

**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 14487893
CANADA INC.

Applicant

THE HONOURABLE MR.

)

FRIDAY, THE 20TH

)

JUSTICE PETER J. CAVANAGH

)

DAY OF SEPTEMBER, 2024

**ORDER
(Motion on Prior Acts Exclusion)**

THIS MOTION, made by (1) XL Specialty Insurance Company (“**XL**”) under its primary policy no. ELU173707-21, (2) Tokio Marine HCC – D&O Group (“**Tokio**”), the Coverholder by HCC Underwriting Agency Ltd, HCC Syndicate 4141 trading as Tokio Marine HCC International via Agreement No. B602121HCCGFM under its Excess Indemnity Policy no. 34-MGU-20-A49117, and (3) Certain Underwriters at Lloyd’s London Subscribing to Excess Insurance Policy No. B0146ERINT2100865 by their authorized Coverholder Hiscox (collectively, the “**Insurers**”), for (a) a declaration that the Prior Acts Exclusion in the Insurers’ primary and excess insurance policies (“**Policies**”) applies to bar coverage for and (b) an order dismissing the motion brought by the class representative Plaintiff Haidar Omarali (“**Omarali**”) by way of his Notice of Motion dated

August 25, 2023 (“**Omarali Motion**”), was heard on Monday September 9th, 2024, at the courthouse at 330 University Avenue, Toronto, Ontario, M5G 1R8.

WHEREAS the Insurers seek a declaration that the Prior Acts Exclusion, being Endorsement No. 4 to XL Policy No. ELU173707-21 (the “**Policy**”), applies to bar coverage for the claim Omarali makes against the directors of Just Energy Group Inc., Just Energy Corp., and/or Just Energy Ontario L.P. (collectively, “**Just Energy**”) asserting that they are personally liable for Just Energy’s conduct and the unpaid wages claim as alleged and described in the Omarali Motion Record, the Class Action pleaded in Court File No. CV-15-527493-00CP, and Omarali’s October 29, 2021 D&O Proof of Claim filed with FTI Consulting Canada Inc., the Court-appointed Monitor in this proceeding (the “**Omarali Claim**”);

ON READING the Insurers’ Motion Record dated June 10, 2023, the Omarali Motion Record, and the Facta, Books of Authorities and Compendia filed by the Insurers and Omarali, and upon hearing the submissions of the lawyers for same;

NOW, THEREFORE, this Court orders and declares as follows:

1. **THIS COURT DECLARES** that the Omarali Claim is based upon, arises out of, directly or indirectly results from, is in consequence of and/or involves an act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act that was committed or allegedly committed prior to March 9, 2021.
2. **THIS COURT DECLARES** that the Prior Acts Exclusion applies to bar coverage for the Omarali Claim under the Policy.

3. **THIS COURT ORDERS** that the Omarali Claim is dismissed.

4. **THIS COURT ORDERS** that costs for this motion are payable to the Insurers, as agreed by the parties or as further ordered by this Court.

MR. JUSTICE P. CAVANAGH

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 14487893 CANADA INC.

Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(Motion on Prior Acts Exclusion)

<p>LENCZNER SLAGHT LLP Barristers 130 Adelaide Street West, Suite 2600 Toronto, ON M5H 3P5</p> <p>Nina Bombier (LSO# 41825T) Tel: (416) 865-3052 Email: nbombier@litigate.com</p> <p>David Salter (LSO# 80519K) Tel: (416) 649-1818 Email: dsalter@litigate.com</p> <p>Evan Linn (LSO# 86998P) Tel: (416) 238-7507 Email: elinn@litigate.com</p> <p>Lawyers for XL Specialty Insurance Company</p>	<p>BLANEY MCMURTRY LLP Lawyers 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David Ullmann (LSO# 42357I) Tel: (416) 596-4289 Email: dullmann@blaney.com</p> <p>Jason P. Mangano (LSO# 51986W) Tel: (416) 596-2896 Email: jmangano@blaney.com</p> <p>Lawyers for Tokio Marine HCC – D&O Group, the Coverholder by HCC Underwriting Agency Ltd, HCC Syndicate 4141 trading as Tokio Marine HCC International via Agreement No. B602121HCCGFM</p>	<p>SNOWDEN LAW PROF. CORP. Coverage Counsel 130 Adelaide Street West, Suite 1940 Toronto, ON M5H 3P5</p> <p>Marcus B. Snowden (LSO# 30868L) Tel.: (416) 363-3343 Email: marcus@snowdenlaw.ca</p> <p>Pearl Rombis (LSO# 35658A) Tel: (416) 363-3353 Email: pearl@snowdenlaw.ca</p> <p>Lawyers for Certain Underwriters at Lloyd's London Subscribing to Policy No. B0146ERINT2100865 by their Coverholder Hiscox</p>
---	--	--

