COURT FILE NUMBER:	2301 16114
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, as amended
	AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF MANTLE MATERIALS GROUP, LTD. and RLF CANADA HOLDINGS LTD.
APPLICANT	TRAVELERS CAPITAL CORP.
RESPONDENT	MANTLE MATERIALS GROUP, LTD.
DOCUMENT:	**BOOK OF AUTHORITIES IN SUPPORT OF APPLICATION TO ENHANCE MONITOR'S POWERS**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP 2100, 222 - 3rd Ave SW Calgary, AB T2P 0B4 Telephone: 403.693.5420/780-969-3501 Fax: 403.508.4349 Attention: Ryan Zahara/Molly McIntosh File: 0160774.00002

LIST OF AUTHORITIES

Legislation

1. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
2. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3
3. *Environmental Protection and Enhancement Act*, RSA 2000, c E-12

Case Law

4. *Re Mantle Materials Group Ltd*, 2023 ABKB 488
5. *Mantle Materials Group Ltd v Travelers Capital Corp*, 2023 ABCA 302.
6. *9354-9186 Callidus Corp*, 2020 SCC 10
7. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
8. *Arrangement relative a 9323-7055 Quebec Inc (Aquadis International Inc.)*, 2020 QCCA 659
9. *Ernst & Young Inc v Essar Global Fund Limited*, 2017 ONCA 1014'
10. *Walter Energy Canada Holdings Inc., Re*, 2016 BCSC 1746

Court Orders

11. In the *CCAA* proceedings of *Groupe Selection Inc., et al*, 2022 QCCS, Court File No. 500-11-061657-223:
    a. ement Sur Demandes Pour L'Emission d'une Ordonnance Initiale et d'une Ordonnance Initiale Amendee et Reformulee (dated November 21, 2022) (in French);
    b. Judgment on Applications for an Initial Order and an Amended and Restated Initial Order (dated November 21, 2022). (Unofficial Translation)
12. In the *CCAA* proceedings of *Re Oilsands Quest Inc,* 2012 ABQB, Court File No. 1101-16110, Order re Expansion of Monitor's Powers (dated June 27, 2012);
13. In the *CCAA* proceedings of *Re Poseidon Concepts Corp*, 2013 ABQB, Court File No. 1301-04364, Order re: Expansion of Monitor's Powers (dated September 30, 2013);
14. In the *CCAA* proceedings of *Re Sanjel Group of Companies,* 2016 ABQB, Court File No. 1601-03143, Transition Order (dated September 28, 2016).
15. The Order of Justice Eidsvik, dated May 14, 2021 in the JMB/216 CCAA Proceeding.
16. The Amended and Restated CCAA Initial Order of Justice Eidsvik, dated May 11, 2020.
17. In the Receivership of Bow River Energy Ltd, the Receivership Order, dated October 29, 2020;
18. in the Receivership of Everest Canadian Resources Corp., the Receivership Order, dated April 6, 2023;
19. in the Receivership of Sanling Energy Ltd., the Receivership Order, dated April 23, 2021.

Court of King's Bench of Alberta

Citation: Re Mantle Materials Group, Ltd, 2023 ABKB 488

Date: 20230828
Docket: 2301 10358
Registry: Calgary

In the Matter of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as Amended

And in the Matter of the Notice of Intention to Make a Proposal of Mantle Materials Group, Ltd.

Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby

Introduction

[1] Mantle Materials Group, Ltd. applied for an extension of time to make a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 s 50.4(8), approval of various charges on the bankrupt estate ("Restructuring Charges") including the priority of those charges, and approval of the payment of certain pre-filing debts to creditors whose support is required to perform environmental reclamation work that will be integral to the pending proposal. The application was granted with a temporary proviso with respect to the priority of the Restructuring Charges over certain equipment to ensure that Travelers Capital Corp, a secured lender, was not prejudiced prior to the release of these Reasons.

[2] Mantle advises that the proposal that it intends to make will not allow payment to any creditors before Mantle has satisfied its end-of-life obligations stemming from Environmental Protection Orders issued by Alberta Environment and Protected Areas ("AEPA" formerly Alberta Environment and Parks) with respect to several gravel producing properties. Mantle submits that this is what is required by ***Orphan Well Association v Grant Thornton Ltd***, 2019 SCC 5 ("*Redwater*") because the environmental remediation obligation is an obligation of the company that must be satisfied prior to distributions to creditors. AEPA supports Mantle's position.

[3] Travelers asserts that it has priority with respect to security in certain equipment and Travelers' ability to realize on its security should not be postponed until after the remediation work has been completed to AEPA's satisfaction and subordinated to the Restructuring Charges. Travelers offers a different interpretation of ***Redwater***. Travelers contends that ***Redwater*** held that an end-of-life environmental obligation need only be satisfied using assets encumbered by or related to the end-of-life obligation. Travelers submits the Court should find that a creditor with security over assets unrelated to assets burdened with the environmental remediation obligation may realize on such security without delay.

Background

[4] Mantle operates 14 gravel pits on public land pursuant to surface material leases issued by AEPA. Mantle also operates 10 gravel pits on private land pursuant to royalty agreements with the landowners.

[5] Mantle acquired its gravel-producing assets in 2021 in the *Companies' Creditors Arrangement Act* proceedings for JMB Crushing Systems Inc. and associated companies.[1] Financial liabilities of JMB were compromised and undesired assets were transferred to a residual company pursuant to a Reverse Vesting Order. The desired assets remained in JMB and its subsidiary 2161889 Alberta Ltd, both of which then amalgamated with Mantle on May 1, 2021.

[6] Following the commencement of the JMB CCAA proceedings, AEPA issued Environmental Protection Orders ("EPOs") to JMB and 216 in respect of some of the gravel-producing properties.

[7] EPOs are issued pursuant to AEPA's authority under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 s 140. An AEPA inspector is permitted to "issue an environmental protection order regarding conservation and reclamation to an operator directing the performance of any work or the suspension of any work if in the inspector's opinion the performance or suspension of the work is necessary in order to conserve and reclaim the land."

[8] An EPO issued by AEPA in respect of end-of-life reclamation is similar in nature to an Abandonment and Reclamation Order ("ARO") issued by the Alberta Energy Regulator ("AER"). Indeed, all the parties in the present case proceeded on the basis that an EPO issued by AEPA had the same legal effect and should be subject to like treatment in insolvency proceedings as an ARO issued by the AER.

[9] The EPOs issued by AEPA to JMB address end-of-life reclamation steps to be taken at various gravel-producing or formerly gravel-producing assets operated by JMB on both public and private land.

[10] The original Reverse Vesting Order presented to the Court in the JMB CCAA proceedings sought to absolve the directors of JMB and 216 of responsibility for the EPOs and sought to usurp AEPA's regulatory role by putting the Court in a supervisory role with respect to

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[1] For a discussion of the restructuring of JMB and the use of a reverse vesting order in that case, see Candace Formosa, "Dampening the Effect of *Redwater* Through a Reverse Vesting Order," in Jill Corrani & D. Blair Nixon, eds., *Annual Review of Insolvency Law,* (Toronto: Thomson Reuters, 2021) 697.

the performance of reclamation work by Mantle and compliance with the EPOs. AEPA objected to the original proposed Reverse Vesting Order.

[11] As a result of AEPA's objections, the Court approved a revised Reverse Vesting Order that provided that the order did not affect the liability of JMB, 216, or the directors of those companies for "Compliance Issues" or performing "Reclamation Obligations" in respect of the various gravel-producing properties. Mantle accordingly remained liable for the EPOs issued with respect to both the properties acquired in the amalgamation with JMB and 216 and the properties now possessed by the residual company. Mantle negotiated a plan with AEPA for the reclamation work to be done to satisfy the EPOs.

[12] Following completion of the JMB CCAA proceedings, Mantle entered a loan transaction with Travelers. Travelers loaned Mantle $1,7000,000 for the acquisition of equipment for use in its operations. Mantle granted Travelers a purchase-money security interest (PMSI) over the equipment. The security interest was registered in the Alberta Personal Property Registry. Pursuant to an agreement between Travelers, Mantle, and Fiera Private Debt Fund V LP, which holds a general security interest in all of Mantle's present and after acquired property, Travelers' security interest in the equipment was designated to have first priority. As of July 21, 2023, Mantle owed Travelers just short of $1.1 million.

[13] Mantle experienced operational problems and was burdened with excessive debt inherited from the JMB CCAA proceedings and incurred in the period following the acquisition of the gravel-producing properties. Mantle's difficulties were compounded by the significant reclamation obligations it was required to complete to satisfy the EPOs. On July 14, 2023, Mantle filed a notice of intention to make a proposal under s 50.4 of the BIA.

[14] On August 15, 2023, I granted an extension of the BIA stay period and the time period to permit Mantle to make its proposal. I further approved the creation and priority ranking of various Restructuring Charges, including an Administration Charge, a Directors & Officers Charge, and an Interim Lending Facility Charge. I was satisfied that the participation of lawyers, insolvency professionals, and directors and officers was required for the proposal to succeed. I was further satisfied that the Interim Lending Facility, which is to be primarily used to fund reclamation work, is necessary for the success of the proposal.

[15] Travelers' argued that the Restructuring Charges should not have priority over Travelers' security interest in the equipment and that Travelers should be able to be paid out or realize on its security without delay. Mantle, supported by AEPA, submitted that the Restructuring Charges were necessary to put the proposal into effect and that the main plank of the proposal was the completion of the reclamation work to satisfy the EPOs. Mantle is of the view that the value of the gravel pits that are still active exceeds the amount of the reclamation obligations. Mantle has also posted more than $1 million as security with AEPA which will be returned upon completion of the reclamation obligations to AEPA's satisfaction. Mantle submits that Travelers should not be permitted to realize on its security prior to the completion of the reclamation work because if it were allowed to do so, that would jeopardize Mantle's ability to complete the reclamation work and thereby jeopardize its ability to make a proposal to its creditors.

[16] I granted an Order to allow work on the pending proposal, including reclamation work, to get underway while preserving Travelers' position pending these Reasons. The Order provided, in part, as follows:

> The Charges shall constitute a security and charge on the Property and, with the exception of the security interests in favour of Travelers registered in the Alberta Property Registry as base registration number 21100725361 (the "**Travelers' Security Interests**"), such Charges shall rank in priority to all other security interests, trusts, liens, charges, deemed trusts, encumbrances and claims of secured creditors, statutory or otherwise in favour of any person, including liens and trusts created by federal and provincial legislation (collectively, the "**Encumbrances**"), provided, however, that the relative priority of Charges and the Travelers' Security Interests is subject to further order of the Court....

Redwater, Manitok, Trident,* and *Stare Decisis

[17] Mantle and AEPA submit that three decisions dictate the outcome of this case: ***Redwater***; ***Manitok Energy Inc (Re)***, 2022 ABCA 117; and ***Orphan Well Association v Trident Exploration Corp***, 2022 ABKB 839. These decisions, they say, stand for the principle that end-of-life environmental obligations must be satisfied before any creditors may recover and that the whole estate of the insolvent entity is to be used to satisfy such end-of-life environmental obligations. This rule leaves no room for those with security in assets unrelated to the environmental condition or damage to realize on that security until end-of-life obligations have been satisfied using, if necessary, the unrelated assets in which they have security.

[18] Travelers submits that Mantle and AEPA are wrong that ***Redwater*** and ***Manitok*** are controlling and that instead the present case is one of "first instance." ***Redwater*** and ***Manitok*** indicate that there is an exception to the rule posited by Mantle and AEPA for assets unrelated to the environmental condition or damage and that it is for this Court to give that exception shape. Travelers, citing ***R v Comeau***, 2018 SCC 15 and ***R v Sullivan***, 2022 SCC 19, further asserts that ***Trident*** at para 66-67 is inconsistent with ***Redwater*** and ***Manitok*** and "violates the doctrine of vertical *stare decisis*...." ***Trident***, Travelers argues, should not be followed because of its conflict with ***Redwater*** and ***Manitok***.

[19] Rather than discussing a basic concept like *stare decisis* in Reasons, I normally just ask what the relevant cases and statutes say the law is and then apply the law to the facts of the case before me. Travelers, however, has raised the issue of *stare decisis* and provided me with some authorities, making it clear that they attach some importance to it.

[20] As a judge of a court of first instance, the principle of vertical *stare decisis* provides that I am bound to follow the *ratio decidendi* of decisions of higher courts. The inimitable Master Funduk explained: "The judicial pecking order does not permit little peckers to overrule big peckers. It is the other way around": ***South Side Woodwork v R.C. Contracting***, 1989 CanLII 3384 (AB KB) at para 53.

[21] The Court held in ***Comeau*** at para 26 "[s]ubject to extraordinary exceptions, a lower court must apply the decisions of higher courts to the facts before it." None of the exceptions apply in the present case. The issue, as will be come clear later in these Reasons, is whether there is a decision that is on point that must be followed or whether the reasons of the Supreme Court of Canada and the Court of Appeal left the question open.

[22] The principle of horizontal *stare decisis* requires that judges of the same Court pay heed to each others' decisions. This is particularly important in the commercial arena where parties

plan their affairs and make significant investment decisions based on the law that emerges from this Court.

[23] Kasirer J, writing for the Court, observed in ***Sullivan*** at para 65 "Horizontal *stare decisis* applies to courts of coordinate jurisdiction within a province.... While not strictly binding in the same way as vertical *stare decisis*, decisions of the same court should be followed as a matter of judicial comity, as well as for the reasons supporting *stare decisis* generally."

[24] Kasirer J explained in ***Sullivan*** at para 75 that a Court should only depart from horizontal *stare decisis* if:

1. The rationale of an earlier decision has been undermined by subsequent appellate decisions;
2. The earlier decision was reached per incuriam ("through carelessness" or "by inadvertence"); or
3. The earlier decision was not fully considered, e.g. taken in exigent circumstances.

[25] Vertical *stare decisis* requires me to determine the *ratio decidendi* of ***Redwater*** and ***Manitok*** while horizontal *stare decisis* demands that I determine the *ratio decidendi* of ***Trident*** with respect to the question before me – whether the whole of a debtor's estate, including unrelated assets, must be used to satisfy end-of-life environmental obligations prior to any distribution to creditors.

[26] Justices Côté, Brown, and Rowe writing for themselves and Wagner CJC in dissent in ***R v Kirkpatrick***, 2022 SCC 33 at para 127 explained what the *ratio decidendi* of a decision is:

> The *ratio decidendi* of a decision is a statement of law, not facts, and "[q]uestions of law forming part of the *ratio* . . . of a decision are binding . . . as a matter of *stare decisis.*" A question of law cannot, therefore, be confused with the various factual matrices from which that question of law might arise [citations omitted].

[27] The *ratio decidendi* of a case can be difficult to separate from *obiter dictum*, which is an expression of opinion that is not essential to a decision. Binnie J explained in ***R v Henry***, 2005 SCC 76 at para 52: "the submissions of the attorneys general presuppose a strict and tidy demarcation between the narrow *ratio decidendi* of a case, which is binding, and *obiter*, which they say may safely be ignored. I believe that this supposed dichotomy is an oversimplification of how the common law develops."

[28] The discussion that follows shows that the issue in the present case is not one of distinguishing between *ratio decidendi* and *obiter dictum*; rather, it is to what extent the Court is bound by what ***Redwater*** and ***Manitok*** imply or, perhaps more accurately, what the parties infer from those decisions. With ***Trident***, the question is whether the *ratio decidendi*, which is clear, applies on the facts of the present case.

[29] What does *Redwater* say about environmental obligations and unrelated assets? Wagner CJC, writing for the majority, pointed out that Redwater's environmental liabilities were not required to be satisfied with unrelated assets. He held at para 159:

> it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, recognizing that the Abandonment Orders and LMR requirements are not provable claims in this case does not interfere with the aims of the *BIA* — rather, it facilitates them [emphasis added].

[30] Travelers submits that Wagner CJC chose his words carefully and that the only plausible inference from those words is that unrelated assets cannot be conscripted to satisfy end-of-life environmental obligations. Though he may have chosen his words carefully in the sense that he did not want to foreclose a scenario where assets were so unrelated to an environmental obligation that they should not be called upon to satisfy the environmental obligation, he did not provide any guidance as to what he meant by "assets unrelated" or how unrelated the assets must be to escape the reach of the regulator.

[31] The Court of Appeal in ***Manitok*** addressed the question of whether a debtor's oil and gas assets could be divided into two pools, one consisting of valuable assets and the other consisting of assets burdened by environmental obligations. The Court viewed the situation in ***Manitok*** to be the same as in ***Redwater*** where the proceeds of the sale of valuable oil and gas assets "had to be used by Redwater's trustee to satisfy abandonment and reclamation obligations before any distribution to secured creditors" (para 31). The Court went on at para 31 to explain how it interpreted ***Redwater***:

> The point is that the outcome of ***Redwater*** demonstrates that the Supreme Court of Canada did not treat Redwater's assets as falling into different pools. All of the oil and gas assets were treated collectively as being contaminated, and they all had to answer for the abandonment and reclamation obligations attached to the disclaimed assets. None of the other oil and gas assets were 'assets unrelated' to the other oil and gas assets. Manitok is in exactly the same position. The 'substantial assets' of Manitok are the same as the 'substantial assets' of Redwater.

[32] Though the Court of Appeal adverted in ***Manitok*** to the question of whether in theory unrelated assets could not be called upon to satisfy environmental obligations it deferred the question because it did not have to be decided given the Court's conclusion that all of Manitok's substantial assets were related to the environmental obligations. The Court held at para 36:

> ***Redwater*** confirms that the proceeds of the sale of those assets must be applied first towards the satisfaction of abandonment and reclamation obligations. To the extent that there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day [emphasis added].

[33] Mantle and AEPA argue that Wagner CJC's words in para 159 must be viewed in the context of the whole ruling in ***Redwater***. Wagner CJC held that environmental obligations are a corporate or estate obligation that must be satisfied before any creditor claims (para 98; see also, ***Manitok*** at para 17, 30, & 35). According to Mantle and AEPA, the logic of this ruling leaves no room for the exception for assets unrelated to the environmental condition or damage asserted by Travelers.

[34] The reference to "assets unrelated" in ***Redwater*** unaccompanied by any explanation followed by the Court of Appeal's statement in ***Manitok*** that it was leaving the issue for "another day" indicates that there is no *ratio decidendi* in those cases that binds me in the present case. As I will explain below, the facts of the present case do not require me to decide whether Travelers is correct that some category of assets unrelated to the environmental condition or damage in issue may not be used to satisfy environmental regulatory obligations or Mantle and AEPA are correct that all the assets that comprise the estate of a debtor must be used to address environmental regulatory obligations before creditor claims are paid.

[35] That Redwater and Manitok's substantial assets were all oil and gas assets was not surprising. Many oil and gas companies do not own much in the way of assets other than oil and gas rights and the equipment required to produce oil and gas from those interests in land such as compressors, pumpjacks, and tanks. And even this kind of equipment may be leased instead of owned. Jack R Maslen & Tiffany Bennett, "Going Green? New Interpretations of Redwater from Canada's Natural Resource Sectors" in in Jill Corrani Nadeau & D. Blair Nixon, eds., *Annual Review of Insolvency Law*, (Toronto: Thomson Reuters, 2022) 105 concluded at 119, "based on *Manitok*, assets or proceeds that relate in any way to the debtor's oil and gas business will be used to satisfy non-monetary end-of-life obligations. For most oil and gas producers, this likely means all of their property." A question to be considered later in these Reasons is whether Mantle, a gravel company, is any different than oil and gas companies like Redwater and Manitok.

[36] Whether assets of an oil and gas company other than oil and gas rights are unrelated assets was tested in ***Trident***. Justice Neufeld in ***Trident*** was required to consider whether a receiver was required to allocate proceeds of the sale of assets, including "non-licensed assets such as real estate and equipment" (para 80) to satisfy environmental obligations in priority to municipal tax claims. Neufeld J took a pragmatic approach, refusing to get engaged in a debate over how to draw a line between related and unrelated assets of an oil and gas company. He concluded that because Trident had one business, oil and gas exploration and production, that all assets were related to the environmental obligation. He wrote at para 67:

> I also find that the assets subject to the AER super priority are not limited to licenced oil and gas wells, pipelines and production facilities. Trident had certain real estate assets that were used for office or equipment storage and the like. However, Trident had only one business: exploration and production of oil and gas. It makes no sense to differentiate real estate assets from other assets used in that business, just as it made no sense in ***Manitok*** to carve out economic licensed assets from uneconomic ones. In either case, the result would be to undermine the policy purposes upon which the super priority principle is based.

[37] Neufeld J's statement of the law in ***Trident*** is consistent with ***Redwater*** and ***Manitok*** though his application of the law breaks new ground. Whereas in ***Redwater*** and ***Manitok***, it was held that all oil and gas assets should be treated as related to environmental obligations that attached only to some of the oil and gas assets, ***Trident*** extended this principle to other assets used in an oil and gas business even if they were not directly involved in oil and gas production (e.g. the real estate used to store equipment).

[38] None of the exceptions to the principle of horizontal *stare decisis* apply to ***Trident***. The decision was fully considered, carefully reasoned, and has not been undermined by appellate

authority. That means that the question in the present case is whether Mantle's equipment subject to the Travelers security interest is analogous to the equipment and real estate in ***Trident***.

[39] Warren Miller, Vice President of Structured Finance and Capital Markets at Travelers, deposed that it was his understanding that Mantle sought financing from Travelers so that it could "purchas[e] the equipment necessary to operate its business (instead of renting it)." Mr. Miller's Affidavit attached as part of an exhibit a Notice of Intention to Enforce Security which listed all Mantle's equipment that Travelers had financed. The descriptions include the following: Jaw Crushing Plant, Cone Crushing Plant, Screen Plant, Aggregate Feeder, Aggregate Surge Bin, Material Washer, Conveyor, Truck Scale, Articulated Dump Truck, Tracked Excavator, and the like. The equipment in which Travelers has a security interest appears to be part to Mantle's gravel production business.

[40] In my view, no sensible distinction can be made between the equipment and real estate in ***Trident*** and the equipment in the present case. The equipment over which Travelers has a security interest is as much a part of Mantle's gravel business as the equipment and real estate in ***Trident*** was a part of Trident's oil and gas business. Based on this factual finding, I am bound by the principle of horizontal *stare decisis* to follow ***Trident***. In finding that the equipment in the present case is part of Mantle's gravel business, I make no comment on how in theory a line should be drawn between related and unrelated assets or even if a line should be drawn. As the Court of Appeal said in ***Manitok***, that "can be left for another day."

[41] Travelers advanced policy arguments as to why it should not have to wait to realize upon its security until after Mantle completes the reclamation work required by the EPOs. Mantle and AEPA responded with policy arguments supporting the deferral of realization of all secured creditors, including Travelers, until after the satisfactory completion of the reclamation work. Given my conclusion that the equipment subject to the Travelers security interest is related to the assets to which Mantle's environmental obligations pertain in the sense that the equipment is used in gravel production, it is not necessary to explore these policy arguments.

[42] Though I decline to debate the wisdom of the policy of effectively subordinating secured creditors to environmental obligations in these Reasons, it is noteworthy that the evidential record shows that Travelers conducted due diligence prior to entering the financing arrangement with Mantle. Among the materials available to Travelers as part of that due diligence process were documents indicating the existence of Mantle's environmental reclamation obligations and the security posted by Mantle with AEPA. Prior to entering the financing arrangement, Travelers had the opportunity to assess the risk of doing business with Mantle, make an informed decision whether to do business with Mantle, and to negotiate a cost of borrowing that reflected the risk inherent in Mantle's business.

Conclusion

[43] The Travelers security interest in the equipment must be subordinated to the Restructuring Charges because the Restructuring Charges are necessary to the completion of the environmental remediation work that is an important part of the pending proposal. Travelers cannot realize on its security until the environmental reclamation work is completed to AEPA's satisfaction and the only way that such work can be done is with the support of the officers and directors of Mantle, lawyers and insolvency professionals, and the interim lender who are all protected by the Restructuring Charges.

[44] Paragraph 10 of the Order dated August 15, 2023 shall be amended to provide that the Restructuring Charges have priority over the Travelers security interest in the equipment identified in the Travelers security registration.

Heard on the 15th day of August, 2023.
Dated at the City of Calgary, Alberta this 28th day of August, 2023.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Tom Cumming & Stephen Kroeger, Gowling WLG
for Mantle Materials Group, Ltd.

Alexis Teasdale & Joel Schachter, Lawson Lundell LLP
for Travelers Capital Corp

Pantelis Kyriakakis, McCarthy Tétrault LLP
for the Proposal Trustee, FTI Consulting Canada Inc.

Doug Nishimura, Field LLP,
for Alberta Environment and Protected Areas

Darren Bieganek, Duncan Craig LLP
for 945441 Alberta Ltd

In the Court of Appeal of Alberta

Citation: Mantle Materials Group, Ltd v Travelers Capital Corp, 2023 ABCA 302

Date: 20231023
Docket: 2301-0216AC
Registry: Calgary

Between:

Mantle Materials Group, Ltd

Respondent

- and -

Travelers Capital Corp

Applicant

Corrected judgment: A corrigendum was issued on October 24, 2023; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision of
The Honourable Justice William T. de Wit

Application for Permission to Appeal

Reasons for Decision of
The Honourable Justice William T. de Wit

Introduction

[1] Travelers Capital Corp (Travelers) applies for a declaration that leave is not required to appeal the August 28, 2023 decision of Feasby J or alternatively, applies for permission to appeal that same order.

[2] The respondent, Mantle Materials Group, Ltd. (Mantle), opposes the application and cross applies for a lifting of a stay in the event that leave is granted.

[3] Alberta Environment and Protected Areas (AEPA), the provincial ministry responsible for environmental issues, supports Mantle in opposing the application.

Facts

[4] This application arises in the context of Mantle's insolvency proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*). Mantle operates gravel pits on lands both public and private, some of which are subject to Environment Protection Orders (EPO) issued by the AEPA.

[5] After conducting due diligence, Travelers financed Mantle's purchase of equipment for use in its operations and Mantle granted Travelers a purchase-money security interest over the equipment, and pursuant to an agreement, Travelers' security interest in the equipment was designated to have first priority. As of the date of this application, Mantle owes Travelers over $1 million.

[6] Financial difficulties led Mantle to file a notice of intention to make a proposal under section 50.4 of the *BIA*. On August 15, 2023, Mantle was granted an order extending time to make a proposal. In addition, the order approved various charges on the bankrupt estate including the priority of those charges, and approval of the payment of certain pre-filing debts to creditors whose support is required to perform environmental reclamation work that will be integral to the pending proposal. The application was granted without prejudice with respect to the priority of the charges that Travelers holds over the equipment until the chambers judge released his reasons regarding Travelers' priority claim.

[7] Mantle's intended proposal will not allow payment to any creditors before Mantle has satisfied its end-of-life obligations stemming from EPOs. Mantle submits this is required by the Supreme Court of Canada decision known as *Redwater* or *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, which held the environmental remediation obligations must be satisfied prior to distributions to creditors.

[8] Travelers submitted that it has priority with respect to security in certain equipment and its ability to realize on its security should not be postponed until after the remediation work has been completed. Travelers takes the position that *Redwater* held that an end-of-life environmental obligation need only be satisfied using assets encumbered by or related to the end-of-life obligation. A creditor with security over assets unrelated to assets burdened with the environmental remediation obligation may realize on such security without delay.

[9] The chambers judge disagreed with Travelers and amended his August 15, 2023 order to provide that the various approved charges on the bankrupt's estate have priority over Travelers' security interest in the equipment. The reasons of the chambers judge can be found at *Re Mantle Materials Group, Ltd*, 2023 ABKB 488.

Is Leave Required?

[10] Travelers submits that leave to appeal is not required because section 193(c) of the *BIA* provides "an appeal lies to the Court of Appeal from any order or decision of a judge of the court . . . if the property involved in the appeal exceeds in value ten thousand dollars". As it is owed over $1 million, Travelers submits it is entitled to appeal as of right.

[11] Travelers is required to obtain leave. Case authorities have held that section 193(c) is not satisfied simply where the value of the property exceeds $10,000. In *Manitok Energy Inc (Re)*, 2022 ABCA 260 (*Manitok leave decision*), this court held that an appeal is not available under section 193(c) in situations where the order is procedural in nature (para 27). Where the order does not result in a gain or loss to an interested party, the order is procedural in nature: *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 at para 15; *Manitok leave decision* at para 30.

[12] Travelers has not filed evidence showing the value of the equipment at issue and has not shown that its recovery is in jeopardy. The order it seeks to appeal is an order extending time to make a proposal, approved various charges on the bankrupt estate, and approved payment of certain pre-filing debts. The order is procedural in nature and section 193(c) does not apply to give Travelers a right to appeal.

Test for Leave to Appeal

[13] As set out in *Athabasca* at paras 17-18, the following factors are considered on an application for leave to appeal under section 193(e) of the *BIA*:

a) whether the point on appeal is of significance to the practice;

b) whether the point raised is of significance to the action itself;

c) whether the appeal is *prima facie* meritorious or frivolous; and

d) whether the appeal will unduly hinder the progress of the action.

In addition, leave should only be granted if the judgment appears to be contrary to law, amounts to an abuse of judicial power or involves an obvious error, causing prejudice for which there is no remedy.

[14] The test essentially requires that the proposed appeal must be on a point of significance for which there is at least an arguable case. I find that is where the application fails.

[15] Travelers points to paragraph 159 in *Redwater*, where Wagner CJC for the majority stated that the Alberta Energy Regulator's orders and assessment of liability "did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage".

[16] This court in *Manitok Energy Inc (Re)*, 2022 ABCA 117 (*Manitok*), viewed the situation in the appeal before it to be the same as in *Redwater* and at paragraph 31 explained *Redwater*:

> The point is that the outcome of *Redwater* demonstrates that the Supreme Court of Canada did not treat Redwater's assets as falling into different pools. All of the oil and gas assets were treated collectively as being contaminated, and they all had to answer for the abandonment and reclamation obligations attached to the disclaimed assets. None of the other oil and gas assets were 'assets unrelated' to the other oil and gas assets. Manitok is in exactly the same position. The 'substantial assets' of Manitok are the same as the 'substantial assets' of Redwater.

[17] Whether in theory unrelated assets could not be called upon to satisfy environmental obligations did not have to be decided by this court given that all of Manitok's substantial assets were related to the environmental obligations. As this court stated at paragraph 36:

> *Redwater* confirms that the proceeds of the sale of those assets must be applied first towards the satisfaction of abandonment and reclamation obligations. To the extent that there is any issue about it, the status of assets completely unrelated to the oil and gas business can be left for another day.

[18] Travelers argues that the unaddressed issue arises in its case because the equipment over which it has a secured interest was not affected by an environmental condition or damage and

therefore, it should not have to wait for Mantle to complete its environmental obligations before Travelers can realize upon its security.

[19] Travelers' proposed arguments on appeal ignore a basic principle arising from *Redwater* and reiterated in *Manitok* that abandonment and reclamation obligations are binding "on the bankrupt estate": *Redwater* at para 93, 98, *Manitok* at para 17. The obligation was not tied to the type of asset.

[20] In *Redwater* and *Manitok* all the assets were oil and gas assets and none were "assets unrelated" to the other oil and gas assets. Distinguishing oil and gas assets from non-oil and gas assets as "assets unrelated to the environmental condition or damage" was argued in *Manitok* and rejected by this court at paragraph 35:

> One could read para 159 of *Redwater* as excluding resort to "unrelated" non-oil and gas assets to cover abandonment and reclamation costs. However, as was pointed out by the Orphan Well Association, the reasons in *Redwater* refer repeatedly to the "assets of the estate", without drawing any such distinction: see for example *Redwater* at paras 76, 102, 107, 114. Further, there is no clear boundary between licensed assets and other assets. For example, the sale to Persist (like many similar sales) included not only licensed assets but oil and gas rights, royalty rights, intellectual property, seismic data, vehicles and other chattels. *Redwater* gives no support to the municipalities' argument.

[21] Travelers is in no different position in its proposed appeal. As the chambers judge found, the equipment in which Travelers has a security interest is part of Mantle's gravel production business: "Jaw Crushing Plant, Cone Crushing Plant, Screen Plant, Aggregate Feeder, Aggregate Surge Bin, Material Washer, Conveyor, Truck Scale, Articulated Dump Truck, Tracked Excavator, and the like" (para 39 and see paras 40-41). These are "vehicles and other chattels" as referred to in *Manitok* quoted above. Moreover, the equipment is being used in the reclamation efforts. Mantle is not an oil and gas company but that distinction does not change the application of the reasons in *Redwater* or *Manitok*. Mantle's only business is gravel production. It has no assets unrelated to those operations. While the question of what are "assets unrelated to the environmental condition or damage" and the policy concerns related to financing businesses that have environmental obligations are significant matters, they are not arguable on the facts of this case.

[22] Additionally, Travelers cannot satisfy the factor that an appeal will not unduly hinder the progress of the action. Section 195 of the *BIA* automatically stays proceedings until an appeal is disposed of. Staying the proceedings would cause significant harm to Mantle as it is required to complete the EPOs by November 1, 2023, and it cannot continue once winter freeze sets in.

Conclusion

[23] The application for leave to appeal is dismissed. As leave has not been granted, there is no need for Mantle's cross-application.

Application heard on October 18, 2023

Reasons filed at Calgary, Alberta
this 23rd day of October, 2023

de Wit J.A.

Appearances:

T.S. Cumming
S.P. Kroeger
for the Respondent

A.E. Teasdale
for the Applicant

T.A. Batty
for Alberta Environment and Protected Areas

P. Kyriakakis
for the Proposal Trustee

Corrigendum of the Reasons for Decision

Page 6, counsel's name "S.J. Kroeger" has been corrected to "S.P. Kroeger".

9354-9186 Québec inc. and 9354-9178 Québec inc. *Appellants*

v.

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier *Respondents*

and

Ernst & Young Inc., IMF Bentham Limited (now known as Omni Bridgeway Limited), Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited), Insolvency Institute of Canada and Canadian Association of Insolvency and Restructuring Professionals *Interveners*

- and -

IMF Bentham Limited (now known as Omni Bridgeway Limited) and Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited) *Appellants*

v.

Callidus Capital Corporation, International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier *Respondents*

and

9354-9186 Québec inc. et 9354-9178 Québec inc. *Appelantes*

c.

Callidus Capital Corporation, International Game Technology, Deloitte S.E.N.C.R.L., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier *Intimés*

et

Ernst & Young Inc., IMF Bentham Limited (maintenant connue sous le nom d'Omni Bridgeway Limited), Corporation Bentham IMF Capital (maintenant connue sous le nom de Corporation Omni Bridgeway Capital (Canada)), Institut d'insolvabilité du Canada et Association canadienne des professionnels de l'insolvabilité et de la réorganisation *Intervenants*

- et -

IMF Bentham Limited (maintenant connue sous le nom d'Omni Bridgeway Limited) et Corporation Bentham IMF Capital (maintenant connue sous le nom de Corporation Omni Bridgeway Capital (Canada)) *Appelantes*

c.

Callidus Capital Corporation, International Game Technology, Deloitte S.E.N.C.R.L., Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx et François Pelletier *Intimés*

et

Ernst & Young Inc.,
9354-9186 Québec inc.,
9354-9178 Québec inc.,
Insolvency Institute of Canada and Canadian Association of Insolvency and Restructuring Professionals *Interveners*

Ernst & Young Inc.,
9354-9186 Québec inc.,
9354-9178 Québec inc.,
Institut d'insolvabilité du Canada et Association canadienne des professionnels de l'insolvabilité et de la réorganisation
Intervenants

INDEXED AS: 9354-9186 QUÉBEC INC. *v.* CALLIDUS CAPITAL CORP.

2020 SCC 10

File No.: 38594.

Hearing and judgment: January 23, 2020.

Reasons delivered: May 8, 2020.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Rowe and Kasirer JJ.

RÉPERTORIÉ : 9354-9186 QUÉBEC INC. *c.* CALLIDUS CAPITAL CORP.

2020 CSC 10

N° du greffe : 38594.

Audition et jugement : 23 janvier 2020.

Motifs déposés : 8 mai 2020.

Présents : Le juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Côté, Rowe et Kasirer.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

EN APPEL DE LA COUR D'APPEL DU QUÉBEC

Bankruptcy and insolvency — Discretionary authority of supervising judge in proceedings under Companies' Creditors Arrangement Act — Appellate review of decisions of supervising judge — Whether supervising judge has discretion to bar creditor from voting on plan of arrangement where creditor is acting for improper purpose — Whether supervising judge can approve third party litigation funding as interim financing — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, ss. 11, 11.2.

Faillite et insolvabilité — Pouvoir discrétionnaire du juge surveillant dans une instance introduite sous le régime de la Loi sur les arrangements avec les créanciers des compagnies — Contrôle en appel des décisions du juge surveillant — Le juge surveillant a-t-il le pouvoir discrétionnaire d'empêcher un créancier de voter sur un plan d'arrangement si ce créancier agit dans un but illégitime? — Le juge surveillant peut-il approuver le financement de litige par un tiers à titre de financement temporaire? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, c. C-36, art. 11, 11.2.

The debtor companies filed a petition for the issuance of an initial order under the *Companies' Creditors Arrangement Act* ("*CCAA*") in November 2015. The petition succeeded, and the initial order was issued by a supervising judge, who became responsible for overseeing the proceedings. Since then, substantially all of the assets of the debtor companies have been liquidated, with the notable exception of retained claims for damages against the companies' only secured creditor. In September 2017, the secured creditor proposed a plan of arrangement, which later failed to receive sufficient creditor support. In February 2018, the secured creditor proposed another, virtually identical, plan of arrangement. It also sought the supervising judge's permission to vote on this new plan in the same class as the debtor companies' unsecured creditors, on the basis that its security was worth nil. Around the

En novembre 2015, les compagnies débitrices déposent une requête en délivrance d'une ordonnance initiale sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* (« *LACC* »). La requête est accueillie, et l'ordonnance initiale est rendue par un juge surveillant, qui est chargé de surveiller le déroulement de l'instance. Depuis, la quasi-totalité des éléments d'actif de la compagnie débitrice ont été liquidés, à l'exception notable des réclamations réservées en dommages-intérêts contre le seul créancier garanti des compagnies. En septembre 2017, le créancier garanti propose un plan d'arrangement, qui n'obtient pas subséquemment l'appui nécessaire des créanciers. En février 2018, le créancier garanti propose un autre plan d'arrangement, presque identique au premier. Il demande aussi au juge surveillant la permission de voter sur ce nouveau plan dans la même catégorie que

same time, the debtor companies sought interim financing in the form of a proposed third party litigation funding agreement, which would permit them to pursue litigation of the retained claims. They also sought the approval of a related super-priority litigation financing charge.

The supervising judge determined that the secured creditor should not be permitted to vote on the new plan because it was acting with an improper purpose. As a result, the new plan had no reasonable prospect of success and was not put to a creditors' vote. The supervising judge allowed the debtor companies' application, authorizing them to enter into a third party litigation funding agreement. On appeal by the secured creditor and certain of the unsecured creditors, the Court of Appeal set aside the supervising judge's order, holding that he had erred in reaching the foregoing conclusions.

Held: The appeal should be allowed and the supervising judge's order reinstated.

The supervising judge made no error in barring the secured creditor from voting or in authorizing the third party litigating funding agreement. A supervising judge has the discretion to bar a creditor from voting on a plan of arrangement where they determine that the creditor is acting for an improper purpose. A supervising judge can also approve third party litigation funding as interim financing, pursuant to s. 11.2 of the *CCAA*. The Court of Appeal was not justified in interfering with the supervising judge's discretionary decisions in this regard, having failed to treat them with the appropriate degree of deference.

