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

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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

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TEXAS POWER INTERRUPTION CLAIMANTS

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PART I - OVERVIEW

1. In these proceedings, 364 individual claimants (the "**Interruption Claimants**") filed claims for loss of business, personal injury, and property damage (the "**Mass Tort Claims**") against Just Energy and its associated entities (collectively, "**Just Energy**" or the "**Company**"). Each of the Interruption Claimants entered into contracts with Just Energy for the purchase of electricity for their homes and businesses. Just Energy was the only provider of electricity to each of these claimants and the claimants did not have contracts with any other electricity provider. The Mass Tort Claims address the damages suffered as a result of Just Energy's failure to deliver electricity to the claimants' businesses and homes just when they needed it most – when temperatures were very low during winter Storm Uri in 2021, and, in addition or in the alternative, the failure to warn the Interruption Claimants of the significant risk that this could happen if the weather got cold enough. As a result of Just Energy's failure to warn and failure to provide electricity to them when they needed it most, each of the Interruption Claimants suffered various forms of business, personal and property damage.

2. Following the devastating effects of Storm Uri, Just Energy commenced creditor protection proceedings under the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36 (the "***CCAA***" or the "**Act**"). Just Energy now brings this motion to file a proposed Plan of Arrangement (the "**Plan**") and asking this Court to grant an order (the "**Meeting Order**") calling and setting the ground rules for a creditors meeting regarding the Plan.

3. In the almost fifteen (15) months the Company has been aware that it would have to address claims such as the Mass Tor Claims, and in the over seven months since the Mass Tort Claims were duly filed, the Company has not yet valued these Mass Tort

Claims or attempted to have them valued for the purpose of voting on the Plan. Instead, just two days ago, the Company filed in the Texas Chapter 15 proceedings a motion requesting the Hon. Judge Marin Isgur summarily disallow the Mass Tort Claims (Bk. SD TX 21-30823 D.I. 173) (the "**Chapter 15 Disallowance Motion**"). The Interruption Claimants have not yet had an opportunity to complete their review of this motion, or have time to consider and formulate a position on how it interplays with the relief sought before this Court. In the ordinary course, one would expect that the requested hearing date for the Chapter 15 Disallowance Motion will be pushed back very significantly to permit discovery and pre-trial motion practice. The Company now asks this Court, in the proposed Meeting Order and proposed Plan, to disenfranchise the Interruption Claimants by denying them their right to vote on the Plan as contemplated by the CCAA. There has been no adjudication, preliminary or otherwise, of the Interruption Claims, yet the Company is asking this Court to accept its bare denial of the claims without providing an opportunity for the Interruption Claimants to be heard, and without this Court having an opportunity to consider the disposition by Hon. Judge Isgur upon the Chapter 15 Disallowance Motion. They are seeking the extraordinary relief of denying the Interruption Claimants a meaningful vote on the Plan based on their own bald denial of the claims without this Court or other claims officer having considered the issue of valuation at all: the Company asks this Court to provide that each of the Interruption Claimants are collectively only entitled to one vote (thereby giving each claimant only 1/364th of a vote) and that their individual claims should collectively be valued at $1 (thereby valuing each claim at a fraction of one (1) cent each).

4. It is no answer for the Company to say that votes can be tabulated and considered at the sanction hearing. Understanding the actual voting rights of the various parties in each class and their rights vis-à-vis the Plan will have an impact on interim negotiations between the stakeholders and will factor into how the various parties will vote on the meeting. The impact of those negotiations, and the creditors' loss of opportunity to address these matters before the creditors' meeting, cannot be undone through an *ex post facto* consideration of the actual voting rights after the vote.

5. Furthermore, the Plan is fundamentally unfair in that it provides vastly different consideration to claimants lumped together in the same class of unsecured creditors. Accordingly, there is a genuine issue that the Plan may not sanctioned or that the classification of creditors will not be upheld by the Court at the sanction hearing.

