monitor includes extending the Stay Period up to and including December 31, 2025. The requested extension is expected to allow time for all distributions proposed to be made, noting that the distributions to the Former Directors are anticipated to occur over a period of time as contingent aspects of such claim crystalize.²⁰

(iii) The Proposed CCAA Termination Order

23. If the proposed Stay Extension and Distribution Order is granted, the Monitor will make the distributions to creditors contemplated thereby and the administration of these CCAA proceedings will be complete.²¹

¹⁷ *Ibid* at paras 40-41, 67(c).

¹⁸ *Ibid* at para 42.

¹⁹ *Ibid* at paras 49-51.

²⁰ *Ibid* at para 70.

²¹ *Ibid* at para 70.

24. For efficiency in the circumstances, the Monitor contemporaneously seeks the CCAA Termination Order, to terminate these CCAA proceedings upon the Monitor serving an executed certificate on the Service List in substantially the form attached as Schedule “A” to the CCAA Termination Order (the “**Monitor’s Termination Certificate**” and the time of service thereof being the “**CCAA Termination Time**”).
25. In connection with the proposed termination of these CCAA proceedings, the Monitor seeks approval of its reports and activities, approval of the Monitor’s and Monitor’s Counsel’s fees and disbursements and the Monitor’s discharge and release.

III. ISSUES AND THE LAW

26. The issues to be considered in this application are whether:
 - a. the Sabre Claim constitutes a valid Proprietary/Trust Claim;
 - b. the distributions proposed by the Monitor should be approved;
 - c. the Stay Period should be extended up to and including December 31, 2025;
 - d. the reports and activities of the Monitor, and the fees and disbursements of the Monitor and the Monitor’s Counsel should be approved;
 - e. these CCAA proceedings should be terminated, conditional and effective upon the Monitor certifying completion of the remaining administrative matters; and
 - f. the releases sought should be approved.

A. SABRE’S CLAIM IS NOT A VALID TRUST CLAIM

27. Given the quantum of funds available for distribution to creditors, the Claims Process did not call for pre-filing unsecured claims. The Claims Process called for four specific categories of claims, being Proprietary/Trust Claims, Post-Filing Claims, Secured Claims and D&O Claims.²²
28. Accordingly, in order for Sabre’s claim to constitute a valid claim in the Claims Process, the issue is not whether Razor Energy was indebted to Sabre. Rather, Sabre’s claim must constitute one of these elevated categories of claims, entitling it to be repaid in priority to other categories of creditors.

²² Tenth Report at para 25; Claims Process Order, [Schedule “A” – Claims Process](#) at para 5.

29. Sabre asserts a Proprietary/Trust Claim. The definition of “Proprietary/Trust Claim” in the Claims Process Order is as follows:

“Proprietary/Trust Claim” means any Claim which is based on (i) the Person asserting such Claim holding a proprietary interest in any ResidualCo Funds or other Property of ResidualCo, or (ii) any ResidualCo Funds or other Property of ResidualCo being subject to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) in respect of which the Person asserting such Claim is the beneficiary.²³

30. As the Monitor understands it, Sabre asserts that Razor Energy agreed to hold certain gas cost allowances in trust for Sabre pending completion of an annual adjustment.²⁴ Sabre has not provided any form of written agreement, nor referenced any oral agreement in relation to this arrangement.
31. Prior to making a determination on the Sabre Claim, the Monitor specifically requested that Sabre provide a copy of the “GCA Transfer Agreement” referenced in Sabre’s Proof of Claim.²⁵ The additional documentation provided by Sabre did not contain any reference to a trust. To the contrary, the additional documentation provided by Sabre indicates that there was an adjustment calculated pursuant to an asset purchase and sale agreement, Sabre sent Razor Energy an invoice for payment of that adjustment, and Razor Energy failed to pay the invoiced amounts.²⁶
32. It is settled law that the creation of a trust requires the presence of the “three certainties”: certainty of intention, subject matter, and object.²⁷
33. Sabre has not provided any documentation or other evidence that demonstrates a certainty of intention (or any intention) on the part of Razor Energy to establish a trust.

