

**ORAL JUDGMENT ON THE APPLICATION FOR ISSUANCE OF AN AMENDED AND RESTATED INITIAL ORDER**

[1] On March 19, 2025, I issued an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC c C-36, or **CCAA**, as well as an order providing for the launch of a Sale and Investment Solicitation Process, or **SISP**, in respect of Pelican International Inc. and two U.S. subsidiaries, Pelican US Topco LLC, and Confluence Outdoor Inc.

[2] I am now being asked to issue an Amended and Restated Initial Order and to extend the initial 10-day stay period to April 28, 2025.

[3] I am satisfied that such an extension is necessary to pursue Pelican's restructuring efforts pursuant to the CCAA. I am further satisfied that the Applicant and Pelican, acting in good faith, have engaged in appropriate restructuring efforts. Moreover, the evidence demonstrates that extending the proceedings is consistent with and will advance the purposes of the CCAA. The requested extension will thus be granted.

[4] That said the following points require further discussion.

[5] First, the Applicant seeks to increase the amount of interim financing and the Interim Lender's Charge. My Initial Order authorized interim financing of \$4,000,000 which was intended to satisfy Pelican's cash flow requirements for a two-week period. The Monitor's analysis of Pelican's cash flow suggests that it requires an additional \$2,800,000 in interim financing to meet its cash flow requirements until April 28, 2025.

[6] In the circumstances, I am satisfied that it is appropriate to increase the amount of interim financing as requested and to increase the Interim Lender's Charge to \$8,160,000, which consists of the total amount of the interim financing plus 20%.

[7] Second, the Applicant seeks to reduce the Directors & Officers Charge from \$1,300,000 to \$900,000. Indeed, it would appear that Pelican's payroll has been adjusted from bi-weekly payments to weekly payments which reduces the exposure of its directors and officers. I am satisfied that it is appropriate to reduce the Directors & Officers Charge to \$900,000.

[8] Third, the Applicant is seeking an order discharging KPMG Inc. as trustee for Pelican's proposal under the *Bankruptcy and Insolvency Act*.

[9] Prior to the institution of the CCAA proceedings, Pelican had filed a notice of intention to file a proposal under the *Bankruptcy and Insolvency Act*. My Initial Order terminated those proceedings and continued them under the CCAA.

[10] The testimony of Mr. De Broux satisfies me that KPMG has performed its obligations as proposal trustee and that it is appropriate to discharge it from that role. It is

further appropriate to authorize payment by the Monitor of KPMG's outstanding invoices, as its work as financial advisor and as proposal trustee was necessary for and useful to the current restructuring efforts.

[11] The fourth and final issue to be addressed relates to one of Pelican's suppliers, Overseas Express Consolidators (Canada) Inc. or **OEC**. This supplier is one of Pelican's freight forwarders. It would appear that OEC is withholding delivery of a number of Pelican's containers until it receives payment of monies owed by Pelican or a guarantee from the Monitor for payment of such monies.

[12] OEC relies, in this regard, on a contractual right of detention allowing it to retain goods for monies owing with respect to such goods or other monies owed.

[13] There are three categories of shipments giving rise to OEC's alleged right of detention: (1) goods received by Pelican from OEC prior to the filing of the CCAA proceedings and for which OEC has not been paid (**Pre-filing Containers**); (2) containers presently in OEC's possession (**Post-filing Containers**); and (3) containers that are presently in transit.

[14] The Monitor has indicated that it will pay amounts owed to obtain the release of the Post-filing Containers and that debts in relation to Pre-filing Containers may give rise to a provable claim that will be dealt with in due course through these CCAA proceedings. As for the containers in transit, the Monitor is content to let any purchaser of Pelican's business address these.

[15] The Applicant seeks an order requiring OEC to release the Post-filing Containers at issue upon payment of the monies due for such containers and to remit the issue of OEC's rights in respect to Pre-filing Containers and containers in transit to a subsequent hearing prior to any creditor distribution.

[16] For the reasons that follow, I find that the Applicant's proposed course of conduct is a wise one and I will follow it.

[17] To begin with, there is no debate in respect of Post-filing Containers. The Monitor will pay for these. The issue between OEC and the Applicant relates to Pre-filing Containers and containers in transit.

[18] With respect to the latter, it is unclear whether monies are yet owing or owed in relation to such containers. Accordingly, it is not obvious that OEC can exercise any contractual right of detention on the containers presently in its possession as a guarantee for payment of monies relating to containers in transit.

[19] With respect to monies owed in relation to Pre-filing Containers, OEC's rights and claims in this regard appear *prima facie* to be covered by the terms of the stays issued in paragraphs 21 and 30 of my Initial Order.



[20] By exercising a right of detention, OEC is effectively seeking to force payment of pre-filing debts, which would amount to granting it a super priority over all of Pelican's other creditors.

[21] In the circumstances of this case, the exercise by OEC of its contractual right of detention would effectively threaten the viability of the CCAA process. To begin with, the evidence before is that the goods in the containers at issue are essential to Pelican's continued operation. Failure to release such goods to Pelican would put at risk the success of its sale as a going concern. This reality distinguishes the present case from a number of the cases relied on by OEC where a stay was lifted to allow a creditor to perfect a security interest without otherwise interfering with the debtor's operations.

[22] Moreover, OEC's request that it be granted substitute security for its right of detention signifies that funds made available by the interim lenders for Pelican's continued operations would be diverted to guarantee certain pre-filing debts. This too has the potential of threatening the viability of the CCAA process.

[23] In the circumstances, the prudent course of conduct is to recognize that the stay of proceedings applies to OEC's claimed right of detention and to remit the issue of the impact of such right, if any, on OEC's rights as a creditor of Pelican to a future hearing prior to any distribution to Pelican's creditors.

[24] For these reasons, I have signed the Amended and Restated Initial Order submitted to me in draft form.

  
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**ANDRES C. GARIN, J.S.C.**