

COURT OF APPEAL OF ALBERTA

FORM AP-3
[RULE 14.53]

COURT OF APPEAL FILE NUMBER: 2401-0268AC
TRIAL COURT FILE NUMBER: 2401-02680
REGISTRY OFFICE: CALGARY
APPLICANT: CONIFER ENERGY INC.



STATUS ON APPEAL: APELLANT
STATUS ON APPLICATION: APPLICANT

RESPONDENT: RAZOR ENERGY CORP.
STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT

DOCUMENT: **APPLICATION FOR PERMISSION TO APPEAL**

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: Keely Cameron & Sarah Aaron
Telephone No.: (403) 298- 3324/ 298-3177
Fax No.: (403) 265-7219

and

CONTACT INFORMATION OF ALL OTHER PARTIES:

MCCARTHY TETRAULT LLP
Suite 4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attn: Sean Collins/Pantelis Kyriakakis
Phone: (403) 260-3531 / (403) 260-3536
Fax: (403) 260-3501
Email: scollins@mccarthy.ca/
pkyriakakis@mccarthy.ca

BLAKE, CASSEL AND GRAYDON LLP
Counsel for FTI Consulting Canada Inc. (the Monitor)
Suite 3500, Bankers Hall East, 855 - 2nd Street SW
Calgary, AB T2P 4K7

Attn: Kelly Bourassa
Phone: (403) 260-9697
Fax: (403) 260-9700
Email: kelly.bourassa@blakes.com

FASKEN MARTINEAU DUMOULIN LLP

Counsel for Arena Investors LP
Suite 3400, 350 7 Avenue SW
Calgary, Alberta T2P 3N9
Attn: Jessica Cameron
Phone: (403) 261-0468
Fax: (403) 261 5351
Email: jcameron@fasken.com

Service List in Court of King's Bench
Action 2401-02680

NOTICE TO RESPONDENT(S): Razor Energy Corp., Respondent

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT(S):

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: November 27, 2024
Time: 9:30 a.m.
Where: TransCanada Pipelines Tower
Suites 2600, 450 – 1 Street SW
Calgary AB T2P 5H1
Before: A single judge of the Court (Rule 14.37)

Nature of Application and Relief Sought:

1. This is a case of a creditor being treated differently and left with an “unwieldy predicament”, whereby it is being forced to bear a disproportionate amount of the costs and risks of the proceedings commenced by Razor Energy Corp. ("**Razor**") pursuant to *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"). This is despite the entitlement of Conifer to require immediate payment under section 11.01 and the Court's authority to intervene and provide for a charge where no payment has been provided.
2. In the decision of the Honourable Justice D. R. Mah of the Court of King's Bench of Alberta in *Razor Energy Corp (Re)*, 2024 ABKB 553 (the "**Decision**"), the Court failed to properly apply section 11.01 of the CCAA, in declining to order that Razor pay to Conifer Energy Inc. ("**Conifer**" or the "**Appellant**") the post-filing amounts owed or provide a priority charge. In doing so, the Court failed to apply previous jurisprudence which has recognized that it is unfair to require a person to continue to supply a debtor with goods or services during CCAA proceedings without that person being compromised.
3. The Appellant seeks leave from this Honourable Court pursuant to section 13 of the CCAA to appeal the Decision on the basis that the Justice erred as follows:
 - (a) In his interpretation and application of section 11.01 of the CCAA;
 - (b) In concluding that a debtor company can avoid post-filing obligations pursuant to section 11.01 of the CCAA on the basis that there was no ongoing request for the services provided by the supplier or on the basis that a purchase may pay such amounts if a transaction is concluded;
 - (c) In applying or considering irrelevant factors in exercising his discretion to refuse to grant a post-filing charge pursuant to section 11 and 11.01 of the CCAA; and
 - (d) In failing to consider and make a determination regarding Conifer's entitlement to ongoing payment pursuant to the Agreement for the Ownership and Operation of the Judy Creek Gas Plant to which both Conifer and Razor are parties.

4. Such further and other relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

5. The points of appeal are of significance to the insolvency bar generally, as the proposed appeal raises issues where there is no appellate authority on point and post filing requirements are applicable to all insolvency proceedings;
6. The points of appeal are of significance to the action itself and to other service providers within the action;
7. The appeal is *prima facie* meritorious and is not frivolous;
8. The appeal will not unduly hinder the progress of the action;
9. The judgment appears to be contrary to law and/or involves an obvious error causing prejudice for which there is no other remedy; and
10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

11. The Applicant intends to rely upon the following:
 - (a) The record or portions of the record that was before the Honourable Justice Mah on September 11, 2024 in Court of King's Bench Action 2401-02680;
 - (b) Memorandum of Argument, to be filed; and
 - (c) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts, Regulations and Rules:

12. Part 14, Division 4 of the *Alberta Rules of Court*;

13. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and in particular, sections 11, 11.01 and 13;
14. *Judicature Act*, RSA 2000, c J-2; and
15. Such further and other Acts, Regulations and Rules as counsel may advise and this Honourable Court may permit.