6. Accordingly, the Interruption Claimants request that if the Meeting Order is to be granted, it be granted on terms that provide the following:

(a) The Mass Tort Claims are to be valued, at least on a preliminary basis for voting purposes, prior to the meeting of creditors pursuant to section 20(1)(iii) of the CCAA, and that each of the Interruption Claimants receive a separate vote with respect to their claims; and

(b) The votes are to be tabulated so as to allow the parties to determine what the results of the vote would be if the Interruption Claimants and those claimants involved in the two class proceedings were placed in (i) their own separate class; and (ii) a class with only the other unsecured creditors who are participating in the $10 million General Unsecured Creditor Cash Pool.

PART II - FACTS

A. The Mass Tort Claims and the Interruption Claimants

7. On November 1, 2021, the law firms of Fears Nachawati PLLC, Watts Guerra LLP and Parker Waichman LLP collectively and timely filed claims on behalf of 260 claimants against the Just Energy Entities. In addition, the law firm of Robins Cloud LLP filed claims on behalf of 104 claimants. All of these Mass Tort Claims arise out of loss of business, property damage and/or personal injuries suffered by Claimants due to the loss of power during Storm Uri in February 2021. All of the claims are based on Texan law, and address the particular regulatory regime that exists there for electricity markets.

8. For the administrative convenience of all parties, including Just Energy and the Monitor, the Proofs of Claim were filed on an omnibus basis.[1] At no point was it intended by the Interruption Claimants, nor was it agreed by them with the Company, that the omnibus filing had the effect of converting the individual 364 claims into one single claim (class, or otherwise). Similarly, the fact that some of the Interruption Claimants are represented by the same firms does not mean that they gave up their individual rights as individual claimants, including the right to vote on the Plan as individual creditors. Furthermore, the filing of an omnibus proof of claim does not provide the Company with any right to treat the claims as a single class claim. There is simply nothing in the CCAA or in the filing of an omnibus Proof of Claim that causes the Interruption Claimants to lose their individual rights as creditors, including the right of each of them to vote on the Plan.

[1] See Notices of Revision or Disallowance identifying the Claimants as Individuals, Motion Record of the Applicant, pages 1432, 1489.

9. The fact that the individual Interruption Claimants each have individual claims is made clear from the important distinction between class proceedings and mass tort litigation in the US, where these claims originated.[2] In mass tort litigation, a number of individual claims are prosecuted together from an administrative standpoint, but each claim is and remains an individual claim. There is nothing in the filing of an omnibus Proof of Claim that changes this fundamental nature of the Interruption Claimants' claims.

10. Mass tort claims, such as the Interruption Claims, are clearly ineligible for class certification under the rules of class certification by state and federal judges in Texas in both insolvency and non-insolvency cases. Not only should this bear on this Court's determination of this motion, but this Court must consider that the Chapter 15 Disallowance Motion will be decided strictly on a non-class basis, given that there has been and will be no motion for recognition under (U.S.) Bankruptcy Rule 7023 of the Interruption Claimants as a class (and such motion would certainly be denied if made).

11. The Mass Tort Claims are different from claims that are advanced as a class proceeding.[3] Whereas in a class proceeding, there are one or more representative plaintiffs who represent the rights of the entire class and assert the totality of the claims on behalf of the class, the Interruption Claimants are each advancing individual claims. Again, there is nothing in the Proof of Claim that changes this fundamental fact. Similarly,

[2] Motion Record of the Applicant, pages 1551-1553, 1561-1562.
[3] See Abbe R. Gluck & Elizabeth Chamblee Burch, "MDL Revolution" (2021) 96:1 NYU L Rev 1 at 9-15; see Howard M. Erichson, "What MDL and Class Actions Have in Common" (2017) 70 Vand L Rev En Banc 29 at 36-39; Motion Record of the Applicant, pages 1551-1553, 1561-1562; Motion Record of the Applicant, pages 123-124, 140, 200.

the fact that there are class claims that are being advanced by other claimants does not, and cannot, mean that the Mass Tort Claims are to be treated as a single claim.

