Court File No. CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

BOOK OF AUTHORITIES OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD. RE: RESPONDING CROSS-MOTION

(returnable April 10-12, 2024)

March 27, 2024

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I N D E X

1

2018 ONSC 4165
Ontario Superior Court of Justice

Concordia International Corp. (Re)

2018 CarswellOnt 13057, 2018 ONSC 4165, 294 A.C.W.S. (3d) 691, 61 C.B.R. (6th) 274

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

IN THE MATTER OF A PROPOSED ARRANGEMENT OF CONCORDIA INTERNATIONAL CORP. AND CONCORDIA HEALTHCARE (CANADA) LIMITED AND INVOLVING CONCORDIA LABORATORIES INC., S.A.R.L., CONCORDIA PHARMACEUTICALS INC., S.A.R.L., CONCORDIA INVESTMENTS (JERSEY) LIMITED, CONCORDIA FINANCING (JERSEY) LIMITED, AMDIPHARM HOLDINGS S.A.R.L., AMDIPHARM AG, AMDIPHARM B.V., AMDIPHARM LIMITED, AMDIPHARM MERCURY HOLDCO UK LIMITED, AMDIPHARM MERCURY UK LTD., CONCORDIA HOLDINGS (JERSEY) LIMITED, AMDIPHARM MERCURY INTERNATIONAL LIMITED, CONCORDIA INVESTMENT HOLDINGS (UK) LIMITED, MERCURY PHARMA GROUP LIMITED, CONCORDIA INTERNATIONAL RX (UK) LIMITED, ABCUR AB, MERCURY PHARMACEUTICALS LIMITED, FOCUS PHARMA HOLDINGS LIMITED, FOCUS PHARMACEUTICALS LIMITED, MERCURY PHARMA (GENERICS) LIMITED, MERCURY PHARMACEUTICALS (IRELAND) LIMITED AND MERCURY PHARMA INTERNATIONAL LIMITED

CONCORDIA INTERNATIONAL CORP. AND CONCORDIA HEALTHCARE (CANADA) LIMITED

G.B. Morawetz R.S.J.

Heard: June 26, 2018
Judgment: June 26, 2018
Docket: CV-17-584836-00CL

Counsel: Robert J. Chadwick, Brendan O'Neill, Loren Cohen, Caroline Descours, for Applicants
Marc Wasserman, Martino Calvaruso, for Secured Debentureholder Committee
Kevin Zych, Sean Zweig, for Unsecured Debtholder Committee
Nicole Rozario, for US Bank National Association as Trustees under certain notes

***G.B. Morawetz R.S.J.*:**

1 This application was heard on June 26, 2018. At the conclusion of the hearing, the application was granted with reasons to follow. These are the reasons.

2 Concordia International Corp. ("Concordia") and Concordia HealthCare (Canada) Limited ("CHCL" and, together with Concordia, the "Applicants") applied for a final order in the form of the proposed order (the "Final Order"), pursuant to sections 192(3) and (4) of the *Canada Business Corporations Act* ("CBCA") approving the proposed arrangement (the "Arrangement") to be implemented pursuant to the plan of arrangement to be attached as "Schedule 'A'" to the proposed Final Order (the "CBCA Plan").

3 Concordia, together with its direct and indirect subsidiaries (the "Concordia Entities" or the "Company"), is an international specialty pharmaceutical company. The Concordia Entities have an international presence with sales in more than ninety countries, and a diversified portfolio of more than 200 established, off-patent products.

4 On May 2, 2018, an interim order (as amended on May 16, 2018, (the "Interim Order")) provided for, among other things, the calling, holding and conduct of the Secured Debtholders' Meeting, the Unsecured Debtholders' Meeting and the Existing Shareholders' Meeting (together, the "Meetings") to consider and, if deemed advisable, vote to approve the Arrangement.

5 Meetings were held on June 19, 2018 in accordance with the Interim Order. At the Meetings, 100% of the votes cast by the Secured Debtholders, 100% of the votes cast by Unsecured Debtholders, and 87.37% of votes cast by Existing Shareholders were in favour of the Arrangement.

6 The purpose of the Arrangement is to give effect to a recapitalization transaction (the "Recapitalization Transaction") pursuant to the CBCA Plan. The Recapitalization Transaction is described in the Final Order Affidavit of David Price, sworn June 19, 2018 and the Circular. The Arrangement will result in:

> (i) Secured Debtholders receiving, in the aggregate in exchange for their Secured Debtholder Claims, over $600 million in cash, and new secured debt in an aggregate amount of approximately $1.4 billion, such that, the cash and new secured debt will equal approximately 93.4% of the principal amount of their existing secured claims (taking into account early consent consideration);
>
> (ii) Unsecured Debtholders receiving, in the aggregate in exchange for their Unsecured Debtholder Claims, 11.96% of the Limited Voting Shares of Concordia immediately following implementation of the Recapitalization Transaction, subject to the MIP Dilution (taking into account early consent consideration); and
>
> (iii) Existing Shareholders retaining approximately 0.35% of the Common Shares of Concordia (which will be re-designated as Limited Voting Shares) immediately following implementation of the Recapitalization Transaction, subject to the MIP Dilution.

7 As part of the Recapitalization Transaction, Concordia will raise $586.5 million by way of a private placement (the "Private Placement") pursuant to which certain of the Consenting Debtholders (collectively, the "Private Placement Parties") that entered into the Subscription Agreement will purchase the Private Placement Shares equal to, in the aggregate, 87.69% of the Limited Voting Shares immediately following implementation of the Recapitalization Transaction, subject to the MIP Dilution. The proceeds from the Private Placement will be used towards paying the cash components of the consideration for the exchange of the Secured Debtholder Claims.

8 The Company currently has a capital structure with approximately $4 billion of secured and unsecured debt obligations outstanding. The Company is of the view that based on the size and nature of its existing capital structure, an arrangement is required to reduce its debt obligations. The successful implementation of the Recapitalization Transaction will improve the Company's financial position by reducing the Company's outstanding indebtedness by approximately $2.4 billion, reducing the Company's annual cash interest costs by approximately $171 million and improving the Company's capital structure and liquidity.

9 The Company concluded that the Recapitalization Transaction represents the best alternative available in the circumstances to achieve a sustainable capital structure, and that, taking into account all of the circumstances and alternatives available to Concordia, the proposed CBCA Plan is fair from the perspective of all stakeholders, including its security holders, and is advantageous to all such parties.

10 The Board also determined, following receipt of legal advice and financial advice with respect to the Recapitalization Transaction from the Company's financial advisor, and the Fairness Opinion, and CBCA Opinion provided by MPA Morrison Park Advisors Inc. ("MPA"), that the proposed Arrangement will offer substantial benefits to and is in the best interests of the Company and its stakeholders.

11 At the Meetings, Concordia's affected debtholders and shareholders overwhelmingly supported the Board and the Company's recommendations and conclusions with respect to the proposed Recapitalization Transaction and approved the CBCA Plan.

12 The Company advises that the Arrangement has received the requisite approval from the Secured Debtholders, the Unsecured Debtholders and Existing Shareholders pursuant to the terms of the Interim Order and the Applicants have complied with all applicable statutory and court-mandated requirements. Accordingly, the Applicants submit that the court should approve the Arrangement and grant the Final Order.

13 It is noted that the proposed Final Order contained certain provisions granting relief with respect to equity claims, releases and permanent waivers, all of which the Company considers to be appropriate, fair and reasonable under the circumstances of this Recapitalization Transaction and this CBCA Plan. It was also noted that in addition to the Applicants, these proceedings also involved a number of entities (the "Subsidiary Guarantors") listed on Schedule "A", each of which is a wholly-owned direct or indirect subsidiary of Concordia. The Subsidiary Guarantors collectively own a significant portion of the assets of the Company's business and are guarantors under the Debt Documents. The Subsidiary corporations are foreign entities located in England, Jersey, Ireland, Switzerland, Sweden, Luxembourg and the Netherlands.

14 As part of the proposed Recapitalization Transaction, and as a condition of the CBCA Plan, the Support Agreement and the Subscription Agreement, the parties require that the Existing Equity Claims Relief be granted by an order or that the Equity Claims relating to the period prior to the Effective Date be otherwise addressed in a manner satisfactory to Concordia and the Majority Private Placement Parties.

15 The Existing Equity Claims Relief encompasses that:

> (i) the Affected Equity (which excludes the Existing Shares) be terminated and cancelled for no consideration;
>
> (ii) any Affected Equity Claims, which is defined in the CBCA Plan to include all equity claims, as such term is defined in s. 2(1) of the *Companies' Creditors Arrangement Act* ("CCAA"), relating to the period prior to Effective Date, other than the Existing Equity Class Action Claims, be released; and
>
> (iii) all Persons having Existing Equity Class Action Claims be limited in their recourse and recovery in respect of such claim to the proceeds of the Insurance Policies, in each case pursuant to the CBCA Plan and the Final Order.

16 The Company takes the position that the Existing Equity Claims Relief is an important and necessary element of the overall proposed Recapitalization Transaction that was the subject of lengthy and complex negotiations with the Company's Consenting Debtholders, and is reasonable and appropriate in the circumstances of this Recapitalization Transaction that involves significant equitization of existing debt and a new money equity investment as part of the recapitalization.

17 The Company has also brought to the court's attention that on May 16, 2018, the Interim Order was amended to provide for certain procedural matters relating to elections in respect of the New Senior Secured Debt and entitlement to Early Consent Consideration. This information was then made available to all stakeholders.

18 Further, certain amendments were made to the CBCA Plan that was appended to the Draft Information Circular and, again, this information was made available, on a timely basis, to all stakeholders.

19 In the Opinions, MPA concluded that:

> (i) the Arrangement is fair, from a financial point of view, to the Company;
>
> (ii) given the consideration provided under the Arrangement to the Secured Debtholders, the Unsecured Debtholders and Existing Shareholders, respectively, these groups would be in a better position, from a financial point of view, under the Arrangement than if the Company were liquidated;

(iii) the consideration provided under the Arrangement to the Secured Debtholders is fair, from a financial point of view, to the Secured Debtholders;

(iv) the consideration provided under the Arrangement to the Unsecured Debtholders is fair, from a financial point of view, to the Unsecured Debtholders; and

(v) the consideration provided under the Arrangement to the Existing Shareholders is fair, from a financial point of view, to the Existing Shareholders.

20 In the period leading up to the Meetings, the Company received additional support from Debtholders and Existing Shareholders such that, as of the close of business on June 12, 2018, the Arrangement had the support of Secured Debtholders and Unsecured Debtholders holding approximately 99.71% of the outstanding principal amount of the Company's Secured Debt and approximately 97.85% of the outstanding principal amount of the Company's Unsecured Debt, respectively.

21 As noted in [5] above, the Arrangement resolutions were subsequently approved at the Meetings by 100% of the votes cast by the Secured Debtholders, 100% of votes cast by the Unsecured Debtholders, and 87.37% of the votes cast by the Existing Shareholders.

The Test for Approval

22 In order to grant final approval of the CBCA Arrangement, the court must be satisfied that:

(1) there has been compliance with all statutory and court-mandated requirements;

(2) the application has been put forward in good faith; and

(3) the Arrangement is fair and reasonable.

(See: *BCE Inc., Re*, 2008 SCC 69 (S.C.C.) (BCE); *Essar Steel Canada Inc., Re*, 2014 ONSC 4285 (Ont. S.C.J.).

23 The Applicants submit that each of the above conditions has been satisfied and that it is appropriate to grant the Final Order approving the Arrangement.

Part (1): Compliance with all Statutory and Court-Mandated Requirements

24 In order to satisfy part (1) of the CBCA arrangement final approval test, the court must be satisfied that:

(i) the applicant is a "corporation" under the CBCA;

(ii) the proposed transaction is an "arrangement" under s. 192(1) of the CBCA;

(iii) the applicant is not insolvent; and

(iv) it is not practicable to effect a fundamental change in the nature of an arrangement under any other provision of the CBCA.

(See: *8440522 Canada Inc., Re*, 2013 ONSC 2509 (Ont. S.C.J.) at para. 49 (*Mobilicity*)).

