COURT FILE NUMBER	2401-02664
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR
DOCUMENT	**SEVENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR** **November 29, 2024**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. Suite 1610, 520 Fifth Avenue S.W. Calgary, AB T2P 3R7 Deryck Helkaa / Dustin Olver / Brett Wilson Telephone: (403) 454-6031 / (403) 454-6032 / (403) 454-6033 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com dustin.olver@fticonsulting.com brett.wilson@fticonsulting.com **COUNSEL** McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Sean Collins / Walker MacLeod / Pantelis Kyriakakis / Nathan Stewart Telephone: (403) 260-3531 Fax: (403) 260-3501 E-mail: scollins@mccarthy.ca/ wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mcccarthy.ca

COURT FILE NUMBER	2401-02664
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR
DOCUMENT	**SEVENTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR** **November 29, 2024**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MONITOR** FTI Consulting Canada Inc. Suite 1610, 520 Fifth Avenue S.W. Calgary, AB T2P 3R7 Deryck Helkaa / Dustin Olver / Brett Wilson Telephone: (403) 454-6031 / (403) 454-6032 / (403) 454-6033 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com dustin.olver@fticonsulting.com brett.wilson@fticonsulting.com **COUNSEL** McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Sean Collins / Walker MacLeod / Pantelis Kyriakakis / Nathan Stewart Telephone: (403) 260-3531 Fax: (403) 260-3501 E-mail: scollins@mccarthy.ca/ wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mcccarthy.ca

SEVENTH REPORT OF THE MONITOR

TABLE OF CONTENTS

INTRODUCTION

1. On February 22, 2024 ("**Initial Filing Date**"), Lynx Air Holdings Corporation ("**Lynx Holdco**") and 1263343 Alberta Inc. dba Lynx Air ("**Lynx Opco**", together with Lynx Holdco, "**Lynx Air**" the "**Applicants**" or the "**Company**"), sought and obtained an initial order ("**Initial Order**") by the Court of King's Bench of Alberta ("**Court**") to commence proceedings ("**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").

2. The Initial Order, among other things, established a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**") of the Applicants in these CCAA Proceedings.

3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the "**ARIO**") which, among other things, provided the following relief:

   (a) declared that the Applicants are companies to which the CCAA applies;

   (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**") and to continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") or their Property;

   (c) extended the Stay of Proceedings, until and including April 15, 2024, (the "**Stay Period**"), concerning all proceedings and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

(d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of $500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");

(e) granted a $500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as security for any obligations and liabilities that they may incur as directors and officers of the Applicants after the commencement of these CCAA Proceedings;

(f) increased the amount available to the Applicants under an interim financing term sheet ("**Term Sheet**") made as of February 21, 2024, with Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**") from approximately $1.0 million (US$750,000) to approximately $5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");

(g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of $1.2 million (the "**KERP Charge**");

(h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and

(i) declared pursuant to section 5(5) of the *Wage Earner Protection Program Act (Canada)*, S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom WEPPA applies as of the date of the Initial Order.

4. As part of these CCAA Proceedings, this Honourable Court has granted various Orders authorizing and approving transactions, in addition to extending the Stay Period from time to time which is currently set to expire on January 31, 2025.

5. On November 25, 2024, on behalf of the cabin crew employees (the "**Cabin Crew Employees**"), the Canadian Union of Public Employees ("**CUPE**") filed and served notices of application returnable on December 4, 2024 (the "**December 4 Application**"), seeking, among other things, the following orders:

   (a) an order that the terminated Cabin Crew Employees who were members of CUPE Local 5558 have a claim for the severance pay, termination pay, and pay in lieu of notice of termination should include an amount representing 16 weeks of additional termination pay in lieu of notice of group termination ("**Group Termination Notice**") under section 212 of the Canada Labour Code, R.S.C. 1985, c. L-2 (the "**CLC**"); and

   (b) a representation order appointing CUPE as representative to the Cabin Crew Employees under Rule 2.16 of the Alberta Rules of the Court, Alta. Reg. 124/2010 (the "**Alberta Rules**") in this proceeding, or in connection with any other proceeding in respect of Lynx Air that may be commenced under the *Bankruptcy and Insolvency Act*, R.S.C 1985, c B-3 (the "**BIA**").

