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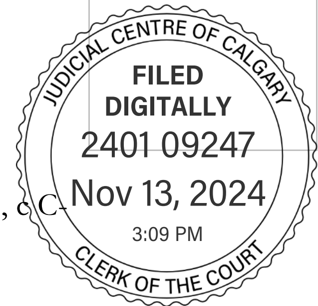
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED	
	AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.	
APPLICANT	FTI CONSULTING CANADA INC. IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.	
DOCUMENT	**REPLY BRIEF OF THE MONITOR (Claims of Henenghaixin Corp.)**	



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Torys LLP 4600 Eighth Avenue Place East 525 - Eighth Ave SW Calgary, AB T2P 1G1 Attention: Kyle Kashuba / Bilal Qureshi Telephone No.: +1 403.776.3744 / +1 403.776.3769 Email: kkashuba@torys.com / bqureshi@torys.com Fax No.: +1 403.776.3800 File No.: 39586-2010

APPLICATION BEFORE THE HONOURABLE JUSTICE D.R. MAH ON NOVEMBER 14, 2024 AT 2:00 PM ON THE COMMERCIAL LIST

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PART I - INTRODUCTION

1. Capitalized terms not otherwise defined in this Reply Brief of the Monitor have the meaning ascribed to them in the bench brief of the Monitor filed October 31, 2024 (the "**Monitor Brief**").

2. On November 7, 2024, H Corp filed a brief of law (the "**H Corp Brief**") and argues that:

(a) the effect of the proposed transaction pursuant to the Subscription Agreement (the "**Proposed Transaction**") is to compromise and extinguish the H Corp Claim, which includes a contingent proprietary constructive trust claim against the assets of the Debtors that *may* rank in priority to the CCBT Security;

(b) there is a reasonable alternative to the Proposed Transaction that would allow the full and final adjudication of the H Corp Action and determine the extent of H Corp's proprietary interests in the Debtors' assets;

(c) the Proposed Transaction extinguishes the H Corp Claim while expressly preserving the claim made by the Debtors against the Individual Defendants and West Lake, among others (the "**Third Party Claim**");

(d) the RVO contains an overly broad release clause that arguably could be relied upon by the Individual Defendants in the H Corp Action; and

(e) the Subscription Agreement's treatment of the H Corp Claim is contrary to section 19(2)(c) and 19(2)(d) of the CCAA[1]

(collectively, the "**H Corp Issues**").

[1] Brief of law of Henenghaixin Crop filed November 7, 2024 [**H Corp Brief**] at para 26.

3. In this Reply Brief, the Monitor has sought to address the H Corp Issues and provide further context and commentary to the Court concerning the Monitor's position and views regarding same.

PART II – ADDRESSING THE H CORP ISSUES

A. Is the effect of the Proposed Transaction to compromise and extinguish the H Corp Claim, which includes a contingent proprietary constructive trust claim against the assets of the Debtors that *may* rank in priority to the CCBT Security?

4. H Corp has failed to establish a valid contingent proprietary constructive trust claim against the Debtors' assets, and the Proposed Transaction does not alter the priority of existing securities. Therefore, the Proposed Transaction should be allowed to proceed without further hinderance from H Corp.

5. H Corp's constructive trust claim lacks merit for two key reasons:

(a) First, H Corp has not identified any specific property to which a constructive trust could attach. Constructive trusts require identifiable assets,[2] yet H Corp has merely requested that the Court hold "any traceable assets" potentially resulting from the Claimed Funds in trust.[3] This vague and expansive request effectively seeks a floating charge over the Debtors' property rather than a specific, identifiable asset required to support a proprietary claim. This critical deficiency underscores the unsuitability of H Corp's constructive trust claim.