25 In connection with the Applicants' motion for the Preliminary Interim Order, the Applicants addressed in detail the statutory requirements of the CBCA in connection with a Plan of Arrangement. The endorsement on the Preliminary Interim Order (the "Concordia Preliminary Interim Order Decision") described the proposed arrangement as "the exchange of the Secured Debt and Unsecured Debt, each comprised of various note and loan obligations, in exchange for new debt, equity of CIC (Concordia) or a combination thereof to be an "arrangement" contemplated by s. 192 of the CBCA" and, with respect to the Preliminary Interim Order, found the Applicants to be in compliance with each of the statutory requirements. The endorsement on the Interim Order

(the "Concordia Interim Order Decision") affirmed that the Concordia Preliminary Interim Order Decision addressed the legal framework for a CBCA Arrangement, and was equally applicable to the Arrangement as described. (See: *Concordia (Re)*, 2017 ONSC 6357 (Ont. S.C.J.) at paras. 28-29 (Concordia Preliminary Interim Order Decision); and *Concordia International Corp., (Re)*, 2018 ONSC 3034 at para. 20 (Concordia Interim Order Decision).

26 I am satisfied that the Arrangement that was approved by the Debtholders and the Existing Shareholders at the Meetings and for which the Applicants now seek approval remains as described in the Interim Order materials. As such, I am satisfied that:

(i) the Applicants are "corporations" under the CBCA;

(ii) the proposed Arrangement constitutes an "arrangement" for the purposes of s. 192 of the CBCA;

(iii) the insolvency requirement under s. 192 of the CBCA is satisfied;

(iv) it would not be "practicable" to implement the Arrangement pursuant to any other provision under the CBCA; and

(v) the CBCA Arrangement can affect the interests of non-CBCA entities.

27 In addition, notice of the within application was given to the staff of the CBCA Director in advance of the hearing for the Interim Order and the CBCA Director informed counsel to the Applicants that it did not need to appear or to be heard at such hearing. The CBCA Director has been provided with notice of the hearing for the Final Order and again, has indicated that it need not appear or be heard at such hearing.

Part (2): The Application Has Been Put Forward in Good Faith

28 Part (2) of the test requires that the application be put forward in good faith.

29 I am satisfied that the CBCA Plan has been put forth in good faith and in furtherance of a valid business purpose. I am satisfied that the successful implementation of the Recapitalization Transaction will improve the Company's capital structure by reducing the Company's outstanding indebtedness by more than $2 billion and will significantly reduce annual interest expense.

30 In arriving at this conclusion, I have also taken into account that the Board, with the assistance of the Company's legal and financial advisors, has reviewed and considered the financial challenges currently facing the Company as well as reviewing the potential alternatives to address the shortcomings. The Board received legal and financial advice and obtained opinions with respect to the Recapitalization Transaction from MPA and the Board unanimously approved the Recapitalization Transaction and the CBCA Plan and authorized its submission to the various stakeholders. At the Meeting, the CBCA Plan received overwhelming support from the various stakeholders.

31 The Company's trade creditors, other unsecured creditors (other than the Unsecured Debtholders), customers and government authorities will not be affected by the Recapitalization Transaction, with the exception of the releases and waivers contemplated by the CBCA Plan and the Final Order. Further, it is noted that all obligations to employees of the Company, other than the cancellation of options, restricted share units and deferred share units, will be unaffected by the Recapitalization Transaction and existing employment arrangements will remain in place, subject to any changes to such employment arrangements to reflect the new management incentive program.

Part (3): The Arrangement is Fair and Reasonable

32 Part (3) of the test requires that the arrangement be fair and reasonable. In assessing the fairness and reasonableness of an arrangement, the court must be satisfied:

(a) that the arrangement has a valid business purpose, and

(b) that the objectives of those whose legal rights are being arranged are being resolved in a fair and balanced way.

(See: *BCE Inc.*, *supra*, at paras. 138, 143 and 155; *Trizec Corp., Re*, [1994] A.J. No. 577 (Alta. Q.B.) at para. 32)

33 Counsel to the Applicants submits that the Supreme Court of Canada in *BCE Inc.* articulated various factors that the court may consider when assessing whether a plan is fair and reasonable, including:

(a) whether a majority of security holders voted to approve the arrangement;

(b) the proportionality of the compromise between various securityholders, the securityholders position before and after the arrangement and the impact on various securityholders rights;

(c) the presence of a fairness opinion from a reputable expert; and

(d) whether the Plan serves a valid business purpose.

34 Another relevant factor may be the priority which the securityholder would receive in the event of liquidation (See: *BCE Inc.*, *supra* at paras. 147-150, 152-154 and *Trizec Corp.*, *supra* at para. 43).

35 Having taken into account that the Arrangement will improve Concordia's financial position by reducing its outstanding indebtedness by approximately $2.4 billion; that Concordia engaged in complex discussions and negotiations with the Debtholder Committees, for an extended period of time, which culminated in the proposed Recapitalization Transaction; that the Board unanimously approved the Recapitalization Transaction; that the Board received legal and financial advice and fairness opinions; that the Arrangement has the support of Secured Debtholders and Unsecured Debtholders holding approximately 99.78% of outstanding principal amount of the Company's Secured Debt and approximately 97.80% of the principal amount of the Unsecured Debt, respectively; that the Arrangement was approved at Meetings by 100% of the votes cast by both Secured Debtholders and Unsecured Debtholders and 87.37% of the votes cast by Existing Shareholders; and the Arrangement is consistent with the purpose of the CBCA Arrangement provisions, I am satisfied that the Arrangement is fair and reasonable and fairly balances the rights of parties affected by the Arrangement.

36 I have also reviewed the terms of the Final Order.

37 The CBCA Plan includes certain releases (the "Releases") in favour of the Released Parties in respect of claims arising on or prior to the Effective Date (other than claims attributable to fraud, willful misconduct, criminal act or criminal omission) in connection with the CBCA Plan, the Debt and Debt Documents, the Affected Equity Claims, the Private Placement and the CBCA proceedings.

38 Counsel to the Applicants submit the Releases are a key feature in CBCA recapitalization transactions where debts are being exchanged under an arrangement and releases are necessary to ensure that the results that flow from the Arrangement are not jeopardized or subject to collateral attack. Courts have exercised their discretion pursuant to s. 192(4) of the CBCA to approve the CBCA plans of arrangement that provide for third-party releases in other cases (See: *Post Media Network Canada Corporation et al*, Court File No. CV-16-11476-00CL, September 12, 2016; *8440522 Canada Inc. et al.*; Court File No. CV-13-10081-00CL, May 28, 2013; *RGL Reservoir Management Inc. et al.*, Court File No. CV-17-587401-00CL, December 14, 2017; and *Lewd Media Corporation et al.*, Court File No. CV-17-11809-00CL, dated June 20, 2017).

39 In considering whether to approve Releases in favour of third parties, courts will take into account the particular circumstances of the case, and while no single factor is determinative, the courts have considered the following factors:

(a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor and have contributed in a tangible and realistic way to the plan;

(b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

(c) whether the plan could succeed without the releases;

(d) whether the release benefitted the debtors as well and the creditors generally; and

(e) whether the creditors voting on the plan had knowledge of the nature and effect of the releases.

(See: *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras. 43, 70, 71 and 113; *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at paras. 80 and 82; and *Cline Mining Corp., Re*, 2015 ONSC 622 (Ont. S.C.J.) at paras. 22-28).

40 In this case, paragraph 11 of the proposed Final Order provides that all persons shall be deemed to have waived any and all defaults, third party change of control rights or any noncompliance with, among others, any covenant, term or provision relating to, arising out of or in connection with the Debt and Debt Documents, the Affected Equity, the Arrangement, the CBCA Plan, the transactions contemplated thereby, or the proceedings commenced with respect thereto (collectively, the "Default and Change of Control Waiver").

41 The Applicants submit that it is appropriate in the circumstances of this Arrangement that the Default and Change of Control Waiver be approved given that, among other things, like the Releases, the Default and Change of Control Waiver was negotiated and forms an integral part of the overall Arrangement that was approved by the various stakeholders. Further, the waiver facilitates the completion of the Arrangement and prevents actions that would frustrate the purpose of the Arrangement.

42 The Applicants also submit that the Existing Equity Claims Relief is appropriate in the circumstances.

43 The CBCA Plan and the Final Order contemplates that the Existing Equity Claims Relief, which, in summary, encompasses that:

(i) the Affected Equity (which excludes the Existing Shares) be terminated and cancelled for no consideration;

(ii) any Affected Equity Claims, which is defined in the CBCA Plan to include all equity claims, as such term is defined in s. 2(1) of the CCAA for the period prior to the Effective Date, other than the Existing Equity Class Action Claims, be released; and

(iii) all persons having Existing Equity Class Action Claims be limited in their recourse and recovery in respect of such claims to the proceeds of the insurance policy, in each case pursuant to the CBCA Plan and the Final Order.

44 The Applicants submit that this relief is appropriate in the circumstances given that:

the Affected Equity, Affected Equity Claims and Existing Equity Class Action Claims constitute "equity claims" as such term is defined in s. 2(1) of the CCAA; courts have consistently held that a wide reading of the definition of "equity claims", as such term is defined in the CCAA, is appropriate and that it will encompass those claims that relate in substance to the claimants interest as an equity holder, regardless of how those claims are framed (See:*Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 5018 (Ont. S.C.J. [Commercial List])).

45 In support of this proposition, counsel also references that "equity claims" may encompass claims by shareholders in proposed class action proceedings, including claims for contribution and indemnity and claims based on breaches of contract, torts and equity, including based on allegations of fraud, misrepresentation, and non-disclosure, among others; (See: *Sino-Forest Corp., Re*, 2012 ONSC 4377 (Ont. S.C.J. [Commercial List]) at paras. 76-82 aff'd 2012 ONCA 816 (Ont. C.A.) at paras. 24 and 59 (Sino-Forest ONCA; *Gandi Innovations Ltd.*, *supra* at paras. 57, 59 and 61; and *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229 (Ont. S.C.J. [Commercial List])).

46 Section 6(8) of the CCAA requires that no compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

47 In this case, the value available to Secured Debtholders and Unsecured Debtholders pursuant to the Recapitalization Transaction is not a full recovery of their claims, with a significant shortfall in respect of the Unsecured Debtholder Claims, and limited value remaining for Existing Shareholders.

48 The Applicants submit that given the respective recoveries, channeling the Existing Equity Class Action Claims for the proceeds to the insurance policies preserves value for the plaintiffs in the Existing Equity Class Action Claims and is fair and reasonable under the circumstances.

49 Counsel also submits that the objectives of CCAA plans of arrangement and CBCA plans of arrangement are to ensure the future viability of the applicants, and as such, the principles applied by CCAA courts in granting such orders should apply equally in the context of a restructuring under the CBCA plan of arrangement (See: *Abitibi-Consolidated*, *supra* at para. 120).

50 I am satisfied that the Existing Equity Claims Relief has been extensively negotiated and forms an integral part of the overall Arrangement that has been overwhelmingly approved by the stakeholders. I am also satisfied that, pursuant to s. 192(4) of the CBCA, the court has the jurisdiction to make the Final Order it thinks fit, including approving the CBCA Plan and providing for the Existing Equity Claims Relief.

51 Such relief is not without precedent. Courts have granted orders channeling equity claims, including orders channeling class action claims to insurance proceeds in a number of cases under the CCAA (See: *Sino-Forest Corp., Re* [2012 CarswellOnt 15919 (Ont. S.C.J. [Commercial List])], CV-12-9667-00CL, Plan Sanction Order dated December 10, 2012; *SkyLink Aviation Inc., Re* [2013 CarswellOnt 7670 (Ont. S.C.J. [Commercial List])], CV-13-10033-00CL, Plan Sanction Order dated April 23, 2013 and *Guestlogix Inc.* and *Guestlogix Ireland Limited*, CV-16-11281-00CL, Plan Sanction Order dated September 1.2, 2016).

52 In the circumstances, I consider the requested relief to be appropriate.

53 Finally, I note that by proceeding by way of statutory arrangement under s. 192 of the CBCA, Concordia intends to rely upon the Final Order as the basis for exemption from the registration requirements of the *Securities Act* of 1933, as amended, of the United States of America with respect to the Unsecured Debt Exchange Shares, Reallocated Unsecured Shares, Unsecured Debentureholder Early Consent Shares and New Senior Secured Notes to be issued in each case in exchange for the Secured Debt or the Unsecured Debt, as applicable, pursuant to the CBCA Plan.

Disposition

54 The application is therefore granted and an order has been signed approving the Arrangement pursuant to s. 192 of the CBCA in the form of the proposed Final Order.