6. Electronic copies of all materials filed in connection with the December 4 Application and other statutory materials are available on the Monitor's website at: http://cfcanada.fticonsulting.com/lynxair/.

PURPOSE

7. The purpose of this seventh report (this "**Report**" or the "**Seventh Report**") is to provide this Honourable Court and the Company's stakeholders with information and the Monitor's comments with respect to the following:

   (a) details of the WEPPA calculation methodology;

   (b) summary of the WEPPA administration timeline;

   (c) the remaining components of the CCAA proceedings; and

   (d) the Monitor's recommendations with respect to the above.

TERMS OF REFERENCE

8. Capitalized terms used but not defined herein have the same meaning ascribed to them in the ARIO, as the context may require.

9. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").

10. Except as described in this Report:

    (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;

(b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and

(c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

11. The Monitor has prepared this Report in connection with the December 4 Application. This Report should not be relied on for other purposes.

12. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the "**Monitor's Counsel**"), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon, by any other person.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

WEPPA CALCULATION METHODOLOGY

14. The Monitor calculated all terminated employees' entitlements to WEPPA, including entitlements for statutory severance and termination pay in accordance with the CLC (the "**WEPP Calculations**"). The WEPP Calculations were based on the following components:

(a) **Unpaid wages and vacation pay:** Information provided by the Company for the period from August 22, 2023 to February 22, 2024 ("**Unpaid Vacation Claim**");

(b) **Termination in lieu of notice:** Pursuant to the CLC, section 230 (1.1), employees with tenure of at least 3 months are entitled to termination notice in lieu equal to the greater of: (i) 2 weeks of pay; or (ii) 1 week of pay per year of service (to a maximum of 8 weeks); and

(c) **Severance:** Pursuant to the CLC, section 235(1), employees with tenure of at least 1 year are entitled severance pay equal to the greater of: (i) 2 days pay x the numbers of years worked; or (ii) 5 days pay,

(collectively, the "**Termination or Severance Claim**").

15. As part of the determination of the WEPP Calculations, the Monitor verified the following:

(a) On February 27, 2024, the Monitor discussed the methodologies applied for the WEPP Calculations with a WEPP representative who verified the methodology for calculating the Termination or Severance Claim amounts for eligible employees. Furthermore, on February 29, 2024, the WEPP representative provided additional guidance on the definition of "eligible wages" (as defined by WEPPA). A copy of WEPPA's definition of "eligible wages" is attached as Appendix "**A**"; and

(b) On March 12, 2024, a Labour Affairs Officer from Employment and Social Development Canada confirmed the Monitors view that the Group Termination Notice does not apply in Lynx's circumstances for reasons including there is no express entitlement to pay in lieu of notice of group termination (in contrast to individual termination notice).

16. Detailed discussion of WEPPA and the Monitor's consideration of the Group Termination Notice can be found in the Monitor's Second Report.

WEPPA TIMELINE

17. On or about February 25, 2024, the Company served termination notices to all the Cabin Crew Employees. Along with such notices, Cabin Crew Employees were provided directions on how to obtain their record of employment from Service Canada and were made aware of WEPPA.

18. Based on the books and records of the Company, the Monitor calculated approximately $1.5 million was owed to eligible employees for their Unpaid Vacation Claims, of which $314,000

were Cabin Crew Employee claims. Additionally, approximately $1.5 million was calculated as the amount owing for Termination or Severance Claims, of which $364,000 were Cabin Crew Employee claims. Under WEPPA, Unpaid Vacation Claims and Termination or Severance Claims are considered "eligible wages" and are included in the employees WEPP claim (the "**WEPP Claims**").

