

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, C C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF SHAW-ALMEX INDUSTRIES LIMITED
AND SHAW ALMEX FUSION, LLC**

**FACTUM
OF FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS MONITOR OF SHAW-ALMEX INDUSTRIES LIMITED
AND SHAW ALMEX FUSION, LLC
(Re: Property Preservation Order)**

May 29, 2025

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416 869 5230

Nicholas Avis LSO#: 76781Q
Email: navis@stikeman.com
Tel: 416-869-5563

Lawyers for the Monitor

To: The Service List

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IN ITS CAPACITY AS MONITOR**

PART I: OVERVIEW

1. On March 29, 2025, Shaw-Almex Industries Limited (“**SAIL**”) filed a notice of intention to make a proposal (“**NOI**”) pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) with the Office of the Superintendent of Bankruptcy. FTI Consulting Canada Inc. (“**FTI**”) consented to act as the proposal trustee (the “**Proposal Trustee**”) of SAIL’s estate.
2. On May 13, 2025, this 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 SAIL and Shaw Almex Fusion, LLC (“**Fusion**”, and together with SAIL, the “**Applicants**”). FTI was appointed as the Court-appointed monitor of the Applicants (in this capacity, the “**Monitor**”) with enhanced powers.
3. This factum is filed in support of the Monitor’s motion seeking an order, amongst other things, (a) requiring the return of the Applicants’ Property (as defined in the Initial

Order); (b) directing that Mr. Timothy Shaw and Mrs. Pamela Shaw conduct themselves in a certain manner; and (c) empowering the Monitor to conduct certain oral examinations.

PART II: THE FACTS

4. The facts with respect to this motion are set out in the First Report of the Monitor dated May 27, 2025 (“**First Report**”). All references to currency in this factum are references to Canadian dollars, unless otherwise indicated. Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the First Report of the Monitor.

1. Generally

5. The Proposal Trustee in the NOI proceeding and now the Monitor in the CCAA proceeding have each faced significant challenges obtaining reliable information and cooperation from Mr. Shaw, SAIL’s only director and former CEO and President.¹ The Monitor was granted enhanced powers in the CCAA proceeding due, in part, to concerns arising from Mr. Shaw’s conduct.²

6. Mr. Shaw was terminated from his employment with SAIL on May 13, 2025, after the Initial Order was granted.³ Mr. Shaw has nevertheless continued to engage in conduct that frustrates the Applicants’ restructuring efforts. Amongst other things, the Monitor is concerned that Mr. Shaw has:

¹ First Report of the Monitor dated May 27, 2025, Monitor’s Motion Record Tab 2 (the “**First Report**”) at para. 28.

² *Ibid* at para. 32.

³ *Ibid* at para. 34.

- (a) contacted the Applicants' employees regarding the copying and acquisition of proprietary information (the "**Proprietary Information**"), including engineering drawings and calculations, order history, pricing tools, electrical drawings and marketing information;⁴
- (b) obtained portable hard drives owned by the Applicants that contain Proprietary Information, including the Applicants' engineering and marketing data;⁵
- (c) made copies of emails and contact information, both of which constitute Proprietary Information;⁶
- (d) made plans to enter the Applicants' facilities after his termination, and that he had the Applicants' keys in his possession to facilitate same;⁷
- (e) advised certain of the Applicants' employees that he intends to establish a new business to compete with the Applicants and that he intends to use the Proprietary Information in furtherance of same;⁸ and
- (f) been soliciting certain of the Applicants' employees to resign from their employment with the Applicants and start employment with his new business.⁹

⁴ *Ibid* at para. 36(a).

⁵ *Ibid* at para. 36(b).

⁶ *Ibid* at para. 36(c).

⁷ *Ibid* at para. 36(d).

⁸ *Ibid* at para. 36(e).

⁹ *Ibid* at para. 36(e).

7. Mr. Shaw has admitted that he has certain of the Applicants' Property in his possession, including vehicles and computers.¹⁰ He has not set out any legal right entitling him to the Property in his possession.

2. Efforts to Recover the Property

8. The Monitor has tried, in good faith, to recover the Property from Mr. Shaw. Mr. Shaw, however, has not engaged in meaningful communication with the Monitor.¹¹

9. Counsel to the Proposal Trustee initially wrote to Mr. Shaw on May 9, 2025, regarding concerns with Mr. Shaw's conduct.¹² On May 15, 2025, counsel to the Monitor sent Mr. Shaw a letter setting out its grave concerns with his use and attempted use of the Property.¹³

10. On May 16, 2025, Mr. Shaw emailed the Monitor and assured the Monitor that the Applicants' vehicles and building keys would be returned "over weekend".¹⁴

11. On May 17, 2025, the Monitor was advised that Mr. Shaw was hospitalized.¹⁵ Later that same day, the Monitor learned that Mr. Shaw had changed the locks on one of the Applicants' buildings.¹⁶

¹⁰ *Ibid* at para. 38.