55 In the result, I am satisfied that the terms and conditions of the Recapitalization Transaction are fair and reasonable to the Secured Debtholders, the Unsecured Debtholders and the Existing Shareholders.

Application granted.

2

2020 CarswellAlta 2725
Alberta Court of Queen's Bench

12178711 Canada Inc, Re

2020 CarswellAlta 2725, [2021] A.W.L.D. 3280, [2021] A.W.L.D. 3312, 173 W.C.B. (2d) 442, 335 A.C.W.S. (3d) 88

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF SECTION 192 OF THE CANADA
BUSINESSCORPORATIONS ACT, R.S.C. 1985, C. C-44, AS AMENDED

IN THE MATTER OF A PROPOSED ARRANGEMENT OF 12178711 CANADA INC,
CALFRAC WELL SERVICES LTD, CALFRAC (CANADA) INC, CALFRAC WELL SERVICES
CORP and CALFRAC HOLDINGS LP, by its General Partner CALFRAC (CANADA) Inc

Blair Nixon J.

Heard: October 30, 2020
Judgment: October 30, 2020
Docket: Calgary 2001-08434

Counsel: C.D. Simard, for Calfrac Well Services, et al
G.F. Pinos, for Wilks Brothers, LLC

***Blair Nixon J.*:**

1 THE COURT: Before I give my decision on this matter, is there any business that we need to attend to? And I will address just Mr. Simard and Mr. Pinos at this point.

2 MR. SIMARD: Good afternoon, My Lord, it's Mr. Sims. I don't believe there's any other business at this time.

3 THE COURT: Okay.

4 MR. PINOS: My Lord, Mr. Pinos. I don't believe there's any other business at this time either.

5 THE COURT: Okay, thank you very much.

Reasons for Judgment

6 THE COURT: This concerns the decision in the matter of the proposed arrangement of the Calfrac Entities. These are the oral reasons for judgment by myself, Justice Blair Nixon.

7 Insofar as this is an oral judgment, I retain the right to review the transcript and provide case names and citations. I may issue a written decision in respect of this matter, but I have not made a final decision in that regard.

8 In oral judgments, it is not my practise to cite legislation, jurisprudence, or the *Rules of Court* in detail, notwithstanding that they have all been considered.

I. Introduction

9 This concerns an application by the Calfrac Entities, who seek a final order approving its plan of arrangement under the *Canada Business Corporations Act*. (I will refer to that arrangement as the "Arrangement" from time to time, and I will refer to that Act as the "CBCA" from time to time.)

II. Issues

10 First, is the Arrangement an arrangement within the meaning of Section 192 of the CBCA?

11 Second, is the Arrangement fair and reasonable, both procedurally and substantively?

12 Third, have the Applicants acted in good faith with due diligence in all respects relating to the Arrangement?

III. Overview Comments

13 12178711 Canada Inc ("ArrangeCo"); Calfrac Well Services Ltd ("Calfrac"); Calfrac Canada Inc, Calfrac Well Services Corp, and Calfrac Holdings LP (each an "Applicant," and collectively, the "Applicants" or the "Calfrac Entities") seek a final order under the Arrangement (the "Final Order").

14 The Arrangement will give effect to a proposed amended recapitalization transaction (the "Amended Recapitalization Transaction"), which will, if approved: first, reduce the Calfrac Entities' total outstanding indebtedness by approximately $561 million, and its annual cash interest payments by approximately $52.7 million; and second, improve its liquidity by approximately $41 million. Thereby providing the sustainable capital structure the Calfrac Entities require to continue as an operating business.

15 Currently, Calfrac has an unsustainable capital structure in light of the sudden and significant decline in its business activities.

16 The Arrangement, as proposed, is supported by all, or substantially all, stakeholders, except the Wilks Brothers.

IV. Analysis

A. Purpose of Arrangements

17 Section 192 of the CBCA recognizes that major changes may be appropriate, even where they have an adverse impact on the rights of particular individuals or groups. That section of the CBCA seeks to ensure that the interests of those rights holders are considered and treated fairly, and that, in the end, the Arrangement is one that should proceed: BCE Inc v 1976 Debentureholders, 2008 SCC 69 at para 129 [.

18 Canadian Courts recognize Section 192 of the CBCA as a flexible statutory tool, capable of incorporating whatever tools and mechanisms of corporate law the ingenuity of their creators bring to the particular problem at hand. The CBCA policy statement likewise endorses the position that the Arrangement provisions of the CBCA are intended to facilitate and should not be construed narrowly: Concordia (Re),2017 ONSC 6357 [Commercial List] at para 27 [Concordia PIO Decision]; RGL Reservoir Management Inc, (Re), 2017 ONSC 7496 [Commercial List] at para 16 [*RGL*]; Innovation, Science and Economic Development Canada, Policy on Arrangements - Canada Business Corporations Act, Section 192, last updated January 8,2014 at section 1.02 [CBCA Policy Statement].

19 In the context of a debt restructuring, the goal of Section 192 of the CBCA is to provide a broad procedure aimed at facilitating the restructuring of corporations; and as such, the provision ought to be broadly and liberally interpreted: 45133541 Canada Inc, Re, 2009 QCCS 6440 at paras 61 and 120 [; *RGL* at para 17.

B. The Proposed Arrangement

20 As noted above, the evidence is that the current financial situation of the Calfrac Entities is not sustainable. The corporate group requires an approved capital structure in order to survive.

21 The Arrangement is the result of a process by the Calfrac Entities and its advisors. The process has been assisted by the guidance from, first, the lead independent director; second, the independent special committee; and third, the board of directors.

22 That process has included a review of alternatives, along with the establishment and achievement of a necessary recapitalization transaction, with the support of key stakeholders.

C. The Arrangement Test

23 To grant final approval of a CBCA arrangement, the Court must be satisfied that, first, there has been compliance with all statutory requirements; second, the application has been put forward in good faith; and third, the Arrangement is fair and reasonable: *BCE* at para 137; Concordia International Corp, 2018 ONSC 4165 [Commercial List] at para 22 [Concordia Final Order Decision].

1. Have the Statutory Prerequisites Been Met?

24 The Applicants must satisfy me that: first, the proposed arrangement meets the definition of an "arrangement" under Section 192(1) of the CBCA; second, ArrangeCo is not "insolvent," as that term is defined in 192(2) of the CBCA, and the Calfrac Group will not be insolvent on emergence; third, it is not practical for the Applicants to effect the fundamental change in the nature of the Arrangement under any other provision of the CBCA; and fourth, the Applicants have given the CBCA director notice of the within Application: CBCA section 192(5); Enbridge Income Fund Holdings Inc, 2010 ABQB 274 at para 6; Re Essar Steel Canada Inc, 2014 ONSC 4285 at para 27 [.

(a) Does the Proposed Arrangement Meet the Definition of an "Arrangement" Under Section 192 of the CBCA?

25 Section 192 of the CBCA contains a broad, non-exhaustive definition of what can constitute an arrangement. Under the CBCA:

> a. A "security" is defined as a share of any class or series of shares, or a debt obligation of a corporation, and includes a certificate evidencing such a share or debt obligation.
>
> b. A "debt obligation" is defined as a bond, debenture, note, or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured.

26 The Courts have adopted a broad interpretation of what can constitute an arrangement under Section 192 of the CBCA: Savage v Amoco Acquisition Co(1988), 87 AR 321 (CA) at para 5; *BCE* at paras 124-125; Concordia (Re),2017 ONSC 6357 at para 27. This arrangement involves a number of elements, including a share consolidation and the exchange of securities.

27 Given the evidence and analysis, I find the proposed transaction constitutes an "arrangement" under Section 192 of the CBCA. Further, I find that the statutory prerequisites have been met.

(b) Did the Applicant Establish That ArrangeCo is Not Insolvent, and that the Calfrac Group Will Not Be Insolvent on Emergence?

28 Subsection 192(3) of the CBCA requires that a corporation not be insolvent to undertake a plan of arrangement under that statute. The provision requires that the corporation meet both the liquidity test (the "Cash-Flow Test") and the solvency test (the "Balance Sheet Solvency Test"): Section 192(2)(a) and (b) of the CBCA, respectively.

29 ArrangeCo is an entity within the Applicant group of companies. The evidence is that ArrangeCo is currently solvent, and was at the time these proceedings were commenced. In particular, ArrangeCo has no liabilities, and the realizable value of its assets is not less than the aggregate of its liabilities and stated capital.

30 I note for the record that a newly incorporated CBCA entity, such as ArrangeCo, has commonly been used to access the Arrangement provisions under the CBCA: see Masonite International Inc, (2009), 56 CBR (5th) 42 (Ont SCJ [Commercial List]) at para 21; and Abitibi, 2009 QCCS 6440 at paras 1, 72 and 77.

31 In addition, based on my review of the financial information provided, the Calfrac Group as a whole will be solvent at the conclusion of the Amended Recapitalization Transaction.

32 Much of the financial information is subject to confidentiality. As a result, I will be cautious in what I am to disclose in these oral reasons for judgment.

33 I reviewed the financial information that was in evidence. I acknowledge that the Wilks Brothers had an expert who opined that neither the Cash-Flow Test nor the Balance Sheet Solvency Test was met. In these circumstances, I give the relevant expert report provided by the Wilks Brothers no weight (the "Wilks Financial Expert Report"). I make this determination for two reasons.

34 First, concerning the Cash-Flow Test, that test is met at the critical time, based on my review of the evidence. While the Wilks Financial Expert Report and the corresponding expert focus was on the possible status of the Calfrac Entities in August 2021, that is not the test. The legislative test does not specify a runway that equates to what the Wilks Brothers is arguing. I find the Cash-Flow Test is met at the relevant time.

35 Second, concerning the Balance Sheet Solvency Test, when I take into account the ability of the Calfrac Entities to reduce stated capital, that test is met. This point was conceded by the expert for the Wilks Brothers during questioning. Further, the ability of Calfrac to reduce stated capital is a corporate action: (i) that it is entitled to effect under the CBCA; and (ii) which the shareholders of Calfrac have already authorized to effect by way of a shareholder resolution.

36 When these transactions are taken into account, the evidence is that the realizable value of the Calfrac assets will exceed its aggregate liabilities and stated capital for the relevant period.

37 In summary, to be solvent for purposes of Section 192 of the CBCA, both the Cash-Flow Test and the Balance Sheet Solvency Test must be met. Based on my review of the evidence and analysis, both of those financial tests are satisfied at the relevant times for purposes of the Arrangement.

(c) Did the Applicants Establish That It is Not Practical to Effect the Fundamental Change in the Nature of the Arrangement Under Any Other Provision of the CBCA?

38 Section 193(3) of the CBCA requires that it not be practical for the corporation to effect a fundamental change in the nature of an arrangement under any other provision of the CBCA. This requirement has been interpreted by the Courts as having a relatively low threshold.

39 To meet this threshold, all that is required is that the proposed arrangement be difficult to put in place under other CBCA provisions. Impossibility is not required. The prerequisite is that it would be inconvenient or less advantageous to proceed under another provision or provisions of the CBCA: Industry Canada Policy Statement Concerning Arrangements Under Section 192 of the CBCA dated January 4, 2010, at 2.06: "...the test would be satisfied by demonstrating that it would be inconvenient or less advantageous to the corporation to proceed under other provisions of the Act"; *Abitibi* at paras 81-82; Re Essar Steel Canada Inc, 2014 ONSC 4285 at para 40 *;* Concordia (Re),2017 ONSC 6357 at para 38; and Enbridge Income Fund Holdings Inc, 2010 ABQB 274 at para 8.

40 In determining whether this requirement has been met, I reviewed the transaction as a whole (rather than the individual steps) to determine whether it would be inconvenient, inefficient, or less advantageous to the Applicants to proceed under other provisions of the CBCA: *Essar Algoma* at para 41; *Abitibi* at paras 82-83; Concordia (Re),2017 ONSC 6357 at para 38; Enbridge Income Fund Holdings Inc,2010 ABQB 274 at para 8. The impracticality requirement may be satisfied in cases

where the implementation of complex or multi-step transactions can be accomplished far more efficiently by means of a plan of arrangement: *8440522* Canada Inc, 2013 CarswellOnt 5649 at para 63 [.