19. As part of the Monitor's administration of the employee claims, the following steps were taken with respect to the WEPP Claims:

(a) on March 13, 2024, the Monitor provided eligible employees (as defined under WEPPA) with an instruction letter (the "**WEPP Instruction Letter**") setting out their eligible Unpaid Vacation Claim and Termination or Severance Claim. The WEPP Instruction Letter included an explanation of the application and dispute process as well as instructions on how to submit their WEPP Claim to the Monitor and Service Canada;

(b) the Monitor sent 490 WEPP Instruction Letters to eligible employees with their specific entitlements under WEPPA. 456 employees submitted a proof of claim ("**WEPP Proof of Claim**") to the Monitor in accordance with the WEPP Instruction;

(c) as summarized in the table below, 222 Cabin Crew Employees received a copy of the WEPP Instruction Letter of which 201 (representing 90.5% of Cabin Crew Employees) submitted their WEPP Proof of Claim to the Monitor for review and submitted such WEPP Proofs of Claim to Service Canada for approval;

Proof of Claims				
	Office	**Pilot**	**Cabin**	**Total**
Notices Sent	123	145	222	490
POCs received and processed by Monitor	116	139	201	456
% received and processed by Monitor	*94.3%*	*95.9%*	*90.5%*	*93.1%*
Claims approved by Service Canada	**115**	**139**	**201**	**455**

(d) all of the Cabin Crew Employees who submitted WEPP Proofs of Claim were approved by Service Canada;

(e) the Monitor fielded numerous calls and emails from eligible employees with questions concerning their WEPP Claims or calculations; and

(f) in instances where an employee disputed their WEPP Claim, the Monitor provided them with the supporting information (obtained from the books and records of the Company) used to calculate their WEPP Claim. In cases where the employee could provide sufficient evidence to support their disputed amount, the Monitor worked with Service Canada to file an amended WEPP Proof of Claim.

20. As shown in the table above, there were 21 Cabin Crew Employees who did not complete a WEPP Proof of Claim. Additional reminder notices were sent to these employees with a response deadline of April 5, 2024, however as of the date of this Report no responses have not been received.

21. On June 12, 2024, the Monitor received a statement from the Canada Revenue Agency outlining their subrogated super-priority claim (the "**WEPP Priority Claim**") to be approximately $727,000. The Monitor estimates the total WEPP Priority Claim to be approximately $786,000 based on the total eligible WEPP Proof of Claims. As of the date of this Report, the WEPP Priority Claim has not been paid to Service Canada. However, the Monitor expects to make payment for the WEPP Priority Claim by December 6, 2024.

WEPPA CALCULATION DISPUTE

22. As previously reported by the Monitor, the following two letters were received from Koskie Minsky LLP ("**Koskie Minsky**") in its capacity as counsel to CUPE as the bargaining agent for and on behalf of former Cabin Crew Employees:

(a) on April 2, 2024, Koskie Minsky disagreed with the calculation of the termination and severance pay on the basis that the WEPPA Claim did not include pay in lieu of Group Termination Notice and that it intended to bring a motion before the Court for an order lifting the Stay of Proceedings. A copy of the letter is attached as Appendix "**B**"; and

(b) on April 19, 2024, Koskie Minsky noted that it continued to disagree with the calculation of the termination and severance pay and that it would respond to the Monitor further. A copy of the letter is attached as Appendix "**C**".

(together, the "**CUPE Dispute Letters**")

23. As previously noted by the Monitor, the positions articulated in the CUPE Dispute Letters do not impact the quantum of the WEPP Priority Claim inasmuch as severance and termination pay are not included in the definition of 'compensation' under 81.4(4) of the BIA.

24. On November 25, 2024, CUPE filed their application materials for the December 4 Application therein noting their continued dispute on the Monitor's calculation methodology, as it relates to the Cabin Crew Employees' severance pay claim which states their position that it should include the Group Termination Notice under section 212 of the CLC.

25. It is the Monitor's understanding that CUPE does not disagree with the Cabin Crew Employees' entitlement calculation of the individual Termination or Severance Clam under the CLC, but seek to add an amount of damages, herein referred as the "Group Termination Damages Claim", to the WEPPA Calculations in lieu of the Group Termination Notice.

26. The Monitor remains of the view that the Group Termination Damages Claim is not a claim for statutory termination pay or statutory severance pay, but a claim for damages in lieu of notice of a group termination. As such, the Group Termination Damages Claim is not a claim for "eligible wages" under WEPPA, and no amounts should be added to the WEPPA Calculations.

27. CUPE's application materials for the December 4 Application are seeking an order authorizing the Monitor to provide CUPE all relevant employee data in respect of the employment and the termination of the Cabin Crew Employees, including those pertaining to pension, benefit, and severance and termination payments and arrangements for group health, life insurance, and including where available, up-to-date financial information regarding these arrangements.