The *CCAA* is one of three principal insolvency statutes in Canada. It pursues an array of overarching remedial objectives that reflect the wide ranging and potentially catastrophic impacts insolvency can have. These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company. The architecture of the *CCAA* leaves the case-specific assessment and balancing of these objectives to the supervising judge.

les créanciers non garantis des compagnies débitrices, au motif que sa sûreté ne vaut rien. À peu près au même moment, les compagnies débitrices demandent un financement temporaire sous forme d'un accord de financement de litige par un tiers qui leur permettrait de poursuivre l'instruction des réclamations réservées. Elles sollicitent également l'approbation d'une charge super-prioritaire pour financer le litige.

Le juge surveillant décide que le créancier garanti ne peut voter sur le nouveau plan parce qu'il agit dans un but illégitime. En conséquence, le nouveau plan n'a aucune possibilité raisonnable d'être avalisé et il n'est pas soumis au vote des créanciers. Le juge surveillant accueille la demande des compagnies débitrices et les autorise à conclure un accord de financement de litige par un tiers. À l'issue d'un appel formé par le créancier garanti et certains des créanciers non garantis, la Cour d'appel annule l'ordonnance du juge surveillant, estimant qu'il est parvenu à tort aux conclusions qui précèdent.

Arrêt : Le pourvoi est accueilli et l'ordonnance du juge surveillant est rétablie.

Le juge surveillant n'a commis aucune erreur en empêchant le créancier garanti de voter ou en approuvant l'accord de financement de litige par un tiers. Un juge surveillant a le pouvoir discrétionnaire d'empêcher un créancier de voter sur un plan d'arrangement s'il décide que le créancier agit dans un but illégitime. Un juge surveillant peut aussi approuver le financement de litige par un tiers à titre de financement temporaire, en vertu de l'art. 11.2 de la *LACC*. La Cour d'appel n'était pas justifiée de modifier les décisions discrétionnaires du juge surveillant à cet égard et n'a pas fait preuve de la déférence à laquelle elle était tenue par rapport à ces décisions.

La *LACC* est l'une des trois principales lois canadiennes en matière d'insolvabilité. Elle poursuit un grand nombre d'objectifs réparateurs généraux qui témoignent de la vaste gamme des conséquences potentiellement catastrophiques qui peuvent découler de l'insolvabilité. Ces objectifs incluent les suivants : régler de façon rapide, efficace et impartiale l'insolvabilité d'un débiteur; préserver et maximiser la valeur des actifs d'un débiteur; assurer un traitement juste et équitable des réclamations déposées contre un débiteur; protéger l'intérêt public; et, dans le contexte d'une insolvabilité commerciale, établir un équilibre entre les coûts et les bénéfices découlant de la restructuration ou de la liquidation d'une compagnie. La structure de la *LACC* laisse au juge surveillant le soin de procéder à un examen et à une mise en balance au cas par cas de ces objectifs.

From beginning to end, each proceeding under the *CCAA* is overseen by a single supervising judge, who has broad discretion to make a variety of orders that respond to the circumstances of each case. The anchor of this discretionary authority is s. 11 of the *CCAA*, with empowers a judge to make any order that they consider appropriate in the circumstances. This discretionary authority is broad, but not boundless. It must be exercised in furtherance of the remedial objectives of the *CCAA* and with three baseline considerations in mind: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence. The due diligence consideration discourages parties from sitting on their rights and ensures that creditors do not strategically manoeuvre or position themselves to gain an advantage. A high degree of deference is owed to discretionary decisions made by judges supervising *CCAA* proceedings and, as such, appellate intervention will only be justified if the supervising judge erred in principle or exercised their discretion unreasonably.

A creditor can generally vote on a plan of arrangement or compromise that affects its rights, subject to any specific provisions of the *CCAA* that may restrict its voting rights, or a proper exercise of discretion by the supervising judge to constrain or bar the creditor's right to vote. Given that the *CCAA* regime contemplates creditor participation in decision-making as an integral facet of the workout regime, the discretion to bar a creditor from voting should only be exercised where the circumstances demand such an outcome. Where a creditor is seeking to exercise its voting rights in a manner that frustrates, undermines, or runs counter to the remedial objectives of the *CCAA* — that is, acting for an improper purpose — s. 11 of the *CCAA* supplies the supervising judge with the discretion to bar that creditor from voting. This discretion parallels the similar discretion that exists under the *Bankruptcy and Insolvency Act* and advances the basic fairness that permeates Canadian insolvency law and practice. Whether this discretion ought to be exercised in a particular case is a circumstance-specific inquiry that the supervising judge is best-positioned to undertake.

In the instant case, the supervising judge's decision to bar the secured creditor from voting on the new plan discloses no error justifying appellate intervention. When he made this decision, the supervising judge was intimately

Chaque procédure fondée sur la *LACC* est supervisée du début à la fin par un seul juge surveillant, qui a le vaste pouvoir discrétionnaire de rendre toute une gamme d'ordonnances susceptibles de répondre aux circonstances de chaque cas. Le point d'ancrage de ce pouvoir discrétionnaire est l'art. 11 de la *LACC*, lequel confère au juge le pouvoir de rendre toute ordonnance qu'il estime indiquée. Quoique vaste, ce pouvoir discrétionnaire n'est pas sans limites. Son exercice doit tendre à la réalisation des objectifs réparateurs de la *LACC* et tenir compte de trois considérations de base : (1) que l'ordonnance demandée est indiquée, et (2) que le demandeur a agi de bonne foi et (3) avec la diligence voulue. La considération de diligence décourage les parties de rester sur leurs positions et fait en sorte que les créanciers n'usent pas stratégiquement de ruse ou ne se placent pas eux-mêmes dans une position pour obtenir un avantage. Les décisions discrétionnaires des juges chargés de la supervision des procédures intentées sous le régime de la *LACC* commandent un degré élevé de déférence. En conséquence, les cours d'appel ne seront justifiées d'intervenir que si le juge surveillant a commis une erreur de principe ou exercé son pouvoir discrétionnaire de manière déraisonnable.

En général, un créancier peut voter sur un plan d'arrangement ou une transaction qui a une incidence sur ses droits, sous réserve des dispositions de la *LACC* qui peuvent limiter son droit de voter, ou de l'exercice justifié par le juge surveillant de son pouvoir discrétionnaire de limiter ou de supprimer ce droit. Étant donné que le régime de la *LACC*, dont l'un des aspects essentiels tient à la participation du créancier au processus décisionnel, les créanciers ne devraient être empêchés de voter que si les circonstances l'exigent. Lorsqu'un créancier cherche à exercer ses droits de vote de manière à contrecarrer ou à miner les objectifs réparateurs de la *LACC* ou à aller à l'encontre de ceux-ci — c'est-à-dire à agir dans un but illégitime — l'art. 11 de la *LACC* confère au juge surveillant le pouvoir discrétionnaire d'empêcher le créancier de voter. Ce pouvoir discrétionnaire s'apparente au pouvoir discrétionnaire semblable qui existe en vertu de la *Loi sur la faillite et l'insolvabilité* et favorise l'équité fondamentale qui imprègne le droit et la pratique en matière d'insolvabilité au Canada. La question de savoir s'il y a lieu d'exercer le pouvoir discrétionnaire dans une situation donnée appelle une analyse fondée sur les circonstances propres à chaque situation que le juge surveillant est le mieux placé pour effectuer.

En l'espèce, la décision du juge surveillant d'empêcher le créancier garanti de voter sur le nouveau plan ne révèle aucune erreur justifiant l'intervention d'une cour d'appel. Lorsqu'il a rendu sa décision, le juge surveillant

familiar with these proceedings, having presided over them for over 2 years, received 15 reports from the monitor, and issued approximately 25 orders. He considered the whole of the circumstances and concluded that the secured creditor's vote would serve an improper purpose. He was aware that the secured creditor had chosen not to value any of its claim as unsecured prior to the vote on the first plan and did not attempt to vote on that plan, which ultimately failed to receive the other creditors' approval. Between the failure of the first plan and the proposal of the (essentially identical) new plan, none of the factual circumstances relating to the debtor companies' financial or business affairs had materially changed. However, the secured creditor sought to value the entirety of its security at nil and, on that basis, sought leave to vote on the new plan as an unsecured creditor. If the secured creditor were permitted to vote in this way, the new plan would certainly have met the double majority threshold for approval under s. 6(1) of the *CCAA*. The inescapable inference was that the secured creditor was attempting to strategically value its security to acquire control over the outcome of the vote and thereby circumvent the creditor democracy the *CCAA* protects. The secured creditor's course of action was also plainly contrary to the expectation that parties act with due diligence in an insolvency proceeding, which includes acting with due diligence in valuing their claims and security. The secured creditor was therefore properly barred from voting on the new plan.

Whether third party litigation funding should be approved as interim financing is a case-specific inquiry that should have regard to the text of s. 11.2 of the *CCAA* and the remedial objectives of the *CCAA* more generally. Interim financing is a flexible tool that may take on a range of forms. This is apparent from the wording of s. 11.2(1), which is broad and does not mandate any standard form or terms. At its core, interim financing enables the preservation and realization of the value of a debtor's assets. In some circumstances, like the instant case, litigation funding furthers this basic purpose. Third party litigation funding agreements may therefore be approved as interim financing in *CCAA* proceedings when the supervising judge determines that doing so would be fair and appropriate, having regard to all the circumstances and the objectives of the Act. This requires consideration of the specific factors set out in s. 11.2(4) of the *CCAA*. These factors need not be mechanically applied or individually reviewed by the supervising judge, as not all of them will be significant in every case, nor are they exhaustive.

connaissait très bien les procédures en cause, car il les avait présidées pendant plus de 2 ans, avait reçu 15 rapports du contrôleur et avait délivré environ 25 ordonnances. Il a tenu compte de l'ensemble des circonstances et a conclu que le vote du créancier garanti viserait un but illégitime. Il savait qu'avant le vote sur le premier plan, le créancier garanti avait choisi de n'évaluer aucune partie de sa réclamation à titre de créancier non garanti et n'avait pas tenté de voter sur ce plan, qui n'a finalement pas reçu l'aval des autres créanciers. Entre l'insuccès du premier plan et la proposition du nouveau plan (identique pour l'essentiel au premier plan), les circonstances factuelles se rapportant aux affaires financières ou commerciales des compagnies débitrices n'avaient pas réellement changé. Pourtant, le créancier garanti a tenté d'évaluer la totalité de sa sûreté à zéro et, sur cette base, a demandé l'autorisation de voter sur le nouveau plan à titre de créancier non garanti. Si le créancier garanti avait été autorisé à voter de cette façon, le nouveau plan aurait certainement satisfait au critère d'approbation à double majorité prévu par le par. 6(1) de la *LACC*. La seule conclusion possible était que le créancier garanti tentait d'évaluer stratégiquement la valeur de sa sûreté afin de prendre le contrôle du vote et ainsi contourner la démocratie entre les créanciers que défend la *LACC*. La façon d'agir du créancier garanti était manifestement contraire à l'attente selon laquelle les parties agissent avec diligence dans une procédure d'insolvabilité, ce qui comprend le fait de faire preuve de diligence raisonnable dans l'évaluation de leurs réclamations et sûretés. Le créancier garanti a donc été empêché à bon droit de voter sur le nouveau plan.

La question de savoir s'il y a lieu d'approuver le financement d'un litige par un tiers à titre de financement temporaire commande une analyse fondée sur les faits de l'espèce qui doit tenir compte du libellé de l'art. 11.2 de la *LACC* et des objectifs réparateurs de la *LACC* de façon plus générale. Le financement temporaire est un outil souple qui peut revêtir différentes formes. Cela ressort du libellé du par. 11.2(1), qui est large et ne prescrit aucune forme ou condition type. Le financement temporaire permet essentiellement de préserver et de réaliser la valeur des éléments d'actif du débiteur. Dans certaines circonstances, comme en l'espèce, le financement de litige favorise la réalisation de cet objectif fondamental. Les accords de financement de litige par un tiers peuvent être approuvés à titre de financement temporaire dans le cadre des procédures fondées sur la *LACC* lorsque le juge surveillant estime qu'il serait juste et approprié de le faire, compte tenu de l'ensemble des circonstances et des objectifs de la Loi. Cela implique la prise en considération des facteurs précis énoncés au par. 11.2(4) de la *LACC*. Ces facteurs

Additionally, in order for a third party litigation funding agreement to be approved as interim financing, the agreement must not contain terms that effectively convert it into a plan of arrangement.

In the instant case, there is no basis upon which to interfere with the supervising judge's exercise of his discretion to approve the litigation funding agreement as interim financing. A review of the supervising judge's reasons as a whole, combined with a recognition of his manifest experience with the debtor companies' *CCAA* proceedings, leads to the conclusion that the factors listed in s. 11.2(4) concern matters that could not have escaped his attention and due consideration. It is apparent that he was focussed on the fairness at stake to all parties, the specific objectives of the *CCAA*, and the particular circumstances of this case when he approved the litigation funding agreement as interim financing. Further, the litigation funding agreement is not a plan of arrangement because it does not propose any compromise of the creditors' rights. The fact that the creditors may walk away with more or less money at the end of the day does not change the nature or existence of their rights to access the funds generated from the debtor companies' assets, nor can it be said to compromise those rights. Finally, the litigation financing charge does not convert the litigation funding agreement into a plan of arrangement. Holding otherwise would effectively extinguish the supervising judge's authority to approve these charges without a creditors' vote, which is expressly provided for in s. 11.2 of the *CCAA*.

Cases Cited

By Wagner C.J. and Moldaver J.

Applied: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379; **considered:** *Re Crystallex*, 2012 ONCA 404, 293 O.A.C. 102; *Laserworks Computer Services Inc. (Bankruptcy), Re*, 1998 NSCA 42, 165 N.S.R. (2d) 296; **referred to:** *Bayens v. Kinross Gold Corporation*, 2013 ONSC 4974, 117 O.R. (3d) 150; *Hayes v. The City of Saint John*, 2016 NBQB 125; *Schenk v. Valeant Pharmaceuticals International Inc.*, 2015 ONSC 3215, 74 C.P.C. (7th) 332; *Re Blackburn*, 2011 BCSC 1671, 27 B.C.L.R. (5th) 199; *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271; *Ernst & Young Inc. v. Essar Global Fund*

ne doivent pas être appliqués machinalement ou examinés individuellement par le juge surveillant, car ils ne seront pas tous importants dans tous les cas, et ils ne sont pas non plus exhaustifs. En outre, pour qu'un accord de financement de litige par un tiers soit approuvé à titre de financement temporaire, il ne doit pas comporter des conditions qui le convertissent effectivement en plan d'arrangement.

En l'espèce, il n'y a aucune raison d'intervenir dans l'exercice par le juge surveillant de son pouvoir discrétionnaire d'approuver l'accord de financement de litige à titre de financement temporaire. L'examen des motifs du juge surveillant dans leur ensemble, conjugué à la reconnaissance de son expérience évidente des procédures intentées par les compagnies débitrices sous le régime de la *LACC*, mène à la conclusion que les facteurs énumérés au par. 11.2(4) concernent des questions qui n'auraient pu échapper à son attention et à son examen adéquat. Il est manifeste que le juge surveillant a mis l'accent sur l'équité envers toutes les parties, les objectifs précis de la *LACC* et les circonstances particulières de la présente affaire lorsqu'il a approuvé l'accord de financement de litige à titre de financement temporaire. De plus, l'accord de financement de litige ne constitue pas un plan d'arrangement parce qu'il ne propose aucune transaction visant les droits des créanciers. Le fait que les créanciers puissent en fin de compte remporter plus ou moins d'argent ne modifie en rien la nature ou l'existence de leurs droits d'avoir accès aux fonds provenant des actifs des compagnies débitrices, pas plus qu'on ne saurait dire qu'il s'agit d'une transaction à l'égard de leurs droits. Enfin, la charge relative au financement de litige ne convertit pas l'accord de financement de litige en plan d'arrangement. Une conclusion contraire aurait pour effet d'annihiler le pouvoir du juge surveillant d'approuver ces charges sans un vote des créanciers, un résultat qui est expressément prévu par l'art. 11.2 de la *LACC*.

Jurisprudence

Citée par le juge en chef Wagner et le juge Moldaver

Arrêt appliqué : *Century Services Inc. c. Canada (Procureur général)*, 2010 CSC 60, [2010] 3 R.C.S. 379; **arrêts examinés :** *Re Crystallex*, 2012 ONCA 404, 293 O.A.C. 102; *Laserworks Computer Services Inc. (Bankruptcy), Re*, 1998 NSCA 42, 165 N.S.R. (2d) 296; **arrêts mentionnés :** *Bayens c. Kinross Gold Corporation*, 2013 ONSC 4974, 117 O.R. (3d) 150; *Hayes c. The City of Saint John*, 2016 NBQB 125; *Schenk c. Valeant Pharmaceuticals International Inc.*, 2015 ONSC 3215, 74 C.P.C. (7th) 332; *Re Blackburn*, 2011 BCSC 1671, 27 B.C.L.R. (5th) 199; *Sun Indalex Finance, LLC c. Syndicat des Métallos*, 2013 CSC 6, [2013] 1 R.C.S. 271; *Ernst*

(1) The Evolving Nature of *CCAA* Proceedings

[39] The *CCAA* is one of three principal insolvency statutes in Canada. The others are the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), which covers insolvencies of both individuals and companies, and the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 ("*WURA*"), which covers insolvencies of financial institutions and certain other corporations, such as insurance companies (*WURA*, s. 6(1)). While both the *CCAA* and the *BIA* enable reorganizations of insolvent companies, access to the *CCAA* is restricted to debtor companies facing total claims in excess of $5 million (*CCAA*, s. 3(1)).

[40] Together, Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially "catastrophic" impacts insolvency can have (*Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 1). These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company (J. P. Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law", in J. P. Sarra and B. Romaine, eds., *Annual Review of Insolvency Law 2016* (2017), 9, at pp. 9-10; J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2nd ed. 2013), at pp. 4-5 and 14; Standing Senate Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2003), at pp. 9-10; R. J. Wood, *Bankruptcy and Insolvency Law* (2nd ed. 2015), at pp. 4-5).

(1) La nature évolutive des procédures intentées sous le régime de la *LACC*

[39] La *LACC* est l'une des trois principales lois canadiennes en matière d'insolvabilité. Les autres sont la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985 c. B-3 (« *LFI* »), qui traite de l'insolvabilité des personnes physiques et des sociétés, et la *Loi sur les liquidations et les restructurations*, L.R.C. 1985 c. W-11 (« *LLR* »), qui traite de l'insolvabilité des institutions financières et de certaines autres personnes morales, telles que les compagnies d'assurance (*LLR*, par. 6(1)). Bien que la *LACC* et la *LFI* permettent toutes deux la restructuration de compagnies insolvables, l'accès à la *LACC* est limité aux sociétés débitrices qui sont aux prises avec des réclamations dont le montant total est supérieur à 5 millions de dollars (*LACC*, par. 3(1)).

[40] Ensemble, les lois canadiennes sur l'insolvabilité poursuivent un grand nombre d'objectifs réparateurs généraux qui témoignent de la vaste gamme des conséquences potentiellement « catastrophiques » qui peuvent découler de l'insolvabilité (*Sun Indalex Finance, LLC c. Syndicat des Métallos*, 2013 CSC 6, [2013] 1 R.C.S. 271, par. 1). Ces objectifs incluent les suivants : régler de façon rapide, efficace et impartiale l'insolvabilité d'un débiteur; préserver et maximiser la valeur des actifs d'un débiteur; assurer un traitement juste et équitable des réclamations déposées contre un débiteur; protéger l'intérêt public; et, dans le contexte d'une insolvabilité commerciale, établir un équilibre entre les coûts et les bénéfices découlant de la restructuration ou de la liquidation d'une compagnie (J. P. Sarra, « The Oscillating Pendulum : Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law », dans J. P. Sarra et B. Romaine, dir., *Annual Review of Insolvency Law 2016* (2017), 9, p. 9-10; J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2e éd. 2013), p. 4-5 et 14; Comité sénatorial permanent des banques et du commerce, *Les débiteurs et les créanciers doivent se partager le fardeau : Examen de la Loi sur la faillite et l'insolvabilité et de la Loi sur les arrangements avec les créanciers des compagnies* (2003), p. 13-14; R. J. Wood, *Bankruptcy and Insolvency Law* (2e éd. 2015), p. 4-5).

[41] Among these objectives, the *CCAA* generally prioritizes "avoiding the social and economic losses resulting from liquidation of an insolvent company" (*Century Services*, at para. 70). As a result, the typical *CCAA* case has historically involved an attempt to facilitate the reorganization and survival of the pre-filing debtor company in an operational state — that is, as a going concern. Where such a reorganization was not possible, the alternative course of action was seen as a liquidation through either a receivership or under the *BIA* regime. This is precisely the outcome that was sought in *Century Services* (see para. 14).

[42] That said, the *CCAA* is fundamentally insolvency legislation, and thus it also "has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally" (Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at p. 14; see also *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014, 139 O.R. (3d) 1 ("*Essar*"), at para. 103). In pursuit of those objectives, *CCAA* proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor's assets under the auspices of the Act itself (Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law", at pp. 19-21). Such scenarios are referred to as "liquidating CCAAs", and they are now commonplace in the *CCAA* landscape (see *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, at para. 70).

[41] Parmi ces objectifs, la *LACC* priorise en général le fait d'« éviter les pertes sociales et économiques résultant de la liquidation d'une compagnie insolvable » (*Century Services*, par. 70). C'est pourquoi les affaires types qui relèvent de cette loi ont historiquement facilité la restructuration de l'entreprise débitrice qui n'a pas encore déposé de proposition en la maintenant dans un état opérationnel, c'est-à-dire en permettant qu'elle poursuive ses activités. Lorsqu'une telle restructuration n'était pas possible, on considérait qu'il fallait alors procéder à la liquidation par voie de mise sous séquestre ou sous le régime de la *LFI*. C'est précisément le résultat qui était recherché dans l'affaire *Century Services* (voir par. 14).

[42] Cela dit, la *LACC* est fondamentalement une loi sur l'insolvabilité, et à ce titre, elle a aussi [TRADUCTION] « comme objectifs simultanés de maximiser le recouvrement au profit des créanciers, de préserver la valeur d'exploitation dans la mesure du possible, de protéger les emplois et les collectivités touchées par les difficultés financières de l'entreprise [. . .] et d'améliorer le système de crédit de manière générale » (Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 14; voir aussi *Ernst & Young Inc. c. Essar Global Fund Ltd.*, 2017 ONCA 1014, 139 O.R. (3d) 1 (« *Essar* »), par. 103). Afin d'atteindre ces objectifs, les procédures intentées sous le régime de la *LACC* ont évolué de telle sorte qu'elles permettent des solutions qui évitent l'émergence, sous une forme restructurée, de la société débitrice qui existait avant le début des procédures, mais qui impliquent plutôt une certaine forme de liquidation des actifs du débiteur sous le régime même de la Loi (Sarra, « The Oscillating Pendulum : Canada's Sesquicentennial and Finding the Equilibium for Insolvency Law », p. 19-21). Ces cas, qualifiés de [TRADUCTION] « procédures de liquidation sous le régime de la *LACC* », sont maintenant courants dans le contexte de la *LACC* (voir *Third Eye Capital Corporation c. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, par. 70).

[43] Liquidating CCAAs take diverse forms and may involve, among other things: the sale of the debtor company as a going concern; an "en bloc" sale of assets that are capable of being operationalized by a buyer; a partial liquidation or downsizing of business operations; or a piecemeal sale of assets (B. Kaplan, "Liquidating CCAAs: Discretion Gone Awry?", in J. P. Sarra, ed., *Annual Review of Insolvency Law* (2008), 79, at pp. 87-89). The ultimate commercial outcomes facilitated by liquidating CCAAs are similarly diverse. Some may result in the continued operation of the business of the debtor under a different going concern entity (e.g., the liquidations in *Indalex* and *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 (Ont. C.J. (Gen. Div.)), while others may result in a sale of assets and inventory with no such entity emerging (e.g., the proceedings in *Re Target Canada Co.*, 2015 ONSC 303, 22 C.B.R. (6th) 323, at paras. 7 and 31). Others still, like the case at bar, may involve a going concern sale of most of the assets of the debtor, leaving residual assets to be dealt with by the debtor and its stakeholders.

[43] Les procédures de liquidation sous le régime de la *LACC* revêtent différentes formes et peuvent, entre autres, inclure la vente de la société débitrice à titre d'entreprise en activité; la vente « en bloc » des éléments d'actif susceptibles d'être exploités par un acquéreur; une liquidation partielle de l'entreprise ou une réduction de ses activités; ou encore une vente de ses actifs élément par élément (B. Kaplan, « Liquidating CCAAs : Discretion Gone Awry? » dans J. P. Sarra, dir., *Annual Review of Insolvency Law* (2008), 79, p. 87-89). Les résultats commerciaux ultimement obtenus à l'issue des procédures de liquidation introduites sous le régime de la *LACC* sont eux aussi variés. Certaines procédures peuvent avoir pour résultat la continuité des activités de la débitrice sous la forme d'une autre entité viable (p. ex., les sociétés liquidées dans *Indalex* et *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 (C.J. Ont., Div. gén.)), alors que d'autres peuvent simplement aboutir à la vente des actifs et de l'inventaire sans donner naissance à une nouvelle entité (p. ex., la procédure en cause dans *Re Target Canada Co.*, 2015 ONSC 303, 22 C.B.R. (6th) 323, par. 7 et 31). D'autres encore, comme dans le dossier qui nous occupe, peuvent donner lieu à la vente de la plupart des actifs de la débitrice en vue de la poursuite de son activité, laissant à la débitrice et aux parties intéressées le soin de s'occuper des actifs résiduaires.

[44] *CCAA* courts first began approving these forms of liquidation pursuant to the broad discretion conferred by the Act. The emergence of this practice was not without criticism, largely on the basis that it appeared to be inconsistent with the *CCAA* being a "restructuring statute" (see, e.g., *Uti Energy Corp. v. Fracmaster Ltd.*, 1999 ABCA 178, 244 A.R. 93, at paras. 15-16, aff'g 1999 ABQB 379, 11 C.B.R. (4th) 204, at paras. 40-43; A. Nocilla, "The History of the Companies' Creditors Arrangement Act and the Future of Re-Structuring Law in Canada" (2014), 56 *Can. Bus. L.J.* 73, at pp. 88-92).

[44] Les tribunaux chargés de l'application de la *LACC* ont d'abord commencé à approuver ces formes de liquidation en exerçant le vaste pouvoir discrétionnaire que leur confère la Loi. L'émergence de cette pratique a fait l'objet de critiques, essentiellement parce qu'elle semblait incompatible avec l'objectif de « restructuration » de la *LACC* (voir, p. ex., *Uti Energy Corp. c. Fracmaster Ltd.*, 1999 ABCA 178, 244 A.R. 93, par. 15-16, conf. 1999 ABQB 379, 11 C.B.R. (4th) 204, par. 40-43; A. Nocilla, « The History of the Companies' Creditors Arrangement Act and the Future of Re-Structuring Law in Canada » (2014), 56 *Rev. can. dr. comm.* 73, p. 88-92).

[45] However, since s. 36 of the *CCAA* came into force in 2009, courts have been using it to effect liquidating CCAAs. Section 36 empowers courts to authorize the sale or disposition of a debtor

[45] Toutefois, depuis que l'art. 36 de la *LACC* est entré en vigueur en 2009, les tribunaux l'utilisent pour consentir à une liquidation sous le régime de la *LACC*. L'article 36 confère aux tribunaux le pouvoir

company's assets outside the ordinary course of business.[3] Significantly, when the Standing Senate Committee on Banking, Trade and Commerce recommended the adoption of s. 36, it observed that liquidation is not necessarily inconsistent with the remedial objectives of the *CCAA*, and that it may be a means to "raise capital [to facilitate a restructuring], eliminate further loss for creditors or focus on the solvent operations of the business" (p. 147). Other commentators have observed that liquidation can be a "vehicle to restructure a business" by allowing the business to survive, albeit under a different corporate form or ownership (Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at p. 169; see also K. P. McElcheran, *Commercial Insolvency in Canada* (4th ed. 2019), at p. 311). Indeed, in *Indalex*, the company sold its assets under the *CCAA* in order to preserve the jobs of its employees, despite being unable to survive as their employer (see para. 51).

[46] Ultimately, the relative weight that the different objectives of the *CCAA* take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval. Here, a parallel may be drawn with the *BIA* context. In *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 67, this Court explained that, as a general matter, the *BIA* serves two purposes: (1) the bankrupt's financial rehabilitation and (2) the equitable distribution of the bankrupt's assets among creditors. However,

[3] We note that while s. 36 now codifies the jurisdiction of a supervising court to grant a sale and vesting order, and enumerates factors to guide the court's discretion to grant such an order, it is silent on when courts ought to approve a liquidation under the *CCAA* as opposed to requiring the parties to proceed to liquidation under a receivership or the *BIA* regime (see Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 167-68; A. Nocilla, "Asset Sales Under the Companies' Creditors Arrangement Act and the Failure of Section 36" (2012) 52 *Can. Bus. L.J.* 226, at pp. 243-44 and 247). This issue remains an open question and was not put to this Court in either *Indalex* or these appeals.

d'autoriser la vente ou la disposition des actifs d'une compagnie débitrice hors du cours ordinaire de ses affaires[3]. Fait important, lorsque le Comité sénatorial permanent des banques et du commerce a recommandé l'adoption de l'art. 36, il a fait observer que la liquidation n'est pas nécessairement incompatible avec les objectifs réparateurs de la *LACC* et qu'il pourrait s'agir d'un moyen « soit pour obtenir des capitaux [et faciliter la restructuration] ou éviter des pertes plus graves aux créanciers, soit pour se concentrer sur ses activités solvables » (p. 163). D'autres auteurs ont observé que la liquidation peut [TRADUCTION] « être un moyen de restructurer une entreprise » en lui permettant de survivre, quoique sous une forme corporative différente ou sous la gouverne de propriétaires différents (Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 169; voir aussi K. P. McElcheran, *Commercial Insolvency in Canada* (4e éd. 2019), p. 311). D'ailleurs, dans l'arrêt *Indalex*, la compagnie a vendu ses actifs sous le régime de la *LACC* afin de protéger les emplois de son personnel, même si elle ne pouvait demeurer leur employeur (voir par. 51).

[46] En définitive, le poids relatif attribué aux différents objectifs de la *LACC* dans une affaire donnée peut varier en fonction des circonstances factuelles, de l'étape des procédures ou des solutions qui sont présentées à la cour pour approbation. En l'espèce, il est possible d'établir un parallèle avec le contexte de la *LFI*. Dans l'arrêt *Orphan Well Association c. Grant Thornton Ltd.*, 2019 CSC 5, [2019] 1 R.C.S. 150, par. 67, notre Cour a expliqué que, de façon générale, la *LFI* vise deux objectifs : (1) la réhabilitation financière du failli, et (2) le partage équitable des actifs du failli entre les créanciers. Or, dans les cas où

[3] Mentionnons que, bien que l'art. 36 codifie désormais le pouvoir du juge surveillant de rendre une ordonnance de vente et de dévolution, et qu'il énonce les facteurs devant orienter l'exercice de son pouvoir discrétionnaire d'accorder une telle ordonnance, il est muet quant aux circonstances dans lesquelles les tribunaux doivent approuver une liquidation sous le régime de la *LACC* plutôt que d'exiger des parties qu'elles procèdent à la liquidation par voie de mise sous séquestre ou sous le régime de la *LFI* (voir Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 167-168; A. Nocilla, « Asset Sales Under the Companies' Creditors Arrangement Act and the Failure of Section 36 » (2012) 52 *Rev. can. dr. comm.* 226, p. 243-244 et 247). Cette question demeure ouverte et n'a pas été soumise à la Cour dans *Indalex* non plus que dans les présents pourvois.

in circumstances where a debtor corporation will never emerge from bankruptcy, only the latter purpose is relevant (see para. 67). Similarly, under the *CCAA*, when a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus. Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage. As we will explain, the architecture of the *CCAA* leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge.

(2) The Role of a Supervising Judge in *CCAA* Proceedings

[47] One of the principal means through which the *CCAA* achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 18-19). From beginning to end, each *CCAA* proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The *CCAA* capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and "meet contemporary business and social needs" (*Century Services*, at para. 58) in "real-time" (para. 58, citing R. B. Jones, "The Evolution of Canadian Restructuring: Challenges for the Rule of Law", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge "to make any order that [the judge] considers appropriate in the circumstances". This section has been described as "the engine" driving the statutory scheme (*Stelco*

la société débitrice ne s'extirpera jamais de la faillite, seul le dernier objectif est pertinent (voir par. 67). Dans la même veine, sous le régime de la *LACC*, lorsque la restructuration d'une société débitrice qui n'a pas déposé de proposition est impossible, une liquidation visant à protéger sa valeur d'exploitation et à maintenir ses activités courantes peut devenir l'objectif réparateur principal. En outre, lorsque la restructuration ou la liquidation est terminée et que le tribunal doit décider du sort des actifs résiduels, l'objectif de maximiser le recouvrement des créanciers à partir de ces actifs peut passer au premier plan. Comme nous l'expliquerons, la structure de la *LACC* laisse au juge surveillant le soin de procéder à un examen et à une mise en balance au cas par cas de ces objectifs réparateurs.

(2) Le rôle du juge surveillant dans les procédures intentées sous le régime de la *LACC*

[47] Un des principaux moyens par lesquels la *LACC* atteint ses objectifs réside dans le rôle particulier de surveillance qu'elle réserve aux juges (voir Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 18-19). Chaque procédure fondée sur la *LACC* est supervisée du début à la fin par un seul juge surveillant. En raison de ses rapports continus avec les parties, ce dernier acquiert une connaissance approfondie de la dynamique entre les intéressés et des réalités commerciales entourant la procédure.

[48] La *LACC* mise sur la position avantageuse qu'occupe le juge surveillant en lui accordant le vaste pouvoir discrétionnaire de rendre toute une gamme d'ordonnances susceptibles de répondre aux circonstances de chaque cas et de « [s'adapter] aux besoins commerciaux et sociaux contemporains » (*Century Services*, par. 58) en « temps réel » (par. 58, citant R. B. Jones, « The Evolution of Canadian Restructuring : Challenges for the Rule of Law », dans J. P. Sarra, dir., *Annual Review of Insolvency Law 2005* (2006), 481, p. 484). Le point d'ancrage de ce pouvoir discrétionnaire est l'art. 11, qui confère au juge le pouvoir de « rendre toute ordonnance qu'il estime indiquée ». Cette disposition a été décrite

Inc. (Re) (2005), 253 D.L.R. (4th) 109 (Ont. C.A.), at para. 36).

[49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[50] The first two considerations of appropriateness and good faith are widely understood in the *CCAA* context. Appropriateness "is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*" (para. 70). Further, the well-established requirement that parties must act in good faith in insolvency proceedings has recently been made express in s. 18.6 of the *CCAA*, which provides:

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

Good faith — powers of court

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

(See also *BIA*, s. 4.2; *Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29, ss. 133 and 140.)

[51] The third consideration of due diligence requires some elaboration. Consistent with the *CCAA* regime generally, the due diligence consideration discourages parties from sitting on their rights and ensures that creditors do not strategically manoeuver or

comme étant le « moteur » du régime législatif (*Stelco Inc. (Re)* (2005), 253 D.L.R. (4th) 109 (C.A. Ont.), par. 36).

[49] Quoique vaste, le pouvoir discrétionnaire conféré par la *LACC* n'est pas sans limites. Son exercice doit tendre à la réalisation des objectifs réparateurs de la *LACC*, que nous avons expliqués ci-dessus (voir *Century Services*, par. 59). En outre, la cour doit garder à l'esprit les trois « considérations de base » (par. 70) qu'il incombe au demandeur de démontrer : (1) que l'ordonnance demandée est indiquée, et (2) qu'il a agi de bonne foi et (3) avec la diligence voulue (par. 69).

[50] Les deux premières considérations, l'opportunité et la bonne foi, sont largement connues dans le contexte de la *LACC*. Le tribunal « évalue l'opportunité de l'ordonnance demandée en déterminant si elle favorisera la réalisation des objectifs de politique générale qui sous-tendent la Loi » (par. 70). Par ailleurs, l'exigence bien établie selon laquelle les parties doivent agir de bonne foi dans les procédures d'insolvabilité est depuis peu mentionnée de façon expresse à l'art. 18.6 de la *LACC*, qui dispose :

Bonne foi

18.6 (1) Tout intéressé est tenu d'agir de bonne foi dans le cadre d'une procédure intentée au titre de la présente loi.

Bonne foi — pouvoirs du tribunal

(2) S'il est convaincu que l'intéressé n'agit pas de bonne foi, le tribunal peut, à la demande de tout intéressé, rendre toute ordonnance qu'il estime indiquée.

(Voir aussi *LFI*, art. 4.2; *Loi nº 1 d'exécution du budget de 2019*, L.C. 2019, c. 29, art. 133 et 140.)

[51] La troisième considération, celle de la diligence, requiert qu'on s'y attarde. Conformément au régime de la *LACC* en général, la considération de diligence décourage les parties de rester sur leurs positions et fait en sorte que les créanciers n'usent

Century Services Inc. *Appellant*

v.

Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada *Respondent*

INDEXED AS: CENTURY SERVICES INC. *v.* CANADA (ATTORNEY GENERAL)

2010 SCC 60

File No.: 33239.

2010: May 11; 2010: December 16.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Bankruptcy and Insolvency — Priorities — Crown applying on eve of bankruptcy of debtor company to have GST monies held in trust paid to Receiver General of Canada — Whether deemed trust in favour of Crown under Excise Tax Act prevails over provisions of Companies' Creditors Arrangement Act purporting to nullify deemed trusts in favour of Crown — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.3(1) — Excise Tax Act, R.S.C. 1985, c. E-15, s. 222(3).

Bankruptcy and insolvency — Procedure — Whether chambers judge had authority to make order partially lifting stay of proceedings to allow debtor company to make assignment in bankruptcy and to stay Crown's right to enforce GST deemed trust — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11.

Trusts — Express trusts — GST collected but unremitted to Crown — Judge ordering that GST be held by Monitor in trust account — Whether segregation of Crown's GST claim in Monitor's account created an express trust in favour of Crown.

Century Services Inc. *Appelante*

c.

Procureur général du Canada au nom de Sa Majesté la Reine du chef du Canada *Intimé*

RÉPERTORIÉ : CENTURY SERVICES INC. *c.* CANADA (PROCUREUR GÉNÉRAL)

2010 CSC 60

N° du greffe : 33239.

2010 : 11 mai; 2010 : 16 décembre.

Présents : La juge en chef McLachlin et les juges Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein et Cromwell.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Faillite et insolvabilité — Priorités — Demande de la Couronne à la société débitrice, la veille de la faillite, sollicitant le paiement au receveur général du Canada de la somme détenue en fiducie au titre de la TPS — La fiducie réputée établie par la Loi sur la taxe d'accise en faveur de la Couronne l'emporte-t-elle sur les dispositions de la Loi sur les arrangements avec les créanciers des compagnies censées neutraliser ces fiducies? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 18.3(1) — Loi sur la taxe d'accise, L.R.C. 1985, ch. E-15, art. 222(3).

Faillite et insolvabilité — Procédure — Le juge en cabinet avait-il le pouvoir, d'une part, de lever partiellement la suspension des procédures pour permettre à la compagnie débitrice de faire cession de ses biens en faillite et, d'autre part, de suspendre les mesures prises par la Couronne pour bénéficier de la fiducie réputée se rapportant à la TPS? — Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, ch. C-36, art. 11.

Fiducies — Fiducies expresses — Somme perçue au titre de la TPS mais non versée à la Couronne — Ordonnance du juge exigeant que la TPS soit détenue par le contrôleur dans son compte en fiducie — Le fait que le montant de TPS réclamé par la Couronne soit détenu séparément dans le compte du contrôleur a-t-il créé une fiducie expresse en faveur de la Couronne?

