

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

MOTION RECORD OF THE INSURERS
(Prior Acts Exclusion)

Dated June 10, 2024

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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

NOTICE OF MOTION OF THE INSURERS
(Prior Acts Exclusion)

The insurers XL Specialty Insurance Company (“XL”), 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 (“TM”), and Certain Underwriters at Lloyd’s London Subscribing to Policy No. B0146ERINT2100865 by their authorized coverholder Hiscox (“**Hiscox**” and collectively with XL and TM “the **Insurers**”), will make a motion to Justice Cavanagh, in his capacity as the judge seized with this proceeding, on September 9, 2024, at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING:

The motion is to be heard in person.

THE MOTION IS FOR:

1. A declaration that under the Policies (defined below), a Prior Acts Exclusion applies to bar coverage for the Claim (defined below) asserted against Just Energy Directors that they are

personally liable for Just Energy's conduct and the unpaid wages claim, as alleged and described in:

- (a) Haidar Omarali's August 25, 2023 motion record filed in his capacity as the representative plaintiff in *Omarali v. Just Energy Group Inc.* ("**Omarali Motion Record**"), and
 - (b) The October 29, 2021 D&O Proof of Claim ("**D&O Proof**" and together with the Omarali Motion Record, the "**Claim**").
2. Dismissal of the class members' Notice of Motion in the Omarali Motion Record;
 3. Costs of this motion on a scale to be determined by this Honourable Court; and
 4. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

5. The Insurers bring this motion to determine a threshold coverage issue that may determine the Claim's viability and relief sought against the Insurers and Just Energy Directors, bringing finality to this CCAA proceeding.
6. A class action first filed in 2015 alleges Just Energy misclassified class member employees as "independent contractors" from 2012 onwards, resulting in the denial of minimum wage, overtime pay, and other employee benefits as also outlined in the D&O Proof (the "**unpaid wages claim**").

7. The Claim asserts that Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P. (collectively, “**Just Energy**”) failed to fund the unpaid wages claim for which the Just Energy Directors from 2012 onwards (the “**Directors**”) are now allegedly personally liable.
8. The Omarali Motion Record, filed following the rejection of the D&O Proof and a Vesting Order in the Just Energy CCAA Proceeding, asserts that class members are entitled to a damages award for the unpaid wages claim against the Directors.
9. The Omarali Motion Record also seeks coverage and indemnity for the Claim award from the Insurers as allegedly covered Loss under an integrated tower of D&O policies issued to Just Energy Group Inc. effective from the Just Energy filing for CCAA protection on March 9, 2021.
10. The Claim against the Directors arises from the unpaid wages claim – the misclassification of employees and failure to pay related wages and benefits – all allegedly committed “prior to” March 9, 2021.
11. The Policies (defined below) are subject to a Prior Acts Exclusion, which provides that:

In consideration of the premium charged, no coverage will be available for any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 09, 2021.

All other terms, conditions and limitations of this Policy shall remain unchanged.
12. If the Prior Acts Exclusion is declared to apply to the Claim, this CCAA proceeding can be concluded cost-efficiently without a 20-day trial.

Parties to This Motion and the Policies

13. Omarali is the representative plaintiff in *Omarali v. Just Energy Group Inc.*, a proposed class action for the unpaid wages claim first filed in 2015, later certified and scheduled for trial.

14. The Insurers issued to Just Energy Group Inc. an integrated insurance tower, effective from the commencement of the Just Energy CCAA Proceeding on March 9, 2021 in the following layers:

- (a) XL issued a one-year Primary Liability Policy No. ELU173707-21 (“**XL Policy**”);
- (b) TM issued a one-year first layer Excess Policy No. 21G196460101 (“**TM Policy**”), which follows the form of the XL Policy; and
- (c) Hiscox issued a one-year second layer Excess Policy No. B0146ERINT2100865 (“**Hiscox Policy**”), above the TM layer which also follows form to the XL Policy.

The XL Policy, TM Policy and Hiscox Policy are the insurance tower referred to as the “**Policies**”.

A copy of the XL Policy is appended hereto as Schedule “A”.

15. As quoted above, a Prior Acts Exclusion endorsed to the Policies applies broadly to any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed before March 9, 2021.

May 4, 2015 to June 21, 2019: The Class Action is Commenced, Certified and Set for Trial

16. On May 4, 2015, the *Omarali v. Just Energy Group Inc.* proposed class action was issued at the Ontario Superior Court of Justice in Toronto as Court File No. CV-15-527493-CP. On July

27, 2016, Justice Belobaba certified the class, with Haidar Omarali appointed as the Representative Plaintiff and an opt-out deadline of June 20, 2017 (the “**Class Action**”).

17. The class members are 7,723 individuals, each of whom allegedly worked for Just Energy in Ontario as a “Sales Agent” pursuant to an independent contractor agreement from as early as 2012.

18. Class members allege Just Energy misclassified each of them as “independent contractors” and that the structure imposed on Sales Agents was, in fact, an employment relationship.

19. Class members, therefore, claim entitlement to the unpaid wages claim relying on the protections of the *Employment Standards Act, 2000*, SO 2000, c 41 (“**ESA**”).

20. On November 28, 2016, after the Class Action was certified, Just Energy reclassified its Sales Agents as employees.

21. The Claim seeks damages arising from the unpaid wages claim, a debt Just Energy allegedly incurred and had not paid before the reclassification of workers on November 28, 2016.

22. On June 21, 2019, Justice Belobaba denied Omarali’s summary judgment motion in the Class Action based on, *inter alia*, conflicting evidence on determinative and fundamental credibility issues.

23. The Class Action was then scheduled for a 20-day trial to start on November 15, 2021.

March 9 to Oct. 29, 2021: A CCAA Proceeding Commences & The D&O Proof is filed

24. On March 9, 2021, Just Energy filed for protection from creditors, obtaining an order commencing this proceeding under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "CCAA", and the proceeding, the "CCAA Proceeding").

25. On March 9, 2021, this Court also issued an initial Order staying all proceedings against Just Energy in the CCAA Proceeding, including the Class Action. This stay remains in effect.

26. On September 15, 2021, this Court issued a Claims Procedure Order establishing the process within the CCAA Proceeding for advancing claims against the D&Os, amongst others.

27. Under the Claims Procedure Order, a claimant could advance a claim against Just Energy or its D&Os by filing a Proof of Claim with the Monitor.

28. On October 29, 2021, the following forms were filed with the Monitor on behalf of Class Members against Directors and Just Energy:

- (a) The D&O Proof alleging Just Energy Directors are jointly and severally liable for CAD 105,854,794.52 allegedly owed to class members in the underlying Class Action; and
- (b) A Proof of Claim against Just Energy for CAD 105,854,794.52 allegedly owed to class members in the underlying Class Action.

Feb. 22 to Nov. 3, 2022: The D&O Proof is disallowed, and a Vesting Order is Issued

29. On February 22, 2022, both Proofs of Claim were disallowed in their entirety. On February 24, 2022, Omarali filed Notices of Dispute of both disallowances with the Monitor.

30. On November 3, 2022, this Court approved a sale transaction in the CCAA Proceeding and granted an Approval and Vesting Order (“**Vesting Order**”).

31. The Vesting Order included a general Release and also provided, *inter alia*:

- (a) Just Energy and its current or former directors and officers (“**D&Os**”) were not released from the Class Action claims to the limited extent of maintaining claims against Just Energy insurance policies that “may be available to pay insured claims” (para. 26); and
- (b) Nothing in the Vesting Order “prejudices, compromises, releases or otherwise affects (a) any right, defence or obligation of any insurer in respect of an Insurance Policy” (para. 29).

August 25, 2023: Omarali Motion Record is Filed in this CCAA Proceeding

32. The Omarali Motion Record seeks expansive remedies arising from unpaid wages claim, which mirror the relief sought in the Class Action, including:

- (a) Declarations that the Class Members are “employees”, and that Just Energy failed to make the prescribed employer CPP and EI contributions on their behalf;
- (b) Declarations that these amounts constitute unpaid debts for services performed for the corporation and are owed to the Class;
- (c) An aggregate determination of damages on account of amounts purportedly owed to the allegedly misclassified employees; and

- (d) A declaration that those damages are debts within the meaning of s. 131 of the *Business Corporations Act*, RSO 1990, c B.16, as amended, and s. 119 of the *Canada Business Corporations Act*, RSC 1985, c C-44, as amended.

33. Relevant for this Motion, the Omarali Motion Record goes further to seek:

- (a) A declaration that an award against Directors is a covered “Loss” under the Policies; and
- (b) An order directing the Insurers to pay the foregoing amounts “pursuant to and in accordance with the coverage and deductibles set out in” the Policies.

This Motion

34. The Insurers bring this motion to determine as a threshold coverage issue whether the Prior Acts Exclusion applies to preclude coverage for the Claim.

35. As quoted above, the Prior Acts Exclusion applies to *any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 09, 2021.*

36. The foundation of the Claim asserted against the Directors is the Class Action for the unpaid wages claim first filed in 2015 for Just Energy’s alleged misclassification of employees between 2012 and 2017.

37. On its face, the Claim (assuming for the purpose of this motion that it can be proven against the Directors), is excluded because it is demonstrably based upon, arises out of, directly or indirectly results from, is in consequence of or in any way involves any act, error, omission,

misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 09, 2021 and falls squarely within the Prior Acts Exclusion.

38. This determination does not require evidence or a determination of the underlying factual and legal assertions in the Claim, which would otherwise require a 20-day trial, including whether employees were misclassified or the alleged basis for liability of current Directors. For purposes of determining the sole issue in this motion – whether the Prior Acts Exclusion applies to the Claim – the factual and legal assertions in the Claim (including its filed affidavit) may be assumed to be true, without prejudice to the Insurers’ rights to later contest the factual and legal assertions in the Claim or the scope of coverage provided by the Policies.

39. As the Claim is based upon, arises out of, directly or indirectly results from, is in consequence of and involves alleged wrongful conduct including an employee misclassification and failure to fund the class members’ entitlement to the unpaid wages claim, all allegedly committed prior to March 9, 2021, the Policies do not cover the Claim.

40. *Rules 1.04, 1.05, 3.02(1), 37, 57.01 and 57.03 of the Rules of Civil Procedure, RRO 1990, Reg 194, as amended.*

41. Section 131 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended.

42. Section 11 of the *CCAA*.

43. Such further and other grounds as may be advised.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

44. Omarali Motion Record dated August 25, 2023;

45. Omarali Amended Statement of Claim dated November 17, 2015, Exhibit “A” to Affidavit of Jamie Shilton affirmed August 18, 2023, Tab 2 to Omarali Motion Record;
46. D&O Proof of Claim Form for Claims Against Directors or Officers of the Just Energy Entities dated October 29, 2021, Exhibit “J” to Affidavit of Michael Carter sworn May 12, 2022;
47. Proof of Claim Form for Claims Against the Just Energy Entities dated October 29, 2021, Exhibit “I” to Affidavit of Michael Carter dated May 12, 2022;
48. Notice of Revision or Disallowance for Persons who have asserted D&O Claims against the Directors and/or Officers of the Just Energy Entities dated February 2, 2022, Exhibit “L” to Affidavit of Michael Carter dated May 12, 2022; and
49. Notice of Revision or Disallowance for Persons who have asserted Claims against the Just Energy Entities dated February 2, 2022, Exhibit “K” to Affidavit of Michael Carter dated May 12, 2022.

Dated June 10, 2024 **LENCZNER SLAGHT LLP**
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Lawyers for the Applicant, 14487893 Canada Inc.