41 I previously found in granting the Preliminary Interim Order, and the Interim Order, that the practicality requirement was satisfied. I find that it continues to be satisfied, as the Arrangement will effect the proposed Amended Recapitalization Transaction in a matter that is most convenient and advantageous to the Calfrac Group and its stakeholders.

42 Given those circumstances, I find the practicality requirement is met.

43 In addition, I state for the record that if I grant the Final Order, it shall serve as a basis for reliance on the exemption provided by Section 3(a)(10) of the United States Security Act 1933, as amended (the ″U.S. Securities Act") from the registration requirements other imposed under the *U.S. Securities Act* regarding the distribution of the New Common Shares and Warrants, pursuant to the Arrangement. I leave, of course, that final determination for those with the jurisdiction to deal with that matter.

(d) Did the Applicants Give the CBCA Director Notice of the Application?

44 The evidence is that the Applicants provided the CBCA director with notice of this Application in accordance with subsection 192(5) of the CBCA. As a result, I find that the Applicants have satisfied this test.

(e) Summary — The Statutory Prerequisites

45 Given the above evidence and analysis, I find the Applicants have complied with all statutory requirements of the CBCA, and have met same.

2. Has the Application Been Put Forward in Good Faith?

46 The Courts have found that the good-faith requirement is met where the Applicants are proceeding with the Arrangement for a valid business purpose: *Mobicity* at paras 47-48; and Concordia (Re),2017 ONSC 6357 at para 40.

47 I previously found that the Arrangement serves a valid business purpose because it will significantly reduce the outstanding indebtedness in annual cash interest payments of Calfrac Entities. The evidence indicates that that result continues to underlie the Arrangement. It also will provide new liquidity, reduce financial risk, and strengthen working capital.

48 Given the evidence of those steps and analysis, I continue to find these factors will create a foundation for a sustainable capital structure for the Calfrac Group. As a result, I find that this Application is being put forward in good faith.

49 For completeness concerning this finding, I turn to address the corporate governance process. Counsel for the Wilks Brothers asserted that the Application was not put forward in good faith because of the inadequacy within the Calfrac Entities' corporate governance process in considering the Arrangement. In alleging that the Calfrac Entities failed to engage in an extensive and robust process to consider the Arrangement, Wilks Brothers pointed to the following issues: (i) the Arrangement was developed in the absence of an independent special committee; (ii) the board failed to consider other viable restructuring options; and (iii) the board did not retain independent legal or financial advisors.

50 The Calfrac Entities state that the Arrangement was, in fact, recommended by independent directors, who canvassed all available options. In any event, counsel for the Calfrac Entities, along with counsel for G2S2, and the Ad Hoc Committee, argued that the board's process for reaching its decision regarding the Arrangement is irrelevant. Further, they assert that the Court must focus on the substance the Arrangement, including its terms and impact.

51 Wilks Brothers responded, stating that such a proposition is based on a strained interpretation of the existing case authorities. Wilks Brothers further asserted that countenancing such an incorrect interpretation would render the concept of director's fiduciary duties meaningless in Canadian corporate law.

52 Interestingly, these two vastly different stances on whether corporate governance process is a relevant factor in the approval of the Arrangement stem from the seminal *BCE* case. As I read the case, the Supreme Court of Canada unequivocally stated that when determining whether to approve a plan of arrangement, the Court must focus on the terms and impact of the Arrangement itself, rather than on the process by which it was reached: *BCE* at para 136.

53 The Court in *BCE* continued on, however, explaining in detail the onus a corporation must satisfy to obtain the Court's approval. Specifically, under the branch that examines whether the particular arrangement is fair and reasonable, the Court must consider whether the Arrangement resolves objections of affected parties in a fair and balanced manner: *BCE* at para 147.

54 While there are numerous factors that may shed light on the issue of fairness, helpful *indicia* may include whether a plan of arrangement was approved by a special committee of independent directors, and whether there was a fairness opinion from the reputable expert: *BCE* at para 152. These *indicia* could be helpful, but neither are mandated nor determinative.

55 The Calfrac Entities relied on paragraph 136 of *BCE* to preclude the consideration of the corporate governance process; whereas, the Wilks Brothers relied on paragraph 152 of the same decision to claim that such preclusion is based on an incorrect and incomplete interpretation of *BCE*.

56 In my view, these two paragraphs are deeply interwoven and function together. Broadly speaking, a plan of arrangement must be suitable for approval both substantively and objectively: *BCE* at para 136. In assessing such suitability, the Court exams — in addition to other elements — whether the plan of arrangement was put forward in good faith, and whether it is fair and reasonable.

57 Although there is no one determinative factor, corporate governance process or the lack thereof, may provide useful guidelines in answering these questions. The corporate governance process, however, is but one consideration amongst many factors. The primary and holistic focus lies within the terms and impact of the plan of arrangement, and the issue of whether the plan of arrangement was put forth in good faith. Whether it is fair and reasonable must be assessed within that substantive framework. This is the point that the Supreme Court of Canada stated with abundant clarity: *BCE* at para 136.

58 While the Wilks Brothers made many allegations, there is no evidence to suggest that the Calfrac Entities failed to engage in an extensive and robust process in considering and approving the Arrangement. In this regard, I found the propositions initially asserted by Mr. William Gula were eroded on cross-examination.

59 Based on my review of the evidence, Wilks Brothers has not provided me with sufficient evidence that would cause me to challenge Mr. Gregory Fletcher's leadership. To the contrary, based on the evidence before me, I find the Applicants have satisfied me, on the balance of probabilities, that Mr. Fletcher has conducted himself appropriately throughout the process.

60 Moreover, based on the evidence before me and my analysis, I find the Arrangement furthers the interests of the Calfrac Entities as a going concern. I make this finding because the Arrangement is projected to reduce the outstanding indebtedness by $561.8 million, and its annual cash interest payments by $52.7 million. Further, the Arrangement is expected to improve liquidity by approximately $41 million.

61 Given the facts and analysis, I find the Application has been put forward in good faith.

3. Is the Arrangement Fair and Reasonable?

62 The key issue on this Application is whether the Arrangement is fair and reasonable. To determine whether a CBCA plan of arrangement is fair and reasonable, a two-part inquiry is required. First, does the Arrangement have a valid business purpose? Second, are the objections of those whose rights are being arranged, being resolved in a fair and balanced way (see *BCE* at para 138)?

63 I will review each of these components in sequence. I also note the test of fairness and reasonableness is to be applied from the perspective of the company that is being arranged: Smoothwater Capital Corporation v Marquee Energy Ltd, 2016 ABCA 360 at paras 33-35.

(a) Does the Arrangement Have a Valid Business Purpose?

64 For a valid business purpose to exist, there must be a positive value to the corporation to offset the fact that rights are being altered. Courts must be satisfied that the burden imposed by the Arrangement on security holders is justified by the interests of the corporation. The proposed plan of arrangement must further consider the interests of the corporation as an ongoing concern: *BCE* at para 145.

65 Importantly, the Court need not find that the plan is in the best interests of the corporation, only that it serves to further the interests of the corporation: *BCE* at para 145.

66 If the Arrangement is necessary for the continued operation of the business, Courts will be more willing to find that this prong of the test has been met. This was commented on in the following matter by the Supreme Court of Canada: (as read)

> An important factor for courts to consider when determining if the plan of arrangement serves a valid business purpose is the necessity of the Arrangement to the continued operations of the corporation. Necessity is driven by the market conditions that a corporation faces, including technological, regulatory, and competitive conditions. *Indicia* of necessity include the existence of alternatives and market reaction to the plan. The degree of necessity of the Arrangement has a direct impact on the court's level of scrutiny [...]. If the plan of arrangement is necessary for the corporation's continued existence, courts will more willingly approve it despite its prejudicial effect on some security holders: *BCE* at para 146.

67 In this case, the Arrangement will significantly reduce the outstanding indebtedness and annual interest costs of the Calfrac Entities. Further, the evidence is that it will provide significant liquidity and working capital. Those steps will result in a capital structure for the Calfrac Entities that will allow them to go forward, clearly furthering the interests of the corporate group as an ongoing concern. This will result in a positive benefit not only for the Calfrac Entities but also for all of its stakeholders, including its employees, creditors, shareholders, suppliers, and customers.

68 The necessity of the Arrangement demonstrating the valid business purpose of the Arrangement is supported by the *indicia* set out in *BCE*.

69 First, the significant market downturn, including severely depressed energy prices, and the price war initiated by the OPEC countries, has had a direct and material negative impact on the Calfrac Entities.

70 Second, the adverse impact of the general market conditions has been aggravated by a COVID-19 pandemic.

71 Third, the Corporal Group, with the assistance of its financial and legal advisors, engaged in a review of the best options to realign its capital structure. This review included extensive discussions with stakeholders. Based on the evidence before me, and the oral submissions that I heard from the supporting cast of participants in this hearing, all *indicia* supports the proposition that the Arrangement is the best option available to the Calfrac Entities in the circumstances.

72 Fourth, in the absence of the Arrangement, the Calfrac Entities would not be viable in the long term. Based on the evidence and the analysis, the Arrangement is necessary to provide a sustainable capital structure for the Calfrac Entities going forward.

73 Fifth, without the Arrangement, the Calfrac Entities will be forced into a CCAA proceeding, or some other insolvency process, where the stakeholders will realize less than they would receive under the Arrangement.

74 And sixth, in making the above comments, I acknowledge the proposal offered by the Wilks Brothers. It was the only potential alternative offered. Based on the evidence and an analysis, the Wilks Brothers proposal is not viable.

75 Based on my review of matters, I find the Arrangement is necessary for the Calfrac Group. Given that finding and my analysis, I find the Arrangement has a valid business purpose.

(b) Are The Objectives of Those Whose Rights are Being Arranged Being Resolved in a Fair and Balanced Way?

76 The second part of the "fair and reasonable" test considers whether the objections of those whose rights are being arranged are being resolved in a fair and balanced way. It considers whether the Arrangement strikes a fair balance, having regard to the ongoing interests of the corporation and the circumstances of the case.

77 A plan of arrangement typically involves a compromise on the part of all parties, for the greater good of the whole: *BCE* at paras 147-148; Re Trizec Corp, 1994 CarswellAlta 171 (QB) at para 42. In this respect: (as read)

> [t]he Court must be careful not to cater to the special needs of one particular group but must strive to be fair to all involved in the transaction depending on the circumstances that exist. The overall fairness of any arrangement must be considered as well as the fairness to various individual stakeholders.
>
> [*Re Trizec Corp*, 1994 CarswellAlta 171 (QB) at para 36; cited in *BCE* at para 148.]

78 In making the fair and balanced determination, I consider the *indicia* of fairness. Such *indicia* include:

> First, whether a majority of security holders have voted to approve the Arrangement;
>
> Second, the proportionality of the compromise between the various security holders;
>
> Third, the security holders' position before and after the Arrangement, and the impact of various security holders' rights;
>
> Fourth, the repute of the directors and advisors who endorse the Arrangement;
>
> Fifth, the presence of a fairness opinion; and
>
> Sixth, the excess of shareholders to decent and appraisal remedies.

79 These factors are neither exhaustive nor determinative. Further, the relevance of particular factors varies from case to case: *BCE* at para 149-153.

80 Another relevant factor is the priority that a security holder would receive in the event of liquidation: Re Trizec Corp, 1994 CarswellAlta 171 (QB) at para 43.

81 It is important to note that there is no such thing as a perfect arrangement; rather, what is required is a reasonable decision in light of the specific circumstances of each case, not a perfect decision: *BCE* at para 155.

(i) Vote to Approve the Arrangement

82 While the outcome of a vote is not in itself solely determinative of whether an arrangement is fair and reasonable, I view it as an important indicator of fairness. As a result, I place considerable weight on this factor. Indeed, voting results offer a key indication of whether those affected by the plan consider it to be fair and reasonable: *BCE* at para 150.

83 Support for a plan by a majority offers a key indication of the fairness and reasonableness of the plan: Century Mining Corp, 2011 ONSC 5622 at para 57. In my view, there is no better litmus test for assessing whether, in the circumstances of a given arrangement, an intelligent and honest business person, as a member of the class concerned, and acting in his or her own interest, might reasonably approve of the plan, than the votes of those whose interests are actually at stake: St Lawrence & Hudson Railway Co, 1998 CarswellOnt 3867 at para 27; cited in *BCE* at para 150.

84 The particulars concerns the vote in this case are instructive to me. Despite the attempts by the Wilks Brothers to sway voters, all Arrangement Resolutions were approved with the requisite majorities.