The debtor company commenced proceedings under the *Companies' Creditors Arrangement Act* ("*CCAA*"), obtaining a stay of proceedings to allow it time to reorganize its financial affairs. One of the debtor company's outstanding debts at the commencement of the reorganization was an amount of unremitted Goods and Services Tax ("GST") payable to the Crown. Section 222(3) of the *Excise Tax Act* ("*ETA*") created a deemed trust over unremitted GST, which operated despite any other enactment of Canada except the *Bankruptcy and Insolvency Act* ("*BIA*"). However, s. 18.3(1) of the *CCAA* provided that any statutory deemed trusts in favour of the Crown did not operate under the *CCAA*, subject to certain exceptions, none of which mentioned GST.

Pursuant to an order of the *CCAA* chambers judge, a payment not exceeding $5 million was approved to the debtor company's major secured creditor, Century Services. However, the chambers judge also ordered the debtor company to hold back and segregate in the Monitor's trust account an amount equal to the unremitted GST pending the outcome of the reorganization. On concluding that reorganization was not possible, the debtor company sought leave of the court to partially lift the stay of proceedings so it could make an assignment in bankruptcy under the *BIA*. The Crown moved for immediate payment of unremitted GST to the Receiver General. The chambers judge denied the Crown's motion, and allowed the assignment in bankruptcy. The Court of Appeal allowed the appeal on two grounds. First, it reasoned that once reorganization efforts had failed, the chambers judge was bound under the priority scheme provided by the *ETA* to allow payment of unremitted GST to the Crown and had no discretion under s. 11 of the *CCAA* to continue the stay against the Crown's claim. Second, the Court of Appeal concluded that by ordering the GST funds segregated in the Monitor's trust account, the chambers judge had created an express trust in favour of the Crown.

Held (Abella J. dissenting): The appeal should be allowed.

Per McLachlin C.J. and Binnie, LeBel, Deschamps, Charron, Rothstein and Cromwell JJ.: The apparent conflict between s. 222(3) of the *ETA* and s. 18.3(1) of the *CCAA* can be resolved through an interpretation that properly recognizes the history of the *CCAA*, its function amidst the body of insolvency legislation enacted by

La compagnie débitrice a déposé une requête sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* (« *LACC* ») et obtenu la suspension des procédures dans le but de réorganiser ses finances. Parmi les dettes de la compagnie débitrice au début de la réorganisation figurait une somme due à la Couronne, mais non versée encore, au titre de la taxe sur les produits et services (« TPS »). Le paragraphe 222(3) de la *Loi sur la taxe d'accise* (« *LTA* ») crée une fiducie réputée visant les sommes de TPS non versées. Cette fiducie s'applique malgré tout autre texte législatif du Canada sauf la *Loi sur la faillite et l'insolvabilité* (« *LFI* »). Toutefois, le par. 18.3(1) de la *LACC* prévoyait que, sous réserve de certaines exceptions, dont aucune ne concerne la TPS, les fiducies réputées établies par la loi en faveur de la Couronne ne s'appliquaient pas sous son régime.

Le juge siégeant en son cabinet chargé d'appliquer la *LACC* a approuvé par ordonnance le paiement à Century Services, le principal créancier garanti du débiteur, d'une somme d'au plus cinq millions de dollars. Toutefois, il a également ordonné à la compagnie débitrice de retenir un montant égal aux sommes de TPS non versées et de le déposer séparément dans le compte en fiducie du contrôleur jusqu'à l'issue de la réorganisation. Ayant conclu que la réorganisation n'était pas possible, la compagnie débitrice a demandé au tribunal de lever partiellement la suspension des procédures pour lui permettre de faire cession de ses biens en vertu de la *LFI*. La Couronne a demandé par requête le paiement immédiat au receveur général des sommes de TPS non versées. Le juge siégeant en son cabinet a rejeté la requête de la Couronne et autorisé la cession des biens. La Cour d'appel a accueilli l'appel pour deux raisons. Premièrement, elle a conclu que, après que la tentative de réorganisation eut échoué, le juge siégeant en son cabinet était tenu, en raison de la priorité établie par la *LTA*, d'autoriser le paiement à la Couronne des sommes qui lui étaient dues au titre de la TPS, et que l'art. 11 de la *LACC* ne lui conférait pas le pouvoir discrétionnaire de maintenir la suspension de la demande de la Couronne. Deuxièmement, la Cour d'appel a conclu que, en ordonnant la ségrégation des sommes de TPS dans le compte en fiducie du contrôleur, le juge siégeant en son cabinet avait créé une fiducie expresse en faveur de la Couronne.

Arrêt (la juge Abella est dissidente) : Le pourvoi est accueilli.

La juge en chef McLachlin et les juges Binnie, LeBel, Deschamps, Charron, Rothstein et Cromwell : Il est possible de résoudre le conflit apparent entre le par. 222(3) de la *LTA* et le par. 18.3(1) de la *LACC* en les interprétant d'une manière qui tienne compte adéquatement de l'historique de la *LACC*, de la fonction de cette loi parmi

Parliament and the principles for interpreting the *CCAA* that have been recognized in the jurisprudence. The history of the *CCAA* distinguishes it from the *BIA* because although these statutes share the same remedial purpose of avoiding the social and economic costs of liquidating a debtor's assets, the *CCAA* offers more flexibility and greater judicial discretion than the rules-based mechanism under the *BIA*, making the former more responsive to complex reorganizations. Because the *CCAA* is silent on what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily provides the backdrop against which creditors assess their priority in the event of bankruptcy. The contemporary thrust of legislative reform has been towards harmonizing aspects of insolvency law common to the *CCAA* and the *BIA*, and one of its important features has been a cutback in Crown priorities. Accordingly, the *CCAA* and the *BIA* both contain provisions nullifying statutory deemed trusts in favour of the Crown, and both contain explicit exceptions exempting source deductions deemed trusts from this general rule. Meanwhile, both Acts are harmonious in treating other Crown claims as unsecured. No such clear and express language exists in those Acts carving out an exception for GST claims.

When faced with the apparent conflict between s. 222(3) of the *ETA* and s. 18.3(1) of the *CCAA*, courts have been inclined to follow *Ottawa Senators Hockey Club Corp. (Re)* and resolve the conflict in favour of the *ETA*. *Ottawa Senators* should not be followed. Rather, the *CCAA* provides the rule. Section 222(3) of the *ETA* evinces no explicit intention of Parliament to repeal *CCAA* s. 18.3. Where Parliament has sought to protect certain Crown claims through statutory deemed trusts and intended that these deemed trusts continue in insolvency, it has legislated so expressly and elaborately. Meanwhile, there is no express statutory basis for concluding that GST claims enjoy a preferred treatment under the *CCAA* or the *BIA*. The internal logic of the *CCAA* appears to subject a GST deemed trust to the waiver by Parliament of its priority. A strange asymmetry would result if differing treatments of GST deemed trusts under the *CCAA* and the *BIA* were found to exist, as this would encourage statute shopping, undermine the *CCAA*'s remedial purpose and invite the very social ills that the statute was enacted to avert. The later in time enactment of the more general s. 222(3) of the *ETA* does not require application of the doctrine of implied repeal to the earlier and more specific s. 18.3(1) of the *CCAA* in the circumstances of this case. In any event,

l'ensemble des textes adoptés par le législateur fédéral en matière d'insolvabilité et des principes d'interprétation de la *LACC* reconnus dans la jurisprudence. L'historique de la *LACC* permet de distinguer celle-ci de la *LFI* en ce sens que, bien que ces lois aient pour objet d'éviter les coûts sociaux et économiques liés à la liquidation de l'actif d'un débiteur, la *LACC* offre plus de souplesse et accorde aux tribunaux un plus grand pouvoir discrétionnaire que le mécanisme fondé sur des règles de la *LFI*, ce qui rend la première mieux adaptée aux réorganisations complexes. Comme la *LACC* ne précise pas ce qui arrive en cas d'échec de la réorganisation, la *LFI* fournit la norme de référence permettant aux créanciers de savoir s'ils ont la priorité dans l'éventualité d'une faillite. Le travail de réforme législative contemporain a principalement visé à harmoniser les aspects communs à la *LACC* et à la *LFI*, et l'une des caractéristiques importantes de cette réforme est la réduction des priorités dont jouit la Couronne. Par conséquent, la *LACC* et la *LFI* contiennent toutes deux des dispositions neutralisant les fiducies réputées établies en vertu d'un texte législatif en faveur de la Couronne, et toutes deux comportent des exceptions expresses à la règle générale qui concernent les fiducies réputées établies à l'égard des retenues à la source. Par ailleurs, ces deux lois considèrent les autres créances de la Couronne comme des créances non garanties. Ces lois ne comportent pas de dispositions claires et expresses établissant une exception pour les créances relatives à la TPS.

Les tribunaux appelés à résoudre le conflit apparent entre le par. 222(3) de la *LTA* et le par. 18.3(1) de la *LACC* ont été enclins à appliquer l'arrêt *Ottawa Senators Hockey Club Corp. (Re)* et à trancher en faveur de la *LTA*. Il ne convient pas de suivre cet arrêt. C'est plutôt la *LACC* qui énonce la règle applicable. Le paragraphe 222(3) de la *LTA* ne révèle aucune intention explicite du législateur d'abroger l'art. 18.3 de la *LACC*. Quand le législateur a voulu protéger certaines créances de la Couronne au moyen de fiducies réputées et voulu que celles-ci continuent de s'appliquer en situation d'insolvabilité, il l'a indiqué de manière explicite et minutieuse. En revanche, il n'existe aucune disposition législative expresse permettant de conclure que les créances relatives à la TPS bénéficient d'un traitement préférentiel sous le régime de la *LACC* ou de la *LFI*. Il semble découler de la logique interne de la *LACC* que la fiducie réputée établie à l'égard de la TPS est visée par la renonciation du législateur à sa priorité. Il y aurait une étrange asymétrie si l'on concluait que la *LACC* ne traite pas les fiducies réputées à l'égard de la TPS de la même manière que la *LFI*, car cela encouragerait les créanciers à recourir à la loi la plus favorable, minerait les objectifs réparateurs de la *LACC* et risquerait de favoriser les maux sociaux que l'édiction de ce texte législatif visait justement à

recent amendments to the *CCAA* in 2005 resulted in s. 18.3 of the Act being renumbered and reformulated, making it the later in time provision. This confirms that Parliament's intent with respect to GST deemed trusts is to be found in the *CCAA*. The conflict between the *ETA* and the *CCAA* is more apparent than real.

The exercise of judicial discretion has allowed the *CCAA* to adapt and evolve to meet contemporary business and social needs. As reorganizations become increasingly complex, *CCAA* courts have been called upon to innovate. In determining their jurisdiction to sanction measures in a *CCAA* proceeding, courts should first interpret the provisions of the *CCAA* before turning to their inherent or equitable jurisdiction. Noteworthy in this regard is the expansive interpretation the language of the *CCAA* is capable of supporting. The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. The requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. The question is whether the order will usefully further efforts to avoid the social and economic losses resulting from liquidation of an insolvent company, which extends to both the purpose of the order and the means it employs. Here, the chambers judge's order staying the Crown's GST claim was in furtherance of the *CCAA*'s objectives because it blunted the impulse of creditors to interfere in an orderly liquidation and fostered a harmonious transition from the *CCAA* to the *BIA*, meeting the objective of a single proceeding that is common to both statutes. The transition from the *CCAA* to the *BIA* may require the partial lifting of a stay of proceedings under the *CCAA* to allow commencement of *BIA* proceedings, but no gap exists between the two statutes because they operate in tandem and creditors in both cases look to the *BIA* scheme of distribution to foreshadow how they will fare if the reorganization is unsuccessful. The breadth of the court's discretion under the *CCAA* is sufficient to construct a bridge to liquidation under the *BIA*. Hence, the chambers judge's order was authorized.

prévenir. Le paragraphe 222(3) de la *LTA*, une disposition plus récente et générale que le par. 18.3(1) de la *LACC*, n'exige pas l'application de la doctrine de l'abrogation implicite dans les circonstances de la présente affaire. En tout état de cause, par suite des modifications apportées récemment à la *LACC* en 2005, l'art. 18.3 a été reformulé et renuméroté, ce qui en fait la disposition postérieure. Cette constatation confirme que c'est dans la *LACC* qu'est exprimée l'intention du législateur en ce qui a trait aux fiducies réputées visant la TPS. Le conflit entre la *LTA* et la *LACC* est plus apparent que réel.

L'exercice par les tribunaux de leurs pouvoirs discrétionnaires a fait en sorte que la *LACC* a évolué et s'est adaptée aux besoins commerciaux et sociaux contemporains. Comme les réorganisations deviennent très complexes, les tribunaux chargés d'appliquer la *LACC* ont été appelés à innover. Les tribunaux doivent d'abord interpréter les dispositions de la *LACC* avant d'invoquer leur compétence inhérente ou leur compétence en equity pour établir leur pouvoir de prendre des mesures dans le cadre d'une procédure fondée sur la *LACC*. À cet égard, il faut souligner que le texte de la *LACC* peut être interprété très largement. La possibilité pour le tribunal de rendre des ordonnances plus spécifiques n'a pas pour effet de restreindre la portée des termes généraux utilisés dans la *LACC*. L'opportunité, la bonne foi et la diligence sont des considérations de base que le tribunal devrait toujours garder à l'esprit lorsqu'il exerce les pouvoirs conférés par la *LACC*. Il s'agit de savoir si l'ordonnance contribuera utilement à la réalisation de l'objectif d'éviter les pertes sociales et économiques résultant de la liquidation d'une compagnie insolvable. Ce critère s'applique non seulement à l'objectif de l'ordonnance, mais aussi aux moyens utilisés. En l'espèce, l'ordonnance du juge siégeant en son cabinet qui a suspendu l'exécution des mesures de recouvrement de la Couronne à l'égard de la TPS contribuait à la réalisation des objectifs de la *LACC*, parce qu'elle avait pour effet de dissuader les créanciers d'entraver une liquidation ordonnée et favorisait une transition harmonieuse entre la *LACC* et la *LFI*, répondant ainsi à l'objectif — commun aux deux lois — qui consiste à avoir une seule procédure. Le passage de la *LACC* à la *LFI* peut exiger la levée partielle d'une suspension de procédures ordonnée en vertu de la *LACC*, de façon à permettre l'engagement des procédures fondées sur la *LFI*, mais il n'existe aucun hiatus entre ces lois étant donné qu'elles s'appliquent de concert et que, dans les deux cas, les créanciers examinent le régime de distribution prévu par la *LFI* pour connaître la situation qui serait la leur en cas d'échec de la réorganisation. L'ampleur du pouvoir discrétionnaire conféré au tribunal par la *LACC* suffit pour établir une passerelle vers une liquidation opérée sous le régime de la *LFI*. Le juge siégeant en son cabinet pouvait donc rendre l'ordonnance qu'il a prononcée.

No express trust was created by the chambers judge's order in this case because there is no certainty of object inferrable from his order. Creation of an express trust requires certainty of intention, subject matter and object. At the time the chambers judge accepted the proposal to segregate the monies in the Monitor's trust account there was no certainty that the Crown would be the beneficiary, or object, of the trust because exactly who might take the money in the final result was in doubt. In any event, no dispute over the money would even arise under the interpretation of s. 18.3(1) of the *CCAA* established above, because the Crown's deemed trust priority over GST claims would be lost under the *CCAA* and the Crown would rank as an unsecured creditor for this amount.

L'ordonnance du juge siégeant en son cabinet n'a pas créé de fiducie expresse en l'espèce, car aucune certitude d'objet ne peut être inférée de cette ordonnance. La création d'une fiducie expresse exige la présence de certitudes quant à l'intention, à la matière et à l'objet. Lorsque le juge siégeant en son cabinet a accepté la proposition que les sommes soient détenues séparément dans le compte en fiducie du contrôleur, il n'existait aucune certitude que la Couronne serait le bénéficiaire ou l'objet de la fiducie, car il y avait un doute quant à la question de savoir qui au juste pourrait toucher l'argent en fin de compte. De toute façon, suivant l'interprétation du par. 18.3(1) de la *LACC* dégagée précédemment, aucun différend ne saurait même exister quant à l'argent, étant donné que la priorité accordée aux réclamations de la Couronne fondées sur la fiducie réputée visant la TPS ne s'applique pas sous le régime de la *LACC* et que la Couronne est reléguée au rang de créancier non garanti à l'égard des sommes en question.

Per Fish J.: The GST monies collected by the debtor are not subject to a deemed trust or priority in favour of the Crown. In recent years, Parliament has given detailed consideration to the Canadian insolvency scheme but has declined to amend the provisions at issue in this case, a deliberate exercise of legislative discretion. On the other hand, in upholding deemed trusts created by the *ETA* notwithstanding insolvency proceedings, courts have been unduly protective of Crown interests which Parliament itself has chosen to subordinate to competing prioritized claims. In the context of the Canadian insolvency regime, deemed trusts exist only where there is a statutory provision creating the trust and a *CCAA* or *BIA* provision explicitly confirming its effective operation. The *Income Tax Act*, the *Canada Pension Plan* and the *Employment Insurance Act* all contain deemed trust provisions that are strikingly similar to that in s. 222 of the *ETA* but they are all also confirmed in s. 37 of the *CCAA* and in s. 67(3) of the *BIA* in clear and unmistakeable terms. The same is not true of the deemed trust created under the *ETA*. Although Parliament created a deemed trust in favour of the Crown to hold unremitted GST monies, and although it purports to maintain this trust notwithstanding any contrary federal or provincial legislation, it did not confirm the continued operation of the trust in either the *BIA* or the *CCAA*, reflecting Parliament's intention to allow the deemed trust to lapse with the commencement of insolvency proceedings.

Le juge Fish : Les sommes perçues par la débitrice au titre de la TPS ne font l'objet d'aucune fiducie réputée ou priorité en faveur de la Couronne. Au cours des dernières années, le législateur fédéral a procédé à un examen approfondi du régime canadien d'insolvabilité, mais il a refusé de modifier les dispositions qui sont en cause dans la présente affaire. Il s'agit d'un exercice délibéré du pouvoir discrétionnaire de légiférer. Par contre, en maintenant, malgré l'existence des procédures d'insolvabilité, la validité de fiducies réputées créées en vertu de la *LTA*, les tribunaux ont protégé indûment des droits de la Couronne que le Parlement avait lui-même choisi de subordonner à d'autres créances prioritaires. Dans le contexte du régime canadien d'insolvabilité, il existe une fiducie réputée uniquement lorsqu'une disposition législative crée la fiducie et qu'une disposition de la *LACC* ou de la *LFI* confirme explicitement l'existence de la fiducie. La *Loi de l'impôt sur le revenu*, le *Régime de pensions du Canada* et la *Loi sur l'assurance-emploi* renferment toutes des dispositions relatives aux fiducies réputées dont le libellé offre une ressemblance frappante avec celui de l'art. 222 de la *LTA*, mais le maintien en vigueur des fiducies réputées créées en vertu de ces dispositions est confirmé à l'art. 37 de la *LACC* et au par. 67(3) de la *LFI* en termes clairs et explicites. La situation est différente dans le cas de la fiducie réputée créée par la *LTA*. Bien que le législateur crée en faveur de la Couronne une fiducie réputée dans laquelle seront conservées les sommes recueillies au titre de la TPS mais non encore versées, et bien qu'il prétende maintenir cette fiducie en vigueur malgré les dispositions à l'effet contraire de toute loi fédérale ou provinciale, il ne confirme pas l'existence de la fiducie dans la *LFI* ou la *LACC*, ce qui témoigne de son intention de laisser la fiducie réputée devenir caduque au moment de l'introduction de la procédure d'insolvabilité.

Per Abella J. (dissenting): Section 222(3) of the *ETA* gives priority during *CCAA* proceedings to the Crown's deemed trust in unremitted GST. This provision unequivocally defines its boundaries in the clearest possible terms and excludes only the *BIA* from its legislative grasp. The language used reflects a clear legislative intention that s. 222(3) would prevail if in conflict with any other law except the *BIA*. This is borne out by the fact that following the enactment of s. 222(3), amendments to the *CCAA* were introduced, and despite requests from various constituencies, s. 18.3(1) was not amended to make the priorities in the *CCAA* consistent with those in the *BIA*. This indicates a deliberate legislative choice to protect the deemed trust in s. 222(3) from the reach of s. 18.3(1) of the *CCAA*.

The application of other principles of interpretation reinforces this conclusion. An earlier, specific provision may be overruled by a subsequent general statute if the legislature indicates, through its language, an intention that the general provision prevails. Section 222(3) achieves this through the use of language stating that it prevails despite any law of Canada, of a province, or "any other law" other than the *BIA*. Section 18.3(1) of the *CCAA* is thereby rendered inoperative for purposes of s. 222(3). By operation of s. 44(*f*) of the *Interpretation Act*, the transformation of s. 18.3(1) into s. 37(1) after the enactment of s. 222(3) of the *ETA* has no effect on the interpretive queue, and s. 222(3) of the *ETA* remains the "later in time" provision. This means that the deemed trust provision in s. 222(3) of the *ETA* takes precedence over s. 18.3(1) during *CCAA* proceedings. While s. 11 gives a court discretion to make orders notwithstanding the *BIA* and the *Winding-up Act*, that discretion is not liberated from the operation of any other federal statute. Any exercise of discretion is therefore circumscribed by whatever limits are imposed by statutes other than the *BIA* and the *Winding-up Act*. That includes the *ETA*. The chambers judge in this case was, therefore, required to respect the priority regime set out in s. 222(3) of the *ETA*. Neither s. 18.3(1) nor s. 11 of the *CCAA* gave him the authority to ignore it. He could not, as a result, deny the Crown's request for payment of the GST funds during the *CCAA* proceedings.

La juge Abella (dissidente) : Le paragraphe 222(3) de la *LTA* donne préséance, dans le cadre d'une procédure relevant de la *LACC*, à la fiducie réputée qui est établie en faveur de la Couronne à l'égard de la TPS non versée. Cette disposition définit sans équivoque sa portée dans des termes on ne peut plus clairs et n'exclut que la *LFI* de son champ d'application. Les termes employés révèlent l'intention claire du législateur que le par. 222(3) l'emporte en cas de conflit avec toute autre loi sauf la *LFI*. Cette opinion est confortée par le fait que des modifications ont été apportées à la *LACC* après l'édiction du par. 222(3) et que, malgré les demandes répétées de divers groupes, le par. 18.3(1) n'a pas été modifié pour aligner l'ordre de priorité établi par la *LACC* sur celui de la *LFI*. Cela indique que le législateur a délibérément choisi de soustraire la fiducie réputée établie au par. 222(3) à l'application du par. 18.3(1) de la *LACC*.

Cette conclusion est renforcée par l'application d'autres principes d'interprétation. Une disposition spécifique antérieure peut être supplantée par une loi ultérieure de portée générale si le législateur, par les mots qu'il a employés, a exprimé l'intention de faire prévaloir la loi générale. Le paragraphe 222(3) accomplit cela de par son libellé, lequel précise que la disposition l'emporte sur tout autre texte législatif fédéral, tout texte législatif provincial ou « toute autre règle de droit » sauf la *LFI*. Le paragraphe 18.3(1) de la *LACC* est par conséquent rendu inopérant aux fins d'application du par. 222(3). Selon l'alinéa 44*f*) de la *Loi d'interprétation*, le fait que le par. 18.3(1) soit devenu le par. 37(1) à la suite de l'édiction du par. 222(3) de la *LTA* n'a aucune incidence sur l'ordre chronologique du point de vue de l'interprétation, et le par. 222(3) de la *LTA* demeure la disposition « postérieure ». Il s'ensuit que la disposition créant une fiducie réputée que l'on trouve au par. 222(3) de la *LTA* l'emporte sur le par. 18.3(1) dans le cadre d'une procédure fondée sur la *LACC*. Bien que l'art. 11 accorde au tribunal le pouvoir discrétionnaire de rendre des ordonnances malgré les dispositions de la *LFI* et de la *Loi sur les liquidations*, ce pouvoir discrétionnaire demeure assujetti à l'application de toute autre loi fédérale. L'exercice de ce pouvoir discrétionnaire est donc circonscrit par les limites imposées par toute loi autre que la *LFI* et la *Loi sur les liquidations*, et donc par la *LTA*. En l'espèce, le juge siégeant en son cabinet était donc tenu de respecter le régime de priorités établi au par. 222(3) de la *LTA*. Ni le par. 18.3(1), ni l'art. 11 de la *LACC* ne l'autorisaient à en faire abstraction. Par conséquent, il ne pouvait pas refuser la demande présentée par la Couronne en vue de se faire payer la TPS dans le cadre de la procédure introduite en vertu de la *LACC*.

3.3 *Discretionary Power of a Court Supervising a CCAA Reorganization*

[57] Courts frequently observe that "[t]he *CCAA* is skeletal in nature" and does not "contain a comprehensive code that lays out all that is permitted or barred" (*Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513, at para. 44, *per* Blair J.A.). Accordingly, "[t]he history of CCAA law has been an evolution of judicial interpretation" (*Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (Ont. Ct. (Gen. Div.)), at para. 10, *per* Farley J.).

[58] *CCAA* decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly describes as "the hothouse of real-time litigation" has been the primary method by which the *CCAA* has been adapted and has evolved to meet contemporary business and social needs (see Jones, at p. 484).

[59] Judicial discretion must of course be exercised in furtherance of the *CCAA*'s purposes. The remedial purpose I referred to in the historical overview of the Act is recognized over and over again in the jurisprudence. To cite one early example:

> The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

(*Elan Corp. v. Comiskey* (1990), 41 O.A.C. 282, at para. 57, *per* Doherty J.A., dissenting)

[60] Judicial decision making under the *CCAA* takes many forms. A court must first of all provide the conditions under which the debtor can attempt to reorganize. This can be achieved by

3.3 *Pouvoirs discrétionnaires du tribunal chargé de surveiller une réorganisation fondée sur la LACC*

[57] Les tribunaux font souvent remarquer que [TRADUCTION] « [l]a *LACC* est par nature schématique » et ne « contient pas un code complet énonçant tout ce qui est permis et tout ce qui est interdit » (*Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513, par. 44, le juge Blair). Par conséquent, [TRADUCTION] « [l]'histoire du droit relatif à la LACC correspond à l'évolution de ce droit au fil de son interprétation par les tribunaux » (*Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (C. Ont. (Div. gén.)), par. 10, le juge Farley).

[58] Les décisions prises en vertu de la *LACC* découlent souvent de l'exercice discrétionnaire de certains pouvoirs. C'est principalement au fil de l'exercice par les juridictions commerciales de leurs pouvoirs discrétionnaires, et ce, dans des conditions décrites avec justesse par un praticien comme constituant [TRADUCTION] « la pépinière du contentieux en temps réel », que la *LACC* a évolué de façon graduelle et s'est adaptée aux besoins commerciaux et sociaux contemporains (voir Jones, p. 484).

[59] L'exercice par les tribunaux de leurs pouvoirs discrétionnaires doit évidemment tendre à la réalisation des objectifs de la *LACC*. Le caractère réparateur dont j'ai fait état dans mon aperçu historique de la Loi a à maintes reprises été reconnu dans la jurisprudence. Voici l'un des premiers exemples :

> [TRADUCTION] La loi est réparatrice au sens le plus pur du terme, en ce qu'elle fournit un moyen d'éviter les effets dévastateurs, — tant sur le plan social qu'économique — de la faillite ou de l'arrêt des activités d'une entreprise, à l'initiation des créanciers, pendant que des efforts sont déployés, sous la surveillance du tribunal, en vue de réorganiser la situation financière de la compagnie débitrice.

(*Elan Corp. c. Comiskey* (1990), 41 O.A.C. 282, par. 57, le juge Doherty, dissident)

[60] Le processus décisionnel des tribunaux sous le régime de la *LACC* comporte plusieurs aspects. Le tribunal doit d'abord créer les conditions propres à permettre au débiteur de tenter une réorganisation.

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No.: 500-09-028436-194, 500-09-028474-195, 500-09-028476-190
(500-11-049838-150)

DATE: May 21, 2020

CORAM: THE HONOURABLE MARK SCHRAGER, J.A.
PATRICK HEALY, J.A.
LUCIE FOURNIER, J.A.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT

No.: 500-09-028436-194

HOME DEPOT OF CANADA INC.
APPELLANT – Impleaded Party
v.
9323-7055 QUÉBEC INC. (Formerly known as Aquadis International Inc.)
RAYMOND CHABOT INC.
RESPONDENTS/ INCIDENTAL RESPONDENTS
and
HOME HARDWARE STORES LIMITED
IMPLEADED PARTY/INCIDENTAL APPELLANT– Impleaded party
and
RONA INC.
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA
CATHAY CENTURY INSURANCE CO., LTD
JING YUDH INDUSTRIAL CO., LTD
GROUPE BMR INC. (Formerly known as Gestion BMR Inc.)
GROUPE PATRICK MORIN INC. (Formerly known as Patrick Morin Inc.)
MATÉRIAUX LAURENTIENS INC.
DESJARDINS GENERAL INSURANCE INC.
THE PERSONAL GENERAL INSURANCE INC.
INTACT INSURANCE COMPANY

[60] The granting of releases for third parties in consideration of their contribution to a litigation pool to satisfy creditors' claims is now well entrenched in *CCAA* jurisprudence.[29]

[61] The *CCAA* expressly provides for certain powers and duties of the monitor.[30] These powers and duties may be extended, because s. 23 *CCAA* provides that a monitor is required to "do anything in respect of the company that the court directs the monitor to do".[31] Thus, while the law does provide the basic framework within which the monitor must act, the courts may use their discretion to grant additional powers considered appropriate.[32]

[62] This discretion cannot be exercised arbitrarily; it must be exercised in a manner consistent with and directed toward the attainment of the objectives of the *CCAA*. In *Century Services Inc.,* Justice Deschamps observed for the Supreme Court that:

> [58] *CCAA* decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly describes as "the hothouse of real-time litigation" has been the primary method by which the *CCAA* has been adapted and has evolved to meet contemporary business and social needs". (References omitted)

She added that judicial discretion may be exercised in furtherance of the *CCAA*'s purposes,[33] which in the case at bar is the maximization of creditor recovery, since Aquadis has ceased carrying on business.

[63] The courts, however, have expressed reservations regarding the imposition of third-party settlements under the *CCAA,* indicating that the purpose of the *CCAA* is not to settle disputes between parties other than the debtor and its creditors.[34] Nonetheless, the precise point in issue – i.e. whether a judge may allow a monitor to exercise the rights and remedies of certain creditors against other persons or creditors of a debtor appears to be without precedent.

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29 *Metcalfe*, *supra*, note 28.

30 S. 23 *CCAA*.

31 S. 23 (1) (*k*) *CCAA*.

32 *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, paras. 105-106 [*Essar*]; *MEI Computer Technology Group Inc. (Bankruptcy), Re*, 2005 CanLII 15656 (Qc. Sup. Ct.), para. 20.

33 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, para. 59.

34 The courts have also indicated that proceedings under the *CCAA* were not intended to alter priorities amongst creditors: "The *CCAA* is to be interpreted in a broad and liberal fashion to facilitate that objective. That broad and liberal interpretation, however, must not permit the enhancement of one stakeholders (sic) position at the expense of others - there should be no confiscation of legal rights.": *843504 Alberta Ltd., Re*, 2003 ABQB 1015, para. 13. See also: *Royal Oak Mines Inc., Re*, 1999 CanLII 14843 (Ont. Sup. Ct.), para. 1.

Ernst & Young Inc. in its Capacity as Monitor of all of the Following: Essar Steel Algoma Inc. et al. v. Essar Global Fund Limited et al.

[Indexed as: Ernst & Young Inc. v. Essar Global Fund Ltd.]

Ontario Reports

Court of Appeal for Ontario,

Blair, Pepall and van Rensburg JJ.A.

December 21, 2017

139 O.R. (3d) 1 | 2017 ONCA 1014

Case Summary

Corporations — Oppression — Algoma's monitor in Companies' Creditors Arrangement Act ("CCAA") restructuring proceedings bringing oppression action under s. 241 of Canada Business Corporations Act ("CBCA") against Algoma's parent Essar — Monitor alleging that Essar had exercised de facto control over Algoma and had consistently preferred its own interests over those of Algoma and its stakeholders — Monitor having standing as complainant under oppression provisions of CBCA — Claim properly pleaded as oppression action rather than derivative action under s. 239 of CBCA — Algoma entirely dependent on access to port in order to function economically — Trial judge entitled to find that transaction directed by Essar which conveyed port to Essar-controlled Portco and resulted in Algoma losing control over port was oppressive to Algoma's stakeholders — Business judgment rule not providing defence to Essar — Trial judge not erring in granting remedy which removed Portco's control rights — Canada Business Corporations Act, R.S.C. 1985, c. C-44, ss. 239, 241 — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

Algoma was a steel manufacturer in Sault Ste. Marie, and its port facilities were integral to its operations. At a time when Algoma was facing a liquidity crisis, its board of directors placed responsibility for Algoma's recapitalization efforts in the hands of its parent Essar. Essar directed a transaction which conveyed the port facilities to Portco, which Essar indirectly owned. The port transaction resulted in Algoma losing control over the port facilities. Algoma was involved in restructuring proceedings under the *Companies' Creditors Arrangement Act*. As a result of the port transaction, Portco -- and therefore Essar -- effectively had a veto over any party acquiring Algoma in the *CCAA* proceedings. With the authorization of the supervising *CCAA* judge, Algoma's *CCAA* monitor brought an oppression action under s. 241 of the *Canada Business Corporations Act* against Essar and certain Essar-controlled companies. The trial judge found that the monitor had standing to bring the action. He found that the reasonable expectations of Algoma's trade creditors, employees, pensioners and retirees were that Algoma would not deal with a critical asset like the port in such a way as to lose long-term control over such a strategic asset to a related party on terms that [page2 p]ermitted the related party to veto and control Algoma's ability to do significant transactions or restructure and which gave unwarranted value to the related party. He concluded that Essar's actions were oppressive. He granted a remedy

which, among other things, removed Portco's control of the port facilities. The defendants appealed.

Held, the appeal should be dismissed.

The trial judge did not err in finding that the monitor had standing as a complainant under s. 238(*d*) of the *CBCA*. While a monitor generally plays a neutral role in *CCAA* proceedings, in exceptional circumstances it may be appropriate for a monitor to serve as a complainant. This was one such case. There was a *prima facie* case that merited an oppression action. The monitor commenced the action as an adjunct to its role in facilitating a restructuring. The monitor could efficiently advance an oppression claim on behalf of a conglomeration of stakeholders -- Algoma's pensioners, retirees, employees and trade creditors -- who were not organized as a group and who were all similarly affected by the alleged oppressive conduct. The remedy granted by the trial judge removed an insurmountable barrier to a successful restructuring.

The trial judge did not err in finding that the action was properly brought as an oppression action under s. 241 of the *CBCA* rather than as a derivative action under s. 239 of the *CBCA*. The derivative action and the oppression remedy are not mutually exclusive, and there may be circumstances giving rise to overlapping derivative actions and oppression remedies where harm is done both to the corporation and to stakeholders in their separate stakeholder capacities. This case fell into that overlapping category.

The trial judge correctly identified the two prongs of the oppression remedy inquiry: (i) does the evidence support the reasonable expectation asserted by a claimant; and (ii) does the evidence establish that the reasonable expectation was violated by conduct falling with the term "oppression"? On the evidence, he was entitled to find that the port transaction, and in particular the transfer of control and the loss of Algoma's ability to restructure absent Essar's consent, violated the reasonable expectations of Algoma's stakeholders.

In light of the fact that Algoma's board of directors was not independent and did not actually exercise business judgment, the business judgment rule did not provide a defence to Essar.

The remedy granted by the trial judge was appropriate.

BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, [2008] S.C.J. No. 37, 2008 SCC 69, 52 B.L.R. (4th) 1, EYB 2008-151755, J.E. 2009-43, 301 D.L.R. (4th) 80, 71 C.P.R. (4th) 303, 383 N.R. 119, 172 A.C.W.S. (3d) 915; *Nortel Networks Corp. (Re)* (October 3, 2012), Toronto, 09-CL-7950 (Ont. S.C.J. (Comm. List)); *Olympia & York Developments Ltd. (Trustee of) v. Olympia & York Realty Corp*. (2003), 68 O.R. (3d) 544, [2003] O.J. No. 5242, 180 O.A.C. 158, 42 B.L.R. (3d) 14, 46 C.B.R. (4th) 313, 127 A.C.W.S. (3d) 830 (C.A.); *Rea v. Wildeboer* (2015), 126 O.R. (3d) 178, 2015 ONCA 373, **consd**

Other cases referred to

Brant Investments Ltd. v. KeepRite Inc. (1991), 3 O.R. (3d) 289, [1991] O.J. No. 683, 80 D.L.R.

[99] As outlined by Deschamps J. in *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, [2010] S.C.J. No. 60, 2010 SCC 60, the *CCAA* fell into disuse after amendments in 1953 that limited its application to companies issuing bonds. Courts breathed new life into the statute in the early 1980s in response to an economic recession, and the *CCAA* became the primary vehicle through which major restructurings were attempted. Amendments to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*"), introduced in 1992, allowed insolvent debtors to make proposals to creditors under that statute, and were expected to supplant the *CCAA*. However, the *CCAA* continues to be employed as the vehicle of choice to restructure large corporations, particularly where flexibility is needed in the restructuring process: Roderick J. Wood, *Bankruptcy & Insolvency Law*, 2nd ed. (Toronto: Irwin Law Inc., 2015), at pp. 336-37; and *Century Services*, at para. 13.

[100] The corporate restructuring process at the heart of the *CCAA* "provide[s] a constructive solution for all stakeholders when a company has become insolvent": *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] 1 S.C.R. 271, [2013] S.C.J. No. 6, 2013 SCC 6, at para. 205. There are a number of justifications for why such a process is desirable. The traditional justification for *CCAA*-enabled restructurings, as explained by Duff C.J. shortly after the statute's enactment, was to rescue financially distressed corporations without forcing them to first declare bankruptcy: [page27]*Reference re: Constitutional Creditor Arrangement Act (Canada)*, [1934] S.C.R. 659, [1934] S.C.J. No. 46, at p. 661 S.C.R.

[101] The restructuring process can also allow creditors to obtain a higher recovery than may otherwise be available to them through bankruptcy or other liquidation proceedings, by preserving the corporate entity or the value of its business as a going concern: Wood, at pp. 338-39. Additionally, restructuring proceedings can provide an opportunity to evaluate the root of a corporation's financial difficulties, and develop strategies to achieve a turnaround, whether the best option be a full restructuring, or a liquidation of the corporation within the restructuring regime: Wood, at p. 340.

[102] The benefits of the restructuring process are not limited to creditors. Even early commentary lauded restructurings as promoting the public interest by salvaging corporations that supply goods or services important to the economy, and that employ large numbers of people: see Stanley E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act" (1947), 25 Can. Bar Rev. 587, at p. 593. This view remains applicable today, with restructurings "justified in terms of rehabilitating companies that are key elements in a complex web of interdependent economic relationships in order to avoid the negative consequences of liquidation": *Century Services*, at para. 18.