**EXECUTIVE AND CORPORATE
SECURITIES INSURANCE POLICY
DECLARATIONS**



Policy Number: ELU173707-21
Renewal of Number: N/A

XL Specialty Insurance Company
First Canadian Place
100 King Street West, Suite 3020
Toronto, Ontario M5X 1C9

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR, IF APPLICABLE, THE OPTIONAL EXTENSION PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

Item 1. Name and Mailing Address of Parent Company:

Just Energy Group Inc.
100 King Street West, Suite 2630
Toronto Ontario, CANADA M5X 1E1

Item 2. Policy Period: Inception Date: March 09, 2021 Expiration Date: March 09, 2022
At 12:01AM Standard Time at your Mailing Address Shown Above

Item 3. Limit of Liability:

- (A) USD\$0 Maximum Aggregate Sublimit of Liability each **Policy Period** for all **Investigation Demands**
- (B) USD\$5,000,000 Maximum Aggregate Limit of Liability each **Policy Period** (including **Defense Expenses**) for all **Loss** from all **Claims, Investigation Demands** and **Interviews**

Item 4. Retentions:

USD\$0 each **Insured Person** under INSURING AGREEMENT I (A) or (D)
USD\$0 each **Claim**, other than a **Securities Claim**, under INSURING AGREEMENT I (B) or (E)
USD\$0 each **Securities Claim** under INSURING AGREEMENT I (B) or (C)
USD\$0 each **Investigation Demand** under INSURING AGREEMENT I (F)

Item 5. Optional Extension Period:

Length of Optional Extension Period: One Year after the end of the **Policy Period**, if elected.
Premium for Optional Extension Period:

Item 6. Pending and Prior Litigation Date: March 09, 2021

Item 7. Notices required to be given to the Insurer must be addressed to:

XL Specialty Insurance Company
First Canadian Place
100 King Street West, Suite 3020
Toronto, Ontario M5X 1C9
Attention: Claims Department
Email: claimscanada@axa.com

Item 8. Premium:

Policy Premium USD\$800,000.00

Item 9. Policy Form and Endorsements Attached at Issuance:

CN 71 00 09 16 XL 80 78 02 15 BR 80 454 08 19 BR 83 11 03 15 BR 80 507 10 20 BR 80 20 01 15
BR 80 334 08 17 BR 80 12 12 14

THESE **DECLARATIONS** AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE **APPLICATION** SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE **INSURED** RELATING TO THIS INSURANCE.

IN WITNESS WHEREOF the Insurer has caused this Policy to be signed by the Canadian Chief Agent.

XL SPECIALTY INSURANCE COMPANY



Glen Hopkinson
Chief Agent for Canada

For purposes of the *Insurance Companies Act (Canada)*, this document was issued in the course of XL Specialty Insurance Company's insurance business in Canada.

TRADE SANCTIONS ENDORSEMENT

This Policy is amended as follows:

XL Specialty Insurance Company shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder, to the extent that the provision of such cover, payment of such claim or provision of such benefit would conflict with or expose XL Specialty Insurance Company to any sanction, prohibition, restriction or penalty under United Nations resolutions or the trade or economic sanctions, laws or regulations of Canada, the European Union, United Kingdom or United States of America.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 2

Effective: March 09, 2021

Named Insured: Just Energy Group Inc.

12:01 A.M. Standard Time

Policy No.: ELU173707-21

Insurer: XL Specialty Insurance Company

Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

AMEND DEFINITION OF LOSS ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the term "Loss," as defined in Section II Definitions of the Policy, shall not include any pre-judgment and post-judgment interest or other amounts (including, but not limited to, punitive, exemplary or multiplied damages) awarded in connection with all or any part of a judgment which is not covered under this Policy. The Policy, including any and all Endorsements, shall be deemed amended as necessary to affect the intent and purpose of this Endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

PRIOR ACTS EXCLUSION

In consideration of the premium charged, no coverage will be available for any Claim, Interview or Investigation Demand based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 09, 2021.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 4

Named Insured: Just Energy Group Inc.

Policy No.: ELU173707-21

Policy Form: EXECUTIVE AND CORPORATE SECURITIES LIABILITY

Effective: March 09, 2021

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

DELETE INSURING AGREEMENTS (B) TO (F) AND SPECIFIED INSURED PERSONS ENDORSEMENT

In consideration of the premium charged:

- (1) Section I Insuring Agreement (B) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (B) are deleted.
- (2) Section I Insuring Agreement (C) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (C) are deleted.
- (3) Section I Insuring Agreement (D) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (D) are deleted.
- (4) Section I Insuring Agreement (E) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (E) are deleted.
- (5) Section I Insuring Agreement (F) of the Policy is deleted in its entirety and all references in the Policy to Insuring Agreement (F) are deleted.
- (6) The term "Insured," as defined in Section II Definitions (I) of the Policy, is amended to read in its entirety as follows:

“(I) ‘Insured’ means the Insured Persons.”
- (7) Section II Definitions (L) of the Policy is deleted in its entirety, and all references in the Policy to “Interview” are deleted.
- (8) Section II Definitions (M) of the Policy is deleted in its entirety, and all references in the Policy to “Investigation Demand” are deleted.
- (9) The term “Securities Claim,” as defined in Section II Definitions (S) of the Policy, is amended to read in its entirety as follows:

“(S) ‘Securities Claim’ means a Claim:

 - (1) made against any Insured Person for any actual or alleged violation of any federal, state or local statute, regulation, or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities, which is:
 - (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities of the Company; or
 - (b) brought by a security holder of the Company with respect to such security holder's interest in securities of the Company; or
 - (2) brought derivatively on behalf of the Company by a security holder of the Company.”

- (10) The term “Wrongful Act,” as defined Section II Definitions (U) of the Policy, is amended to read in its entirety as follows:
- “(U) ‘Wrongful Act’ means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an Insured Person while acting in his or her capacity as such or due to his or her status as such;
 - (2) solely with respect to a Claim as defined in Definition (C)(4) of the Policy, any other matter concerning an Insured Person solely by reason of his or her capacity as such or due to his or her status as such; or
 - (3) any Employment Practices Wrongful Act by an Insured Person while acting in his or her capacity as such or due to his or her status as such.”
- (11) Section IV Limit of Liability, Indemnification and Retentions (A) of the Policy is amended to read in its entirety as follows:
- “(A) The Insurer shall pay the amount of Loss in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3 of the Declarations.”
- (12) Section IV Limit of Liability, Indemnification and Retentions (B) of the Policy is amended to read in its entirety as follows:
- “(B) The amount set forth in ITEM 3 of the Declarations shall be the maximum aggregate limit of liability of the Insurer under this Policy, and payment of Loss, including Defense Expenses, by the Insurer shall reduce the Limit of Liability.”
- (13) Section IV Limit of Liability, Indemnification and Retentions (C) of the Policy is deleted in its entirety.
- (14) Section IV Limit of Liability, Indemnification and Retentions (F) of the Policy is deleted in its entirety.
- (15) Section IV Limit of Liability, Indemnification and Retentions (G) of the Policy is deleted in its entirety.
- (16) Section V Defense, Settlement and Allocation of Loss (D) of the Policy is amended to read in its entirety as follows:
- “(D) If both Loss covered by this Policy and loss not covered by this Policy are incurred, either because a Claim made against an Insured contains both covered and uncovered matters, or because a Claim is made against both the Insured and others not insured under this Policy, the Insured and the Insurer will use their best efforts to determine a fair and appropriate allocation of Loss between that portion of Loss that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the Insured and the Insurer agree that in determining a fair and appropriate allocation of Loss, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the Claim, by the Insured and others.”
- (17) Section VI General Condition (L) of the Policy is deleted in its entirety.
- (18) Item 3. of the Declarations is amended to read in its entirety as follows:
- “Item 3. Limit of Liability:
- \$5,000,000 Maximum Aggregate Limit of Liability each Policy Period (including Defense Expenses) for all Loss from all Claims”
- (19) Item 4. of the Declarations is amended to read in its entirety as follows:

"Item 4. Retentions:

\$0 each Insured Person under INSURING AGREEMENT I (A)"

All other terms, conditions and limitations of this Policy shall remain unchanged.

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Endorsement No.: 5
Named Insured: Just Energy Group Inc.
Policy No.: ELU173707-21

BR 80 20 01 15

Effective: March 09, 2021
12:01 A.M. Standard Time
Insurer: XL Specialty Insurance Company

FULLY-EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, the entire premium for this Policy, as set forth in ITEM 8 of the Declarations, shall be deemed to be fully earned as of the Policy Inception Date set forth in ITEM 2 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

CONVERT POLICY TO RUN-OFF UPON HAPPENING OF SPECIFIC EVENT

In consideration of an additional premium of \$0 (the "Run-Off Premium") charged:

- (1) Immediately upon the date which the event described in paragraph (2) below occurs:
 - (a) coverage under this Policy will continue in full force and effect with respect to any Claim or Investigation Demand for a Wrongful Act committed or allegedly committed before such event, but coverage will cease with respect to any Claim or Investigation Demand for a Wrongful Act, committed or allegedly committed on or after such event (hereinafter, the date of such event, "Conversion Date").
 - (b) The Expiration Date set forth in Item 2 of the Declarations shall be amended to that date exactly six (6) years after the Conversion Date.
 - (c) The term "Company" shall not include those Subsidiaries created or acquired after the Conversion Date.
 - (d) Section VI General Conditions (F) of the Policy and Item 5 of the Declarations, and all other references in the Policy to an Optional Extension Period, are deleted in their entirety.
 - (e) Section VI General Conditions (E)(1) is amended to read in its entirety as follows:

"(1) The entire premium for this Policy is fully earned."
 - (g) Section VI General Conditions (A)(3) of the Policy is deleted in its entirety.
- (2) The event upon the happening of which coverage under this Policy will cease with respect to any Claim or Investigation Demand described in paragraph (1) above, is as follows:

Emergence from bankruptcy
- (3) The Run-Off Premium shall be deemed fully earned as of the effective date of this endorsement.

All other terms, conditions and limitations of this Policy shall remain unchanged.

AMEND DEFINITION OF CLAIM ENDORSEMENT

In consideration of the premium charged, the term "Claim," as defined in Section II Definitions (C) of the Policy, is amended to include a written request or agreement that an Insured Person or the Company toll any applicable statute of limitations (but with respect to the Company only if such Claim would otherwise meet the definition of Securities Claim).

EXECUTIVE AND CORPORATE SECURITIES LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the "Insurer"), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

I. INSURING AGREEMENTS

- (A) The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**, except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- (B) The Insurer shall pay on behalf of the **Company Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** as indemnification.
- (C) The Insurer shall pay on behalf of the **Company Loss** resulting solely from any **Securities Claim** first made against the **Company** during the **Policy Period** for a **Wrongful Act**.
- (D) The Insurer shall pay on behalf of the **Insured Persons Defense Expenses** resulting from an **Interview**, except for **Defense Expenses** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- (E) The Insurer shall pay on behalf of the **Company Defense Expenses** incurred by the **Insured Persons** resulting from an **Interview** to the extent the **Company** is required or permitted to pay on behalf of the **Insured Persons** such **Defense Expenses**.
- (F) The Insurer shall pay on behalf of the **Company Defense Expenses** incurred by the **Company** resulting from any **Investigation Demand** first made during the **Policy Period**.

II. DEFINITIONS

- (A) "**Application**" means:
 - (1) any application, including attachments thereto, or any written information or representation, provided to the Insurer by or on behalf of an **Insured** in connection with the underwriting of this Policy; and
 - (2) any publicly available document filed by the **Company** with any federal, provincial or territorial securities commission, including but not limited to each and every public filing by or on behalf of the Company made with The System for Electronic Document Analysis and Retrieval (SEDAR), the U.S. Securities and Exchange Commission or any state, local or foreign equivalent during the twelve (12) months preceding this Policy's Inception Date.
- (B) "**Change In Control**" means:
 - (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity; or
 - (2) any person, entity or an affiliated group of persons or entities acting together, acquire (a) interest representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of the majority of the directors, management committee members or members of the board of managers of the **Parent Company**, as applicable to its organization, or (b) such rights pursuant to written contract or the by-laws, charter, operating agreement or similar document of the **Parent Company**;

- (C) **"Claim"** means:
- (1) any written demand (other than an **Investigation Demand**) for:
 - (a) monetary or non-monetary relief, including injunctive relief; or
 - (b) arbitration, mediation or other alternative dispute resolution proceeding;
 - (2) any civil, criminal, administrative or regulatory proceeding commenced by:
 - (a) service of a statement of claim, notice of charges, statement of allegations, laying of an information, complaint or similar pleading;
 - (b) return of an indictment, information, notice of charges or similar document;
 - (c) an official written request for extradition of any **Insured Person** or the issuance of a warrant for the arrest of any **Insured Person** where such issuance is an element of extradition;
 - (3) any investigation of an **Insured Person** commenced by a written statement from an **Enforcement Authority** identifying such **Insured Person** as the subject of an investigation, including any investigation order, target letter, Wells Notice or similar document;
 - (4) any summons, warrant, subpoena or similar document served upon an **Insured Person** for testimony or documents in connection with a formal or informal investigation of the **Company** by any **Enforcement Authority**; and
 - (5) any **Corporate Manslaughter Charge**.
- (D) **"Company"** means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the **Policy Period**, subject to GENERAL CONDITIONS VI (D). The term **Company** shall include any such entity as a debtor in possession as such term is used in Chapter 11 of the United States Bankruptcy Code or equivalent status as described in the Canadian Companies' Creditors Arrangement Act or Canadian Bankruptcy and Insolvency Act or any equivalent provision in any foreign jurisdiction.
- (E) **"Corporate Manslaughter Charge"** means a formal criminal proceeding commenced in the United Kingdom against an **Insured Person** of the **Company** domiciled or incorporated in the United Kingdom for involuntary manslaughter (including constructive manslaughter or gross negligence manslaughter) in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**.
- (F) **"Defense Expenses"** means reasonable and necessary legal fees, expenses and other costs (including experts' fees):
- (1) incurred in the investigation, adjustment, settlement, defense and/or appeal of any **Claim**, **Investigation Demand** or **Interview**, including any preparation for such an **Interview**;
 - (2) incurred due to the arrest and detainment or incarceration of any **Insured Person** in his or her capacity as a director or officer of the **Company** and directly related to the business of the **Company**;
 - (3) incurred in connection with any **Claim** under section 304 of the Sarbanes-Oxley Act of 2002 or imposed pursuant to section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance; or
 - (4) incurred in the defense of any **Corporate Manslaughter Charge**;

Defense Expenses will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.

