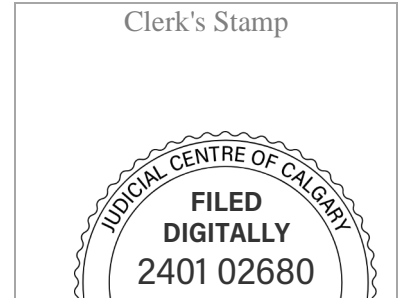


COURT FILE NO. 2401-02680
COURT COURT OF KING'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS, 2024
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE ENERGY SERVICES
CORP.

DOCUMENT **BENCH BRIEF OF CONIFER ENERGY INC.**

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Commercial List Chambers Application Scheduled for the 8th day of November, 2024
before The Honourable Justice Bourque

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I. INTRODUCTION

1. This bench brief is provided on behalf of Conifer Energy Inc. (“**Conifer**”) in response to the application of Razor Energy Corp. (“**Razor**”) for the approval of the Corporate Transaction (as defined in the Affidavit #11 of Doug Bailey).

2. Conifer is a significant stakeholder of Razor. Razor relies on Conifer, as a significant amount of its production is tied into the Conifer-operated Judy Creek Gas Conservation Plant (“**Judy Creek Gas Plant**”).¹

3. Prior to and throughout these proceedings, Razor has chosen not to pay contractual amounts required of Razor as a co-owner and ongoing user of the Judy Creek Gas Plant, notwithstanding Razor’s clear obligation to do so under the Agreement for the Ownership and Operation of the Judy Creek Gas Plant (“**CO&O Agreement**”) and section 11.01 of the *Companies’ Creditors Arrangement Act* (“**CCAA**”).

4. Razor’s ongoing failure is inflicting disproportionate harm to Conifer, as Conifer is not only involuntarily financing Razor’s outstanding pre-filing amounts in the amount of \$8,893,850.06, but it is also owed approximately \$1.34 million in post-filing arrears for providing continued services to Razor, which will continue to increase as the process drags on.² In addition, one of Razor’s other service providers and stakeholders, Canadian Natural Resources Limited (“**CNRL**”), is now seeking contribution from Conifer to offset the shortfalls they are facing because of Razor’s failure to pay \$4.15 million owing to CNRL.

5. In September, Conifer sought relief from this Court to mitigate the ongoing prejudice it has been experiencing as a result of Razor’s ongoing defaults by way of a direction that Razor address its post-filing obligations to CNRL and Conifer or, failing which, provide a charge to secure such payment. In denying Conifer’s Application, the Honourable Justice Mah noted:

- The Corporate Transaction contemplates full payment of post-filing arrears to both Conifer and CNRL (less only the deposit for future services which would not be required).

¹ Affidavit #1 of Doug Bailey sworn on February 13, 2024 [“Bailey Affidavit #1”] at paras 11, 40.

² Affidavit of Heather Wilkins, sworn and filed November 5, 2024, at paras 29 and 30 [Affidavit #4 of Heather Wilkins].

- The documentation for the Corporate Transaction is scheduled to be completed and signed as of September 20, 2024, which is a scant day away. Mr. Bailey (Razor’s CEO) expresses optimism that the Corporate Transaction will actually come to pass. There is no contrary information before me.
- Conifer is not left dangling indefinitely. There are milestone dates looming: September 20, 2024 for the signing of the Corporate Transaction ...³

6. Since the September Application, it appears that—to Conifer’s significant prejudice—the Corporate Transaction has been formulated as a reverse vesting order, and the commercial terms have been amended to enable Razor to continue its history of non-payment.

7. For the reasons that follow, the Corporate Transaction should not be approved as proposed, Razor must utilize proceeds to address post-filing obligations, and, in accordance with the CO&O Agreement, all of Razor’s outstanding monetary obligations to Conifer must be assumed through the Corporate Transaction. Requiring payment is not only consistent with the intention of the CCAA but also industry norms—in fact, Conifer had to meet those same obligations when it similarly purchased assets out of an insolvency.

II. STATEMENT OF FACTS

8. Conifer and Razor both own interests in the Judy Creek Gas Plant and the South Swan Hills Unit. Conifer is the operator of the Judy Creek Gas Plant and Razor is the operator of the South Swan Hills Unit. As both Conifer and Razor own interests in the Judy Creek Gas Plant, they are both parties to the CO&O Agreement, which includes the 1996 PASC Accounting Procedure (the "**Accounting Procedure**") and the 1999 Operating Procedure (the "**Operating Procedure**") which provide for the Operator’s and Owners’ respective obligations at the Judy Creek Gas Plant, including the Operator’s obligation to set up a Joint Account and issue bills to Owners based on their allocated costs and expenses, and for Owners to pay these bills within 30 days.