[103] To summarize, by enabling the restructuring process, the *CCAA* can achieve multiple objectives. It permits corporations to rehabilitate and maintain viability despite liquidity issues. It allows for the development of business strategies to preserve going-concern value. It seeks to maximize creditor recovery. It can serve to preserve employment and trade relationships, protecting non-creditor shareholders and the communities within which the corporation operates: see Janis P. Sarra, *Rescue! The Companies' Creditors Arrangement Act*, 2nd ed. (Toronto: Carswell, 2013), at pp. 13-17. The flexibility inherent in the restructuring process permits a broad balancing of these objectives and the multiple stakeholder interests engaged when a corporation faces insolvency.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re),* 2016 BCSC 1746

Date: 20160923
Docket: S1510120
Registry: Vancouver

In the Matter of the Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36 as Amended

And

In the Matter of the *Business Corporations Act*,
S.B.C. 2002, c. 57, as Amended

And

In the Matter of a Plan of Compromise or Arrangement of Walter Energy Canada Holdings, Inc. and the Other Petitioners Listed on Schedule "A"

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

In Chambers

Counsel for the Petitioners:	Marc Wasserman Mary I.A. Buttery Patrick Riesterer Lance Williams
Counsel for United Mine Workers of America 1974 Pension Plan and Trust:	John Sandrelli Tevia Jeffries
Counsel for the United Steelworkers, Local 1-424:	Craig D. Bavis Stephanie Drake
Counsel for Her Majesty the Queen in Right of the Province of British Columbia:	Aaron Welch

Counsel for Morgan Stanley Senior Funding, Inc.:	Kathryn Esaw Angela Crimeni
Counsel for KPMG Inc., Monitor:	Peter J. Reardon Wael Rostom
Counsel for Pine Valley Mining Corporation:	Kieran Siddall
Counsel for Kevin James:	Heather Jones
Counsel for Conuma Coal Resources Limited:	David Wachowich Leanne Krawchuk
Place and Date of Hearing:	Vancouver, B.C. August 15-16, 2016
Ruling Given to Parties with Written Reasons to Follow	Vancouver, B.C. August 16, 2016
Place and Date of Written Reasons:	Vancouver, B.C. September 23, 2016

[80] Accordingly, the proposed approval and vesting order in respect of the Conuma transaction, as sought by the petitioners, is granted.

OTHER ORDERS

[81] Given the impending sale of their major assets to Conuma, the petitioners also seek a claims process order. As was anticipated at the outset, determining the validity and quantum of claims in order to make a distribution to the creditors through such a claims process is important in liquidating *CCAA* proceedings: *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732 at para. 36; *Timminco Limited (Re)*, 2014 ONSC 3393 at para. 41.

[82] The proposed claims bar date is October 5, 2016. It is anticipated that if any disputes as to claims arise, these will be brought before the court on a *de novo* basis in the first week of January 2017.

[83] The claims process is to be implemented and run by the Monitor, with input from the CRO, and with assistance of certain soon-to-be former key employees of the petitioners. These key employees are to remain accessible to the petitioners and the Monitor even after the sale to Conuma closes under a transition services agreement.

[84] The proposed order is in fairly standard terms; however, specific processes are to be put in place for certain stakeholders.

[85] Claims of individual employees will be determined by the Monitor, and upon being notified of the amount of their claim, they need only respond if they dispute the amount. The Union will receive notice of the claims and may dispute the amount on behalf of any employee. As I anticipated in my earlier reasons from June 2016 (*Walter Energy Canada Holdings, Inc. (Re),* 2016 BCSC 1413 at para. 33), this aspect of the claims process has arisen from fruitful discussions between the petitioners, the Monitor and the Union, with the latter providing input on the most efficient way of adjudicating these claims.

[86] The unique claim of the 1974 Pension Plan poses some procedural challenges for the parties. Again, this is a substantial claim (some $1.4 billion) which, if valid, has the potential to overwhelm most other claims against the estate. This claim is asserted as a liability of the petitioners based on the provisions of U.S. legislation, being the *Employee Retirement and Income Security Act of 1974*, 29 U.S.C. § 1001, as amended, (commonly referred to as "*ERISA*"). There has been some exchange of materials between the parties. As matters stand, the petitioners dispute that they are liable under U.S. law (or *ERISA*), and that this is a valid claim against the Canadian petitioners in any event.

[87] After some negotiations, it is intended that, rather than file a proof of claim, the 1974 Pension Plan will file a notice of civil claim in a separate proceeding in this court to assert the claim. Thereafter, the petitioners, and anyone else on the service list, will be entitled to file a response to that claim. Once the issues are framed, it is intended that the parties will come before the court to determine the procedures and timing by which the parties will develop and present their evidence and legal arguments and how the issues are best resolved. The present thinking is that the issues are likely suitable for disposition by summary trial, although that remains to be seen. The parties are cognizant of the need to adjudicate the issues as soon as possible so as not to delay any distribution to the creditors.

[88] I am satisfied that the proposed claims process order here treats all potential claim holders fairly and equally and is appropriate in the circumstances. In particular, the proposed timeline is reasonable and will afford claimants ample opportunity to formulate their materials and submit them to the Monitor.

[89] This process will also address any claim that may be advanced by Mr. James as a "Restructuring Claim" arising from any disclaimer of the RSA by Walter Energy. In the event of a disclaimer of the RSA, Mr. James will be provided with a proof of claim at the appropriate time in the claims process to give him an opportunity to prove his claim.

[90] Aside from Mr. James, there were no other objections to the proposed order. The claims process order is granted.

[91] Given the granting of the above orders, the petitioners apply for an extension of the stay of the proceedings to January 17, 2017. This date has been chosen to accommodate not only the closing of the Conuma transaction, but also to coincide with the anticipated time frame by which any disputed claims are to be resolved by the court, if necessary. During that time, the Monitor will continue with the claims process. The Monitor will also file a report within a reasonable time after the claims bar date of October 5, 2016 so that the stakeholders are updated not only on the results of the sale, but also on the results of the claims process (including inter-company claims). The CRO will remain involved over this period of time to assist the Monitor, as need be, and also to arrange for the sale of assets that are not being purchased by Conuma (such as the U.K. assets).

[92] The evidence confirms that the petitioners will have sufficient cash flow to continue operations, as currently conducted, to the extension date; although, of course, there will be substantially reduced operating expenditures upon the closing of the sale to Conuma.

[93] Despite the long extension period, the petitioners anticipate that there will continue to be oversight by the court in the interim period. At a minimum, the parties anticipate a further hearing in October to consider the procedural issues arising in relation to the 1974 Pension Plan claim. Obviously, if the Conuma sale has not closed by September, I would anticipate that a court application would be scheduled soon thereafter to consider next steps.

[94] Both Mr. Aziz and the Monitor, in its Fourth Report, confirm the unchallenged view that the petitioners are acting in good faith and with due diligence. Accordingly, I am satisfied that an extension of the stay to January 17, 2017 is appropriate at this time and that is granted: *CCAA*, s. 11.02(2) and (3).

[95] Finally, the petitioners apply for certain miscellaneous orders. The first order is approval of an amendment of the PJT engagement letter which was earlier approved. I am satisfied that the amendment accords with the intention of the parties as to PJT's compensation for their role in the SISP. The amendment reflects what was already determined to be a fair and reasonable compensation for PJT. The second order is to enhance the powers of the Monitor to not only implement the claims process, but to take control of certain of the petitioners' financial affairs. The latter powers are particularly appropriate given the anticipated transfer of the petitioners' employees to Conuma upon closing. The Monitor supports proceeding in this fashion so as to move as quickly and expeditiously as possible toward the monetization of the assets and a distribution to the creditors. Both orders are granted as sought.

"Fitzpatrick J."

COUR SUPÉRIEURE

(Chambre commerciale)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-061657-223

DATE : 21 novembre 2022

SOUS LA PRÉSIDENCE DE L'HONORABLE MICHEL A. PINSONNAULT, J.C.S.

DANS L'AFFAIRE DE LA *LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES*, L.R.C. (1985), CH. C-36, TELLE QU'AMENDÉE

GROUPE SÉLECTION INC.
et
LES AUTRES ENTITÉS LISTÉES À L'ANNEXE « A » DES PRÉSENTES
Débitrices/Demanderesses
et.
LES SOCIÉTÉS EN COMMANDITE LISTÉES À L'ANNEXE « B » DES PRÉSENTES
Mises-en-cause
et
FTI CONSULTING CANADA INC.
Contrôleur proposé
et
BANQUE NATIONALE DU CANADA
Créancière garantie/Requérante pour l'émission d'une Ordonnance initiale
et
PRICEWATERHOUSECOOPERS INC.
Contrôleur proposé

JUGEMENT SUR DEMANDES POUR L'ÉMISSION D'UNE ORDONNANCE INITIALE ET D'UNE ORDONNANCE INITIALE AMENDÉE ET REFORMULÉE

(Articles 9, 11, 11.2, 11.52, 23 et 36 de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36**)**

JP1736

APERÇU

[1] Groupe Sélection inc. (« **GS** ») œuvrant, entre autres, par l'entremise de quelque 81 sociétés[1] et de 56 sociétés en commandite[2] (collectivement les « **Débitrices** ») requière la protection de la Cour en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») afin de lui permettre de procéder à un redressement de leurs affaires à l'abri de leurs créanciers et propose la nomination de FTI Consulting Canada inc. (« **FTI** ») à titre de contrôleur (la « **Demande GS** »).

[2] D'emblée, il s'agit d'un dossier inusité, voire extraordinaire, dont les circonstances fort particulières comportent des ramifications et soulèvent des enjeux complexes tant pour GS et les Débitrices[3] que pour leurs créanciers, partenaires d'affaires et les autres parties prenantes dont les milliers de citoyens ainés qui résident dans les diverses résidences pour personnes âgées (les « **RPA** ») détenues en tout ou en partie par GS et dont la gestion quotidienne est assurée par les employés de GS.

[3] Par ailleurs, la Banque Nationale du Canada (« **BNC** ») qui représente un syndicat bancaire composé de la Banque Canadienne Impériale de Commerce (« **CIBC** »), la Fédération des Caisses Desjardins (« **Desjardins** »), la Banque Toronto Dominion (« **TD** »), la Banque de Montréal (« **BMO** »), la Banque HSBC Canada (« **HSBC** »), Briva Finance (Équité) s.e.c. (« **Briva** ») et Fiera FP Business Financing Fund, L.P. (« **Fiera** ») (collectivement le « **Syndicat** ») à qui il est dû plus de 272 M$ depuis le 28 octobre 2022, conteste vigoureusement la Demande GS dont le plan de redressement proposé par GS et la nomination de FTI à titre de contrôleur et ce, bien que le Syndicat soit en accord sur la nécessité de procéder dans la mesure du possible au redressement des affaires de GS sous l'égide de la LACC.

[4] En réaction à la notification qualifiée de hautement irrégulière de la Demande GS effectuée le dimanche 13 novembre 2022 vers 23h45, laquelle était présentable d'urgence le lendemain à 14h00, le Syndicat a déposé quelques minutes avant le début de l'audience de 14h00, sa propre Demande pour l'émission d'une ordonnance initiale[4] (la « **Demande BNC** ») proposant son propre plan de redressement ainsi que la nomination de PricewaterhouseCoopers inc. (« **PwC** ») à titre de contrôleur à qui seraient confiés des pouvoirs accrus pour mener à bien l'élaboration et la mise en œuvre du plan de redressement des affaires de GS à être approuvé par le Tribunal dans un contexte particulier et complexe.

[5] Le Syndicat précise que lors de négociations qui ont eu lieu entre les parties le dimanche matin 13 novembre 2022 pour tenter de trouver un terrain d'entente mutuellement acceptable, entre autres, quant au financement additionnel requis par GS,

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[1] Identifiées à l'Annexe A ci-jointe.
[2] Identifiées à l'Annexe B ci-jointe.
[3] Dorénavant, lorsque le Tribunal référera à GS cela inclura et visera également les Débitrices, lorsqu'applicables.
[4] On appelle communément une « *competing application* ».

les représentants de GS n'ont jamais indiqué qu'ils entendaient déposer la Demande GS dans les prochaines heures, un comportement qui selon le Syndicat, n'a fait que miner irrémédiablement la confiance qu'il portait à l'endroit des dirigeants de GS.

[6] Le Syndicat allègue que ses membres ont été pris au dépourvu avec le dépôt inattendu de la Demande GS dans la nuit de dimanche à lundi sans préavis raisonnable. Il considère que cette tactique déployée par GS est au détriment de leurs intérêts et de ceux d'un nombre important de partenaires d'affaires de GS dont il sera question plus loin et ce, sans oublier les parties prenantes dont les résidents des RPA et d'autres édifices multi-résidentiels relevant de GS.

[7] Pour l'essentiel, le Syndicat reproche à GS de ne pas avoir respecté ses engagements contractuels relativement au remboursement des sommes avancées depuis 2021 et d'être en défaut de lui rembourser plus de 272 M$ qui sont dus et exigibles depuis le 28 octobre 2022.

[8] En fait, selon le Syndicat, GS se retrouve dans une situation financière hautement précaire, voire critique, en continuant d'engendrer des pertes de quelque 7 M$ chaque mois, et ce, depuis plusieurs mois, ce qui a suscité l'octroi d'avances additionnelles de 64,5 M$ depuis le mois d'avril 2022[5] sans que la situation financière de GS ne s'améliore, bien au contraire.

[9] Bref, GS éprouve un manque chronique de liquidités de quelque 7M$ de mois en mois sans perspective d'amélioration à court terme pour faire face à ses obligations financières courantes.

[10] Le Syndicat, prêteur principal de GS, a perdu confiance à l'endroit de son équipe de direction et de ses dirigeants ce qui s'est soldé par le retrait de son support financier le 28 octobre 2022.

[11] Cette perte de confiance s'est également répercutée sur les principaux partenaires d'affaires de GS qui à l'audience, ont manifesté auprès du Tribunal leur opposition à ce que le Tribunal accueille la Demande GS.

[12] En effet, les avocats de Revera inc., du Groupe Montoni, du Fonds de solidarité FTQ, de la Fédération des Caisses Desjardins, de Timbercreek Capital et de 7813040 Canada inc., de la Banque CIBC et de la Banque de Nouvelle-Écosse (Scotia) sont tous intervenus au cours de l'audience pour confirmer la perte de confiance de leurs clientes respectives envers la direction et les gestionnaires de GS. Leurs clientes appuient entièrement la Demande BNC, l'approche proposée à l'audience par le Syndicat pour l'élaboration d'un plan de redressement des affaires de GS ainsi que le choix de PwC à titre de contrôleur proposé.

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[5] Premier rapport du Contrôleur proposé PwC daté du 14 novembre 2022 (**A-5A**) (ci-après le « **Rapport PwC** ») par. 48.

[13] Pour sa part, Investissement Québec, un autre partenaire majeur qui a cautionné une portion significative de l'endettement de GS envers le Syndicat, a informé le Tribunal qu'elle s'en remettait à la décision du Tribunal, mais qu'elle souhaitait néanmoins réitérer qu'elle tient à cœur avant tout la sécurité et le bien-être des résidents des RPA.

[14] Somme toute, GS n'a plus accès à aucun crédit lui permettant de combler son déficit d'opération mensuel de quelque 7 M$ qui est récurrent et par conséquent, n'est plus en mesure d'honorer ses obligations courantes envers ses créanciers et partenaires ce qui place ces entreprises en situation d'insolvabilité d'où le dépôt de la Demande GS.

[15] Le dépôt de la Demande GS constitue un aveu d'insolvabilité de la part de GS et des Débitrices que GS a choisies d'inclure dans sa procédure. Il ne fait donc aucun doute que GS et les Débitrices sont insolvables dans le contexte actuel ce qui explique que le 14 novembre dernier, le Tribunal a émis une Ordonnance intérimaire en vertu des dispositions de la LACC suspendant essentiellement toutes procédures à l'encontre des Débitrices[6] et de leurs Biens[7] jusqu'à ce que jugement intervienne sur la Demande GS et la Demande BNC.

[16] Pour sa part, le Syndicat reproche à GS de tenter de poursuivre, sous le couvert de la LACC, ses opérations essentiellement sur une base de « *business as usual* » à l'abri de ses divers créanciers, de ses partenaires d'affaires et de diverses parties prenantes en finançant celles-ci au moyen d'un financement temporaire de 50 M$ offert par monsieur Herbert Black (« **M. Black** » ou le « **Prêteur DIP**[8] ») comportant des conditions considérées grandement désavantageuses pour l'ensemble des créanciers garantis sans conférer à GS et aux parties prenantes un avantage ou un bénéfice concret sauf de permettre de gagner du temps tout en nourrissant l'espoir que les conditions économiques s'amélioreront.

[17] Le financement temporaire de 50 M$ favorisé par GS s'inscrit dans un contexte de redressement où le maintien du *statu quo* serait essentiellement l'approche préconisée en espérant que la valeur des actifs de GS s'appréciera et permettra une monétisation de ceux-ci à des conditions plus favorables à plus ou moins court terme.

[18] GS envisage d'éventuellement mettre en place un processus d'investissement et de sollicitation d'offres, mais le Syndicat craint qu'en fonction de l'approche préconisée par GS cumulée au passage du temps et à l'accroissement du déficit d'opération qui serait comblé par les 50 MS avancés par le Prêteur DIP, l'équité des actifs de GS et par conséquent, la valeur des sûretés qu'il détient va continuer de s'éroder significativement et va mettre à risque le remboursement de sa créance.

[19] Outre le Syndicat, les autres créanciers garantis qui ont avancé des sommes substantielles par voie de prêts hypothécaires grevant des immeubles détenus en tout ou

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[6] Tel que défini dans l'Ordonnance intérimaire du 14 novembre 2022.
[7] *Ibid*.
[8] **D**ebtor **I**n **P**ossession (**DIP**).

en partie par GS, lesquels se sont manifestés à l'audience, soutiennent que l'approche préconisée par GS risque d'entrainer rapidement une réduction significative de la valeur des sûretés qu'ils détiennent avec un financement temporaire prioritaire de 50 M$ qui servirait principalement à éponger l'hémorragie financière que vit GS au fil des mois.

[20] Toujours selon le Syndicat, le redressement envisagé nécessite de stabiliser sur une base urgente les opérations de GS en déterminant, entre autres, les mesures qui pourraient être raisonnablement prises pour limiter, sinon éliminer, ce besoin récurrent de liquidités que les entreprises Débitrices n'ont tout simplement pas.

[21] Par ailleurs, à l'audience, les avocats du Syndicat ont fait valoir à plus d'une reprise que les membres de leur client considèrent comme tout à fait prioritaires la sécurité et le bien-être des résidents des RPA dont les services ne doivent pas être affectés par le processus de redressement qui doit s'engager sous la supervision du Tribunal.

[22] À cet égard, le financement temporaire de quelque 20 M$[9] que le Syndicat offre d'avancer servira, entre autres, à combler tout besoin financier ponctuel visant à assurer le maintien des services auxquels les résidents des RPA sont en droit de s'attendre.

[23] Les avocats du Syndicat ont également laissé entendre au Tribunal que si les besoins financiers liés principalement au maintien des services offerts aux résidents des RPA requéraient l'injection de capitaux additionnels en sus des 20 M$ proposés initialement, les membres du Syndicat considéreraient favorablement une telle contribution sujette évidemment à l'accord du Tribunal et aux conditions qu'ils pourraient alors imposer, le cas échéant.

[24] Somme toute, le débat sur les Demande GS et Demande BNC, qui a suscité quatre jours d'audience, soulève essentiellement les principaux enjeux suivants :

- L'élaboration et la mise en œuvre du processus de redressement de GS doivent-elles être confiées aux dirigeants et à la direction de GS qui n'ont plus la confiance du Syndicat et des principaux partenaires d'affaires ou au contrôleur PwC proposé par le Syndicat dont les pouvoirs seraient accrus ?

- Est-il opportun d'approuver l'engagement de 9372-9804 Québec inc. (« **9372** » ou le « **CRO** ») représentée par monsieur Yanick Blanchard[10] (« **M. Blanchard** ») à titre de Chef de la restructuration proposé par GS comportant une Charge du chef de la restructuration de 3 M$, malgré l'opposition du Syndicat et des principaux partenaires d'affaires ?

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[9] L'offre de financement temporaire du Syndicat prévoit que les 20 M$ seront avancés essentiellement en deux tranches avec une tranche initiale de 10 M$ si la Demande BNC est accueillie ainsi que son offre de financement temporaire conformément aux dispositions prévues aux Pièces **A-38** et **A-39**.

[10] **R-25**.

- Est-il opportun d'approuver le financement temporaire de 50 M$ de M. Black préconisé par GS lequel comporterait une Charge du prêteur temporaire de 60 M$ ayant priorité sur toutes les sûretés détenues par les divers créanciers garantis de GS ou le financement temporaire de 20 M$ offert par le Syndicat ?

[25] Pour les motifs qui suivent, en exerçant la discrétion judiciaire que lui confèrent les dispositions de la LACC, le Tribunal estime qu'il doit rejeter la Demande GS, accueillir la Demande BNC et émettre l'Ordonnance initiale demandée par le Syndicat sujet à certaines modulations.

1. CONTEXTE

[26] Avant d'aborder les enjeux identifiés ci-devant, il est utile de brosser un tableau du contexte actuel.

[27] À l'audience, tous ont convenu que la présente affaire est tout à fait exceptionnelle et comporte des circonstances et des enjeux majeurs et complexes tout autant exceptionnels qui vont compliquer significativement non seulement le déroulement futur des présentes procédures, mais également le processus de redressement qui s'enclenche avec le présent jugement.

[28] Les 137 Débitrices qui ont requis avec GS la protection de la Cour sous la LACC ne constituent qu'une partie des sociétés œuvrant sous la direction de GS lesquelles ne seront pas assujetties directement à l'Ordonnance initiale émise aux termes du présent jugement.

[29] À l'audience, on a indiqué, à juste titre, que l'organigramme des sociétés de GS était plus complexe que le plan du métro de Londres.

1.1 LES RPA

[30] GS détient des intérêts et exploite quelque 50 RPA situées aux quatre coins du Québec et ce, en sus de propriétés multi-résidentielles.

[31] Le Tribunal comprend que GS exploite et gère quelque 14 000 unités d'habitation principalement au sein des RPA.

[32] Le Tribunal comprend également que la très grande majorité des milliers de résidents qui occupent les RPA sont d'âge vénérable et qu'ils dépendent grandement des divers services qui leur sont offerts quotidiennement par les gestionnaires de chaque établissement.

[33] Aux yeux du Tribunal, les RPA constituent l'activité principale (*core business*) de GS et ce, même si la majeure partie du manque de liquidités est suscitée par les sociétés

qui acquièrent des terrains pour y construire de nouveaux édifices devant principalement, mais non exclusivement servir de RPA, dont il sera question plus loin.

[34] À l'heure actuelle, une majorité des RPA ne génèrent pas suffisamment de revenus pour couvrir leurs dépenses d'exploitation courantes, ce qui nécessite des injections de fonds régulièrement pour pouvoir maintenir les services.

[35] Bien que la situation semble se résorber lentement, la pandémie a eu un impact négatif important sur le taux d'occupation des RPA, ce qui a affecté par le fait même les revenus générés par une occupation insuffisante.

[36] Or, sur les 50 RPA, GS n'en détient que 6 à part entière[11], toutes les autres résidences sont détenues conjointement avec des partenaires d'affaires tels Revera inc. (« **Revera** »), Blackstone (« **Blackstone** ») et Lokia (« **Lokia** ») pour ne nommer que les principaux.

[37] Selon PwC, au 31 mai 2022, sur les 50 RPA, 28 (56%) étaient déficitaires et avaient besoin d'injections de capitaux de la part de GS et de ses partenaires pour financer leurs opérations. Le taux moyen d'occupation était d'environ 80 %.[12]

[38] Ainsi, les RPA détenues en tout ou en partie et gérées par GS sont majoritairement déficitaires (56%) et requièrent près de 2 M$ de liquidités additionnelles par mois malgré les frais de gestion perçus.[13]

[39] Le Tribunal comprend que la situation actuelle demeure essentiellement inchangée même si à certains endroits le taux d'occupation a augmenté légèrement depuis le mois de mai dernier.

[40] Le fait de ne pas combler les déficits mensuels d'exploitation des RPA met en péril les services rendus quotidiennement aux résidents, d'où l'importance cruciale d'avancer les fonds requis en temps opportun.

[41] Par ailleurs, le manque récurrent de liquidités éprouvé par GS force ses partenaires comme Revera à combler la part des déficits d'exploitation des RPA qui normalement devrait être assumée par GS, ce qui accentue les tensions entre les divers partenaires d'affaires qui s'attendent à ce que GS assume et honore non seulement ses obligations financières envers eux aux termes de leurs ententes contractuelles, mais également ses obligations envers les résidents des RPA.

[42] Or, là où le bât blesse est le modèle d'affaires de GS qui ne se limite pas à la détention d'intérêts à taux variables dans les RPA existantes et à la gestion de ceux-ci.

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[11] Le Rapport PwC, par. 110.
[12] *Ibid*., par. 39.
[13] *Ibid*., par. 41.

1.2 L'ACQUISITION DE TERRAINS ET LA CONSTRUCTION D'ÉDIFICES

[43] GS acquiert de temps à autre des terrains en vue d'y construire des édifices devant servir principalement de RPA ou parfois d'édifices à vocation multi-résidentielle.

[44] Au fil du temps, GS s'est impliquée dans des projets de plus en plus importants et complexes comme l'Espace Montmorency à Laval et le développement du terrain Molson à Montréal qui requièrent des investissements majeurs sans pour autant générer aucun revenu pour l'instant. En fait, GS est présentement en défaut de combler sa quote-part des appels d'avance lancés dans ces deux projets majeurs impliquant principalement le Groupe Montoni et le Fonds de solidarité FTQ.

[45] Dans la poursuite de ce modèle d'affaires, après avoir acquis un terrain, GS tente ensuite de s'associer à un partenaire qui deviendra copropriétaire indivis en fonction d'un pourcentage convenu ponctuellement dont le taux variera selon chaque projet. Cette approche permet à GS de partager les coûts relatifs au maintien et à la conservation du terrain.

[46] Le Tribunal comprend qu'il y a présentement environ 15 projets en développement dont 7 tours de logements locatifs qui sont soit toujours en construction ou en voie d'être complétés.

[47] Autre élément d'importance, GS assure également la construction des installations sur les terrains en question en partageant toujours avec le partenaire, dans les proportions convenues, les coûts afférents à la réalisation du projet de construction.

[48] À cette fin, certaines des sociétés de GS assurent, entre autres, les rôles d'entrepreneur général et de sous-traitants pour réaliser les projets.

[49] GS assume ensuite la gestion de l'édifice une fois la construction complétée.

[50] Inutile de préciser que tant et aussi longtemps que la construction n'est pas terminée et que l'édifice n'est pas suffisamment occupé pour générer des revenus adéquats, ces projets de construction constituent une source majeure de dépenses et de coûts fixes requérant des liquidités.

[51] Selon PwC, les dépenses de construction fixes comprenant principalement des salaires et des frais de consultants s'élèvent à plus de 7 M$ par mois. À ce jour, ce niveau de dépenses est encouru, peu importe le niveau d'activité.[14]

[52] Ainsi, les activités de construction de GS sont déficitaires et engendrent à elles seules des frais fixes mensuels estimés à 7 M$ par PwC. Quelque 30 M$ de liquidités ont été engloutis de janvier à juin 2022 à ce chapitre.[15]

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[14] *Ibid*., par. 25.
[15] *Ibid*., par. 31.

[53] PwC conclut qu'au niveau des activités reliées à la construction, GS est sous-capitalisée, ayant investi plus de 136 M$ au cours des 18 mois terminés le 30 juin 2022, soit l'équivalent de 7,5 M$ par mois.

[54] Or, ce montant a été financé à 100% par des emprunts provenant du financement offert par le Syndicat ou du produit provenant de diverses monétisations qui devaient être réalisées en vertu des conventions de crédit intervenues avec le Syndicat pour réduire son endettement.[16]

[55] Incidemment, la monétisation des projets de GS est la source convenue de remboursement de la dette due au Syndicat selon un échéancier convenu qui n'a pas été respecté, à tort ou à raison. Bien que GS ait pu monétiser certains projets, la très grande proportion des sommes remboursées ont été remplacées cette année au moyen d'avances visant à couvrir les besoins urgents de liquidités de GS.

[56] Bref, le montant de la dette du Syndicat est essentiellement remonté au niveau auquel il se trouvait avant les remboursements effectués par GS provenant des projets monétisés avec comme résultat pratique que l'assiette des sûretés détenues par le Syndicat pour sécuriser ses avances s'est rétrécie avec la vente de certains actifs.

[57] Qui plus est, dans la mesure où GS est incapable de contribuer sa quote-part des coûts reliés à la construction des projets en cours, ceux-ci sont placés à risque, à moins que le partenaire affecté n'assume l'entièreté de ces coûts donc la quote-part de GS ce qui risque de diluer son intérêt dans de tels projets au détriment de ses créanciers.

[58] Mais, il y a plus.

[59] Comme la majorité des sous-traitants est constituée de sociétés faisant partie de GS, la situation risque de se compliquer significativement si GS n'a pas les liquidités nécessaires pour rémunérer les divers ouvriers œuvrant sur ses chantiers de construction.

[60] GS emploie présentement environ 3 000 employés globalement bien que certaines mises à pied auraient été effectuées tout récemment.

[61] Bref, face à un tel constat, il n'est pas étonnant que les avocats des principaux partenaires qui se sont manifestés à l'audience aient fait écho quant à la perte de confiance de leurs clients respectifs à l'endroit de la direction et des dirigeants de GS et qu'ils se soient déclarés contre la Demande GS, l'approbation du CRO, le plan de financement temporaire de 50 M$ de M. Black ainsi que le contrôleur FTI tous proposés par GS.

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[16] *Ibid*., par. 35.

[62] Ils ont plutôt appuyé sans réserve la Demande BNC ainsi que le financement temporaire de 20 M$ et PwC à titre de contrôleur proposé par le Syndicat.

[63] Il importe de préciser que la plupart de ces partenaires ne sont pas nécessairement des créanciers garantis de GS, mais plutôt des partenaires d'affaires ayant à cœur de maintenir les services offerts aux résidents des RPA ou à cœur de compléter les projets de construction déjà entamés pour la plupart.

1.3 L'ENDETTEMENT DE GROUPE SÉLECTION

[64] Le Syndicat détient une créance de **272 227 164,84 $** sécurisée par divers éléments d'actifs de certaines des Débitrices.[17]

[65] La structure complexe adoptée par GS et les intérêts variés, tangibles et intangibles, détenus par ses diverses sociétés dans une kyrielle d'actifs et la nature des sûretés détenues par le Syndicat qui se distingue à certains égards des sûretés traditionnellement consenties par un emprunteur, contribuent à complexifier significativement le mécanisme de réalisation des sûretés en question.

[66] Cette situation n'est cependant pas seulement propre au Syndicat à titre de créancier garanti.

[67] Il n'est donc pas étonnant qu'à l'audience, le Syndicat se soit déclaré favorable à l'élaboration d'un plan de redressement raisonnable et réaliste des affaires de GS sous l'égide de la LACC par l'entremise du contrôleur proposé, PwC.

[68] Par ailleurs, selon la Demande GS, en sus de son endettement envers le Syndicat, GS devrait une somme additionnelle d'environ **925 M$** aux divers prêteurs hypothécaires ayant financé jusqu'à environ 2 milliards de dollars les portefeuilles immobiliers que GS détient soit en propre ou avec d'autres partenaires en équité.[18]

[69] À ce sujet, GS mentionne que les sociétés débitrices aux termes de ces divers prêts hypothécaires ne font pas toutes parties des sociétés qui bénéficient de la protection de la LACC :

> 87. Bien qu'en date des présentes, les sociétés débitrices aux termes des diverses conventions de crédit conclues avec les créanciers hypothécaires ci-dessus ne sont pas toutes des Parties LACC auxquelles il est proposé que les Procédures sous la LACC s'appliquent, les Débitrices réservent néanmoins leurs droits de demander la protection de cette Cour à l'égard de ces autres sociétés.

[17] Demande BNC, par. 23-27.
[18] Demande GS, par. 85.

[70] Quant aux « *fournisseurs et autres créanciers* », le paragraphe 88 de la Demande GS du 13 novembre 2022 révèle un endettement de **118 059 000 $** au 30 juin 2022.[19]

[71] Étonnamment, à la fin de l'audience de quatre jours, les avocats de SG ont annoncé qu'ils allaient déposer une Demande GS modifiée datée du 17 novembre 2022. Or, l'endettement des Débitrices sur une base consolidée de **118 059 000 $** au 30 juin 2022 mentionné au paragraphe 88 est passé à « **environ 63,3 M$** » au 13 novembre 2022 :

> 88. Sur la base de l'information financière fournie par le Groupe Sélection, au 13 novembre 2022, un montant d'environ 63.3 millions$ était dû par les Parties LACC, sur une base consolidée, à des créanciers ordinaires et d'autres fournisseurs, dans la proportion suivante :
>
> (a) 2,9 millions$ payable par Master Immo (ou ses filiales);
>
> (b) 53,8 millions$ payable par Master Corpo (ou ses filiales); et
>
> (c) 6,6 millions $ de chèques en circulation ou en arrêt de paiement.
>
> À la même date, les comptes recevables de projets externes des Parties LACC totalisaient 24,9 millions $.

[72] Quant aux employés, les Débitrices allèguent leur devoir environ **1 078 000 $** à titre de rémunération régulière ainsi que **5 703 240 $** au chapitre des vacances :

> 90. […] Le montant estimé des vacances accumulées et non utilisées et des salaires au 31 octobre 2022 est d'environ 4 625 600$ pour les employés travaillant pour les RPA, 486 500$ pour les employés travaillant dans les opérations de construction et 591 140$ pour les employés travaillant au niveau corporatif.

[73] Par ailleurs, les sommes dues aux agences fiscales seraient nominales.

[74] Enfin, dans le cadre des projets immobiliers en cours et en partenariat avec les partenaires financiers dont il a été fait mention précédemment, certaines des sociétés de GS sont appelées à contribuer de temps à autre leur quote-part des coûts par voie de mises de fonds. Or, ces sociétés s'attendent à faire l'objet d'appels de fonds jusqu'à concurrence d'environ **20 M$** au cours des prochains mois, sommes qu'elles allèguent ne pas être en mesure d'avancer dans le contexte actuel. Ces appels de fonds s'inscrivent, entre autres, pour les projets majeurs de l'Espace Montmorency[20] à Laval et du terrain Molson[21] à Montréal.

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[19] *Ibid*., par 88.
[20] Impliquant le Groupe Montoni, le Fonds de Solidarité FTQ et Montez.
[21] Impliquant le Groupe Montoni et le Fonds de Solidarité FTQ.

[75] Somme toute, l'endettement des sociétés de GS est massif et leur détention de multiples actifs immobiliers nécessite des injections de capitaux importantes sur une base régulière que GS n'a tout simplement pas les ressources ou les liquidités financières d'effectuer sans le soutien d'un prêteur.

[76] Malheureusement, l'équité dont dispose GS n'est de peu d'assistance en l'espèce, car sa structure corporative complexe et la nature particulière des intérêts et des actifs que l'ensemble de ses sociétés détiennent peuvent difficilement générer des prêts additionnels dont GS a absolument besoin en l'absence de tout prêteur institutionnel qui est en mesure ou prêt à leur faire confiance dans le contexte actuel.

[77] Force est de constater qu'en raison de son modèle d'affaires combiné aux défis qu'a suscité la pandémie et que continuent de susciter l'inflation, la hausse des taux d'intérêt et les difficultés éprouvées au niveau des chaines d'approvisionnement, l'état actuel de la situation financière de GS et de ses multiples sociétés est malheureusement critique.

[78] Avec égards pour l'opinion contraire, cet état critique requiert non seulement la protection de la Cour, mais également une révision majeure et réaliste du modèle d'affaires de GS en priorisant en particulier les emplois et les RPA; ce qui implique le maintien des services offerts quotidiennement milliers de résidents qui occupent déjà les édifices dont la gestion est assurée par les employés de GS, sans oublier la nécessité d'assurer leur sécurité et leur bien-être.

2. ANALYSE

[79] D'emblée, il ne fait aucun doute que GS et les Débitrices sont insolvables étant incapables d'honorer leurs obligations au fur et à mesure de leurs échéances. C'est pourquoi elles ont choisi d'avoir recours à la protection de la LACC pour leur permettre de procéder au redressement important qui manifestement s'impose dans les circonstances.

[80] Tel que mentionné précédemment, le Tribunal a déjà prononcé une Ordonnance intérimaire le 14 novembre dernier, leur accordant une protection temporaire. L'Ordonnance initiale qui va être prononcée en vertu du présent jugement va prolonger cette protection sujet à certaines modulations suscitées par les interventions et commentaires des parties à l'audience.

2.1 L'élaboration et la mise en œuvre du processus de redressement de GS doivent-elles être confiées aux dirigeants et à la direction de GS qui n'ont plus la confiance du Syndicat et des principaux partenaires

d'affaires ou au contrôleur PwC proposé par le Syndicat dont les pouvoirs seraient accrus ?

[81] Cette première question suscite des objections majeures de la part des avocats de GS tant au niveau de l'intérêt du Syndicat de présenter la Demande BNC que le choix de PwC à titre de contrôleur proposé dont l'impartialité est mise en doute dans le contexte actuel.

2.1.1 Le Syndicat a-t-il l'intérêt nécessaire pour formuler la Demande BNC?

[82] GS conteste le droit du Syndicat et le caractère approprié pour celui-ci à titre de créancier garanti de formuler la Demande BNC dans le cadre de la LACC dont l'objectif principal est de favoriser le redressement d'une société insolvable.

[83] L'émission d'une ordonnance initiale a essentiellement pour but de permettre à une société débitrice insolvable et éligible de procéder à son redressement sous la protection de la LACC et non pas de permettre à un créancier de procéder à une mise sous séquestre déguisée au moyen d'un contrôleur nommé par la Cour comme tente de le faire le Syndicat.

[84] Selon les avocats de GS, l'émission d'une ordonnance initiale en vertu de la LACC à la demande d'un créancier doit constituer une mesure exceptionnelle qui ne s'applique pas en l'espèce.

[85] Le Tribunal partage entièrement ces principes directeurs, mais pas nécessairement les conclusions qu'ils tirent.

[86] Les avocats de GS ont insisté que tout ce que recherchait réellement le Syndicat est de réaliser ses sûretés en liquidant GS ni plus ni moins tout en procédant à son démembrement complet, ce qui est contraire à l'esprit de la LACC.

[87] Le Rapport de PwC et le témoignage de monsieur Christian Bourque (« **M. Bourque** ») de PwC à titre de représentant du contrôleur proposé par le Syndicat auraient alimenté leurs craintes à cet égard.

[88] Or, le Tribunal a non seulement eu l'opportunité de prendre connaissance de la Demande GS et de la Demande BNC, des pièces invoquées à leur soutien, des rapports soumis par les contrôleurs proposés FTI et PwC ainsi que des plans d'argumentation soumis de part et d'autre.

[89] Le Tribunal a également eu l'avantage d'entendre divers témoignages au cours des quatre jours d'audience, une durée inusitée en matière d'émission d'une ordonnance initiale en présence d'une quarantaine d'avocats représentant une vingtaine de clients.

[90] Tout cela reflète le caractère tout à fait exceptionnel sinon unique de la présente affaire impliquant 137 entités possédant des intérêts variables dans de multiples actifs d'importance dont une cinquantaine de RPA, lesquelles doivent collectivement à leurs créanciers près de 1,5 milliards de dollars alors que GS encoure un manque récurrent de liquidités d'environ 7 M$ mensuellement et dont les entrées de fonds depuis le début de l'année ont à peine réussi à combler les pertes récentes encourues sans pouvoir rembourser les montants convenus au Syndicat.

[91] En d'autres termes, les montants empruntés au Syndicat par GS au cours de la dernière année ont servi à éponger les pertes d'exploitation récentes ou à couvrir les pertes significatives qui continuent de s'accumuler mensuellement. Le Syndicat n'est plus disposé à continuer à se prêter à ce jeu qui ne mène nulle part dans le contexte actuel.

[92] Il presse le Tribunal de permettre au contrôleur PwC d'élaborer un plan de redressement visant initialement à arrêter l'hémorragie financière, à stabiliser les entreprises Débitrices et à repenser le modèle d'affaires de GS afin de lui permettre de retrouver la santé financière.

[93] Tout porte à croire qu'au fil des années, l'actionnaire principal monsieur Réal Bouclin (« **M. Bouclin** »), encouragé par les succès de ses diverses entreprises, a commencé à prendre des bouchées de plus en plus grandes qui ont malheureusement engendré les conséquences financières que ses sociétés vivent présentement.