¹¹ *Ibid* at para. 33.

¹² *Ibid* at para. 30.

¹³ *Ibid* at para. 36.

¹⁴ *Ibid* at para. 38.

¹⁵ *Ibid* at para. 40.

¹⁶ *Ibid* at para. 41.

12. Mrs. Pamela Shaw, on Mr. Shaw's behalf, assured the Monitor that she was "working to return property as soon as [she] can".¹⁷ The Monitor offered to pick up the Property.¹⁸

13. By May 22, 2025, no Property had been returned to the Monitor. Counsel to the Monitor sent a follow-up letter to Mr. Shaw, which noted his non-compliance with the Monitor's earlier letter and addressed concerns that Mrs. Pamela Shaw may have in her possession rental income that ought to be remitted to SAIL.¹⁹

14. On May 23, 2025, Mrs. Shaw wrote to the Monitor to advise that "We are working to comply with the return of vehicles, computers, hard drives, and phones by end of day today."²⁰ In a second email send shortly thereafter, Mrs. Shaw told the Monitor that she was under her doctor's care. The doctor's note described her as "totally disabled on Thursday, May 22, 2025 and I estimate through to Sunday, May 25, 2025. Return to regular work on Monday, May 26, 2025."²¹

15. To date, only three out of five vehicles owned by the Applicants but in the possession of Mr. Shaw and Mrs. Shaw have been returned to the Applicants. No hard drives containing Proprietary Information (or Proprietary Information in any other form) have been returned to the Applicants or the Monitor. Mrs. Shaw has not delivered to the Monitor any rental income owing to SAIL.²²

¹⁷ *Ibid* at para. 43.

¹⁸ *Ibid* at para. 42.

¹⁹ *Ibid* at para. 44.

²⁰ *Ibid* at para. 48.

²¹ *Ibid* at para. 49.

²² *Ibid* at para. 51.

3. Removal of Property From Fusion’s Premises

16. The Monitor has obtained information that suggests that some of Fusion and/or SAIL’s Property has been removed from Fusion’s premises by or at the direction of Mr. Shaw. The Property that was removed includes approximately 20 presses in development for clients, which are approximately 80% to 90% complete and valued at approximately \$1 million (retail value). This Property was moved to an adjacent building owned or controlled by Mr. Shaw and/or Mrs. Shaw, movable trailers, and a personal residence owned by Mr. Shaw.²³

17. The Monitor understands that the removal of the Property started on or before May 4, 2025, and continued after the granting of the Initial Order.²⁴

4. Concerns about Operations in India

18. The Monitor understands that the Applicants have historically provided services and/or intellectual property to Shaw-Almex Overseas Ltd. (“SAOL”) and Shaw Almex India PVT Ltd. (together with SAOL, “Shaw India”) despite no agreement between the Applicants and Shaw India setting out the provision of such services and/or intellectual property. The Shaw India entities are not Applicants or part of the Applicants’ corporate group.²⁵

19. The Monitor is not aware of any payments by Shaw India to the Applicants as compensation for these services and/or intellectual property.²⁶

²³ *Ibid* at paras. 53-57.

²⁴ *Ibid* at para. 61.

²⁵ *Ibid* at para. 69.

²⁶ *Ibid*.

20. The Monitor is concerned that Shaw India may be using (or at risk of using) the Applicants' own services and/or intellectual property to compete with the Applicants.²⁷

PART III: THE ISSUES

21. The issues before the Court are whether the Court should:

- (a) compel Timothy Shaw, his agents, representatives and anyone else acting on his behalf deliver to the Monitor any and all Property in their possession and control;
- (b) authorize the Monitor to take all reasonable and necessary steps to recover and secure the Property;
- (c) require that Mr. Shaw and Mrs. Shaw co-operate fully with the Monitor in its efforts to recover and secure the Property;
- (d) restrict the manner in which Mr. Shaw may interact with the Applicants and the Property;
- (e) authorize the Monitor to examine under oath any Person reasonably thought to have knowledge of the affairs of the Applicants or any Person who is or has been an agent or mandatary, or a clerk, a servant, an officer, a director or an employee of the Applicants, respecting the Applicants or the Applicants' dealings or Property; and

²⁷ *Ibid.*

- (f) authorize the Monitor to discontinue the provision of services to Shaw India?