85 That voting result occurred, notwithstanding that the affected security holders had the benefit of numerous press releases, analysis in the press releases, the Circular, the ISS Report and the Glass Report (both of which advocated that they vote against the Arrangement) and countless other sources of information. With that high-level of knowledge concerning the Arrangement, and in the face of a clear economic alternative, and a cash bid available to the Shareholders, they voted with their feet. I give significant weight to the results of that vote.

86 In my view, the importance of the super-majority vote is heightened in this case because of the context in which the Arrangement has evolved.

87 Both the Applicants and the Wilks Brothers advanced assertions in respect of the votes. Given the nature of their respective positions, I took the opportunity to break down the results of their votes.

88 Based on my review, I note that the votes cast against the Arrangement are significantly those attributable to the Wilks Brothers. I further note that when the votes of the Wilks Brothers are excluded, the percentage of approval is generally in excess of 90 percent.

89 Based on my review, I find that there was overwhelming support for the Arrangement, outside of the Wilks Brothers.

90 The intentions and motivations of the Wilks Brothers are in evidence. The jurisprudence indicates that I have the discretion to bar a creditor from voting in circumstances where the creditor is acting for an improper purpose: 9354-9186 Quebec inc v Callidus Capital Corp, 2020 SCC 10 at paras 56 and 75 [. In the *Callidus* case, a creditor's votes were not considered.

91 In *Re West Coast Logistics Ltd* case, the votes of an unsecured creditor were similarly disregarded. In that case, Prudential Transportation Limited held enough of the debtor's debt to have an effective veto over the approval of any proposal by creditors. The Registrar disallowed that creditor's votes against the proposal, finding that there was no legitimate commercial reason for opposing the proposal: West Coast Logistics Ltd, Re, 2017 CarswellBC 2340 at para 34.

92 The decision was upheld by the BC Supreme Court, which held that defeating a restructuring proposal for an improper purpose can give rise to a substantial injustice, supporting the disqualification of that creditor's vote: West Coast Logistics Ltd, Re, 2017 CarswellBC 3014 at para 34.

93 There are earlier cases where the Courts have also disallowed votes. In the *Laser Work Computer Services Inc* case, the vote of a creditor was similarly disallowed where it was acting in the interests of removing the bankrupt entity as a competitor. That initiative was found to be an improper purpose because it was collateral to the purpose for which the bankruptcy and insolvency legislation was enacted by Parliament: Laserworks Computer Services Inc, 1998 NSCA 42 at para 54.

94 These cases reflect a long-standing recognition that where a stakeholder is voting for a purpose collateral to the intention of the applicable legislation, its votes can be disregarded.

95 I note that the conduct and actions of the Wilks Brothers echo those seen in the above cases. Based on the evidence, I make the following observations.

First, the Wilks Brothers is a competitor to the Calfrac Entities;

Second, Wilks Brothers has indicated that it believes these actions should be a Chapter 11 proceeding. I find that would be collateral to the purpose of the CBCA planned arrangement provisions, which have been broadly interpreted to support restructuring debt outside of insolvency proceedings;

Third, Wilks Brothers has aggressively purchased securities in an attempt to block this arrangement from proceeding;

Fourth, in its role as Shareholder, there has been no legitimate commercial reason for Wilks Brothers to oppose the Arrangement in this manner. I make that observation because the general body of the Shareholders in Calfrac will benefit from the completion of the Arrangement, relative to other outcomes. This is evidenced by the overwhelming support of such remaining Shareholders, other than Wilks Brothers;

Fifth, the Wilks Brothers' proposal represents an attempt to obtain control of the Calfrac Group for an improper purpose; and

Sixth, the Takeover Bid, including its opportunistically late timing, is a collateral attack upon the Applicant's restructuring transactions.

96 The Arrangement resolutions were approved by all requisite majorities, even with the Wilks Brothers significant "no" vote. When Wilks Brothers votes are removed, and its motivations and intentions are viewed in the context of the above cases, the majority vote is overwhelming.

(ii) Impact on Security Holders

97 In terms of determining whose rights are being arranged — and therefore, necessitate consideration — the Supreme Court has dictated that only security holders whose *legal rights* stand to be affected by the proposal are envisioned: *BCE* at para 133 (emphasis added). The fact that economic rights are being affected is not sufficient to fall within the ambit of Section 192 of the CBCA.

98 That said, the Supreme Court has recognized that in extraordinary circumstances, interests that are not strictly legal may be considered. While it did not decide precisely what amounts to such circumstances, the Supreme Court stated that the fact that a group whose legal rights are left intact faces a reduction in the trading value of a securities, would generally not, without more, constitute such a circumstance: *BCE* at para 135.

99 In considering this issue, I note that the jurisprudence indicates that neither the issuance of shares, nor the dilution of voting or economic rights is a change to legal rights: Telus Corp v CDS Clearing and Depository Services Inc, 2012 BCSC 1539 at paras 57-58; and Re iAnthus Capital Holdings, Inc, 2020 BCSC 1442 at para 18.

100 In this case, neither the Calfrac Group's First Lien Lenders nor the Second Lien Noteholders, are legally affected by the Arrangement. The position of the Second Lien Noteholders is the same prior to the Arrangement as it is after the Arrangement: 12178711 Canada Inc v Wilks Brothers LLC, 2020 ABCA 313 at para 13. In fact, the semi-annual interest payment due to the Second Lien Noteholders on September 15th, 2020, was paid when due during the course of these proceedings.

101 The elements of the Arrangement leave the Second Lien Noteholders legally unaffected. Given the opposition raised by Wilks Brothers as a Second Lien Noteholder, the focus of the discussion below is on any alleged impact to the Second Lien Noteholders.

102 As a preliminary comment, I find there is no legal impact on the Second Lien Noteholders. Further, as I read the documents, the Arrangement is permitted under the terms of all the agreements with the Second Lien Noteholders.

(A) Intercreditor Agreement

103 As a contract between sophisticated parties, the Intercreditor Agreement is to be interpreted, pursuant to contractual interpretation principles. The intention of the parties should be ascertained by interpreting the contract in the context of its surrounding circumstances and factual matrix: Creston Moly Corp v Sattva Capital Corp, 2014 SCC 53 at paras 56-59.

104 The relevant surrounding circumstances include the genesis of the contract, its purpose, the nature of the relationship created by the contract, and the nature or custom of the market or the industry in which the contract was made: Trico Developments Corporation v El Condor Developments Ltd, 2020 ABCA 132 at para 32 [.

105 A key principle of contractual interpretation is that the words of one provision must not be read in isolation, but should be considered in harmony with the rest of the contract, and in light of its purpose and commercial context: Tercon Contractors Ltd v British Columbia (Minister of Transportation & Highways),2010 SCC 4 at para 64. Case law interpreting commercial agreements in particular articulates that the interpretation should accord with sound commercial principles and good business sense: *Trico Developments* at para 29.

106 Wilks Brothers raise concerns that the New 1.5 Lien Notes and New 1.5 Lien Term Loans (collectively, the "1.5 Lien Financing") are not permitted under the terms of the Intercreditor Agreement. However, pursuant to Section 8.1 of the Intercreditor Agreement, refinancing indebtedness in respect of the First Lien Obligations may be incurred without the consent of the Second Lien Representative, or any noteholder.

107 The phrase "Refinancing Indebtedness" is defined as indebtedness that Refinances First Lien Obligation or Second Lien Obligation, pursuant to Section 8.5 or 8.6. The term "Refinance" is defined to mean "to refinance, extend, renew, restructure, or replace, or to issue other indebtedness in exchange or replacement for...in whole or in part...".

108 The 1.5 Lien Financing is, in part, a restructuring of the existing indebtedness. As a consequence, the 1.5 Lien Financing constitutes a "Refinancing Indebtedness," which is permitted under Section 8.1 of the Intercreditor Agreement. In particular, the net proceeds from the New 1.5 Lien Notes will be used to repay a portion of the existing First Lien Credit Facility.

109 Section 8.1 of the Intercreditor Agreement contains certain exceptions to the above, including:

> Without the consent of the Second Lien Representative...no such... Refinancing shall (i) contravene any provision of this Agreement; (ii) increase the ability for the Debtors to incur secured indebtedness, other than to the extent permitted under this Agreement and any First Lien Debt Agreements in effect as of the date of this Agreement. The incurring of the 1.5 Lien Financing, a secured indebtedness, is expressly permitted, pursuant to the Intercreditor Agreement and, therefore, does not fall within this exception.

110 The 1.5 Lien Financing is expressly permitted by the Intercreditor Agreement as refinancing indebtedness. To read this provision as not permitting such financing, without the consent of the Second Lien Noteholders would render the first part of Section 8.1 of the Intercreditor Agreement meaningless, that and would be contrary to the general principles of contractual interpretation.

111 To give effect to all words chosen by the parties, the best interpretation is that such refinancing, with the corresponding amendments to the First Lien Credit Agreement, is permitted under the Intercreditor Agreement so long as the obligations are not increased in quantum.

112 Based on my review of the documents and an examination of the overall transaction, it is evident on the face of the relevant agreements that not only are the obligations not increasing in quantum, they are decreasing. Under the Amended and Restated First Lien Credit Agreement, as of April 30th, 2019, the total First Lien Obligations are $375 million. Under the new Amended and Restated Credit Agreement, the total First Lien Obligations are $290 million, and the maximum aggregate under the new 1.5 Lien Financing is $70 million.

113 As a result, the total amount of face debt ranking ahead of the Second Lien Noteholders will be reduced, upon the implementation of the Arrangement, to $360 million, from the current $375 million.

114 This interpretation is also supported by the factual matrix in which the Intercreditor Agreement was executed. The First Lien Credit Agreement had already been executed, and was known or knowable to the Second Lien Noteholders, when the Intercreditor Agreement was entered into by the parties. As a result, the provisions of that agreement further informed the interpretation of the Intercreditor Agreement.

(B) Second Lien Note Indenture

115 Wilks Brothers asserted that the actions of the Calfrac Entities are not permitted, or are restricted under the terms of the Second Lien Note Indenture, due to the default thereunder. Wilks Brothers raised the application of Article 6.02, which accelerates the obligations under the Second Lien Note Indenture, there had been an "Event of Default." I disagree.

116 I expressly stated in the reasons during the Comeback Application that there is currently no default or "Event of Default" under the Second Lien Note Indenture. Further, my determination on this point was confirmed by the Court of Appeal. To reiterate the point, the Stay Provision preserved the status quo ante, as it existed immediately prior to the Calfrac Entities filing of the application: see also 12178711 Canada Inc v Wilks Brothers LLC, 2020 ABCA 313 at para 13. At that time, there was no default under the second lien note indenture. That result remains the case today.

117 One of the issues raised on the Comeback Application, and the appeal thereof, was the application of the anti-deprivation rule to Article 6.02, which provides for the immediate acceleration of the Second Lien Notes, upon the occurrence of certain events of default. The application of this rule was upheld by the Alberta Court of Appeal, noting that the Rule is part of, and indeed fundamental, to Canadian insolvency and restructuring law. At that time, the decision relied upon *Capital Steel v Chandos Construction* case, which was on reserve with the Supreme Court of Canada: Capital Steel Inc v Chandos Construction Ltd, 2019 ABCA 32.

118 On October 2nd, 2020, the reasons from the Supreme Court of Canada were released in that case, and the Supreme Court confirmed that the anti-deprivation rule has and continues to exist in Canadian Common Law: Chandos Construction Ltd v Deloitte, 2020 SCC 25 at paras 25-28. As a result, the Supreme Court has now affirmed what was determined: first by me at the Comeback Application; and second, by the Alberta Court of Appeal. I reiterate that Article 6.02 cannot operate in the face of that rule.

119 The Second Lien Note Indenture also contains certain cross-default provisions. In light of those provisions, due to the non-payment of interest payment due and owing under the Unsecured Note Indenture by the end of the grace period, the cross-default provisions could otherwise be triggered within the Second Lien Note Indenture, resulting in an "Event of Default" thereunder.

120 However, given the impact of the Stay Provision and the relevant terms of the Arrangement, no Event of Default will occur under the Second Lien Note Indenture.

121 Pursuant to Section 9.2 of the Plan of Arrangement, from and after the "Effective Time," all parties are deemed to have waived any and all defaults, or events of default. Pursuant to Section 5.3 of the Plan of Arrangement, commencing at the Effective Time and in five-minute increments thereafter, the steps in Section 5.3 will occur or be deemed to occur.