9. In December 2023, after providing multiple notices to Razor in respect of its significant arrears of close to \$8 million and Conifer’s concerns with the accumulation of further arrears should Razor continue to fail to meet its obligations, Conifer exercised its rights under section

³ Razor Energy Corp (Re), [2024 ABKB 553](#) at para 21 (“Razor”) [TAB 1].

602(b)(ii) of the CO&O Agreement and stopped receiving and processing the majority of Razor's gas by physically closing and locking valves at 16 separate points within the South Swan Hills Gas Gathering System (the "**Locked Out Properties**").

10. On February 16, 2024, Razor brought an application as part of proposal proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**"), for a declaration that Conifer was in breach of the stay of proceedings pursuant to the Notice of Intention to Make a Proposal, filed on January 30, 2024 (the "**NOI**"), and for a direction that Conifer cease restricting Razor's access to the Judy Creek Gas Plant.

11. Razor asserted that the application was necessary and urgent because Razor required the revenue derived from the Locked Out Properties to fund its working capital requirements and its associated revenue that comprised a material portion of Razor's cash flow, and that it required ongoing cash flow to convert from the NOI to a proceeding pursuant to the CCAA.⁴

12. The Honourable Justice Michael J. Lema issued his decision on February 21, 2024, directing Conifer to restore the system connections to the Locked Out Properties (the "**Decision**"). Justice Lema also held that Conifer could rely on its contractual rights pursuant to the CO&O Agreement for post-filing payment obligations or may choose to rely on other payment-enforcement rights that may be triggered by non-payment.⁵

13. After Razor asserted to Justice Lema that the revenue from the Locked Out Properties comprised a material portion of Razor's cash flow, Conifer reached out to Razor to discuss terms for providing access to the Judy Creek Gas Plant, which included providing payment in advance of services, in accordance with its contractual entitlement. Razor has not taken further steps to regain access to the Judy Creek Gas Plant.⁶

14. Since Razor issued the NOI and subsequently converted to a CCAA proceeding on February 28, 2024, Conifer has continued to process some of Razor's gas, around 830 e3m3 of gas per month, or around 1/3 of the volume of gas that Razor used to put through the Judy Creek Gas Plant before the Locked Out Properties' disconnection ("**Razor's Processed Gas**").

⁴ Bailey Affidavit #1, *supra*.

⁵ *Blade Energy Services Corp. (Re)*, [2024 ABKB 100](#) ("*Blade Energy*") [TAB 2].

⁶ Affidavit of Heather Wilkins, affirmed June 3, 2024, at para 10.

15. A further lock out of Razor's Processed Gas is not a viable option. Conifer cannot disconnect Razor's Processed Gas without also disconnecting the other Non-Operators/Owners and Non-Owners/Custom Users who are complying with their contractual obligations. This would require Conifer to breach its contractual obligations as an Owner and Operator, and would cause unnecessary harm to compliant Owners and Non-Owners/Custom Users.

16. Despite this ongoing service, Razor has refused to pay any post-filing amounts. Razor has not contemplated allocating any of its funds to Conifer for Razor's Processed Gas.⁷ Razor initially advised that it did not intend to pay any of the post-filing amounts owed to Conifer despite its stated commitment to paying other suppliers and stakeholders post-filing payments, including paying other parties' processing fees. When faced with Conifer's application for payment before Justice Mah, Razor finally advised that the post-filing amounts would be paid. As noted above, Justice Mah denied Conifer's application, at least in part, because of Razor's commitment to pay Conifer's post-filing amounts.⁸

17. Without notice, Razor has now reneged on its commitments and seeks approval of an uncommon reverse vesting order structure that provides for no payment to Conifer and removes Conifer and other Owners' contractual protections under the CO&O Agreement, while—at the same time—providing for full payments to other parties that have substantially similar contracts to the CO&O Agreement.

III. LAW AND ARGUMENT

A. FACTORS FOR APPROVAL OF A SALE TRANSACTION

18. Subsection 36(3) of the CCAA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale or disposition of assets outside of the ordinary course:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

⁷ Monitor's Fifth Report.