12. Despite the Company's characterization to the contrary,[4] each of the Interruption Claimants is asserting a separate claim, and they are not asserting a representative or class claim.

PART III - ISSUES

13. The issues on this motion are:

(a) The proposed treatment of the Interruption Claimants under the Meeting Order unfairly and unreasonably limits their voting rights as guaranteed by the *CCAA*, and a valuation of their claims, even on a preliminary basis, must be held before the meeting of creditors; and

(b) The Meeting Order, if granted, must provide for the ability to determine the outcome of the vote if the Interruption Claimants and other unsecured creditors other than the Term Loan Creditors were placed in a class separate from the Term Loan Creditors for voting purposes.

(c) The Meeting Order must account for the Company's late and unannounced filing of the Chapter 15 Disallowance Motion.

[4] Motion Record of the Applicant, page 123.

PART IV - LAW AND ARGUMENT

A. The treatment of Interruption Claimants under the Meeting Order unfairly and unreasonably limits their voting rights under the *CCAA*, and a preliminary valuation of their claims must be held before the meeting of creditors

14. The proposed Meeting Order unfairly and unjustly disenfranchises the Interruption Claimants by effectively denying them the right to vote on the proposed Plan. It does so in two ways:

(a) The Meeting Order purports to only give a single vote to the Interruption Claimants despite the fact that they are 364 individual creditors with separate claims, and despite the fact that each claimant has a right to vote on the Plan; and,

(b) The Meeting Order fails to appropriately value the Mass Tort Claims, and instead provides that each of the claims will be valued at less than one (1) cent each.

i. The Meeting Order Strips the Interruption Claimants of Their Right to Vote

15. The Meeting Order provides a single vote to each of the law firms representing the Interruption Claimants, giving these 364 individual claimants, in effect, a single vote. The Company attempts to justify this disenfranchisement by saying that they are treating the individual Interruption Claimants the same way that it is treating the claims of the certified and non-certified class actions.[5]

[5] Motion record of the applicant, page 139-140.

16. While the Mass Tort Claims were made in an omnibus fashion for the administrative convenience of all parties, including the Company itself,[6] doing so did not mean that there was only one claim or that the claimants were forgoing their rights as a creditor. The filing of a single proof of claim in this fashion is a common practice, recognized in cases where a tortfeasor has injured many parties through a single act, but their individual injuries require individual valuations and examination.[7]

17. Mass tort claims are different than class claims. While class proceedings operate with a representative plaintiff who may act and vote on behalf of their class, mass tort claims are distinguished by the individual pursuits of each plaintiff, none of whom represent another.[8] The Meeting Order has the effect of stripping the right to vote for the 364 Interruption Claimants by treating the Mass Tort Claims as a class action or proposed class action proceeding and purporting to give a single vote to one person. In the Mass Tort Claims, there is no representative who can bind the rights of all of the claimants, and each one has to be dealt with individually. There is nothing in the CCAA that allows this Court, through a meeting order, to strip these claimants of these rights and to, in effect, assign all of their rights to a lawyer or any other person.

18. The attempt in the Meeting Order to strip away the claimants' right to vote is similar to the attempt that was made in *Menegon v Philip Services Corp*.[9] In that case, the Plan would have deprived contingent claimants of the right to vote in the *CCAA* proceedings.

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[6] Dispute Notice, Motion Record of the Applicant, pages 1489-1490.
[7] See for example *Walker Estate v York-Finch General Hospital,* 2001 SCC 23; see also *Hollis v Birch,* [1995] 4 SCR 624.
[8] See Abbe R. Gluck & Elizabeth Chamblee Burch, "MDL Revolution" (2021) 96:1 NYU L Rev 1 at 9-15; see Howard M. Erichson, "What MDL and Class Actions Have in Common" (2017) 70 Vand L Rev En Banc 29 at 36-39; Motion Record of the Applicant, pages 1551-1553, 1561-1562.
[9] 1999 CanLII 15004 (ON SC). (*Menegon*)

While debtors have a right under the *CCAA* to propose compromises or arrangements with their creditors, it is the creditors' right under the *CCAA* to vote on the arrangement.[10] This concept of creditor democracy is fundamental to the CCAA process.