122 Therefore, at the moment, the steps in the Plan of Arrangement are initiated the Affected Parties, which includes Senior Unsecured Noteholders, have waived any and all defaults or events of default.

123 As a result, there is no cross-default under the Second Lien Note Indenture at the time of the Plan of Arrangement steps take place.

124 Subject to my final determination on this application, Section 14 of the draft Final Order has been structured so that the implementation steps taken after the Effective Time cannot be relied upon as defaults. If I grant the Final Order, it provides that all Persons will be deemed to have waived any and all defaults arising on or prior to the implementation of the Plan of Arrangement, and that will include Second Lien Noteholders.

125 That being the case, no implementation steps will trigger a default under any agreement to which the Second Lien Noteholders are party.

(C) Senior Unsecured Noteholders

126 Due to failure of the Calfrac Entities to pay the interest under the Senior Unsecured Note Indenture, the key stakeholders impacted in the CBCA proceedings are the Senior Unsecured Noteholders. The Senior Unsecured Noteholders' rights are clearly being legally affected by the Arrangement.

127 Notwithstanding that impact, the Senior Unsecured Noteholders have chosen, first, in majority under the Support Agreement, and then in the meeting of the Senior Unsecured Noteholders (with 99.7 percent of the total votes cast) to support the Arrangement and the Amended Recapitalization Transaction. Insofar as they are the fulcrum creditor, I give their voice significant weight.

(D) Affiliate Transaction

128 Among other issues, Wilks Brothers has raised is a question as to whether the Arrangement would create a default under the Section Lien Note Indenture. The underlying assertion is that it affects the substantive legal rights of the Second Lien Noteholders. I've touched on this above, but I want to go into a bit more detail.

129 The sub-issue is whether the 1.5 Lien Financing is an "affiliate transaction" under the New York Law Governed Second Liened Note indenture. Wilks Brothers relies on Mr. Gene Carr's affidavit (the "Carr Affidavit"), which opines that the Calfrac Entities are unlikely to meet the burden of proving that the issuance and occurrence of the 1.5 Lien Financing falls under the arms-length exception under the New York Law. As a result, Mr. Carr concludes that the transaction appears to be an "affiliate transaction," within the meaning of the Second Lien Note Indenture, and that the Arrangement would cause a default under the "affiliate transaction" provisions.

130 The Calfrac Entities attack the fundamental accuracy and reliability of the analysis within the Carr Affidavit. They point out that Mr. Carr's admissions during cross-examination undermine his own assessment in his affidavit. Specifically, among others, Mr. Carr admitted: first, to having read only parts of a limited number of documents related to this matter; second, not having read all of the legal authorities cited in the Carr Affidavit; and third, having no knowledge of what the evidential record was before this Court, or what evidential record would be before a Court that may be asked to apply the New York Law to the Second Lien Note Indenture interpretive issues.

131 I have no doubts concerning the qualifications of Mr. Carr as a lawyer and his legal expertise. However, based on the evidence before me, I find the admissions that Mr. Carr made during cross-examination to be very concerning. These admissions severely undermine the value of the assessment he provided in his affidavit.

132 The fact that Mr. Carr has not read at least a significant portion of the documents related to this application, indicates to me that he is not in a true position to appreciate the nature of the Arrangement. Determining the "affiliate transaction" issue is an interpretive exercise. It requires all the complex, yet relevant, facts. Based on the evidence, I find that Mr. Carr reached his conclusion without the complete set of facts to assist in this case-specific analysis.

133 Given this finding, and other relevant evidence in my analysis, I find the Carr Affidavit is insufficient in establishing that the Arrangement would create a default under the Second Lien Note Indenture.

(iii) Recommendation of the Board

134 In assessing whether an arrangement is fair and reasonable, the Courts typically grant some deference to the views of the board of directors. In making this comment, I acknowledge that the full business judgment rule is not strictly applied. As was recently held in an Ontario case, and I quote: (as read)

> While the Court in *BCE* has discouraged Courts using the Business Judgment Rule to defer entirely to the board's judgment when assessing whether an arrangement is fair and reasonable, the Court cannot ignore the board's recommendation to accept a cash bid in uncertain times with respect to both the media business and the impacts of the ongoing pandemic: *Torstar Corporation and NordStar Capital LP Plan of Arrangement*, 2020 ONSC 4574 at para 56.

135 In this case, the board has recommended the Arrangement as being in the best interests of the Calfrac Entities and its stakeholders. For reasons that I have stated above, the process of the board reaching its decision is not relevant for approval. As stated by the Supreme Court in *BCE*, and I quote: (as read)

> The Court must focus on the terms and impact the Arrangement itself, rather than on the process by which it was reached. What is required is that the Arrangement itself, viewed substantively and objectively, be suitable for approval: *BCE* at para 136.

136 I am guided by these judicial statements. As a result, the process of the board's decision is not relevant. Rather, the recommendation of the board is one indicator of fairness, and it is entitled to a certain amount of deference.

137 To this end, I acknowledge that the Wilks Brothers advanced the affidavit of Mr. William Gula, sworn October 17th, 2020, in support of its position ("Gula Affidavit"). Based on the admissions of Mr. Gula made on cross-examination, I find the Gula Affidavit is misplaced and irrelevant to the determination to be made by this Court.

138 More importantly, I find the Gula Affidavit to be inadmissible. I make this finding because opinions on matters of law, or any conclusion based on the evidence, are for the Court to decide. These matters are not properly addressed in an affidavit: Rau v Edmonton (City),2015 ABC A 5 at para 19; Hovsepian v West/air Foods Ltd, 2003 ABQB 641 at para 49. Mr. Gula purports to opine on issues of law, and makes conclusions that are based on legal principles.

139 To emphasize the legal foundation for this finding, evidence similar to that in the Gula Affidavit has been rejected in other cases. In particular, when determining issues that require a consideration of the conduct and process of directors, Justice Farley, as he then was, rejected such expert evidence, and he was upheld by the Ontario Court of Appeal. The comments of that Appellant Court on this matter are as follows, and I quote: (as read)

> It seems to me that the conduct of directors is to be weighed against existing statutes, policies, and legal precedent. I think it is inappropriate for those two witnesses to draw legal conclusions as to pure law or mixed questions of law and fact. As well, I find it inappropriate and equally unhelpful for them to draw factual determinations. This is not a technical area, in the same way that laws of physics or science of medicine are, where the trier of fact would need assistance in understanding the principles and how they apply to the facts: *Pente Investment Management Ltd v Schneider Corp* 1998 CarswellOnt 5943 (Ct J) at paras 4-5; affirmed 1998 CarswellOnt 4035 (CA).

(iv) Fairness Opinions

140 While such opinions are not determinative, another factor in this case are the opinions from Peters & Co Those opinions are as follows:

> a. The Senior Unsecured Noteholders and Shareholders would be in a better financial position, respectfully, under the Recapitalization Transaction, than if the company were liquidated; and
>
> b. The terms of the Recapitalization Transaction are fair, from a financial point of view, to Calfrac.
>
> (collectively, the "Fairness Opinions")

141 The Calfrac Entities have emphasized that the Fairness Opinions were not provided as expert evidence. Rather, the Fairness Opinions were provided as one of many factors for this Court to consider in assessing the fairness and reasonableness of the Arrangement.

142 Wilks Brothers raised two points in rejecting the Fairness Opinions. First, it alleges that Peters & Co is not independent. Second, it alleges that the Fairness Opinions are materially deficient.

143 With regards to the issue of independence, Wilks Brothers points to a pre-existing relationship between Peters & Co and the individuals associated with the Calfrac Entities. These relationships include the following:

> a. Calfrac is a client of Peters & Co in respect of recent investment banking work;
>
> b. Matco's vice-chair, Mr. Tims, is a former chair of Peters & Co; and
>
> c. During Mr Tims' time at Peters & Co, that investment banking firm performed significant work for companies for which Mr. Mathison was a director and/or officer, or a significant shareholder.

144 With respect to the materiality deficiency, Wilks Brothers claims that the Fairness Opinions failed to address whether the Arrangement would be fair to shareholders and noteholders. Instead, it asserts the Fairness Opinions merely focus on whether the Arrangement would be fair to the Calfrac Entities.

145 In support of its position, Wilks Brothers directs this Court's attention to procedural guidelines on Section 192 of the CBCA, which states: (as read)

> ordinarily, for a fairness opinion to be meaningful, the person providing the opinion must be in a position to state that the arrangement is fair to each class of security holders affected by the arrangement: CBCA Policy Statement.

146 Wilks Brothers adroitly indicated that a fairness opinion must be robust, rigorous, and independent, and prepared by reputable experts. Wilks Brothers goes on to assert that the failure to obtain such a fairness opinion is a detriment to the board of directors in reaching a sound conclusion, which impaired their ability to discharge the fiduciary duties: InterOil Corporation v Mulacek,2016 YKCA 14 at para 22.

147 The evidence is that Peters & Co is a reputable financial advisory firm, often involved in large financings in the oil and gas industry. It is not surprising that the Calfrac Entities have, in the past, retained Peters & Co for investment banking work.

148 While I acknowledge the evidence that there were pre-existing relationships among Mr. Tims, Mr. Mathison, and Peters & Co, I find that they do not amount to a level of inappropriateness which I would call into question the independence of Peters & Co in this context. I make that finding because Mr. Tims, having served as the chair of Peters & Co, stepped down from that role and left the company some six years ago.

149 Mr. Mathison's involvement in Peters & Co is even further removed. He stepped down from his role more than two decades ago.

150 Both parties cited Re Sherritt International,2020 ONSC 5822 [, in which the Court rejected a fairness opinion on the basis that the author of the opinion had a seat on the shared board of directors. In the case at hand, no such egregious conduct is present. The mere fact that Mr. Tims and Mr. Mathison held positions at Peters & Co some considerable time ago is not sufficient to cast doubt on the independence of the Fairness Opinions.

151 I now turn to the substance of the Fairness Opinions. I agree with the Wilks Brothers that the Fairness Opinions should have addressed the issue of fairness with respect to Noteholders and shareholders, as well as the corporate entity itself. Ideally, fairness opinions provide a board of directors with a full and detailed analysis of how the plan of arrangement might impact the corporation's stakeholders. This, in turn, provides the necessary information to the board of directors, and may assist them in exercising their fiduciary duties.

152 Given the incompleteness of the Fairness Opinion, I give modest weight to it in determining whether the Arrangement is fair and reasonable. That said, it is but one factor.

(v) Indicia of Fairness

153 Based on my review of all of the evidence and my analysis, I find the Arrangement is fair and reasonable. My reasons for making this finding include the following factors:

First, despite the aggressive position of Wilks Brothers, the Affected Securityholders voted with their feet and approved the Arrangement Resolutions. They did so even in the face of clear economic alternatives.

Second, the vote occurred after an extensive publically-disclosed campaign with competing proposals.

Third, the support of the board came after careful consideration, lengthy and detailed consultation and negotiation with stakeholders. This initiative was led by the board's independent lead director and the advice of legal and financial advisors.

Fourth, sophisticated legal and financial advisors have all considered the terms of the Arrangement and endorsed the Arrangement.

Fifth, the opinion from Peters & Co Limited, relied upon by the board, indicate that the Arrangement is fair and reasonable. I mention this for completeness only, notwithstanding that I have given only a modest weight to the opinion for reasons that I mentioned above.

Sixth, if the Arrangement was not implemented, the Calfrac Group would not have a sustainable capital structure going forward. That would have a severe negative impact on all stakeholders.

Seventh, based on the evidence before me, there is no reasonable alternative to the Arrangement and the Amended Recapitalization Transaction. Wilks Brothers' proposal is not viable. The Special Committee of the board reviewed, and rejected, Wilks Brothers' Proposal.

Eighth, based on the evidence and analysis, the Affected Securityholders will receive more value under the Arrangement than they would under a liquidation.

Ninth, in the circumstances, the Arrangement and Amended Recapitalization Transaction is the most reasonable option for the Calfrac Entities and its stakeholders, and will ensure a sustainable future for the Applicants.

D. Additional Issues Raised By Wilks Brothers

1. Break Fee

154 Wilks Brothers asserted the "break fee" included in the Noteholders Support Agreement is too high. Concern was expressed that the size of the break fee was a deterrent to other third-parties from submitting a competing proposal.

