

COURT FILE NUMBER 2501-06120
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SUNTERRA FOOD CORPORATION,
TROCHU MEAT PROCESSORS LTD., SUNTERRA
QUALITY FOOD MARKETS INC., SUNTERRA FARMS
LTD., SUNWOLD FARMS LIMITED, SUNTERRA BEEF
LTD., LARIAGRA FARMS LTD., SUNTERRA FARM
ENTERPRISES LTD., and SUNTERRA ENTERPRISES
INC.

DOCUMENT

BENCH BRIEF OF NATIONAL BANK OF CANADA

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BENCH BRIEF OF NATIONAL BANK OF CANADA

**APPLICATION TO BE HEARD BY
THE HONOURABLE JUSTICE LEMA**

September 5, 2025 at 2:00 p.m.

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I. INTRODUCTION

1. This bench brief is submitted by National Bank of Canada (“**NBC**”), in support of NBC’s application filed August 25, 2025 (the “**Application**”), made pursuant to paragraph 47 of the Claims Procedure Order,¹ granted by Justice M.J. Lema on July 24, 2025 (the “**General Claims Procedure Order**”), seeking an order amending the General Claims Procedure Order to identify any Compeer v. NBC Claims.²

2. As set out in the Application, the claims procedure (the “**Compeer v. NBC Claim Procedure**”) sought by NBC requires Compeer Financial, PCA (“**Compeer**”) to file an election (referred to in this Brief as the “**Compeer Election**”), on or before September 30, 2025, in which Compeer indicates: (i) whether it intends to advance a claim against NBC in respect of any facts, circumstances, or matters, giving rise to a Compeer v. NBC Claim; and, (ii) if Compeer intends to advance such a claim, requiring Compeer to: (a) outline the bases of such claim(s); and (b) provide a range of the quantum of such claim(s).

3. The claims of NBC and Compeer, which arise in connection with the cheque kiting scheme, have been expressly carved out of the General Claims Procedure Order. These claims, instead, are subject to two separate litigation plans, as outlined in the Consent Order (Scheduling), granted on July 24, 2025, concerning NBC’s claims (the “**NBC Claims Process Order**”), and the Consent Order (Scheduling Order), granted July 24, 2025, concerning Compeer’s claims (the “**Compeer Claims Process Order**”); which will culminate in applications to be heard, concurrently, by Justice M.J. Lema on December 4 and 5, 2025. These two litigation plans and processes are highly bespoke.

4. The Compeer claims against Sunterra Farms Ltd. (“**Sunterra Canada**”), Sunwold Farms Limited (“**Sunwold Canada**”), Sunterra Farm Enterprises Ltd. (“**Sunterra Enterprises**”), Ray Price (“**Price**”), and Debbie Uffelman (“**Uffelman**”) are set out in the Statement of Claim filed by

¹ Capitalized terms used herein and not otherwise defined shall have the same meaning as ascribed to such terms in the General Claims Procedure Order.

² Paragraph 1(c) of the NBC Claims Process Order defines “**Compeer v. NBC Claim**” as follows:

“(c) “**Compeer v. NBC Claim**” means every claim Compeer has or may have against National Bank of Canada (as amalgamation successor to Canadian Western Bank) that is related to, arises from or is in anyway connected to Canadian Western Bank dishonoring cheques issued by Sunterra Farms Ltd. or Sunwold Farms Limited in favour of the Sunterra US Entities;” [emphasis added].

NBC denies any and all liability to any third party and, in particular, any and all liability to Compeer under any asserted Compeer v. NBC Claim.

Compeer in Action No. 2503-10998, in which Compeer has filed an application for declaratory relief and summary judgment.

5. The NBC claims against the applicable Sunterra Parties (as defined in the NBC Claims Process Order), for amounts advanced and outstanding under the credit facilities provided, by NBC, under the Amended and Restated Commitment Letter, dated November 15, 2022, are not in dispute. Those amounts were determined by the NBC Claims Process Order to be in the amount of \$9,932,732.70, as at July 24, 2025, exclusive of all accruing interest, fees, costs and expenses.

6. As for NBC's claims relative to the cheque kiting scheme, the bespoke litigation plan contemplates that NBC and the Sunterra Parties will join issue through the issuance of a claim, by NBC, in which NBC will seek, (i) contribution and indemnity (the "**NBC Indemnity Claims**") arising out of or in any way connected to the Compeer v. NBC Claim (as defined in the NBC Claims Process Order);³ and (ii) damages.

7. As presently formulated, the process is missing an ingredient; namely, details surrounding the Compeer v. NBC Claim. The absence of this ingredient is the narrow issue which led NBC to seek the inclusion of section 47 of the Claims Procedure Order⁴ and which this Application is intended to address.