19. In *Menegon*, the Court described the circumstances in which the rights of creditors may be compromised under the *CCAA* were described as follows [emphasis added]:

> a) the creditor has been given a right to vote, in the appropriate class, on the proposed compromise;
>
> b) the creditor's vote is in accordance with a value ascribed to the claim by a Court-approved procedure;
>
> c) the class in which the creditor has been appropriately placed has voted by a majority in number and two-thirds in value in favour of the compromise; and,
>
> d) the Court has sanctioned the compromise on the basis that it is fair and reasonable (with considerable deference being given by the Court in this regard to the votes of the creditors).[11]

20. As held in *Menegon*, in order for a creditors' claim to be compromised, it must be given the right to vote. Furthermore, as held in Menegon and as required by section 20(1)(iii) of the CCAA, a value, fairly determined by a Court-approved procedure, has to be given to the creditor's vote.

21. There is no justification under the *CCAA* for depriving the Interruption Claimants of their individual rights as creditors to vote on the Plan. Further, unless the Interruption Claimants are afforded a full and fair right to vote on the Plan, which means that each creditor is given a meaningful opportunity to exercise the right to vote, their rights as a creditor cannot be compromised under the Plan. If the Company intends to treat the

[10] See *Menegon* at para 38.
[11] *Menegon* at para 42.

Interruption Claimants as unaffected creditors, then they should do so directly. If they seek to compromise their claims, then they must give them a meaningful and proper vote on the Plan.

22. Accordingly, it is respectfully submitted this Court should not grant the Meeting Order without providing that each of the Interruption Claimants has a single vote on the Plan. Otherwise, their claims cannot be compromised,

ii. The Meeting Order fails to appropriately value the Mass Tort Claims.

23. To comply with the requirements of the *CCAA* and the prerequisites to compromise the rights of a creditor under the *CCAA*, the creditor's vote must be ascribed a value by a Court-approved procedure.[12]

24. The issue of how the Mass Tort Claims will be valued must be addressed prior to the classification and the meeting of creditors, as this issue is critical to the determination of whether the creditor classes in the proposed Plan are fair and permissible.[13]

25. Even if a claim is contingent in the sense that it is disputed, it must be given a fair value for voting purposes. It is not up to the Company, simply because it denies the claim, to ascribe a nil or negligible value to the claim. Moreover, it is respectfully submitted that it also not proper for the Court to simply accept a Company's view that a claim has nil value. Rather, as provided for in section 20(1)(iii) of the CCAA, and as noted in the *Menegon* decision, there has to be a court-approved process for valuing the claim.

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[12] See *Menegon* at para 42; see also *CCAA* s 6(1) and 20(1)(iii).
[13] See *Re Wiebe* (1995), 30 C.B.R. (3d) 109 (Ont. Ct. Gen .Div.); see also *Claude Resources Inc. (Trustee of) v. Dutton* (1993), 22 C.B.R. (3d) 56 (Sask. Q.B.); see also *Re Confederation Treasury* (1997), 43 C.B.R. (3d) 4 (Ont. C.A.).

26. Courts have held that when valuing a contingent claim, two aspects must be considered:

a) The likelihood of the contingency occurring; and,

b) The quantification of the claim.[14]

27. Just Energy has not disputed that the Mass Tort Claims are "provable" claims within the context of *CCAA* proceedings.[15] Each of the 364 Mass Tort Claims has a provable value. There is no evidence before this Court on which this Court can determine that the Mass Tort Claims, which are governed by Texas law, have a zero likelihood of success. Accordingly, regardless of the Company's view of Mass Tort Claims, it is not simply not proper nor permissible under the CCAA for this Court to simply ascribe a nil or negligible value to the Mass Tort Claims for voting or any other purpose as requested by the Company on this motion.