[94] Le Tribunal est saisi d'un dossier d'insolvabilité d'une complexité extraordinaire en raison de la structure corporative adoptée par la direction de GS, – ce qui ne constitue pas un reproche – du nombre et de la nature particulière des sûretés consenties à de nombreux créanciers garantis en sus du Syndicat portant sur une kyrielle d'actifs dont plusieurs ne sont pas détenus en propre par les Débitrices ce qui implique la présence des partenaires d'affaires ayant également des intérêts dans ces actifs.

[95] En réalité, une liquidation pure et simple de GS et des Débitrices est difficilement envisageable sans risque d'entrainer un chaos juridique certain vu la diversité des intérêts en jeu.

[96] En fait, après quatre jours d'audience, le Tribunal est plutôt convaincu que le présent dossier se prête bien à un processus de redressement en vertu de la LACC, en raison de sa complexité et des enjeux qui impliquent, notamment les milliers de résidents des RPA.

[97] Un processus de redressement qui s'entame en vertu de la LACC n'implique pas qu'une compagnie débitrice va nécessairement conserver tous ses éléments d'actifs et qu'elle va émerger intacte du processus de redressement avec un fardeau d'endettement allégé. Le processus de redressement est évolutif en fonction des circonstances et des événements qui vont survenir au fil du temps.

[98] Le processus de la LACC possède l'avantage de se dérouler sous la supervision du Tribunal qui – dans le respect des dispositions de la LACC - s'assurera, entre autres, du caractère raisonnable et approprié des pistes de redressement envisagées tant du point de vue des sociétés débitrices que des créanciers garantis et ordinaires ainsi que des parties prenantes dont les milliers de résidents des RPA.

[99] Qui plus est, le Tribunal s'attend à ce que la bonne foi anime tous les intervenants qui participeront à ce processus et que la direction de GS collaborera pleinement avec le contrôleur dans la recherche de pistes de solutions viables et raisonnables.

[100] Ces quatre jours d'audience ont permis au Tribunal de constater une évolution qu'il qualifierait de positive de la perspective des principaux créanciers et partenaires d'affaires quant au plan de redressement à favoriser initialement, quant au support financier qui pourrait être offert pour permettre l'élaboration et la mise en exécution d'un plan de redressement et quant aux prochaines étapes à franchir.

[101] Force est de constater que le Syndicat et ses membres ont bien entendu, compris et répondu aux préoccupations du Tribunal pour la suite des choses quant au respect des milliers de personnes vulnérables qui sont à risque d'être affectées par le déroulement du processus de redressement qui s'entame aux termes du présent jugement. Ceci implique qu'une attention toute particulière soit également apportée sur les employés de GS qui se dévouent quotidiennement pour assurer les services offerts aux résidents.

[102] Bref, les circonstances et le contexte fort particulier actuel constituent précisément une situation tout à fait exceptionnelle permettant à un créancier intéressé au sens de l'article 11 LACC, tel le Syndicat, de formuler la Demande BNC.

[103] Avec égards, l'approche de « *business as usual* » vraisemblablement préconisée par GS aux termes de la Demande GS n'apparaît ni raisonnable, ni réaliste, ni équitable dans les circonstances, et ce, même avec l'ajout du CRO Blanchard proposé qui, incidemment, œuvre déjà au sein de l'entreprise depuis juin 2022.

[104] Il n'est ni raisonnable ni réaliste d'envisager une forme de « *business as usual* » sous le couvert de la LACC en se servant d'un prêt temporaire de 50 M$ dont certaines des conditions suscitent de sérieux doutes dans l'esprit du Tribunal d'autant plus que certaines exigences risquent de causer un préjudice important à plusieurs créanciers hypothécaires dont leurs débitrices ne bénéficieront aucunement des sommes qui seront alors avancées à GS vu la nature de leurs sûretés, des dettes qu'elles sécurisent.

[105] Avec égards, aux fins d'obtenir une protection globale en vertu de la LACC, l'avantage de jumeler près de 150 sociétés disposant d'actifs et de créanciers différents – sans oublier qu'elles risquent d'avoir des intérêts divergents les unes par rapport aux autres - peut comporter également certains désavantages lorsqu'il est question d'accorder une priorité de rang à un prêteur temporaire qui désire sécuriser ses nouvelles

avances en grevant essentiellement tous leurs actifs, surtout si le financement temporaire ne servira pas nécessairement de la même façon à chacune des sociétés visées.

[106] Il n'est donc pas étonnant qu'à première vue, un créancier hypothécaire ayant avancé des fonds substantiels à une société spécifique laquelle a grevé son immeuble en sa faveur ait de sérieuses réserves quant à l'octroi par le Tribunal d'une charge prioritaire sur ce même immeuble au montant de 60 M$, par surcroît.

[107] La perte de confiance du Syndicat et de ses membres qualifiée par ceux-ci d'irrémédiable à l'endroit de la direction de GS - que cette perte de confiance soit justifiée ou non - est une autre réalité incontournable que le Tribunal doit considérer vu l'ampleur de la dette de plus de 272 M$ qui lui est due et l'impossibilité pour GS de trouver le financement crucial d'une autre source similaire pour couvrir ses pertes mensuelles qui vont continuer à s'accumuler si rien n'est fait.

[108] Obtenir la protection de la LACC pour continuer, somme toute, les opérations de GS en se servant du prêt temporaire proposé de 50 M$ et pour tenter de soumettre au Tribunal d'ici au 23 décembre 2022[22] un processus d'investissement et de sollicitation de vente sans identifier immédiatement les éléments d'actifs qui génèrent ces pertes récurrentes démesurées et sans poser rapidement les gestes raisonnablement nécessaires pour réduire ces pertes récurrentes à tout le moins, dans la mesure du possible, n'apparaît pas être une formule permettant de maximiser la valeur des actifs de GS au bénéfice des créanciers et autres parties prenantes de GS, bien au contraire.

[109] Le prêt de 50 M$ servira principalement à éponger les pertes mensuelles récurrentes sans conférer aucune *plus-value* aux actifs de GS. Le Syndicat n'a pas tort de prétendre qu'une telle approche impliquant l'octroi d'une Charge du prêteur temporaire de 60 M$ va avoir comme effet direct de réduire significativement la valeur des actifs assujettis aux sûretés qu'il détient pour assurer le remboursement de sa créance de plus de 272 M$, sans parler de l'impact négatif sur les sûretés détenues par les autres créanciers garantis de GS.

[110] Enfin, il ne faut pas oublier que les autres dettes de GS dépassent le milliard de dollars.

[111] Que dire des principaux partenaires financiers identifiés précédemment qui ont également manifesté leur perte de confiance tout en appuyant les démarches du Syndicat ? Leur opinion doit être également considérée par le Tribunal.

[112] Somme toute, l'audience de quatre jours s'est révélée bénéfique aux yeux du Tribunal et lui a permis de constater, au fil du déroulement de l'audience, l'ouverture du Syndicat et de ses membres relativement à l'élaboration et la mise en place d'un processus de redressement de GS en misant avant tout sur le « *core business* » de GS soit sur les quelque 50 RPA, les employés qui se dévouent quotidiennement au bénéfice

[22] Une exigence du prêt temporaire de 50 M$ (**R-26**).

des milliers de résidents, les fournisseurs de service et autres qui approvisionnent et desservent ces RPA, le tout afin d'assurer et de maintenir la sécurité ainsi que le bien-être de ces résidents qui ne devraient pas être privés des services qu'ils ont payés et auxquels ils ont droit de s'attendre.

[113] Dans cette optique, le Syndicat s'est dit disposé à offrir un prêt temporaire jusqu'à concurrence de 20 M$ à des conditions beaucoup plus favorables que le financement temporaire de M. Black préconisé par GS.

[114] Qui plus est, le financement temporaire proposé par le Syndicat ne suscite pas l'opposition des mêmes créanciers hypothécaires qui ont émis de sérieuses réserves relativement au financement temporaire de M. Black.

[115] Le Tribunal a également pris acte de l'engagement des membres du Syndicat manifesté par l'entremise de leurs avocats quant à leur ouverture de considérer favorablement d'avancer des fonds additionnels si le processus de redressement le requiert surtout en ce qui concerne le maintien des opérations et des services offerts par les RPA.

[116] En conclusion, le Syndicat à titre de créancier de GS, même s'il n'est pas créancier de tout un chacun des sociétés et sociétés en commandite qui ont requis la protection de la LACC, possède l'intérêt voulu pour formuler la Demande BNC.

[117] Avec respect, les avocats de GS sont malvenus d'opposer au Syndicat la présence parmi les Débitrices de sociétés qui ne sont pas débitrices du Syndicat, pour tenter de faire échec à la Demande BNC.

[118] De toute façon, une telle approche des avocats de GS s'inscrit nécessairement dans un contexte où ces avocats ont tenu pour acquis que l'exercice proposé par le Syndicat dans la Demande BNC se voulait essentiellement une réalisation déguisée de ses sûretés, ce qui n'est pas le cas aux yeux du Tribunal.

[119] Après tout, le redressement tel qu'envisagé par le Syndicat impliquera sans aucun doute une réduction du fardeau financier de GS en continuant la monétisation de ses actifs comme il est également prévu dans la Demande GS. Cet exercice peut être fait sous la supervision du Tribunal sans que le Syndicat ne doive réaliser formellement ses sûretés.

2.2 Le processus de redressement doit-il être confié à la direction de GS et à FTI le contrôleur proposé dans la Demande GS?

[120] Pour répondre à cette question, les avocats de GS proposent au Tribunal de porter son regard vers le futur plutôt que sur les agissements du passé et par conséquent, de permettre au dirigeant, M. Bouclin, de procéder au redressement requis avec son équipe assistée du CRO Blanchard et du contrôleur FTI.

[121] Avec égards, les circonstances et enjeux exceptionnels de l'espèce militent malheureusement à l'encontre d'une telle proposition.

[122] L'ampleur de l'endettement combinée à l'hémorragie financière récurrente qui mine gravement GS, la complexité extraordinaire de l'organigramme des sociétés assujetties au présent processus, la diversité des actifs d'importance qui sont détenus en partie pour la plupart par des partenaires financiers, le type de sûretés grevant ces actifs et le nombre important de créanciers garantis et de partenaires financiers ayant à bien des égards des intérêts divergents, la sécurité et le bien-être des milliers de personnes logées dans quelque 50 RPA requièrent l'implication d'experts spécialisés en redressement d'entreprises.

[123] Qui plus est, l'équipe de direction actuelle ne bénéficie plus de la confiance du Syndicat, de ses membres et des principaux partenaires d'affaires de GS.

[124] Selon le Rapport PwC et à la lumière du témoignage fort convaincant de M. Bourque, un professionnel de l'insolvabilité œuvrant au sein de PwC qui a été appelé à conseiller diverses institutions financières au sujet des affaires de GS depuis 2019 dont le Syndicat à l'heure actuelle, M. Bouclin est l'actionnaire principal qui ultimement contrôle et gère directement ou indirectement les diverses sociétés Débitrices.

[125] À sa connaissance, M. Bouclin a toujours pris les décisions clés à l'égard de GS, que ce soit de nature stratégique ou opérationnelle, incluant la gestion du financement contracté auprès du Syndicat.[23]

[126] Voici un des constats faits par M. Bourque :

> 15. En résumé, GS:
>
> > i. Encours des pertes opérationnelles significatives chaque mois pour les raisons plus amplement décrites ci-haut;
> >
> > ii. De manière continue;
> >
> > iii. A été incapable d'exécuter les divers plans de monétisations qu'elle a proposés;
> >
> > iv. Ne peut rencontrer ses obligations envers les Prêteurs et divers partenaires dans un nombre important de projets immobiliers; et
> >
> > v. Est incapable d'assurer le service de la dette envers ses Prêteurs;
>
> En étant sous-capitalisé, GS dépend présentement du Financement Syndiqué offert par les Prêteurs.

[23] Rapport PwC, par. 2.

> 16. GS est désormais dans une situation où elle a mis en vente ses actifs, ultimement grevés en faveur des Prêteurs, pour financer ses pertes opérationnelles plutôt que rembourser sa dette, le tout alors que la valeur des actifs et de l'entreprise de GS diminue et apparaît maintenant insuffisante pour rencontrer l'ensemble de ses obligations. Sans un changement de cap, cette spirale vers le bas devrait continuer, prendre de l'ampleur chaque mois et augmenter la perte pour les Prêteurs. De plus, la pérennité des opérations et des affaires de GS est sérieusement à risque, et ce au détriment de l'ensemble des parties prenantes de la Compagnie.[24]
>
> [Soulignements ajoutés]

[127] Un autre constat fait par M. Bourque interpelle particulièrement le Tribunal.

[128] M. Bourque a relaté que depuis son implication dans le dossier, une instabilité très importante a pu être observée au niveau de la direction financière de GS. GS est incapable de produire de l'information financière, historique, fiable et ponctuelle.[25]

[129] Dans le Rapport PwC, M. Bourque remarque ainsi que l'instabilité et l'inefficacité de la fonction finance au sein de GS est une source d'inquiétude importante[26] et conclut:

> 86. En résumé, il est incompréhensible et inacceptable qu'une organisation de la taille et de la complexité de GS ne soit pas en mesure de générer de l'information financière fiable, tant historique que prévisionnelle. Cette situation cause un préjudice à tous les partenaires financiers de GS.[27]

[130] M. Bourque a également remarqué que GS a dû faire appel à des consultants externes afin d'effectuer des tâches qui sont courantes et inhérentes à une fonction financière normale. GS ne dispose pas des ressources et compétences internes pour produire des prévisions financières en temps opportun.

[131] En fait, cet été, la gestion financière a dû être confiée à Raymond Chabot Grant Thornton (« **RCGT** ») :

> 92. La gestion de la trésorerie a également dû être prise en charge par la firme Raymond Chabot Grant Thornton, l'équipe de trésorerie étant incapable d'assurer un suivi sur les recettes et débours en temps opportun. À cet effet, les consultants externes de GS ont dû mettre en place des comités hebdomadaires de gestion de trésorerie afin d'assurer un suivi et une gestion saine de la trésorerie au sein de GS. Ces tâches sont habituellement routinières dans une entreprise de la taille de GS disposant d'une fonction finance.

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[24] *Ibid*., par. 15-16.
[25] *Ibid*., par. 78 et témoignage en cour.
[26] Rapport PwC, par. 79-94.
[27] *Ibid*.

> 93. Bien que l'embauche de consultants externes puisse sembler régler divers problèmes précités, l'instabilité chronique de la fonction finance depuis des années a rendu la tâche ardue et a occasionné des délais significatifs, de sorte que les diverses parties prenantes ont dû se contenter d'informations partielles, incomplètes et souvent mal fondées pour tenter de prendre des décisions financières importantes.

[132] M. Bourque conclut avec ce constat fort révélateur quant à l'état de la gestion financière au sein de GS :

> 94. En résumé, la désorganisation, le manque de compétence et la désinvolture de GS quant à la génération et la compréhension d'informations financières de base pour ses secteurs d'activités sont incompréhensibles.

[133] Le Tribunal comprend que RCGT n'agit plus au sein de GS et que la firme de comptables a choisi de ne pas agir comme contrôleur proposé, d'où la proposition du contrôleur FTI.

[134] Les lacunes majeures identifiées au niveau de la gestion financière de GS par M. Bourque préoccupent grandement le Tribunal lorsque vient le temps de déterminer l'identité de la ou des personnes qui devraient assumer la responsabilité d'élaborer un plan de redressement et de gérer la mise en œuvre du processus de redressement qui doit définitivement avoir lieu dans les plus brefs délais.

[135] Normalement, cette responsabilité échoit à l'équipe de gestionnaires mis en place par les dirigeants de l'entreprise insolvable sous la supervision d'un contrôleur nommé par la Cour. En certaines instances, la direction retient également les services d'un CRO « *Chief Restructuring Officer* » pour diriger et mener à bien le plan de redressement convenu tout dépendant de la complexité du processus envisagé.

[136] En telles circonstances, le CRO choisi est un professionnel expérimenté en matière de redressement d'entreprises dans un contexte d'insolvabilité.

[137] Or, force est de constater qu'une telle équipe n'existe pas au sein de GS et qu'avec grands égards, le CRO Blanchard ne possède pas l'expérience pratique requise en matière de redressement et d'insolvabilité pour répondre aux besoins criants de GS.

[138] Il y a également lieu de souligner que selon la lettre d'engagement du 11 novembre 2022 signée par M. Bouclin[28] (la « **Lettre d'engagement** »), M. Blanchard doit se rapporter directement à M. Bouclin dans l'exécution de son mandat.

[139] Certains éléments de cette lettre, dont le programme de rémunération qui y est proposé, suscitent aussi des préoccupations dans l'esprit du Tribunal qui lui permettent de douter du détachement et du niveau minimal d'impartialité que M. Blanchard devrait

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[28] **R-25**.

avoir dans l'accomplissement de son mandat de CRO dont les décisions ne seraient pas toujours susceptibles de plaire ou de convenir à M. Bouclin.

[140] Qui plus est, dans un contexte où le Syndicat et les principaux partenaires d'affaires ont perdu totalement confiance dans la direction de GS pour mener à bien le processus de redressement approprié requis, force est de constater que la venue de M. Blanchard, un ancien banquier ayant travaillé pendant quelque 20 années au sein de la BNC, n'a pas permis en six mois de « rétablir les ponts » entre GS et le Syndicat et ainsi restaurer un certain niveau de confiance entre les parties.

[141] En fait, le Syndicat, ses membres et les principaux partenaires d'affaires qui sont intervenus ne favorisent aucunement que le Tribunal approuve la nomination de M. Blanchard à titre de CRO que ce soit aux termes de la Lettre d'engagement ou autrement.

[142] Avec grand respect à l'endroit de M. Blanchard dont la compétence et l'intégrité ne sont aucunement remises en question, le Tribunal considère que le Syndicat, ses membres et les principaux partenaires d'affaires qui sont intervenus ont raison.

[143] Avec égards, M. Blanchard n'est pas la personne appropriée pour agir comme CRO dans la présente affaire qui présente des enjeux majeurs et complexes dans un contexte où il existe des lacunes majeures, voire inquiétantes, au niveau de la gestion financière de GS d'autant plus que la direction de GS assurée par M. Bouclin n'envisage pas le processus de redressement requis de la même façon que les principaux créanciers et partenaires financiers.

[144] Une autre préoccupation soulevée par M. Bourque dans le Rapport PwC est le manque de transparence dont a fait preuve M. Bouclin – qui incidemment a toujours refusé de rencontrer le représentant du Syndicat, malgré les maintes demandes de M. Bourque à cet effet, sauf une seule foi dans les derniers jours précédents la présentation de la Demande GS – à l'endroit des sociétés liées[29] à ses enfants et des divers paiements majeurs effectués régulièrement à ces deux sociétés malgré l'ampleur des difficultés financières de GS[30].

[145] À ce sujet, un autre élément déterminant aux yeux du Tribunal est la découverte fortuite au matin du 15 novembre dernier qu'au moment de présenter la Demande GS devant le soussigné ou dans les heures qui ont précédé, GS a transféré, entre autres, 1 503 694 $ à Gaia[31]. Le 10 novembre 2022, 904 921 $ avaient été également transférés à Gaia.[32]

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[29] 9419-1780 Québec inc. faisant affaire sous la raison sociale de Gaia (« **Gaia** ») et Groupe Conseil Evolia inc. (« **Evolia** »).
[30] Rapport PwC, par. 109.
[31] **A-41**.
[32] *Ibid*.

[146] Alors que GS allègue au paragraphe de la Demande GS modifiée au 17 novembre 2022 « *avoir 6,6 millions $ de chèques en circulation ou en arrêt de paiement* ». GS verse non seulement 2,4 M$ à Gaia, mais également 500 000 $ à M. Black le prêteur intérimaire proposé et 200 000 $ aux conseillers juridiques de ce dernier[33].

[147] Le Tribunal a été informé que ces paiements à M. Black et à ses conseillers juridiques totalisant 700 000 $ effectués le 14 novembre 2022 ne sont pas remboursables, et ce, même si le Tribunal n'approuve pas le Prêt DIP de M. Black. GS n'avait certainement pas le luxe de perdre 700 000 $ dans de telles conditions assez inusitées.

[148] Enfin, ce n'est qu'à la mi-journée du mercredi 16 novembre 2022 que les avocats de GS ont déposé un tableau fort succinct[34] identifiant les bénéficiaires des 2,4 M$ transférés à Gaia depuis le 10 novembre 2022, en sus de ceux mentionnés ci-devant.

[149] Étonnamment, des 2,4 M$, Gaia aurait transféré 1 198 000 $[35] à Evolia l'autre société liée appartenant aux deux enfants de M. Bouclin qui aurait effectué divers paiements à certains fournisseurs de service et aux autorités fiscales sans fournir aucune autre explication au cours du procès[36].

[150] Avec égards, le défaut de GS au cours du procès d'agir proactivement afin de divulguer en temps opportun une information pertinente, complète et fiable plutôt que de réagir aux « découvertes » faites par le Syndicat ou par PwC ne fait que renforcer dans l'esprit du Tribunal les lacunes majeures de GS au niveau financier constatées par M. Bourque et le manque de transparence – à moins d'y être obligé - dont semble faire preuve M. Bouclin et son équipe.

[151] Malheureusement, M. Bouclin, l'âme dirigeante du Groupe GS, n'a pas témoigné à l'audience pour rassurer non seulement le Tribunal, mais surtout le Syndicat, ses membres et les divers partenaires financiers présents quant à sa vision et la justesse du plan de redressement qu'il envisage.

[152] Avec égards, les avocats de GS devaient présenter le témoignage de M. Bouclin dans le contexte actuel plutôt que de reprocher aux avocats du Syndicat de ne pas avoir requis son témoignage à l'audience.

[153] Ceci étant dit, le Tribunal se questionne également si M. Blanchard possède la distanciation et l'indépendance voulues face à M. Bouclin et à son équipe de direction pour signaler, par exemple, que les divers paiements effectués en toute apparence *in extremis* le 14 novembre 2022 étaient inappropriés dans les circonstances alors qu'un

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[33] **A-41** et **R-33**.
[34] **R-33**.
[35] **R-33**.
[36] *Ibid*.

bon nombre de chèques transmis à d'autres récipiendaires « moins privilégiés » ont vu ceux-ci faire l'objet d'arrêts de paiement.

[154] En rétrospective, le Tribunal aurait souhaité que M. Blanchard en fasse mention au cours de son témoignage et fournisse volontairement toutes les explications requises pour idéalement éliminer tout doute qui pourrait surgir dans l'esprit du Tribunal sans oublier le Syndicat, ses membres et les principaux partenaires financiers présents à l'audience. L'information risquait de sortir un jour ou l'autre.

[155] Une telle approche favorisant une transparence crucialement nécessaire dans les circonstances aurait dû être priorisée par M. Blanchard qui avait déjà accepté d'agir comme CRO.

[156] Par contre, le Tribunal ne pourrait tenir rigueur à M. Blanchard si au moment de témoigner, celui-ci ignorait l'existence des transactions bancaires qui venaient ou qui se déroulaient alors. Si tel était le cas, son implication à titre de CRO serait de peu d'utilité.

[157] Le Tribunal n'insinue pas pour autant qu'aucun paiement ne devait être effectué le 14 novembre 2022. C'est plutôt l'approche *en catimini* qui jette une douche froide sur la crédibilité de l'équipe de GS qui voudrait se voir confier la responsabilité du processus de redressement qui s'entame aujourd'hui.

2.3 La nomination de PwC à titre de contrôleur

[158] Au final, les circonstances exceptionnelles de l'espèce et les enjeux qui ont déjà été identifiés requièrent l'implication d'une personne expérimentée disposant des ressources nécessaires pour élaborer d'urgence un plan de redressement en consultation avec l'équipe de direction de GS et soumettre celui-ci à l'approbation du Tribunal tout en conservant à l'esprit les préoccupations que le soussigné a fait valoir tout au long de l'audience lesquelles s'inscrivent dans un contexte favorisant le redressement des affaires de GS dans la mesure du possible évidemment.

[159] Le Tribunal est d'avis qu'à l'heure actuelle, la personne tout à fait désignée pour assumer ce rôle est M. Bourque et l'équipe de PwC. Le Tribunal s'attend à ce que M. Bourque joue son rôle en consultation lorsque requis avec l'équipe de direction de GS.

[160] Vu les circonstances exceptionnelles de l'espèce, il est tout à fait indiqué que M. Bourque joue son rôle par le truchement de certains pouvoirs additionnels qui seront accordés au contrôleur choisi par le Tribunal, soit PwC dont M. Bourque est le représentant.

[161] Les avocats de GS ont manifesté leur opposition au choix de PwC et de M. Bourque considérant qu'en raison des mandats confiés par différentes institutions financières depuis 2019, M. Bourque sera en conflit d'intérêts et n'aura pas la

distanciation et l'indépendance requise pour exercer adéquatement son rôle de contrôleur en vertu de la LACC.

[162] Avec égards, le Tribunal ne partage cet avis.

[163] D'emblée, M. Bourque est un professionnel de l'insolvabilité compétent et expérimenté qui a déjà agi à maintes reprises à titre de contrôleur en vertu de la LACC, un rôle qu'il doit exercer de façon impartiale devenant à compter du moment de sa nomination les yeux et les oreilles du Tribunal qui va compter sur son assistance franche et complète tout au long du processus de redressement qui s'entame aujourd'hui.

[164] En acceptant le présent mandat du Tribunal, M. Bourque prendra le pouls de la situation et verra à formuler auprès du Tribunal, après consultation avec l'équipe de direction de GS, les recommandations nécessaires pour stabiliser la situation financière de GS et recommander un plan de redressement qui aura, dans la mesure du possible et du raisonnable l'adhésion de la direction de GS et des autres parties prenantes.

[165] En ce faisant, M. Bourque devra, entre autres, tenter de considérer et de concilier si possible les préoccupations et les attentes des parties intéressées.

[166] Bref, jusqu'à preuve du contraire, le Tribunal n'a aucun doute que dorénavant, en sa nouvelle qualité de contrôleur, M. Bourque agira avec impartialité ce qui lui permettra de conseiller le Tribunal dans l'exécution de son nouveau mandat dans le respect des dispositions de la LACC.

[167] En raison des conclusions tirées par le Tribunal ci-devant, il n'y a pas lieu de nommer FTI à titre de contrôleur.

[168] Le Tribunal tient néanmoins à préciser que cette décision ne doit aucunement s'interpréter comme portant ombrage de quelque façon que ce soit à l'endroit de FTI et plus particulièrement à l'endroit de messieurs Nigel Meakin et Martin Franco qui sont tous deux des professionnels en insolvabilité compétents et expérimentés.

[169] Étant nouveaux au dossier, leur courbe d'apprentissage a fait obstacle à l'urgence d'agir imposée par les circonstances et le contexte fort particulier actuel, ce qui n'était pas le cas pour PwC.

2.4 Le financement temporaire proposé par le Syndicat

[170] Bien que le montant global de 20 M$ offert par le Syndicat à titre de financement temporaire soit moindre que celui offert par M. Black, le Tribunal considère qu'en fonction des représentations et assurances offertes par les avocats du Syndicat, les conditions du prêt temporaire offert sont plus favorables par rapport à celles du financement offert par M. Black et que les montants qui seront mis à la disposition de GS seront suffisants pour permettre l'élaboration d'un plan de redressement et de stabiliser initialement les opérations de GS tout en mettant l'emphase sur les résidents des RPA.

[171] De plus, le Tribunal est sensible à l'ouverture manifestée par le Syndicat et ses membres, par l'entremise de leurs avocats, de considérer favorablement, si requise, une augmentation du prêt temporaire dans le cadre de la mise en œuvre du plan de redressement alors approuvé.

[172] Qui plus est, ce financement temporaire a reçu l'aval de tous les créanciers et partenaires d'affaires qui se sont manifestés à l'audience.

[173] En définitive, vu la structure particulière corporative de GS et la nature des multiples sûretés portant souvent sur des actifs comportant des intérêts détenus conjointement avec des tiers, un plan de redressement favorisant le maintien du « *core business* » de GS tout en poursuivant de façon raisonnable, réaliste et ordonnée, le processus de monétisation des actifs de GS devrait être beaucoup plus porteur qu'une simple liquidation tant du point de vue de GS que de ses créanciers dont le Syndicat sans oublier les partenaires d'affaires et les autres parties prenantes dont les milliers de résidents qui ont accordé leur confiance à GS et qui dépendent des services qui leur sont offerts quotidiennement par un personnel dévoué.

CONCLUSION

[174] Ainsi, pour les motifs qui précèdent, il y a lieu de rejeter la Demande d'émission d'une ordonnance initiale présentée par GS et d'accueillir la Demande BNC du Syndicat suivant les conclusions recherchées aux termes de l'Ordonnance initiale jointe au présent jugement.

POUR CES MOTIFS, LE TRIBUNAL :

[175] **REJETTE** la Demande amendée pour l'émission d'une ordonnance initiale et d'une ordonnance initiale amendée et reformulée des Demanderesses et Mises-en-cause datée du 17 novembre 2022;

[176] **ACCUEILLE** la Demande intitulée « *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief* » de la Banque Nationale du Canada datée du 14 novembre 2022 suivant les conclusions de l'Ordonnance initiale jointe au présent jugement;

[177] **LE TOUT,** sans frais de justice.

MICHEL A. PINSONNAULT, J.C.S.

Me Guy P. Martel
Me Joseph Reynaud
Me Danny Duy Vu
Stikeman Elliott s.e.n.c.r.l., s.r.l.
Avocats des Débitrices Groupe Sélection inc. *et al* et des Mises-en-cause

Me Luc Morin
Me Arad Mojtahedi
Me Guillaume Pierre Michaud
Me Noah Zucker
Norton Rose Fulbright
Avocats de la Requérante Banque Nationale du Canada représentant le Syndicat bancaire

Me Gabriel Faure
Me Alain Tardif
McCarthy Tétrault s.e.n.c.r.l., s.r.l.
Avocats pour le contrôleur proposé FTI CONSULTING INC.

Me Alain Riendeau
Fasken Martineau DuMoulin SENCRL, s.r.l.
Avocats pour le contrôleur proposé PRICEWATERHOUSECOOPERS INC

Me Luc Béliveau
Me Marc-André Morin
Fasken Martineau DuMoulin SENCRL, s.r.l.
Avocats pour la Banque CIBC

Me Christian Lachance
Davies Ward Phillips & Vineberg s.e.n.c.r.l, s.r.l
Avocats pour la Fédération des Caisses Desjardins pour Otéra inc.

Me Nicolas Brochu
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Avocats pour Banque de Montréal

Me François Viau
Me Geneviève Cloutier
Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.
Avocats pour Briva Finance et Fiera Dette Privée

Me Neil G. Oberman
Spiegel, Sohmer, inc.
Avocats pour MCAP Financial Corporation

Me Matthew Cressatti
Osler, Hoskin & Harcourt, S.E.N.C.R.L./s.r.l.
Avocats pour Banque Royale du Canada

Me Alexandre Bayus
Me Nicolas Mancini
Fasken Martineau DuMoulin SENCRL, s.r.l.
Avocats pour Banque de Nouvelle-Écosse (Scotia)

Me Joshua Bouzaglou
Woods s.e.n.c.r.l.
Représentants proposés pour les résidents des RPA

Me Gabriel Lepage
Davies Ward Phillips & Vineberg s.e.n.c.r.l, s.r.l.
Avocats pour le Fonds de Solidarité (FTQ)

Me Avram Fishman
Fishman Flanz Meland Paquin s.e.n.c.r.l.
Avocats pour la Kingsett Capital

Me Nicholas Sheib
Scheib Legal
Me Sean Zweig
Me Mark Rasile
Me Aiden Nelms
Bennett Jones LLP
Avocats pour le mis-en-cause Herbert Black

Me Denis Ferland
Me Louis-Martin O'Neill
Me Benjamin Jarvis
Davies Ward Phillips & Vineberg s.e.n.c.r.l, s.r.l
Avocats pour Revera inc.

Me Kim Sheppard
Me Rim Afegrouch
Ministère de la Justice Canada
Avocats pour l'Agence du revenu du Canada

Me Daniel Cantin
Me Vincenzo Carrozza
Me Frédéric Tessier
Revenu Québec
Avocats pour l'Agence du revenu du Québec

Me Bernard Boucher
Me Christina Cataldo
Blake, Cassels & Graydon s.e.n.c.r.l.
Avocats pour Investissement Québec

Me Sandra Abitan
Me Julien Morissette
Osler, Hoskin & Harcourt, S.E.N.C.R.L./s.r.l.
Avocats pour Groupe Montoni

Dates d'audience : 14, 15, 16 et 17 novembre 2022

ANNEXE "A"
LISTE DES DÉBITRICES

1. GROUPE SELECTION INC.
2. 9411-3594 QUÉBEC INC.
3. 8504750 CANADA INC.
4. 10067628 CANADA INC.
5. 10067601 CANADA INC.
6. 9281-8343 QUÉBEC INC.
7. 10437042 CANADA INC.
8. 9395-8379 QUÉBEC INC.
9. 10437123 CANADA INC.
10. 10437387 CANADA INC.
11. 10442364 CANADA INC.
12. 10442259 CANADA INC.
13. 10442500 CANADA INC.
14. 10442437 CANADA INC.
15. 10437492 CANADA INC.
16. 10442453 CANADA INC.
17. 10437433 CANADA INC.
18. 9408-3581 QUÉBEC INC.
19. 9408-3789 QUÉBEC INC.
20. 9650261 CANADA INC.
21. 11349945 CANADA INC.
22. 9357-2006 QUÉBEC INC.
23. 9851267 CANADA INC.
24. 9357-2014 QUÉBEC INC.
25. 11075900 CANADA INC.
26. 10702030 CANADA INC.
27. 9357-2030 QUÉBEC INC.
28. 9394-6127 QUÉBEC INC.
29. 9399-6049 QUÉBEC INC.
30. 9399-6072 QUÉBEC INC.
31. 10067644 CANADA INC.
32. 10067636 CANADA INC.
33. 10212440 CANADA INC.
34. 9413-5449 QUÉBEC INC.
35. 9415-4580 QUÉBEC INC.
36. 9409-4794 QUÉBEC INC.
37. 9411-9252 QUÉBEC INC.
38. 9408-6824 QUÉBEC INC.
39. 9410-5475 QUÉBEC INC.
40. 9245-0519 QUÉBEC INC.
41. 10619817 CANADA INC.
42. 9328-2887 QUÉBEC INC.
43. 8504776 CANADA INC.
44. 9497722 CANADA INC.
45. 8788537 CANADA INC.
46. 9094-8951 QUÉBEC INC.
47. 9286861 CANADA INC.
48. 12781948 CANADA INC.
49. 9408-1577 QUÉBEC INC.
50. GESTION CH 2015 INC.
51. 9390-8697 QUÉBEC INC.
52. CONCEPTION HABITAT 2015 INC.
53. 9352-0252 QUÉBEC INC.
54. 9319-7473 QUÉBEC INC.
55. GROUPE RÉSEAU SÉLECTION CONSTRUCTION INC.
56. STRUCTURE ISO 2015 INC.
57. 9280-2842 QUÉBEC INC.
58. 8468834 CANADA INC.
59. 9408-2328 QUÉBEC INC.
60. 9408-2369 QUÉBEC INC.
61. 9408-2401 QUÉBEC INC.
62. 8788383 CANADA INC.
63. 9462-9037 QUÉBEC INC.
64. 9408-1585 QUÉBEC INC.
65. 9408-1593 QUÉBEC INC.
66. 9408-1601 QUÉBEC INC.
67. ÉBÉNISTERIE BOSCO INC.
68. TOITURES FD INC.
69. 9383-3572 QUÉBEC INC.
70. 9383-3507 QUÉBEC INC.
71. CONSTRUCTION DELAUMAR INC.
72. BMD ÉLECTRIQUE INC.
73. 9334-9652 QUÉBEC INC.
74. 9395-8387 QUÉBEC INC.
75. 9395-4956 QUÉBEC INC.
76. 9395-5094 QUÉBEC INC
77. 9463-6297 QUÉBEC INC.
78. 9463-8749 QUÉBEC INC.
79. 9851321 CANADA INC.
80. 9650270 CANADA INC.
81. 9387-2604 QUÉBEC INC.

ANNEXE "B"
LISTE DES SOCIÉTÉS EN COMMANDITE

1. SOCIÉTÉ EN COMMANDITE GROUPE SÉLECTION IMMOBILIER
2. SOCIÉTÉ EN COMMANDITE CORPORATION GROUPE SÉLECTION
3. SOCIÉTÉ EN COMMANDITE ROSEMONT
4. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS ROSEMONT II
5. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS LACHENAIE
6. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LOGEMENT LACHENAIE
7. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE II
8. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE III
9. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE IV
10. SOCIÉTÉ EN COMMANDITE INVESTISSEURS GATINEAU
11. SOCIÉTÉ EN COMMANDITE INVESTISSEURS SÉLECTION MONTMORENCY
12. SOCIÉTÉ EN COMMANDITE INVESTISSEURS DISTRICT DES BRASSEURS
13. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE V
14. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE VI
15. SOCIÉTÉ EN COMMANDITE INVESTISSEURS ROSEMONT III
16. SOCIÉTÉ EN COMMANDITE COMMANDITAIRE GROUPE SÉLECTION
17. SOCIÉTÉ EN COMMANDITE GS IMMOBILIER 2
18. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS ROSEMONT
19. SOCIÉTÉ EN COMMANDITE RÉSIDENCE GATINEAU
20. SOCIÉTÉ EN COMMANDITE TOURS RIMOUSKI COMMERCIAL
21. SOCIÉTÉ EN COMMANDITE RIMOUSKI
22. SOCIÉTÉ EN COMMANDITE INVESTISSEURS REPENTIGNY
23. SOCIÉTÉ EN COMMANDITE RÉSEAU SÉLECTION INVESTISSEMENT
24. SOCIÉTÉ EN COMMANDITE INVESTISSEURS STJ
25. SOCIÉTÉ EN COMMANDITE INVESTISSEURS DEUX-MONTAGNES
26. SOCIÉTÉ EN COMMANDITE INVESTISSEURS RV
27. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VANIER
28. SOCIÉTÉ EN COMMANDITE RÉSIDENCE LE JARDIN DES SOURCES
29. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CHÂTEAUGUAY
30. SOCIÉTÉ EN COMMANDITE CONDOS ROSEMONT
31. SOCIÉTÉ EN COMMANDITE GS IMMOBILIER
32. SOCIÉTÉ EN COMMANDITE IMMEUBLE CHAMBLY
33. COMMANDITÉ SÉLECTION S.E.C.
34. SOCIÉTÉ EN COMMANDITE GS GESTION
35. SOCIÉTÉ EN COMMANDITE GESTION IMMO SÉLECTION
36. SOCIÉTÉ EN COMMANDITE GESTION IMMO SÉLECTION SC
37. SOCIÉTÉ EN COMMANDITE GS DEV
38. SOCIÉTÉ EN COMMANDITE SÉLECTION DÉVELOPPEMENT
39. SOCIÉTÉ EN COMMANDITE SÉLECTION DÉVELOPPEMENT INTERNATIONAL
40. SOCIÉTÉ EN COMMANDITE CONDOS ROSEMONT II

41. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VAUDREUIL
42. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VALLEYFIELD
43. SOCIÉTÉ EN COMMANDITE ROSEMONT II
44. SOCIÉTÉ EN COMMANDITE ROSEMONT III
45. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VICTORIAVILLE
46. SOCIÉTÉ EN COMMANDITE PROJET CHÂTEAUGUAY
47. SOCIÉTÉ EN COMMANDITE RÉSIDENCE CHICOUTIMI
48. SOCIÉTÉ EN COMMANDITE RÉSIDENCE INNES ROAD
49. SOCIÉTÉ EN COMMANDITE COMPLEXE LÉVIS ST-NICOLAS
50. SOCIÉTÉ EN COMMANDITE INVESTISSEURS VAUDREUIL HOOP
51. SOCIÉTÉ EN COMMANDITE INVESTISSEURS ST-HYACINTHE
52. SOCIÉTÉ EN COMMANDITE SÉLECTION MONTMORENCY
53. SOCIÉTÉ EN COMMANDITE DISTRICT DES BRASSEURS
54. SOCIÉTÉ EN COMMANDITE CONDOS LACHENAIE
55. SOCIÉTÉ EN COMMANDITE MIRABEL
56. SOCIÉTÉ EN COMMANDITE INVESTISSEUR VALLEYFIELD

[Unofficial Translation]

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-061657-223

DATE: November 21, 2022

PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

GROUPE SÉLECTION INC.
and
THE OTHER ENTITIES LISTED IN SCHEDULE "A" HERETO
Debtors/Plaintiffs
and
THE LIMITED PARTNERSHIPS LISTED IN SCHEDULE "B" HERETO
Impleaded Parties
and
FTI CONSULTING CANADA INC.
Proposed Monitor
and
NATIONAL BANK OF CANADA
Secured Creditor/Petitioner for the issuance of an Initial Order
and
PRICEWATERHOUSECOOPERS INC.
Proposed Monitor

JUDGMENT ON APPLICATIONS FOR AN INITIAL ORDER AND AN AMENDED AND RESTATED INITIAL ORDER

(Sections 9, 11, 11.2, 11.52, 23 and 36 of the *Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36*)

JP1736

OVERVIEW

[1] Groupe Sélection Inc. (**"GS"**) operating, among others, through 81 companies[1] and 56 limited partnerships[2] (collectively, the **"Debtors"**) requests protection from the Court pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"), in order to allow it to proceed with the restructuring of its affairs while being protected from creditors and proposes the appointment of FTI Consulting Canada Inc. (**"FTI"**) as Monitor (the **"GS Application"**).