8. The objectives of these *Companies' Creditors Arrangement Act* ("**CCAA**") restructuring proceedings, which includes Sunterra's stated intention to repay NBC, in full,⁵ will be significantly more efficient and efficacious by adding the Compeer v. NBC Claim.

9. Compeer does not currently wish to assert its claim against NBC. Rather, Compeer is solely focussed upon having its claims against certain Sunterra parties and their officers and directors determined. The determination may or may not result in payment, by the Sunterra Parties, of amounts sufficient to cover the losses Compeer sustained as a result of the kiting scheme; depending on both quantum and priority.

³ Parenthetically, the Application also seeks to add "or Compeer Financial PCA" after "the Sunterra US Entities".

⁴ Section 47 of the Claims Procedure Order states: "Without prejudice to Compeer, an application to amend this claims procedure Order will be scheduled to be heard on September 5, 2025 at 2pm as it relates to implementing a claims procedure on such terms as the court may approve to identify any claims which Compeer intends to assert against NBC."

⁵ Affidavit of Arthur Price, sworn April 15, 2025, at para.12 [**Excerpt at Book of Authorities, TAB 27**].

10. Compeer has nothing to lose in the process, as it is currently formulated. Rather, Compeer has the luxury of laying in the weeds for as long as up to and including the expiration of the limitation period for it to commence any related Compeer v. NBC Claims.

11. All of the foregoing leads to the current process being half-baked, in that it requires NBC to assert an indemnification claim against Sunterra where neither NBC, Sunterra, nor the Court will have knowledge of whether Compeer will assert a claim against NBC and, if it does assert such a claim, the corresponding basis and quantum of such claim.

12. Proceeding to determine the NBC Indemnity Claims without knowing whether Compeer will assert a claim against NBC, and, if so, the details of such claim, is like trying to bake a cake without flour. Yes, you can still produce something – a flourless cake – but it lacks the structure and substance that flour provides. In the process proposed by NBC, the Compeer Election is the flour: a foundational ingredient that gives shape and coherence to NBC's indemnity claim. Without it, the result may resemble a resolution, but it risks being unstable and unsatisfying.

13. Moreover, it's not just the flour that's missing. Trying to resolve the NBC Indemnity Claims without the Compeer Election is like baking with half the ingredients left off the list — no eggs, no sugar, no baking powder. Each missing element makes the final product less reliable. The Court, the Sunterra Parties, and NBC are left guessing at the recipe, when all it takes is for Compeer to provide a simple list of ingredients — the Compeer Election — to complete the mix. There will be no prejudice to Compeer if it is required to provide the Compeer Election and the benefit to the overall CCAA process will be substantial.

II. THE FACTS

Discovery of the Kiting Scheme and Aftermath

14. NBC discovered an issue with the Sunterra Parties' bank accounts in February 2025. Specifically, as at February 14, 2025, Sunterra Canada's and Sunwold Canada's NBC Accounts had accumulated unauthorized overdrafts in excess of US\$43 million.

15. NBC returned cheques drawn in favour of the Sunterra US Entities (as such term is defined in the General Claims Procedure Order) and Compeer which brought the kiting scheme to a halt. Compeer has averred that it has suffered losses at the hands of the Sunterra US Entities, Sunwold Canada, Sunterra Canada, Sunterra Enterprises, Price, and Uffelman of approximately

US\$36,500,103.19 comprised of amounts on account of funds lent and unauthorized overdrafts arising due to the kiting scheme.

Developments in the US Receivership Proceedings; Compeer Claims

16. Compeer applied and was granted an order appointing a receiver (the “**US Receiver**”) over the Sunterra US Entities.

17. On May 30, 2025, the US Receiver sought and was granted court approval for a sale of pigs, rolling stock, and an assignment of all the current barn leases, owned or held by various Sunterra US Entities, for a purchase price of approximately US\$15,000,000 (the “**US Sunterra Sale**”).

18. The US Sunterra Sale has closed. The proceeds from the US Sunterra Sale are insufficient to repay the indebtedness, liabilities, and obligations owed by the Sunterra US Entities to Compeer; including those resulting from the kiting scheme.

19. As a result, on or around June 2, 2025, Compeer filed a Statement of Claim in this Honourable Court, in Action No. 2503-10998, against Sunterra Canada, Sunwold Canada, Sunterra Enterprises, Price, and Uffelman, seeking, among other relief: (i) a declaration that the defendants committed fraud; (ii) damages, against (among others) Sunterra Canada and Sunwold Canada, in the amount of at least USD\$36,500,103.19; (iii) a declaration that Compeer is entitled to trace the funds advanced as a result of the kiting scheme; and, (iv) and a declaration that the holders of such funds hold same, in trust, as a constructive trustee for Compeer.

Compeer Statement of Claim [Book of Authorities (“BOA”) TAB 26].

Claims Procedure Order

20. On July 24, 2025, upon the Canadian Sunterra Parties’ application, this Honourable Court granted the General Claims Procedure Order and two (2) consent scheduling orders, being the NBC Claims Process Order and the Compeer Claims Process Order.