(b) Second, there exists a valid juristic reason for any alleged enrichment, namely, the necessity of protecting the interests of all creditors. A constructive trust, as a remedy in

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[2] ***Peter v Beblow***, [1993] 1 SCR 980, 1993 CarswellBC 1258 at para 25.
[3] H Corp Brief at para 11(c).

insolvency proceedings, is used "only in the most extraordinary cases," given the significant impact on the other creditors of the debtor's estate.[4] The standard for establishing a constructive trust in a bankruptcy setting is therefore exceptionally high, and courts consistently reject such claims absent compelling, extraordinary grounds. H Corp has failed to show such grounds in the present case, and granting its claim would unfairly disrupt the established priority scheme, undermining the rights of secured creditors, such as CCBT, who hold perfected security interests.

6. Consequently, H Corp's constructive trust claim fails due to the lack of any identifiable property to support such a trust and the absence of extraordinary circumstances justifying this remedy in insolvency.

7. Further, H Corp incorrectly frames this dispute as a "priority dispute between H Corp and [CCBT]".[5] Unless H Corp can prove that the H Corp Claim takes precedence over the DIP Fund—which it has not attempted—there are no grounds to require the Stalking Horse Bidder to retain it, even if the H Corp Claim holds the same or higher priority than the CCBT Debt.

8. The Alberta Court of Appeal's decision in ***Canadian Overseas Petroleum Limited (Re)*** ("***COPL***") is instructive here.[6] In ***COPL***, two lenders, Summit and BP, held *pari passu* senior secured claims.[7] Summit subsequently advanced interim financing to the debtor ("**DIP Financing**"), while BP did not.[8] Summit then submitted a credit bid for its DIP Financing, selectively assuming certain debts while excluding BP's debt.[9] BP opposed on grounds of equal ranking under the intercreditor

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[4] ***Credifinance Securities Limited v DSLC Capital Corp***, 2011 ONCA 160 at paras 32-33.
[5] H Corp Brief at para 68.
[6] ***Canadian Overseas Petroleum Limited (Re)***, 2024 ABCA 190 [***COPL***].
[7] ***COPL*** at para 2.
[8] ***COPL*** at paras 5-6.
[9] ***COPL*** at para 8.

agreement.[10] However, Justice Yamauchi upheld Summit's selective assumption approach, granting the approval and vesting order, and the Alberta Court of Appeal later denied BP's request for leave to appeal.[11]

9. The ***COPL*** decision confirms that a purchaser may assume certain liabilities ranking behind its DIP Financing without needing to assume all such liabilities equally, provided they remain subordinate to the DIP Financing. Notably, H Corp does not argue that its claim should outrank the priority of DIP Fund.

10. Analogously, the Stalking Horse Bidder has made a credit bid, by way of its DIP Fund, and has chosen to retain certain liabilities listed as "Retained Liabilities" in Schedule "B" of the Subscription Agreement, including the CCBT Debt, and it is not obligated to retain all liabilities—such as the contingent H Corp Claim.

11. Regardless, CCBT holds priority over any subsequent claims by H Corp against the Debtors. Perfected on January 26, 2017,[12] the CCBT Security secures approximately $355 million in outstanding debt owed by the Debtors.[13] Critically, this perfected security predates the alleged initial transfer of the Claimed Funds to the Debtors on April 13, 2017.[14]

12. Accordingly, the Proposed Transaction should proceed unencumbered by H Corp or their claimed interests.

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[10] ***COPL*** at para 11.
[11] ***COPL*** at para 52.
[12] Supplement to the Fifth Report of FTI Consulting Canada Inc, in its capacity as Monitor of Long Run Exploration Ltd and Calgary Sinoenergy Investment Corp at para 37 [**Supplement to Fifth Report**].
[13] Supplement to Fifth Report at para 53.
[14] Affidavit of Gaoyong Zhang, sworn September 13, 2024 at para 25 [**Zhang Affidavit**].

B. Is there a reasonable alternative to the Proposed Transaction that would allow the full and final adjudication of the H Corp Action and determine the extent of H Corp's proprietary interests in the Debtors' assets?

