Court File No. CL-26-00000219-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION, AND 12334992 CANADA INC.

Applicants

FACTUM OF THE APPLICANTS / DEBTORS
(KERP Approval Motion: Returnable October 29, 2026)

October 28, 2026

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TO: The Service List

PART I – OVERVIEW[1]

1. The Applicants seek an Order substantially in the form found at Tab 3 to the Applicants' Motion Record, among other things:

(a) approving a key employee retention plan (the "**KERP**") for 36 key employees of the Debtors and their subsidiaries (the "**KERP Recipients**");

(b) granting a Court-ordered charge over the property of the Debtors in the amount of CAD $17,096,250 as security for payments under the KERP (the "**KERP Charge**"); and

(c) sealing Confidential Exhibit "B" to the Second Aziz Affidavit, which contains the personal details of the KERP Recipients, as well as their compensation and proposed payments under the KERP.

PART II – FACTS

2. The facts underlying this motion are more fully set out in the Second Aziz Affidavit and the Supplement to the Sixth Report of the Monitor dated October 27, 2026 (the "**Supplemental Report**").

[1] Capitalized terms used but not defined herein have the meaning given to them in the Affidavit of William E. Aziz sworn October 26, 2026 ["**Second Aziz Affidavit**"].

A. The KERP

(i) Background to the KERP

3. From the start of these CCAA Proceedings, the Debtors have signalled that they would ask this Court to approve a key employee retention plan for certain key employees who are crucial to running the Mine and to the SISP.[2]

4. The CRO Mandate, which was approved by this Court pursuant to the CRO Appointment Order, empowers the CRO to make recommendations about any proposed key employee retention plan. To do so responsibly, the CRO first needed time to become familiar with the Debtors' business, operations and key employees. During that period, the Debtors retained a transaction advisor and obtained Court approval of the SISP.[3]

5. If the participants, size and milestones of the KERP had been fixed before those steps were taken, the retention incentives would have been designed without knowing what sale process the participants would be supporting or which employees would be critical to it. With the SISP now approved and underway, the CRO can now recommend a KERP that is aligned with the SISP.[4]

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[2] Second Aziz Affidavit, para. 7 [A8411].
[3] Second Aziz Affidavit, paras. 2 and 9 [A8410] and [A8412].
[4] Second Aziz Affidavit, para. 10 [A8412].

(ii) Development of the KERP

6. The KERP was developed by the CRO,[5] who has experience developing and implementing key employee retention plans in restructuring proceedings and is empowered to do so by the CRO Mandate.[6]

7. In developing the KERP, the CRO consulted with the Debtors' management, the Debtors' counsel, the Monitor and its counsel, and the Operating Committee. Specifically, the CRO: (a) met with each functional group head, together with the Vice President, Human Resources and the Monitor, to review the list of key employees; (b) discussed the proposed design of the KERP with senior management, the Debtors' counsel, the Monitor and the Monitor's counsel; and (c) reviewed his recommendations with the Operating Committee and considered its comments.[7] The Operating Committee advised the CRO that the final decision regarding the design of the KERP rests with him.[8]

8. The CRO also met with the DIP Lender and its advisors and the Senior Secured Lenders, and understands that the Monitor, the DIP Lender and the Senior Secured Lenders support the KERP.[9]

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[5] Second Aziz Affidavit, para. 14 [A8413].
[6] Second Aziz Affidavit, paras. 9 and 19 [A8412] and [A8415].
[7] Second Aziz Affidavit, para. 13 [A8413].
[8] Second Aziz Affidavit, para. 14 [A8413].
[9] Second Aziz Affidavit, para. 15 [A8414].

(iii) KERP Recipients

9. The KERP Recipients are skilled and experienced individuals with specialized industry and operational knowledge of the Debtors' mining operations and key contracts.[10]

10. The KERP Recipients fall into two categories:

(a) nine employees who report to the acting Chief Executive Officer of Baffinland Iron Mines Corporation (the "**CEO Reports**"); and

(b) 27 employees who perform critical functions (the "**Critical Function Employees**").[11]

(iv) KERP Payments

11. The KERP Payments are calculated based on each KERP Recipient's base salary plus payments they are entitled to receive under the Debtors' existing short-term incentive plan ("**STIP**") and long-term incentive plan ("**LTIP**"), where applicable.[12] The KERP Payments are in addition to, and not in place of, the KERP Recipients' base salary and ordinary STIP and LTIP entitlements in 2026 or 2027.[13]

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[10] Second Aziz Affidavit, para. 11 [A8412].
[11] Second Aziz Affidavit, para. 17 [A8414].
[12] Second Aziz Affidavit, para. 21 [A8415].
[13] Second Aziz Affidavit, para. 24 [A8416].