**NBC Claims Process Order [BOA TAB 29];
Compeer Claims Process Order [BOA TAB 30];**

21. In the lead up to the July 24, 2025 application, NBC, through its counsel, proposed that the General Claims Procedure Order contain a requirement akin to the Compeer Election.

22. Compeer, through its counsel, advised, by way of email dated July 23, 2025 of its position, which was and remains:

While Compeer takes no position on the advancement of an indemnity claim by National against Sunterra, Compeer opposes the amendments proposed by National to the Claims Procedure Order. National is not a debtor in the CCAA proceeding. It is inappropriate for National as a creditor of Sunterra to seek to utilize the Sunterra's claims process to force the filing or assertion of any claims against National. While we have had inadequate time to brief the matter, **we are aware of no precedent for a debtor's claims process seeking to require the filing or barring of claims as between two creditors who are not the subject of the CCAA proceedings, and we do not believe the CCAA Court has the power to do so in these circumstances.** Should National wish to advance this position its needs to be done on adequate notice and an appropriate written record.

Not only is what is being proposed highly prejudicial to Compeer but it is also unnecessary. We note that both National and Sunterra seem to be of the view that National may have liability to Compeer, however, there is no reason why National cannot proceed in the normal course to advance its claim for indemnity as against Sunterra. Should that claim be successful, then a further procedure could be established to determine the quantum of that claim if necessary.

We can further advise that while Compeer agrees with National and Sunterra that it may have a claim against National, it is simply not in a position to advance one at this time. It has been focusing its efforts on the issues as they relate to the Sunterra Entities and their directors and officers which are clearly relevant to these proceedings and has had inadequate time and information to consider or advance a claim in respect of National and **it reserves its right to do so outside of the CCAA Proceedings in the ordinary course.** (*emphasis added*)

Affidavit #1 of Raymond Pai, sworn August 25, 2025, at Exhibit "B".

III. ISSUES

23. The sole issue to be determined in the Application is whether it is appropriate, in the circumstances, for this Court to exercise its jurisdiction to amend the General Claims Procedure Order to require Compeer to make the Compeer Election.

IV. LAW

24. The determination of inter-creditor disputes, within a CCAA process, is appropriate where such action would further the remedial purposes of the CCAA. As stated by Justice Wilton-Siegel, in *U.S. Steel Canada Inc. (Re)* ("**U.S. Steel S.C.**"):

"[...] the purpose of the CCAA is to facilitate a compromise or arrangement between an insolvent debtor corporation and its creditors to allow the business to continue as a going concern. Accordingly, in most situations, it would be expected that the

resolution of inter-creditor disputes would not further such process and may, in fact, delay and possibly hinder such process. In such circumstances, there is no reasonable basis for a determination of such claims within the CCAA process.

[73] **The issue for the Court, however, is whether the broad jurisdiction of a court granted under section 11 of the CCAA permits a court to exercise its discretion to determine inter-creditor claims within a CCAA process if it determines that, in its judgment, such action would further the purposes of the CCAA.** USS argues, in effect, for an inflexible rule that excludes such a possibility. I am not persuaded, however, that this is correct as a matter of the statutory interpretation of section 11 of the CCAA. I am also not persuaded that the case law relied upon by USS precludes such an approach.

[...] All of these considerations **argue in favour of a broad authority under section 11 that does not preclude the determination of inter-creditor claims within CCAA proceedings in appropriate circumstances.** I do not suggest that such circumstances are presented in most circumstances before the courts. I do, however, think that **the discretion or authority of a court under section 11 of the CCAA extends to the determination of inter-creditor matters within a CCAA proceeding if, on balance, such action would appear to further the remedial purpose of the CCAA.**

[...] Based on the foregoing, I conclude that **the Court has authority under section 11 of the CCAA to order that the Subordination Claims be determined by a process within the CCAA proceedings, other than the process contemplated by the Claims Process Order, if the Court is of the opinion that, on balance, such action is likely to further the remedial purpose of the CCAA.**"

U.S. Steel Canada Inc. (Re), unreported endorsement indexed at 2015 ONSC 5103 [*U.S. Steel S.C.*], at paras. 72-73, 80, 84 **[emphasis added]** [BOA TAB 23],
aff'd on other grounds in *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 [BOA TAB 24].

25. Section 11 of the CCAA states:

"General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, **the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.**

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA], at s. 11 **[emphasis added]** [BOA TAB 2].

V. ARGUMENT

A. The Court Has Clear and Undisputed Jurisdiction to Grant the Relief Sought

26. The Court has the jurisdiction to require the filing of the Compeer Election, as part of the general Claims Process.

27. **First**, section 20(1) of the CCAA specifically mandates that NBC's secured claim, including any corresponding indemnification obligations and liabilities which are secured under NBC's security agreements, against the Sunterra Parties "*must* be determined by the Court in these proceedings on a summary basis".