²³ Claims Process Order, [Schedule “A” – Claims Process](#) at para 1.

²⁴ Smith Affidavit, Appendix A, Proof of Claim; Statement of Claim appended thereto at paras 12-13.

²⁵ Tenth Report at para 35 and Appendix A.

²⁶ Tenth Report, Appendix A, including an email from Mr. Josh Molack dated April 15, 2025.

²⁷ *Century Services Inc v Canada*, 2010 SCC 60 at [para 83](#), citing D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters’ Law of Trusts in Canada* (3rd ed. 2005).

34. While Sabre may have a valid claim for breach of contract or otherwise for amounts owed to it, in the Monitor's view, any such claim would be a pre-filing unsecured claim and does not constitute a Proprietary/Trust Claim pursuant to the Claims Process.
35. Accordingly, the Monitor is of the view that Sabre's application should be dismissed.

B. THE PROPOSED DISTRIBUTIONS ARE APPROPRIATE

36. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA proceeding. A CCAA court has broad power to do what is just in the circumstances, and payments to creditors outside of a CCAA plan are often ordered.²⁸
37. Where claims have been accepted by the Monitor pursuant to a Court-ordered claims process, it follows that a distribution to such creditors should be made.
38. The specific sequence and proportion of the distributions proposed by the Monitor reflect discussions between the Monitor and the parties affected thereby, as detailed in the Tenth Report.²⁹
39. The Monitor respectfully submits that, if the Sabre Claim is dismissed, the proposed distributions on the terms of the Stay Extension and Distribution Order should be authorized.

C. STAY PERIOD SHOULD BE EXTENDED

40. Section 11.02(2) of the CCAA provides the Court discretion to make an Order extending the stay of proceedings granted in an initial order.³⁰
41. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that (i) circumstances exist that make an order appropriate, and (ii) the applicant has acted, and is acting, in good faith and with due diligence.³¹
42. The Monitor submits that an extension of the Stay Period up to and including December 31, 2025 is appropriate in the circumstances given, amongst other things:

²⁸ *Nortel Networks Corp, Re*, 2014 ONSC 4777 at [paras 53-55](#).

²⁹ Tenth Report at paras 49-53.

³⁰ CCAA, [Section 11.02\(2\)](#).

³¹ CCAA, [Section 11.02\(3\)](#).

- a. ResidualCo has acted, and continues to act, in good faith and with due diligence;
 - b. extending the Stay Period will provide ongoing stability for ResidualCo while the Monitor continues to wind-down the affairs and complete these CCAA proceedings, including making distributions of the remaining ResidualCo Funds;
 - c. distributions in respect of the Former Directors' claim are anticipated to occur over a period of time; and
 - d. no creditor or stakeholder will be prejudiced as a result of the extension of the Stay Period.
43. The Monitor submits that it is appropriate for this Court to approve the requested extension of the Stay Period.

D. THE MONITOR'S ACTIVITIES AND FEES SHOULD BE APPROVED

(i) Monitor's Reports and Activities

44. Requests to approve the reports and the activities of CCAA monitors are routinely granted in CCAA proceedings.³²
45. The Monitor has undertaken its duties, as prescribed by the CCAA, the Initial Order, the ARIO and all other Orders issued in these CCAA proceedings, in good faith and with due diligence.³³
46. Accordingly, it appropriate that the Monitor's reports, along with the actions, conduct and activities of the Monitor as set out therein, be approved.

(ii) Monitor's Fees and Disbursements

47. Pursuant to the ARIO, the Monitor and the Monitor's Counsel were to be paid their reasonable fees and disbursements, at standard rates and charges, and such fees and disbursements are secured by the Administration Charge.³⁴

³² *Target Canada Co (Re)*, 2015 ONSC 7574 at [para 2](#).

³³ Tenth Report at para 71.

³⁴ ARIO, at [paras 29, 31](#).

