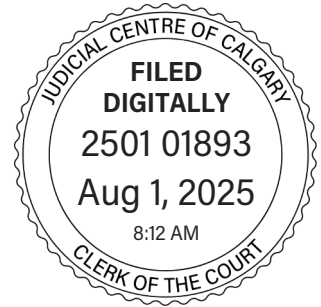


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COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT APEX OPPORTUNITIES FUND LTD.
RESPONDENTS BETA ENERGY CORP. and KADEN
CREDITOR TRUST

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Fasken Martineau DuMoulin LLP
Barristers and Solicitors
3400 First Canadian centre
350 – 7th Avenue SW
Calgary, AB, T2P 3N9

Attention: Robyn Gurofsky / Tiffany Bennett
Phone: (403) 261-9469 / (403) 261 5355
Email: rgurofsky@fasken.com / tbennett@fasken.com
File Number.: 304091.00008



**BENCH BRIEF OF THE RECEIVER
IN SUPPORT OF APPLICATION FOR APPROVAL OF CLAIMS PROCESS, INTERIM
DISTRIBUTION AND ANCILLARY RELIEF**

Scheduled to be Heard August 12, 2025 at 2:00 p.m.

Before the Honourable Justice R. W. Armstrong

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I. INTRODUCTION

1. The Applicant, FTI Consulting Canada Inc. (“**FTI**”), in its capacity as (a) the Court-appointed receiver and manager (the “**Receiver**”) of the undertakings, properties and assets of Beta Energy Corp. (“**Beta**”), and (b) trustee of the Kaden Creditor Trust, established by Creditor Trust Settlement appended as Schedule “C” to the Transaction Approval and Reverse Vesting Order granted by this Honourable Court on July 2, 2025 (the “**Creditor Trust**” and, together with Beta, the “**Debtors**”), submits this Bench Brief to provide this Honourable Court with an overview of the law to be considered in the Receiver’s Application, filed concurrently herewith (the “**Application**”), for *inter alia*, the following:
 - (a) approval a claims process (the “**Claims Process**”) for the identification, quantification and resolution of claims that may be made against the Debtors, and to facilitate distributions to creditors;
 - (b) approval of an interim distribution by the Receiver as detailed in the Third Report of the Receiver, dated July 31, 2025 (the “**Third Report**”) to the Debtors’ primary secured creditor, Apex Opportunities Fund Ltd. (“**Apex**”) in respect of the indebtedness, liabilities and obligations owed by the Debtors to Apex, being the amount of \$2,438,784.67 plus interest and costs continuing to accrue to the date of payout; and
 - (c) approval of the Receiver’s actions and activities as more particularly set out in the Third Report, including the Receiver’s interim receipts and disbursements.

II. FACTS

2. The factual background is set out in the Third Report. Unless otherwise indicated, capitalized terms used herein have the meanings ascribed to them in the Third Report or the Claims Process Order, as applicable.

III. ISSUES

3. The issues to be addressed on this Application are:

- (a) should the proposed Claims Process be approved and the requested Claims Process Order be granted;
- (b) should the proposed interim distribution be approved; and
- (c) should the Receiver's actions and activities be approved.

IV. LAW AND ARGUMENT

A. The Claims Process Should Be Approved and the Claims Process Order Should Be Granted

- 4. The *BIA* is remedial legislation which gives courts broad and flexible discretion to facilitate an orderly and efficient distribution of a debtor's assets to its creditors, in accordance with predetermined priorities.¹ The purpose of a receivership, in particular, is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors".² Consistent with the overall purpose of receivership proceedings, the primary objective of a claims process is "to attempt to ensure that all legitimate creditors come forward on a timely basis".³ The proposed Claims Process is designed to achieve all of these objectives.
- 5. Claims processes are not commonly sought in receivership proceedings under the *BIA*, as realizations from receivership estates do not typically provide a surplus for distributions to unsecured creditors. Here, the Receiver is in the unique position of having obtained sufficient proceeds from the closing of the Transaction to satisfy in full the claims of the primary secured creditor, Apex. In addition, the Receiver will be holding proceeds available to satisfy a portion of unsecured creditor claims.
- 6. Guidance in respect of the necessity and structure of a claims process may therefore be found in claims processes approved in proceedings under the *Companies' Creditors*

¹ *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41, 2022 CSC 41 at para 147 [TAB 1], citing *Re Ted Leroy Trucking [Century Services] Ltd*, 2010 SCC 60, 2010 CSC 60 at para 15 [TAB 2] and *Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc*, 2019 ONCA 508, [2019] OJ No 3211 [*Dianor*] at para 43 [TAB 3].