Alderbridge Way GP Ltd. (Re), 2023 BCSC 1718 [Alderbridge], at para. 30 [BOA TAB 4].

28. Section 20(1) of the CCAA states:

20(1) For the purposes of this Act, **the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:**

....

(b) **the amount of a secured claim is the amount**, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, **in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.**

CCAA, at s 20 [BOA TAB 2].

29. **Second**, there is nothing in the CCAA which limits the Court's authority to facilitate the determination of inter-creditor claims, between NBC and Compeer, as part of the Sunterra Parties' CCAA Proceedings.

30. **Third**, in the absence of specific limitations or restrictions, section 11 of the CCAA provides a CCAA Court with broad inherent jurisdiction and powers to "make any order that it considers appropriate in the circumstances", "if, on balance, such action would appear to further the remedial purpose of the CCAA". Specifically,

"[75] Case law establishes that the authority of a court under section 11 is to be interpreted broadly subject, in any particular case, to satisfaction of the baseline requirements of "appropriateness, good faith and due diligence": See *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70."

...

"[79] In addition, the Supreme Court noted with approval in para. 61 that, in exercising authority under the CCAA, and in particular under section 11 of the

CCAA, courts must necessarily be flexible and innovative in order to further efforts to achieve the remedial purposes of the CCAA.”

CCAA, at s. 11 [BOA TAB 2];
U.S. Steel S.C. at paras. 75 and 79 [BOA TAB 23];
Alderbridge, at para 56 [BOA TAB 4].

31. **Fourth**, CCAA Courts have previously exercised their inherent jurisdiction under section 11 of the CCAA to extend the a debtor's CCAA proceedings to include the adjudication and determination of third party or inter-creditor claims. Specifically:

(a) in *U.S. Steel S.C.*, the resolution of certain inter-creditor claims was anticipated to affect the quantum and priority of claims to be asserted against the debtor. In that case, Justice Wilton-Siegel concluded that:

“the Court has authority under section 11 of the CCAA to order that the Subordination Claims be determined by a process within the CCAA proceedings, other than the process contemplated by the Claims Process Order, if the Court is of the Opinion that, on balance, such action is likely to further the remedial purposes of the CCAA”;

U.S. Steel S.C. at para. 84 [BOA TAB 23].

(b) in *Alderbridge Way GP Ltd. (Re)*, Romspen Investment Corporation (“**Romspen**”), sought a procedural order that:

“would: (a) provide that the Related Actions would be tried together in the context of the CCAA proceedings; and (b) set various deadlines for the filing of pleadings, listing of documents and examinations for discovery, consistent with case plan orders that have been regularly granted in this Court.”

Alderbridge, at para. 3 [BOA TAB 4].

While, much like in the current circumstances, the respondents to Romspen’s application:

“oppose the relief sought, arguing that the Court has no jurisdiction under the CCAA to grant the relief sought; alternatively, they contend that such orders are inappropriate. In the main, **the respondents wish to have the Related Actions resolved in the fullness of time and in the usual civil trial process outside of these CCAA proceeding** without the CCAA court imposing any case management deadlines at any time.”

Alderbridge, at para. 4 [emphasis added] [BOA TAB 4].

Justice Fitzpatrick stated and subsequently concluded:

[55] In my view, **the conclusions of Wilton-Siegel J. in *U.S. Steel* SC are entirely consistent with the single proceeding model and the benefits that are intended by that model. It is undeniably the case that the CCAA court is attuned to providing a means by which claims can be adjudicated, as they relate to the restructuring proceeding, in an efficient manner and in a manner that is fair to all stakeholders.**

[56] I agree that it will not always be the case that other claims are appropriately brought into the CCAA umbrella for adjudication. However, I adopt the reasoning and result in *U.S. Steel* SC in concluding that, if the circumstances are such that bringing other claims into the CCAA proceeding will **assist in the restructuring process and further the remedial purposes of the CCAA**, that may ground the exercise of the court's jurisdiction to grant such an order under s. 11 of the CCAA.

[57] **I conclude that this Court in these CCAA proceedings does have the jurisdiction to grant the order sought by Romspen pursuant to s. 11 of the CCAA.** It remains to be determined whether it is appropriate to exercise that jurisdiction in these circumstances, as I will discuss below."

Alderbridge, at paras. 55-57 **[emphasis added]** [BOA TAB 4].

B. The Filing of the Compeer Election is appropriate in the circumstances.

32. The filing of the Compeer Election is appropriate in the current circumstances and furthers the remedial purposed of these CCAA Proceedings. Specifically,

(a) the Compeer v. NBC Claim is sufficiently interconnected with both the NBC v. Sunterra Claim and the Compeer v. Sunterra Claim;

(b) the Compeer v. Sunterra Statement of Claim contains relief potentially directed at NBC. Specifically, Compeer prays for the following relief at paragraph 101(e):

"(e) A declaration that Compeer is entitled to trace the funds advanced as a result of the Cheque Kiting Scheme and declaration that those funds are held in trust as a constructive trustee for Compeer";

Compeer Statement of Claim, at para. 101(e) [BOA TAB 26].