155 I do not accept the concerns advanced by Wilks Brothers concerning the break fee. My reasons are four-fold:

First, the relevant magnitude of the break fee depends on how it is measured. If I assess the break fee in the context of the aggregate transaction using the sum of the equity of Calfrac, plus its debts. On that basis, the $5 million break fee is nominal on a percentage basis.

Second, there is no evidence that any third-party was deterred by the break fee. To the contrary, it is evident that at least one third-party was not deterred. That third party is Wilks Brothers. The evidence is that Wilks Brothers expressly offered to pay the allegedly excessive break fee in the Wilks Brothers' proposal.

Third, both Wilks Brothers affiants are employed at MPA — Morrison Park Advisors — which I will refer to as "MPA." The evidence is that MPA opined in another deal that a transaction was fair and reasonable in circumstances where the subject transaction had a break fee of 7.5% of the funds being raised. I find that break fee not dissimilar to the break fee in this Calfrac case, when it is not calculated by reference to the enterprise value. As a result, I give little weight to the opinion of Wilks Brothers' affiants in respect of the break fee.

Fourth, neither Wilks Brothers' affiants put forward any comparable transaction analysis in support of their unsupported assertion that the break fee was too high.

2. Criminal Interest Rate

156 Counsel for Wilks Brothers claims that the Arrangement does not have a valid business purpose because it violates the *Criminal Code of Canada*. Specifically, Wilks Brothers submits that the terms of the 1.5 Lien Note breached Section 347 of the Criminal Code by allowing an annual effective interest rate in exceeds 60%.

157 A brief review of the relevant facts is warranted. The 1.5 Lien Note stipulates a 10% rate. Under the terms of the Arrangement, the 1.5 Lien Notes are convertible into common shares.

158 Wilks Brothers underscores that the conversion price of the 1.5 Lien Notes represents an 85% discount vis-à-vis the current market price of the Calfrac shares.

159 Wilks Brothers argues that the conversion and any subsequent sale would entail the payment or receipt of "interest" in excess of the maximum rate of 60% envisioned in Section 347 of the Criminal Code.

160 In calculating the alleged interest, Wilks Brothers include the discount therein. Wilks Brothers rely on Mr. Scott Frank's affidavit, in which Mr. Frank makes several assumptions to find an effective annual rate of interest above 60%. Mr. Frank provides this data, assuming an immediate conversion of the 1.5 Lien Notes to stock, and assuming that share prices at the time of sale are 2.7, 3, 4, and 5 cents.

161 Under each scenario, Mr. Frank opines that the conversion and sale will result in an annual effective interest rate of over 60%. Notably, Mr. Frank clarifies that he is not expressing an opinion on whether such conversion and sale would be considered "interest" under Section 347 of the Criminal Code.

162 In contrast, the Calfrac Entities assert that the benefit of the discount realized at the time of conversion into common shares is not "interest" under the definition provided by the *Criminal Code*. While the Calfrac Entities acknowledge a broad definition of "interest," they maintain that there is a limit. Citing authorities from Ontario and British Columbia, the Applicants urge this Court to reject the application of Section 347 of the Criminal Code to the issuance of shares in connection with a loan in this case.

163 Specifically, the Calfrac Entities rely on Bimman v Neiman, 2015 ONSC 2313 [and Cirius Messaging Inc v Epstein Enterprises Inc, 2018 BCSC 1859 [. In contrast, Wilks Brothers rely primarily on Bearcat Explorations: .

164 In *Bearcat*, this Court stated in *obiter* that a certain sum could be considered interest on the basis that it forms part of the cost of the loan: para 97. I do not find this comment helpful because the Court was not asked to perform, and thus did not provide, a full and detailed legal analysis on the issue. That said, I note the following comment from *Bearcat*, quote: (as read)

> However, given [Section 347's] comprehensive nature, it applies to a broad range of commercial transactions involving the advancement of credit. It is, as characterized by the Supreme Court, "a deeply problematic law" and an attempt to apply s. 347 to a series of loan agreements entered into by the parties in this case illustrates many of the problems of the legislation: para 85.

165 Courts have engaged in an extensive statutory interpretation exercise to address the problems associated with the expansive nature of Section 347 in commercial contexts. In *Bimman*, for example, the Court held that shares issued to shareholders were not a "charge or expense," as contemplated by the definition of "interest" in the *Criminal Code*: para 183. The Court in that case further opined that "the issuance of shares is not a charge that is paid or payable" by one of the corporate defendants and therefore did not fall within the definition of "interest" under Section 347 of the Criminal Code.

166 Of particular interest in *Bimman*, the Court went on to say in *obiter dicta* that the subject transaction was best classified as a hybrid debt-equity transaction, and was not one which Parliament intended to be caught in the web of the prohibition in Section 347 of the Criminal Code.

167 Similarly, in considering the meaning of "charge" or "expense" in *Cirius*, the Court held that there are reasons to suggest that a "charge or expense" would have been either a fixed amount or an amount that can be calculated or determined with precision: para 95. Significantly, the Court in *Cirius*, provided the following summary in relation to the *actus reus* required under Section 347, and I quote: (as read)

> 117. The *actus reus* of the offence which is created by s. 347(1) is either "entering into an agreement or arrangement to receive interest at a criminal rate," or receiving "a payment or partial payment of interest at a criminal rate": *Degelder* at para 28. A "criminal rate" of interest means, as I have stated, a rate of interest calculated in accordance with generally accepted actuarial practises and principles that exceed 60%.
>
> 119. To establish the *actus reus* of the offence under s. 347 there is no room on an imprecise and relatively subjective basis, to select a share value that falls within a range of fair and/or reasonable share values. To be specific, in some prosecutions it may not matter where, within a range of values, the shares or warrants or options in issue are valued. All such values, when subsequently calculated, may yield a "criminal rate" of interest. In other case, however, the value that is ascribed to such shares or warrants or options will matter considerably: *Cirius* at paras 117 and 119.

168 Under Section 347(1)(a) of the Criminal Code, the plaintiff must establish, beyond a reasonable doubt, that the defendant entered into the agreement or arrangement to receive interest at a criminal rate. The requisite *mens rea* is the intention to enter into such an agreement or arrangement. Of significant note, subsection 347(1)(a) of that provision is violated if, provable on its terms, a credit agreement expressly imposes an annual rate of interest of above 60%, or if the agreement requires a payment of interest charges over a period that necessarily gives rise to an annual rate above 60%: *Degelder* at para 28. Watt, David and Fuerst, Michelle, The Annotated Tremeear's Criminal Code, 2021 ed (Toronto: Carswell, 2021) at 716 [*Annotated Tremeear*].

169 Section 347(1)(b) involves the actual receipt of a payment or partial payment of interest at a criminal rate. The requisite *mens rea* is proof of the defendant's knowledge of the *nature* of the payment: *Annotated Tremeear* at 715.

170 As the evidence before me indicates, the agreement at hand — namely, the terms within the 1.5 Lien Notes — was entered into between the relevant parties for the fiscal recovery of the Calfrac Entities. Wilks Brothers has not presented evidence to support that this agreement was to facilitate the receipt of interest at a criminal rate, as contemplated by Section 347(1)(a) nor has it advanced any evidence that speaks to the criminal intention of the Calfrac Entities.

171 Further, the terms of the agreement in question expressly define the interest rate at 10%. In the absence of evidence to the contrary, I cannot find that the requisite burden of proof has been met for criminal purposes.

172 Based on that analysis, I find that the elements of Section 347(1)(a) have not been proved beyond a reasonable doubt in respect of these particulars.

173 Further, Wilks Brothers claim that the conversion and subsequent sale of the Calfrac shares would violate Section 347 of the Criminal Code emanates from substantial assumptions, including the act of conversion itself, as well as a hypothetical price at which the shares may be trading at the time of sale.

174 Counsel for the Calfrac Entities asserts that such imprecise hypothetical calculation excludes the proposed valuation of shares from the definition of "interest" under s. 347 of the Criminal Code.

175 Based on my reading of the *Criminal Code*, and the judicial guidance that I have reviewed in the context of this Application, I agree with the proposition advanced by the Calfrac Entities. Absent the actual act of converting the 1.5 Lien Notes into common shares, and selling such shares at a significantly higher price, the absence of precise calculations and demonstrations of criminal interest rate, there can be no *actus reus*.

176 Based on that analysis, I find that the elements of Section 347(1)(b) have not been, proved beyond a reasonable doubt, in respect of these particulars.

177 As an aside, I echo the concerns expressed by Justice Romaine in *Bearcat*, and the Supreme Court of Canada in Garland v Consumers Gas Co,[1998] 3 SCR 112 [: *Bearcat* at para 85 and *Garland* at para 52. In particular, I note that the sheer breadth of Section 347 of the Criminal Code has created ambiguity in its precise reach and application, especially in the context of commercial transactions.

3. Waiver and Jurisdiction

178 The proposed final order provides no person, including the Second Lien Noteholders, can exercise any rights or remedies in respect of a default resulting from the initiation of the CBCA proceedings. The non-payment of interest on the Senior Unsecured Notes that are being extinguished under the Arrangement, and any change of control of Calfrac resulting from the completion of the Arrangement (the "Waiver Provision").

179 This form of waiver is squarely within the jurisdiction of this Court, consistent with the broad and facilitating purpose of the CBCA arrangement provisions, and is commonly granted by Courts when approving CBCA plans of arrangement.

180 The Applicants seek the proposed Final Order approving the Arrangement and granting the ancillary relief to ensure that the Recapitalization Transaction is completed in accordance with its terms. I find that the proposed Final Order is consistent with the scope of relief frequently granted in CBCA arrangements involving the compromise of debt obligations.

181 To give effect to the approval of the Arrangement, the proposed Final Agreement includes the Waiver Provision, providing that all persons, including the Second Lien Noteholders and the Second Lien Note Trustee, shall be deemed to have waived any and all defaults and accelerations, third-party change of control rights, or non-compliance with any term in any agreement, arising on or prior to the Effective Time, relating to — amongst other things — the Senior Unsecured Notes and any failure to pay any principle, interest or other amount when due thereunder, the New 1.5 Lien Obligations, the Arrangement that transactions contemplated by the Amended Plan of Arrangement, the CBCA Proceedings, and Chapter 15 Proceedings.

182 Provisions similar to the waiver provision are a key feature in CBCA final orders approving arrangements involving the compromise and exchange of indebtedness. Provisions waiving events of default relating to the contemplation of the arrangement, or the comprised debt are necessary to ensure that the positive results that are to flow from the arrangement are not jeopardized or subject to collateral attack.

183 Courts across Canada have exercised their discretion, pursuant to Section 192(4) of the CBCA, to approve plans of arrangement that provide waivers like the Waiver Provision, and prevent any person — regardless of whether such person is affected on the arrangement — from invoking or alleging, after the Court approval of the arrangement, defaults or other contractual rights relating to the initiation of the CBCA proceeding, the completion of the Arrangement, or the indebtedness that the compromised or eliminated, pursuant to the Arrangement.

184 I have reviewed the jurisprudence that the parties touched on in both their briefs and in oral argument. Based on that jurisprudence, I find a substantial body of CBCA cases clearly establishes that this Court has the jurisdiction to grant the proposed Waiver Provision.

185 For completeness, I also note that the Waiver Provision is necessary to give effect to the anti-deprivation rule, and to prevent any person from seeking to rely on an "*ipso facto*" clause to take enforcement actions against Calfrac following the completion of the Arrangement, based on fact that the company initiated the CBCA proceedings and Chapter 15 recognition proceedings, to implement the Recapitalization Transaction.

186 In its recent decision in *Chandos Construction* the Supreme Court of Canada confirmed that the anti-deprivation rule exists under the common law of Canada, as I mentioned earlier. The anti-deprivation rule renders void contractual provisions

that, upon insolvency, remove the value that would otherwise have been available to an insolvent person's creditors from their reach.

187 This Court, and the Alberta Court of Appeal, have already determined that the underlying principles and policy informing the anti-deprivation rule are applicable in this case.

188 I acknowledge that the Waiver Provision also includes a waiver of any third-party change of control rights. I find that the necessary and appropriate to prevent any person from claiming, after the Arrangement is completed, that it gave rise to a change of control of Calfrac that entitles such person to exercise rights against the Applicants.