⁸ *Razor*, *supra* at para 21.

- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that, in its opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and,
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁹ [Emphasis added]

19. In considering the above factors, the court should have specific regard to the lack of consultation and notice by Razor in seeking approval of the Corporate Transaction and the effects of the proposed Corporate Transaction on Conifer.

20. Throughout these proceedings, Razor has provided very little information for the basis of the decisions that it is making or the details of the proposed sale. In particular:

- (a) Conifer received very little engagement from Razor throughout this process.
- (b) Razor has not provided Conifer with responses to questions or concerns regarding the invoices which they now seek to avoid paying.
- (c) On May 22, 2024, Conifer attended a virtual meeting of creditors and stakeholders in the CCAA process to learn about potential transactions, and on May 28, 2024, issued a number of questions and concerns regarding what it had heard at such meetings. Those concerns were never fully addressed.

⁹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 36(3) [CCAA] [TAB 3]; *Re Sanjel Corp*, 2016 ABQB 257 at para 54 [Sanjel] [TAB 4].

- (d) Razor did not consult with Conifer regarding the terms of the Corporate Transaction despite Conifer being a significant stakeholder and having raised a number of concerns throughout this process.

21. With only a number of days before the application, Conifer continues to lack an understanding of how Razor is proposing to allocate the sales proceeds, the basis for the same and which creditors will receive no payment as a result.

22. Understanding the impacts of the Corporate Transaction are critical to the assessment of it. While Conifer does not dispute that the sale of all of Razor's assets may be beneficial, such benefits depend on the purchaser's ability to meet its financial and environmental obligations.

B. THE REVERSE VESTING ORDER AS PROPOSED IS INEQUITABLE

23. The Corporate Transaction is predicated on the issuance of a reverse vesting order (an "RVO"). Whereas a traditional vesting order transfers the assets of the debtor to a purchaser leaving the liabilities behind, a "reverse" vesting order transfers certain assets and liabilities to a separate entity, while other specified assets and liabilities remain in the corporation.¹⁰

24. While the Court has jurisdiction under sections 11 and 36 of the CCAA to approve RVO-structured transactions in appropriate circumstances, whether this discretion ought to be exercised in a particular case is a circumstance-specific inquiry that must balance the various objectives of the CCAA.¹¹

25. Recently, Penny J. in *Harte Gold* provided commentary and guidance regarding the issuance of RVOs. Penny J. noted that approval of the use of an RVO structure should involve close scrutiny, since "the frequency of applications based on court approval of an RVO structure has increased significantly in the past few years", and that most of those applications were "in a context where there was no opposition and no obvious or identified unfairness arising from the use of the RVO structure". Because of the dearth of guidance in the jurisprudence on RVO structures, Penny J. noted the following:

¹⁰ *Re Harte Gold Corp.*, 2022 ONSC 653 at paras 70-71 [*Harte Gold*] [TAB 5].

¹¹ *Plasco Energy Group Inc.*, Settlement Approval Order granted July 17, 2015, Court File No. CV-15-10869-00CL (ONSC) [*Plasco Settlement Approval Order*] [TAB 6]; *Re Nemaska Lithium Inc.*, 2020 QCCA 1488 [*Nemaska*] [TAB 7].

- (a) neither the BIA nor the CCAA deal specifically with the use or application of the RVO structure;
- (b) an RVO should continue to be regarded as an unusual or extraordinary measure and not an approach appropriate merely because it may be more convenient;
- (c) the court officer and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and constraints of the underlying statute;
- (d) the approval of the use of an RVO structure should involve close scrutiny; and
- (e) this is particularly the case where there is no party with a significant stake in the outcome opposing the use of an RVO structure.¹²

26. Thus, the Court found that the court-appointed officer overseeing the process should be prepared to answer questions such as:

- (a) Why is the RVO necessary in this case?
- (b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
- (c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable structure?
- (d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (and other intangible assets) being preserved under the RVO structure?

27. The Court indicated these questions must be answered in the context of the factors that are considered on a motion to approve a sale, which largely correspond to the *Soundair* principles already discussed herein.¹³

¹² *Harte Gold*, *supra* at paras 25 and 38.

¹³ *Ibid* at paras 20-21.