28. Indeed, the fact that the Company has now brought the Chapter 15 Disallowance Motion shows that it is premature for either the proposed Plan or the Meeting Order to provide that the Mass Tort Claims have a nil value for voting purposes – the valuation of the claim has not yet occurred.

[14] See *Air Canada, Re*, 2004 CanLII 6674 (ON SC); see also *Edgewater Casino Inc. (Re): Development Permit Issue*, 2008 BCSC 1; see also *677960 Alberta Ltd. v. Petrokazakhstan Inc.*, 2009 ABQB 50.
[15] *Newfoundland and Labrador v AbitibiBowater Inc,* 2012 SCC 67 (*Abitibi*); *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 at para 37

29. Accordingly, before the results of the creditor vote can be determined, a valuation of the Interruption Claims must take place, even if on a preliminary basis for voting purposes.

30. The fact that the Company has allegedly been preoccupied over the past number of months with preparing the Plan does not provide it with an excuse to not value the Mass Tort Claims prior to the creditors meeting and, at the same time, claiming that the value of the claim should in effect be nil for voting purposes or otherwise. The Company had other options available to it – it could have had summary valuation of the claims done in the last several months, it could have provided for reasonable schedule for the creditors' meeting to allow these known claims to be properly valued before the creditor meeting, or it could have provided a meaningful provisional valuation for voting purposes pursuant to section 20(2) of the CCAA. However, it took only minimal steps to value the claims and now says that it has no time to value the claims before the meeting and they should, in effect, be given no value. That is not appropriate.

31. The Company's attempt to disenfranchise the Interruption Claimants is similar to the attempt made in *Oblats de Marie Immaculee du Manitoba, Re*,[16] another mass tort case. In that case, the applicant sought to give different claims with different causes of action the same valuation for voting purposes. The Court held that the variety of claims, which varied from loss of cultural status to sexual abuse, demanded "some sort of distinction and any vote based on equal comparison of complaints is on its face unfair."[17]

[16] 2004 MBQB 71. (*Oblats*)
[17] *Oblats* at para 58.

32. The necessity of properly valuing contingent claims like the Mass Tort Claims is also in line with how US Bankruptcy law approaches mass tort claims under Chapter 11 Bankruptcy. In Chapter 11 proceedings, a bankruptcy court must estimate contingent or unliquidated claims for the purpose of voting.[18]

33. Beyond the issue of fairness to the Interruption Claimants, the valuation of the Mass Tort Claims is necessary for any vote to be fair to the other creditors. This Court explored a similar issue in *Campeau v Olympia & York Developments Ltd*,[19] where the Court determined that it was essential to deal with the claim and value it within the *CCAA* proceedings for the purpose of voting.[20] Blair J. (as he then was) suggested that the creditors in the proceeding "would have no effective way of assessing the weight to be given to the Campeau claim in determining their approach to the acceptance or rejection of the [Plan]"[21] if the claim and its value were not appropriately included for voting purposes.

34. The failure of Just Energy to properly value the Mass Tort Claims prior to the creditors' meeting not only deprives the Interruption Claimants of their right to vote in these *CCAA* proceedings, but it is also fundamentally unfair to the other creditors who are asked to vote on the Plan without knowing the value of other creditors' claims and how much they stand to receive under the proposed Plan.

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[18] Troy A McKenzie, "Toward A Bankruptcy Model for Non-Class Aggregate Litigation" (2012) 87 New York University Law Review 960 at 1005-12

[19] 1992 CarswellOnt 185, Ontario Court of Justice (General Division). (*Campeau*)

[20] See *Campeau* at para 25.

[21] See *Campeau* at para 25.See also *Zayo Inc. v Primus Telecommunications Canada Inc.*, 2016 ONSC 5251 at para. 84, where Justice Penny recognized that once the time and opportunity for negotiations has passed, it is not possible undo what has transpired in the meantime and determine what decision might have been made by the stakeholders if the context during the negotiations was different.