² *Dianor* at para 73 [TAB 3].

³ *BA Energy Inc, Re*, 2010 ABQB 507, [2010] AWLD 4793 at para 41 [TAB 4]

Arrangement Act (“*CCAA*”).⁴ Courts routinely accept claims processes as a commonly recognized element of *CCAA* proceedings, including those involving asset liquidations, on the basis of the broad judicial discretion conferred in section 11 thereof.⁵

7. Similarly, section 243(1)(c) of the *BIA* confers courts with broad discretion to make any orders that may be appropriate in the circumstances, including authorizing the receiver to take any action the court considers advisable and just or convenient.⁶ Additionally, section 183 provides courts with broad jurisdiction “at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction” in any proceedings under the *BIA*, commonly recognized as the provision authorizing a court to exercise its inherent jurisdiction.⁷
8. The concept of inherent jurisdiction allows a court, as a “pragmatic problem solver”, to exercise its jurisdiction to effect a remedy or fill statutory gaps. However, the exercise of inherent discretion is not without limits.⁸ For example, it cannot be used to negate the “unambiguous expression of legislative will”, and should only be exercised in the context of applicable legislation, in this case the *BIA*, aimed at ensuring the certainty of equitable distribution of a bankrupt’s assets among creditors.⁹
9. On this basis, it is respectfully submitted that approval of the Claims Process Order, designed at its core to ensure the certainty of equitable distribution of Kaden’s assets amongst its creditors, is consistent with the express purpose of the *BIA* and is therefore just, convenient and advisable in the circumstances.

⁴ *Companies’ Creditors Arrangement Act*, RSC 1995, c C-36, as amended [*CCAA*] [TAB 5].

⁵ *CCAA*, s 11 [TAB 5]; *Bul River Mineral Corp (Re)*, 2014 BCSC 1732, [2014] BCWLD 6764 [*Bul River*] at paras 29-31 [TAB 6]; *Soccer Express Trading Corp (Re)*, 2020 BCSC 749, 319 ACWS (3d) 17 [*Soccer Express*] at para 106 [TAB 7].

⁶ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended [*BIA*] at s 243(1)(c) [TAB 8].

⁷ *BIA*, s 183 [TAB 8]; *Syndic de Chronometriq inc.* 2023 QCCA 1295, 2023 CarswellQue 14729 [*Chronometriq*] at para 57 [TAB 9].

⁸ *Chronometriq* at para 58 [TAB 9], citing *Residential Warranty Co. of Canada Inc., Re*, 2006 ABCA 293, [2006] AWLD 3143 [*Residential Warranty*] at paras 20-21 [TAB 10].

⁹ *Chronometriq* at para 58 [TAB 9], citing *Residential Warranty* at paras 20-21 [TAB 10].

10. While there are “no set rules” as to how a claims process is structured, courts have considered the following factors in determining whether to approve a proposed claims process order:
- (a) whether the process is fair and reasonable to all stakeholders; and
 - (b) whether the process allows for the usual steps and procedures, consistent with what has been ordered in other proceedings.¹⁰

As detailed below, each of these factors supports the approval of the proposed Claims Process Order.

11. First, the process is fair and reasonable to all stakeholders. The Receiver has concluded the SISP and successfully marketed all realizable assets of the receivership estate, and it is now prepared to distribute the proceeds from the realization to the stakeholders. Implementation of the Claims Process will, among other benefits, allow the Receiver to efficiently and effectively assess any potential claims (particularly those which are presently unknown), and permit the determination of the nature, quantum and priority of those potential claims for purposes of effecting distribution. The use of a “negative notice” claims process is not uncommon, and will result in an efficient and timely process, while providing all known creditors with a reasonable procedure to dispute the assessment of their Claims.¹¹ In approving a “negative notice” claims process, as is contemplated here, the Ontario Superior Court of Justice [Commercial List] commented that “in all cases it is appropriate to make efforts to increase efficiency, affordability and certainty”.¹² Similarly, the British Columbia Supreme Court has noted that fairness to stakeholders includes minimizing unnecessary costs.¹³

¹⁰ *Bul River* at paras 32 and 41 [TAB 6], citing *Steels Industrial Products Ltd (Re)*, 2012 BCSC 1501, [2013] BCWLD 1452 at paras 38-39 [TAB 11].