189 The waiver is appropriate to provide certainty to Calfrac and its stakeholders in circumstances of this case since no change of control will arise on completion of the Arrangement. No person or group of persons will acquire more than 50 percent of Calfrac's common shares on completion of the Arrangement.

190 In summary, the Court has the jurisdiction, under subsection 192(4) of the CBCA, to grant the Waiver Provision. The Waiver Provision is ancillary relief in connection with the approval of the Arrangement, and is necessary to provide Calfrac and stakeholders — as I mentioned earlier — with certainty that the Arrangement will not be subject to collateral attack following its completion.

191 Based on the evidence and analysis, I find that the proposed waiver provision is appropriate and necessary in the circumstances of this case.

192 In conclusion, in respect of this section, I find, based on the evidence and my analysis, that this arrangement is fair and reasonable in the circumstances.

4. Mediation

193 I acknowledge the request from Wilks Brothers that I direct the parties to mediation. While there are circumstances where I would consider this step, I find it is not appropriate in these circumstances. I make this finding because the Affected Securityholders already have voted in favour of the Arrangement. I infer they did so because they have determined the Arrangement will benefit them as stakeholders.

194 As such, they have spoken with their vote. It is time to move forward.

V. Conclusion - Summary of Analysis

195 Based on the evidence and analysis, I find as follows:

First, the Court has the jurisdiction to approve the Arrangement and grant the Final Order in the requested form;

Second, the Arrangement meets all of the applicable CBCA tests for approval;

Third, the Arrangement is in the best interests of the Calfrac Entities, and it was advanced in good faith; and

Fourth, the Arrangement is fair and reasonable to the Calfrac Entities, and its stakeholders, having regard to their current financial condition and all available alternatives.

VI. Closing Comments

196 Given that Calfrac is represented by Bennett Jones, I ask Mr. Simard to draft the necessary order. I also ask that Mr. Simard have the draft order reviewed by his friends — which may have already occurred.

197 I acknowledge that I do have what I think is the final draft. Mr. Simard, after our last hearing, you may recall, sent it over on the 28th of October. The only comment I have is this document is black-lined. It was in PDF format when I went to print it off today, so I don't have a clean copy.

198 That said, I can certainly sign the last page, which has no changes on it, page so. If there has been no other changes in the interim.

199 That concludes my decision in respect of this application. If the Applicants wish to bring a costs application before me, they have leave to do so at their convenience, subject to the order that I just touched on.

200 Is there any other business that we need to attend to today?

Submissions by Mr. Pinos

201 MR. PINOS: Yes, My Lord. It's Pinos here, on behalf of the Wilks Brothers.

202 Thank you very much, My Lord, for your detailed and comprehensive reasons.

203 I am instructed to appeal your order, and was to make application to seek a stay of the order on an interim basis. I have alerted Mr. Simard of the fact that I would be making this request.

204 At the request of the Wilks Brothers, if you do stay the operation of the order to permit Wilks Brothers to file a notice of appeal and bring an application for a stay and an expedited appeal before the Court of Appeal. Wilks Brothers will be filing the notice of appeal and application for a stay on Monday, and seeking that the matter be heard by the duty Judge, who we are advised is sitting on Wednesday and Thursday of next week in the Court of Appeal.

205 So I would seek leave to bring that application before you at this time, and I will stop there. I won't make any further submissions at this point.

206 THE COURT: Okay, thank you.

207 Mr. Simard, your comments on that?

Submissions by Mr. Simard

208 MR. SIMARD: Comments on two things, My Lord.

209 The form of order, first of all, you'll recall I moved a bit too quickly on Wednesday. I sent you the form of order that was the most recent one being sought. It had been attached to Mr. Mathison's October 16th affidavit. And then — I sent it to the service list as well — Ms. Brunston (phonetic) then sent the black line, which updated the date to today's date, and added the reference to Mr. Mathison's final supplemental affidavit.

210 I will have her send you a clean Word version, incorporating those last two changes.

211 THE COURT: Okay.

212 MR. SIMARD: So that is, she will do that promptly with respect to the order.

213 And with respect to Mr. Pinos' request to seek a stay, we would oppose that application at this time.

214 THE COURT: Thank you.

215 Any further comments, Mr. Pinos?

Submissions by Mr. Pinos

216 MR. PINOS: My Lord, in terms of the basis for a stay, the noteholder support agreement, which is in evidence before you, sets an outside date for the completion of this transaction at December 15th, 2020. And the Wilks Brothers have a statutory right of appeal under Section 249(1) of the (INDISCERNIBLE).

217 Leave is not required, and a number of cases have indicated that if a stay is not sought or granted in this type of transaction, steps towards the completion of that transaction may constitute a scrambling of the egg, which would (INDISCERNIBLE) my clients otherwise clear of rights of appeal.

218 My client undertakings to promptly prosecute the appeal and seek an expedited hearing before the Court of Appeal, and submits that in the circumstances, given that there is no prejudice to the Calfrac Entities in seeking an expedited appeal, all I seek from you here today is that there be an interim stay, pending the decision of the Court of Appeal next week, with respect to an application for a stay and an expedited appeal.

219 If an expedited appeal is granted, and the stay continues, that's a matter for the Court of Appeal. If one is not founded next week, then Calfrac will be free to continue with the closing of this transaction.

220 I'll also note before the Court that — and, in fact, Calfrac has already filed an application for an urgent hearing in the United States on November 9th, to seek confirmation of this order. They called that last weekend, before the matter had even before heard before you. So it's clear from the intent of the Calfrac Group that they wish to proceed to close this matter quickly, and it's very important that my client, who has a statutory right of appeal, be given a reasonable time frame to order to bring the application for a stay before the Court of Appeal and seek an expedited appeal.

221 THE COURT: Thank you.

222 MR. SIMARD: My Lord, may I respond to Mr. Pinos' submissions?

223 THE COURT: You may, sir, go ahead.

224 MR. SIMARD: Thank you.

Submissions by Mr. Simard

225 MR. SIMARD: So as you know, the test for a stay — even an interim stay — is the tripartite test from *R v R. MacDonald*. The first prong, is there a serious question to be argued on appeal? There is no serious question, and of course, they have to satisfy each of the three prongs of the test, My Lord.

226 You just made what is a discretionary order under your broad jurisdiction under Section 192. It was based on a balancing of the parties' interest, you presided over every hearing in this case, and you had a very extensive and evidentiary record before you. And your decision will be accorded great deference by the Court of Appeal, and for that reason, we say there is no serious issue to be tried, and Wilks Brothers can't establish the first prong.

227 On the second prong, irreparable harm, as a Second Lien Noteholder, as you found, Wilks Brothers will be unaffected. There's no harm to them there. If ultimately they launch this appeal, and the appeal was successful, they wouldn't have suffered any prejudice as Second Lien Noteholder.

228 As a shareholder, they're currently holding shares. The effect of the plan would be to dilute those shares. But a shareholding is no more than an asset; and as such, like any other asset, it has value that can be determined. The prejudice to them, if their shares were diluted, but then later appealed, if proved successful, would be a loss that could be calculated and then compensable in damages.

229 On the other hand, Calfrac could very very, in a very real way, suffer irreparable harm if a closing is delayed. As you know, there's an amount outstanding to the Senior Unsecured Noteholders that Calfrac cannot pay. Calfrac needs to achieve the sustainable capital structure that this plan achieves urgently.

230 You also know the first lien lenders, who are not subject to the stay, have been working with the company cooperatively and waiving defaults. But there's no guarantee that they will continue to do that forever.

231 So there is a real risk that the exact, that a delay could cause the exact type of irreparable harm that Wilks Brothers actively advocated for, and that is the insolvency of Calfrac.

232 And when it comes to the third prong of the test, balance of convenience, without implementation — we've got a parties here, this is not just a two-party transaction here — we have all the supporting parties, all the stakeholders who voted in favour of the plan, and all those parties have clearly indicated they want to plan to proceed.

233 So on the one side of the balance, it's all those parties pursuing this arrangement for the purposes set out in the CBCA. And on the other side, it is Wilks Brothers' private economic interests and what they tried to achieve in these proceedings, about which you have made certain observations in your reasons today.

234 So we say the inconvenience as between the two parties is not even close, and the balance is strongly in favour of Calfrac and the other stakeholders.

235 Mr. Pinos says we just want a stay for a short time. That's fine, but none of us, as we sit here today, know if the Court of Appeal will hear that application next week, if that application will get adjourned, or what will happen. And so we really don't know with any certainty what the time frame is.

236 As you said at the conclusion of your reasons, it is time to move forward.

237 And so we say none of the three prongs of the tripartite test have been satisfied, or could be satisfied; and therefore, a stay is not appropriate.

238 THE COURT: Thank you, sir.

239 Mr. Pinos, this is, I am treating this as your application, so I will give you the final word, if you have anything further to address.

Submissions by Mr. Pinos

240 MR. PINOS: Yes, I do. Just on the first leg of the tripartite test, whether there may be a serious issue for appeal. My Lord, you heard, you had 60-plus-page briefs on grant issues of law across the board for Section 192 in this application. You've made findings with respect to the interpretation of Section 192, the jurisdiction of the Court, the application of *BCE*. And while at the end of the day, the final decision of the Court is a discretionary one under Section 192, in this case there were significant legal issues arising out of both statutes and case law that I think were fairly and fully joined. And you have decided that that provide substantive matters for appeal, as matters of law, rather than matters of pure fact.

241 With respect to the second matter, My Lord, it's a situation where we take into account the length of stay that's being sought, and balance it off against the likelihood of any adverse effects of the parties for that stay period.

242 I've only asked for a stay until the next Wednesday or Thursday, before this matter can be heard before the Court of appeal. At that point, the hand-off to the Court of Appeal is complete, and any stay pending appeal and an expedited appeal will ultimately be determined at that point in time.

243 But in my respectful submission, the highly unlikely adverse impact on any of the Calfrac Entities or their partners in the Plan of Arrangement over the course of the next week is more than waived by the adverse effect on my client's rights

of appeal, if in the interim, steps are taken which can be used later in arguments with respect to possible — in response to a possible appeal if my client's rights are moot, are steps taken to affect this transaction.

244 Those are my submissions.

245 THE COURT: Thank you, sir.

Ruling

246 THE COURT: Thank you, both, for your submissions.

247 As has been the case throughout this series of hearings dealing with Calfrac — and I certainly do not mean this in any negative way — this is real-time litigation. Over the past week I have received and dealt with and reviewed several thousands of pages of evidence and briefs, and I had the benefit of hearing submissions.

248 I appreciate this application that you have just made, Mr. Pinos, on behalf of the Wilks Brothers. However, in the context of this real-time litigation, and having thought about the application of the tripartite test, as has been outlined by the Supreme Court of Canada in *R v R. MacDonald*, when I consider the evidence and all matters that are relevant in terms of the first test, I would conclude that you would not meet that.

249 In terms of the second test, I would conclude that you would not meet that.

250 And in terms of the third test, I would conclude, after reflection of all of the relevant particulars, that you would not meet that test.

251 Therefore, in the circumstances, the application for the stay is denied.

252 That concludes my reasons in the decision in respect of that aspect of the hearing.

253 Is there any other business that we need to deal with?

254 MR. SIMARD: It's Mr. Simard. No, My Lord. We heard you on costs. We will certainly be claiming costs, but what we will do is put together a bill of costs and propose it to my friend.

255 THE COURT: Okay, thank you.

256 MR. SIMARD: I have nothing further today.

257 THE COURT: The only other comment I will make is — thank you, Mr. Simard, for offering to provide that updated order. And just, if you could confirm on the record now, or in your correspondence — on the record would be preferred — that all parties have had a chance to review that, including Mr. Pinos?

258 MR. SIMARD: Yes. We sent the form of order and then the acceded black line to all parties shortly after the end of the hearing on Wednesday. And of course, other than the two black-line items, all parties had that form of order since October 16th, when Mr. Mathison's first supplemental affidavit was served.

259 THE COURT: Okay, thank you.

260 That being the case, I will give you leave to provide that to my assistant. You can provide it to me directly, you have got my email address in the circumstances. I will have it executed and certainly back to you promptly first thing tomorrow morning.

261 Again, one final time, is there any other business we need to address? Hearing none, I will ask Madam Clerk to adjourn.

Application granted.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

Court File No. CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

BOOK OF AUTHORITIES OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
RE: RESPONDING CROSS-MOTION
(returnable April 10-12, 2024)

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