12. Each of the CEO Reports will receive a KERP Payment equal to 125% of the total of their annual base salary plus their 2026 STIP entitlements and LTIP entitlements that vest in 2026.[14]

13. For the Critical Function Employees:

(a) three will receive a KERP Payment equal to 50% of the total of their annual base salary plus their 2026 STIP entitlements and LTIP entitlements that vest in 2026; and

(b) the remaining 24 will receive a KERP Payment equal to 30% of the total of their annual base salary plus their 2026 STIP entitlements and, if applicable, LTIP entitlements that vest in 2026.[15]

(v) Timing of KERP Payments

14. KERP Payments for the CEO Reports are divided into three payment tranches: (a) a time-based payment (equal to 35% of the CEO Reports' total eligible KERP Payment), and (b) two event-based payments tied to (i) the closing of a Court-approved Restructuring Transaction[16] (equal to 55% of the CEO Reports' total eligible KERP Payment), and (ii) the closing of a Court-approved Restructuring Transaction that results in repayment of all of the Debtors' senior secured debt owing to the DIP Lender and the

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[14] Second Aziz Affidavit, para. 25 [A8416].
[15] Second Aziz Affidavit, para. 26 [A8416].
[16] A "**Restructuring Transaction**" includes any transaction or series of related transactions approved by the Court that is designated by the Monitor as a "Restructuring Transaction" and shall include: (a) the implementation of a plan of compromise or arrangement; (b) a sale, conveyance, or transfer, directly or indirectly, of all or substantially all of the assets or business of the Debtors or of the equity interests of the Debtors resulting in a change of control; or (c) a refinancing or recapitalization that repays in full and in cash all funded secured debt of the Debtors.

Senior Secured Lenders (equal to 10% of the CEO Reports' total eligible KERP Payment) (collectively, the "**Senior Secured Debt**").[17]

15. For the Critical Function Employees, KERP Payments are divided into two payment tranches: (a) a time-based payment (equal to 35% of the Critical Function Employees' total eligible KERP Payment) and (b) an event-based payment tied to the closing of a Court-approved transaction (equal to 65% of the Critical Function Employees' total eligible KERP Payment). No portion of the KERP Payment for Critical Function Employees is conditional on the repayment of the Senior Secured Debt.[18]

B. The KERP Charge

16. The proposed KERP Charge of CAD $17,096,250 represents the maximum aggregate amount that may be payable under the KERP.[19]

17. The KERP Charge would rank behind the Administration Charge, the CRO Fee Charge and the Financial Advisor Fee Charge (which rank *pari passu*), the D&O Charge and the DIP Charge, and ahead of all other Court-ordered charges.[20]

18. The Debtors have served notice of this motion on all secured creditors affected by the KERP Charge, and the Senior Secured Lenders, whose security will be primed, support the KERP.[21]

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[17] Second Aziz Affidavit, paras. 18 and 28 [A8414] and [A8417].
[18] Second Aziz Affidavit, paras. 18 and 29 [A8414] and [A8417].
[19] Second Aziz Affidavit, para. 34 [A8418].
[20] Second Aziz Affidavit, para. 35 [A8418].
[21] Second Aziz Affidavit, para. 35 [A8418].

PART III – THE ISSUES

19. The issues to be considered by the Court on this motion are whether it should:

(a) approve the KERP;

(b) grant the KERP Charge; and

(c) grant a sealing order in respect of Confidential Exhibit "B".

PART IV – LAW & ARGUMENT

A. The Court Should Approve the KERP

20. The purpose of a key employee retention plan is to provide appropriate incentives to retain key employees that are important to the management or operations of the debtor company in order to keep their skills within the company at a time when they are likely to look for other employment because of the company's financial distress.[22]

21. This Court has discretion to approve a key employee retention plan under section 11 of the CCAA.[23]

22. The factors the Court considers in approving a KERP and a KERP Charge include: (a) the approval of the Monitor; (b) whether the beneficiaries of the KERP are likely to consider other employment opportunities if the KERP is not approved; (c) whether the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company; (d) whether a replacement could be found in a timely manner should the

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[22] *Grant Forest Products Inc. (Re)*, 2009 CanLII 42046 (ON SC), at para 8.
[23] CCAA, s 11; *Hudson's Bay Company, Re*, 2025 ONSC 1897 (CanLII), at para 87; *Grant Forest Products Inc. (Re)*, 2009 CanLII 42046 (ON SC), at para 8.

beneficiary elect to terminate his or her employment with the debtor company; and (e) the business judgment of the board of directors of the debtor.[24]