48. Pursuant to the ARIO, the Monitor and the Monitor's Counsel are required to pass their accounts from time to time.³⁵ A summary of the fees and disbursements incurred for the Monitor and the Monitor's Counsel for the period of January 1, 2024 to June 13, 2025, and the estimated fees and disbursements to complete the Monitor's remaining duties in these CCAA proceedings, are set out in the Tenth Report.³⁶
49. The fees and disbursements charged by the Monitor and the Monitor's Counsel have been necessarily incurred and the hours and rates are fair and reasonable in the circumstances.³⁷ The Monitor respectfully requests approval of the same, without the necessity of passing formal accounts.

E. THE CCAA TERMINATION-RELATED RELIEF SHOULD BE GRANTED

50. Upon the conclusion of the Claims Process and the distributions of the ResidualCo Funds, the only remaining matter in these CCAA proceedings will be the orderly and efficient wind-up of ResidualCo.
51. The Monitor seeks an order that would, upon the filing of the Monitor's Termination Certificate, amongst other things, terminate these CCAA proceedings, discharge FTI as Monitor, discharge the remaining Administration Charge, and authorize the Monitor to file an assignment in bankruptcy for and on behalf of ResidualCo.
52. Courts routinely grant orders on terms similar to those sought in the CCAA Termination Order, including but not limited to provisions expressly:
 - a. terminating the CCAA proceedings conditional upon the Monitor serving a certificate which certifies the completion of remaining administrative matters;
 - b. terminating, releasing, and discharging Court-ordered charges;
 - c. discharging the Monitor from duties, obligations and responsibilities after the CCAA Termination Time while preserving the benefits of, rights, approvals, releases and protections in favour of the Monitor; and

³⁵ ARIO, at [para 30](#).

³⁶ Tenth Report at para 73-75.

³⁷ Tenth Report at para 76.

- d. authorizing the Monitor to file an assignment in bankruptcy for and on behalf of ResidualCo.³⁸

53. The proposed mechanics set out in the CCAA Termination Order are intended to achieve cost-efficiencies and are reasonable and appropriate in the circumstances.

F. THE PROPOSED RELEASE IS REASONABLE AND APPROPRIATE

54. The Released Parties have made substantial contributions to these CCAA proceedings. The Monitor seeks the limited CCAA Releases to achieve certainty and finality for the Released Parties, and believes the proposed releases are appropriate in the circumstances.

55. Such limited releases in favour of the Monitor, the Monitor's Counsel, and each of their respective affiliates, officers, directors, partners, employees and agents (specifically including Dustin Olver, who as a representative of the Monitor has served as director and officer of ResidualCo), are appropriate and Courts have exercised their discretion to grant similar relief in a number of cases.³⁹

IV. CONCLUSION

56. Subject to the Court's determination of the Sabre Claim, the Monitor seeks the Stay Extension and Distribution Order and the CCAA Termination Order in order to distribute the ResidualCo Funds to creditors with accepted claims pursuant to the Claims Process and complete the administration of these CCAA proceedings in an efficient manner.

57. The Monitor respectfully requests that this Court grant the relief sought in the proposed Stay Extension and Distribution Order and the CCAA Termination Order.

³⁸ *Aleafia Health Inc, et al*, Court File No. CV-23-00703350-00CL, CCAA Termination Order dated March 1, 2024 at [paras 7-12](#); see also *Westphalia Dev Corp*, Court File Number 2501-00574 [*Westphalia*], CCAA Termination Order dated March 28, 2025 at [paras 6-10](#).

³⁹ *Bellatrix Exploration Ltd*, Court File Number 1901-13767, CCAA Termination Order dated March 29, 2022 at [para 13](#); see also *Divestco Inc*, Court File Number 1901-03046, CCAA Termination Order dated February 3, 2020 at [para 7](#); *Westphalia*, CCAA Termination Order at [para 11](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June, 2025.

Per: Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP

Counsel for the Monitor

TABLE OF AUTHORITIES

AUTHORITY

[Century Services Inc v Canada, 2010 SCC 60](#)

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[Divestco Inc](#), Court File Number 1901-03046, [CCAA Termination Order](#) dated February 3, 2020

[Companies' Creditors Arrangement Act](#), RSC 1985, c C-36, as amended