



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00743136-00CL

DATE: September 10, 2025

NO. ON LIST: 002

TITLE OF PROCEEDING:

SHAW-ALMEX INDUSTRIES LIMITED et al

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff:**

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**For Defendant:**

Name of Person Appearing	Name of Party	Contact Info

**Other:**

Name of Person Appearing	Name of Party	Contact Info
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## **ENDORSEMENT OF JUSTICE J. DIETRICH:**

### **Introduction**

- [1] Shaw-Almex Industries Limited ("**SAIL**"), Shaw Almex Fusion, LLC (together with SAIL, the "**Applicants**") and FTI Consulting Canada Inc. ("**FTI**"), in its capacity as court-appointed monitor (the "**Monitor**") of the Applicants seeks two orders today.
- [2] First, an order is sought (i) extending the Stay of Proceedings up to and including January 31, 2026 (the "**Extended Stay Period**"); (ii) authorizing the Monitor to make a distribution to Royal Bank of Canada ("**RBC**") and subject to receiving a satisfactory opinion confirming the security held by Business Development Bank of Canada ("**BDC**"), making distribution to BDC; and (iv) a limited sealing order with respect to the Confidential Supplement to the Fourth Report of the Monitor dated September 8, 2025 (the "**Fourth Report**").
- [3] Second, an order is sought authorizing the Monitor to continue and commence certain proceedings under s. 96 of the *Bankruptcy and Insolvency Act* (the "**BIA**") in respect of the Share Purchase Agreement.
- [4] Defined terms used but not otherwise defined herein have the meaning provided in the factum of the Applicants filed for use on this motion.
- [5] No opposition was raised with respect to the relief sought.

### **Background**

- [6] On May 13, 2025, the Court granted an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") with respect to the Applicants, which, among other things continued the NOI proceeding commenced by SAIL under the purview of the CCAA, and provided FTI as monitor with enhanced powers. On May 13, 2025, an Order was also made approving a sale, refinancing and solicitation process.

- [7] On July 18, 2025, an order was granted by the Court approving an Asset Purchase Agreement and extending the stay period until September 10, 2025. That transaction closed on August 27, 2025 and following closing, SAIL has no remaining employees or operating business. Certain post-closing matters remain outstanding. These include the transfer of SAIL's legal ownership in certain subsidiaries - the beneficial ownership was transferred as at closing, but due to, among other things, local laws, the legal ownership has not yet been transferred and certain amounts of the purchase price under the transaction remain in escrow.
- [8] As well, on June 18, 2025, the Monitor brought a motion seeking authorization to commence an application that, among other things, declares that the transfer of shares of Shaw Almex Spain Real Holdings, S.L. from SAIL to Shaw Almex Global Holdings Limited pursuant to a share sale and purchase agreement dated December 31, 2021 (the "**Share Purchase Agreement**") and the transaction thereunder, was a transfer at undervalue for the purposes of s. 96 of the BIA, as incorporated into the CCAA by s. 36.1 thereof, and void as against the Monitor (such motion, the "**TUV Motion**"). That motion is currently scheduled to be heard on December 4, 2025.
- [9] The Monitor also previously commenced a motion seeking to hold Mr. Shaw in contempt of court. That motion settled shortly before the scheduled hearing, however, the issue of costs remained unresolved. Counsel has now made submissions on costs of that matter.
- [10] Further, the total amount outstanding as owing to RBC under the DIP Facility as of September 5, 2025 is \$4,418,052.83, including interest. As well, RBC has advised the Monitor that as at September 5, 2025, SAIL is indebted to RBC pursuant to the terms of the pre filing RBC Facility in the total amount of \$21,230,945.806 and USD\$514,661.45, including interest (the "**RBC Indebtedness**"). The Monitor received a legal opinion confirming that, subject to the usual assumptions and qualifications contained therein, the security interest granted to RBC in the personal property of SAIL is properly registered under the Personal Property Security Act (Ontario) (the "**PPSA**") and is valid and enforceable.
- [11] SAIL has also advised the Monitor that it is indebted to BDC, pursuant to the terms of the BDC Letter (as defined in the Initial Affidavit) in the total amount of \$1,931,944.61 as of August 22, 2025 (the "**BDC Indebtedness**"). No security opinion has been received by the Monitor in respect of the BDC indebtedness, but one is in progress.