28. Applying the present circumstances to the Court's questions in *Harte Gold* highlights the issues with the RVO and demonstrates that the RVO ignores obligations owed to Conifer:

- (a) the RVO is not necessary in the circumstances, and is simply being used as a work around to avoid paying creditors cure costs as required pursuant to s. 11.3 of the CCAA where there is an assignment;
- (b) the RVO structure as proposed produces an economic result that is less favourable to Conifer and other similarly situated counterparties than other viable alternatives, such as a traditional asset transaction; and,
- (c) the proposed RVO structure is more prejudicial and unfair to Conifer than any other viable structure, and was advanced on a without-notice basis in lieu of proper consultation and negotiation with Conifer.

29. In *Harte Gold*, the Court articulated that an analysis of whether a reverse vesting order is appropriate must have regard to the CCAA's objectives and statutory constraints. In general, debtors should not be able to avail themselves of a reverse vesting order structure as a means to circumvent the CCAA's statutory requirements. In assessing whether the reverse vesting order was reasonable and in light of the objectives and requirements of the CCAA, Penny J. considered the fact that the purchaser in *Harte Gold* had agreed to pay cure costs for third party trade creditors on top of the DIP financing it had already provided. The purchaser's commitment to fund cure costs—notwithstanding that it did not need to seek the assignment of any contracts—evidenced that the reverse vesting order structure was not being used to escape the payment of cure costs that would ordinarily be payable in a typical asset sale structure.¹⁴

30. Conifer respectfully submits that the use of an RVO, as proposed, is not appropriate in the circumstances. There are other viable and more equitable transaction structures available. This is not mere speculation: Conifer is, itself, a testament to the fact that asset transactions can proceed fairly in the oil and gas context. If Razor wants to pursue an RVO, caselaw dictates that it must be structured in a manner that ensures creditors are not made worse off. Here, that means paying cure costs, which includes the post-filing amounts owing to Conifer.

¹⁴ *Ibid* at paras 70-72.

31. The lack of consultation by Razor and the purchaser should not be rewarded by enabling them to push through a prejudicial transaction on the basis of lack of funds, particularly when any funding constraints could be addressed through re-entering the Judy Creek Gas Plant or obtaining interim funding.

C. THE CORPORATE TRANSACTION, AS IT STANDS, CANNOT BE APPROVED

32. There is no dispute that, in the normal course, Razor has an obligation to pay Conifer's cure costs and post-filing arrears under the CCAA. In fact, Razor represented that they could (and would) do so before Justice Mah—a representation which was integral to his decision in *Razor Energy Corp (Re)*, 2024 ABKB 553. Razor also has an obligation to pay Conifer's post-filing arrears under the CO&O Agreement.

33. Now, upon review of the present application, it is evident that the same fears which brought Conifer to court in September have come true.

34. Insulated from having to meet its contractual obligations, Razor has suddenly resiled from its commitments. This is evidenced by the proposed transaction openly cherry-picking preferred agreements to pay cure costs and post filing amounts while seeking relief from others (like Conifer's CO&O Agreement with Razor). If this Court exercised its discretion and permitted the assignment to proceed as proposed, Conifer would be left with unrecoverable claims while Razor's new owner enjoys a lopsided benefit.

35. In contrast, and despite Razer's claims otherwise, the transaction would not be materially impacted if Razor was required to abide by its contractual obligations to Conifer. There are excess funds arising from the purchase price that could satisfy the obligations owed to Conifer, and Conifer is prepared to accept a payment plan with the purchaser for the pre-filing amounts owed. Proceeding in this manner would not materially impact Razor's other stakeholders.

36. Significantly, the pre-filing amounts owing are estimated to be at least \$1.0 million after equalization.¹⁵ If the purchaser is unable to pay this amount over time under a payment plan—such as it is proposing to do for the amounts owing to municipalities—Conifer has significant

¹⁵ Affidavit #4 of Heather Wilkins, *supra*, at para 34.

concerns about its ability to operate and maintain the assets it seeks to assume (which require significant capital to operate safely, responsibly, and in a manner that protects the environment).

a. Authority to Assign Agreements

37. Section 11.3 of the *CCAA* permits the court to exercise its discretion and order an assignment of agreements, but only when its statutory requirements are met. Section 11.3 states:

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

38. As Razor rightly notes at paragraph 110 of its Bench Brief, the Ontario Superior Court of Justice in *Nexient Learning Inc. (Re)* articulated the principles that the requested assignment should not (i) adversely affect the third party's contractual rights beyond what is absolutely required for the restructuring, (ii) inappropriately impose upon the third parties' rights, or (iii) lead to an inappropriate loss of claims for that third party.¹⁶