PART IV: LAW & ARGUMENT

22. Section 11 of the CCAA gives the Court the authority to grant “any order that it considers appropriate in the circumstances.”²⁸ The Supreme Court of Canada has described this broad judicial discretion—which plays a prominent role in CCAA restructurings—as the “true ‘engine’” driving the statutory scheme of the CCAA.²⁹ This discretion allows a supervising judge to make a variety of orders that respond to the circumstances of each case and “meet contemporary business and social needs”.³⁰

23. In exercising its discretion under the CCAA, the Court is to keep three baseline considerations in mind: (a) the appropriateness of the order being sought; (b) due diligence and; (c) good faith on the applicant’s part.³¹ With respect to the appropriateness of the order being sought, the question is whether the order “will usefully further efforts to achieve the remedial purpose of the CCAA”.³² The Supreme Court of Canada expanded this remedial purpose in *Montreal (City) v. Deloitte Restructuring Inc.*, writing:

[...] These remedial objectives include the following: avoiding the social and economic losses resulting from the liquidation of an insolvent company; maximizing creditor recovery; ensuring fair and equitable treatment of the claims against the debtor company; preserving going-concern value where possible; protecting jobs and communities affected by the company’s financial distress; and enhancing the credit system generally [...]³³

²⁸ CCAA, s. 11.

²⁹ *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at para 48.

³⁰ *Montréal (City) v. Deloitte Restructuring Inc.*, *supra* note 29 at para 116.

³¹ *Montréal (City) v. Deloitte Restructuring Inc.*, *supra* note 29 at para 85.

³² *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70.

³³ *Montréal (City) v. Deloitte Restructuring Inc.*, *supra* note 29 at paras 85-86.

24. Section 11 of the CCAA and the inherent jurisdiction of the Court permits the making of orders against third parties where their actions may potentially prejudice the success of a plan under the CCAA.³⁴

25. The Monitor has, at all times, acted in good faith and sought to reach a consensual resolution on the issues at hand. The Monitor’s efforts, however, have not been successful. It is, accordingly, appropriate in these circumstances for the Court to grant the relief sought by the Monitor, as discussed in greater detail in the following subsections.

1. Mr. Shaw Should Be Required to Return the Property

26. The Initial Order requires that the Applicants remain in possession and control of their Property and to carry on their business in a manner consistent with the preservation of their Property. The Initial Order specifically contemplates that the Applicants—and no other person—is to control the Property and that the Property is to be preserved:

THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the “Business”) and Property.³⁵

27. The Monitor is required to consent to any dealings with the Property: “[...] the Applicants and their shareholders, officers, directors and Assistants shall not take any steps with respect to the Applicants, the Business or the Property, save and except under the

³⁴ *T. Eaton Co.* (1997), [1997] O.J. at para 6.

³⁵ Initial Order at para. 5.

direction of the Monitor [...]”.³⁶ The Monitor has not consented to Mr. Shaw having possession of any Property.

28. The Initial Order also provides that the Monitor is to have “full and complete access to the Property”.³⁷ Mr. Shaw, by continuing to possess Property, denies the Monitor of its right to full and complete access to the Property.

29. The present proceeding is being conducted under the CCAA. The treatment of property in other insolvency contexts is nonetheless informative—particularly given that the Supreme Court of Canada stated in *Century Services* that the intention of Parliament was “for the CCAA to operate *in tandem* with other insolvency legislation, such as the BIA.”³⁸

30. In the bankruptcy context, subsection 17(1) of the BIA allows a trustee to recover any property of the bankrupt that a person is not by law entitled to retain.³⁹ If a person is in possession of a bankrupt’s property and wrongfully deprives the trustee of possession of it, then they are liable for damages for conversion—being the wrongful interference with the goods of another.⁴⁰

31. Subsection 164(1) of the BIA allows a trustee to compel a third-party to deliver to the trustee the bankrupt’s property in their possession:

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be

³⁶ *Ibid* at para. 22.

³⁷ *Ibid* at para. 23(z).

³⁸ [*Century Services Inc. v. Canada \(Attorney General\)*](#), *supra* note 32 at para 76

³⁹ BIA, s. 17(1).