- (G) "**Employment Practices Wrongful Act**" means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;
 - (2) employment discrimination of any kind, including violation of the Canadian Charter of Rights and Freedoms, any federal, state, provincial, municipal or local law involving employment or discrimination in employment, which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, or other protected status;
 - (3) sexual or other harassment in the workplace; or
 - (4) wrongful deprivation of career opportunity, employment related misrepresentations, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, refusal to hire, negligent hiring, or negligent supervision.
- (H) "**Enforcement Authority**" means any federal, provincial, municipal, state, local or foreign law enforcement or governmental regulatory authority, including, but not limited to, the Ontario Securities Commission or similar provincial or territorial securities regulatory authority, the Department of Justice Canada or any similar provincial or territorial Department of Justice, the United States Departments of Justice and Labor, Securities and Exchange Commission, attorneys general, or the enforcement unit of any securities exchange or similar self-regulatory organization.
- (I) "**Insured**" means the **Insured Persons** and the **Company**.
- (J) "**Insured Person**" means:
- (1) any past, present or future natural person director or officer, or member or manager of the board of managers, of the **Company** and those persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States or Canada (including any de facto director);
 - (2) any past, present or future natural person employee of the **Company** (other than an individual described in (J)(1) above) to the extent any **Claim** is: (a) a **Securities Claim**, or (b) made and maintained against both such employee and an **Insured Person** as defined in (J)(1) above;
 - (3) an individual identified in (J)(1) above who, with the consent of the **Company**, is or was serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**; or
 - (4) any individual identified in (J)(1) above who, with the consent of the **Company** is or was serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**.

In addition:

In the event of the death, incapacity or bankruptcy of any individual identified above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** of such individual will be deemed to be a **Claim** against such individual.

The coverage otherwise available under this Policy to any **Insured Person** will be extended to such **Insured Person's** lawful spouse or domestic partner, but only to the extent such spouse or domestic partner, is a party to any **Claim** solely in his or her capacity as a spouse or domestic partner, of such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner.

- (K) **"Interrelated Wrongful Acts"** means any **Wrongful Acts**, based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events.
- (L) **"Interview"** means:
- (1) a written request first received by an **Insured Person** during the **Policy Period** for a voluntary interview, meeting or sworn statement by:
 - (a) any **Enforcement Authority**; or
 - (b) the **Company** in connection with an **Investigation Demand** or an investigation or other inquiry of the **Company** by an **Enforcement Authority**; or
 - (2) an arrest or confinement of an **Insured Person** during the **Policy Period** to a specified residence or secure custodial premises operated by an **Enforcement Authority**, but only in connection with the business of the **Company** or an **Insured Person's** capacity as such or due to his/her status as such;

provided that **Interview** will not include: any document production or discovery in a legal proceeding; any request that is part of any routine or regularly scheduled oversight, compliance, audit, inspection or examination; or any request that is part of an employment-related investigation or **Claim**. Any **Interview** as defined in (L)(1) above first received, or as defined in (L)(2) above, occurring, prior to the Inception Date of this Policy are not covered under this Policy.

- (M) **"Investigation Demand"** means an investigation by the **Company** to determine whether it is in its best interest to prosecute the allegations made by a security holder or by a complainant as defined under Section 238 of the Canada Business Corporations Act of the **Company** in a derivative demand or action. An **Investigation Demand** shall be deemed first made upon the earlier of: receipt of such allegations by the **Company** or service of a civil complaint or similar proceeding setting forth such allegations.
- (N) **"Joint Venture"** means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the **Parent Company**, either directly or through one or more **Subsidiary(s)**:
- (1) owns or controls at least thirty-three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the present right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
 - (2) has the right, by written contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty-three (33%) of those persons described in (N)(1) above.
- (O) **"Loss"** means damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts (including punitive, exemplary or multiplied damages, where insurable by law) that any **Insured** is legally obligated to pay and **Defense Expenses**, including that portion of any settlement which represents the claimant's legal fees. **Loss** will not include that portion which constitutes:
- (1) fines, penalties or taxes imposed by law; provided that **Loss** will specifically include:
 - (a) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(b) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(b), Sections 4(2) and 5(2) of the Corruption of Foreign Public Officials Act of Canada, the United Kingdom's Bribery Act 2010 (2010 chapter 23), and Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) or similar federal, provincial or territorial statute, law, regulation or ordinance; and

- (b) solely with respect to **Loss** to which Insuring Agreement (A) applies,
- (i) fines, penalties or taxes, including, but not limited to, Section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act, Section 43 of the Ontario Retail Sales Tax Act, or similar provisions of any other Canadian provincial or territorial income tax or retail sales tax statute;
- (ii) taxes, employment insurance contributions and pension plan contributions that are or were payable by the **Company** to a Canadian federal, provincial, territorial or municipal governmental taxing authority, which are imposed by statute upon an **Insured Person** in his or her capacity as such in connection with the failure of the **Company** to deduct, withhold or remit such amounts; or
- (iii) salary, wages and related amounts such as vacation pay or holiday pay that are or were payable by the **Company** to an employee for services performed if an **Insured Person** has become personally liable to make such payment under any applicable federal, provincial, territorial or municipal statutory provision;
- that an **Insured Person** is obligated to pay if such fines, penalties, taxes or payments are insurable by law and are imposed in connection with such **Insured Person's** service with an insolvent **Company**;
- (2) costs incurred by an **Insured** to comply with an order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- (3) any amount which is uninsurable under the law pursuant to which this Policy is construed; provided that the Insurer will not assert that the portion of any settlement or judgment in a **Claim** arising from an initial or subsequent public offering of the **Company's** securities constitutes uninsurable loss due to the alleged violations of Sections 130 and/or 130.1 of the Ontario Securities Act or any other similar provision of a Canadian provincial or territorial securities law, Section 11 and/or 12 of the Securities Act of 1933 as amended (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933);
- (4) any amount arising out of the cleanup, containing, treating, testing, removing, disposing, assessing, monitoring or similar costs relating to pollution, contaminants, waste of any kind, pollutants, product defects that result in the release of hazardous materials or pollutants, or any other hazardous materials;
- (5) any amount which represents or is substantially equivalent to an increase in the consideration paid, or proposed to be paid, by the **Company** in connection with its purchase of any securities or assets of any person, group of persons, or entity;
- (6) the return of any amounts required to be paid by an **Insured Person** pursuant to section 304 of the Sarbanes-Oxley Act of 2002 or promulgated under Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance;

NOTE: With respect to judgments in which punitive, exemplary or multiplied damage are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the **Insured**, punitive, exemplary or multiplied damages are insurable under applicable law, the Insurer will not dispute the written opinion of counsel for the **Insured**.

- (P) "**Non-Profit Entity**" means any not-for-profit entity or not-for-profit organization.
- (Q) "**Parent Company**" means the entity named in ITEM 1 of the Declarations.
- (R) "**Policy Period**" means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date. **Policy Period** will include any Optional Extension

Period, if applicable.

- (S) "**Securities Claim**" means a **Claim**, other than an administrative or regulatory proceeding against or investigation of the **Company**:
- (1) made against any **Insured** for any actual or alleged violation of any federal, state, local, provincial, territorial, municipal or foreign statute, regulation or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities, which is:
 - (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities of the **Company**; or
 - (b) brought by a security holder of the **Company** with respect to such security holder's interest in securities of the **Company**; or
 - (2) brought derivatively on behalf of the **Company** by a security holder of the **Company**.

Notwithstanding the foregoing, the term **Securities Claim** shall include an administrative or regulatory proceeding against, or a formal investigation of, the **Company**, but only if and only during the time that such formal investigation or proceeding is also maintained against an **Insured Person**.

- (T) "**Subsidiary**" means any entity during any time in which the **Parent Company** holds directly or indirectly:
- (1) more than fifty percent (50%) of the voting rights or issued share capital of such entity;
 - (2) between twenty percent (20%) and fifty percent (50%) of the voting rights or issued share capital, together with control of the management of such entity; or
 - (3) the right to appoint or remove a majority of the Board of Directors of such entity.
- (U) "**Wrongful Act**" means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an **Insured Person** while acting in his or her capacity as such or due to his or her status as such;
 - (2) solely with respect to a **Claim** as defined in Definition (C)(4) of the Policy, any other matter concerning an **Insured Person** solely by reason of his or her capacity as such or due to his or her status as such;
 - (3) solely with respect to Insuring Agreement (C) of the **Policy**, any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by the **Company**; or
 - (4) any **Employment Practices Wrongful Act** by an **Insured Person** while acting in his or her capacity as such or due to his or her status as such.

Solely with respect to determining whether a securities holder derivative lawsuit which names the **Company** as a defendant (including as a nominal defendant) is a **Securities Claim** against such **Company** for purposes of Insuring Agreement (C) of the Policy, any **Wrongful Act** as defined in subparagraph (U)(1) above will also be deemed to be a **Wrongful Act** of the **Company**; provided that this provision shall not be deemed to create coverage under this Policy for **Loss** from any **Investigation Demand** pursuant to Insuring Agreement (F) of the Policy. Any such coverage shall only be available pursuant to Insuring Agreement (F) of the Policy.

III. EXCLUSIONS

- (A) No coverage shall be available under this Policy for that portion of any **Claim, Interview** or

Investigation Demand made against an **Insured**:

- (1) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any property including loss of use thereof; however, this Exclusion (A)(1) will not apply to: (a) any allegations of libel, slander, defamation, mental anguish or emotional distress if and only to the extent that such allegations are made as part of a **Claim** for an **Employment Practices Wrongful Act**; (b) any **Securities Claim**; (c) for **Corporate Manslaughter Charges**; (d) **Defense Expenses** incurred as a result of any **Claim** brought against an **Insured Person** pursuant to (i) Section 217.1 of the Criminal Code of Canada (as amended by Bill C-45); (ii) Section 32 of the Ontario Occupational Health and Safety Act; or (e) any **Claim** to the extent coverage is provided under Insuring Agreement, (A) of the Policy;
- (2) for any actual or alleged violation of the Canada Pension Benefits Standards Act, the Ontario Pension Benefits Act, the Employee Retirement Income Security Act of 1974 (ERISA) as amended or any regulations promulgated thereunder or any similar law, federal, provincial, territorial, municipal, state or local law or regulation in connection with any pension, profit sharing or employee benefit program established and/or sponsored by the **Company** in whole or in part for the benefit of the directors, officers or employees of the **Company**;
- (3) by, on behalf of, or at the direction of the **Company**, or any **Joint Venture** or **Non-Profit Entity** (but with respect to the **Joint Venture** or **Non-Profit Entity**, only against an **Insured Person** for a **Wrongful Act** while acting in his or her capacity as a director, officer, trustee, regent or governor of such **Joint Venture** or **Non-Profit Entity**, or as a person occupying an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated of the **Joint Venture**); however, this Exclusion (A)(3) will not apply to:
 - (a) the extent a **Claim** is brought derivatively by a security holder or by a complainant as defined under Section 238 of the Canada Business Corporations Act of the **Company**, or by any **Joint Venture** or **Non-Profit Entity** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of any **Insured Person** unless such solicitation, assistance, participation or intervention is protected pursuant to Section 425.1 of the Criminal Code of Canada, Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute, or the **Company**, or any **Joint Venture** or **Non-Profit Entity**;
 - (b) the extent a **Claim** or **Interview** is brought by the Bankruptcy Trustee or Examiner of the **Company**, or by any **Joint Venture** or **Non-Profit Entity** or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**, **Joint Venture**, or **Non-Profit Entity**;
 - (c) the extent a **Claim** is brought and maintained in a non-common law jurisdiction outside the United States of America, including its territories and possessions, or Canada;
 - (d) the extent a **Claim** or **Interview** is brought by a Creditors Committee of the **Company**, or any **Joint Venture** or **Non-Profit Entity** in the event the **Company**, **Joint Venture**, or **Non-Profit Entity** files for relief under Title 11 of the United States Code, or by a receiver, monitor, liquidator or trustee appointed on behalf of the **Company**, **Joint Venture**, or **Non-Profit Entity** by a court or creditor by virtue of the provisions of the Canadian Companies' Creditors Arrangement Act or of the Canadian Bankruptcy and Insolvency Act, or of any similar federal, provincial, territorial, municipal, state or other governmental statute, law, regulation or ordinance;
 - (e) **Defense Expenses** covered under Insuring Agreement (A) or (D).