(c) the Compeer Election furthers the remedial purpose of these CCAA Proceedings as it will enable a more efficient and accurate determination of the NBC v. Sunterra Claims, including outlining the scope and potential range of quantum of same;

(d) the inclusion of the Compeer Election is consistent with the purposes and intent of claims procedures under the CCAA; and,

- (e) no party will be prejudiced or gain any tactical advantage.

i. The Compeer v. NBC Claim Is Sufficiently Interconnected.

33. Any potential action between Compeer and NBC relates to and arises from the actions and affairs of the Sunterra Parties; namely the kiting scheme. The determination of NBC's claims, including the NBC Indemnity Claims, may affect other stakeholders, including Compeer, as a result of, among other things, the determination of the amount of NBC's secured claim against the Sunterra Parties.

34. In *Alderbridge*, the Court considered whether the litigation between third parties was sufficiently interconnected with the debtors and the CCAA proceeding to warrant their claims' inclusion in the proceedings under the "single proceeding model". In holding that the third party litigation was sufficiently interconnected with the CCAA debtors, the Court stated:

"[72] I am not persuaded by the respondent's arguments that attempt to distance themselves and their claims from this CCAA proceeding. There is a manifest relationship between the Related Actions, GEC, Romspen, the CCAA Debtors/Guarantors and these CCAA proceedings. **None of GEC, Romspen or the CCAA Debtors/Guarantors can be characterized as "strangers" to these CCAA proceedings.**

[73] These CCAA proceedings are an insolvency proceeding involving the CCAA Debtors and **each of the Related Actions concerns the CCAA Debtors.** The Guarantors are in each case either the economic stakeholders of the CCAA Debtors, their controlling minds, or were otherwise involved in their business operations leading up to the commencement of these CCAA proceedings.

...

[75] The GEC Action also concerns the CCAA Debtors. **GEC's claims against Romspen in the GEC Action relate to and arise from the affairs of the CCAA Debtors and their insolvency.** GEC is a major secured creditor of the CCAA Debtors. The contractual relationship between GEC and Romspen pertains solely to the CCAA Debtors. **GEC hopes, through the GEC Action, to elevate its secured claim against the Development in relation to the Romspen Security.**

[76] I conclude that there is considerable interconnection between the Related Actions and the conduct of these CCAA proceedings, as the Monitor notes in its Report."

Alderbridge, at paras. 72-76 [emphasis added] [BOA TAB 4].

35. Similarly to *Alderbridge*, the claim(s) subject to the Compeer Election, the Compeer v. NBC Claim, and the NBC Indemnity Claims (which forms part of the NBC v. Sunterra Claim) share

a sufficient commonality of facts, claims, and issues; which overlap to such a degree that any determination of same will inevitably be decided on similar factual, legal, and evidentiary grounds. Specifically:

- (a) the NBC Indemnity Claims, the Compeer v. Sunterra Claim, and the Compeer v. NBC Claim, all relate and stem from the actions of the applicable Sunterra Parties, and their directors and officers;
- (b) Compeer represents the other half of the Sunterra Parties' kiting scheme;
- (c) the Compeer v. NBC Claim and Compeer Election specifically relate to and stem from the various cheques issued by Sunterra Canada or Sunwold Canada in favour of the Sunterra US Entities or Compeer, as part of the Sunterra Parties' kiting scheme;
- (d) Compeer is not a "stranger to the bankruptcy", nor is the Compeer Election sufficiently distanced from the NBC v. Sunterra Claim and the Compeer v. Sunterra Claim to warrant excluding the Compeer Election or proceeding in a vacuum without it; and,
- (e) NBC holds valid and enforceable security against the Canadian Sunterra Parties, which secures all liabilities, indebtedness, and obligations of the Canadian Sunterra Parties to NBC. The NBC Indemnity Claims are part of NBC's secured claims against the Canadian Sunterra Parties and, as discussed below, the Compeer Election will directly affect the analysis and efficient determination of same.

ii. The Compeer Election Furthers the Remedial Purposes of the CCAA.

36. The determination of the NBC v. Sunterra Claim will be significantly more efficient, straightforward, and certain, if the Compeer Election is made (or, if the Compeer Election is not made, and Compeer's claim against NBC is barred) because the parties, including the Court, will know the extent, scope, and potential quantum, of the NBC Indemnity Claims. NBC seeks details regarding the scope and nature of any Compeer v. NBC Claim which Compeer intends to assert (if at all).