⁴⁰ [*Kostiuk \(Trustee of\)*](#), 2001 BCSC 1134 at paras 45-53

required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.⁴¹

32. In the receivership context, courts routinely grant orders requiring the return of property that was unlawfully moved away from a debtor.⁴²

33. CCAA courts have adopted a similar approach. In *Re Canwest Aerospace Inc. et al*, for example, the Court granted a broad order that required all persons who removed property from the possession of the debtor companies to return it forthwith.⁴³

34. In *Re Quadriga Fintech Solutions Corp. et al.*, the monitor sought to recover property held by third party payment processors who refused to cooperate with the monitor. The Court ordered that the third-party payment processors return any of the debtor companies' cash, books, documents, records, and other assets in their possession.⁴⁴ The monitor was also concerned that cryptocurrency assets may have been transferred away from the debtor companies, and so in a separate order the Court ordered that any cryptocurrency accounts in the names of certain related parties be returned to the monitor to form part of the debtors' property.⁴⁵ Both orders were issued concurrently with an order authorizing the debtor companies to make assignments in bankruptcy.

⁴¹ BIA, s. 164(1).

⁴² See e.g. *Orbit Freight Ltd. (Re)*, (19 April 2021) Ont SCJ [Commercial List], Court File No. CV-21-00658361-00CL ([Ancillary Order](#)) at para. 8; *Orbit Freight Ltd. (Re)*, (17 March 2021) Ont SCJ, Court File No. CV-21-00658361-00CL ([Order](#)) at para. 3; *Maritime Fuels Limited (Re)*, (17 July 2024) NS SC, Court File No. Hfx 528474 ([Order for Return of Property](#)) at para. 1.

⁴³ *Canwest Aerospace Inc. et al. (Re)*, (9 May 2023) BC SC, Court File No. S-231354 (Vancouver Registry) ([Order Made After Application](#)) and ([Affidavit](#)).

⁴⁴ *Quadriga Fintech Solutions Corp. et al (Re)*, (11 April 2019) NS SC, Court File No. Hfx. 484742 ([Order Re Thid Paty Payment Processors](#)).

⁴⁵ *Quadriga Fintech Solutions Corp. et al (Re)*, (11 April 2019) NS SC, Court File No. Hfx. 484742 ([Asset Preservation Order](#)).

35. In *Re Connacher Oil and Gas Limited*, a third party obtained \$728,183.99 from the debtor company as a result of a scam. The third party could not be contacted to facilitate the money's return, so the debtor company obtained an order directing the bank to return the funds.⁴⁶

36. Here, the Monitor has information that suggests Mr. Shaw has in his possession and/or control Property including:

- (a) equipment used by the Applicants in their manufacturing process;⁴⁷
- (b) in-progress customer orders;⁴⁸
- (c) portable hard drives containing Proprietary Information;⁴⁹
- (d) vehicles;⁵⁰
- (e) cell phones and laptops;⁵¹
- (f) emails and other electronic records;⁵²
- (g) keys;⁵³ and
- (h) furniture.⁵⁴

⁴⁶ *Connacher Oil and Gas Limited (Re)*, (16 July 2019) AB QB, Court File No. 1601-06131 ([Return of Property Order](#)) at para. 3, ([Bench Brief of the Applicant](#)).

⁴⁷ First Report at paras 31(a), 54 and 57.

⁴⁸ *Ibid* at para 56.

⁴⁹ *Ibid* at para 51.

⁵⁰ *Ibid* at para 38 and 50.

⁵¹ *Ibid* at paras. 34 and 48.

⁵² *Ibid* at para. 36(c).

⁵³ *Ibid* at para 39 and 42.

⁵⁴ *Ibid* at para. 59.

37. The Court should order the return of Property to the Applicants for the following reasons:

- (a) Mr. Shaw has no entitlement to the Property and should not be allowed to keep it;
- (b) Mr. Shaw has not expressly contested title to any of the Property he is retaining;
- (c) the Applicants are operating their business in the ordinary course subject to the terms of the Initial Order. The Property is important in the context of the Applicants' general business operations and cash flows;
- (d) the Applicants and the Monitor have suffered damage in being required to expend significant time, effort and resources to resolve Property issues with Mr. Shaw, including the cost and expense of bringing this motion, all of which is to the detriment of the Applicants' creditors and other stakeholders;
- (e) the Applicants are in the midst of a sales and investment solicitation process. Prospective buyers require certainty that the Applicants have in their possession and control the assets they are trying to sell or refinance;
- (f) the Monitor has attempted to secure the return of the Property in a cooperative manner with Mr. Shaw; however, Mr. Shaw has not been cooperative and has engaged in limited communication with the Monitor;

- (g) Mr. Shaw transferred the Property away from the Applicants during the stay of proceedings in favour of the Applicants, which is inconsistent with his obligations under the Initial Order and his duty of good faith;⁵⁵ and
- (h) the Monitor has conducted itself in good faith and in the interests of all stakeholders.