- (B) No coverage shall be available under this Policy for any **Claim, Interview or Investigation Demand** made against an **Insured**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration against an **Insured** which was brought prior to the Pending and Prior Litigation Date set forth in ITEM 6 of the Declarations;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other Management Liability policy, Directors and Officers liability policy or similar policy;
 - (3) brought about or contributed to in fact by any:
 - (a) deliberately fraudulent or deliberately criminal act or omission or any willful violation of any statute, rule, regulation or law by an **Insured**; or
 - (b) profit or remuneration gained by an **Insured** to which such **Insured** is not legally entitled,

as determined by a final, non-appealable adjudication in the underlying action; however this Exclusion (B)(3) will not apply to: (i) allegations in a **Claim** asserted against an **Insured** under Sections 130 and/or 130.1 of the Ontario Securities Act or any other similar provision of a Canadian provincial or territorial securities law, Section 11 and/or 12 of the Securities Act of 1933 as amended arising out of an initial or subsequent public offering of the **Company's** securities (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933); or (ii) **Defense Expenses** incurred in connection with a **Claim** alleging violations of section 304 of the Sarbanes-Oxley Act of 2002 or section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or similar federal, provincial or territorial statute, law, regulation or ordinance;

No conduct of any **Insured** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS. Only the conduct of the chief executive officer and/or chief financial officer of the **Company** will be imputed to the **Company**.

IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

- (A) The Insurer shall pay the amount of **Loss** in excess of the applicable Retention(s) set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3(B) of the Declarations.
- (B) The amount set forth in ITEM 3(B) of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy whether any **Loss** is covered under one or more Insuring Agreements. Payment of **Loss**, including **Defense Expenses**, by the Insurer shall reduce the Limit of Liability.
- (C) The amount set forth in Item 3(A) of the Declarations shall be the maximum aggregate limit of liability of the Insurer under this Policy resulting from all **Investigation Demands** first made during the **Policy Period**, which amount is part of, and not in addition to, the maximum aggregate Limit of Liability for the Policy as set forth in Item 3(B) of the Declarations.
- (D) With respect to the **Company's** indemnification of its **Insured Persons**, the articles of incorporation, certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company**, each **Subsidiary** and each **Non-Profit Entity** or **Joint Venture**, will be deemed to require indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (E) No Retention will be applicable to **Loss**, including **Defense Expenses**, under Insuring Agreements, (A), (D) or (F). In the event of financial insolvency of the **Company**, no Retention shall apply.

- (F) In the event the **Company** is obligated under the Policy to pay any Retention, the **Company** may satisfy such Retention from any source. As a precondition to such recognition of the erosion of the Retention from any source other than by payment by the **Company**, the **Company** shall provide the Insurer with written proof, to the Insurer's satisfaction, that payment of such Retention has been made.
- (G) If more than one retention is applicable to different portions of **Loss**, including **Defense Expenses**, the applicable Retention(s) will be applied separately to each portion of such **Loss**, and the sum of such Retention(s) will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.

V. DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

- (A) It shall be the duty of the **Insured** and not the duty of the Insurer to defend any **Claim, Interview or Investigation Demand** under this Policy.
- (B) No **Insured** may incur any **Defense Expenses** in connection with any **Claim, Interview or Investigation Demand**, or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably delayed or withheld; however, the **Insured** may settle a **Claim** without such consent, if the total amount of such settlement and **Defense Expenses** does not exceed fifty percent (50%) of the amount of the applicable Retention(s) for such **Claim**.
- (C) Upon the written request of an **Insured**, the Insurer will advance **Defense Expenses** on a current basis, but no less so than quarterly, excess of the applicable Retention, before the disposition of the **Claim, Interview or Investigation Demand** for which this Policy provides coverage. As a condition of the advancement of **Defense Expenses**, each **Insured** agrees that if and to the extent it is determined that such **Defense Expenses** are not insured under this Policy, such **Defense Expenses** shall be repaid to the Insurer by the **Insureds**, severally according to their respective interests.
- (D) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim, Interview or Investigation Demand** made against the **Insured** contains both covered and uncovered matters, or because a **Claim, Interview or Investigation Demand** is made against both the **Insured** and others (including the **Company** for **Claims** other than **Securities Claims**) not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim, Interview or Investigation Demand** by, the **Insured** and others.
- (E) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in (D) above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VI. GENERAL CONDITIONS

(A) NOTICE

- (1) As a condition precedent to any right to payment under this Policy with respect to any **Claim or Investigation Demand**, the **Insured** shall give written notice to the Insurer of each **Claim or Investigation Demand** as soon as practicable after it is first made, including but not limited to written notice as soon as practicable of each **Claim or Investigation Demand** deemed to constitute a single **Claim or Investigation Demand** pursuant to Section VI (B) below. Such notice shall be provided as soon as practicable after the risk management or general counsel departments of the **Parent Company** first becomes aware of such **Claim or Investigation Demand**. In the event that the **Insureds** fail to provide timely notice to the Insurer under this Section VI (A)(1), the Insurer shall not be entitled to deny coverage solely based on such untimely notice unless the Insurer can demonstrate its interests were materially prejudiced by reason of such untimely notice.

- (2) As a condition precedent to any right to payment under this Policy with respect to any **Interview**, the **Insured** may elect to give the Insurer written notice thereof during the **Policy Period** pursuant to Section VI (A)(4) below.
- (3) If, during the **Policy Period**, the **Insured** provides the Insurer with written notice of:
- (a) a specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the **Insured** first became aware of such **Wrongful Act**;
 - (b) its receipt of a request to toll or waive a statute of limitations in connection with a **Wrongful Act**; or
 - (c) an **Interview** first received during the **Policy Period**,

then any **Claim** or **Investigation Demand** subsequently made arising out of such **Wrongful Act**, request to toll or waive a statute of limitation or **Interview** will be treated as if it had been first made during the **Policy Period**, provided written notice of any subsequent **Claim** or **Investigation Demand** is provided to the Insurer as soon as practicable after such **Claim** or **Investigation Demand** is made.

- (4) All notices under Section VI (A)(1),(2) and (3) above must be sent by:
- (a) first class U.S. mail, overnight mail, Canada Post or the equivalent to the address set forth in ITEM 7 of the Declarations: Attention Claim Department; or
 - (b) electronic mail (email) to the address shown in ITEM 7 of the Declarations.

(B) **INTERRELATED CLAIMS**

All **Claims**, **Investigation Demands**, **Interviews** or requests to toll or waive a statute of limitations, arising from the same **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim**, **Investigation Demand** or **Interview** and shall be deemed to have been made at the earliest of the time at which the earliest such **Claim**, **Investigation Demand**, or **Interview** is made or deemed to have been made pursuant to Section VI (A) above.

(C) **OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES AND JOINT VENTURES**

- (1) Subject to Section IV LIMIT OF LIABILITY INDEMNIFICATION AND RETENTIONS (F), all coverage under this Policy will be specifically excess of and will not contribute with any other valid and collectible management liability insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy, or a personal umbrella policy or personal directorship liability policy purchased by an **Insured Person**. This Policy will not be subject to the terms of any other insurance policy.
- (2) All coverage under this Policy for **Loss** from **Claims** and **Interviews** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** or persons occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of the **Insured Persons** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** or **Joint Venture** by reason of his or her service as such.

(D) **MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)**

- (1) If during the **Policy Period** the **Company** acquires any entity by merger, consolidation or

otherwise such that the entity becomes a **Subsidiary**, coverage shall be provided for any **Loss** involving a **Claim, Interview or Investigation Demand** for a **Wrongful Act** occurring after the consummation of the transaction.

- (2) If, however, by reason of the transaction (or series of transactions) described in (D)(1) above, the assets or liabilities so acquired or so assumed as a result of such acquisition, exceed thirty-five percent (35%) of the total assets or liabilities, respectively, of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements, coverage under this Policy shall be provided for a period of ninety (90) days or to the Expiration Date, whichever occurs first, for any **Loss** involving a **Claim, Interview or Investigation Demand** for a **Wrongful Act** that occurred after the transaction has been consummated. Coverage beyond such period will be provided only if:
 - (a) the Insurer receives written notice containing full details of the transaction(s); and
 - (b) the Insurer at its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.
- (3) With respect to the acquisition, assumption, merger, consolidation or otherwise of any entity as described in (D)(1) and (2) above, there will be no coverage available to the **Company**, an **Insured Person**, or to the acquired entity under this Policy for **Claims** made against the **Company**, an **Insured Person**, or the acquired entity, for a **Wrongful Act** committed any time during which such entity, is not an **Insured**.
- (4) If any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- (5) If during the **Policy Period** there is a **Change In Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** against an **Insured** for a **Wrongful Act** committed or allegedly committed up to the time of the **Change In Control**; and
 - (a) coverage will cease with respect to any **Claim** for a **Wrongful Act** committed subsequent to the **Change In Control**; and
 - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

(E) **CANCELLATION AND RENEWAL OF COVERAGE**

- (1) Except for the nonpayment of premium, as set forth in (E)(2) below, the **Parent Company** has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

(F) **OPTIONAL EXTENSION PERIOD**

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** or any **Insured Person** shall be entitled, upon payment of an additional premium set forth in ITEM 5 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** or **Investigation Demand** first made or deemed first made during the period of time set forth in ITEM 5 of the Declarations after the Policy Expiration Date, but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date. Any such **Claim** or **Investigation Demand** shall be deemed to have been made during the **Policy Period**.
- (2) As a condition precedent to the right to purchase the Optional Extension Period, the total premium for this Policy must have been paid in full. The right of the **Parent Company** or any **Insured Person** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** or **Insured Person** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Parent Company** or **Insured Person** elects to purchase the Optional Extension Period as set forth in (F)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limit of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all **Claims, Interviews** and **Investigation Demands** made during the **Policy Period**.

(G) **ASSISTANCE, COOPERATION AND SUBROGATION**

- (1) The **Insured** agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request in connection with any **Claim, Investigation Demand** or **Interview** that is reasonably likely to be covered under this Policy, and further agrees that it will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery against any party.
- (2) In the event of any payment under this Policy, the Insurer will be subrogated to the extent of such payment of **Loss** to all of the **Insured's** rights of recovery; provided that the Insurer will be subrogated to any **Insured's** potential or actual rights of recovery against any **Insured Person** only in the event that Exclusion (B)(3) of the Policy is applicable to such **Insured Person** in connection with such **Loss**. The **Insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in its name, and will provide all other assistance and cooperation which the Insurer may reasonably require. It is understood that the failure of any **Insured Person** to give the Insurer cooperation and information as required in this paragraph shall not impair the rights of the **Company**, or any other **Insured Person** under this Policy.
- (3) In the event the Insurer recovers amounts it paid under this Policy, the Insurer will reinstate the applicable Limits of Liability of this Policy to the extent of such recovery, less the Insurer's costs incurred in obtaining such recovery. It is understood and agreed that the Insurer shall have no duty to seek such a recovery.

(H) **EXHAUSTION**

If the Insurer's Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned and, subject to Section VI General Condition (G)(3), all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(I) **REPRESENTATION CLAUSE**

The **Insured** represents that the statements and particulars contained in the **Application** as well as any prior application submitted to the Insurer are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, form the basis of this Policy. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person**. With respect to **Claims** made under Insuring Agreement (C) only, no knowledge or information possessed by any **Insured Person** other than a past or present chief executive officer or chief financial officer of the **Parent Company** will be imputed to the **Company**. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth.

This Policy shall not be rescinded by the Insurer; provided that nothing herein shall limit or waive any other rights or remedies available under the Policy or applicable law.

(J) **ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY**

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured** to determine its liability, nor may the **Insured** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement.

(K) **AUTHORIZATION AND NOTICES**

It is understood and agreed that the **Parent Company** will act on behalf of the **Company** and the **Insured Persons** with respect to:

- (1) the payment of the premiums;
- (2) the receiving of any return premiums that may become due under this Policy;
- (3) the giving of all notices to the Insurer as provided herein; and
- (4) the receiving of all notices from the Insurer.