28. On March 15, 2024, Koskie Minsky requested certain employment data related to the Cabin Crew Employees, including the start date, pay rate and hours worked, so that CUPE could complete its own calculations for entitlement under WEPPA. A copy of the letter is attached as Appendix "**D**".

29. On March 25, 2024, counsel for the Monitor advised Koskie Minsky that the requested information could not be disclosed without Lynx Air's consent. A copy of the letter is attached as Appendix "**E**".

30. Lynx Air subsequently provided its consent to the release of the WEPPA Calculations to CUPE.

31. On April 16, 2024, counsel for the Monitor provided Koskie Minsky with a letter (the "**April 16 Letter**") including the requested information relating to the Cabin Crew Employees, including the Cabin Crew Employees': (i) names; (ii) province of employment; (iii) start date; (iv) termination date; (v) hourly rate; (vi) annual salary; (vii) unpaid wages; (viii) unpaid vacation; (ix) statutory termination pay; (x) statutory severance pay; (xi) WEPPA eligibility date; and, (xii) total eligible claim under WEPPA.

32. The Monitor is not aware of any further claims owing to the Cabin Crew Employees aside from the objections raised CUPE.

REMAINING CCAA ADMINISTRATION

33. As of the date of this Report, the liquidation of Lynx Air's Property is complete.

34. As previously described in the Sixth Monitor's Report dated September 9, 2024 (the "**Sixth Report**"), the Greater Toronto Airport Authority ("**GTAA**") and the Vancouver Airport Authority, Calgary Airport Authority, Edmonton Regional Airport Authority, Winnipeg Airport Authority Inc. and Halifax International Airport Authority (collectively, the "**Airport Authorities**") asserted trust claims for unpaid Airport Improvement Fees ("**AIF**") pursuant to various agreements between the Lynx Opco and the Airport Authorities (the "**AIF Trust Claims**").

35. This Honourable Court heard an application on June 24, 2024, for determination of AIF Trust Claims matter. On August 26, 2024, the Honourable Justice B.E. Romaine released reasons for a decision that held that the GTAA had a valid trust claim and the Airport Authorities do not have a valid trust claim for their respective AIF Trust Claims. On November 22, 2024, the Airport Authorities sought and obtained leave to appeal Justice Romaine's decision.

36. As also described in the Sixth Report, the U.S. Transportation Security Administration, U.S. Customs and Border Protection, U.S. Department of Agriculture and U.S. Department of Homeland Security, Customs and Boarder Protection (the "**US Government**") asserted that the US Government has trust claims for unpaid Immigration User Fees and Customs User Fees (the "**US Claims**"). The Monitor, the Monitor's Counsel, and counsel to the US Government continue to evaluate the US Claims (approximately USD $1.077 million) to determine if they represent a valid trust claim and are enforceable against the Company's cash on hand.

37. Upon determination of the aforementioned matters, the Monitor will seek distribution of the amounts held back for the Airport Authorities AIF Trust Claims and US Claims to either the Airport Authorities, the US Government, or to Indigo, on account of the terms of the note purchase agreement dated December 20, 2018 (the "**Initial Notes**"), and the five bridge note purchase

agreements, as amended (the "**Bridge Notes**" and collectively with the Initial Notes, the "**Secured Obligations**"), as applicable.

38. The Monitor continues to administer the D&O Claims Process as one of the D&O Claims pertains to the AIF which requires resolution of the appeal to the decision.

39. As of the date of this Report, the Company currently has three consultants retained to assist with the administration of the CCAA Proceedings and the wind-down of the operations.

40. The Monitor continues to provide communication to employees and other stakeholders on the CCAA Proceedings and further post materials of the administration to the Monitor's website.

41. As previously described in the Third Monitor's Report dated April 11, 2024, the secured obligations of Lynx Air far exceed the amount of funds received through the Court-approved sales and investment solicitation process and related transactions.

42. Indigo is Lynx Air's senior secured creditor and has incurred a shortfall on its secured debt of approximately $58 million.

43. As a result, there will not be any distributions to unsecured creditors, nor will there be a claims process to determine payment of claims subordinate to Indigo's secured claim.