¹¹ *1057863 B.C. Ltd. (Re)*, 2024 BCSC 1111, 2024 CarswellBC 1828 [1057863] at para 37 [TAB 12].

¹² *Toys “R” Us (Canada) Ltd (Re)*, 2018 ONSC 609, 288 ACWS (3d) 16 [Toys “R” Us] at paras 11-14 [TAB 13].

¹³ *1057863* at para 37 [TAB 12].

12. Second, the Receiver has developed the process to include steps and procedures that are commonly found in processes approved by insolvency courts, including that the proposed Claims Process:
- (a) addresses all claims for which Creditors may be entitled to distribution from the Receiver, and excludes claims secured by priority charges (to be separately administered by the Receiver, to avoid unnecessary or duplicative work);
 - (b) establishes broad notice and publication procedures to communicate the commencement of the proposed claims process to potential Creditors;
 - (c) requires Creditors to prove their Claims by the Claims Bar Date, and correspondingly bars late submissions from consideration, thus creating certainty required in the process;
 - (d) provides an opportunity for the Receiver to review and, if appropriate, contest any Claims made; and
 - (e) establishes an adjudication procedure for Claims which cannot be agreed upon or settled by negotiation.¹⁴
13. In this case, the Receiver proposes a negative process for all Known Creditors, being those creditors for whom the Debtors' books and records allow the Receiver to have sufficient information to make a reasonable assessment of their Claims. The contemplated Claims Process streamlines the procedure through which the Receiver will identify and assess Claims for purposes of effecting distribution. Among other things:
- (a) where a Claims Notice will be issued, it will be included in the Claims Package. Only parties receiving a Claims Notice who disagree with the assessment of their Claim need to take any further steps (by, in the first instance, submitting a Proof of Claim);

¹⁴ *Toys "R" Us* at para 8 [TAB 13].

- (b) all Unknown Creditors will be required to submit a Proof of Claim to the Receiver by the Claims Bar Date in accordance with the Claims Process Order;
 - (c) the Receiver will assess Proofs of Claims submitted by both Known Creditors and Unknown Creditors, both of whom may have a further opportunity to contest any Notices of Revision or Disallowance issued by the Receiver by submitting a Notice of Dispute and referring the disputed Claim to the Court; and
 - (d) the Claims Process Order provides the Receiver with flexibility and discretion in implementing the Claims Process, including extending time periods, provided that the extension does not impact a Creditor's obligation to submit a Proof of Claim by the Claims Bar Date.
14. The Receiver believes that the proposed process allows flexibility and ensures that all Claims are addressed fairly, while minimizing, to the extent possible, costs and time. Further, the Claims Process is fair and reasonable, and the implementation of the Claims Process is appropriate and prudent at this time. The Receiver respectfully submits that this Honourable Court should approve the Claims Process, grant the Claims Process Order, and direct that the Receiver proceed with the implementation of the Claims Process as soon as practicable.

B. The Proposed Interim Distributions Should Be Approved

15. The Receiver seeks this Court's approval to proceed with an interim distribution as set out in the Third Report, being, a distribution to the Debtors' senior secured creditor.
16. In this regard, Madam Justice Romaine's comments in *SemCanada Crude Co., Re*, a decision issued by this Court in the context of *CCAA* proceedings, are instructive:

While orders allowing interim distributions to creditors for one reason or another are not without precedent, at the least, an application for an interim distribution to one creditor must be carefully scrutinized and found to be justifiable for good and sustainable reasons, recognizing that it may create a preference. The court is required to consider the advantages,

disadvantages and potential prejudice of such an interim distribution to all the stakeholders of the debtor entity.¹⁵

17. The contemplated interim distribution is reasonable and appropriate in the circumstances. Importantly, the proposed distribution to Apex will not cause prejudice to any stakeholders of the receivership estate. Apex commenced these receivership proceedings, and the validity and quantum of its debt claim as against both Beta and the Creditor Trust (formerly Kaden) is not in dispute. The Receiver has obtained an independent legal opinion which confirms, subject to the usual qualifications and assumptions, Apex's position as a secured creditor of the Debtors with valid and enforceable security as against a trustee in bankruptcy. The Receiver holds sufficient Sale Proceeds to satisfy Apex's claim in full, and distribution to Apex at this time will ensure that the remaining creditors receive the maximum possible recovery as it would limit further interest accrual in respect of Apex's claim.
18. The Receiver respectfully submits that this Honourable Court should approve the proposed interim distribution.