(L) **PRIORITY OF PAYMENTS**

In the event of **Loss**, including **Defense Expenses**, payable under more than one of the Insuring Agreements of the Policy, then the Insurer shall, to the maximum extent practicable and subject at all times to the Insurer's maximum aggregate Limit of Liability as set forth in ITEM 3 of the Declarations, pay such **Loss** as follows:

- (1) first, the Insurer shall pay that **Loss**, if any, which the Insurer may be liable to pay on behalf of the **Insured Persons** which the **Company** is not permitted nor required to pay on behalf of the **Insured Persons** as indemnification;

- (2) second, the Insurer shall pay that **Loss**, if any, which the Insurer may be liable to pay on behalf of the **Company** which the **Company** is permitted or required to pay on behalf of the **Insured Persons**; and
- (3) third, the Insurer shall make such other payments which the Insurer may be liable to make under Insuring Agreements (C) and/or (F) or otherwise.

(M) **BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations under this Policy. In such event, including any liquidation or reorganization proceeding of the **Company**, then each **Insured** and the Insurer hereby agree not to oppose or object to any efforts by any **Insured Person** to obtain relief from any stay or injunction.

(N) **ENTIRE AGREEMENT – WORLDWIDE COVERAGE**

- (1) The **Insured** agrees that the Declarations, Policy, including the endorsements, attachments and the **Application**, shall constitute the entire agreement between the Insurer or any of its agents and the **Insured** relating to this insurance. The coverage afforded by the Policy shall apply anywhere in the world.
- (2) If the **Parent Company** requests management or directors and officers liability policies for issuance to its foreign **Subsidiaries** in their own countries, the Insurer or a subsidiary or affiliate of XL Group plc shall provide a quote to the **Parent Company** for such policies; provided that the Insurer or a subsidiary or affiliate of XL Group plc can support or facilitate the issuance of the policies to such foreign **Subsidiaries** in their applicable foreign countries. Any coordination of coverage under such policies with coverage under this Policy shall be set forth in an endorsement attached to this Policy.

(O) **CURRENCY**

All premiums, limits of liability, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of Canada. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than Canadian dollars, payment of covered **Loss** due under this Policy, subject to its terms, conditions and limitations, will be made either in such other currency (at the option of the Insurer and with the agreement of the **Parent Company**), or, in Canadian dollars at the rate of exchange most recently published in The Globe and Mail on the date of the Insurer's obligation to pay such **Loss** is established.

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

NOTICE OF MOTION OF THE INSURERS
(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 St. W. 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>
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**THIS IS EXHIBIT A REFERRED TO IN THE
AFFIDAVIT OF JAMIE SHILTON
AFFIRMED BEFORE ME THIS 18TH DAY OF AUGUST, 2023**

A handwritten signature in black ink, appearing to read 'VCalina', with a long horizontal stroke extending to the right.

COMMISSIONER FOR TAKING AFFIDAVITS

VLAD CALINA (LSO NO. 69072W)

Court FileNo.CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

KIA KORDESTANI Haidar Omarali

Plaintiff

-and-

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

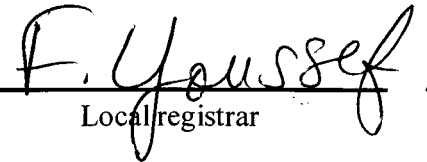
AMENDED THIS NOV 17/15 PURSUANT TO
 MODIFIED RULE 26.02 (1) CONFORMEMENT A
 RULE 26.02 (1)
 THE ORDER OF JUSTICE, Belobaba
 L'ORDONNANCE DU JUGE
 DATED / FAIT LE NOV 13/15
 JUSTICE Belobaba
 JUDGE
 COUR SUPERIEURE DE JUSTICE

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 4, 2015

Issued by


Local registrar

Address of court office 393 University Avenue,
10th Floor,
Toronto, ON

TO: JUST ENERGY CORP.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY GROUP INC.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY ONTARIO L.P.
2630-100 King St. West
Toronto, ON M5X 1E1

CLAIM

1. The Plaintiff claims:
 - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class (defined below);
 - (b) \$100 million in ~~general~~ damages for the Class, or such other sum as this Honourable Court deems just;
 - (c) a declaration that the provisions of the *Employment Standards Act, 2000* (“*ESA*”), as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below);
 - (d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;
 - (e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members’ contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to the Class Members by:
 - (i) failing to ensure that Class Members were properly classified as employees;
 - (ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the “Minimum Wage”);
 - (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
 - (iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the “Overtime Threshold”);

- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold (“Overtime Pay”);
 - (vi) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
 - (vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* (“Vacation Pay”);
 - (viii) failing to compensate Class Members for Vacation Pay;
 - (ix) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the “Public Holiday and Premium Pay”); and
 - (x) failing to compensate Class Members for Public Holiday and Premium Pay.
- (f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:
- (i) ensure that Class Members are properly classified as employees;
 - (ii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;
 - (iii) ensure that the Class Members’ hours of work are monitored and accurately recorded; and

- (iv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.
- (g) a declaration that the provisions of any applicable independent contractor agreement which may purport to exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;
- (h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (i) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (j) a declaration that the Defendants are liable, and must reimburse Class Members, for any *Canada Pensions Plan* (“CPP”) or *Employment Insurance Act* (“EI”) contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating class members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;
- (l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;

- (m) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;
- (n) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (o) punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as this Honourable Court deems just;
- (p) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (q) the costs of administering the plan of distribution of the recovery in this action; and
- (r) such further and other relief as this Honourable Court may deem just.

THE PARTIES

~~2. The Plaintiff, Kia Kordestani (“Kordestani”), resides in Ontario. He was a “Sales Agent” retained by one or more of the Defendants (“Just Energy”) from June 2012 until June 2013. Kordestani worked as a Sales Agent at the Ottawa sales office of Just Energy.~~

2. The Plaintiff, Haidar Omarali (“Omarali”), resides in Ontario. He was a “Sales Agent” retained by Just Energy starting in August 2012 until September 2013. Omarali worked as a Sales Agent at the Dundas sales office of Just Energy.

3. Just Energy is one of the largest independent energy retailers in North America, and serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy products to approximately 2 million homes and businesses. It annually generates revenues of hundreds of millions of dollars.

4. Within Ontario, Just Energy has 12 regional offices and approximately 130 Sales Agents at any given time. Sales Agents are employed by Just Energy to market Just Energy’s fixed price energy contracts and other energy products related to the supply of natural gas and

electricity in Ontario. Sales Agents market Just Energy contracts at designated times and at designated locations to residential and commercial customers by traveling door-to-door to the residences of energy consumers and potential customers.

5. The Defendants carry on business in common in respect of the hiring, training, supervision and control of the Class Members. The Defendants are headquartered at the same address and represent to the public and to Sales Agents as a single entity.

6. The marketing activities of Just Energy, and the activities of the Sales Agents, are provincially regulated and therefore governed by the *ESA*.

THE CLASS

7. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following class of persons:

“Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.”

(the “Class” or “Class Members”)

EMPLOYMENT RELATIONSHIP

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Just Energy creates an employment relationship with Just Energy. In particular:

- (a) Just Energy trains all the Class Members in their marketing duties;
- (b) Class Members are told how they can market Just Energy contracts, in the form of sales scripts, booklets, manuals and sales presentations;
- (c) Class Members were told where and when they can market Just Energy contracts;
- (d) Class Members are taken to specific locations and areas in which they could market door-to-door contracts and require permission to change any location;

- (e) Class Members all must wear Just Energy clothing and represent as working for Just Energy;
- (f) Class Members must use the tools of Just Energy in the form of brochures, contracts, informational sheets and mandatory Just Energy branded clothing;
- (g) All prices and Sales Agent commissions are fixed by Just Energy;
- (h) Class Members do not complete contract renewals or the finalization and confirmation of any contract with potential customers, which is all done directly by Just Energy through a Just Energy call centre after the Class Members' home marketing;
- (i) Just Energy maintains sole discretion whether to accept or reject any potential contract generated by the Class Members;
- (j) All potential contracts generated by Class Members must be reported to Just Energy on a daily basis;
- (k) Only Just Energy handles customer complaints about the Class Members;
- (l) Just Energy assumes responsibility for alleged misconduct of the Class Members while marketing of Just Energy contracts to the public;
- (m) As a result of the work demands and explicit working restrictions placed on Class Members by Just Energy, Class Members cannot work for any other business while also working for Just Energy;
- (n) Class Members cannot sub-contract or independently employ other individuals to market Just Energy contracts on the Class Members' behalf;
- (o) The contracts generated by the Class Members form a substantial amount of Just Energy's revenue; and
- (p) Class Members are paid directly by Just Energy.

ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT

9. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contracts of employment of the Class Members.

10. Therefore, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated

- (a) at a rate equal to, or greater than, the Minimum Wage;
- (b) with Overtime Pay for hours worked in excess of the Overtime Threshold;
- (c) with Vacation Pay on all amounts paid; and
- (d) with Public Holiday and Premium Pay.

CONTRACTUAL DUTIES OWED TO CLASS MEMBERS

11. As low skilled employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Just Energy is/was in a position of power and direct control over the Class Members and the Class members were in a vulnerable position *vis-a-vis* the Defendants.

12. The Defendants owe contractual duties to the Class Members, including its contractual duty of good faith, all of which required, and continue to require, the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay and Vacation Pay;

- (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

DUTY OF CARE

13. Just Energy owed the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Just Energy retaining the Class Members to perform marketing services on Just Energy's behalf.

14. Just Energy owed the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts.

15. The Defendants' duty of care required the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) ensure that the Class Members hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

RESPONSIBILITIES OF SALES AGENT AND TREATMENT BY JUST ENERGY

16. ~~From June 2012 until June 2013, Kordestani worked for Just Energy as a Sales Agent out of a sales office located in Ottawa, Ontario. From August 2012 until September 2013,~~ Omarali worked for Just Energy as a Sales Agent out of the Dundas sales office.

17. ~~Kordestani's~~ Omarali's duties and responsibilities as a Sales Agent included:

- (a) attending the Just Energy regional sales office between 9:00 a.m. and 9:30 a.m. to start work;
- (b) collecting blank contracts and promotional material at the regional sales office;
- (c) from approximately 9:30 a.m. to 12:00 p.m. each day, attend a meeting with other Sales Agents and the Just Energy Regional Director at the regional sales office to review sales statistics, sales scripts, sales tactics, sales role playing, marketing locations and sales targets for the day;
- (d) being assigned to a crew coordinator by the Regional Director and taken by the crew coordinator, by van, to a location with other Sales Agents to begin door-to-door marketing of Just Energy contracts;
- (e) between approximately 1:00 p.m. to 9:00 p.m., market Just Energy contracts door-to-door in a designated area using materials provided by Just Energy;
- (f) report all potential contracts to the regional sales office and Regional Director;
- (g) obey the direction of the Regional Director if directed to change marketing locations and report to the Regional Director on present locations; and
- (h) conclude the day at 9:00 p.m. by reporting to the assigned crew coordinator, who picked him up from his assigned location and dropped him back off at the regional sales office.

18. The Defendants required ~~Kordestani~~ Omarali to work between 60-72 hours per week without receiving the Minimum Wage, contrary to his contractual terms.

19. ~~Kordestani~~ Omarali relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that he was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, ~~Kordestani~~ Omarali relied on the Defendants to properly classify him regarding his status as an employee and his entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay and was misled by the Defendants that he was not an employee of the Defendants.

20. ~~Kordestani~~ Omarali did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the Defendants had continually misrepresented to him his actual eligibility and entitlement to such pay.

21. ~~Kordestani's~~ Omarali's duties are consistent with the duties of all Sales Agents in the Class and the operations of Just Energy and the controls imposed by Just Energy on the Sales Agents.

22. The Defendants required explicitly, and/or implicitly, that ~~Kordestani~~ Omarali and the other Class Members work exclusively for Just Energy.

23. At all material times, ~~Kordestani,~~ Omarali and the other Class Members were explicitly directed how, where and when they could perform marketing duties for Just Energy.

24. The Defendants required that all Sales Agents attend at the regional sales office to begin work between 9:00 a.m. and 9:30 a.m. and perform marketing between 1:00 p.m. to 9:00 p.m., 5-6 days per week.

25. The Defendants required that Sales Agents travel to other cities during "Push Weeks" to market Just Energy contracts in new locations and that Sales Agents cover all costs related to travel, food and accommodation during those "Push Weeks".

26. As a Sales Agent, ~~Kordestani,~~ Omarali and all other Class Members worked between 60-72 hours per week including weekends. The Defendants were aware of, and encouraged ~~Kordestani,~~ Omarali and all other Class Members, to work those hours in excess of the

Overtime Threshold, which were necessary in order to comply with the enforced hours and structure of a Sales Agent workday. The Defendants required and/or permitted ~~Kordestani~~, Omarali and the other Class Members, to work hours in excess of the Overtime Threshold and failed or refused to provide them with Overtime Pay.

27. At all material times, ~~Kordestani~~, Omarali and the other Class Members were explicitly and incorrectly informed they were not employees of Just Energy.

28. The Defendants required ~~Kordestani~~, Omarali and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay, contrary to their contractual terms.

29. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Vacation Pay, contrary to their contractual terms.

30. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

SYSTEMIC CLASSIFICATION AS “INDEPENDENT CONTRACTORS”

31. The Defendants systemically classified all Sales Agents as “independent contractors” and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay, under the misrepresentation from Just Energy that Sales Agents were independent contractors.

32. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

33. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. If Class Members did not work the overtime as required to

complete their employment responsibilities, such Class Members were terminated because the Defendants would “cancel” their “independent contractor” agreement.

SYSTEMIC BREACH OF THE *ESA*

34. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by :

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
- (d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;
- (e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated for Overtime Pay;
- (f) failing to compensate Class Members for Vacation Pay; and
- (g) failing to compensate Class Member for Public Holiday and Premium Pay.

35. Just Energy’s misclassification of Sales Agents as purported independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

36. To the extent that any contracts purport to designate the Class Members as independent contractors and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay or any other minimum requirement of the *ESA*, such contracts and or provisions are void and unenforceable.

SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH

37. The Defendant systemically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

38. There was no legitimate basis for the Defendants' arbitrary designation of the Class Members as independent contractors and ineligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, which was contrary to the employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

39. Such breaches are ongoing and continuous in respect of the Class Members since at least 2012.

SYSTEMIC NEGLIGENCE

40. Just Energy owed ~~Kordestani~~, Omarali and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts. Just Energy systemically breached that duty by:

- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

41. As a result of Just Energy's negligence in mischaracterizing the relationship between Just Energy and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors, all of which were reasonably foreseeable to Just Energy.

UNJUST ENRICHMENT

42. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

43. The Class Members have suffered a corresponding deprivation, in the form of the Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

44. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

45. The Defendants' unjust enrichment has been continuous and ongoing since at least 2013.

DAMAGES

46. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors.

47. Furthermore, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors and exclusion from Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, coupled with the Defendants' requirement that the Class Members work hours in excess the Overtime Threshold, was high handed and callous. The Defendants were in a position of power over low skilled and vulnerable employees and owed them a duty of good faith, which the Defendants flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of punitive damages.

48. Moreover, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors caused the Class Members to erroneously pay the employer component of CPP and/or EI contributions on their income. Such employer contributions ought to have been made by Just Energy on their behalves, instead the Class Members paid those contributions directly. The Defendants' misclassification thereby caused compensable damages to the Class Members for which sufficient reimbursement should be awarded.

49. The Plaintiff pleads and relies on upon the following statutes and regulations:

- (a) *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

- (c) Canada Pension Plan, R.S.C. 1985, c. C-8; and
 - (d) Employment Insurance Act, S.C. 1996, c. 23;
50. The Plaintiff proposes that this action be tried in Toronto.

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

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Tel: 416-595-2700
Fax: 416-204-2894

Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiff

KIA KORDESTANI Haidar Omarali
PLAINTIFF

and

JUST ENERGY GROUP INC., ET AL
DEFENDANTS

Court File No: CV-15-52749300CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSUC#: 51143A
Tel: 416-595-2700
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Jody Brown LSUC # 58844D
Tel: 416-595-2709
Fax: 416-204-2815

Lawyers for the Plaintiffs

THIS IS **EXHIBIT “J”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

OCT 29 2021

**D&O PROOF OF CLAIM FORM
FOR CLAIMS AGAINST
DIRECTORS OR OFFICERS OF THE JUST ENERGY ENTITIES**

By Omni Management Group, Claims Agent
For U.S. Bankruptcy Court
Southern District of Texas

This form is to be used only by Claimants asserting a Claim against any Directors and/or Officers of the Just Energy Entities and NOT for Claims against the Just Energy Entities themselves. For Claims against the Just Energy Entities that are not captured in any Statement of Negative Notice Claim, please use the form titled "Proof of Claim Form for Claims Against the Just Energy Entities", which is available on the Claims Agent's website at <https://omniagentsolutions.com/justenergyclaims> or the Monitor's website at <http://cfcanda.fticonsulting.com/justenergy>.

Note: Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent's online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

1. Name(s) and Position(s) of Officer(s) and/or Director(s) (the "Debtor(s)") the Claim is being made against:

Debtor(s): See Schedule "A" attached

2A. Original Claimant (the "Claimant")

Legal Name of Claimant:	<u>Haider Omarali, as representative plaintiff on behalf of class members in the</u>	Name of Contact	<u>David Rosenfeld</u>
Address	<u>20 Queen Street West, Suite 900</u>	Title	<u>Partner (Lawyer) at Koskie Minsky LLP</u>
		Phone #	<u>416-595-2700</u>
		Fax #	<u>416-204-2894</u>
City	<u>Toronto</u> Prov /State	City	<u>Ontario</u>
Postal/Zip Code	<u>M5H 3R3</u>	Email	<u>drosenfeld@kmlaw.ca</u>

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¹ The "Just Energy Entities" are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the "Claims Procedure Order"), a copy of which is available on the Monitor's website at <http://cfcanda.fticonsulting.com/justenergy>.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: _____	Name of Contact _____
Address _____	Title _____
_____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	Email _____
Postal/Zip Code _____	

3. Amount and Type of D&O Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officer(s)	Currency	Amount of Pre-Filing D&O Claim <i>(including interest, if applicable, up to and including March 9, 2021)</i>	Amount of Restructuring Period D&O Claim
See Schedule "B" attached. <input checked="" type="checkbox"/>	CAD	\$105,854,794.52 <input checked="" type="checkbox"/>	

4. Documentation



Provide all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this D&O Proof of Claim form must be true, accurate and complete. Filing a false D&O Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

<p>Signature: </p> <p>Name: <u>DAVID ROSENFELD</u></p> <p>Title: <u>Partner (Lawyer) at Koskie Minsky LLP</u></p>	<p>Witness²: </p> <p>(signature)</p> <p><u>ARYAN ZIAIE</u></p> <p>(print)</p>
<p>Dated at <u>Toronto</u> this <u>29th</u> day of <u>October</u>, 2021.</p>	

6. Filing of Claims and Applicable Deadlines

For Pre-Filing D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the “**Claims Bar Date**”).

For Restructuring Period D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).

In each case, Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

² Witnesses are required if an individual is submitting this D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

If located in Canada:

FTI Consulting Canada Inc.,
 Just Energy Monitor
 P.O. Box 104, TD South Tower
 79 Wellington Street West
 Toronto Dominion Centre, Suite 2010
 Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
 Email: claims.justenergy@fticonsulting.com
 Fax: 416.649.8101

If located in the United States or
 elsewhere:

Just Energy Claims Processing
 c/o Omni Agent Solutions
 5955 De Soto Ave., Suite 100
 Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such D&O Claims.

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Schedule "A"

Names and Positions of Directors against whom the Claim is being made:

Directors of Just Energy Group Inc.

- R. Scott Gahn – Director;
- Walter Higgins - Director;
- H. Clark Hollands – Director;
- Rebecca MacDonald – Director;
- Dallas H. Ross – Director;
- William F. Weld – Director;
- John A. Brussa – Director;
- Michael Kirby – Director;
- Brennan R. Mulcahy – Director;
- Brian R. D. Smith – Director;
- Patrick McCullough – Director;
- Brett Perlman – Director;
- James Lewis – Director;
- Deborah Merrill – Director;
- Ryan Barrington-Foote – Director;
- George Sladoje – Director;
- David F. Wagstaff – Director;
- Hugh D. Segal – Director;
- Gordon D. Giffin – Director;
- Ken Hartwick - Director;
- Brian R. D. Smith – Director;
- R. Roy McMurty – Director

Directors of Just Energy Corp.

- Jonah Davids - Director
- Michael Carter – Director;
- R. Scott Gahn – Director;
- James Brown – Director;
- Patrick McCullough – Director;
- Deborah Merrill – Director;
- James Lewis – Director;
- Beth Summers – Director;
- Ken Hartwick – Director;
- Brian R. D. Smith – Director;
- Bruce Gibson – Director;
- Gordon D. Giffin – Director;
- Hugh D. Segal – Director;

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- John Brussa – Director;
- Rebecca MacDonald – Director;
- Michael Kirby – Director;
- R. Roy McMurtry – Director.

To the extent that there may be other individuals who were directors of either Just Energy Group Inc. or Just Energy Corp. from 2012 onwards and are not listed above and therefore unknown to the claimant, this claim is also asserted against those former or current directors.

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Schedule "B"

This claim is made on behalf of the class members in the Omarali v. Just Energy class action (the "Class Members"). The claim is asserted against the following directors of each of Just Energy Group Inc. and Just Energy Corp, who are claimed to be jointly and severally liable for the \$105,854,794.52 owing to the Class Members. The total number of Class Members who are creditors is estimated to be 7,900.

Just Energy Group Inc.

Year	Just Energy Group Inc. Director and Year of Appointment
2020 (July 7)	<ul style="list-style-type: none"> • R. Scott Gahn – 2013 • Walter Higgins – 2019 • H. Clark Hollands – 2015 • Rebecca MacDonald – 2001 • Dallas H. Ross – 2017 • William F. Weld – 2012
2019 (May 15)	<ul style="list-style-type: none"> • John A. Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • Rebecca MacDonald – 2001 • Patrick McCullough – 2018 • Brett Perlman – 2013 • Dallas H. Ross – 2017 • William F. Weld – 2012
2018 (May 25)	<ul style="list-style-type: none"> • John A. Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • James Lewis – 2015 • Rebecca MacDonald – 2001 • Patrick McCullough – 2018 • Deborah Merrill – 2015 • Brett Perlman – 2013 • Dallas H. Ross – 2017 • William F. Weld – 2012
2017 (May 26)	<ul style="list-style-type: none"> • Ryan Barrington-Foote – 2015 • John A. Brussa – 2001 • R. Scott Gahn – 2013 • H. Clark Hollands – 2015 • James Lewis – 2015 • Rebecca MacDonald – 2001

	<ul style="list-style-type: none"> • Deborah Merrill – 2015 • Brett Perlman – 2013 • George Sladoje – 2012 • William Weld - 2012
2016 (May 27)	<ul style="list-style-type: none"> • Rebecca MacDonald – 2001 • James Lewis – 2015 • Deborah Merrill – 2015 • John A. Brussa – 2001 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn – 2013 • David F. Wagstaff – 2015 • Ryan Barrington-Foote - 2015 • H. Clark Hollands – 2015
2015 (May 26)	<ul style="list-style-type: none"> • Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn – 2013
2014 (May 28)	<ul style="list-style-type: none"> • Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby - 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • William F. Weld – 2012 • George Sladoje – 2012 • Brett Perlman – 2013 • R. Scott Gahn – 2013
2013 (May 31)	<ul style="list-style-type: none"> • Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001 • Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Hon. Gordon D. Giffin – 2006 • Ken Hartwick – 2008 • William F. Weld – 2012 • George Sladoje - 2012
2012 (May 31)	<ul style="list-style-type: none"> • Rebecca MacDonald – 2001 • Hon. Hugh D. Segal – 2001

	<ul style="list-style-type: none"> • Hon. Michael Kirby – 2001 • John A. Brussa – 2001 • Brian R. D. Smith – 2001 • Hon. Gordon D. Giffin – 2006 • Hon. R. Roy McMurty – 2007 • Ken Hartwick – 2008 • William F. Weld - 2012
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Just Energy Corp.

Year	Just Energy Corporation Director and Year of Appointment
2021	<ul style="list-style-type: none"> • Jonah Davids • Michael Carter • Robert Scott Gahn
2020	<ul style="list-style-type: none"> • James Brown • Jonah Davids • Michael Carter • Robert Scott Gahn
2019	<ul style="list-style-type: none"> • James Brown • Jonah Davids • Patrick McCullough • Robert Scott Gahn
2018	<ul style="list-style-type: none"> • Deborah Merrill • James Brown • James Lewis • Jonah Davids • Patrick McCullough
2017 (May 26)	<ul style="list-style-type: none"> • Deborah Merrill • Jonah Davids • James Lewis
2016 (May 27)	<ul style="list-style-type: none"> • Deborah Merrill • Jonah Davids • James Lewis
2015	<ul style="list-style-type: none"> • Deborah Merrill • Jonah Davids

	<ul style="list-style-type: none">• James Lewis
2014	<ul style="list-style-type: none">• Beth Summers• Deborah Merrill• James Lewis• Jonah Davids• Ken Hartwick
2013	<ul style="list-style-type: none">• Ken Hartwick• Beth Summers
2012	<ul style="list-style-type: none">• Brian Smith• Bruce Gibson• Gordon Giffin• Hugh Segal• John Brussa• Ken Hartwick• Rebecca Macdonald• Michael Kirby• Roy McMurtry• Beth Summers

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Schedule "C"

The Basis of the Claim against Directors

1. This claim arises from a class action for unpaid wages brought against Just Energy Group Inc. ("JE"), Just Energy Corp. ("JEC") and Just Energy Ontario L.P. (collectively the "Defendants"), for the period of 2012 to date. The Proof of Claim is filed on behalf of all Class Members by the certified representative plaintiff in the class action (Haidar Omarali, referred to herein as the "Representative Plaintiff").
2. JE is a company incorporated under the Canada Business Corporations Act (R.S.C., 1985, c. C-44) ("CBCA").
3. JEC is a company incorporated under the Business Corporations Act, R.S.O. 1990, c. B.16 ("OBCA").
4. The Defendants misclassified class member employees as independent contractors. All of the Class Members worked for the Defendants in Ontario. As a result of JEC's misclassification, the Class Members were denied minimum protections under the *Employment Standards Act, 2002* ("ESA"), including but not limited to minimum wage, overtime, public and holiday pay and vacation pay.
5. The Class Members' employment relationships were with JE, JEC or both. In any event, JE and JEC were common employers of class members, as evidenced by the documentation filed with this Proof of Claim.
6. As set out in the Amended Statement of Claim filed with this Proof of Claim, the Class Members seek recovery from the Defendants for unpaid wages including minimum wage, overtime, holiday and vacation pay, in accordance with the ESA.
7. The Defendants have failed to pay any amounts owing to Class Members.
8. This CCAA proceeding will result in unsatisfied claims of Class Members.
9. In accordance with section 81 of the ESA each of the directors JE and JEC from 2012 onwards are liable for the unpaid wages claimed.
10. In addition, or in the alternative, in accordance with to section 131 of the OBCA, each of the directors of JEC from 2012 onwards are liable for the unpaid wages claimed.
11. In addition, or in the alternative, in accordance with to section 119 of the CBCA, the directors of JE from 2012 onwards are liable for the unpaid wages claimed.
12. The full amount owing by JE and JEC directors, jointly and severally, is **\$105,854,794.52**, comprising \$100,000,000 for the claim plus pre-judgment interest over a period of 2137 days – commencing May 4, 2015 (claim issuance date) and accruing to March 9, 2021 (CCAA filing

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date) – at a rate of 1% (based on the applicable pre-judgment interest rate at the second quarter of 2015).

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THIS IS **EXHIBIT "I"** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

FILED

OCT 29 2021

By Omni Management Group, Claims Agent
For U.S. Bankruptcy Court
Southern District of Texas

**PROOF OF CLAIM FORM
FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES¹**

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

1. Name of Just Energy Entity or Entities (the “Debtor(s)”) the Claim is being made against²:

Debtor(s): Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.

2A. Original Claimant (the “Claimant”)

Legal Name of Claimant:

Haider Omarali, as representative plaintiff on behalf of class members in the class action

Name of Contact

David Rosenfeld

Address

20 Queen Street West, Suite 900

Title

Partner (Lawyer) at Koskie Minsky LLP

Phone #

416-595-2700

Fax #

416-204-2894

City Toronto

Prov /State

Ontario

Email

drosenfeld@kmlaw.ca

Postal/Zip Code

M5H 3R3

KM 11127

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¹ The “**Just Energy Entities**” are 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 Holdeco I Inc., JE Services Holdeco 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

² List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the “Claims Procedure Order”), a copy of which is available on the Monitor’s website at <http://efcanada.fticonsulting.com/justenergy>.

2B. Assignee, if claim has been assigned

Legal Name of Assignee: _____	Name of Contact _____
Address _____	Title _____
_____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	Email _____
Postal/Zip Code _____	

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of Pre-Filing Claim (including interest up to and including March 9, 2021) ³ :	Whether Claim is Secured:	Value of Security Held, if any ⁴ :
Just Energy Group Inc.	CAD	\$105,854,794.52 ⁺	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Just Energy Corp.	CAD	\$105,854,794.52 ⁺	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Just Energy Ontario L.P.	CAD	\$105,854,794.52 ⁺	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Restructuring Period Claims

Debtor Name:	Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes <input type="checkbox"/> No <input type="checkbox"/>	
			Yes <input type="checkbox"/> No <input type="checkbox"/>	
			Yes <input type="checkbox"/> No <input type="checkbox"/>	

³ Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

⁴ If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation⁵



Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature:  Name: DAVID ROSENFEELD Title: Partner (Lawyer) at Koskie Minsky LLP	Witness ⁶ :  (signature) ARYAN ZIAIE (print)
Dated at <u>Toronto</u> this <u>29th</u> day of <u>October</u> , 2021.	

6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the “**Claims Bar Date**”).

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

⁵ If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

⁶ Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent’s online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities’ CCAA proceedings with respect to any such Claims.

Schedule "A"**Calculation For Amount Claimed**

The amount claimed including pre-filing interest is **\$105,854,794.52**. The calculation for this amount is set out below.

The statement of claim for the Omarali v. Just Energy class action was issued on May 4, 2015. The claim amount is \$100,000,000. The applicable pre-judgment interest is 1%, which rate is used for pre-filing interest. Annual pre-judgment interest on the claim amount is therefore \$1,000,000 (1% of \$100,000,000). Daily interest is \$2,739.73 (\$1,000,000 divided by 365). The number of days between the class action filing date (May 4, 2015) and the CCAA proceeding filing date (March 9, 2021) is 2,137. Accordingly, the full amount of pre-filing interest is \$5,854,794.52 (\$2,739.73 X 2,137 days). That interest amount, added to \$100,000,000, equals \$105,854,794.52.

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KOSKIE MINSKY

October 29, 2021

Aryan Ziaie
Direct Dial: 416-595-2104
aziaie@kmlaw.ca

BY EMAIL – claims.justenergy@fticonsulting.com

FTI Consulting Canada Inc.
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8

Attention: Just Energy Claims Process

Dear Monitor:

**Re: *Omarali v. Just Energy Group Inc. et al.*
Court File No. CV-15-52749300 CP
Class Members' Claims in the Just Energy CCAA Proceeding**

Our client, Haidar Omarali, is filing a Proof of Claim Form and D&O Proof of Claim Form on behalf of class members in the class proceeding bearing Court File No. CV-15-52749300 CP (*Omarali v. Just Energy*). Both Proof of Claim Forms are enclosed.

You will shortly receive, by TitanFile, the following documentation filed in support of both Proof of Claim Forms (pursuant to section 4 of each form):

1. Amended Statement of Claim;
2. Plaintiff's Motion Record filed in support of a summary judgment motion returnable June 11-13, 2019 (the "**SJM**"), Volumes 1-7;
3. Transcript Brief filed in connection with the SJM; and
4. Moving Factum filed in connection with the SJM.

Please also note that we have provided: (i) at Schedule "A" to the Just Energy Proof of Claim Form, a calculation explaining the amount claimed; and (ii) at Schedule "C" to the D&O Proof of Claim Form, an explanation of the basis for the claim against the directors.

Yours truly,

KOSKIE MINSKY LLP



Aryan Ziaie
AZ/sr

C James Harnum, David Rosenfeld – Koskie Minsky LLP (by email)

THIS IS **EXHIBIT "L"** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

NOTICE OF REVISION OR DISALLOWANCE**For Persons who have asserted D&O Claims against the
Directors and/or Officers of the Just Energy Entities¹**

TO: **Haidar Omarali as Representative Plaintiff (the “Claimant”)**

David Rosenfeld (counsel for the Representative Plaintiff)
drosenfeld@kmlaw.ca
Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario M5H 3R3

RE: Claim Reference Number: DO-5005-1

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/>.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

¹ The “**Just Energy Entities**” are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing D&O Claim	Beth Summers Brennan R. Mulcahy Brett Perlman Brian Smith Brian R. D. Smith Bruce Gibson Dallas H. Ross David F. Wagstaff Deborah Merrill George Sladoje H. Clark Hollands Hon. Gordon D Giffin Hon. Hugh D. Segal Hon. Michael Kirby Hon. R. Roy McMurty James Brown James Lewis John A. Brussa Jonah Davids Ken Hartwick Michael Carter Patrick McCullough Rebecca MacDonald Robert Scott Gahn Ryan Barrington-Foote Walter Higgins William F. Weld		\$105,854,794.52	\$0	\$0
B. Restructuring Period D&O Claim			\$	\$	\$
C. Total Claim	As listed above		\$105,854,794.52	\$0	\$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.


The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy>.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 2nd day of February, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: _____


Jim Robinson
Senior Managing Director

SCHEDULE A

Background

This Claim (the “**D&O Claim**”) is advanced in connection with a certified class action filed in the Ontario Superior Court of Justice on May 4, 2015 (as amended on November 17, 2015), titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP (the “**Class Action**”). The representative plaintiff in the Class Action (the “**Claimant**”) has also filed an ordinary Proof of Claim in this claims process in respect of the Class Action (the “**Class Action Claim**”).

The Class Action was brought against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (the “**Specified JE Entities**”) on behalf of a class of “[A]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement” (“**Class Members**”). The Class Action alleges, among other things, that the Specified JE Entities misclassified the Class Members as independent contractors and have improperly denied them the benefits prescribed in the *Employment Standards Act, 2000* (the “**ESA**”) (including minimum wage, overtime pay, vacation pay, and public holiday pay), and contributions on the Class Members’ behalf pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*. The Class Action also claims punitive, aggravated and exemplary damages. The directors and officers of the Specified JE Entities (listed in Schedule ● to the Proof of Claim) have not been named as defendants in the Class Action.

The D&O Claim alleges that the directors of the Just Energy Entities named in the Proof of Claim (the “**Directors**”) are liable to the Class Members for alleged unpaid wages pursuant to section 81 of the ESA; section 131 of the Ontario *Business Corporations Act* (the “**OBCA**”), and/or section 119 of the *Canada Business Corporations Act* (the “**CBCA**”).

For the reasons outlined below, the Just Energy Entities, in consultation with the Monitor, disallow the D&O Claim in its entirety.

D&O Claim is Entirely Contingent on Class Action Claim, Which Has Been Disallowed

The D&O Claim is not independent, but rather entirely contingent on the success of the Class Action Claim. The Class Action Claim has been disallowed in its entirety for the reasons set out in the Notice of Revision or Disallowance in respect of such claim (which reasons are fully adopted and referentially incorporated herein). Therefore, there is no basis for recovery as against the Directors.

D&O Claim is Untimely and Statute Barred / JE Entities and Directors are Materially Prejudiced by Delay

The D&O Claim was filed over six (6) years after the Class Action was filed and the D&O Claim does not assert any “new knowledge” relating to the facts giving rise to the Class Action Claim that was not otherwise known to the Claimant at the time the Class Action Claim was commenced. Accordingly, the D&O Claim is barred by operation of the *Limitations Act, 2002* as well as by the limitations in the applicable statutes and by common law doctrines, including laches and abuse of

process. The Claimant made a strategic choice not to pursue the Directors as part of the Class Action, and must be accountable for that choice.

Further, the excessive and undue delay in advancing a claim against the Directors has caused material prejudice to the JE Entities and to the Directors. For example, given that the Class Action, as filed and subsequently certified, did not assert any claims whatsoever against the Directors or otherwise contemplate the personal liability of directors and officers, the Just Energy Entities rightly did not provide a claim or provide notice to the insurer who underwrote the applicable directors' and officers' coverage when the Class Action was issued or certified. The belated attempt to pursue the Directors personally more than six (6) years later has resulted in prejudice to the JE Entities and the Directors, including a likely coverage dispute.

Several of the named Directors ceased to hold office years ago.