RECOMMENDATIONS

44. Based on the foregoing, the Monitor is of the view that the relief sought by CUPE is unnecessary in the circumstances, as:

    (a) the appeal procedure of the Cabin Crew Employees' entitlements under WEPPA is administered by Service Canada. Any dispute regarding the determination of the Cabin Crew Employees' eligibility for payments under WEPPA must be addressed with Service Canada through the WEPPA appeal procedure; and

(b) as the Group Termination Damages Claim is the only dispute remaining to be resolved with respect to the Cabin Crew Employees and will be addressed at the December 4 Application, the appointment of CUPE as representative counsel neither save expenses for, nor provide additional efficiencies or benefits to, the proceedings.

All of which is respectfully submitted this 29th day of November 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as Monitor of Lynx Air and not in its personal or corporate capacity.

Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Name: Dustin Olver, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Appendix "A" – "eligible wages" as defined by WEPPA

2 (1) The following definitions apply in this Act.

eligible wages means

(a) wages other than termination pay and severance pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer,

(ii) the period beginning on the day that is six months before one of the following days and ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer:

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced, and

(iii) the period beginning on the day that is six months before one of the following days and ending on the day on which a court makes a determination under subsection 5(5):

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced; and

(b) termination pay and severance pay that relate to employment that ended

(i) during the period referred to in paragraph (a), or

(ii) during the period beginning on the day after the day on which the period referred to in paragraph (a) ends and ending on the day on which the trustee is discharged or the receiver completes their duties, as the case may be. (*salaire admissible*)

Appendix “B” – Letter from Koskie Minsky LLP dated April 2, 2024

KOSKIE MINSKY
JUSTICE MATTERS

April 2, 2024

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

McCarthy Tétrault LLP
Suite 4000, 421-7th Avenue S. W.
Calgary, Alberta T2P 4K9

Attention: Justin Turc

Dear Mr. Turc:

Re: ***In the Matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air,*** **Court File No. 2401-02664**

CUPE Cabin Crew Members Bargaining Unit
Undercalculation of Cabin Crew Severance Amounts for WEPPA Process
Our File No. 16407-240298

We have reviewed your letter dated March 25, 2024 with our clients.

We do not agree with your proposition that the financial liquidity crisis of Lynx Air prior to it seeking protection from its creditors under the CCAA and the sudden mass termination of its 246 cabin crew employees without prior notice nor pay in lieu of notice, disentitle the employees to a claim in respect of mass termination severance under section 212 of the Canada Labour Code, R.S.C. 1985, c. L-2 (the "*Code*"), and thus a claim in respect of that amount under the WEPPA program.

We maintain the Monitor's calculations of each employees' severance claim is too low, and for some employees, the amount of their claims appear to be even below their entitlement under common law notice, which would still apply even if the mass termination provision under the *Code* are ultimately held not to.

The Monitor's exclusion of the mass termination provisions as well as an amount based on common law notice has the effect of depriving the terminated employees of their full entitlements under WEPPA, which the employees urgently need in the circumstances of their job losses.

We also disagree with your statement that the employment data of the Union members is not required to be provided to CUPE to discharge its duty of representation of its members. As we explained in our previous correspondence dated March 12, 2024, cases have held that privacy

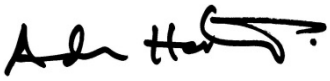
rights of the Union members are partially superseded by the rights of their Union, who those employees chose as their representative. CUPE is entitled to the employment and compensation data of its members, which CUPE requires so it can verify each of their members' severance calculations and ensure that they receive their full entitlement under WEPPA and for any future claims process. The refusal to provide the Union member data is obstructing the Union in its representation of its members.

Given the impasse with the Monitor on the above issues, our client wishes to bring the matter of: (i) the request of the members' employment and compensation data; and (ii) the applicable law to apply to the employees' mass termination entitlements, before the Canada Industrial Relations Board (the regulatory body that administers the *Code*; the "CIRB") for a determination.

We expect that this will require bringing a motion before the Court for an order lifting the CCAA stay of proceedings to facilitate the CIRB hearing. We have contacted the Court office who have advised that the Court has availability over the next few weeks for the lift stay motion.