[2] First, this is an unusual, even extraordinary, case whose very particular circumstances have ramifications and raise complex issues both for GS and the Debtors[3] as for their creditors, business partners and the other stakeholders, including the thousands of senior citizens who reside in various seniors' residences ("**RPAs**") owned in whole or in part by GS and whose day-to-day management is carried out by GS employees.

[3] Furthermore, National Bank of Canada (**"NBC"**), which represents a banking syndicate comprised of Canadian Imperial Bank of Commerce (**"CIBC"**), Fédération des Caisses Desjardins (**"Desjardins"**), Toronto Dominion Bank (**"TD"**), Bank of Montreal (**"BMO"**), HSBC Bank Canada (**"HSBC"**), Briva Finance (Équité) S.E.C. (**"Briva"**) and Fiera FP Business Financing Fund, L.P. (**"Fiera"**) (collectively, the **"Syndicate"**), to which is owed in excess of $272 million since October 28, 2022, is vigorously contesting the GS Application, including GS's proposed restructuring plan and the appointment of FTI as Monitor, notwithstanding the Syndicate's agreement that the restructuring of GS's affairs should proceed to the extent possible under the CCAA.

[4] In response to the highly irregular service of the GS Application on Sunday, November 13, 2022 at approximately 11:45 p.m., which was to be presented on an urgent basis at 2:00 p.m. the next day, the Syndicate filed, minutes before the 2:00 p.m. start of the hearing, its own Application for an Initial Order[4] (the **"NBC Application"**) proposing its own restructuring plan and the appointment of PricewaterhouseCoopers Inc. (**"PwC"**) as Monitor with enhanced powers to carry out the development and implementation of the GS Business Restructuring Plan to be approved by the Court in a particular and complex context.

[5] The Syndicate points out that during negotiations between the parties on Sunday morning, November 13, 2022, in an attempt to find mutually acceptable common ground, among other things, with respect to the additional funding required by GS, GS representatives never indicated that they intended to file the GS Application within the next few hours, a behaviour which, according to the Syndicate, only irreparably undermined the confidence it had in GS executives.

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[1] Identified in Schedule A attached hereto.
[2] Identified in Schedule B attached hereto.
[3] Henceforth, when the Court refers to GS it will also include and cover the Debtors, where applicable.
[4] Commonly referred to as a "*competing application*".

[6] The Syndicate alleges that its members were caught off guard with the unexpected filing of the GS Application on Sunday night without reasonable notice. It considers that this tactic used by GS is detrimental to their interests and those of a significant number of GS's business partners, discussed below, as well as stakeholders including residents of GS's RPAs and other multi-residential buildings.

[7] Essentially, the Syndicate alleges that GS has failed to comply with its contractual obligations to repay amounts advanced since 2021 and has failed to repay more than $272 million due and owing to the Syndicate since October 28, 2022.

[8] In fact, according to the Syndicate, GS is in a highly precarious, even critical, financial position, as it continues to generate losses of approximately $7 million per month for several months, which has led to the granting of additional advances of $64.5 million since April 2002[5] without any improvement in GS's financial position, quite the contrary.

[9] In short, GS is experiencing a chronic cash shortage of some $7 million from month to month with no prospect of improvement in the short term to meet its current financial obligations.

[10] The Syndicate, GS's principal lender, lost confidence in its management team and executives, resulting in the withdrawal of its financial support on October 28, 2022.

[11] This loss of confidence also affected GS's principal business partners who, at the hearing, expressed to the Court their opposition to the Court granting the GS Application.

[12] In fact, counsel for Revera Inc, Montoni Group, Fonds de solidarité FTQ, Fédération des Caisses Desjardins, Timbercreek Capital and 7813040 Canada inc., CIBC and the Bank of Nova Scotia (Scotia) all intervened during the hearing to confirm their respective clients' loss of confidence in GS executives and management. Their clients fully support the NBC Application, the approach proposed at the hearing by the Syndicate for the development of a restructuring plan to turn around GS's business, and the selection of PwC as the proposed Monitor.

[13] For its part, Investissement Québec, another major partner that has guaranteed a significant portion of GS's indebtedness to the Syndicate, informed the Court that it was deferring to the Court's decision, but that it nevertheless wished to reiterate that its primary concern is the safety and well-being of the residents of the RPAs.

[14] In short, GS no longer has access to any credit that would allow it to cover its monthly operating deficit of some $7 million, which is recurring, and consequently, it is no longer able to honour its current obligations to its creditors and partners, which places these businesses in an insolvency situation, hence the filing of the GS Application.

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[5] PwC Proposed Monitor's First Report dated November 14, 2022 (**A-5A**) (hereinafter the "**PwC Report**") para. 48.

[15] The filing of the GS Application constitutes an admission of insolvency on the part of GS and the Debtors whom GS has chosen to include in its proceedings. There can be no doubt, therefore, that GS and the Debtors are insolvent in the present context. Consequently, on November 14, 2022, the Court issued an Interim Order under the provisions of the CCAA, essentially staying all proceedings against the Debtors[6] and their Property[7] until judgment has intervened on the GS Application and the NBC Application.

[16] For its part, the Syndicate accuses GS of attempting to continue, under the cover of the CCAA, its operations essentially on a "business as usual" basis, sheltered from its various creditors, business partners and stakeholders by financing them with an interim $50-million financing offered by Mr. Herbert Black (**"Mr. Black"** or the **"DIP Lender[8]"**) on terms that were considered highly disadvantageous to all secured creditors without conferring any tangible benefit or advantage on GS and its stakeholders other than to buy time and hope that economic conditions will improve.

[17] The $50 million interim financing favoured by GS is considered in the context of a restructuring where maintaining the *status quo* would essentially be the preferred approach in the hope that the value of GS's assets will appreciate and allow them to be monetized on more favourable terms in the near future.

[18] GS is considering the possibility of an investment and bidding process, but the Syndicate is concerned that under the approach advocated by GS, coupled with the passage of time and the increase in the operating deficit that would be made up by the $50 million advanced by the DIP Lender, the equity of GS's assets, and therefore the value of the security it holds, will continue to erode significantly and put the repayment of its claim at risk.

[19] In addition to the Syndicate, the other secured creditors who have advanced substantial amounts by way of mortgage loans on properties owned in whole or in part by GS, who appeared at the hearing, argue that the approach advocated by GS is likely to result in a rapid and significant reduction in the value of the securities they hold, with an interim priority financing of $50 million, which would be used primarily to wipe out the financial hemorrhage experienced by GS over the months.

[20] Still according to the Syndicate, the contemplated restructuring requires stabilizing GS's operations on an urgent basis by determining, among other things, the measures that could reasonably be taken to limit, if not eliminate, this recurring need for cash that the Debtor companies simply do not have.

[21] Moreover, at the hearing, counsel for the Syndicate argued on more than one occasion that their client's members consider of prime importance the safety and well-being of residents of RPAs, whose services must not be affected by the restructuring process to be undertaken under the supervision of the Court.

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[6] As defined in the Interim Order of November 14, 2022.
[7] *Ibid.*
[8] **D**ebtor in **P**ossession (**DIP**).

[22] In this regard, the interim financing of approximately $20 million[9] that the Syndicate is offering to advance will be used, among other things, to meet any one-time financial needs to ensure the continuation of services that RPA residents are entitled to expect.

[23] Counsel for the Syndicate also suggested to the Court that if the financial needs related primarily to maintaining the services offered to the residents of the RPAs required the injection of additional capital over and above the $20 million initially proposed, the members of the Syndicate would favourably consider such a contribution, subject, of course, to the agreement of the Court and to the conditions that they might then impose, as the case may be.

[24] In sum, the debate over the GS Application and NBC Application, which prompted four days of hearings, essentially raises the following key issues:

- Should the development and implementation of the GS restructuring process be left to GS executives and management who no longer have the confidence of the Syndicate and key business partners, or to the Syndicate's proposed Monitor PwC whose powers would be increased?

- Is it appropriate to approve the engagement of 9372-9804 Québec Inc (**"9372"** or the **"CRO"**) represented by Mr. Yanick Blanchard[10] (**"Mr. Blanchard"**) as the Chief Restructuring Officer proposed by GS with a Chief Restructuring Officer Charge of $3 million, despite the opposition of the Syndicate and the key business partners?

- Is it appropriate to approve Mr. Black's $50-million interim financing advocated by GS that would include a $60-million Interim Lender Charge that would have priority over any security interests held by GS's various secured creditors or the $20-million interim financing offered by the Syndicate?

[25] For the following reasons, in exercising its judicial discretion under the CCAA, the Court finds that it must dismiss the GS Application, grant the NBC Application and issue the Initial Order sought by the Syndicate subject to certain adjustments.

1. CONTEXT

[26] Before addressing the issues identified above, it is relevant to outline the current context.

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[9] The Syndicate's interim financial offer provides that $20 million will be advanced essentially in two tranches with an initial tranche of $10 million if the NBC Application is successful as well as its offer of interim financing in accordance with the provisions set out in Exhibits **A-38** and **A-39**.

[10] **R-25**.

[27] At the hearing, all agreed that this case is quite exceptional and involves major and complex circumstances and issues that are equally exceptional and that will significantly complicate not only the future conduct of these proceedings, but also the restructuring process that is set in motion by this judgment.

[28] The 137 Debtors that filed with GS for Court protection under the CCAA are only a portion of the companies operating under the management of GS which will not be directly subject to the Initial Order issued pursuant to this judgment.

[29] At the hearing, it was rightly pointed out that the organizational chart of the GS companies was more complex than the London Underground map.

1.1. THE RPAs

[30] GS owns and operates some 50 RPAs located throughout Quebec, in addition to multi-residential properties.

[31] The Court understands that GS operates and manages some 14,000 housing units, primarily in RPAs.

[32] The Court also understands that the vast majority of the thousands of residents who occupy the RPAs are of advanced age and are highly dependent on the various services provided to them on a daily basis by the managers of each facility.

[33] In the Court's view, RPAs are the core business of GS, even though most of the cash flow shortfall is caused by companies acquiring land for the construction of new buildings primarily, but not exclusively, for use as RPAs, which will be discussed below.

[34] Currently, a majority of RPAs do not generate enough revenue to cover their ongoing operating expenses, requiring regular injections of funds to maintain services.

[35] Although the situation appears to be slowly improving, the pandemic has had a significant negative impact on the occupancy rate of RPAs, which in turn has affected the revenue generated by insufficient occupancy.

[36] Of the 50 RPAs, GS wholly owns only 6 of them[11], and all other residences are jointly owned with business partners such as Revera Inc. (**"Revera"**), Blackstone (**"Blackstone"**) and Lokia (**"Lokia"**), to name only the main ones.

[37] According to PwC, as of May 31, 2022, of the 50 RPAs, 28 (56%) were in deficit and required capital injections from GS and its partners to fund their operations. The average occupancy rate was approximately 80 percent.[12]

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[11] PwC Report, para. 110.
[12] *Ibid.*, para. 39.

[38] Thus, the majority of RPAs owned in whole or in part and managed by GS are in deficit (56%) and require close to $2 million in additional cash flow per month despite the management fees collected.[13]

[39] The Court understands that the current situation remains essentially unchanged, although in some locations, the occupancy rate has increased slightly since last May.

[40] Failure to meet the RPAs' monthly operating deficits jeopardizes the services provided to residents on a daily basis, making it critical to advance the required funds in a timely manner.

[41] Moreover, the recurring cash flow shortfall experienced by GS forces its partners, such as Revera, to make up the share of the RPAs' operating deficits that would normally be assumed by GS, thereby increasing the tension between the various business partners who expect GS to assume and honour not only its financial obligations to them under the terms of their contractual agreements, but also its obligations to the RPA residents.

[42] The problem is that GS's business model is not limited to holding variable percentages of interests in existing RPAs and to managing them.

1.2. LAND ACQUISITION AND BUILDING CONSTRUCTION

[43] GS acquires land from time to time for the purpose of constructing buildings to be used primarily as RPAs or sometimes as multi-residential buildings.

[44] Over time, GS has become involved in increasingly important and complex projects such as Espace Montmorency in Laval and the development of the Molson property in Montreal, which require major investments without generating any revenues for the moment. In fact, GS is currently in default of its share of the additional contributions requested for these two major projects involving mainly the Montoni Group and Fonds de solidarité FTQ.

[45] In pursuing this business model, after acquiring a piece of land, GS then attempts to associate with a partner who will become an undivided co-owner based on a percentage agreed upon from time to time, the rate of which will vary on a project-by-project basis. This approach allows GS to share the costs of maintaining and preserving the land.

[46] The Court understands that there are currently approximately 15 projects under development, including 7 rental unit towers that are either still under construction or nearing completion.

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[13] *Ibid.*, para. 41.

[47] Another important element is that GS also provides for the construction of the facilities on the land in question, still sharing with the partner, in the agreed proportions, the costs related to carrying out the construction project.

[48] To this end, some of the GS entities act as general contractors and subcontractors to carry out the projects, among other roles.

[49] GS then takes over the management of the building once construction is completed.

[50] Needless to say, until construction is completed and the building is sufficiently occupied to generate adequate revenues, these construction projects are a major source of expense and fixed costs requiring cash flow.

[51] According to PwC, fixed construction expenses, consisting primarily of salaries and consulting fees, are in excess of $7 million per month. To date, this level of spending is incurred regardless of the level of activity.[14]

[52] Accordingly, GS's construction activities are in deficit and alone generate monthly fixed costs estimated by PwC to reach $7 million. Some $30 million in cash was spent from January to June 2022 in this regard.[15]

[53] PwC concludes that in terms of construction-related activities, GS is undercapitalized, having invested more than $136 million in the 18 months ended June 30, 2022, or the equivalent of $7.5 million per month.

[54] However, this amount was financed 100% by borrowings from the financing provided by the Syndicate or from the proceeds of various monetizations that were to be made under the credit agreements entered into with the Syndicate for the purpose of reducing its indebtedness.[16]

[55] Incidentally, the monetization of GS projects is the agreed source of repayment of the debt owed to the Syndicate according to an agreed-upon schedule that has not been met, rightly or wrongly. While GS has been able to monetize certain projects, the very large proportion of the money repaid has been replaced this year by advances required to cover GS's emergency cash flow needs.

[56] In short, the amount of the Syndicate's debt has essentially returned to the level it was at prior to GS's repayments from monetized projects, with the practical result that the base of the security interests held by the Syndicate to secure its advances has shrunk with the sale of certain assets.

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[14] *Ibid.*, para. 25.
[15] *Ibid.*, para. 31.
[16] *Ibid.*, para. 35.

[57] Moreover, insofar as GS is unable to contribute its share of the costs related to the construction of the projects in progress, these projects are placed at risk, unless the affected partner assumes the entirety of these costs, including GS's share, which risks diluting its interest in such projects to the detriment of its creditors.

[58] But there is more.

[59] Since the majority of subcontractors are GS companies, the situation could be significantly complicated if GS does not have the cash flow to pay the various workers on its construction sites.

[60] GS currently employs approximately 3,000 employees overall, although some layoffs have reportedly occurred recently.

[61] In short, in the face of such a finding, it is not surprising that counsel for the key partners who appeared at the hearing echoed their respective clients' loss of confidence in GS's executives and managers and spoke out against the GS Application, the approval of the CRO, Mr. Black's $50-million interim financing plan and the FTI Monitor, all of which were proposed by GS.

[62] Instead, they fully supported the NBC Application and the $20-million interim financing and PwC as Monitor proposed by the Syndicate.

[63] It is important to note that most of these partners are not necessarily secured creditors of GS, but rather business partners who are committed to maintaining the services offered to RPA residents or to completing the construction projects that have already begun for the most part.

1.3. THE INDEBTEDNESS OF GROUPE SÉLECTION

[64] The Syndicate is owed an amount of **$272,227,164.84** secured by various assets of certain Debtors.[17]

[65] The complex structure adopted by GS and the varied interests, both tangible and intangible, held by its various companies in a variety of assets as well as the nature of the security interests held by the Syndicate, which differ in certain respects from the security interests traditionally granted by a borrower render the enforcement mechanism for the security interests in question significantly more complex.

[66] This situation is not, however, unique to the Syndicate as a secured creditor.

[67] Not surprisingly, at the hearing, the Syndicate expressed its support for the development of a reasonable and realistic plan for the restructuring of GS's affairs under the CCAA through the proposed Monitor, PwC.

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[17] NBC Application, para. 23-27.

[68] Moreover, according to the GS Application, in addition to its indebtedness to the Syndicate, GS owes an additional amount of approximately **$925 million** to the various mortgage lenders who have financed up to approximately $2 billion of the real estate portfolios that GS holds either on its own or with other equity partners.[18]

[69] In this regard, GS notes that not all of the debtor companies under these various mortgage loans are entities covered by the CCAA protection:

> 87. Although, as of the date hereof, the debtor companies under the various credit agreements with the foregoing mortgagees are not all CCAA Parties to whom the CCAA Proceedings are proposed to apply, the Debtors nevertheless reserve their rights to seek protection from this Court with respect to such other companies.

[70] As for the "*suppliers and other creditors*," paragraph 88 of the GS Application dated November 13, 2022 shows a indebtedness of **$118,059,000** as at June 30, 2022.[19]

[71] Surprisingly, at the end of the four-day hearing, counsel for SG announced that they would be filing an amended GS Application dated November 17, 2022. Indeed, the Debtors' indebtedness on a consolidated basis of **$118,059,000** as at June 30, 2022 mentioned in paragraph 88 decreased to "**approximately $63.3 million**" as at November 13, 2022:

> 88. Based on the financial information provided by Groupe Sélection, as at November 13, 2022, an amount of approximately $63.3 million was owed by the CCAA Parties, on a consolidated basis, to ordinary creditors and other suppliers in the following proportion:
>
> (a) $2.9 million payable by Master Immo (or its subsidiaries);
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> (b) $53.8 million payable by Master Corpo (or its subsidiaries); and
>
> (c) $6.6 million of outstanding or stopped payment cheques.
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> As of the same date, the CCAA Parties' external project accounts receivable totalled $24.9 million.

[72] As for the employees, the Debtors allege owing them approximately **$1,078,000** in regular pay and **$5,703,240** in vacation pay:

> 90. [...] The estimated amount of accrued and unused vacation and salaries as of October 31, 2022 is approximately $4,625,600 for employees working for RPAs,

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[18] GS Application, para. 85.
[19] *Ibid.*, para. 88.

$486,500 for employees working in construction operations and $591,140 for employees working at the corporate level.

[73] In addition, the amounts owed to the tax agencies would be nominal.

[74] Finally, as part of the ongoing real estate projects and in partnership with the financial partners previously referred to, some of the GS companies are called upon to contribute their share of the costs from time to time by way of an investment. These companies expect to receive contribution calls for up to approximately **$20 million** in the coming months, which they claim they are unable to advance in the current environment. These contribution calls are, among others, for the major projects of Espace Montmorency[20] in Laval and the Molson lot[21] in Montréal.

[75] By and large, the indebtedness of GS companies is massive and their ownership of multiple real estate assets requires significant capital injections on a regular basis that GS simply does not have the resources or financial liquidity to make without the support of a lender.

[76] Unfortunately, the equity available to GS is of little assistance in this case, as its complex corporate structure and the particular nature of the interests and assets held by all of its companies can hardly generate the additional loans that GS absolutely needs in the absence of any institutional lender that is able or willing to trust them in the current environment.

[77] It is clear that because of its business model, combined with the challenges posed by the pandemic and the ongoing challenges of inflation, rising interest rates and supply chain issues, the current state of the financial condition of GS and its multiple companies is unfortunately critical.

[78] With all due respect to the contrary opinion, this critical state requires not only the protection of the Court, but also a major and realistic revision of GS's business model by prioritizing jobs and RPAs in particular; this implies maintaining the services offered on a daily basis to the thousands of residents who already occupy the buildings managed by GS's employees, not to mention the need to ensure their safety and well-being.

2. ANALYSIS

[79] At the outset, there can be no doubt that GS and the Debtors are insolvent and unable to meet their obligations as they fall due. For this reason, they have chosen to avail themselves of the protection of the CCAA to enable them to effect the substantial restructuring that is clearly required in the circumstances.

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[20] Involving Montoni Group, Fonds de Solidarité FTQ and Montez.
[21] Involving Montoni Group, Fonds de Solidarité FTQ and Montez.

[80] As mentioned previously, the Court already issued an Interim Order on November 14, granting them temporary protection. The Initial Order to be made under this judgment will extend that protection subject to certain amendments prompted by the parties' interventions and comments at the hearing.

2.1 Should the development and implementation of the GS restructuring process be left to the GS executives and management who no longer have the confidence of the Syndicate and key business partners or to the Syndicate's proposed Monitor PwC whose powers would be increased?

[81] This first issue gives rise to major objections by counsel to GS, both in relation to the Syndicate's interest in submitting the NBC Application and the choice of PwC as the proposed Monitor whose impartiality is questioned in the current context.

2.1.1 Does the Syndicate have the necessary interest to make the NBC Application?

[82] GS challenges the right and appropriateness of the Syndicate as a secured creditor to make the NBC Application under the CCAA, the primary purpose of which is to facilitate the recovery of an insolvent corporation.

[83] The purpose of issuing an initial order is essentially to allow an eligible insolvent debtor corporation to recover under the protection of the CCAA and not to allow a creditor to proceed with a disguised receivership by way of a court-appointed Monitor as the Syndicate is attempting to do.

[84] Counsel for GS submits that the issuance of an initial order under the CCAA at the request of a creditor should be an exceptional measure which does not apply in this case.

[85] The Court fully agrees with these guiding principles, but not necessarily with the conclusions they draw.

[86] Counsel for GS insisted that all the Syndicate was really seeking to do was to realize its security interests by liquidating GS, nothing more and nothing less, while dismembering it completely, which is contrary to the spirit of the CCAA.

[87] The PwC Report and the testimony of Mr. Christian Bourque (**"Mr. Bourque"**) of PwC as the Syndicate's proposed Monitor's representative would have fuelled their concerns in this regard.

[88] The Court not only had the opportunity to examine the GS Application and the NBC Application, the exhibits relied upon in support of them, the reports submitted by the proposed Monitors FTI and PwC and the plans of argument submitted by each side.

[89] The Court also had the benefit of hearing a variety of testimony over the course of four days of hearings, an unusual amount of time for the issuance of an initial order in the presence of some forty lawyers representing some twenty clients.

[90] All of this reflects the exceptional, if not unique, nature of the present case involving 137 entities with varying interests in multiple significant assets, including some fifty RPAs, which collectively owe their creditors close to $1.5 billion, while GS faces a recurring cash flow shortfall of approximately $7 million per month, and whose cash inflows since the beginning of the year have barely made up for recent losses incurred without being able to reimburse the amounts agreed upon to the Syndicate.

[91] In other words, the amounts borrowed from the Syndicate by GS over the past year have been used to cover recent operating losses or to cover significant losses that continue to accumulate on a monthly basis. The Syndicate is no longer willing to continue to play this game which is going nowhere in the current environment.

[92] The Syndicate urged the Court to allow the Monitor, PwC to develop a restructuring plan aimed initially at stopping the financial hemorrhaging, stabilizing the debtor companies and rethinking GS's business model in order to return it to financial health.

[93] There is every reason to believe that over the years, the principal shareholder, Mr. Réal Bouclin (**"Mr. Bouclin"**), encouraged by the success of his various businesses, began to take bigger and bigger bites, which unfortunately led to the financial consequences that his companies are currently experiencing.

[94] The Court is seized of an extraordinarily complex insolvency file because of the corporate structure adopted by the management of GS, - which is not a reproach - the number and particular nature of the security interests granted to numerous secured creditors in addition to the Syndicate, covering a host of assets, many of which are not wholly owned by the Debtors, which implies the presence of business partners who also have interests in these assets.

[95] In reality, an outright liquidation of GS and the Debtors is difficult to envisage without the risk of creating legal chaos, given the diversity of interests at stake.

[96] In fact, after four days of hearings, the Court is quite satisfied that this case is well suited to a restructuring process under the CCAA because of its complexity and the issues involved, including the thousands of RPA residents.

[97] A restructuring process that begins under the CCAA does not imply that a debtor company will necessarily retain all of its assets and emerge from the restructuring process intact with a reduced debt burden. The restructuring process is dynamic based on the circumstances and events that will occur over time.

[98] The CCAA process has the advantage of being conducted under the supervision of the Court, which - in compliance with the provisions of the CCAA - will ensure, among other things, the reasonable and appropriate character of the remedies being considered not only from the perspective of the debtor companies and secured and unsecured creditors, but also from the perspective of stakeholders, including the thousands of RPA residents.

[99] Moreover, the Court expects good faith on the part of all parties involved in this process and that GS management will cooperate fully with the Monitor in the search for viable and reasonable solutions.

[100] These four days of hearings have allowed the Court to observe what it would describe as a positive evolution from the perspective of the principal creditors and business partners with respect to the restructuring plan being favoured initially, with respect to the financial support that could be offered to allow the development and implementation of a restructuring plan and with respect to the next steps to be taken.

[101] It is important to note that the Syndicate and its members have heard, understood and responded to the Court's concerns regarding the respect of the thousands of vulnerable people who are at risk of being affected by the unfolding of the restructuring process beginning under the terms of this judgment. This means that special attention must also be paid to the GS employees who are dedicated to providing services to residents on a daily basis.

[102] In short, the circumstances and the very particular context of this case constitute a very exceptional situation allowing an interested creditor within the meaning of section 11 CCAA, such as the Syndicate, to make the NBC Application.

[103] With respect, the "business as usual" approach presumably advocated by GS under the GS Application does not appear to be reasonable, realistic or fair in the circumstances, even with the addition of the proposed CRO Blanchard who, incidentally, has been with the company since June 2022.

[104] It is neither reasonable nor realistic to contemplate a form of "business as usual" under the CCAA by using a temporary loan of $50 million, some of the conditions of which give rise to serious doubts in the mind of the Court, especially since some of the requirements are likely to cause significant prejudice to a number of hypothecary creditors whose debtors will not benefit in any way from the sums that will then be advanced to GS, given the nature of their security interests, the debts that they secure.

[105] With respect, for the purposes of obtaining comprehensive protection under the CCAA, the advantage of combining nearly 150 companies with different assets and creditors - not to mention the fact that they may have divergent interests relative to one another - may also result in certain disadvantages when it comes to granting priority to a temporary lender who wishes to secure its new advances by essentially encumbering all of their assets, especially if the interim financing will not necessarily serve each of the affected companies in the same way.

[106] It is therefore not surprising that, at first glance, a hypothecary creditor who has advanced substantial funds to a specific company which has encumbered its building in its favour would have serious reservations about the Court's granting of an additional priority charge on the same building in the amount of $60 million.

[107] The loss of confidence of the Syndicate and its members, described by them as irreparable, in GS management - whether this loss of confidence is justified or not - is another inescapable reality that the Court must consider, given the magnitude of the debt of more than $272 million that is owed thereto and the impossibility for GS to find the crucial financing from another similar source to cover its monthly losses, which will continue to accumulate if nothing is done.

[108] Obtaining CCAA protection to, on balance, continue GS's operations using the proposed $50 million interim loan and to attempt to submit to the Court by December 23, 2022[22] a sale and investor solicitation process without immediately identifying the assets that are generating these inordinate recurring losses and without promptly taking the steps reasonably necessary to at least reduce those recurring losses, to the extent possible, does not appear to be a formula for maximizing the value of GS's assets for the benefit of GS's creditors and other stakeholders, quite the contrary.

[109] The $50-million loan will be used primarily to cover recurring monthly losses without adding any value to the GS assets. The Syndicate is not wrong to claim that such an approach involving a temporary $60 million Lender Charge will have the direct effect of significantly reducing the value of the assets subject to the security interests it holds to secure repayment of its more than $272-million claim, not to mention the negative impact on the security interests held by GS's other secured creditors.

[110] Finally, it should not be forgotten that GS's other debts exceed $1 billion.

[111] What about the main financial partners identified earlier who also showed their loss of confidence while supporting the Syndicate's actions? Their opinion must also be considered by the Court.

[112] All in all, the four-day hearing proved beneficial to the Court and allowed it to see, as the hearing unfolded, the openness of the Syndicate and its members to developing and implementing GS's restructuring process by focusing mainly on GS's core business of some 50 RPAs, the employees who work daily for the benefit of thousands of residents, the service providers and others who supply and service these RPAs, all in order to ensure and maintain the safety and well-being of these residents who should not be deprived of the services they have paid for and have a right to expect.

[113] With this in mind, the Syndicate expressed its willingness to offer an interim loan of up to $20 million on much more favourable terms than Mr. Black's interim financing advocated by GS.

[114] Moreover, the interim financing proposed by the Syndicate is not raising the opposition manifested by the same hypothecary creditors who had serious reservations about Mr. Black's interim financing.

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[22] A requirement of the $50-million interim loan (**R-26**).

[115] The Court also took note of the commitment of the members of the Syndicate expressed through their counsel that they would favourably consider advancing additional funds if the restructuring process so required, particularly with respect to the maintenance of the operations and services offered by the RPAs.

[116] In conclusion, the Syndicate as a creditor of GS, while not a creditor of each and every one of the companies and limited partnerships that have sought protection under the CCAA, has the necessary interest to make the NBC Application.

[117] With respect, counsel for GS are ill-advised when asserting against the Syndicate that the Debtors include companies that are not debtors of the Syndicate, in an attempt to defeat the NBC Application.

[118] In any event, such an approach by counsel for GS necessarily takes place in a context where counsel for GS assumed that the exercise proposed by the Syndicate in the NBC Application was essentially a disguised enforcement of its security interests, which the Court does not consider to be the case.

[119] After all, the restructuring as contemplated by the Syndicate will undoubtedly involve a reduction of GS's financial burden by continuing to monetize its assets as also contemplated in the GS Application. This exercise can be done under the supervision of the Court without the Syndicate having to formally enforce its security interests.

2.2 Should the restructuring process be assigned to GS management and FTI, the Monitor proposed in the GS Application?

[120] To answer this question, counsel for GS suggested that the Court look to the future rather than to the past and, consequently, allow Mr. Bouclin to proceed with the required restructuring with his team, assisted by the CRO Blanchard and the Monitor, FTI.

[121] With respect, the exceptional circumstances and issues of this case unfortunately argue against such a proposal.

[122] The scope of the indebtedness combined with the recurring financial hemorrhaging that seriously undermines GS, the extraordinary complexity of the corporate structure of the companies subject to this process, the diversity of significant assets that are mostly held in part by financial partners, the type of security interests encumbering these assets and the large number of secured creditors and financial partners with divergent interests in many respects, the safety and well-being of the thousands of people housed in some 50 RPAs require the involvement of experts specializing in corporate restructuring.

[123] Moreover, the current management team no longer enjoys the confidence of the Syndicate, its members and GS's major business partners.

[124] According to the PwC Report and in light of the very compelling testimony of Mr. Bourque, an insolvency professional with PwC who has been called upon to advise various financial institutions on the affairs of GS since 2019, including the Syndicate at

this time, Mr. Bouclin is the principal shareholder who ultimately controls and manages, directly or indirectly, the various Debtor companies.

[125] To his knowledge, Mr. Bouclin has always made the key decisions with respect to GS, whether of a strategic or operational nature, including the management of the financing contracted with the Syndicate.[23]

[126] One of Mr. Bourque's findings is as follows:

> 15. In short, GS:
>
> i. Is incurring significant operational losses each month for the reasons more fully described above;
>
> ii. On a ongoing basis;
>
> iii. Has been unable to execute the various monetization plans it has proposed;
>
> iv. Cannot meet its obligations to the Lenders and various partners in a significant number of real estate projects; and
>
> v. Is unable to service the debt owed to its Lenders;
>
> By being undercapitalized, GS is currently dependent on the Syndicated Financing offered by the Lenders.
>
> 16. GS is now in a situation where it has put its assets up for sale, ultimately encumbered in favour of the Lenders, to finance its operating losses rather than repay its debt, all while the value of GS's assets and business is declining and now appears insufficient to meet all of its obligations. Without a change of course, this downward spiral is expected to continue, growing each month and increasing the loss to the Lenders. In addition, the sustainability of GS's operations and business is seriously at risk, to the detriment of all of the Company's stakeholders.[24]
>
> [Emphasis added]

[127] Another observation made by Mr. Bourque is of particular concern to the Court.

[128] Mr. Bourque reported that since his involvement in the case, there has been considerable instability in GS's financial management. GS is unable to produce historical, reliable and timely financial information.[25]

[129] In the PwC Report, Mr. Bourque noted that the instability and inefficiency of the finance function within GS is a major concern[26] and concluded:

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[23] PwC Report, para. 2.
[24] *Ibid.*, paras. 15-16.
[25] *Ibid.*, para. 78 and court testimony.
[26] PwC Report, paras. 79-94.

> 86. In summary, it is incomprehensible and unacceptable that an organization of GS's size and complexity is unable to generate reliable financial information, both historical and prospective. This situation is detrimental to all of GS's financial partners.[27]

[130] Mr. Bourque also noted that GS has had to rely on outside consultants to perform tasks that are routine and inherent in a normal financial function. GS does not have the internal resources and expertise to produce timely financial forecasts.

[131] In fact, this summer, financial management had to be turned over to Raymond Chabot Grant Thornton ("**RCGT**") :

> 92. Cash management also had to be taken over by the firm Raymond Chabot Grant Thornton, as the treasury team was unable to follow up on receipts and disbursements in a timely manner. To this end, GS's external consultants had to set up weekly cash management committees in order to ensure sound cash management and follow-up within GS. These tasks are usually routine in a company the size of GS with a finance function.
>
> 93. While hiring outside consultants may seem to address some of the above issues, the chronic instability of the finance function over the years has made the task difficult and caused significant delays, so that various stakeholders have had to rely on partial, incomplete, and often unsubstantiated information in attempting to make important financial decisions.

[132] Mr. Bourque concludes with this very revealing observation about the state of financial management at GS:

> 94. In summary, GS's disorganization, lack of competence and casualness in generating and understanding basic financial information for its business segments is incomprehensible.

[133] The Court understands that RCGT is no longer acting for GS and that the accounting firm has chosen not to act as the proposed monitor, hence the proposal of the Monitor FTI.

[134] The major deficiencies identified in the financial management of GS by Mr. Bourque are of great concern to the Court in determining the identity of the person or persons who should assume responsibility for developing a restructuring plan and managing the implementation of the restructuring process which must definitely take place as soon as possible.

[135] Normally, this responsibility falls to the management team put in place by the executives of the insolvent business under the supervision of a court-appointed monitor. In some jurisdictions, officers also retain the services of a CRO ("Chief Restructuring Officer") to lead and carry out the agreed upon restructuring plan, depending on the complexity of the process considered.

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[27] *Ibid.*

[136] In such circumstances, the selected CRO is a professional experienced in corporate restructuring in an insolvency context.

[137] However, it is clear that such a team does not exist within GS and that, for all intents and purposes, CRO Blanchard does not have the practical experience in restructuring and insolvency matters required to meet GS's pressing needs.

[138] It should also be noted that according to the letter of engagement of November 11, 2022 signed by Mr. Bouclin[28] (the **"Engagement Letter"**), Mr. Blanchard is to report directly to Mr. Bouclin in the performance of his mandate.

[139] Certain elements of this letter, including the proposed compensation package, also raise concerns in the mind of the Court that allow it to question the detachment and minimum level of impartiality that Mr. Blanchard should have in carrying out his mandate as CRO, whose decisions are not always likely to please or suit Mr. Bouclin.

[140] Moreover, in a context where the Syndicate and the key business partners have lost all confidence in GS management to carry out the appropriate restructuring process required, it must be noted that the arrival of Mr. Blanchard, a former banker who worked for some 20 years with NBC, has not made it possible in six months to "bridge the divide" between GS and the Syndicate and thus restore a certain level of confidence between the parties.

[141] In fact, the Syndicate, its members and the key business partners who intervened do not favour at all the Court approving the appointment of Mr. Blanchard as CRO, whether under the terms of the Letter of Engagement or otherwise.

[142] With great respect for Mr. Blanchard, whose competence and integrity are in no way questioned, the Court considers that the Syndicate, its members and the key business partners who intervened are right.

[143] With respect, Mr. Blanchard is not the appropriate person to act as CRO in this case, which presents major and complex issues in a context where there are major, even worrisome, deficiencies in GS's financial management, especially since GS's management, under the direction of Mr. Bouclin, does not consider the required restructuring process in the same way as its main creditors and financial partners.

[144] Another concern raised by Mr. Bourque in the PwC Report is the lack of transparency shown by Mr. Bouclin - who incidentally has always refused to meet with the Syndicate's representative, despite Mr. Bourque's repeated requests to do so, except only once in the last few days prior to the filing of the GS Application - with respect to his children's related companies[29] and the various major payments that have been made on

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[28] **R-25**.

[29] 9419-1780 Québec inc. operating under the name of Gaia (**"Gaia"**) and Groupe Conseil Evolia inc. (**"Evolia"**).

a regular basis to both of there companies despite the extent of GS's financial difficulties[30].

[145] In this regard, another decisive element in the eyes of the Court is the fortuitous discovery on the morning of November 15, 2022 that at the time of presenting the GS Application to the undersigned or in the hours preceding it, GS had transferred, among other things, $1,503,694 to Gaia[31]. On November 10, 2022, $904,921 had also been transferred to Gaia.[32]

[146] Although GS alleges in the paragraph of the Amended GS Application as at November 17, 2022 that it "*has $6.6 million in outstanding or stop-payment cheques* ", GS not only pays $2.4 million to Gaia, but also $500,000 to Mr. Black the proposed interim lender and $200,000 to counsel for Mr. Black[33].

[147] The Court has been advised that these payments to Mr. Black and his counsel totalling $700,000 made on November 14, 2022 are non-refundable, even if the Court does not approve Mr. Black's DIP Loan. GS certainly did not have the luxury of losing $700,000 under these rather unusual circumstances.