D&O Claim Constitutes Improper Attempt to Expand the Class Action

The D&O Claim amounts to an improper expansion of the scope of the Class Action to add new defendants more than six (6) years after the Class Action was filed. The Class Action was certified as against the Specified JE Entities only in relation to the specified common issues and the damages sought in the Class Action. As a matter of law and equity, the Claimant cannot now, more than half a decade later, properly seek to add the Directors as defendants to the Class Action and to seek to recover a "wages" claim as opposed to a "damages" claim. Amongst other things, the Claimant would need to obtain leave from the Court to amend the pleadings and would need to obtain class certification in respect of such amended pleadings.

D&O Claim is An Abuse of Process and Brought in Bad Faith

The D&O Claim improperly and belatedly seeks to add the Directors to a Class Action that was filed more than six (6) years ago in order to gain leverage in respect of the underlying Class Action Claim, which is indisputably a contingent, unsecured, pre-filing liability. The D&O Claim is a transparent and purely tactical attempt to obtain more favourable treatment of a pre-filing claim to the detriment of other creditors and the estate, and thus amounts to an abuse of process.

Directors Are Not Liable For Amounts Claimed

In addition and/or in the alternative, the Directors are not liable for the amounts claimed. As noted, the D&O Claim is entirely contingent on the amounts claimed in the Class Action. However, the amounts claimed in the Class Action are not for unpaid "wages" pursuant to the ESA or "debts for services performed" pursuant to the CBCA and OBCA for which directors can be *per se* personally liable in certain circumstances by virtue of holding office at the relevant time. Rather, the Class Representative seeks damages in the Class Action resulting from alleged misclassification. Indeed, in connection with the Class Action, the Claimant specifically sought to have "damages" awarded on an aggregate basis. The court rejected the Claimant's argument, determining that *damages* needed to be assessed on an individual basis.

Given that director liability for unpaid wages is an exception to the principles of separate corporate personality, provisions imposing personal liability on directors must be interpreted strictly and narrowly. Individuals who have been misclassified are entitled to seek *damages* resulting from

the misclassification as contemplated by the Class Action itself, and not to *wages* or *debts for services performed*.

While directors may be personally liable for unpaid wages to employees in order to ensure that the directors do not permit the company to continue using the employees' services when the corporation is in financial difficulty and no longer able to pay for them, directors' personal liability does not extend to ensuring all workers are properly classified for statutory and common law purposes or to indemnifying those workers for damages if the corporation is later found to have failed to do so.

Preconditions for Director Liability Have Not Been Met

In addition and in the alternative to the above, and in any event, pursuant to the ESA, OBCA and CBCA, personal liability for directors and officers only arises once the company has been sued with judgment obtained and has failed to pay some or all of the amount owing. The precondition has not been satisfied in these circumstances given that the Class Action has been stayed pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 9, 2021, as amended and restated on March 19, 2021 (the "Stay").

Moreover, the alternative preconditions for director and officer liability in the ESA, OBCA and CBCA have plainly not been met in this case, namely:

ESA:

- Section 81(a): the employee must cause a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid. This condition has not been met because the Just Energy Entities have not filed for bankruptcy and there is no appointed receiver or trustee in bankruptcy.
- Section 81(b): an employment standards officer has made an order that the employer is liable for wages. This condition has not been met.
- Section 81(c): an employment standards officer has made an order that a director is liable for wages. This condition has not been met.
- Section 81(d): the Ontario Labour Relations Board has issued a prescribed order under section 119. This condition has not been met.

OBCA:

- Section 131(2): the corporation goes into liquidation, is ordered to be wound up or makes an authorized assignment under the *Bankruptcy and Insolvency Act* (the "BIA"), or a receiving order under the BIA is made against it, and, in any such case, the claim for the debt has been proved. This condition has not been met.

CBCA:

- Section 119(2)(b): the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution. This condition has not been met.

- Section 119(2)(c): the corporation has made an assignment or a bankruptcy order has been made against it under the BIA and a claim for the debt has been proved within six months after the date of the assignment or bankruptcy order. This has condition has not been met.

Additional Issues and Limitations

- In the further alternative, the individual Directors, if liable at all in respect of the D&O Claim (which is denied), could only be liable for the prescribed quantum set out in the ESA, OBCA and CBCA, as applicable, and only in relation to amounts that were actually unpaid in relation to specific individuals who were engaged during their tenure as Directors. It is not legally sustainable to simply name all the Directors who ever held office during the certified class period and seek to affix them with joint and several liability for the entire amount potentially owing to the class, which the Claimant has purported to do in the D&O Claim.
- Pursuant to the OBCA and the ESA, the quantum of any potential liability for the Directors (if all the other preconditions are met) is limited to six months' wages and 12 months' accrued vacation pay. Under the CBCA, liability is limited to 6 months' wages.
- Even if any such amount is properly recoverable from the Directors (which is denied), an individual worker would have to first prove his or her entitlement to unpaid wages, based on an individual assessment of hours worked on a week-by-week basis and the resulting wage and related entitlements. If the corporation then does not pay that amount, the individual would have to assert that amount against those individual directors or officers (and only those individuals), who served in that capacity during the period when the individual worked. And the quantum of any amount that could be recovered from those individual directors or officers who held office at the time would be subject to the above statutory quantum limits.
- Additionally, the Specified JE Entities' independent contractor program terminated in 2017. Therefore, only those individual directors or officers serving prior to 2017 can be liable for any unpaid "wages". The D&O Claim improperly names directors and officers specifically in respect of the years 2018, 2019, 2020 and 2021, and is therefore overly broad.
- The D&O Claim is too contingent, speculative and remote to permit recovery; in the alternative, the D&O Claim is so contingent, speculative and remote that it has an effective value of \$0.

THIS IS **EXHIBIT “K”** REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER SWORN BEFORE ME over video teleconference this 12th day of May, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)

NOTICE OF REVISION OR DISALLOWANCE**For Persons who have asserted Claims against the Just Energy Entities¹**

TO: Haidar Omarali as Representative Plaintiff (the “**Claimant**”)

David Rosenfeld (counsel for the Representative Plaintiff)

drosenfeld@kmlaw.ca

Koskie Minsky LLP

20 Queen Street West

Suite 900, Box 52

Toronto, Ontario M5H 3R3

RE: Claim Reference Numbers: PC-11127-1, PC-11127-2 & PC-11127-3

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated September 15, 2021 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/>.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be treated as follows:

¹ The “**Just Energy Entities**” are 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., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	CAD	\$105,854,794.52	\$0	\$0
B. Restructuring Claim	N/A				
C. Total Claim	Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.	CAD	\$105,854,794.52	\$0	\$0

Reasons for Revision or Disallowance:

See attached Schedule A.

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at <http://cfcanda.fticonsulting.com/justenergy>.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this 2nd day of February, 2022.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Just Energy Entities, and not in its personal or corporate capacity

Per: _____



Jim Robinson
Senior Managing Director

SCHEDULE A

The Claimant advances a claim against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (the “**Specified JE Entities**”) in the amount of \$105,854,794.52 based on a certified class action filed in the Ontario Superior Court of Justice on May 4, 2015 (as amended on November 17, 2015), titled *Haidar Omarali v Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.*, Court File No. CV-15-52749300 CP (the “**Class Action**”).

The Just Energy Entities, in consultation with the Monitor, disallow the Claim in its entirety.

Status of Litigation

The Class Action was brought against the Specified JE Entities on behalf of a class of “[a]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement” (“**Class Members**”). The Class Action alleges that the Specified JE Entities misclassified the Class Members as independent contractors and improperly denied them the benefits prescribed in the *Employment Standards Act, 2000* (the “**ESA**”) (including minimum wage, overtime pay, vacation pay, and public holiday pay), and contributions on the Class Members’ behalf pursuant to the *Canada Pension Plan* and the *Employment Insurance Act*. The Claimant also claims punitive, aggravated and exemplary damages.

On July 27, 2016, the Court certified the Class Action and 13 common issues. On June 12, 2019, the Claimant brought a summary judgement motion, which the Court dismissed on the basis that a full trial was necessary. The Class Action has been stayed pursuant to the Initial Order.

Class Members are Not Employees

The Class Members are in both form and substance independent contractors and not employees.

The relationship was governed by an “Independent Contractor Agreement” freely executed by each Class Member pursuant to which the parties expressly agreed that their relationship was that of an independent contractor relationship and not that of an employment relationship.

Further, the Class Members had a significant degree of control in the performance of their work, including by setting their own days of work, hours of work, time off work, work location, sales methods, and whether or not to engage in several forms of sales. Further, Class Members were compensated solely through commission on sales and were responsible for their own business expenses. As such, their opportunity for profit and their risk of loss depended entirely on their individual efforts and choices.

The alleged control that the Specified JE Entities exercised over the Class Members referenced in the documents filed in support of the Claim was primarily exercised by the applicable regulator, the Ontario Electricity Board (the “OEB”), and not the Specified JE Entities. The OEB required Class Members to wear identification badges; follow prescribed content in sales scripts; conduct verification calls to finalize energy contracts; and comply with requirements regarding interacting with consumers in the course of selling energy. The relationship between the Class Members and the Specified JE Entities was not characterized by the Specified JE Entities’ control over the Class

Members, for which reason the Class Members are not “employees” of the Specified JE Entities for the purpose of the ESA, CPP or EI.

Class Members Fall Within “Salesperson” Exemption

In the alternative, even if the Class Members are “employees” pursuant to the ESA, they indisputably fall within the “salesperson” exemption in section (2)(h) of Ontario Regulation 285/01 and are therefore ineligible for minimum wage, overtime, public holiday pay and vacation pay. The exemption applies to individuals who satisfy the following: (1) remuneration takes the form of commissions (in whole or in part); (2) those commissions are calculated on sales (or offers to purchase); (3) the sales relate to goods or services; and (4) the sales are made away from the employer’s place of business.

The Claimant does not dispute that the first three criteria are met. The fourth criterion – which the Claimant argues is not met – has clearly been satisfied in the present case. Indeed, this very issue has been considered by courts in the United States relative to an analogous “salesperson” exemption pursuant to the *Fair Labor Standards Act* in respect of the Just Energy entities and the courts have repeatedly found that the salespeople in fact made sales away from the employer’s place of business. For example, in *Flood v. Just Energy Mktg. Corp.*, 904 F.3d 219 (2d Cir. 2018), the Second Circuit Court of Appeals found that the salespeople for Just Energy were not just promoting the products or advertising them; they were trying to persuade specific customers to sign up then-and-there for an energy plan, which the court found constituted making a sale away from the employer’s business. The courts reached the same conclusion in *Dailey v. Just Energy Mktg. Corp.*, 2015 U.S. Dist. LEX IS 97103 (N.D. Cal.).

Class Members are Not Route Salespersons

The Class Action alleges that the Class Members do not fall within the “salesperson” exemption because they are “route salespersons”, which are exceptions to the “salesperson” exemption. This position is not tenable. It is established law that a route salesperson is a worker who drives an employer-owned vehicle to deliver the employer’s products to established customers along a specified route on a prescribed schedule, and the sales function is generally ancillary to the delivery function.² Such is clearly not the role of the Class Members: the Class Members’ sales function was integral, rather than ancillary, to their function which was directed toward non- established customers and undertaken by the Class Members on their own schedules in the location(s) of their choice.

Additional Bases For Denial of Claim

In addition and in any event, the Claim is too contingent, speculative, and remote to permit recovery. Additional bases militating against any recovery include:

- Significant parts of the Claim are barred by operation of the *Limitations Act, 2002* and the time limits under the ESA. In particular, the Class Action was commenced on May 4, 2015.

² See, e.g., *Decision No. 1724/11*, 201 I O.N.W.S.I.A.T.D. 2860.; *Canadian Union of Operating Engineers and General Workers (CUOE) v. Red Cmpef Food Systems Inc.*, 200 I CanLII 5016 (O.L.R.B.); and *Chester v. Pepsi-Cola Canada Ltd.*, 2005 SKQB 110.

Therefore, all claims for amounts to be paid prior to May 4, 2013 are precluded by the two year limitation period prescribed in the *Limitations Act, 2002*.

- There is insufficient supporting documentation in support of the quantification of any damages. By definition, the claim of each Class Member must be quantified through individualized assessments based on each worker's individual circumstances and experience, as a precondition for any recovery. The Claimant has failed to adduce any (let alone adequate) evidence of actual losses or damages for any of the Class Members.

Claim is Vastly Overstated

In the further alternative, even if the Claim has some merit (which is denied), the quantum of damages claimed is vastly overstated. Among other issues, (i) the vast majority (approximately 7,000 of the 7,900) Class Members are clearly statute barred from bringing a claim, and (ii) a significant proportion, if not the majority, of the sales agents with a potentially timely claim performed little or no actual work for the Specified JE Entities following their execution of the independent contractor agreement.

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

MOTION RECORD OF THE INSURERS
(Prior Acts Exclusion)

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