Please advise that you will not oppose the lift stay motion and if so, the motion can proceed unopposed and efficiently. We will coordinate with you to schedule the hearing before the CIRB.

Yours truly,
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Clients
Abir Shamim, *Koskie Minsky LLP*

Appendix "C" – Letter from Koskie Minsky LLP dated April 19, 2024

KOSKIE MINSKY

JUSTICE MATTERS

April 19, 2024

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

McCarthy Tétrault LLP
Suite 4000, 421-7th Avenue S. W.
Calgary, Alberta
T2P 4K9

Attention: Justin Turc

Dear Mr. Turc:

Re: ***In the Matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air,*** **Court File No. 2401-02664**

CUPE Cabin Crew Members Bargaining Unit
Undercalculation of Cabin Crew Severance Amounts for WEPPA Process
Our File No. 16407-240298

We acknowledge receipt of your letter dated April 16, 2024 enclosing the Monitor's claim calculations that it made for the CUPE cabin crew employees for the purpose of the WEPPA process, and which do not include 16 weeks pay *in lieu* of group termination under section 212 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the "*Code*").

The Monitor should not consider the issue of the exclusion of 16 weeks pay *in lieu* of group termination from the terminated employees' claims for WEPPA (nor a future claims process) closed.

We have previously provided you with sufficient legal authority that holds that pay *in lieu* of group termination should be included as a claim of the terminated employees against Lynx Air based on Lynx Air's termination of their employment without any prior notice.

We are also puzzled by your comment that common law reasonable notice is not included in the Monitor's claim it made for the employees' WEPPA applications, as that is also part of an employees' severance entitlement, and there is no exclusion for common law notice in the WEPPA Act nor the CCAA. If you have authority to exclude common law notice from the employees' claim for WEPPA, please provide it to us.

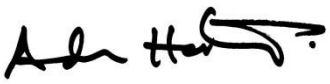
As we pointed out in previous correspondence, the exclusion of 16 weeks pay *in lieu* of group termination (as well as common law notice) results in an undercalculation of the employees' severance claims and in turn an underpayment of WEPPA to each of them. This adds to the hardship they are incurring caused by the loss of their jobs.

We have looked into the jurisdiction of the CIRB to determine the applicability of 16 weeks pay *in lieu* of group termination for the CUPE cabin crew employees in this case, and in light of the novel facts of this case that the Union was certified as the employees' bargaining agent, but no collective agreement was concluded prior to Lynx seeking CCAA protection and terminating the majority of its employees.

We will discuss with our client the position you convey in your letter that the Monitor will oppose a lift stay motion to proceed before the CIRB, and that the issue should instead be brought before the CCAA court for a determination. We will be back in touch with you shortly.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Clients
Abir Shamim, *Koskie Minsky LLP*

Appendix "D" – Letter from Koskie Minsky LLP dated March 15, 2024

KOSKIE MINSKY
JUSTICE MATTERS

March 15, 2024

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

McCarthy Tétrault LLP
Suite 4000, 421-7th Avenue S. W.
Calgary, Alberta T2P 4K9

Attention: Justin Turc
Dear Mr. Turc:

Re: ***In the Matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air,*** **Court File No. 2401-02664**
CUPE Cabin Crew Members Bargaining Unit
Undercalculation of Cabin Crew Severance Amounts for WEPPA Process
Our File No. 16407-240298

As you know, we are counsel to CUPE, the union that is the bargaining agent for the Lynx Air cabin crew employees under the *Canada Labour Code,* R.S.C. 1985, c. L-2 (the "Code").

The unionized Lynx Air cabin crew number approximately 246 individuals who were terminated en masse by the company on or about February 22, 2024, after Lynx Air applied for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 ("CCAA"). Lynx is not restructuring and is liquidating while under CCAA protection.

We write further to your letter of March 13, 2024. In that letter, you informed us that the Monitor will be sending WEPPA notices with the Monitor's calculations of amounts owing to all eligible cabin crew employees without including a claim for 16 weeks notice based on the mass termination notice requirements on employers under section 212 of the Code. We had previously provided the legal basis to include a mass termination claim for the employees in our email of March 12, 2024, and in respect of which WEPPA would make a payment to them.