37. It is well established that the CCAA "includes the authority to approve a process to solicit and determine claims against a debtor company and its directors and officers". Such processes

are designed to ensure that “all of the creditors of an applicant and its directors and officers can submit their claims **for recognition and valuation**” (*emphasis added*).

U.S. Steel Canada Inc. (Re), 2017 ONSC 1967, at para. 5 [BOA TAB 25];
Re ScoZinc Ltd., 2009 NSSC 136, at para. 25 [BOA TAB 20];
Re Toys “R” Us (Canada) Ltd., 2018 ONSC 609 [Toys R Us], at para. 8 [BOA TAB 17].

38. There are various forms of claims for indemnification, including common law, equitable, and statutory claims for indemnification, and the exact elements of NBC’s claims depend upon the context and nature of the claims asserted against NBC. As a result, bases for the NBC Indemnity Claims will depend, in part, upon the particulars of the *Compeer v. NBC Claim*. Otherwise, such claims will need to be determined on a contingent and hypothetical basis, based on Compeer’s future claim(s).

Addison & Leye Ltd v Fraser Milner Casgrain LLP, 2014 ABCA 230, at paras. 22-23, 28-30, 36-37 and 40 [BOA TAB 3]; *Bonner v. Tottenham and Edmonton Permanent Investment Building Society*, [1899] 1 Q.B. 161 (C.A.), at p. 174 [BOA TAB 8], as cited in *FBI Foods Ltd. v. Glassner*, 2001 BCSC 151, 86 B.C.L.R. (3d) 136, at para. 13 [BOA TAB 12];
R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42 (CanLII), [2011] 3 SCR 45 [BOA TAB 15].

39. As set out above, this Court has the jurisdiction to determine contingent claims under section 20(b) of the CCAA.

40. The NBC Indemnity Claims are contingent claims (*i.e.*, claims contingent upon the occurrence or non-occurrence of some future event or circumstances), as contemplated by sections 121 and 135 of the BIA, which state:

“Claims provable

121 (1) **All** debts and **liabilities, present or future**, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt’s discharge **by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt** shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall **determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], at ss. 121(1)-(2), 135(1)-(1.1) [emphasis added] [BOA TAB 1];
National Bank of Canada v Merit Energy Ltd., 2001 ABQB 583 [NBC v Merit], at paras. 41, 73-78, 80 [BOA TAB 14], aff'd 2002 ABCA 5 [BOA TAB 11];
RMP Energy Inc. v. SemCAMS ULC, 2012 ABCA 312, at para. 28 [BOA TAB 18].

41. In *NBC v Merit*, in the context of determining whether various claims for indemnification made against a bankrupt company were provable claims, Justice LoVecchio stated:

"[76] The fact that a claim is contingent does not mean it is not "provable"[18]. Provable claims include contingent claims as long as they are not too speculative: *Negus v. Oakley's General Contracting* [19]. Section 121 defines provable claims to include "all debts and liabilities, present or future,...to which the bankrupt may become subject..."

[77] Section 121 does not specify the degree of certainty required to make a claim provable, other than to include as provable all debts or liabilities to which the bankrupt may become subject. As stated, the Ontario Court of Appeal addressed this in *Re Confederation Treasury Services Ltd.* and held that **the test of probable liability** set out in *Claude Resources (Trustee of) v. Dutton* and *Re Wiebe* (also relied on by the Trustee) **imposed too high of a threshold to establish a valid contingent claim. Rather, the Ontario Court of Appeal expressed that contingent claims must simply be not too "remote or speculative in nature". I agree with the Ontario Court of Appeal's view of the test.**

NBC v Merit, at paras. 76-77 [citations omitted, emphasis added] [BOA TAB 14];
Confederation Treasury Services Ltd. (Re) (In Bankruptcy), 1997 CanLII 3544 (ON CA) [BOA TAB 10].

42. In bankruptcy and CCAA proceedings, a contingent claim may be valued even if the underlying event which would give rise to the claim has not yet come to pass, and it is not necessary that the cause of action underlying the contingent claim has crystallized as at the date of the bankruptcy. Specifically:

(a) as Justice Romaine held in *Re SemCanada Crude Company (Orleans Energy Ltd.)*, a claim will not be too speculative to be proven **if there is an obligation which can be calculated with some degree of certainty** and "the relevant underlying transaction occurred before the insolvency event, even though the debt did not come due until the occurrence of a required event"; and,

(b) as stated by the Court of Appeal in *AMIC Mortgage Investment Corporation v. Abacus Cities Ltd.*, “[t]he valuing court can have regard to events after bankruptcy, and before the hearing, to help it decide”.