13. Bankruptcy is the only realistic alternative for the Debtors if the Proposed Transaction does not proceed, as they lack sufficient liquidity to meet post-filing obligations or cover the fees of the CCAA Proceedings and operating costs beyond November 30, 2024, when the DIP Fund is estimated to be exhausted.[15]

14. In a bankruptcy scenario, many stakeholders, including Hiking as the DIP Lender, the AER, OWA, municipalities, surface lease holders, joint venture partners and employees and contractors of the Debtors, will face significantly worse outcomes. Despite this, H Corp unreasonably and unjustifiably suggests that "the Monitor has advocated for [CCBT's] position at every turn".[16]

15. H Corp references case law suggesting that courts typically do not approve reverse vesting orders or sale approval vesting orders affecting contingent proprietary claims without first:

(a) adjudicating the claim's validity on a summary basis; or

(b) holding funds in trust equal to the claim's potential value, pending an expeditious resolution of any priority dispute.[17]

16. However, H Corp fails to recognize that the case law that it has referenced is distinguishable because those cases involved credit bids at the secured debt level, whereas here, the credit bid is at the

[15] Supplement to Fifth Report at para 57.
[16] H Corp Brief at para 85.
[17] H Corp Brief at para 79.

DIP level.[18] For these cases to apply, H Corp would need to assert that its claim ranks on par with or ahead of the DIP Charge—a position it has neither taken nor could reasonably support.

17. Regardless, H Corp itself argues that the alternatives listed in paragraph 15 are impractical here, as: (i) the H Corp Claim is too complex to be resolved summarily before the RVO deadline;[19] and (ii) the Stalking Horse Bidder's form of consideration under the Subscription Agreement makes it unfeasible to set aside funds in trust for the H Corp Claim.[20]

18. As an alternative, H Corp proposes in the H Corp Brief a "creative solution" that requires treating the H Corp Action as a "Retained Liability".[21]

19. Despite acknowledging that the Stalking Horse Bidder has clearly stated they will not proceed if the H Corp Claim is treated as a "Retained Liability",[22] H Corp persists in this demand, jeopardizing the Proposed Transaction.

20. H Corp's "creative solution" proposal still hinging on the H Corp Action being treated as a "Retained Liability" illustrates that no viable alternative to the Proposed Transaction exists.

21. Given the Debtors' imminent lack of operating funds expected by November 30, 2024 and the depleted DIP Fund,[23] the Proposed Transaction is the only feasible option to protect stakeholder interests. Bankruptcy would result in delayed asset distributions, reduced recoveries, and adverse financial impacts for stakeholders, making the Proposed Transaction the preferable path forward.

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[18] ***Invico Diversified Income Limited Partnership v NewGrange Energy Inc***, 2024 ABKB 214 at para 9 [***Invico***]; ***Bison Properties Ltd (Re), 2016 BCSC 793*** at para 22; and ***American Iron v 1340923 Ontario***, 2018 ONSC 2810 at para 13.
[19] H Corp Brief at para 82.
[20] H Corp Brief at para 111.
[21] H Corp Brief at para 86.
[22] H Corp Brief at para 83.
[23] Supplement to Fifth Report at para 57.

22. This Court reached a similar conclusion in ***Invico Diversified Income Limited Partnership v NewGrange Energy Inc***:

> In terms of alternative scenarios, there simply are none, which is why the Monitor is supporting the current proposal. In the proposed RVO, Invico is better off than in a bankruptcy, but so are any employees, the priority creditors and even the industry, to the extent that the Orphan Well Association's costs and liabilities are so funded.[24] [Emphasis added.]

C. Is the Proposed Transaction extinguishing the H Corp Claim while expressly preserving the Third Party Claim?

23. H Corp contends that the Subscription Agreement preserves the Third Party Claim against its defendants, and suggests that after the Proposed Transaction is closed, the Debtors could pursue the defendants in the Third Party Claims while the H Corp Action is transferred to the "Creditor Trust".[25] H Corp argues this structure would sever mutuality of debts and prejudice any rights of set-off.[26]

24. Both the Monitor and the Stalking Horse Bidder have proactively amended the Subscription Agreement to further clarify these points, ensuring that the Proposed Transaction does not impair any set-off rights or prejudice H Corp.