39. However, *Nexient* also provides guidance on factors to consider when determining whether the assignment is sufficiently critical to the transaction. The court considered whether refusing to order the assignment would (i) materially impact the purchase price or (ii) materially impact the debtor's stakeholders, including its customers and creditors. In that case, the assignment was refused on the basis that it was not critical because there would be no material impact on the sale price, the debtor's customers, or the debtor's creditors if it did not occur.¹⁷

40. Significantly, the contractual arrangements between the parties are not the only factors to consider. Instead:

the Court should look to the entirety of the arrangement between [the parties] and assess (1) the extent of the adverse impact on [the counterparty] of the order sought by [the debtor and purchaser] and (2) whether there are any alternatives to the proposed relief that achieve the same result with less encroachment on [the counterparty's] rights.¹⁸

41. Put another way, this Honorable Court should be on the lookout for alternatives that do not prejudice Conifer. Conifer sees no evidence that alternatives were seriously considered, and the adverse impacts on Conifer are clearly not necessary, but rather reflect an ongoing approach by Razor to discriminate against Conifer.

42. In addition, even if the court exercises its discretion to authorize an assignment, caselaw confirms that the assignment remains subject to the contractual rights of the counterparties to the agreement at issue (such as the right to withhold consent). In *Firenze Energy Ltd v Scollard Energy Ltd*, Dario J. confirmed this established jurisprudential trend:

¹⁶ *Nexient Learning Inc. (Re)*, [2009 CanLII 72037 \(ON SC\)](#) at para 59 [*Nexient*] [TAB 8]; see also Greenfield, Maguire, Spencer, & Lenz "When Insolvency and Restructuring Law Supercedes Contract", Alberta Law Review Society, [2017 CanLII Docs 35](#) at 362 [TAB 9].

¹⁷ *Nexient*, *supra* at para 74.

¹⁸ *Ibid* at para 81.

Courts have ruled on many occasions that the assignment of the contractual rights of a party in receivership is made subject to the contractual rights of the counter parties, such as the right to withhold consent or the right to first refusal: [Citations omitted]¹⁹ [Emphasis added]

43. Dario J. in the *Firenze* decision approved the assignment but refused to override the counterparties' right to withhold consent. She held that an assignment could only transfer the *debtor's* contractual rights to the purchaser.²⁰ Therefore, the assignment could not be permitted to result in the purchaser enjoying a better contractual position than the debtor would have:

Operatorship, a contractual right, may not be assigned outside the terms of the contract.

I similarly find that the Receiver cannot transfer more than [the debtor's] interest in this case. [The other owner] has the contractual right, under clauses 2.09 and 2.06C, to demand it become the Operator of all but four of the wells and associated Facilities at the time of [the Debtor's] transfer of its working interest to a non-affiliate.²¹

44. Likewise, even if Razor is permitted to assign its ownership of the Judy Creek Gas Plant, that assignment must remain subject to Conifer and the other Owners' rights to withhold consent and enforce contractual obligations under the CO&O Agreement; otherwise, the purchaser will be inappropriately placed in a better position than Razor had originally bargained for.

b. The Corporate Transaction as currently structured is prejudicial and unfair

45. Cherry-picking which partners and service providers to pay results in unfairness, which the Supreme Court of Canada has affirmed is contrary to the spirit of insolvency legislation, because it leaves select creditors facing risk while others benefit from ongoing payment.²²

46. As the purchaser cannot discriminate between creditors, it also cannot discriminate between contracts or between parts of contracts.²³

47. The Corporate Transaction inappropriately allows the purchaser to enjoy the benefits of Conifer's CO&O Agreement with Razor, but carves out the accompanying responsibilities, namely: (i) paying Conifer's post-filing arrears, (ii) paying Conifer's cure costs, and (iii) answering the ROFR dispute. Further, it is unclear that, in releasing Razor from its pre-closing

¹⁹ *Firenze Energy Ltd v Scollard Energy Ltd*, [2018 ABQB 126](#) at para 22 [*Firenze Energy*] [TAB 10].

²⁰ *Ibid* at paras 22, 23, 32, and 33.

²¹ *Ibid* at paras 22 and 23.

²² *Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at para 75 [TAB 11].

²³ *Nexient*, *supra* at para 62

obligations, Razor will also forfeit any entitlements arising from adjustments as described in the Affidavit #4 of Heather Wilkins, *supra* at paragraph 34.