[148] Finally, it was not until mid-day on Wednesday, November 16, 2022 that counsel for GS filed a very succinct table[34] identifying the beneficiaries of the $2.4 million transferred to Gaia since November 10, 2022, in addition to those mentioned above.

[149] Surprisingly, of the $2.4 million, Gaia transferred $1,198,000[35] to Evolia, the other related company owned by Mr. Bouclin's two children, which allegedly made various payments to certain service providers and tax authorities without providing any further explanation during the trial[36].

[150] With respect, GS's failure during the trial to act proactively to disclose relevant, complete and reliable information in a timely manner, rather than reacting to the "discoveries" made by the Syndicate or PwC, only reinforces in the mind of the Court the major financial shortcomings of GS noted by Mr. Bourque and the lack of transparency - unless forced to do so - that Mr. Bouclin and his team appear to be showing.

[151] Unfortunately, Mr. Bouclin, the guiding spirit of the GS Group, did not testify at the hearing to reassure not only the Court, but especially the Syndicate, its members and the various financial partners present as to his vision and the soundness of the restructuring plan that he is considering.

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[30] PwC Report, para. 109.
[31] **A-41**.
[32] *Ibid.*
[33] **A-41** and **R-33**.
[34] **R-33**.
[35] **R-33**.
[36] *Ibid.*

[152] With respect, counsel for GS should have presented Mr. Bouclin's testimony in the current context rather than criticizing counsel for the Syndicate for not requiring his testimony at the hearing.

[153] That being said, the Court also questions whether Mr. Blanchard has the necessary distance and independence from Mr. Bouclin and his management team to point out, for example, that the various payments made seemingly *in extremis* on November 14, 2022 were inappropriate in the circumstances when a good number of cheques sent to other "less privileged" recipients had their payments stopped.

[154] In retrospect, the Court would have liked Mr. Blanchard to have mentioned this during his testimony and to have voluntarily provided all the necessary explanations to ideally eliminate any doubt that might arise in the mind of the Court, not to mention the Syndicate, its members and the key financial partners present at the hearing. The information was bound to come out sooner or later.

[155] Such an approach promoting the transparency that is crucially necessary in the circumstances should have been prioritized by Mr. Blanchard who had already agreed to act as CRO.

[156] On the other hand, the Court could not hold it against Mr. Blanchard if, at the time he testified, he was unaware of the existence of the banking transactions that had just taken place or were then taking place. If this were the case, his involvement as CRO would be of little use.

[157] The Court does not imply that no payment was to be made on November 14, 2022. Rather, it is the covert approach that casts a pall over the credibility of the GS team that would like to be entrusted with the responsibility for the restructuring process that is now beginning.

2.3 Appointment of PwC as Monitor

[158] In the end, the exceptional circumstances of this case and the issues that have already been identified require the involvement of an experienced person with the necessary resources to urgently develop a restructuring plan in consultation with GS's management team and to submit it to the Court for approval, while keeping in mind the concerns that the undersigned has expressed throughout the hearing, which are part of a context that favours the restructuring of GS's business to the extent possible.

[159] The Court is of the view that at this time the most appropriate person to assume this role is Mr. Bourque and the PwC team. The Court expects that Mr. Bourque will perform his role in consultation with the GS management team when appropriate.

[160] Given the exceptional circumstances of this case, it is entirely appropriate for Mr. Bourque to perform his role through certain additional powers to be granted to the Monitor selected by the Court, PwC, for whom Mr. Bourque is the representative.

[161] Counsel for GS objected to the selection of PwC and Mr. Bourque on the basis that Mr. Bourque's mandates from various financial institutions since 2019 will place him in a conflict of interest and he will not have the necessary distance and independence to adequately perform his role as monitor under the CCAA.

[162] With respect, the Court does not share this view.

[163] From the outset, Mr. Bourque is a competent and experienced insolvency professional who has already acted on numerous occasions as a monitor under the CCAA, a role that he must exercise impartially, becoming from the moment of his appointment the eyes and ears of the Court, which will rely on his full and frank assistance throughout the restructuring process that is beginning today.

[164] In accepting this mandate from the Court, Mr. Bourque will take the pulse of the situation and, after consultation with GS's management team, will make the necessary recommendations to the Court to stabilize GS's financial situation and recommend a restructuring plan that will have the support of GS's management and other stakeholders, to the extent possible and reasonable.

[165] In doing so, Mr. Bourque must, among other things, attempt to consider and reconcile, if possible, the concerns and expectations of interested parties.

[166] In short, until the contrary is proven, the Court has no doubt that from now on, in his new capacity as controller, Mr. Bourque will act with impartiality, which will enable him to advise the Court in the execution of his new mandate in accordance with the provisions of the CCAA.

[167] In view of the conclusions reached by the Court above, it is not appropriate to appoint FTI as Monitor.

[168] The Court nevertheless wishes to make it clear that this decision should in no way be interpreted as discrediting FTI in any way and, more particularly, Nigel Meakin and Martin Franco, both of whom are competent and experienced insolvency professionals.

[169] Being new to the case, their learning curve impeded the urgency to act imposed by the circumstances and the very particular context at hand, which was not the case for PwC.

2.4 Interim financing proposed by the Syndicate

[170] Although the aggregate amount of $20 million offered by the Syndicate as temporary financing is less than that offered by Mr. Black, the Court considers that, based on the representations and assurances of counsel for the Syndicate, the terms of the interim loan offered are more favourable than those of the financing offered by Mr. Black and that the amounts to be made available to GS will be sufficient to allow for the

development of a restructuring plan and the initial stabilization of GS's operations, while maintaining an emphasis on the residents of the RPAs.

[171] Moreover, the Court is sensitive to the openness shown by the Syndicate and its members, through their counsel, to consider favourably, if required, an increase in the interim loan as part of the implementation of the approved restructuring plan.

[172] Moreover, this interim financing was supported by all creditors and business partners who appeared at the hearing.

[173] Ultimately, given the particular corporate structure of GS and the nature of the multiple security interests often involving assets held jointly with third parties, a restructuring plan promoting the maintenance of GS's core business while continuing in a reasonable, realistic and orderly fashion, the process of monetizing GS's assets should be much more successful than a simple liquidation from the perspective of both GS and its creditors, including the Syndicate, without forgetting the business partners and other stakeholders, as well as the thousands of residents who have placed their trust in GS and who depend on the services offered to them on a daily basis by dedicated staff.

CONCLUSION

[174] Accordingly, for the foregoing reasons, GS's Application for an Initial Order should be dismissed and the Syndicate's NBC Application should be granted in accordance with the findings sought in the Initial Order attached to this judgment.

FOR THESE REASONS, THE COURT:

[175] **DISMISSES** the Application entitled "*Demande amendée pour l'émission d'une ordonnance initiale et d'une ordonnance initiale amendée et reformulée*" (Amended application for the issuance of an initial order and an amended and restated initial order) of the Plaintiffs and Impleaded Parties dated November 17, 2022;

[176] **GRANTS** the *Application for an Initial Order, an Amended and Restated Initial Order and* Other *Relief* of National Bank of Canada, dated November 14, 2022 pursuant to the conclusions of the Initial Order attached hereto;

[177] **THE WHOLE** without legal costs.

(signed) Michel A. Pinsonnault, J.S.C.

MICHEL A. PINSONNAULT, J.S.C.

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Mtre. Daniel Cantin

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Mtre. Julien Morissette
Osler, Hoskin & Harcourt LLP
Counsel for Groupe Montoni

Hearing dates: November 14, 15, 16 and 17, 2022

SCHEDULE "A"
LIST OF DEBTORS

1. GROUPE SELECTION INC.
2. 9411-3594 QUÉBEC INC.
3. 8504750 CANADA INC.
4. 10067628 CANADA INC.
5. 10067601 CANADA INC.
6. 9281-8343 QUÉBEC INC.
7. 10437042 CANADA INC.
8. 9395-8379 QUÉBEC INC.
9. 10437123 CANADA INC.
10. 10437387 CANADA INC.
11. 10442364 CANADA INC.
12. 10442259 CANADA INC.
13. 10442500 CANADA INC.
14. 10442437 CANADA INC.
15. 10437492 CANADA INC.
16. 10442453 CANADA INC.
17. 10437433 CANADA INC.
18. 9408-3581 QUÉBEC INC.
19. 9408-3789 QUÉBEC INC.
20. 9650261 CANADA INC.
21. 11349945 CANADA INC.
22. 9357-2006 QUÉBEC INC.
23. 9851267 CANADA INC.
24. 9357-2014 QUÉBEC INC.
25. 11075900 CANADA INC.
26. 10702030 CANADA INC.
27. 9357-2030 QUÉBEC INC.
28. 9394-6127 QUÉBEC INC.
29. 9399-6049 QUÉBEC INC.
30. 9399-6072 QUÉBEC INC.
31. 10067644 CANADA INC.
32. 10067636 CANADA INC.
33. 10212440 CANADA INC.
34. 9413-5449 QUÉBEC INC.
35. 9415-4580 QUÉBEC INC.
36. 9409-4794 QUÉBEC INC.
37. 9411-9252 QUÉBEC INC.
38. 9408-6824 QUÉBEC INC.
39. 9410-5475 QUÉBEC INC.
40. 9245-0519 QUÉBEC INC.
41. 10619817 CANADA INC.
42. 9328-2887 QUÉBEC INC.
43. 8504776 CANADA INC.
44. 9497722 CANADA INC.
45. 8788537 CANADA INC.
46. 9094-8951 QUÉBEC INC.
47. 9286861 CANADA INC.
48. 12781948 CANADA INC.
49. 9408-1577 QUÉBEC INC.
50. GESTION CH 2015 INC.
51. 9390-8697 QUÉBEC INC.
52. CONCEPTION HABITAT 2015 INC.
53. 9352-0252 QUÉBEC INC.
54. 9319-7473 QUÉBEC INC.
55. GROUPE RÉSEAU SÉLECTION CONSTRUCTION INC.
56. STRUCTURE ISO 2015 INC.
57. 9280-2842 QUÉBEC INC.
58. 8468834 CANADA INC.
59. 9408-2328 QUÉBEC INC.
60. 9408-2369 QUÉBEC INC.
61. 9408-2401 QUÉBEC INC.
62. 8788383 CANADA INC.
63. 9462-9037 QUÉBEC INC.
64. 9408-1585 QUÉBEC INC.
65. 9408-1593 QUÉBEC INC.
66. 9408-1601 QUÉBEC INC.
67. ÉBÉNISTERIE BOSCO INC.
68. TOITURES FD INC.
69. 9383-3572 QUÉBEC INC.
70. 9383-3507 QUÉBEC INC.
71. CONSTRUCTION DELAUMAR INC.
72. BMD ÉLECTRIQUE INC.
73. 9334-9652 QUÉBEC INC.
74. 9395-8387 QUÉBEC INC.
75. 9395-4956 QUÉBEC INC.
76. 9395-5094 QUÉBEC INC
77. 9463-6297 QUÉBEC INC.
78. 9463-8749 QUÉBEC INC.
79. 9851321 CANADA INC.
80. 9650270 CANADA INC.
81. 9387-2604 QUÉBEC INC.

SCHEDULE "B"
LIST OF LIMITED PARTNERSHIPS

1. SOCIÉTÉ EN COMMANDITE GROUPE SÉLECTION IMMOBILIER
2. SOCIÉTÉ EN COMMANDITE CORPORATION GROUPE SÉLECTION
3. SOCIÉTÉ EN COMMANDITE ROSEMONT
4. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS ROSEMONT II
5. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS LACHENAIE
6. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LOGEMENT LACHENAIE
7. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE II
8. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE III
9. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE IV
10. SOCIÉTÉ EN COMMANDITE INVESTISSEURS GATINEAU
11. SOCIÉTÉ EN COMMANDITE INVESTISSEURS SÉLECTION MONTMORENCY
12. SOCIÉTÉ EN COMMANDITE INVESTISSEURS DISTRICT DES BRASSEURS
13. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE V
14. SOCIÉTÉ EN COMMANDITE INVESTISSEURS LACHENAIE VI
15. SOCIÉTÉ EN COMMANDITE INVESTISSEURS ROSEMONT III
16. SOCIÉTÉ EN COMMANDITE COMMANDITAIRE GROUPE SÉLECTION
17. SOCIÉTÉ EN COMMANDITE GS IMMOBILIER 2
18. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CONDOS ROSEMONT
19. SOCIÉTÉ EN COMMANDITE RÉSIDENCE GATINEAU
20. SOCIÉTÉ EN COMMANDITE TOURS RIMOUSKI COMMERCIAL
21. SOCIÉTÉ EN COMMANDITE RIMOUSKI
22. SOCIÉTÉ EN COMMANDITE INVESTISSEURS REPENTIGNY
23. SOCIÉTÉ EN COMMANDITE RÉSEAU SÉLECTION INVESTISSEMENT
24. SOCIÉTÉ EN COMMANDITE INVESTISSEURS STJ
25. SOCIÉTÉ EN COMMANDITE INVESTISSEURS DEUX-MONTAGNES
26. SOCIÉTÉ EN COMMANDITE INVESTISSEURS RV
27. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VANIER
28. SOCIÉTÉ EN COMMANDITE RÉSIDENCE LE JARDIN DES SOURCES
29. SOCIÉTÉ EN COMMANDITE INVESTISSEURS CHÂTEAUGUAY
30. SOCIÉTÉ EN COMMANDITE CONDOS ROSEMONT
31. SOCIÉTÉ EN COMMANDITE GS IMMOBILIER
32. SOCIÉTÉ EN COMMANDITE IMMEUBLE CHAMBLY
33. COMMANDITÉ SÉLECTION S.E.C.
34. SOCIÉTÉ EN COMMANDITE GS GESTION
35. SOCIÉTÉ EN COMMANDITE GESTION IMMO SÉLECTION
36. SOCIÉTÉ EN COMMANDITE GESTION IMMO SÉLECTION SC
37. SOCIÉTÉ EN COMMANDITE GS DEV
38. SOCIÉTÉ EN COMMANDITE SÉLECTION DÉVELOPPEMENT
39. SOCIÉTÉ EN COMMANDITE SÉLECTION DÉVELOPPEMENT INTERNATIONAL
40. SOCIÉTÉ EN COMMANDITE CONDOS ROSEMONT II

41. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VAUDREUIL
42. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VALLEYFIELD
43. SOCIÉTÉ EN COMMANDITE ROSEMONT II
44. SOCIÉTÉ EN COMMANDITE ROSEMONT III
45. SOCIÉTÉ EN COMMANDITE RÉSIDENCE VICTORIAVILLE
46. SOCIÉTÉ EN COMMANDITE PROJET CHÂTEAUGUAY
47. SOCIÉTÉ EN COMMANDITE RÉSIDENCE CHICOUTIMI
48. SOCIÉTÉ EN COMMANDITE RÉSIDENCE INNES ROAD
49. SOCIÉTÉ EN COMMANDITE COMPLEXE LÉVIS ST-NICOLAS
50. SOCIÉTÉ EN COMMANDITE INVESTISSEURS VAUDREUIL HOOP
51. SOCIÉTÉ EN COMMANDITE INVESTISSEURS ST-HYACINTHE
52. SOCIÉTÉ EN COMMANDITE SÉLECTION MONTMORENCY
53. SOCIÉTÉ EN COMMANDITE DISTRICT DES BRASSEURS
54. SOCIÉTÉ EN COMMANDITE CONDOS LACHENAIE
55. SOCIÉTÉ EN COMMANDITE MIRABEL
56. SOCIÉTÉ EN COMMANDITE INVESTISSEUR VALLEYFIELD

COURT FILE NUMBER	1101-16110	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	CLERK OF THE COURT FILED JUN 2 9 2012 JUDICIAL CENTRE OF CALGARY
JUDICIAL CENTRE	CALGARY	
APPLICANTS	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED** **AND IN THE MATTER OF OILSANDS QUEST INC., OILSANDS QUEST SASK INC., TOWNSHIP PETROLEUM CORPORATION, STRIPPER ENERGY SERVICES INC., 1291329 ALBERTA LTD., OILSANDS QUEST TECHNOLOGY INC., WESTERN PETROCHEMICALS CORP. and 1259882 ALBERTA LTD.**	
DOCUMENT	**ORDER** **(Expansion of Monitor's Powers)**	I ~~hereby~~ certify this to be a true copy of the original Order Dated this 29 day of June, 2012 for Clerk of the Court
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Norton Rose Canada LLP 3700 Devon Tower 400 Third Avenue SW Calgary, Alberta T2P 4H2 Telephone: +1 403.267.8222 Fax: +1 403.264.5973 Attention: Randal Van de Mosselaer / Kyle D. Kashuba Email: randal.vandemosselaer@nortonrose.com kyle.kashuba@nortonrose.com File No. 196023	
DATE ON WHICH ORDER WAS PRONOUNCED	~~July~~ June 28, 2012	
NAME OF JUSTICE WHO MADE THIS ORDER	The Honourable Madam Justice B.E.C. Romaine	

UPON THE APPLICATION of Oilsands Quest Inc., Oilsands Quest Sask Inc., Township Petroleum Corporation, Stripper Energy Services Inc., 1291329 Alberta Ltd., Oilsands Quest Technology Inc., Western Petrochemicals Corp. and 1259882 Alberta Ltd. (collectively, the "**Applicants**" or "**Oilsands Quest**"); **AND UPON** having read the Affidavit of Garth Wong, filed June 26, 2012 (the "**June 2012 Wong Affidavit**"), the Seventh Report of Ernst & Young Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of Oilsands Quest , filed June 27, 2012 (the "**Seventh Report**"), and the pleadings and proceedings filed herein; **AND UPON** noting that the Applicants anticipate that the Applicants' Board of Directors will be resigning for the reasons set out in the June 2012 Wong Affidavit; **AND UPON** hearing counsel for Oilsands Quest, the

Monitor and from any other affected parties that may be present; **IT IS HEREBY ORDERED AND DECLARED THAT**:

Service

1. The time for service of this notice of this Application for this Order is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

Expansion of the Powers of the Monitor

2. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Honourable Court in these proceedings dated November 29, 2011 (the "**Initial Order**"), and the Amended and Restated Initial Order dated February 16, 2012 (the "**Amended and Restated Initial Order**").

3. The expansion of the Monitor's powers in respect of Oilsands Quest as set out below is authorized and approved, on the terms and conditions outlined herein. Nothing in this Order shall derogate from the powers of the Monitor as provided in the Initial Order or the Amended and Restated Initial Order.

4. The Monitor, continuing as an officer of the Court, shall be and is hereby authorized to exercise the following powers and duties:

   a) to meet and communicate with bidders who have advanced, or may advance, bids to acquire, restructure or recapitalize the Applicants' business, which bids have been advanced, or may be advanced, pursuant to the solicitation process established by the January 11, 2012 Order (the "**Solicitation Order**") in the within Action;

   b) to select the successful bid (the "**Successful Bid**") from amongst the bids submitted pursuant to the Solicitation Order;

   c) to oversee and direct the completion of the transaction (the "**Transaction**") contemplated by the Successful Bid on behalf of the Applicants and to take all steps on behalf of the Applicants and to execute all documents as may be reasonably necessary to conclude the Transaction, subject to Court approval, including the right to amend or extend the Successful Bid and the Transaction or to

select another bid as the Successful Bid in the event the original Successful Bid does not close for any reason;

d) to apply for any vesting order or other orders necessary to conclude the Transaction;

e) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

f) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including but not limited to, the changing of locks and security codes, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

g) to operate and carry on the business of the Applicants, for the purpose of implementing the Transaction, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, retain or terminate employees and officers, cease to carry on all or any part of the business, or cease to perform any contracts of the Applicants;

h) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

i) to oversee and direct the preparation of Oilsands Quest's cash flow statements and to assist in the dissemination of financial and other information in these proceedings, but only to the extent necessary in the Monitor's judgment to inform this Court and the parties to this proceeding and to facilitate the Transaction;

j) to have full access to the books, records and key personnel of Oilsands Quest as may be necessary for the completion of its duties under this Order;

k) to receive, collect and take possession of all monies and accounts now owed or hereafter owing to Oilsands Quest, including any proceeds payable pursuant to the Transaction, and to exercise all remedies of Oilsands Quest in collecting such

monies, including, without limitation, to enforce any security held by Oilsands Quest;

l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants or the Property, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

m) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of Oilsands Quest, for any purpose expressly contemplated by this Order;

n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought to be desirable by the Monitor, in the name of Oilsands Quest;

o) filing of necessary tax returns on behalf of Oilsands Quest;

p) to exercise any other rights which the Applicants may have; and

q) to perform such other duties or take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor by this Order or any further Order of this Court.

5. The Monitor shall not have additional powers and duties beyond those set out in this Order, and shall not have the power to direct or cause the direction of the management and policies of the Applicants.

6. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of the Applicants.

7. Oilsands Quest and its shareholders, officers, directors, employees, agents and representatives shall co-operate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations, including providing the Monitor with access to Oilsands Quest's books, records, assets and premises as the Monitor requires.

8. No director, officer, shareholder, employee, agent or representative of Oilsands Quest, nor any party related to the business of Oilsands Quest, shall interfere with the Monitor's exercise of its powers and duties under this Order or any other Order of the Court.

9. The Monitor shall not incur any liability or obligation as a result of the fulfillment of its duties as set out herein, save and except for any liability or obligation arising from wilful misconduct by the Monitor, and no action or other proceedings may be commenced against the Monitor relating to its appointment or its conduct in these proceedings except with the prior leave of this Court obtained on at least 7 days notice to Oilsands Quest and the Monitor and provided further that any liability of the Monitor hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by the Monitor in connection herewith. In addition, all of the protections granted to the Monitor in the Initial Order and the Amended and Restated Initial Order shall apply *mutatis mutandis* for the benefit of the Monitor in respect of its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.

10. The Monitor will provide regular reports and updates to the Court from time to time with respect to its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.

11. Oilsands Quest and the Monitor are at liberty and are hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.

Justice of the Court of Queen's Bench of Alberta

I hereby certify this to be a true copy of
the original Order
Dated this 30 day of Sept., 2013
for Clerk of the Court

CLERK'S STAMP
CLERK OF THE COURT
FILED
SEP 30 2013
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1301 – 04364
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.
DOCUMENT	**ORDER (Expansion of Monitor's Powers)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500, 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Ken Lenz Telephone No.: (403) 298-3317 Facsimile No.: (403) 265-7219 Client File No.: 11866.66
DATE ON WHICH ORDER WAS PRONOUNCED:	**Friday, September 27, 2013**
LOCATION WHERE ORDER WAS PRONOUNCED:	**Calgary**
NAME OF JUSTICE WHO MADE THIS ORDER:	**The Honourable Madam Justice K.M. Eidsvik**

UPON the application of the PricewaterhouseCoopers Inc., the Court-appointed Monitor (the "Monitor") of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts

Limited Partnership and Poseidon Concepts Inc. (collectively, "**Poseidon**"); AND UPON the consent of The Toronto-Dominion Bank, as agent for a syndicate comprised of The Toronto-Dominion Bank, National Bank of Canada, The Bank of Nova Scotia and HSBC Bank Canada (collectively, the "**Lending Syndicate**"); AND UPON having read the Thirteenth Report of the Monitor dated September 6, 2013 and the Sixteenth Report of the Monitor dated September 26, 2013; AND UPON noting that the Poseidon Board of Directors have indicated their intention to resign, and that the third party contract management services provided by Total Water Management Inc. have concluded;

AND UPON hearing from counsel for the Monitor, counsel to the Lending Syndicate, counsel to Poseidon and any other affected parties that may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Court in these proceedings dated April 9, 2013 (the "**Initial Order**").

SERVICE

2. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

EXPANSION OF MONITOR'S POWERS

3. The expansion of the Monitor's powers in respect of Poseidon as set forth below is hereby authorized and approved, on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.

4. In addition to the powers and duties of the Monitor set out in the Initial Order, without altering in any way the limitations and obligations of Poseidon as a result of these proceedings, the Monitor be and is hereby authorized and empowered to:

   (a) preserve, protect and maintain control of the Property, or any parts thereof;

(b) operate and carry on the business of Poseidon including, without limitation:

(i) completing any transaction for the sale of Property; and

(ii) negotiating, developing and implementing a Plan or Plans on behalf of Poseidon;

(c) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:

(i) entering into any agreements;

(ii) incurring obligations in the ordinary course of business;

(iii) retaining or terminating employees; and

(iv) ceasing to carry on all or any part of the Business;

(d) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

(e) oversee and direct the preparation of cash flow statements and to assist in the dissemination of financial and other information in these proceedings;

(f) receive, collect and take possession of all monies and accounts now owed or hereafter owing to any one of Poseidon, including proceeds payable pursuant to a sale of Property;

(g) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf any one of Poseidon;

(h) initiate, prosecute and continue the prosecution of any and all proceedings on behalf of Poseidon and to settle or compromise any such proceedings or claims. For greater certainty, such authority shall include the ability to represent Poseidon

in any negotiations or mediation with respect to such claims of Poseidon. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceedings;

(i) instruct counsel respecting the defence of the class proceedings commenced against Poseidon, only to the extent that such instructions are necessary for defence counsel in the class proceedings and only to the extent such instructions do not require the disclosure of privileged information or documentation to the Monitor, and provided that the Monitor shall not have the authority to take any steps that would have the effect of invalidating coverage under any applicable insurance policy;

(j) exercise any rights which Poseidon may have;

(k) provide instruction and direction to the advisors of Poseidon;

(l) make any distribution or payments required under any Order in these proceedings including the Financial Advisor and to fund the KERP created herein; and

(m) to perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any further order of this Court.

5. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of Poseidon. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of Poseidon and that any distribution made to creditors of Poseidon will be deemed to have been made by Poseidon.

6. Poseidon and its current and former shareholders, officers, directors, agents and representatives shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court.

7. The Monitor shall continue to have the benefit of all of the protections and priorities as set out in the Initial Order and any such protections and priorities shall apply to the

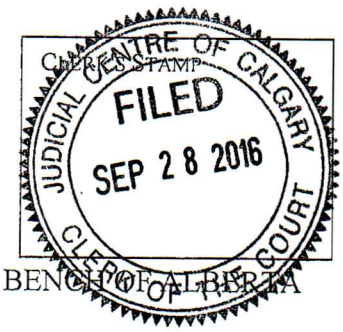
Monitor in fulfilling its duties under this Order or in carrying out the provisions of this Order.

FOREIGN ASSISTANCE

8. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Poseidon, the Monitor and their respective agents in carrying out the terms of this Order.

J.C.Q.B.A.

I hereby certify this to be a true copy of the original Order
Dated this 28 day of Sept 2016
for Clerk of the Court



COURT FILE NUMBER	1601-03143
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended** **AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF SANJEL CORPORATION, SANJEL CANADA LTD., TERRACOR GROUP LTD., SURETECH GROUP LTD., SURETECH COMPLETIONS CANADA LTD., SANJEL ENERGY SERVICES (USA) INC., SANJEL (USA) INC., SURETECH COMPLETIONS (USA) INC., SANJEL CAPITAL (USA) INC., TERRACOR (USA) INC., TERRACOR RESOURCES (USA) INC., TERRACOR LOGISTICS (USA) INC., SANJEL MIDDLE EAST LTD., SANJEL LATIN AMERICA LIMITED and SANJEL ENERGY SERVICES DMCC**
DOCUMENT	**TRANSITION ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4K7 Attention: Chris Simard / Alexis Teasdale Tel No.: 403-298-4485 / 3067 Fax No.: 403-265-7219 Client File No.: 22681.375

DATE ON WHICH ORDER WAS PRONOUNCED: September 28, 2016
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary
NAME OF JUSTICE WHO MADE THIS ORDER: Justice B.E. Romaine

UPON THE APPLICATION of Sanjel Corporation, Sanjel Canada Ltd., Terracor Group Ltd., Suretech Group Ltd., Suretech Completions Canada Ltd., Sanjel Energy Services (USA) Inc., Sanjel (USA) Inc., Suretech Completions (USA) Inc., Sanjel Capital (USA) Inc.,

Terracor (USA) Inc., Terracor Resources (USA) Inc., Terracor Logistics (USA) Inc., Sanjel Middle East Ltd., Sanjel Latin America Limited, and Sanjel Energy Services DMCC (collectively, the "**Applicants**" or the "**Sanjel Group**"); **AND UPON** having read the Application filed September 20, 2016, the Affidavit of Paul J. Crilly sworn on September 20, 2016 (the "**Crilly Affidavit No. 10**"), the Twelfth Report of PricewaterhouseCoopers Inc., the Court-appointed Monitor of the Applicants (the "**Monitor**"), and the pleadings and proceedings in this Action, including the Initial Order granted on April 4, 2016 (the "**Initial Order**"), the Order of the Honourable Madam Justice B. E. Romaine, dated May 2, 2016, the Order of the Honourable Madam Justice J. Strekaf dated July 13, 2016, and the Order of the Honourable Madam Justice B. E. Romaine dated August 31, 2016, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Court in these proceedings dated April 4, 2016 (the "**Initial Order**").

SERVICE

2. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

DIRECTORS' CHARGE

3. The Directors' Charge shall not be discharged and the funds being held back by the Monitor in relation to the Directors' Charge shall not be distributed, until the Monitor has completed a claims process with respect to all claims and potential claims against the directors and officers of the Sanjel Group that could result in claims against the Directors' Charge, or some other process as may be approved by the Court, providing for the determination and resolution of such claims.

TRANSITION: DISCHARGE OF CRO AND EXPANSION OF MONITOR'S POWERS

4. Paragraphs 5 - 15 of this Order shall come into force and take effect upon the filing of a Monitor's Certificate confirming same (the "**Monitor's Transition Certificate**"). The Monitor shall have the authority and discretion to file the Monitor's Transition Certificate as and when the Monitor deems it appropriate to do so, and the Monitor shall provide timely notice of the filing of the Monitor's Transition Certificate to the Service List established in these proceedings. Paragraphs 5 - 15 of this Order shall be of no force and effect until the filing of the Monitor's Transition Certificate.

5. The CRO is hereby discharged.

6. On the evidence before the Court, the CRO has satisfied his obligations under and pursuant to the terms of the Initial Order up to and including the date of his discharge, and the CRO shall not be liable for any act or omission on his part including, without limitation, any act or omission pertaining to the discharge of his duties in the within proceedings, save and except for any liability arising out of any gross negligence or willful misconduct on his part, or with leave of the Court. Subject to the foregoing, any claims against the CRO in connection with the performance of his duties are hereby stayed, extinguished and forever barred.

7. No action or other proceedings shall be commenced against the CRO in any way arising from or related to his capacity or conduct as CRO, except with prior leave of this Court on Notice to the CRO, and upon such terms as this Court may direct.

8. Nothing in this order shall derogate from the protections ordered with respect to the CRO in paragraphs 26, 27, 28 and 29 of the Initial Order.

9. The expansion of the Monitor's powers in respect of the Sanjel Group as set forth below is hereby authorized and approved, on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.

10. In addition to the powers and duties of the Monitor set out in the Initial Order, without altering in any way the limitations and obligations of the Sanjel Group as a result of these proceedings, the Monitor be and is hereby authorized and empowered to:

(a) preserve, protect and maintain control of the Property, or any parts thereof;

(b) operate and carry on the Business including, without limitation:

(i) completing any transaction for the sale, use or monetization of the Property; and

(ii) negotiating, developing and implementing a Plan or Plans on behalf of the Sanjel Group;

(c) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:

(i) entering into any agreements;

(ii) incurring obligations in the ordinary course of business;

(iii) retaining or terminating employees or contractors;

(iv) administering and winding-down all employee benefit plans of the Sanjel Group and making and endorsing all filings related thereto (including, without limitation, financial statements, tax returns and tax filings); and

(v) ceasing to carry on all or any part of the Business;

(d) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

(e) oversee and direct the preparation of cash flow statements and to assist in the dissemination of financial and other information in these proceedings;

(f) receive, collect and take possession of all monies and accounts now owed or hereafter owing to any one of the Sanjel Group, including proceeds payable pursuant to a sale of Property;

(g) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf any one of the Sanjel Group (including, without limitation, financial statements, tax returns and tax filings);

(h) take any and all actions regarding the corporate actions and governance of the Sanjel Group ("**Governance Action**"), including without limitation, authorizing and effecting:

(i) amendments or updates to bylaws;

(ii) amendments to certificates of incorporation;

(iii) merger or consolidation with any entity;

(iv) changes to the jurisdiction of incorporation or formation;

(v) dissolution and winding up of any Sanjel entity; and

(vi) the removal or appointment of directors;

and any Governance Action so taken by the Monitor is hereby authorized without requiring any further action or approval by the applicable entity in the Sanjel Group's directors, former or existing shareholders or officers. In regard to any Governance Action taken on behalf of any member of the Sanjel Group by the Monitor, all applicable regulatory or governmental units or agencies are hereby directed to accept any such certificates or other documents filed by the Monitor and take all steps necessary or appropriate to allow and effect the Governance Action in question;

(i) in the event of the dissolution and winding up of any member of the Sanjel Group, execute, acknowledge and file all necessary or appropriate certificates or other

documents with the appropriate governmental agency or unit on behalf of such Sanjel Group entity and to make and take any other action necessary or appropriate to effect such dissolution and wind-up of each such entity and to withdraw such entity from qualification in any jurisdiction it is qualified to do business, including without limitation, the execution and filing of certificates of dissolution and the payment of any associated filing fees and state taxes and the filing of any tax returns deemed necessary or appropriate (and the payment of related taxes) on behalf of such entity;

(j) initiate, prosecute, make and respond to applications in, and continue the prosecution of any and all proceedings on behalf of or involving the Sanjel Group (including the within proceedings) and settle or compromise any proceedings or claims by or against the Sanjel Group. For greater certainty, such authority shall include the ability to represent the Sanjel Group in any negotiations or mediation with respect to such claims by or against the Sanjel Group. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceedings;

(k) exercise any rights which the Sanjel Group may have;

(l) provide instruction and direction to the advisors of the Sanjel Group;

(m) exercise any rights or authority granted to the CRO in the Initial Order or otherwise in these proceedings;

(n) make any distribution or payments required under any Order in these proceedings;

(o) apply to the Court upon notice as required under the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended, and where the Court is of the opinion on the making of such an application that it is proper and in the best interests of the estate, to assign the Applicants into bankruptcy or obtain a bankruptcy order against the Applicants. Nothing in this Order shall prevent the Monitor from acting as Trustee in Bankruptcy of any of the Sanjel Group; and

(p) to perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any other order of this Court.

11. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of the Sanjel Group or to create a fiduciary duty to any party including, without limitation, any creditor or shareholder of the Sanjel Group. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Sanjel Group and any distribution made to creditors of the Sanjel Group will be deemed to have been made by the Sanjel Group.

12. The Sanjel Group and its current and former shareholders, officers, directors, agents and representatives shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court.

13. The Monitor will provide regular reports and updates to the Court and the Secured Lending Syndicate from time to time with respect to its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.

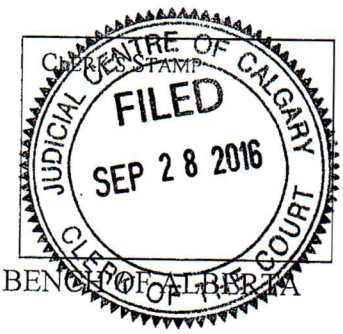
14. The Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, in any foreign jurisdiction, for the recognition of this Order and for assistance in carrying out the terms of this Order, including in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code, and to take such actions necessary or appropriate in furtherance of the recognition of these proceedings in any such jurisdiction.

15. The Monitor shall continue to have the benefit of all of the protections and priorities as set out in the Initial Order and any such protections and priorities shall apply to the Monitor in fulfilling its duties under this Order or in carrying out the provisions of this Order.

16. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order.

J.C.Q.B.A

I hereby certify this to be a true copy of the original Order
Dated this 28 day of Sept 2016
for Clerk of the Court



COURT FILE NUMBER	1601-03143
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended** **AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF SANJEL CORPORATION, SANJEL CANADA LTD., TERRACOR GROUP LTD., SURETECH GROUP LTD., SURETECH COMPLETIONS CANADA LTD., SANJEL ENERGY SERVICES (USA) INC., SANJEL (USA) INC., SURETECH COMPLETIONS (USA) INC., SANJEL CAPITAL (USA) INC., TERRACOR (USA) INC., TERRACOR RESOURCES (USA) INC., TERRACOR LOGISTICS (USA) INC., SANJEL MIDDLE EAST LTD., SANJEL LATIN AMERICA LIMITED and SANJEL ENERGY SERVICES DMCC**
DOCUMENT	**TRANSITION ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street S.W. Calgary, Alberta T2P 4K7 Attention: Chris Simard / Alexis Teasdale Tel No.: 403-298-4485 / 3067 Fax No.: 403-265-7219 Client File No.: 22681.375

DATE ON WHICH ORDER WAS PRONOUNCED: September 28, 2016
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary
NAME OF JUSTICE WHO MADE THIS ORDER: Justice B.E. Romaine

UPON THE APPLICATION of Sanjel Corporation, Sanjel Canada Ltd., Terracor Group Ltd., Suretech Group Ltd., Suretech Completions Canada Ltd., Sanjel Energy Services (USA) Inc., Sanjel (USA) Inc., Suretech Completions (USA) Inc., Sanjel Capital (USA) Inc.,

Terracor (USA) Inc., Terracor Resources (USA) Inc., Terracor Logistics (USA) Inc., Sanjel Middle East Ltd., Sanjel Latin America Limited, and Sanjel Energy Services DMCC (collectively, the "**Applicants**" or the "**Sanjel Group**"); **AND UPON** having read the Application filed September 20, 2016, the Affidavit of Paul J. Crilly sworn on September 20, 2016 (the "**Crilly Affidavit No. 10**"), the Twelfth Report of PricewaterhouseCoopers Inc., the Court-appointed Monitor of the Applicants (the "**Monitor**"), and the pleadings and proceedings in this Action, including the Initial Order granted on April 4, 2016 (the "**Initial Order**"), the Order of the Honourable Madam Justice B. E. Romaine, dated May 2, 2016, the Order of the Honourable Madam Justice J. Strekaf dated July 13, 2016, and the Order of the Honourable Madam Justice B. E. Romaine dated August 31, 2016, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Court in these proceedings dated April 4, 2016 (the "**Initial Order**").

SERVICE

2. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

DIRECTORS' CHARGE

3. The Directors' Charge shall not be discharged and the funds being held back by the Monitor in relation to the Directors' Charge shall not be distributed, until the Monitor has completed a claims process with respect to all claims and potential claims against the directors and officers of the Sanjel Group that could result in claims against the Directors' Charge, or some other process as may be approved by the Court, providing for the determination and resolution of such claims.

TRANSITION: DISCHARGE OF CRO AND EXPANSION OF MONITOR'S POWERS

4. Paragraphs 5 - 15 of this Order shall come into force and take effect upon the filing of a Monitor's Certificate confirming same (the "**Monitor's Transition Certificate**"). The Monitor shall have the authority and discretion to file the Monitor's Transition Certificate as and when the Monitor deems it appropriate to do so, and the Monitor shall provide timely notice of the filing of the Monitor's Transition Certificate to the Service List established in these proceedings. Paragraphs 5 - 15 of this Order shall be of no force and effect until the filing of the Monitor's Transition Certificate.

5. The CRO is hereby discharged.

6. On the evidence before the Court, the CRO has satisfied his obligations under and pursuant to the terms of the Initial Order up to and including the date of his discharge, and the CRO shall not be liable for any act or omission on his part including, without limitation, any act or omission pertaining to the discharge of his duties in the within proceedings, save and except for any liability arising out of any gross negligence or willful misconduct on his part, or with leave of the Court. Subject to the foregoing, any claims against the CRO in connection with the performance of his duties are hereby stayed, extinguished and forever barred.

7. No action or other proceedings shall be commenced against the CRO in any way arising from or related to his capacity or conduct as CRO, except with prior leave of this Court on Notice to the CRO, and upon such terms as this Court may direct.