D. Does the RVO contain an overly broad release clause that arguably could be relied upon by the Individual Defendants in the H Corp Action?

25. H Corp argues that the RVO's release clause is overly broad, potentially releasing the Individual Defendants from all claims except those involving fraud, gross negligence, willful misconduct, or claims that cannot be released under s. 5.1(2) of the CCAA.[27]

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[24] ***Invico*** at para 26.
[25] H Corp Brief at paras 89-91.
[26] H Corp Brief at paras 90.
[27] H Corp Brief at paras 92-94.

26. The Monitor disagrees with H Corp's broad interpretation of the release clause.

27. In any event, the Monitor has proactively amended the RVO language to further narrow the release clause, thereby addressing H Corp's concerns regarding any potential alleged overreach.

E. Is the Subscription Agreement's treatment of the H Corp Claim contrary to section 19(2)(c) and 19(2)(d) of the CCAA?

28. The Subscription Agreement's treatment of the H Corp Claim does not contravene sections 19(2)(c) and 19(2)(d) of the CCAA ,as H Corp has not proven on a balance of probabilities that: (i) Long Run made a representation to H Corp; (ii) *the* representation was false; (iii) Long Run knew that *the* representation was false; and (iv) *the* false representation was made to obtain the Claimed Funds.[28]

29. Further, the Supreme Court of Canada has held that the exception in subsection 19(2) of the CCAA is narrowly interpreted,[29] and this Court must make independent findings of fact to confirm whether H Corp has discharged its burden on a balance of probabilities, even if prior judgments contain related findings.[30]

H Corp has not proven Long Run made a representation to H Corp

30. H Corp alleges that the Debtors, through the Individual Defendants, knowingly obtained the Claimed Funds by falsifying certain bank records and financial statements.[31] These allegations are centred around fraudulent actions attributed to the Individual Defendants, whom H Corp claims acted within their roles at H Corp or its affiliates, including West Lake.[32]

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[28] ***Montréal (City) v Deloitte Restructuring Inc***, 2021 SCC 53 at para 25 [***Montreal City***].
[29] *Montreal City* at para 25.
[30] *Montreal City* at para 29.
[31] H Corp Brief at para 103.
[32] H Corp Brief at para 104.

31. However, the alleged falsified financial documents, specifically the bank records and statements in question, pertain to West Lake (the "**West Lake Documents**"), not Long Run.[33]

32. H Corp has failed to establish that Long Run made any representation to H Corp. The allegations are focused on the conduct of the Individual Defendants during their tenure at H Corp and West Lake. There is no direct evidence linking Long Run to the alleged representation.

33. The Supreme Court of Canada has made clear that vicarious liability requires a "strong connection" between the wrongful act and the employment role.[34] To hold Long Run vicariously liable, H Corp would need to show that the Individual Defendants acted within the scope of their duties as agents for Long Run- a connection that H Corp has not established.

34. Long Run is a distinct, unrelated entity from both H Corp and West Lake. It would be unreasonable to assume that the Individual Defendants were acting as agents of Long Run when presenting the West Lake Documents—financial records and bank statements specific to West Lake—to H Corp. There is no factual basis to suggest Long Run made any representation to H Corp in connection with these documents.

35. Furthermore, any alleged misconduct by the Individual Defendants appears to have been for personal gain or unrelated business ventures, rather than in furtherance of Long Run's interests.[35] This further distances Long Run from the actions of the Individual Defendants, reinforcing that no representation was made by Long Run to H Corp.

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[33] Zhang Affidavit at para 22(c).
[34] ***Bazley v Curry***, 1999 CanLII 692 (SCC), [1999] 2 SCR 534 at para 42.
[35] Statement of Defence of Calgary Sinoenergy Investment Corp and Long Run Exploration Ltd dated February 11, 2011 at paras 20, 25.

36. Accordingly, the facts before the Court do not support that Long Run made any representations to H Corp. The actions of the Individual Defendants, which are central to H Corp's allegations, were unrelated to Long Run.

H Corp has not proven that the representation was false

37. H Corp has failed to establish that the representations in the West Lake Documents were false.

38. The Court must independently assess whether H Corp has met its burden under subsection 19(2) of the CCAA, which requires proof on a balance of probabilities that the West Lake Documents were false representations.[36]

39. H Corp argues that it pursued the Rule 7.1 Application to determine whether the West Lake Documents were falsified.[37] However, that application was denied, with the court deciding that the issue should be resolved with other matters, underscoring that no conclusive finding of falsity has been reached.[38]

40. As in civil trials, H Corp bears the burden of proving falsity on a balance of probabilities. To date, it has not met this standard. Consequently, H Corp has not demonstrated that the West Lake Documents are false, and its claims cannot satisfy the stringent requirements of section 19(2) of the CCAA.

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[36] *Montreal City* at para 29.
[37] H Corp Brief at para 42.
[38] H Corp Brief at para 42.

H Corp has not proven that the false representation was made to obtain the Claimed Funds

41. The H Corp Brief mischaracterizes the West Lake Documents as the false representation allegedly made to obtain the Claimed Funds.[39] The Supreme Court of Canada has clarified that to meet the burden of proof, a creditor must establish that *the* specific representation in question—not merely a general one—was made to obtain the funds.[40] This standard requires evidence of a precise misrepresentation tied directly to the transfer of the Claimed Funds, which H Corp has not demonstrated in the case at bar.

42. H Corp's own statement of claim identifies the supposed misrepresentation as the Individual Defendants' authority to transfer these funds.[41] Specifically, H Corp alleges that Ms. Deng and Mr. Lam falsely claimed authority to act on behalf of H Corp and represented Mr. Deng as its ultimate owner and controller in order to authorize fund transfers:

> Both Ms. Deng and Mr. Lam represented themselves as having authority to direct the affairs of H Corp. and West Lake as delegates of Mr. Deng. They held out Mr. Deng as being the ultimate owner of controller of H Corp. As outlined below, they had no such authority. However, under the pretenses of having such authority, Ms. Deng, Mr. Lam, and Mr. Deng wrongfully removed tens of millions of dollars from H Corp., as detailed below.[42] [Emphasis added.]

43. This is further supported in the Zhang Affidavit:

> Mr. Neu indicated he was a Calgary Sinoenergy employee who, at the direction of a cousin of Mr. Deng, accepted a role as a director of H Corp and was then appointed President and CEO. Further, at the direction of Mr. Lam, he stated he would confirm, if asked by the bank, transfers from H Corp to West Lake that Mr. Lam initiated via ATB. He assumed H Corp was one of the corporations controlled by Deng and that Mr. Lam had authority to initiate such transfers.

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[39] H Corp Brief at paras 103-105.
[40] *Montreal City* at para 25.
[41] Henenghaixin Corp statement of claim against Tianzhou Deng, Xiaobo Deng aka Lake Deng, Michael Lam, Calgary Sinoenergy Investment Corp, Long Run Exploration Ltd, John Doe and ABC Corporation at para 7 [**H Corp SoC**].
[42] H Corp SoC at para 7.

> Mr. Neu stated that between April 13, 2017 and September 5, 2017 Mr. Lam instructed ATB through email to transfer funds totalling CAD$93,356,491 from H Corp to Calgary Sinoenergy.[43] [Emphasis added.]

44. Consequently, the West Lake Documents themselves are not representations made to obtain the Claimed Funds. Rather, it was the alleged misrepresentation by the Individual Defendants of their authority to transfer funds from H Corp.

45. Moreover, such representations were clearly not made by Long Run. If they were indeed misrepresentations, they were made by the Individual Defendants as agents of H Corp or its affiliates, including West Lake, and not in any capacity associated with Long Run.

46. Additionally, H Corp has not established that the Individual Defendants' claimed authority was false, especially considering their roles as agents of H Corp or its affiliates.