## Issues

- [12] The issues to be determined are whether the Court should approve: (i) the requested extension of the Stay of Proceedings to January 31, 2025; (ii) the requested distributions to RBC and BDC; (iii) the limited sealing order in respect of the Confidential Supplement; and (iv) the authorization to the Monitor to pursue the TUV claim and related relief.

## Analysis

- [13] This Court is authorized to extend a CCAA stay pursuant to s. 11.02(2) of the CCAA, provided that the (a) circumstances exist that make the order appropriate; and (b) the CCAA Parties have acted, and are acting, in good faith and with due diligence (see s. 11.02(3) of the CCAA).
- [14] The Stay of Proceedings currently expires today. The Applicants are seeking an extension of the Stay of Proceedings up to and including January 31, 2025. The stay extension is appropriate and necessary in the circumstances to provide the Applicants and the Monitor time to complete the transfer of legal ownership of the relevant subsidiaries, address outstanding matters related to the Contempt Motion and TUV Motion and prepare the materials necessary to seek Court approval of, among other things, the final distribution of proceeds from the transaction and the termination of the CCAA Proceeding.
- [15] There is no reason to believe that the Applicants, under the supervision of the Monitor have not acted in good faith and with due diligence. Given the Revised Cash Flow Forecast demonstrates that the Applicants are expected to have sufficient liquidity to fund their obligations and costs of the CCAA Proceedings through the Stay Period Extension, no creditor will be materially prejudiced by the extension of the Stay Period. Accordingly, the extension of the Stay of Proceedings is appropriate in the circumstances.
- [16] The Monitor is seeking authority to distribute the cash proceeds received from the transaction to their first-ranking general secured creditor and DIP Lender, RBC as well as BDC. The Monitor has advised that the intent is to repay the DIP Facility first, followed by the amounts owing to BDC (subject to the security opinion being received); and finally followed by amounts owing to RBC on a pre-filing basis. None of the secured creditors present today object to the distributions and making the distributions in a timely manner will reduce interest costs. The Monitor also advises that reserves will be maintained and that no priority payables are expected, but that the Monitor undertakes to have a further conversation with CRA prior to the distributions being made, given that the motion was only served on September 8, 2025.
- [17] The limited sealing order being sought is necessary to preserve the Applicant and Monitor's ability to maximize the value of the remaining subsidiaries in the event of the transfer of legal ownership does not close. I am satisfied that the requested sealing order for the Confidential Supplement (being a breakdown of the escrowed funds) meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the Monitor to file a hard copy of the Confidential Supplement with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.
- [18] The Monitor seeks approval of the TUV Order which, among other things, authorizes the Monitor to continue and commence a proceeding under Section 96 of the BIA with respect to the Share Purchase Agreement. The proposed TUV Order is a discretionary order and should be assessed by the Court in considering if the order sought advances the policy

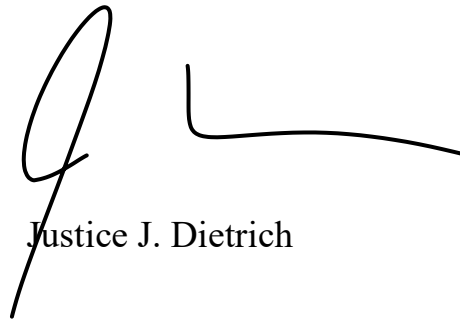
objectives underlying the CCAA and furthers efforts to achieve the remedial purpose of the CCAA.

[19] In the current case, in the TUV action the Monitor seeks the return of the shares that were allegedly improperly removed from the Applicants' estate, with the aim of ensuring that their value can be fairly and equitably redistributed among the Applicants' creditors, in accordance with the applicable priority scheme. This objective is clearly remedial in nature, falls squarely within the framework contemplated by the CCAA, and aligns with the overarching policy goals of the legislation; namely, maximizing value for stakeholders and ensuring fairness in the restructuring process. As noted above there was no opposition to this relief and the requested Order is appropriate in the circumstances.

### **Disposition**

[20] Orders to go in the forms signed by me this day.

September 10, 2025



Justice J. Dietrich