48. The Corporate Transaction's impact on Conifer is also unfair because it uniquely discriminates against Conifer relative to other stakeholders.

49. Despite Conifer having actively taken steps throughout these proceedings to try to protect its right to payment,²⁴ Razor continues to seek to pay other parties while excluding Conifer.

50. Further, and contrary to Razor's assertion, the CO&O Agreement cannot be freely sold, transferred, assigned, or otherwise disposed-of. Rather, clause 504 the CO&O Agreement requires the assumption of *all* obligations, including outstanding costs, as part of the assignment of an Owner's interest.²⁵ Further, clause 901 of the CO&O Agreement states, in part:

Except as provided in this Article IX, no Owner shall sell, transfer, assign, mortgage or otherwise dispose of all or part of its interest in the Facility or any Functional Unit. An Owner who intends to dispose of all or a part of its interest in the Facility or any Functional Unit (in this Article called "the Disposing Owner") shall comply with the provisions of ALTERNATE C immediately below....²⁶

51. In addition, Alternate C of the CO&O Agreement sets out that the transaction can only proceed with the consent of the other Owners. While the other Owners must not unreasonably withhold their consent, Provision (e) of Alternate C confirms that it is reasonable to withhold consent where:

...it reasonably believes that the disposition would be likely to have a material adverse effect on its Functional Unit Participation or Joint Operations, including [...] a reasonable belief that the proposed assignee does not have the financial capability to meet its prospective obligations arising out of this Agreement...²⁷

52. While clause 902 does permit an unauthorized transfer in limited cases where all or substantially all of the Owner's interest is being sold, transferred, or assigned, clause 504 states:

Notwithstanding the assignment by an Owner of all or a portion of its Functional Unit Participation in any Functional Unit, such Owner shall, as regards the other Owners and notwithstanding the terms of such an assignment, remain liable for its

²⁴ *Arrangement relatif à Gestion Éric Savard inc.*, [2019 QCCA 1434](#) at paras 17-19 [TAB 12].

²⁵ Affidavit #4 of Heather Wilkins, *supra* at Exhibit "A", clause 504.

²⁶ *Ibid* at clause 901.

²⁷ *Ibid* at clause 901, Alternate (c), Provision "e".

proportionate share of any liabilities and indemnities which arose in respect of that Functional Unit, the Facility or under this Agreement, prior to the date that such Owner's assignee becomes an Owner with respect to the assigned interest pursuant to Article IX.

53. The purpose of the CO&O Agreement is to provide for the operation and allocation of associated costs with the Judy Creek Processing Plant. The foregoing clauses and provisions form part of the explicit safeguards in place to ensure such obligations are addressed.

54. Razor and the purchaser are asking this Court to override the parties' contractual intentions to the significant detriment of Conifer. This should not be permitted. As discussed above, caselaw confirms that the purchaser cannot receive a better position from the assignment than Razor would have normally enjoyed under the contract or if an RVO was not being pursued.²⁸

If the assignment proceeds as proposed, Conifer and the other owners of the Judy Creek Gas Plant will never be compensated for the significant financial losses that they continue to suffer because of Razor's defaults. Conifer, in particular, has been forced to take on debt—and suffer related interest costs—to compensate for Razor's ongoing contractual breaches. Conifer has also been forced bear the burden of approximately \$6.7 million resulting from CNRL's re-allocation of amounts owed by Razor. Now, select creditors and the purchaser seek to benefit from Conifer's actions to Conifer's detriment.

D. RAZOR'S JUSTIFICATIONS FOR NOT PAYING CONIFER DO NOT WITHSTAND SCRUTINY

55. Razor and the purchaser's justifications should be closely scrutinized because it is evident that there are sufficient funds available. Only a few months ago, Razor represented before Justice Mah that the sale price would exceed \$15 million, and that Conifer's application at that time was both premature and unnecessary because they would be made whole upon closing.

56. The amounts sought by Conifer are not complicated, Razor has received invoices on a monthly basis (in the same manner they are also provided to all other Owners), and Razor—like the other Owners—can also obtain real time data regarding the basis for such invoices.²⁹ The

²⁸ *Firenze Energy, supra* at paras 22, 23, 32, and 33.