8. Nothing in this order shall derogate from the protections ordered with respect to the CRO in paragraphs 26, 27, 28 and 29 of the Initial Order.

9. The expansion of the Monitor's powers in respect of the Sanjel Group as set forth below is hereby authorized and approved, on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.

10. In addition to the powers and duties of the Monitor set out in the Initial Order, without altering in any way the limitations and obligations of the Sanjel Group as a result of these proceedings, the Monitor be and is hereby authorized and empowered to:

(a) preserve, protect and maintain control of the Property, or any parts thereof;

(b) operate and carry on the Business including, without limitation:

(i) completing any transaction for the sale, use or monetization of the Property; and

(ii) negotiating, developing and implementing a Plan or Plans on behalf of the Sanjel Group;

(c) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:

(i) entering into any agreements;

(ii) incurring obligations in the ordinary course of business;

(iii) retaining or terminating employees or contractors;

(iv) administering and winding-down all employee benefit plans of the Sanjel Group and making and endorsing all filings related thereto (including, without limitation, financial statements, tax returns and tax filings); and

(v) ceasing to carry on all or any part of the Business;

(d) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

(e) oversee and direct the preparation of cash flow statements and to assist in the dissemination of financial and other information in these proceedings;

(f) receive, collect and take possession of all monies and accounts now owed or hereafter owing to any one of the Sanjel Group, including proceeds payable pursuant to a sale of Property;

(g) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf any one of the Sanjel Group (including, without limitation, financial statements, tax returns and tax filings);

(h) take any and all actions regarding the corporate actions and governance of the Sanjel Group ("**Governance Action**"), including without limitation, authorizing and effecting:

(i) amendments or updates to bylaws;

(ii) amendments to certificates of incorporation;

(iii) merger or consolidation with any entity;

(iv) changes to the jurisdiction of incorporation or formation;

(v) dissolution and winding up of any Sanjel entity; and

(vi) the removal or appointment of directors;

and any Governance Action so taken by the Monitor is hereby authorized without requiring any further action or approval by the applicable entity in the Sanjel Group's directors, former or existing shareholders or officers. In regard to any Governance Action taken on behalf of any member of the Sanjel Group by the Monitor, all applicable regulatory or governmental units or agencies are hereby directed to accept any such certificates or other documents filed by the Monitor and take all steps necessary or appropriate to allow and effect the Governance Action in question;

(i) in the event of the dissolution and winding up of any member of the Sanjel Group, execute, acknowledge and file all necessary or appropriate certificates or other

documents with the appropriate governmental agency or unit on behalf of such Sanjel Group entity and to make and take any other action necessary or appropriate to effect such dissolution and wind-up of each such entity and to withdraw such entity from qualification in any jurisdiction it is qualified to do business, including without limitation, the execution and filing of certificates of dissolution and the payment of any associated filing fees and state taxes and the filing of any tax returns deemed necessary or appropriate (and the payment of related taxes) on behalf of such entity;

(j) initiate, prosecute, make and respond to applications in, and continue the prosecution of any and all proceedings on behalf of or involving the Sanjel Group (including the within proceedings) and settle or compromise any proceedings or claims by or against the Sanjel Group. For greater certainty, such authority shall include the ability to represent the Sanjel Group in any negotiations or mediation with respect to such claims by or against the Sanjel Group. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceedings;

(k) exercise any rights which the Sanjel Group may have;

(l) provide instruction and direction to the advisors of the Sanjel Group;

(m) exercise any rights or authority granted to the CRO in the Initial Order or otherwise in these proceedings;

(n) make any distribution or payments required under any Order in these proceedings;

(o) apply to the Court upon notice as required under the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended, and where the Court is of the opinion on the making of such an application that it is proper and in the best interests of the estate, to assign the Applicants into bankruptcy or obtain a bankruptcy order against the Applicants. Nothing in this Order shall prevent the Monitor from acting as Trustee in Bankruptcy of any of the Sanjel Group; and

(p) to perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any other order of this Court.

11. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of any of the Sanjel Group or to create a fiduciary duty to any party including, without limitation, any creditor or shareholder of the Sanjel Group. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Sanjel Group and any distribution made to creditors of the Sanjel Group will be deemed to have been made by the Sanjel Group.

12. The Sanjel Group and its current and former shareholders, officers, directors, agents and representatives shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court.

13. The Monitor will provide regular reports and updates to the Court and the Secured Lending Syndicate from time to time with respect to its performance, or the exercise of, its additional powers, duties, rights and obligations as provided and set out in this Order.

14. The Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, in any foreign jurisdiction, for the recognition of this Order and for assistance in carrying out the terms of this Order, including in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code, and to take such actions necessary or appropriate in furtherance of the recognition of these proceedings in any such jurisdiction.

15. The Monitor shall continue to have the benefit of all of the protections and priorities as set out in the Initial Order and any such protections and priorities shall apply to the Monitor in fulfilling its duties under this Order or in carrying out the provisions of this Order.

16. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order.

J.C.Q.B.A

Clerk's Stamp

50383

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	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 JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANTS:	JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
DOCUMENT:	**AMENDED AND RESTATED CCAA INITIAL ORDER**
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**Gowling WLG (Canada) LLP** 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: May 11, 2020

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K.M. Eidsvik

LOCATION OF HEARING: Calgary Court House

UPON the application of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (the "**Applicants**"); **AND UPON** having read the Application filed by the Applicants on May 8, 2020,

the Affidavit of Jeff Buck sworn April 16, 2020 (the "**First Buck Affidavit**"), the Supplemental Affidavit of Jeff Buck sworn April 29, 2020, and the Affidavit of Jeff Buck sworn May 8, 2020 (the "**Second Buck Affidavit**"); **AND UPON** reading the First Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants (the "**Monitor**"); **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided with notice of this Application; **AND UPON** hearing counsel for the Applicants, the Monitor, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP, and those parties present; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") by the Honourable Madam Justice K.M. Eidsvik on May 1, 2020 (the "**Initial Order**"); **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* of Canada (the "**CCAA**") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

   (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

   (b) subject to further order of this Court, continue to carry on business in a manner

consistent with the preservation of their business (the "**Business**") and Property; and

(c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order;

(c) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants, including for the period prior to the date of this Order if, in the opinion of the Applicants following consultation with the Monitor, the supplier or vendor of such goods or services is critical for the operation or preservation of the Business or Property;

(d) in the case of goods or services supplied to the Applicants prior to the date of this Order, any amounts paid to the supplier or vendors shall be limited to those amounts secured by liens, where the Monitor is satisfied with respect to the claim and its lien protection, or amounts paid in connection with ongoing projects that the Monitor is satisfied is necessary in order to ensure the supplier or vendor continues to supply or perform work in respect of such project;

(e) repayment from the ATB Facility (as defined in paragraph 31 below) of amounts advanced by ATB Financial to JMB under a bulge facility created pursuant to an amending agreement dated April 17, 2020 between ATB Financial and the Applicants; and

(f) with consent of the Monitor, repayment of the $200,000 advanced by Canadian Aggregate Resource Corporation to JMB on or about April 10, 2020.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order, subject to the requirements in paragraph (c) hereof.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance;

(ii) Canada Pension Plan; and

(iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of the Initial Order, or are not required to be remitted until after the date of the Initial Order, unless otherwise ordered by the Court;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of the Initial Order, or where such Sales Taxes were accrued or collected prior to the date of the Initial Order but not required to be remitted until on or after the date of the Initial Order; and

(c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of the Initial Order ("**Rent**"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order or authorized in the Interim Financing Agreement or the Definitive Documents, the Applicants are hereby directed, until further order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of the Initial Order, subject to paragraphs (c)and (d) herein;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property, subject to those as may be authorized or required under the Interim Financing Agreements or approved by the Interim Lenders in writing; and

(c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Interim Financing Agreements or the Definitive Documents (as hereinafter defined in paragraph 33), have the right to:

(a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a

representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Until and including July 31, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

    (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien; or

    (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants (or either of them), including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of the Initial Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of the Initial Order, nor shall any person, other than the Interim Lenders where applicable, be under any obligation on or after the date of the Initial Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 13 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur in their capacity as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $250,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 to 40 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

    (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

    (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders and their counsel of financial and other information as agreed to between the Applicants and the Interim Lenders which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders;

(d) monitor all expenditures of the Applicants and approve any material expenditures;

(e) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders, which information shall be reviewed with the Monitor and delivered to the Interim Lenders and their counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Interim Lenders;

(f) direct and manage any sale and investment solicitation process and all bids made therein;

(g) seek input into various aspects of these CCAA proceedings directly from the Applicants' senior secured lenders, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP;

(h) advise the Applicants in their development of the Plan and any amendments to the Plan;

(i) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(k) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(l) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(m) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any

federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and the Interim Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants, in each case on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, and counsel to the Applicants, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the

Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 to 40 hereof.

INTERIM FINANCING

31. The Applicants are hereby authorized and empowered to obtain and borrow under an interim revolving credit facility in the maximum amount of $900,000 from ATB Financial ("**ATB Financial**", and such facility, the "**ATB Facility**") and an interim revolving credit facility in the maximum amount of $900,000 from Canadian Aggregate Resource Corporation ("**CARC**", such facility, the "**CARC Facility**", CARC and ATB Financial, collectively the "**Interim Lenders**", individually an "**Interim Lender**", and the ATB Facility and CARC Facility, collectively the "**Facilities**") during the Stay Period in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that (a) the Applicants shall not draw on the CARC Facility unless ATB Financial has terminated or is unwilling to permit advances under the ATB Facility; and (b) the maximum amount available under the CARC Facility shall be reduced by the amounts outstanding under the ATB Facility.

32. The ATB Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between ATB and the Applicants and the CARC Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between CARC and the Applicants (as may be amended from time to time by the parties thereto, with the consent of the Monitor, the "**Interim Financing Agreements**"), filed.

33. The Applicants are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (which, together with the Interim Financing Agreements, are collectively referred to as the "**Definitive Documents**") as are contemplated by the Interim Financing Agreements or as may be reasonably required by the Interim Lenders pursuant to the terms

thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Interim Financing Agreements and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Interim Lenders' Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order, which charge shall not exceed the aggregate amount outstanding under the Interim Facility Agreements. The Interim Lenders' Charge shall have the priority set out in paragraphs 38 to 40 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the termination of the ATB Facility by ATB Financial, on notice in writing to JMB, CARC and the Monitor, if CARC does not make an advance under the CARC Facility that repays the amount outstanding under the ATB Facility in full within seven (7) business days, ATB Financial may without further notice exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreement and Definitive Documents in favour of ATB Financial and the Interim Lenders' Charge, including without limitation, to set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under such Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants;

(c) upon the occurrence of an event of default under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders, upon seven (7) business days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreements, Definitive Documents, and the Interim Lenders' Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(d) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. Any amounts realized or received by an Interim Lender after an Interim Lender enforces the Interim Lenders' Charge in the manner contemplated by paragraph 35(b) or 35(c) of this Order shall be applied first to the outstanding obligations owing to ATB under the ATB Facility and second to the outstanding obligations owing to CARC under the CARC Facility. For greater certainty, the obligations to CARC secured by the Interim Lenders' Charge are subordinated to the obligations to ATB Financial secured by the Interim Lenders' Charge.

37. The Interim Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Interim Financing Agreements or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

38. The priorities of the Directors' Charge, the Administration Charge, and the Interim Lenders' Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $300,000);

Second – Interim Lenders' Charge, subject to, as between ATB Financial and CARC, paragraph 36 hereof; and

Third – Directors' Charge (to the maximum amount of $250,000).

39. The filing, registration or perfection of the Administration Charge, the Interim Lenders' Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person that has received notice of this Application.

41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the persons entitled to the benefit of those Charges (collectively, the **Chargees**"), or as approved by further order of this Court.

42. Each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(f) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof , including the Interim Financing Agreements or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which either is a party;

(g) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Agreements or the Definitive Documents, or the execution, delivery or performance of the Definitive Documents; and

(h) the payments made by the Applicants pursuant to this Order, including the Interim Financing Agreements or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

APPROVAL OF SISP

43. The SISP attached as Schedule "A" hereto is hereby approved, and the Monitor is hereby authorized to commence the SISP, in consultation with the Sale Advisor (as defined in the

SISP), the Applicants, the Interim Lenders and the Applicants' senior secured lenders pursuant to the terms of the SISP. The Applicants, the Monitor and the Sale Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder.

44. Sequeira Partners is hereby appointed pursuant to the CCAA as the Sale Advisor to carry out the SISP in cooperation with the Applicants and the Monitor.

45. Each of the Monitor and the Sale Advisor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Sale Advisor, as applicable, in performing its obligations under the SISP (as determined by this Court).

46. In connection with the SISP and pursuant to sections 20 and 22 of the *Personal Information Protection Act (Alberta)*, the Applicants, the Sale Advisor and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more potential transactions (each, a "**Transaction**"). Each prospective bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the transaction, and if it does not complete a Transaction, shall: (a) return all such information to the Applicants, the Sale Advisor and the Monitor, as applicable; (b) destroy all such information; or (c) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of the Business or any Property shall be entitled to continue to use the personal information provided to it, and related to the Business or Property purchased, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the Sale Advisor or the Monitor, as applicable, or ensure that other personal information is destroyed.

ALLOCATION

47. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lenders' Charge and the Directors' Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in the Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

49. The Applicants and, where applicable, the Monitor, are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: [http://cfcanada.fticonsulting.com/jmb].

51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to the email addresses of counsel

as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at:
[http://cfcanada.fticonsulting.com/jmb].

52. Subject to further order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in an application brought by the Applicants or the Monitor in these proceedings shall, subject to further order of this Court, provide the Service List with responding application materials or a written notice (including by email) stating its objection to the application and the grounds for such objection by no later than 5:00pm Mountain Standard Time on the date that is four (4) days prior to the date such application is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants. This paragraph shall not apply to any application served less than 7 days prior to its hearing date.

53. Following the expiry of the Objection Deadline, counsel for the Monitor or counsel for the Applicants shall inform the Commercial Coordinator in writing (which may be by email) of the absence or the status of any objections to the application, and the judge having carriage of the application may determine the manner in which the application and any objections to the application, as applicable, will be dealt with.

GENERAL

54. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

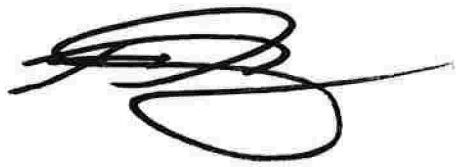
56. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

57. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

58. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

59. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

60. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

On May 1, 2020, JMB Crushing Systems Inc. ("**JMB Crushing**") and 2161889 Alberta Ltd. ("**216**", and together with JMB Crushing, collectively, "**JMB**") applied for an Initial Order (the "**Initial Order**") from the Alberta Court of Queen's Bench (the "**Court**") in Court Action No. 2001–05482 pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), to, among other things, appoint FTI Consulting Canada Inc. ("**FTI**") as the monitor (the "**Monitor**") of JMB,

The principal secured creditors of JMB are ATB Financial ("**ATB**") and Fiera Private Debt Fund VI LP, by its general partner Integrated Private Debt Fund GP Inc. ("**Fund VI**"), and Fiera Private Debt Fund V LP, by its general partner Integrated Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, "**Fiera**", and together with ATB, the "**Secured Creditors**").

In connection with the CCAA proceedings, a sale, re-capitalization and investment solicitation process is being implemented in respect of JMB (the "**SISP**") in order to solicit interest in and opportunities for a sale of, or investment in, JMB or all or any part of JMB's property, assets and undertakings ("**Property**") and its business operations ("**Business**"). Such opportunities may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of one or more of JMB Crushing and/or 216 as a going concern, or a sale of all, substantially all or one or more components of JMB's Property and Business as a going concern or otherwise.

The SISP will be conducted by the Monitor with the assistance of a sale advisor to be retained by the Monitor after consultation with JMB, ATB and Fund VI (the "**Sale Advisor**") and subject to the overall approval of the Court pursuant to the Initial Order.

The Applicants anticipate that there may be a stalking horse bidder. If that is the case, the Applicants reserve their right to amend the SISP to include provisions applicable to a stalking horse bid.

Parties who wish to have their bids and/or proposals considered shall be expected to participate in this SISP as conducted by the Monitor and the Sale Advisor.

OPPORTUNITY

1. The SISP is intended to solicit interest in, and opportunities for a sale of, or investment in, all or part of JMB's Property or Business (the "**Opportunity**"), which primarily consists of aggregate inventory, equipment, surface material leases and royalty agreements. The inventory and lands to which the leases and royalty agreements apply are located in Alberta.

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

(a) the sale of JMB's interest in the Property. In particular, interested parties may submit proposals to acquire all, substantially all or a portion of the Property of either JMB Crushing or 216 or both collectively (a "**Sale Proposal**"); and

(b) an investment in the Business as a going concern of JMB. Such proposals for the Business may take the form of an investment in the Business including by way of a plan of compromise or arrangement pursuant to the CCAA (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as hereinafter defined), any Sale Proposal or any Investment Proposal will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sale Advisor or JMB, or any of their respective affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of JMB in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

SOLICITATION OF INTEREST

4. As soon as reasonably practicable following the Initial Order, the Sale Advisor shall, in consultation with the Monitor:

(a) prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest in the Property or Business pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor (an "**NDA**"); and (iii) a confidential information memorandum ("**CIM**");

(b) gather and review all required due diligence material to be provided to interested parties and continue the secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Sale Advisor during the SISP;

(c) prepare a list of potential bidders, including: (i) parties that have approached JMB, the Sale Advisor or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Sale Advisor, in consultation with the Monitor and JMB, believes may be interested in purchasing all or part of the Business or Property or investing in JMB pursuant to the SISP (collectively, the "**Known Potential Bidders**");

(d) cause a notice of the SISP (the "**Notice**") to be posted on the Sale Advisor's website and published in the Calgary Herald, Edmonton Journal, Bonnyville Nouvelle and Insolvency Insider once approved by the Court; and

(e) send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the

Sale Advisor, JMB or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

5. As soon as reasonably practicable following the Initial Order, the Monitor shall issue a press release setting out the information contained in the Notice and such other relevant information that the Monitor` considers appropriate.

PHASE 1: NON-BINDING LETTERS OF INTENT

Qualified Bidders

6. Any party who expresses a desire to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM or access to the Data Room, provide to the Sale Advisor written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder, and disclosure of the direct and indirect principals of the Potential Bidder.

7. If a Potential Bidder has delivered the NDA and the confirmation contemplated in paragraph 6 above with disclosure that is satisfactory to the Sale Advisor, acting reasonably and in consultation with the Monitor, then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

8. At any time during Phase 1 of the SISP, the Monitor may, acting reasonably, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

Due Diligence

9. The Sale Advisor, in consultation with the Monitor, subject to competitive and other business considerations, will afford each Phase 1 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as it deems appropriate. Due diligence access may further include management presentations with the participation of the Monitor, and JMB where appropriate, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and to which the Sale Advisor, in its reasonable business judgment and in consultation with the Monitor, may agree. The Sale Advisor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Monitor determines it is information that pertains to proprietary or commercially sensitive competitive information.

10. Phase 1 Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information relating to the Property and Business in connection with their participation in the SISP and any transaction they enter into with JMB.

Submission of Non-Binding Letters of Intent

11. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an executed letter of intent ("**LOI**"), identifying such bidder's interest in each specific Property or Business, to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Mountain Daylight Time) on or before **June 19, 2020** (the "**Phase 1 Bid Deadline**").

12. An LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if all of the following conditions are satisfied:

    (a) It is submitted to the Monitor on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) It contains an indication of whether the Phase 1 Qualified Bidder is making a:

        (i) Sale Proposal; or

        (ii) an Investment Proposal;

    (c) In the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation. If a Phase 1 Qualified Bidder wishes to acquire Property owned by both JMB Crushing and 216, a price must be allocated for such Property as between the relevant entities;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property, obligations or liabilities for each Property expected to be excluded; and

        (iii) a specific indication of the financial capability (including analysis of the Phase 1 Qualified Bidder's current available cash liquidity, summary of key covenants and or restrictions on such liquidity), together with evidence of such capability, of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;

    (d) In the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars and key assumptions supporting the valuation;

        (iii) the underlying assumptions regarding the *pro forma* capital structure; and

        (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the proposed transaction;

(e) In the case of either a Sale Proposal or an Investment Proposal:

(i) it identifies or contains the following:

(A) a description of the conditions and approvals required for a final and binding offer;

(B) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer and expected timeline for same;

(C) an acknowledgement that any Sale Proposal or Investment Proposal, as applicable, is made on an "as-is, where-is" basis;

(D) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(E) any other terms or conditions of the Sale Proposal or Investment Proposal, as applicable, that the Phase 1 Qualified Bidder believes are material to the proposed transaction;

(ii) it does not contain any requirement or provision for exclusivity, a break fee or reimbursement of expenses associated with submitting the Sale Proposal or Investment Proposal, conducting the due diligence in respect thereof or otherwise; and

(iii) it contains such other information as reasonably requested by the Sale Advisor or the Monitor from time to time.

13. The Monitor, in consultation with the Sale Advisor, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Assessment of Phase 1 Bids

14. Following the Phase 1 Bid Deadline, the Monitor will assess the Qualified LOIs in consultation with, the Sale Advisor, JMB and the Secured Creditors, as appropriate. If it is determined that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (a) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (b) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed to be a "**Phase 2 Qualified Bidder**", provided that the Monitor, in consultation with the Sale Advisor, may limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

15. The Sale Advisor, in consultation with the Monitor, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will include a draft purchase/investment agreement (the "**Draft Purchase/Investment Agreement**") which will be made available in the Data Room, and the Bid Process Letter will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

PHASE 2: FORMAL BINDING OFFERS

16. Paragraphs 18 to 26 below and the conduct of the Phase 2 bidding are subject to paragraphs 17, 18 and 35, any adjustments made to the Phase 2 process as defined in the Bid Process Letter, and any further order of the Court.

Formal Binding Offers

17. Phase 2 Qualified Bidders that wish to make a formal Sale Proposal or an Investment Proposal shall submit to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), a sealed binding offer that complies with all of the following requirements, so as to be received by them by 5:00 pm. (Mountain Daylight Time) on **July 20, 2020**, or such later date that is determined by the Monitor, in consultation with the Sale Advisor and the Secured Creditors, and communicated to the Phase 2 Qualified Bidders (the "**Phase 2 Bid Deadline**"):

    (a) Subject to paragraph 13, it complies with all of the requirements set forth in respect of the Phase 1 Qualified LOIs;

    (b) It contains: (i) duly executed binding transaction document(s) generally in the form of the Draft Purchase/Investment Agreement; and (ii) a blackline to the Draft Purchase/Investment Agreement;

    (c) It contains evidence of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body);

    (d) It (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Monitor;

    (e) It includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder, and (ii) that number of days following the Sale Approval Application (as defined below) that the Monitor determines, acting reasonably, is appropriate in light of market conditions at the time, subject to further extensions as may be agreed to under the applicable transaction agreement(s);

    (f) It provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;

(g) It is not conditional upon the outcome of unperformed due diligence by the bidder, and/or obtaining financing;

(h) It specifies any regulatory or other third party approvals the party anticipates would be required to complete the transaction;

(i) It fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;

(j) It is accompanied by a cash deposit (the "**Deposit**") of 10%: (i) of the purchase price offered in respect of a Sale Proposal; (ii) of the total new investment contemplated in respect of an Investment Proposal; or (iii) of the total cash consideration, less the value of the consideration allocated to the credit portion, of a Credit Bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust by the Monitor in accordance with this SISP;

(k) It includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and JMB prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, the Business and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Sale Advisor, JMB or the Monitor, whether express, implied, statutory or otherwise, regarding the Business, Property, or JMB, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor for and on behalf of JMB; and

(l) It is received by the Phase 2 Bid Deadline.

18. Following the Phase 2 Bid Deadline, the Monitor, in consultation with JMB, the Sale Advisor and the Secured Creditors, will assess the Phase 2 Bids received with respect to the Property or Business. The Monitor, in consultation with and the Sale Advisor, will designate the most competitive bids that comply with the foregoing requirements to be "**Phase 2 Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).

19. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

20. The Sale Advisor, upon receiving instructions from the Monitor, shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within five (5) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.

21. If the Monitor is not satisfied with the number or terms of the Phase 2 Qualified Bids, it may, in consultation with the Sale Advisor and the Secured Creditors, extend the Phase 2 Bid Deadline without Court approval.

22. Without limiting anything else herein, the Monitor, in consultation with the Sale Advisor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Phase 2 Qualified Bid(s)".

Evaluation of Competing Bids

23. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price, the net value and form of consideration to be provided by such bid, the identity and circumstances of the Phase 2 Qualified Bidder, any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction, each as determined by the Monitor, in consultation with the Sale Advisor.

Selection of Successful Bid

24. The Monitor, in consultation with the Sale Advisor, JMB and the Secured Creditors: (a) will review and evaluate each Phase 2 Qualified Bid, and shall be permitted to negotiate the terms of any Phase 2 Qualified Bid with the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) identify the highest or otherwise best bid or bids (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Monitor shall be subject to consultation with the Secured Creditors and approval by the Court.

25. If the Monitor determines that: (a) no Phase 2 Qualified Bids were received other than the Sale Agreement; (b) at least one Phase 2 Qualified Bid was received, but it is not likely that the transaction contemplated in any such Phase 2 Qualified Bid will be consummated; (c) proceeding with the SISP is not in the best interests of JMB and its stakeholders, then the Monitor shall forthwith: (i) terminate this SISP; (ii) notify each Phase 2 Qualified Bidder that this SISP has been terminated; and (iii) consult with JMB, the Secured Creditors and the Sales Advisor regarding next steps, including concluding the Sale Agreement.

26. The Monitor shall have no obligation to select a Successful Bid, and JMB with the consent of the Monitor, in consultation with the Secured Creditors and the Sale Advisor, shall the right to reject any or all Phase 2 Qualified Bids.

Sale Approval Hearing

27. At the hearing of the application to approve any transaction with a Successful Bidder (the "**Sale Approval Application**"), the Monitor shall seek, among other things, approval from the Court for the consummation of any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by JMB on and as of the date of approval of the Successful Bid by the Court.

28. Any Deposit delivered with a Phase 2 Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date on which the Successful Bid is approved by the Court, or such earlier date as may be determined by the Monitor, in consultation with the Sale Advisor.

CONFIDENTIALITY, STAKEHOLDER/BIDDER COMMUNICATION AND ACCESS TO INFORMATION

29. Except as otherwise permitted herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, LOIs, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and/or the Sale Advisor, and such other bidders or Potential Bidders in connection with the SISP.

30. All discussions regarding a Sale Proposal, Investment Proposal, LOI or Phase 2 Bid shall be directed through the Sale Advisor and/or the Monitor.

SUPERVISION OF THE SISP

31. The Monitor will oversee, in all respects, the conduct of the SISP by the Sale Advisor and will participate in the SISP in the manner set out herein, and is entitled to receive all information in relation to the SISP.

32. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between JMB or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in any definitive agreement that may be signed by the Monitor for and on behalf of JMB.

33. Without limiting the preceding paragraph, neither the Monitor nor the Sale Advisor shall have any liability whatsoever to any person or party, including without limitation, any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, or any other creditor or other stakeholder of JMB, for any act or omission related to the process contemplated by this SISP procedure, except to the extent such act or omission is the result of gross negligence or willful misconduct by the Monitor or Sale Advisor. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor or Sale Advisor for any reason whatsoever, except to the extent such claim is the result of gross negligence or willful misconduct of the Monitor or Sale Advisor.

34. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

35. The Monitor shall have the right to modify the SISP if, in its reasonable business judgment in consultation with the Sale Advisor and the Secured Creditors, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

Schedule "A"

Sale Advisor

520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1-877-790-6172
Email: asequeira@sequeirapartners.com
Attention: Arron Sequeira

Monitor

FTI Consulting Canada Inc.
520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1 403 232 6116
Email: Deryck.Helkaa@fticonsulting.com
Attention: Deryck Helkaa

JMB

JMB Crushing Systems Inc.
PO Box 6977
Bonnyville, AB T9N 2H4
Email: jeffb@jmbcrush.com
Attention: Jeff Buck

COURT FILE NUMBER:	2001-
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ORPHAN WELL ASSOCIATION
RESPONDENT	BOW RIVER ENERGY LTD.
DOCUMENT	**RECEIVERSHIP ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP 2100, 222 - 3rd Ave SW Calgary, Alberta T2P 0B4 Phone: 403.693.5420/4347 Fax: 403.508.4349 Attention: Ryan Zahara/Catrina Webster File: 0147836.00001

Clerk's stamp

DATE ON WHICH ORDER WAS PRONOUNCED:	**OCTOBER 29, 2020**
LOCATION OF HEARING OR TRIAL:	**EDMONTON, ALBERTA**
NAME OF JUSTICE WHO MADE THIS ORDER:	**JUSTICE D.L. SHELLEY**

UPON the application of the Orphan Well Association (the "**OWA**" or the "**Applicant**") and supported by the Alberta Energy Regulator (the "**AER**") in respect of Bow River Energy Ltd. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Lars Depauw sworn on October 21, 2010, the Affidavit of Maria Lavelle sworn on October 21, 2020, and the Affidavit of Service of Joy Mutuku, sworn October 28, 2020; **AND UPON** reading the consent of BDO Canada Limited to act as receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the OWA and the AER and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today. To the extent necessary, the stay of proceedings provided for in Alberta Court of Queen's Bench Action No. 1901-16581 regarding the Debtor ("**CCAA Proceedings**") is lifted *nunc pro tunc* solely to allow for the commencement of the within action.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9, and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, BDO Canada Limited is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and located in the Province of Alberta, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

   (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

   (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor's personal or real property;

   (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

   (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(h) to settle, extend or compromise any indebtedness owing to or by the Debtor;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

(k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

(l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding $100,000.00, provided that the aggregate consideration for all such transactions does not exceed $1,000,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c P-7 or any other similar legislation in any other province or territory shall not be required.

(n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;

(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be

disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor

or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:

   (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;

   (b) prevent the filing of any registration to preserve or perfect a security interest;

   (c) prevent the registration of a claim for lien; or

   (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

    (a) statutory or regulatory mandates for the supply of goods and/or services; or

    (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

    are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

    (i) before the Receiver's appointment; or

    (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

A. complies with the order, or

B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or

B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that

exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,000,000.00 as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

19. The Receiver and its legal counsel shall pass their accounts from time to time.

20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $1,000,000.00 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall

be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

CONTINUATION OF STAY OF PROCEEDINGS, CHARGES AND PRIORITIES OF CHARGES

26. For clarity, the stay of proceedings established in the CCAA Proceedings shall continue uninterrupted pursuant to the terms of this Receivership Order.

27. Each of the Administration Charge and Directors' Charge (each as defined in the orders granted in the CCAA Proceedings) shall continue to constitute valid and enforceable charges on the Property.

28. The priority of the charges created in the CCAA Proceedings (and continued by this Order) in relation to the Receiver's Charge and the Receiver's Borrowing Charge created hereunder, shall be as follows:

First — the Receiver's Charge;

authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

36. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

37. This Order is issued and shall be filed in Court of Queen's Bench Action No. 2001-____.

38. The Receiver shall establish and maintain a website in respect of these proceedings at https://www.bdo.ca/en-ca/extranets/bowriver/ (the **"Receiver's Website"**) and shall post there as soon as practicable:

    (a) all materials prescribed by statue or regulation to be made publicly available; and

    (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

39. Service of this Order shall be deemed good and sufficient by:

    (a) serving the same on:

        (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

        (ii) any other person served with notice of the application for this Order;

        (iii) any other parties attending or represented at the application for this Order; and

Second — the Receiver's Borrowings Charge;

Third — the Administration Charge as defined in the CCAA Proceedings; and

Fourth — the Directors' Charge as defined in the CCAA Proceedings.

ALLOCATION

29. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

30. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

32. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

33. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

34. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is

(b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

40. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Bow River Energy Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the October 29, 2020 (the "**Order**") made in action number 2001-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of **[$]**, being part of the total principal sum of **[$]** that the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of [•] per cent above the prime commercial lending rate of Bank of [•] from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [•].

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

BDO Canada Limited solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

COURT FILE NUMBER	2301-04480
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ORPHAN WELL ASSOCIATION
DEFENDANT	EVEREST CANADIAN RESOURCES CORP.
DOCUMENT	**RECEIVERSHIP ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP 2100, 222 - 3rd Ave SW Calgary, AB T2P 0B4 Telephone: 403.693.5420 Fax: 403.508.4349 Attention: Ryan Zahara File: 0147836.00003

DATE ON WHICH ORDER WAS PRONOUNCED:	APRIL 5, 2023
LOCATION OF HEARING:	EDMONTON, ALBERTA
NAME OF JUSTICE WHO GRANTED THIS ORDER:	**JUSTICE M.E. BURNS**

UPON the application of the Orphan Well Association (the "**OWA**") in respect of Everest Canadian Resources Corp. (the "**Debtor**"); AND UPON having read the Application, the Affidavit of Lars De Pauw sworn on April 4, 2023, the Affidavit of Lars De Pauw sworn on March 30, 2023, in Action No. 2301-04293, the Supplemental Affidavit of Lars De Pauw, sworn on April 3, 2023, in Action No. 2301-04293; and the Affidavit of Service of Joy Mutuku, filed; AND UPON reading the consent of PricewaterhouseCoopers Inc. to act as receiver and manager (the "**Receiver**") of the Debtor, filed; AND UPON hearing counsel for the OWA, counsel for the proposed Receiver, counsel for Greenfire Resources Inc. ("**Greenfire**"), and any other counsel or other interested parties present; IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of the notice of application for this order (the "Order") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

Appointment

2. Pursuant to sections 13(2) of the *Judicature Act*, RSA 2000, c.J-2, 99(a) of the *Business Corporations Act*, RSA 2000, c.B-9, and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, PricewaterhouseCoopers Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

   (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability:

      i. to abandon, dispose of, or otherwise release any interest in any of the Debtor's real or personal property, or any right in any immoveable; and

      ii. upon further order of the Court, to abandon, dispose of, or otherwise release any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority;

   (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

   (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

   (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to settle, extend or compromise any indebtedness owing to or by the Debtor;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

(k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

i. without the approval of this Court in respect of any transaction not exceeding $50,000, provided that the aggregate consideration for all such transactions does not exceed $250,000; and

ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

(m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;[1]

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

Duty to Provide Access and Co-operations to the Receiver

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons

in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Debtor or the Property

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

No Exercise of Rights of Remedies

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or

the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall:

(a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;

(b) prevent the filing of any registration to preserve or perfect a security interest;

(c) prevent the registration of a claim for lien; or

(d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

No Interference with the Receiver

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

Continuation of Services

12. All persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor,

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

Receiver to Hold Funds

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 ("**WEPPA**").

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitations on Environmental Liabilities

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

    i. before the Receiver's appointment; or

    ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

    i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

        A. complies with the order, or

B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:

A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or

B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Limitation on the Receiver's Liability

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

Receiver's Accounts

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

19. The Receiver and its legal counsel shall pass their accounts from time to time.

20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Funding of the Receivership

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $2,500,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

Allocation

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property

General

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order. [2]

Filing

34. This Order is issued and shall be filed in Court of King's Bench Action No. 2301- 04480.

35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/everestcanadianresources (the "**Receiver's Website**") and shall post there as soon as practicable:

    (a) all materials prescribed by statue or regulation to be made publicly available; and

    (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

36. Service of this Order shall be deemed good and sufficient by:

    (a) serving the same on:

        i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

        ii. any other person served with notice of the application for this Order;

        iii. any other parties attending or represented at the application for this Order; and

    (b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Everest Canadian Resources Corp. appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta (collectively, the "Court") dated the 5th day of April, 2023 (the "**Order**") made in action number 2301-04480, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ that the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the [DAY] day of each month after the date hereof at a notional rate per annum equal to the rate of 5% per cent above the prime commercial lending rate of the Orphan Well Association from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at:

   Orphan Well Association
   1800, 222-3rd Avenue S.W.
   Calgary, AB, T2P0B4.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____,2023

PricewaterhouseCoopers Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal or corporate capacity,

Per: _____

Name:

Title:

44088

COURT FILE NUMBER:	2101-05013
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	ORPHAN WELL ASSOCIATION and BRITISH COLUMBIA OIL AND GAS COMMISSION
RESPONDENT	SANLING ENERGY LTD.
DOCUMENT	**RECEIVERSHIP ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP 2100, 222 - 3rd Ave SW Calgary, Alberta T2P 0B4 Phone: 403.693.5420/4311 Fax: 403.508.4349 Attention: Ryan Zahara/Kaitlin Ward File: 0148745.00002

DATE ON WHICH ORDER WAS PRONOUNCED:	**APRIL 23, 2021**
LOCATION OF HEARING OR TRIAL:	**CALGARY, ALBERTA**
NAME OF JUSTICE WHO MADE THIS ORDER:	**JUSTICE L. B. HO**

UPON the application of the Orphan Well Association (the "**OWA**") and the BC Oil & Gas Commission (the "**BCOGC**", and together with the OWA, the "**Applicants**") in respect of SanLing Energy Ltd. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Lars De Pauw sworn on April 15, 2021 and April 22, 2021, the Affidavit of Brian Murphy sworn on April 15, 2021, and the Affidavit of Service of Nishaljeet Khangura, sworn April 23, 2021; **AND UPON** reading the consent of PricewaterhouseCoopers Inc., LIT ("**PwC**") to act as receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicants and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9, section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, and section 39 of the *Law and Equity Act*, RSBC 1996, c 253 or Rule 10-2 of the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009, PwC is hereby appointed as the Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

   (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

   (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor's personal or real property;

   (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

   (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(h) to settle, extend or compromise any indebtedness owing to or by the Debtor;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

(k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

(l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding $500,000.00, provided that the aggregate consideration for all such transactions does not exceed $3,000,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the Alberta *Personal Property Security Act*, RSA 2000, c P-7, section 59(1) of the British Columbia *Personal Property Security Act*, RSBC 1996, c 359, or any other similar legislation in any other province or territory shall not be required.

(n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, the Land Title and Survey Authority of British Columbia or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;

(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

(t) to assign the Debtor into bankruptcy without further Order of this Court; and

(u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall

require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided

by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:

   (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;

   (b) prevent the filing of any registration to preserve or perfect a security interest;

   (c) prevent the registration of a claim for lien; or

   (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or section 18(1)(o) of the *Personal Information Protection Act*, SBC 1003, c 63, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

    (i) before the Receiver's appointment; or

(ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

A. complies with the order, or

B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or

B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

19. The Receiver and its legal counsel shall pass their accounts from time to time.

20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $1,000,000.00 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, including the Supreme Court of British Columbia, or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, including the Supreme Court of British Columbia, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. The Applicants shall have their costs of this application, up to and including entry and service of this Order on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. This Order is issued and shall be filed in Court of Queen's Bench Action No. 2101-05013.

35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/sanling (the "**Receiver's Website**") and shall post there as soon as practicable:

    (a) all materials prescribed by statue or regulation to be made publicly available, including pursuant to Rule 10-2 of the British Columbia *Supreme Court Civil Rule*; and

    (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

36. Service of this Order shall be deemed good and sufficient by:

    (a) serving the same on:

        (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

        (ii) any other person served with notice of the application for this Order;

        (iii) any other parties attending or represented at the application for this Order; and

    (b) posting a copy of this Order on the Receiver's Website

    and service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., LIT, the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of SanLing Energy Ltd., appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated April 23, 2021 (the "**Order**") made in action number 2101-05013, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of **[$]**, being part of the total principal sum of **[$]** that the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of [•] per cent above the prime commercial lending rate of Bank of [•] from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [•].

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

PricewaterhouseCoopers Inc., LIT solely in its capacity as Receiver of the Debtor (as defined in the Order), and not in its personal or corporate capacity,

Per: _____
Name:
Title: