

# Court of King's Bench of Alberta



**Citation: Razor Energy Corp (Re), 2024 ABKB 553**

**Date:**  
**Docket: 2401 02680**  
**Registry: Calgary**

**In the Matter of the *Companies' Creditors 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**

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**Reasons for Decision  
of the  
Honourable Justice Douglas R. Mah**

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## **A. Background**

[1] Within the ambit of *CCA*<sup>1</sup> proceedings, a creditor (Conifer Energy Inc) of the debtor corporation (Razor Energy Corp) seeks an Order under s 11 for payment of post-filing obligations and a priming charge to secure that payment.

[2] Here is a brief factual synopsis:

- Razor and Conifer are oil and gas producers. Conifer operates the Judy Creek Gas Conservation Plant where Conifer, under an ownership and operating agreement (OOA) with Razor, received and processed a major portion of Razor's gas production.
- Razor and Conifer, along with others, are owners of the gas plant. The OOA requires Razor to pay its share of the plant's operating costs and to pay for ongoing processing services in respect of its gas processed there. There are 8

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<sup>1</sup> *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 as am.

other owners who have ownership interests in the functional units comprising the facility.

- In December 2023, after Razor defaulted in its obligations under the OOA, Conifer physically locked Razor out of the gathering system at 16 separate points within the South Swan Hills Gas Gathering System, thus preventing processing of about two-thirds of Razor's gas.
- Conifer was unable to completely lock out Razor because the configuration of the infrastructure did not allow Conifer to do so without adversely affecting third-party interests. Conifer set-off and continues to set-off the revenue from the one-third of Razor's gas that continues to be processed against Razor's obligations.
- Razor filed a Notice of Intention to Make a Proposal (NOI) under the *BIA*<sup>2</sup> in January 2024, thus invoking the statutory stay provided in s 69(1)(a) of the *BIA*.
- Justice Lema in a February 21, 2024 decision reported as *Blade Energy Services Corp (Re)*, 2024 ABKB 100 determined that Conifer's lockout action was contrary to the statutory stay so far as any pre-NOI amounts were concerned, but not any post-NOI amount owing. He determined that Conifer continues to enjoy any contractual remedies it may have with regard to unpaid post-NOI obligations.
- Following Justice Lema's decision, Conifer and Razor were unable to reach terms by which Razor could revert to full access to the plant. Razor had determined that it could continue to carry on business even without access to the Judy Creek plant. Thus, the lockout of the two-thirds of Razor's output continues and the set-off by Conifer of the revenue from the remaining one-third also continues.
- On February 28, 2024 Razor converted its NOI proceedings into a *CCAA* proceeding, engaging a new stay under s 11.02. There have been extensions applied for and granted. The current stay period expires on October 13, 2024. The amounts sought to be paid (or secured) relate to the period on and after February 28, 2024 or the "post-filing" period.
- Razor advises that its plan in the *CCAA* proceedings takes the form of a pending "Corporate Transaction" with a third-party purchaser which, according to Razor's affiant (Mr. Bailey, affidavit of September 6, 2024 at para 6), will come together on or about September 20, 2024 and will result in Conifer being paid the post-filing arrears in full. For reasons of commercial confidentiality, the details of the Corporate Transaction have not been disclosed.
- It is Conifer's surmise (affidavit of Ms. Wilkins affirmed September 3, 2024 at para 16) that Razor's interest in the Judy Creek gas plant and South Swan Hills Unit form part of the assets under sale in the Corporate Transaction.
- Razor continues to not pay Conifer under the OOA. Razor says it is insolvent and unable to do so. Conifer says that Razor is getting a "free ride" with respect to the one-third of gas output that continues to be processed at the Judy Creek plant and with regard to its ownership obligations. Furthermore, Conifer advises that

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<sup>2</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 as am.

Razor's obligations to another owner, CNRL, are now being allocated by CNRL to Conifer, thus jeopardizing Conifer's financial status.

- The amount owed to Conifer by Razor for the post-filing period as of September 2, 2024 for services is \$1.89 million, including Razor's share of the plant's operating costs. The debt is escalating at a rate of \$250,000 per month after set-off. The amount reallocated by CNRL to Conifer in respect of Razor is more than \$4.15 million which includes approximately \$360,000 for post-filing amounts charged by CNRL.

### **B. Principles underlying the CCAA**

[3] The Supreme Court of Canada in *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60, by its majority at paras 57-60, set out the foundational precepts of decision-making under the *CCAA*:

- The *CCAA* is “skeletal in nature” and does not “contain a comprehensive code that lays out all that is permitted or barred.” Thus, *CCAA* decisions are often based on discretionary grants of jurisdiction. Judicial discretion in this regard must be exercised in furtherance of the *CCAA*'s purposes.
- The purpose of the *CCAA* is remedial “in the purest sense” in providing a means whereby the devastating social and economic effects of bankruptcy or creditor-initiated termination of ongoing business operations can be avoided while a Court-supervised attempt to reorganize the financial affairs of the debtor company is undertaken.
- The Court engaged in judicial decision-making under the *CCAA* must “first of all provide the conditions under which the debtor can attempt to reorganize.” This can be achieved by staying enforcement action to allow the debtor's business to continue, preserving the *status quo* while the debtor readies itself to present the restructuring or reorganization plan to creditors, and supervising the process and advancing it to the point where it can be determined whether it will succeed.
- The Court must be cognizant of and weigh all stakeholder interests and the public interest that may come into play in any decision of whether to allow a particular action.

[4] I consider this application against the backdrop of the above principles.

### **C. Conifer's Position**

[5] Conifer seeks this Order from the Court:

- requiring Razor to pay Conifer all amounts owing under the OOA for the post-filing period;
- requiring Razor to pay Conifer all post-filing amounts owed by Razor to CNRL that CNRL intends to seek from Conifer;

- that such payments be made in priority to any other creditors of Razor and be paid by September 20, 2024 (coinciding with the date that the Corporate Transaction is supposed to be signed); and
- that Conifer be granted a charge against Razor’s property to secure the post-filing amounts, ranking only behind the administration charge and directors’ charge, or a declaration of constructive trust against Razor’s property, for the post-filing amounts. (This appears to be alternative relief to a Court Order for an immediate in-full cash payment.)

[6] As justification for the relief sought, Conifer says:

- The amounts are owed by Razor to Conifer under the OOA.
- Both s 11.01 of the *CCAA*, as an exception to the stay provision, and para 19 of the Amended and Restated Initial Order (ARIO) permit Conifer to require immediate payment from Razor for post-filing amounts.
- Conifer notes that Razor is paying certain partners and service providers their post-filing invoices but not Conifer, resulting in Conifer facing risk while those other creditors receive ongoing payment, contrary to the spirit of insolvency legislation as expressed in *Québec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 75.
- The Court has broad jurisdiction under section 11 of the *CCAA* to make the Order sought. When assessed against the policy objectives of the *CCAA*, Conifer notes the purpose of the *CCAA* is not to disadvantage creditors but rather to provide a constructive solution for all stakeholders and where all stakeholders are treated as advantageously and fairly as circumstances permit: *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para 205.
- Under its inherent powers, the Court can create a security interest for creditors who supply goods and services to the debtor after the filing of a *CCAA* petition and can provide for the priority and ranking of such a security interest with respect to other security holders: *Arrangement relatif à Gestion Éric Savard inc*, 2019 QCCA 1434 at paras. 17-24; Houlden, Morawetz and Sarra, *The 2024 Annotated Bankruptcy and Insolvency Act*, Toronto: Thomson Carswell, 2024, pp. 1464-1465, commenting on *Re Smoky River Coal Ltd*, 2000 ABQB 621, aff’d in 2001 ABCA 209.
- Further, or in the alternative, the Court may declare a constructive trust in respect of the supplier’s entitlement to be paid for post-filing goods and services provided under an executory contract: *General Motors Corporation v Peco, Inc.*, 2006 CanLII 4758 at paras. 17-31.

[7] In its brief at paragraph 41, Conifer invoked s 11.4 the *CCCA*, which provides the Court the ability to declare a charge in favor of a “critical supplier” but did not press that position during the hearing. The evidence before me was that Razor was carrying on business without support from Conifer and Conifer was not cutting off services completely only because of the configuration of the infrastructure and its obligations to other parties. In this sense, Conifer was not a critical supplier of Razor.

[8] CNRL appeared by counsel at the hearing. No argument was made on its behalf regarding whether the Orders sought should be granted or not. Counsel confined his remarks to saying that if the Court was inclined to grant the Orders in favour of Conifer, then payment of the amounts earmarked for reallocated obligations by CNRL should be paid directly to CNRL. Counsel for CNRL also suggested that if Conifer was successful, then one might expect CNRL and other operators involved with Razor to make the same application.

#### D. Razor's position

[9] In response, Razor submits the following:

- The OOA between Conifer and Razor provides the remedies for breach and non-payment. The Court should not be rewriting the OOA by giving Conifer new remedies and rights, nor does the *CCAA* confer jurisdiction on the Court to do so: *Allarco Entertainment Inc, Re*, 2009 ABQB 503 at paras 52-54. (As noted, Conifer is presently exercising the existing right of set-off.)
- Enforcement of the post-filing amounts remain stayed. No application has been made to lift the stay. The remedy inherent in s 11.01 is not an Order for payment but rather stoppage of supply.
- The Court should remain alive to the principle that the *status quo* should be maintained until a conclusion is reached under the *CCAA*. Accordingly, there is no basis for Conifer to obtain the Court's assistance to either improve its position by enhancing priority or effect collection of amounts owing: *Agro Pacific Industries Ltd, Re*, 2000 BCSC 879 at para 17.
- Case law establishes that s 11.01 must be construed narrowly. In order for a creditor to fit within the exception to the stay of proceedings found in s 11.01, the creditor must be compelled by *CCAA* Order to continue supply of services during the post-filing period. The *quid pro quo* for this compulsion is the statutory obligation for the debtor to continue paying on a current basis during the post-filing period: *Smith Brothers Contracting Ltd (Re) (Trustee of)*, 1998 CanLII 3844 (BCSC) at para 14; *Royal Bank v Cow Harbour Construction Ltd*, 2012 ABQB 59.
- The granting of Conifer's application in either form, says Razor, would basically sound the death knell for the Corporate Transaction. Razor says that it is insolvent and lacks the ability to pay Conifer as requested in the application. Further, the granting of a priority charge to Conifer would make the Corporate Transaction untenable. There is no reason to elevate Conifer's position at the expense of all remaining creditors standing to benefit if the Corporate Transaction is concluded.

[10] Razor was supported in its opposition to the application by Arena Investors LP, one of Razor's secured creditors, and by Big Lakes County and the Municipal District of Greenview. The two municipalities, among others, are owed municipal taxes on a priority basis. All of these objecting parties echo that Conifer seeks to improperly elevate its priority status either by actual payment before anyone else or the granting of a priming charge, to the prejudice of other creditors.

[11] Arena's counsel submitted that Conifer's post-filing claim is unsecured or at best forms the basis of an Operator's Lien, still subordinate to Arena's security: *Cansearch Resources Ltd v Regent Resources Ltd*, 2017 ABQB 535 at para 42. Arena also contends that a single post-filing creditor should not be allowed to determine the fate of the entire *CCAA* proceeding: *Essar Steel Algoma Inc, Re*, 2016 ONSC 6459 at para 26. Finally, with regard to constructive trust, Arena's counsel says that even if enrichment of Razor and deprivation on Conifer's part are made out, there is a juristic reason not to pay Conifer and that is the *CCAA*.

#### **E. Does Section 11.01 apply?**

[12] I accept that s 11.01 must be construed narrowly *per Smith Brothers* and *Cow Harbour*. Yamauchi J noted at para 16 of the latter case:

While a debtor corporation is proceeding through the *CCAA* restructuring process, it must still carry on its business. It hardly seems fair to require a person to continue to supply the debtor corporation with goods or services, or to allow the debtor corporation to continue to use leased property, without that person being compensated for those goods, services or use. Section 11.01(a) of the *CCAA* allows for that compensation.

[13] I understand the sentiment of the unfairness of non-payment when the services are connected to the debtor corporation carrying on business while under the *CCAA*. Here, the evidence before me is that Razor has not asked Conifer to provide services. In fact, Conifer has cut off Razor to the extent it can. All of the gas ostensibly produced by Razor that is processed at the plant is being processed for Conifer's benefit, not Razor's. The only reason the services continue on Razor's account is because of the physical configuration of the system infrastructure and Conifer's obligations to other parties, neither of which Razor control. Indeed, the evidence is that Razor is getting by without any help from Conifer.

[14] I am not ready to say that the *quid pro quo* of compulsion under a *CCAA* Order is required to engage s 11.01 as suggested by Razor but in the least the services being claimed must be at the debtor's request and of some utility to the debtor in conducting its business, even if the claimant is not a "critical supplier" under s 11.4. It is true that the plant continues to be operated and that Razor's interest in the plant may be part of the assets sold in the Corporate Transaction. But Conifer's continued operation of the plant arises not from Razor's request to do so but rather Conifer's obligations to others and its self-interest in the plant's operation.

[15] As the evidence shows, Razor has undergone a process of determining who it needs to pay in order to remain in business and work toward achieving the Corporate Transaction. Examples were given in Mr. Bailey's affidavit of electrical supply and the services of other operators who are processing Razor's gas *and* providing Razor with revenue for use as the *CCAA* proceedings advance. Razor has determined that it does not need Conifer's help to conduct business during the stay period or to advance the Corporate Transaction under the *CCAA*.

[16] To be sure, Conifer is in an unwieldy predicament and that is through no fault of its own. It cannot completely shut off Razor's access and it cannot shut down the plant. Unfortunately for Conifer, it has already taken its best available remedy, which is the set-off. I agree that *if* s 11.01 is engaged then Conifer's remedies under s 11.01 itself are as contained in the OOA or stoppage of supply (if it were possible). Beyond that, Conifer must apply for an Order under s 11 (or s

11.4 if “critical supplier” status was made out). Such an application in either event engages the foundational precepts of decision-making under the *CCAA* discussed above.

## F. Monitor’s Report

[17] These points are notable from the Monitor’s Report:

- (at para 24) Razor has sufficient liquidity to remain in business for the duration of the stay. If Conifer were successful in obtaining its Order directing payment of the post-filing arrears by September 20, 2024 Razor would not have the necessary cash flow to remain in business.
- (at para 25) The Monitor’s fifth report and sixth (and current) cash flow statement, and others filed in these proceedings, do not contemplate payment of the post-filing amounts owed to Conifer.
- (at para 28) The Monitor views the Corporate Transaction as the best alternative for all stakeholders as it would avoid a bankruptcy and potentially no recovery for stakeholders.
- (at para 29) The Monitor understands that the estimated proceeds from the Corporate Transaction are expected to be sufficient to pay the post-filing arrears owed to Conifer, not including the deposit of \$680,000 that is requested, which would only be required if Conifer were to reconnect Razor to the system.
- (at para 32) If Conifer were successful in this application, Razor will likely be unable to complete the Corporate Transaction which would result in significant losses for stakeholders, including significant abandonment and reclamation obligations.

[18] I remind myself of the Monitor’s role in these proceedings. The Monitor is a Court officer subject to OSB supervision. The Ontario Court of Appeal summarized the nature of the Monitor's role in *Ernst & Young Inc v Essar Global Fund Limited*, 2017 ONCA 1014 at para 109, as:

The monitor is to be the eyes and the ears of the Court and sometimes, as is the case here, the nose. The monitor is to be independent and impartial, must treat all parties reasonably and fairly, and is to conduct itself in a manner consistent with the objectives of the *CCAA* and its restructuring purpose. In the course of a *CCAA* proceeding, a monitor frequently takes positions; indeed it is required by statute to do so.

[19] The Monitor’s financial presentation and its statements about the effect of the Corporate Transaction if it comes to fruition (or not) were not controverted by Conifer or any other evidence. Accordingly, I accept what the Monitor in its September 10, 2024 report says about the financial condition of Razor, its liquidity, and the prospects for all of Razor’s stakeholders if the Corporate Transaction is realized or is not.

### G. Ruling

[20] Even if Conifer's post-filing claim falls within s 11.01, I am still required to exercise my discretion to make an appropriate Order under s 11 in accordance with the *CCAA*'s overall policy objectives.

[21] In making my ruling, I have regard to the following factors:

- The mere fact that Razor is under the *CCAA* means it is insolvent.
- No provision in the latest cash flow statement, which extends to the end of the current stay, is made for payment to Conifer for any post-filing amounts.
- The granting of Conifer's application in either form would trigger similar applications by CNRL and other operators, which the Court would be hard-pressed (given the precedent set) to deny.
- 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).
- The documentation for the Corporate Transaction is scheduled to be completed and signed as of September 20, 2024, which is a scant day away. Mr. Bailey (Razor's CEO) expresses optimism that the Corporate Transaction will actually come to pass. There is no contrary information before me.
- Conifer is not left dangling indefinitely. There are milestone dates looming: September 20, 2024 for the signing of the Corporate Transaction and October 13, 2024 for the expiry of the current stay.

[22] Based on the evidence before me, I conclude as follows:

- Allowing Conifer's application (and the other similar applications that would inevitably follow) will likely have the effect of causing the Corporate Transaction to collapse.
- In the words of *Century Services*, granting the Order sought would not "provide the conditions" under which Razor can execute on the Corporate Transaction but rather would hasten its bankruptcy or receivership.
- Granting the Order sought would give Conifer an unfair advantage now and in any subsequent bankruptcy or receivership by authorizing a preferential payment and/or artificially elevating its priority position. It would not provide a constructive solution to all stakeholders, only Conifer.
- Granting the Order would in effect permit the interests of a single post-filing creditor to determine the fate of the entire *CCAA* proceeding to the detriment of remaining stakeholders.

[23] In exercising my discretion under the *CCAA*, I remain cognizant of the remedial purpose of the *CCAA* and the requirement to consider broad stakeholder interests. I appreciate the Corporate Transaction, if signed, is still subject to Court approval but, on the basis of the evidence before me, it does represent the best and fairest outcome for all stakeholders.



[24] In the result, I find that Conifer's post-filing claim does not fall within the narrow exception created by s 11.01. Whether it does or not, I would still exercise my discretion against granting the Order for the reasons given above. In consequence, I dismiss Conifer's application.

[25] If the parties/counsel so wish, they may address costs with me within 30 days of the date of this decision by submitting a written submission not longer than two single-spaced pages, excluding exhibits and authorities, and including a draft Bill of costs.

Heard on the 11<sup>th</sup> day of September, 2024.

**Dated** at the City of Calgary, Alberta this 19<sup>th</sup> day of September, 2024.



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**Douglas R. Mah**  
**J.C.K.B.A.**

**Appearances:**

Keely Cameron and Sarah Aaron, Bennett Jones LLP,  
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Sean Collins, McCarthy Tetrault LLP,  
counsel for Razor Energy Corp, Razor Royalties Limited Partnership, Razor Holdings GP  
Corp., and Blade Energy Services Corp.

Kelly J. Bourassa, Blakes, Cassels & Graydon LLP,  
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Jessica Cameron, Fasken Martineau Dumoulin LLP,  
counsel for 405 Dolomite ULC, as agent to certain lenders (Arena Investors LP)

Randal Van de Mosselaer, Osler,  
counsel for Canadian Natural Resources Limited

Corey Luda, Brownlee LLP,  
counsel for Vulcan County

Michael Swanberg, Reynolds Mirth Richards & Farmer LLP,  
counsel for Big Lakes County and Municipal District of Greenview

The following parties also attended but did not make submissions

Stacey McPeak, Shores Jardine LLP,  
counsel for the Alberta Petroleum Marketing Commission

Philip LaFair,  
Counsel to Sabre Energy Ltd.

Daniel Segal,  
Justice Canada

Marianne Panenka, Department of Justice Canada,  
Counsel for Indian Oil and Gas Canada

Kristopher Lensink,  
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