B. The Meeting Order, if granted, must provide for the determination of the vote if the Interruption Claimants were placed in a class separate from the Term Loan Creditors for voting purposes

35. If a Meeting Order is to be granted, it also must be granted on terms and directions that allows for the determination of the creditor vote in the event the Interruption Claimants are to be placed in a class separate from the Term Loan Claim Holders (as defined in the Plan). Given that the proposed Plan provides very different consideration to the Term Loan Claim Holders from the other unsecured creditors lumped in the same class, there is a genuine and material issue that the Plan's classification of creditors cannot be upheld at the sanction hearing.

36. Under the proposed Plan, the Term Loan Claim Holders will receive equity and share in the profitability of the restructured company, whereas the rest of the Unsecured Creditor Class will be limited to only recover a *pro rata* share of the leftovers of the General Unsecured Creditor Cash Pool after the Monitor's fees and the convenience class is paid in full.[22]

37. Accordingly, it is necessary for the Court to provide terms and directions that if the creditors' meeting to be ordered at this time, that the creditors' votes are tabulated in such as way so as to all the Court to understand the outcome of the vote if the Interruption Claimants and other unsecured creditors other than the Term Loan Claim Holders were placed in their own class.

[22] Motion record of the applicant, pages 114, 124, 127, 818-893.

38. In addition, there are other forms of unfairness in the structuring of the unsecured class. For example, the Subordinated Noteholders (as defined in the Plan), whose claims have been accepted, are also placed in the Unsecured Creditor Class.[23]

39. The principles for the establishment of classes of creditors are set out in section 22(2) of the *CCAA* and guided by the principles set out in *Canadian Airlines Corp, Re,*[24] as adopted in Ontario by the Ontario Court of Appeal in *Stelco Inc, Re*.[25] The Court of Appeal held that while different creditors can be included in the same class, it must make sense in the context of the proposed Plan.[26]

40. The key guidepost in assessing the fairness of the classification of creditors is that the claims grouped together must involve some commonality of interest, taking into account the community of interest and rights which are not so dissimilar as to make it impossible for the creditors in a class to consult.[27]

41. Where, as here, the Term Loan Claim Holders are being given fundamentally different consideration that is not being offered to the other unsecured creditors, there is a material and genuine issue that the classification of creditors, and the Plan itself, cannot be sanctioned by the Court at the sanction hearing.

42. Furthermore, courts have recognized that the claims of creditors in tort claims differ significantly enough from the claims of other creditors that separate classes may be warranted. For example, where a claim or set of claims has a unique nature and status

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[23] Motion record of the applicant, page 124
[24] [2000] AJ No 163 (QL) at para 31. (*Canadian Airlines*)
[25] 2005 CanLII 42247 (ON CA) at para 15. (*Stelco*)
[26] See *Canadian Airlines* at paras 17-31; see also *Stelco* at para 35.
[27] See *SemCanada Crude Company (Re)*, 2009 ABQB 490.

compared to the other claims in a proposed class, this Court has held that the unique claims ought to be in their own class for voting purposes.[28] In *Cline*, the potential members of an uncertified class action proceeding for violations of the *Worker Adjustment and Retraining Notification Act* were classified as their own class due to the unique nature and status of the claims.

43. Dividing mass tort claims from dissimilar claims is not uncommon. For example, in *Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re*,[29] separate classes were set out in the Plan for the class actions of transfusion claimants and the mass tort claims of the HIV claimants.[30]

44. In this case, the conflicts of interest within the unsecured creditor class has been amplified by the fact that Company is purporting to lump in the Term Loan Claim Holders and the Subordinated Noteholders with the other unsecured creditors, while purporting to give no votes to the Interruption Claimants and the class claimants.