38. To mitigate against further risk of parties interfering with the Property, the proposed Property Preservation Order orders and directs that the Monitor may take all reasonable and necessary steps to recover and secure the Property for the benefit of the Applicants. If a Person has in their possession or power any of the Property of the Applicants, or any book, document or paper of any kind relating in whole or in part to the Applicants, their dealings or Property, they may be required by the Monitor to produce the book, document or paper for the information of the Monitor, or to deliver to the Monitor any Property of the Applicants in their possession.

39. The language in the Property Preservation Order regarding the return of property is based on the language of s. 164(1) of the BIA.

2. Mr. and Mrs. Shaw Should Be Required to Co-Operate with the Monitor

40. The proposed Property Preservation Order provides that Mr. Shaw and Mrs. Shaw are to co-operate fully with the Monitor in its efforts to recover and secure the Property for the benefit of the Applicants and that they shall provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out such functions.

⁵⁵ First Report at para. 61.

41. The Initial Order already imposes a baseline level of co-operation on parties:

- (a) paragraph 22 requires that “the Applicants and their shareholders, officers, directors and Assistants [...] co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions”;⁵⁶ and
- (b) paragraph 24 requires that “the Applicants and their advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide the Monitor with such assistance as the Monitor may request”.⁵⁷

42. Although Mr. Shaw and Mrs. Shaw are no longer employed with the Applicants, Mr. Shaw remains, for the time being, a director and shareholder of the Applicants.⁵⁸

43. *Former* shareholders, officers, directors, Assistants and advisors are not explicitly captured by paragraphs 22 and 24 of the Initial Order. To ensure that Mr. Shaw and Mrs. Shaw continue to be under an obligation to co-operate with the Monitor, the proposed Property Preservation Order explicitly and directly imposes a duty to co-operate on them.

44. It is common for the court to expand on the language in the model CCAA order and require that current and former shareholders, officers, directors and Assistants co-operate

⁵⁶ Initial Order at para. 22.

⁵⁷ *Ibid* at para 24.

⁵⁸ First Report at para. 14.

with the Monitor.⁵⁹ Such relief is particularly common in situations where a monitor has been granted enhanced powers.⁶⁰

3. Mr. Shaw Should Be Prohibited From Further Harming the Applicants

45. Mr. Shaw's conduct has been inconsistent with that of a good faith participant in these CCAA proceedings. The Monitor is concerned that he has, amongst other things, transferred Property away from the Applicants, taken steps to establish a business in direct competition with the Applicants using Applicants' Property, and solicited the Applicants' employees to join his competing business. Mr. Shaw's conduct frustrates the Applicants' restructuring.

46. To ensure that the Applicants have the best chance at a successful restructuring, the proposed Property Preservation Order prohibits Mr. Shaw from:

- (a) altering, concealing, defacing, deleting, destroying, discarding, disposing of, erasing, interfering with or removing from the Applicants any Property currently in the Applicants' possession or control;
- (b) entering any of the Applicants' buildings or facilities other than to facilitate the return of Property to the Applicants; and

⁵⁹ [*Arrangement relatif à Certain Underwriters at Lloyd's*](#), 2025 QCCS 1474 at para 47; *Stokes Inc. (Re)*, (19 November 2024) Que SCJ [Commercial Division], Court File No. 500-11-064901-248 ([Rectified Amended and Restated Initial Order](#)) at para. 52.

⁶⁰ *Clover Leaf Holdings Company et al (Re)*, (28 January 2020) Ont SCJ [Commercial List], Court File No. CV-19-631523-00CL ([Monitor's Expansion of Powers and Stay Extension Order](#)) at para. 13.; *Bondfield Construction Company Limited et al (Re)*, (18 January 2021) Ont SCJ [Commercial List], Court File No. CV-19-615560-00CL ([Stay Extension and Expansion of Powers Order](#)) at para. 7.

- (c) employing, engaging, offering employment or engagement to or soliciting the employment or engagement of or otherwise enticing away from the employment or engagement of the Applicants any individual who is employed or engaged by the Applicants, or procuring or assisting any other Person to employ or engage, offer employment, or engagement, or solicit the employment or engagement of or otherwise entice away from the employment or engagement of the Applicants any such individual.

47. The relief sought by the Monitor is analogous to the relief sought in a motion for an interim prohibitive injunction. An injunction will be granted where it is just and equitable to do so.⁶¹ The test for an injunction was set out in *RJR-MacDonald Inc. v. Canada*, where the Supreme Court of Canada held that it is appropriate to grant a prohibitive injunction on an interim basis when:

- (a) the claim is not frivolous or vexatious;
- (b) the applicant will suffer irreparable harm absent the injunction; and
- (c) the balance of convenience favours granting the injunction.⁶²

48. The Monitor submits that each of the elements of this test are met, and therefore the Court should grant the relief requested.