²⁹ Affidavit #4 of Heather Wilkins, *supra* at paras 40-41.

other six owners of the Judy Creek Gas Plant have been able to understand the obligations and submit payments in accordance with the CO&O Agreement, so there is no reason that Razor should not be able to understand such calculations or pay such sums owing.³⁰ Moreover, Razor's failure to spent the necessary effort or time to understand its contractual obligations is no basis not to pay them. Finally, even if there was a legitimate dispute (*there is not*) such dispute does not absolve Razor of its payment obligations, as the PSAC requirements mandate payment regardless of a dispute.

57. Payment of Conifer's post-filing arrears is mandated by the CCAA, which includes explicit provisions intended to protect post-filing service providers (such as Conifer) by providing that they do not need to advance credit and requiring that monetary defaults be paid prior to an assignment.³¹

58. While it is regrettable that Razor has failed to consult with Conifer to date, Conifer remains willing to work with Razor and the purchaser to amend their proposed arrangement and create a result that it is fair and consistent with their contractual obligations. Conifer recognizes that, from an environmental stewardship and general business perspective, it is important for Razor to continue to be a going concern.

IV. CONCLUSION

59. Conifer has not laid in the weeds throughout this process; rather, it has been consistent in its expectation that Razor and any purchaser must comply with the CO&O Agreement. Despite this, neither Razor nor the purchaser have worked with Conifer to discuss the structuring of a transaction in a way that would satisfy this objective.

60. Razor has continued to seek to pay other parties ahead of Conifer, with no justification other than false claims that it is not receiving a "service" from Conifer and that payment would be too complicated.

61. Such claims should be rejected. There is nothing complicated about what Conifer is requesting, its entitlements, or the contractual basis for same. Paying post-filing amounts and

³⁰ *Ibid.*

³¹ CCAA, *supra* at s. 11.01, 11.3(4).

cure costs are typically pre-requisite to a sale and distribution of funds. In this case, however, Razor is unfairly seeking to dispense with these obligations and distribute funds to other parties.

62. The request that cure costs and post-filing amounts be forcibly vested off, as proposed, is somewhat novel and threatens to create a dangerous precedent in the oil and gas context which, if energy companies are permitted to selectively pay their preferred partners and choose which others will be saddled with their obligations, with no regard for the fallout, could result in further insolvencies.

V. RELIEF SOUGHT

63. For the reasons set out above, Conifer submits that this Court should only approve the Corporate Transaction and grant the orders sought if they are amended as follows:

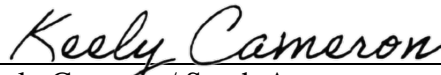
- (a) To direct the payment of post-filing arrears to Conifer.
- (b) To require Razor to assume the Cure Costs associated with the CO&O Agreement to be addressed on terms agreed to by the parties or otherwise determined by the Court.
- (c) In the alternative to (b), providing that to the extent Cure Costs are not paid that in releasing Razor from its obligations it will further be barred from obtaining any benefits under the CO&O Agreement relating to the pre-closing period including but not limited to any equalization payments or adjustments that may occur.
- (d) Such further relief as Conifer may advise and this Honourable Court may provide.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 5th day of November, 2024.

Estimated Time for
Argument: 30 minutes

BENNETT JONES LLP

Per:



Keely Cameron/ Sarah Aaron
Counsel for the Respondent,
Conifer Energy Inc.

VI. TABLE OF AUTHORITIES

1. *Razor Energy Corp (Re)*, [2024 ABKB 553](#)
2. *Blade Energy Services Corp. (Re)*, [2024 ABKB 100](#)
3. *Companies Creditors Arrangement Act*, [RSC 1985, c C-36](#)
4. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
5. *Harte Gold Corp.(Re)*, [2022 ONSC 653](#)
6. *Plasco Energy Group Inc.* [2015, Court File No. CV-15-10869-00CL \(ONSC\)](#)
7. *Arrangement relatif a Nemaska Lithium inc.*, [2020 QCCA 1488](#)
8. *Nexient Learning Inc. (Re)*, [2009 CanLII 72037 \(ON SC\)](#)
9. Greenfield, Maguire, Spencer & Lenz “*When Insolvency and Restructuring Law Supercedes Contract*”, Alberta Law Review Society, [2017 CanLIIDocs 35](#)
10. *Firenze Energy Ltd v Scollard Energy Ltd*, [2018 ABQB 126](#)
11. *Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#)
12. *Arrangement relatif à Gestion Éric Savard inc.*, [2019 QCCA 1434](#)