C. The Receiver's Actions and Activities Should Be Approved

19. As a final matter, this Honourable Court has jurisdiction to review and approve the activities of a court-appointed receiver.¹⁶ A receiver's conduct is to be assessed objectively, and if reasonable, prudent, and not arbitrary, then the Court should approve the activities set out in a receiver's report.¹⁷ Further, where a receiver has fulfilled the purpose of obtaining as high a value for the debtor's assets as it could, the court will find that the receiver has acted properly and within its mandate.¹⁸
20. As detailed in the Third Report, the Receiver has undertaken numerous and significant efforts to carry out its mandate since the Second Report. Among other things, the Receiver

¹⁵ *SemCanada Crude Co, Re*, 2009 ABQB 90, [2009] AWLD 1593 at para 27 [TAB 14].

¹⁶ *Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd*, 2014 BCSC 1855, [2014] BCWLD 7241 [P218 Enterprises] at para 54 [TAB 15].

¹⁷ *P218 Enterprises* at para 54 [TAB 15].

¹⁸ *Re Regal Constellation Hotel Ltd*, [2004] OJ No 365, 128 ACWS (3d) 646 at para 11 (ONCJ) [TAB 16], aff'd 2004 CanLII 206, 242 DLR (4th) 689 (ONCA).

has closed the Transaction, and now holds the proceeds from the Transaction (being the Sale Proceeds) with a view to distributing the same to the stakeholders. The Receiver respectfully submits that its actions and activities are reasonable and prudent, consistent with its mandate, and should be approved together with the Receiver's interim statement of receipts and disbursements as provided for in the Third Report.

V. CONCLUSION

21. The Receiver respectfully submits that this Honourable Court should grant the relief sought in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31st DAY OF JULY, 2025.

FASKEN MARTINEAU DuMOULIN LLP

Per:



Robyn Gurofsky / Tiffany Bennett,
Counsel for FTI Consulting Canada Inc.,
in its capacity as Court-appointed
receiver and manager of Beta Energy
Corp. and trustee of Kaden Creditor
Trust, and not in its personal capacity

LIST OF AUTHORITIES

TAB	AUTHORITY
1.	<i>Peace River Hydro Partners v Petrowest Corp</i>, 2022 SCC 41, 2022 CSC 41.
2.	<i>Re Ted Leroy Trucking [Century Services] Ltd</i>, 2010 SCC 60, 2010 CSC 60.
3.	<i>Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc</i>, 2019 ONCA 508, [2019] OJ No 3211.
4.	<i>BA Energy Inc, Re</i>, 2010 ABQB 507, [2010] AWLD 4793.
5.	<i>Companies’ Creditors Arrangement Act</i>, RSC 1995, c C-36.
6.	<i>Bul River Mineral Corp (Re)</i>, 2014 BCSC 1732, [2014] BCWLD 6764.
7.	<i>Soccer Express Trading Corp (Re)</i>, 2020 BCSC 749, 319 ACWS (3d) 17.
8.	<i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3.
9.	<i>Syndic de Chronometriq inc.</i>, 2023 QCCA 1295, 2023 CarswellQue 14729.
10.	<i>Residential Warranty Co. of Canada Inc., Re</i>, 2006 ABCA 293, [2006] AWLD 3143.
11.	<i>Steels Industrial Products Ltd (Re)</i>, 2012 BCSC 1501, [2013] BCWLD 1452.
12.	<i>1057863 B.C. Ltd. (Re)</i>, 2024 BCSC 1111, 2024 CarswellBC 1828.
13.	<i>Toys “R” Us (Canada) Ltd (Re)</i>, 2018 ONSC 609, 288 ACWS (3d) 16.
14.	<i>SemCanada Crude Co, Re</i>, 2009 ABQB 90, [2009] AWLD 1593.
15.	<i>Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd</i>, 2014 BCSC 1855, [2014] BCWLD 7241.
16.	<i>Re Regal Constellation Hotel Ltd</i>, [2004] OJ No 365 at para 11, 128 ACWS (3d) 646 (ONCJ).