The exclusion by the Monitor of the 16 weeks mass termination notice in the claim it prepared in respect of the cabin crew members deprives those employees of the full amount they can receive from WEPPA, which for 2024 is a maximum of $8507.66 per employee. Given the sudden loss of their jobs without any severance pay, the unknown amount and timing of a distribution to creditors from the estate of Lynx Air, if any, the employees urgently require the assistance of a WEPPA payment in the highest amount possible.

Over the past ten days, we have tried to work cooperatively with the Monitor and its counsel to ensure that the terminated employees' severance calculations are accurately calculated and that they can obtain the maximum amount they are eligible for under WEPPA.

In our email to the Monitor of March 5, 2024, we requested a copy of the Monitor's draft WEPPA calculations for each employee to ensure they were accurate and so that later corrections and delays could be avoided. As stated in our email, this was done to confirm WEPPA payments for the employees would be processed "as soon as possible." We restated this and our request for the WEPPA calculations in our call with you and the Monitor on March 7, 2024. We have not received a response to this request.

1. **The exclusion of the *Canada Labour Code* mass termination notice is incorrect and shortchanges the employees**

On March 11, 2024, the Monitor sent us an outline of the methodology it planned to apply to calculate the WEPPA claims, and only provided us 24 hours to review. Despite the very short turnaround, we identified the omission of the mass termination provision under section 212 of the Code and again, we requested a copy of the WEPPA calculations for each employee. You responded that "[t]here is no authority for the inclusion of pay in lieu of notice of the group termination in the context of a WEPPA claim or CCAA proceedings." We disagreed and in our email of March 12, 2024, we provided legal authority to include the mass termination notice for the employees. You then responded that a claim for mass termination would not apply "to the present circumstances of the termination being necessitated by the cessation of operations occasioned by a liquidity crisis and the ensuing commencement of the CCAA proceedings."

That position is incorrect. As we expect you are aware, in *Rizzo & Rizzo Shoes Ltd., (Re)*, [1998] 1 SCR 27, the Supreme Court of Canada held that terminated employees have a right to claim termination pay in lieu of notice and severance pay where their termination resulted from the insolvency of their employer:

> [28] The trial judge properly noted that, **if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off**.
>
> …
>
> [40] As I see the matter, when the express words of ss. 40 and 40a of the *ESA* are examined in their entire context, **there is ample support for the conclusion that the words "terminated by the employer" must be interpreted to include termination resulting from the bankruptcy of the employer.** Using the broad and generous approach to interpretation appropriate for benefits-conferring legislation, I believe that these words can reasonably bear that construction (see *R. v. Z. (D.A.)*, 1992 CanLII 28 (SCC), [1992] 2 S.C.R. 1025). I also note that the intention of the Legislature as evidenced in s. 2(3) of the *ESAA*, clearly favours this interpretation. **Further, in my opinion, to deny employees the right to claim *ESA* termination and severance pay where their termination**

> **has resulted from their employer's bankruptcy, would be inconsistent with the purpose of the termination and severance pay provisions and would undermine the object of the *ESA*, namely, to protect the interests of as many employees as possible.**
>
> [41] In my view, **the impetus behind the termination of employment has no bearing** upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Further, I believe that such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Therefore, I conclude that termination as a result of an employer's bankruptcy does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *BA* for termination and severance pay in accordance with ss. 40 and 40a of the *ESA*. Because of this conclusion, I do not find it necessary to address the alternative finding of the trial judge as to the applicability of s. 7(5) of the *ESA*.

In that case, approximately 873 employees were terminated[1] and the Supreme Court considered the applicable mass termination provision and held it to apply:

> [18] The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40a of the *ESA*, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40a(1a) begins with the words, "**Where . . . fifty or more employees have their employment terminated by an employer. . .** ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

The Supreme Court held that employees who are terminated during the bankruptcy of their employer have the same claim for termination pay in lieu of notice and severance pay under mass termination provisions as any other employee would have who is terminated as a result of the actions of an employer.

Accordingly, the terminated employees of Lynx Air have a claim for 16 weeks termination pay in lieu of notice as per the mass termination provision under section 212 of the Code. The Monitor's

---

[1] *Rizzo and Rizzo Shoes Ltd., (Re),* [1991] OJ No 2158 at para 11.

exclusion of this mass termination provision is an error and results in an undercalculation of the employees' claim for WEPPA.