⁶¹ [*Google Inc. v. Equustek Solutions Inc.*](#), 2017 SCC 34 at para 23.

⁶² [*RJR-MacDonald Inc. v. Canada \(Attorney General\)*](#) (1994), 111 D.L.R. 385 (Can. S.C.C.) at 334-5.

The Monitor's Concerns Are Not Frivolous or Vexatious

49. The Monitor is required to show that its claim is not frivolous or vexatious and stands a reasonable chance of success at trial. This is a low threshold to satisfy.⁶³

50. The Monitor submits that the allegations and concerns identified in its First Report with respect to Mr. Shaw satisfy the threshold of not being frivolous and vexatious. There is a serious issue at hand. To date, Mr. Shaw has dispossessed the Applicants of significant amounts of Property, has taken steps to establish a competitor that potentially uses the Applicants' Property, and is soliciting the Applicants' employees to join his new business—all in breach of his fiduciary duties as a director of SAIL and Fusion.⁶⁴ These are serious issues.

The Applicants Will Suffer Irreparable Harm

51. In *RJR-Macdonald v. Canada*, the Supreme Court of Canada described irreparable harm as follows:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision; where one party will suffer permanent market loss or irrevocable damage to its business; or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined.⁶⁵

⁶³ [*Arc Compute v. Anton Allen*](#), 2025 ONSC 1745 at para 28.

⁶⁴ First Report at paras. 36, 53-65.

⁶⁵ [*RJR-MacDonald Inc. v. Canada \(Attorney General\)*](#), *supra* note 62 at 341.

52. Similarly, in *Orica Canada Inc. v. East Luther Grand Valley (Township)*, the Court stated:

I accept that loss of actual and potential customers, loss of good will, and diminution in the applicant's reputation are all types of harm that is irreparable; that cannot be compensated in damages. Further, an inability to deliver products to customers and the resulting damage to business reputation can amount to irreparable harm; it can in fact be the kind of harm for which the subsequent calculation of damages would "be almost impossible"⁶⁶

53. Irreparable harm is presumed in cases involving the misuse of confidential information.⁶⁷

54. The Applicants will suffer irreparable harm if Mr. Shaw continues his conduct. Mr. Shaw's conduct has already dispossessed the Applicants of some of their Property. The Property he has taken and refused to return includes production equipment, in-progress customer orders, and intellectual property.⁶⁸ This Property is vital to business operations.

55. If the Applicants are further dispossessed of their Property (or if the Property is otherwise made unusable to them by Mr. Shaw's conduct), they may be unable to sustain their operations. Layoffs are possible, causing far-reaching consequences in the regions where the Applicants operate. The sale and investment solicitation process will be impacted. The Applicants may have no choice but to make assignments in bankruptcy.

⁶⁶ [*Orica Canada Inc. v. East Luther Grand Valley \(Township\)*](#) (2009), 2009 CanLII 36311 at para 37 (Ont. Sup. Ct. J.).

⁶⁷ [*Arc Compute v. Anton Allen*](#), *supra* note 63 at para 60.

⁶⁸ First Report at paras. 31, 36, 63 and 70.

56. Similar consequences are probable if Mr. Shaw successfully solicits the Applicants' employees to join his new business and uses the Applicants' confidential intellectual property in setting up a competing business.

57. The Monitor respectfully submits that the harm it will suffer if Mr. Shaw is not prohibited from interfering with the Property and the Applicants' employees constitutes irreparable harm.

The Balance of Convenience Favours the Applicants

58. As described above, the Applicants will suffer irreparable harm if the prohibitive relief with respect to Mr. Shaw is not granted.

59. Mr. Shaw is not expected to suffer comparable harm for the following reasons:

- (a) Mr. Shaw has no legal right or entitlement the Property, so prohibiting him from dealing with the Property still in the Applicants' possession is not an onerous obligation—it merely requires that he conduct himself lawfully;
- (b) Mr. Shaw is no longer employed by the Applicants,⁶⁹ so prohibiting him from trespassing on the Applicants' real property or entering its buildings and facilities ought not impact his livelihood;
- (c) Mr. Shaw remains a director of the Applicants.⁷⁰ He should not, in any event, be dispossessing the Applicants of their Property or soliciting their employees to a competitor because he owes fiduciary duties to the Applicants; and

⁶⁹ *Ibid* at para. 34.

⁷⁰ *Ibid* at para. 14.

- (d) Mr. Shaw should not be soliciting employees to his new business because he ought not to be starting the new business in the first place. His new business appears to be a direct competitor to the Applicants and it is believed to be using and/or relying on the Applicants' Property, including their intellectual property.⁷¹ In any event, the balance of convenience favours the party with a long-established business and customer base.⁷²

60. Mr. Shaw has conducted himself in a manner that is inconsistent with a CCAA participant's duty of good faith. He has not engaged in meaningful communication with the Monitor and has repeatedly ignored the Monitor's directions and demands.⁷³ It is possible that his conduct amounts to a violation of the Initial Order.

61. Importantly, the proposed relief is not permanent. The Property Preservation Order is drafted such that without further Court order, the restrictions on Mr. Shaw expire when the CCAA proceeding terminates.

62. Mr. Shaw was served with the Monitor's motion record regarding the prohibitive relief against him on May 27, 2025.

4. This Court Should Authorize the Monitor to Conduct Examinations Under Oath

63. The proposed Property Preservation Order authorizes the Monitor to examine under oath any Person reasonably thought to have knowledge of the affairs of the Applicants or any Person who is or has been an agent or mandatary, or a clerk, a servant, an officer, a

⁷¹ *Ibid* at para. 64.

⁷² *Arc Compute v. Anton Allen*, *supra* note 63 at para 64.

⁷³ First Report at paras. 28 and 33.

director or an employee of the Applicants, respecting the Applicants or the Applicants' dealings or Property.

64. The language in the proposed Property Preservation Order is based on subsections 163(1), 163(3) and 167 of the BIA, which relate to the examination of a bankrupt. The proposed Property Preservation Order requires that any examination be conducted in accordance with the rules of court in civil cases (in Ontario, the *Rules of Civil Procedure*, RRO 1990, Reg 194).

65. The power to examine under oath can be viewed as an extension of subsection 23(c) of the CCAA, as suggested in *Arrangement relatif à 9227-1584 Québec inc.*⁷⁴ Subsection 23(c) of the CCAA directs the Monitor to “make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company’s business and financial affairs [...]”.⁷⁵

66. In *Re Original Traders Energy Ltd et al.*, Osborne J. authorized a monitor to conduct investigations “including examinations under oath of any person reasonably thought to have knowledge relating to the information requested” in circumstances where the debtor companies were unable to locate all books and records as a result of alleged misconduct by certain former executives.⁷⁶ Justice Osborne observed that the Monitor’s investigatory powers were “generally consistent with such powers given to Court-appointed Monitors in

⁷⁴ [*Arrangement relatif à 9227-1584 Québec inc.*](#), 2021 QCCS 1342 at paras 48-49.

⁷⁵ CCAA, s. 23(c).

⁷⁶ [*In the Matter of the Companies’ Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*](#), 2023 ONSC 753 at paras 53-54.

situations where the books and records of an applicant are deficient, the historical financial information is unreliable and there are matters requiring further investigation”.⁷⁷

67. Similar powers to examine under oath were granted by the Court in *Arrangement relatif à Bloom Lake General*.⁷⁸

68. In the present case, the power to examine under oath is required by the Monitor. The books and records of the Applicants are deficient. The Monitor (and the Proposal Trustee before the Monitor) has had difficulty relying on management and obtaining consistent information about the Business.⁷⁹ Further, the Monitor is currently investigating Mr. Shaw’s conduct and the relationship between the Applicants and Shaw India, amongst other matters. To effectively investigate matters related to the Applicants and act upon the results of those investigations, the Monitor requires the power to examine under oath.

5. The Monitor Should Be Entitled to Stop the Provision of Services to Shaw India

69. Shaw India is not an Applicant, nor is it in the same corporate group as the Applicants. The Monitor has not found any agreements to support the Applicants’ provision of services and/or intellectual property to Shaw India, nor is it aware of any payments by Shaw India to the Applicants as compensation for these services and/or intellectual property.⁸⁰

⁷⁷ *In the Matter of the Companies’ Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, *supra* note 75 at para 55.

⁷⁸ *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 at para 124.

⁷⁹ First Report at para. 28.

⁸⁰ *Ibid* at paras 69-70.

70. The Monitor is concerned that Shaw India may be using (or at risk of using) the Applicants' own services and/or intellectual property to compete with the Applicants.⁸¹

71. The proposed Property Preservation Order provides that if the Monitor is not satisfied with the nature of the relationship between the Applicants and Shaw India, then the Monitor may stop the provision of services and/or intellectual property to Shaw India.

PART V: RELIEF REQUESTED

72. For the foregoing reasons, the Monitor respectfully submits that this Court should approve the proposed Property Preservation Order substantially in the form appended at Tab 3 of the Monitor's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29TH DAY OF MAY, 2025.



STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416 869 5230

Nicholas Avis LSO#: 76781Q
Email: navis@stikeman.com
Tel: 416-869-5563

Lawyers for the Monitor

⁸¹ *Ibid* at para. 70.

SCHEDULE “A”

List of Authorities

No.	Title
1	<i>Arc Compute v. Anton Allen</i>, 2025 ONSC 1745
2	<i>Arrangement relatif à; 9227-1584 Québec inc.</i>, 2021 QCCS 1342
3	<i>Arrangement relatif à; Bloom Lake General</i>, 2021 QCCS 2946
4	<i>Arrangement relatif à; Certain Underwriters at Lloyd’s</i>, 2025 QCCS 1474
5	<i>Bondfield Construction Company Limited et al (Re)</i> , (18 January 2021) Ont SCJ [Commercial List], Court File No. CV-19-615560-00CL (Stay Extension and Expansion of Powers Order)
6	<i>Canwest Aerospace Inc. et al. (Re)</i> , (9 May 2023) BC SC, Court File No. S-231354 (Vancouver Registry) (Order Made After Application) and (Affidavit)
7	<i>Century Services Inc. v. Canada (Attorney General)</i>, 2010 SCC 60
8	<i>Clover Leaf Holdings Company et al (Re)</i> , (28 January 2020) Ont SCJ [Commercial List], Court File No. CV-19-631523-00CL (Monitor’s Expansion of Powers and Stay Extension Order)
9	<i>Connacher Oil and Gas Limited (Re)</i> , (16 July 2019) AB QB, Court File No. 1601-06131 (Return of Property Order) and (Bench Brief of the Applicant)
10	<i>Google Inc. v. Equustek Solutions Inc.</i>, 2017 SCC 34
11	<i>In the Matter of the Companies’ Creditors Arrangement Act and In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.</i>, 2023 ONSC 753
12	<i>Kostiuk (Trustee of)</i>, 2001 BCSC 1134
13	<i>Maritime Fuels Limited (Re)</i> , (17 July 2024) NS SC, Court File No. Hfx 528474 (Order for Return of Property)
14	<i>Montréal (City) v. Deloitte Restructuring Inc.</i>, 2021 SCC 53
15	<i>Orbit Freight Ltd. (Re)</i> , (17 March 2021) Ont SCJ, Court File No. CV-21-00658361-00CL (Order)
16	<i>Orbit Freight Ltd. (Re)</i> , (19 April 2021) Ont SCJ [Commercial List], Court File No. CV-21-00658361-00CL (Ancillary Order)
17	<i>Orica Canada Inc. v. East Luther Grand Valley (Township) (2009)</i>, 2009 CanLII 36311 (Ont. Sup. Ct. J.)
18	<i>Quadriga Fintech Solutions Corp. et al (Re)</i> , (11 April 2019) NS SC, Court File No. Hfx. 484742 (Asset Preservation Order)
19	<i>Quadriga Fintech Solutions Corp. et al (Re)</i> , (11 April 2019) NS SC, Court File No. Hfx. 484742 (Order Re Thid Paty Payment Processors)
20	<i>RJR-MacDonald Inc. v. Canada (Attorney General) (1994)</i>, 111 D.L.R. 385 (Can. S.C.C.)

No.	Title
21	<i>Stokes Inc. (Re)</i> , (19 November 2024) Que SCJ [Commercial Division], Court File No. 500-11-064901-248 (Rectified Amended and Restated Initial Order)
22	T. Eaton Co. (1997) , [1997] O.J.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



Nicholas Avis LSO#: 76781Q

SCHEDULE “B”

Statutory Authorities

Companies' Creditors Arrangement Act, RSC 1985, c C-36 _____

General power of court

- 11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

Monitors

Duties and functions

23 (1) The monitor shall [...]

- (c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

Bankruptcy and Insolvency Act, RSC 1985, c B-3 _____

Property to be delivered to trustee

17 (1) Where a person has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee, that person shall deliver the property to the trustee.

[...]

Examination of bankrupt and others by trustee

163 (1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

[...]

Examination to be filed

163 (3) The evidence of any person examined under this section shall, if transcribed, be filed in the court and may be read in any proceedings before the court under this Act to which the person examined is a party.

[...]

Trustee may require books and property of bankrupt to be produced

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

[...]

Questions must be answered

167 Any person being examined is bound to answer all questions relating to the business or property of the bankrupt, to the causes of his bankruptcy and the disposition of his property.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C
C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX
FUSION, LLC

Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF THE
MONITOR
(Returnable May 30, 2025)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416 869 5230

Nicholas Avis LSO#: 76781Q
Email: navis@stikeman.com
Tel: 416-869-5563

Lawyers for the Monitor