23. This Court has also stated that three criteria underlie these factors: (a) arm's length safeguards; (b) necessity; and (c) reasonableness of design. Within these parameters, the scope of the key employee retention plan and the amounts allocated to beneficiaries are both highly fact dependent, based on the needs of the particular CCAA debtor and the role of the beneficiaries in the business and the restructuring.[25]

24. Based on these criteria, the KERP is necessary, appropriate and should be approved:

(a) *Arm's Length Safeguards*: the KERP was designed by the Court-appointed CRO, an independent restructuring professional who was selected through a process run by the Monitor.[26] The CRO has experience developing and implementing employee incentive plans in restructurings and developed the KERP in consultation with functional group heads, senior management, the Operating Committee, the Monitor and the Monitor's counsel.[27] The KERP is supported by the Monitor, as well as by the DIP Lender and the Senior Secured Lenders;[28]

(b) *Necessity*: the KERP Recipients have specialized technical and institutional knowledge of the Debtors' remote northern mining operations and the

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[24] *Hudson's Bay Company, Re*, 2025 ONSC 1897 (CanLII), at paras 88 and 95.
[25] *Hudson's Bay Company, Re*, 2025 ONSC 1897 (CanLII), at para 89.
[26] Second Aziz Affidavit, para. 8 [A8411].
[27] Second Aziz Affidavit, paras. 13 and 19 [A8413] and [A8415].
[28] Second Aziz Affidavit, para. 15 [A8414].

Debtors' key contracts. They are needed to operate the Mine and to support the SISP, and it would be very difficult to replace them in a timely manner.[29] Absent the KERP, there is a real risk that the KERP Recipients would pursue other opportunities, to the detriment of the SISP and all stakeholders;[30] and

(c) *Reasonableness of Design:* the KERP is limited to 36 employees identified by the functional group heads and the Monitor,[31] and payments are scaled by seniority and role. The KERP combines a time-based payment with event-based payments tied to the closing of a Court-approved Restructuring Transaction, which in the CRO's experience is the most effective design.[32] The Senior Secured Debt repayment milestone for the CEO Reports was included at the request of the DIP Lender and the Senior Secured Lenders to align incentives with a value-maximizing transaction resulting from the SISP.[33] Payments are conditional on continued active employment and performance of duties.[34] The Debtors, through the CRO and with input from the Monitor, determined the quantum of the proposed retention bonuses and believe they are reasonable, having regard to the specific circumstances facing the Debtors in these CCAA Proceedings, including

[29] Second Aziz Affidavit, para. 11 [A8412].
[30] Second Aziz Affidavit, para. 12 [A8413].
[31] Second Aziz Affidavit, para. 13 [A8413].
[32] Second Aziz Affidavit, para. 19 [A8415].
[33] Second Aziz Affidavit, para. 30 [A8417].
[34] Second Aziz Affidavit, para. 33 [A8418].

the remote location of the Mine operations and terms of certain existing employment agreements.[35]

B. The KERP Charge Should be Granted

25. To secure the KERP Payments, the Applicants seek a charge over the Debtors' property up to the maximum amount of CAD $17,096,250.

26. As with the KERP, the Court has jurisdiction to grant the KERP Charge pursuant to section 11 of the CCAA.[36]

27. Based on the factors set out in paragraph 22 above, this Court should approve the KERP Charge for the following reasons:

(a) *Monitor Support:* The Monitor supports the KERP and finds it reasonable and appropriate when accounting for the specific circumstances facing the Debtors in these CCAA Proceedings;[37]

(b) *Employee Retention Concerns:* Retention is a pressing concern as 85 employees have left since the CCAA Proceedings began and the CRO has learned that some employees have been exploring or have taken up other employment opportunities. The Monitor notes that further departures of key employees would jeopardize the Debtors' ability to maintain day to day operations, complete the SISP and maximize value for stakeholders;[38]

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[35] Supplemental Report, para. 27 [E1961].
[36] *Re Essar Steel Algoma Inc. et al*, 2015 ONSC 7656 (CanLII), at para 10.
[37] Supplemental Report, para. 10(a) [E1957].
[38] Supplemental Report, para. 22 [E1960].