Please immediately correct the employees' claim amounts to include 16 weeks mass termination notice or we will seek instructions to bring this before the court for resolution.

2. Union's request for its members' employment data

Your letter of March 13, 2024 does not respond to our ongoing request for the union members' employment data so that the union can verify their severance calculations, as set out in our emails of March 5 and March 12, 2024. We provided the legal support for that request in our email of March 12, 2024.

We are informed that CUPE sent the same request to Lynx Air on February 15, 2024, one week after the union was certified (with the consent of Lynx) as a bargaining agent for the cabin crew members. This request came in before the CCAA filing. Although the receipt of that email was acknowledged by Jim Sullivan of Lynx Air, the information was not provided to the union.

Again, please provide the full employment data of the members, including their start date, pay rate and hours worked.

3. Other employee claim calculation errors

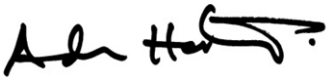
Our client is now receiving calls and emails from their members that the Monitor/company has erred by not including the vacation pay owing to them in the employees' claim calculations. The terminated employees have claims for their unused vacation days in addition to severance, which was not paid by Lynx.

Further, we have been informed that the company has failed to include credits for members' reserve shifts in their determination of total hours worked. This contradicts article 18 of the Lynx Air Cabin and Crew Member Work Rules Handbook and underreports the number of each members' insurable hours in their Record of Employment ("ROE").

Please also correct these omissions.

We are available to discuss.

Yours truly,
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Clients
Abir Shamim, *Koskie Minsky LLP*

Appendix “E” – Letter to Koskie Minsky LLP from the Monitor’s Counsel dated March 25, 2024

McCarthy Tétrault LLP
Suite 4000
421-7th Avenue S.W.
Calgary AB T2P 4K9
Canada
Tel: 403-260-3500
Fax: 403-260-3501

Justin Turc
Direct Line: (403) 260-3565
Email: jturc@mccarthy.ca

Assistant: Erin Bell
Direct Line: (403) 260-3660
Email: ebell@mccarthy.ca

March 25, 2024

Via Email (ahatnay@kmlaw.ca)

Koskie Minsky LLP
20 Queen Street West
Suite 900
Toronto, ON M5H 3R3

Attention: Andrew J. Hatnay

Dear Mr. Hatnay:

Re: Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
Court File No. 2401-02664
CUPE Cabin Crew Members Bargaining Unit

Thank you for your letter of March 15, 2024.

In the absence of any authority (of which our understanding is that there are none) arising under the CCAA that provides for pay in lieu of group termination under WEPPA in the context of CCAA proceedings, the Monitor respectfully considers the matter of pay in lieu of group termination closed. As previously highlighted, unlike statutory severance pay and individual notice of termination under the *Canada Labour Code*, there is no express right in a termination occasioned by an unplanned liquidity crisis, urgent application for an initial order under the CCAA followed by an immediate cessation of operations, for employees to receive payment in lieu of notice of group termination.

It is not clear that CUPE requires the requested information to discharge its duty of representation. Further, and in any event, Lynx Air has not authorized the disclosure of such information to CUPE. In this respect, we remark that pursuant to paragraph 28 of the March 1, 2024 Order by the Honourable Justice Whitling, the Monitor has been directed not to provide information which Lynx Air has classified as confidential to any creditors (which would include employees) unless otherwise directed by the Court.

While the Monitor understands that some employees have expressed concern with respect to the calculation of vacation pay, most concerns appear to have been resolved after clarifying that vacation pay is only eligible under WEPPA as it relates to the eligible period, being the 6 month period before the date of the initial order. If CUPE is aware of any further concerns respecting vacation pay, please provide particulars for the Monitor's consideration.

Finally, the Monitor has brought CUPE's concerns with respect to Records of Employment to Lynx Air's attention. Lynx Air indicates that it will respond to further enquiries that CUPE may have in this regard.

We trust the foregoing addresses all matters raised in your letter of March 15, 2024.

Yours truly,

McCarthy Tétrault LLP

Justin Turc
Partner