45. Given these material issues, there is a genuine issue that the proposed classification of creditors cannot stand at the sanction hearing. Accordingly, if the Meeting Order is to be ordered, the appropriate directions and terms should be provided so that the vote can be tabulated and reported to this Court on the basis that the Interruption Claimants and other unsecured creditors who are participating in the General Unsecured Creditor Cash Pool are placed in their own, separate class.

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[28] *Cline Mining Corporation (Re)*, 2014 ONSC 6998 at paras 72-77. (*Cline*)
[29] 2000 CanLII 22488 (ON SC). (*Red Cross*)
[30] See generally *Red Cross*.

C. The Meeting Order, if granted, must account for the relief the Company has sought from the Hon. Judge Isgur

46. Adjudication of the Chapter 15 Disallowance Motion, sought by the Debtors without any agreement or advance warning to the Interruption Claimants, will greatly impact the status of the Mass Tort Claims, both substantively and procedurally. Additionally, it imposes a timeframe upon the substantive and procedural status of the Mass Torts Claims entirely incompatible with the timeframe sought by the Company for the Meeting Order. Finally, the Chapter 15 Disallowance Motion effectively concedes that the Mass Tort Claims cannot be treated as a class claim in any forum.

PART V - RELIEF REQUESTED

47. For these reasons, we respectfully request of this Honourable Court the following relief:

(a) The Mass Tort Claims are to be valued, at least on a preliminary basis for voting purposes, pursuant to section 20(1)(iii) of the CCAA and that each of of the Interruption Claimants receive a separate vote with respect to their claims;

(b) The votes are to be tabulated so as to allow the parties to determine what the results of the vote would be if the Interruption Claimants and those claimants involved in the two class proceedings were placed in (i) their own separate class; and (ii) a class with only the other unsecured creditors who are participating in the $10 million General Unsecured Creditor Cash Pool and

(c) Any other relief this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of June, 2022.

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SCHEDULE "A"
LIST OF AUTHORITIES

TAB	**AUTHORITY**
1.	*Walker Estate v York-Finch General Hospital,* 2001 SCC 23
2.	*Hollis v Birch,* [1995] 4 SCR 624
3.	*Menegon v Philip Services Corp*, 1999 CanLII 15004 (ON SC)
4.	*Re Wiebe* (1995), 30 C.B.R. (3d) 109 (Ont. Ct. Gen .Div.)
5.	*Claude Resources Inc. (Trustee of) v. Dutton* (1993), 22 C.B.R. (3d) 56 (Sask. Q.B.)
6.	*Re Confederation Treasury* (1997), 43 C.B.R. (3d) 4 (Ont. C.A.)
7.	*Air Canada, Re*, 2004 CanLII 6674 (ON SC)
8.	*Edgewater Casino Inc. (Re): Development Permit Issue*, 2008 BCSC 1
9.	*677960 Alberta Ltd. v. Petrokazakhstan Inc.*, 2009 ABQB 50
10.	*Newfoundland and Labrador v. AbitibiBowater Inc.,* 2012 SCC 67
11.	*Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5
12.	*Oblats de Marie Immaculee du Manitoba, Re,* 2004 MBQB 71
13.	*Campeau v Olympia & York Developments Ltd*, 1992 CarswellOnt 185
14.	*Zayo Inc. v Primus Telecommunications Canada Inc.,* 2016 ONSC 5251
15.	*Canadian Airlines Corp, Re,* [2000] AJ No 163 (QL)
16.	*Stelco Inc, Re.*, 2005 CanLII 42247 (ON CA)
17.	*SemCanada Crude Company (Re)*, 2009 ABQB 490
18.	*Cline Mining Corporation (Re)*, 2014 ONSC 6998
19.	*Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re*, 2000 CanLII 22488 (ON SC)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act

R.S.C., 1985, c. C-36

PART I

Compromises and Arrangements

Compromises to be sanctioned by court

6(1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

PART III – GENERAL

Claims

Determination of amount of claims

20(1)(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor;

Classes of Creditors

Factors

22(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Court File No. CV-21-00658426-00CL

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 JUST ENERGY GROUP INC. ET AL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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