Re SemCanada Crude Company (Orleans Energy Ltd.), 2012 ABQB 495 (CanLII), at paras. 45-49, 52-56, 66-69 [BOA TAB 16], leave to appeal refused, 2012 ABCA 312 [BOA TAB 18];
AMIC Mortgage Investment Corporation v. Abacus Cities Ltd., 1992 ABCA 57 (CanLII), at para. 39 [BOA TAB 5];
Auctioneers' Assn. of Alberta v. Hunter, 2002 ABQB 28 (CanLII), at paras. 29-31, 43-46, 50-51, 56, 62, 70-73 [BOA TAB 6].

43. Correspondingly, if a claim is considered to be too remote, it will not be deemed to be a “proved claim”, and will not be subject to any plan of compromise or arrangement under section 19 of the CCAA, which states:

“Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), **the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are**

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

...

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).”

BIA, at s. 135(1.1) [BOA TAB 1]; *CCAA*, at s. 19(1) **[emphasis added]** [BOA TAB 2].

44. While the fact that Compeer has not yet asserted a Compeer v. NBC Claim against NBC is not a bar to: (i) NBC’s assertion of the NBC Indemnity Claims against the Canadian Sunterra Parties; or (ii) the existence of a contingent claim for indemnification by NBC against the Canadian Sunterra Parties; without the Compeer Election, the scope of the NBC Indemnity Claims remains ill defined and the potential quantum of same uncertain.

45. The benefits of requiring Compeer to make the Compeer Election include:

(a) in the first instance, the current doubt as to whether Compeer will assert a Compeer v. NBC Claim will be resolved, removing one potential source of uncertainty or additional contingency in determining the NBC Indemnity Claims; and,

(b) if Compeer evidences an intention to commence an action against NBC, by filing the Compeer Election, then:

(i) NBC and the Sunterra Parties will have a clearer basis on which to assert or defend, respectively, the NBC Indemnity Claims;

(ii) the Canadian Sunterra Parties will have certainty that all potential claims against them, by Compeer and NBC, are being addressed in these CCAA Proceedings, without any question as to whether the NBC Indemnity Claims are comprehensive with respect to all provable claims or whether any non-provable claims exist;

(iii) in assessing the quantum claimed by Compeer, against NBC, the Court will have knowledge of the extent of the NBC Indemnity Claims, and be better positioned to determine the NBC v. Sunterra Claim and the priority of same on December 4 and 5, 2025;

(iv) the Sunterra Parties will be better able to assess their options for restructuring or refinance, by knowing the applicable scope, quantum, and priority of the NBC Indemnity Claims; and,

(v) in the event of a sale or liquidation, the proper determination of the scope, priority and quantum of the NBC v. Sunterra Claim will allow for the identification of the applicable “fulcrum creditor”.

iii. The Inclusion of the Compeer Election is Consistent with the Purposes and Intent of Claims Procedures Under the CCAA.

46. The Compeer Election is fair and reasonable, in the circumstances, and is consistent with the purposes of CCAA claims process, generally.

47. The overarching purpose of claims processes, generally, is to “streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner.” Accordingly, **in determining what form of claims process best suits a given case,**

due regard must be given to the facts and circumstances at hand, and the parties should make efforts to increase “efficiency, affordability, and certainty”.

Canwest Global Communications Corp., 2011 ONSC 2215, at para. 40 [BOA TAB 9];
Toys R Us, at para. 14 [BOA TAB 17].

48. The reported case law confirms that fairness, practicality, and reasonableness are critical components of any claims procedure and will inform the contents of the relevant orders. For example:

(a) as stated by Justice Myers in *Re Toys “R” Us (Canada) Ltd.*, “Each case must be responsive to its own facts and circumstances. What works in one case may be wholly inapt in another. But **in all cases it is appropriate to make efforts to increase efficiency, affordability, and certainty** as was done here. The overriding concern of the court is to ensure that any claims procedure process is both fair and reasonable”;

Toys R Us, at para. 14 [emphasis added] [BOA TAB 17].

(b) as stated by Chief Justice Morawetz in *Laurentian University*, “A claims process order must be carefully drafted so as to **ensure that the process by which claims are determined is both fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims**”; and,

Laurentian University of Sudbury, 2021 ONSC 3885, at para. 32 [*Laurentian University*] [emphasis added] [BOA TAB 13], citing *Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501, at para. 38 [BOA TAB 21].

(c) as stated by Justice Romaine in *BA Energy Inc. (Re)*, “[...] the **objective of a claims procedure order is to attempt to ensure that all legitimate creditors come forward on a timely basis**. A claims procedure provides the debtor company and the Monitor with the information necessary to fashion a plan that may prove acceptable to the requisite majority of creditors, given the financial circumstances of the debtor, and that may be sanctioned by the Court. [...] The claims procedure process was developed to give creditors a level playing field with respect to their claims and to discourage tactics that would give some creditors an unjustified advantage.”

BA Energy Inc. (Re), 2010 ABQB 507 (CanLII), at paras. 41-42 [emphasis added] [BOA TAB 7].