The application of subsection 19(2) is narrow

47. In ***Laurentian University***, counsel for Laurentian University of Sudbury argued, and the Court agreed,[44] that subsection 19(2) should not be applied so broadly as to undermine the CCAA's single-proceeding model, which is a cornerstone of the statutory framework.[45] They emphasized that allowing every claim involving fraud, misrepresentation, or misappropriation to bypass the CCAA process would open the floodgates to litigation, directly contradicting the CCAA's goal of preventing "inefficiency and chaos" in insolvency proceedings.[46] To support their position, they quoted the Supreme Court of Canada's decision in ***Century Services Inc v Canada (Attorney General)***, which affirmed that the

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[43] Zhang Affidavit, at paras 24-25.
[44] *Laurentian University of Sudbury*, 2022 ONSC 3013 at para 44 [***Laurentian University***].
[45] *Laurentian University* at para 29.
[46] *Laurentian University* at para 29.

single-proceeding model "avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt".[47]

48. Here, H Corp's approach conflicts with this principle by seeking to assert claims that fall squarely within the CCAA process. Rather than providing evidence of direct false representations made by Long Run to H Corp, H Corp relies on allegations against Individual Defendants and conflates their actions with Long Run's, seeking to sidestep the CCAA claims process. As ***Laurentian University*** makes clear, allowing such claims to proceed outside of the CCAA would encourage a multiplicity of proceedings that the CCAA is designed to prevent.

49. In conclusion, H Corp's attempt to bypass the CCAA claims process and bring an unsubstantiated fraud claim against Long Run would undermine the single proceeding model and invite a floodgate of litigation, contrary to the CCAA's structure and purpose. The Subscription Agreement's treatment of the H Corp Claim, therefore, does not violate sections 19(2)(c) and 19(2)(d) of the CCAA, as it respects both the narrow application of section 19(2) and the CCAA's overarching goal of coordinated, efficient restructuring.

PART III - CONCLUSION

50. H Corp's actions are delaying the CCAA process and threaten the timely resolution essential to its success. In ***COPL***, Justice de Wit emphasized that delays can disrupt the "timely and orderly resolution of the matter and the effect on the interests of all parties".[48] Allowing H Corp's objections now would open the door to a flood of litigation and create undue delay, jeopardizing the Proposed Transaction's viability and the overall restructuring effort.

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[47] *Laurentian University* at para 29.
[48] ***COPL*** at para 49.

51. What H Corp fails to acknowledge is that without the Proposed Transaction, the alternative for the Debtors is bankruptcy, as they do not have sufficient liquidity to continue meeting post-filing obligations or the cost of these CCAA Proceedings past November 30, 2024.

52. In a bankruptcy scenario, many stakeholders, including Hiking as the DIP Lender, the Secured Lenders, the AER, OWA, municipalities, surface lease holders, joint venture partners employees and contractors of the Debtors, will face significantly worse outcomes.

53. Accordingly, the Monitor respectfully submits that the H Corp Issues have been addressed and requests that this Court grant the relief requested by it, including granting the application for the approval of the RVO sought on the terms proposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13th DAY OF NOVEMBER, 2024.

Torys LLP
Counsel for the Monitor

TABLE OF AUTHORITIES

TAB	AUTHORITY
1.	***Pettkus v Becker***, 1980 CanLII 22 (SCC), [1980] 2 SCR 834.
2.	***Credifinance Securities Limited v DSLC Capital Corp***, 2011 ONCA 160.
3.	***Canadian Overseas Petroleum Limited (Re),*** 2024 ABCA 190.
4.	***Invico Diversified Income Limited Partnership v NewGrange Energy Inc,*** 2024 ABKB 214.
5.	***Bison Properties Ltd (Re),*** 2016 BCSC 793.
6.	***American Iron v 1340923 Ontario,*** 2018 ONSC 2810.
7.	***Montréal (City) v Deloitte Restructuring Inc,*** 2021 SCC 53.
8.	***Laurentian University of Sudbury,*** 2022 ONSC 3013.