49. The General Claims Procedure Order, the NBC Claims Process Order, and the Compeer Claims Process Order follow these principles, with a focus on determining the claims of creditors in a timely, fair, and efficient manner.

iv. The Filing of the Compeer Election Does Not Prejudice Compeer.

50. The Compeer Election requires Compeer to indicate, by a deadline: (i) whether it intends to advance a claim against NBC in respect of any facts, circumstances or matters that give rise to a Compeer v. NBC Claim; and, (ii) if Compeer indicates that it intends to advance such a claim, requiring Compeer to: (a) outline the bases of such claim(s); and (b) provide a range of the quantum of such claim(s).

51. There will be no prejudice to Compeer if it is required to provide the Compeer Election and the benefit to the overall CCAA process will be substantial. Compeer is not required to have the Compeer v. NBC Claim *determined*, only to confirm what Compeer v. NBC Claim it *intends* to advance.

52. Claims bar dates are commonplace in claims procedures under the CCAA. Such bar dates are intended to promote certainty for voting and distribution purposes and to prevent creditors from intentionally refraining from asserting their claims in order to obtain a tactical advantage.

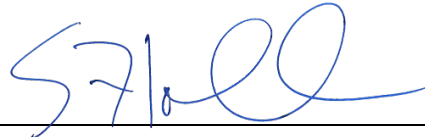
***Re Timminco Ltd.*, 2014 ONSC 3393, at para. 43 [BOA TAB 22]; *Toys R Us*, at para. 8 [BOA TAB 17];
Royal Bank of Canada v. Cow Harbour Construction Ltd., 2011 ABQB 223, at paras. 26-28, 46
[BOA TAB 19].**

53. In these circumstances, the Compeer v. NBC bar date is necessary. The claims bar date will promote certainty in determining the extent of the claims relating to the cheque kiting scheme and the NBC Indemnity Claim.

VI. CONCLUSION / ORDER REQUESTED

54. These proceedings will suffer without Compeer being required to make the Compeer Election. NBC accordingly respectfully requests that this Honourable Court approve the Compeer v. NBC Claim Procedure.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25TH DAY OF AUGUST, 2025

A handwritten signature in blue ink, appearing to be 'S7100', is written above a horizontal line.

Sean Collins, KC / Sean Smyth, KC /
Pantelis Kyriakakis / Nathan Stewart /
Samantha Arbor
Counsel to National Bank of Canada

VII. LIST OF AUTHORITIES

Statutes

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, at ss. 2, 121, 135;
2. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, at ss. 11, 19, 20;

Case Law

3. *Addison & Leyen Ltd v Fraser Milner Casgrain LLP*, 2014 ABCA 230;
4. *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718;
5. *AMIC Mortgage Investment Corporation v. Abacus Cities Ltd.*, 1992 ABCA 57 (CanLII);
6. *Auctioneers' Assn. of Alberta v. Hunter*, 2002 ABQB 28 (CanLII);
7. *BA Energy Inc. (Re)*, 2010 ABQB 507 (CanLII);
8. *Bonner v. Tottenham and Edmonton Permanent Investment Building Society*, [1899] 1 Q.B. 161 (C.A.);
9. *Canwest Global Communications Corp.*, 2011 ONSC 2215;
10. *Confederation Treasury Services Ltd. (Re) (In Bankruptcy)*, 1997 CanLII 3544 (ON CA);
11. *Delf v. Merit Energy Ltd.*, 2002 ABCA 5 (CanLII);
12. *FBI Foods Ltd. v. Glassner*, 2001 BCSC 151, 86 B.C.L.R. (3d) 136;
13. *Laurentian University of Sudbury*, 2021 ONSC 3885;
14. *National Bank of Canada v Merit Energy Ltd.*, 2001 ABQB 583;
15. *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45;
16. *Re SemCanada Crude Company (Orleans Energy Ltd.)*, 2012 ABQB 495 (CanLII);
17. *Re Toys "R" Us (Canada) Ltd.*, 2018 ONSC 609;

18. *RMP Energy Inc. v. SemCAMS ULC*, 2012 ABCA 312;
19. *Royal Bank of Canada v. Cow Harbour Construction Ltd.*, 2011 ABQB 223;
20. *ScoZinc Ltd. (Re)*, 2009 NSSC 136;
21. *Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501;
22. *Timminco Ltd. (Re)*, 2014 ONSC 3393;
23. *U.S. Steel Canada Inc. (Re)*, 2015 ONSC 5103;
24. *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662;
25. *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967;

Evidence

26. Compeer Statement of Claim, Action No. 2503-10998;
27. Excerpt of Affidavit of Arthur Price, sworn April 15, 2025;
28. Claims Procedure Order, pronounced on July 24, 2025;
29. NBC's Consent Order (Scheduling), pronounced on July 24, 2025; and,
30. Compeer's Consent Order (Scheduling), pronounced on July 24, 2025.