(c) *The KERP Recipients are Key Employees:* The KERP Recipients are skilled and experienced individuals with specialized industry and operational knowledge of the Debtors' mining operations and key contracts and it would be very difficult to find suitable replacements in a timely manner. Retaining these individuals is essential to continuing operations, preserving the Debtors' property, advancing these CCAA Proceedings and conducting the SISP;[39]

(d) *Quantum of KERP Charge is Reasonable:* The KERP Charge is capped at CAD $17,096,250, the maximum aggregate amount payable under the KERP, and the Monitor considers this amount reasonable and appropriate in the circumstances.[40] The KERP Charge is needed to address the Debtors' concerns about employee departures, because it assures the KERP Recipients that the amounts owed to them under the KERP will be paid;[41]

(e) *Business Judgment of the CRO:* The CRO has experience developing retention plans, and the CRO Mandate authorizes the CRO to make recommendations on any key employee retention plan. In the CRO's view, the KERP will give the KERP Recipients a meaningful incentive to stay through the SISP and until a transaction approved by the Court closes. If approved, the KERP Charge will rank behind the Administration Charge,

[39] Supplemental Report, para. 12 [E1957].
[40] Supplemental Report, para. 32 [E1963].
[41] Supplemental Report, para. 32 [E1963].

the CRO Fee Charge and the Financial Advisor Fee Charge (which rank *pari passu* with one another), and behind the D&O Charge and the DIP Charge. Notice of the motion has been given to all affected creditors, and the Senior Secured Lenders, whose security will be primed, support the KERP.[42]

C. Confidential Exhibit "B" Should be Sealed

28. The Applicants seek a sealing order in respect of Confidential Exhibit "B", which contains sensitive personal information about the KERP Recipients.[43] This Court has discretion under subsection 137(2) of the *Courts of Justice Act* to order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record.[44]

29. The test to determine if a sealing order should be granted is set out by the Supreme Court of Canada in *Sierra Club*[45] as recast in *Sherman Estate*.[46] The details of the KERP satisfy the applicable test because: (i) the disclosure of the KERP poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk (and reasonable alternative measures will not prevent it); and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects, each of which will be addressed in turn below.[47]

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[42] Second Aziz Affidavit, para. 35 [A8418].
[43] Second Aziz Affidavit, para. 16 [A8414].
[44] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2).
[45] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), [2002] 2 SCR 522.
[46] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75.
[47] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75, at para 38.

(i) The Disclosure of the KERP Poses a Serious Risk to an Important Public Interest

30. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests, such as protecting confidential information, are an "important public interest" for the purposes of this test.[48] Applying that principle in *Re Danier Leather Inc.*, this Court sealed the details of a key employee retention plan and a summary of a stalking horse offer. It found that there is "a public interest in maximizing recovery in an insolvency that goes beyond each individual case".[49]

31. Confidential Exhibit "B" contains each KERP Recipient's name, current position and compensation entitlements under the KERP. This information is highly personal and the Debtors do not make it public in the ordinary course.[50] Public disclosure of this information could harm the KERP Recipients and could disrupt the Debtors' restructuring.[51] Because the KERP Recipients have been identified as crucial to the Debtors' restructuring efforts,[52] protecting their personal information is a clear example of the public interest recognized in the authorities.

32. Courts in CCAA and BIA proceedings have regularly sealed the terms of key employee retention plans, finding that they involve "matters of a private, personal nature"[53] and "confidential and personal information".[54] Sealing is particularly appropriate

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[48] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75, at para 41; *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), [2002] 2 SCR 522, at para 53.
[49] *Danier Leather Inc. (Re)*, 2016 ONSC 1044 (CanLII), at para 84.
[50] Second Aziz Affidavit, para. 36 [A8419].
[51] Second Aziz Affidavit, para. 37 [A8419].
[52] Supplemental Report, para. 12 [E1957].
[53] *Danier Leather Inc. (Re)*, 2016 ONSC 1044 (CanLII), at para 83.
[54] *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 (CanLII), at paras 23-27.

where the materials could reveal "individually identifiable information and compensation information", since the "protection of sensitive personnel and compensation information the disclosure of which would cause harm to the individuals and to the [debtor] is an important commercial interest that should be protected".[55]

(ii) The Sealing is Necessary to Prevent this Risk

33. The Monitor believes it is reasonable and appropriate for Confidential Exhibit "B" to be sealed pending further order of this Court. Sealing will protect the privacy interests of the KERP Recipients and the Debtors' commercial interests in maintaining the confidentiality of their compensation.[56]

34. The disclosure of the information in Confidential Exhibit "B" would also be detrimental to the Debtors' efforts as it may result in other employees demanding similar payments. No alternative measure would prevent this risk, and sealing Confidential Exhibit "B" is therefore reasonable and appropriate.[57]

(iii) The Benefits of Sealing Outweigh any Deleterious Effects

35. The sealing order is narrowly tailored and covers only the personal information of the KERP Recipients. The aggregate amount payable under the KERP (CAD $17,096,250) and the key milestones for the KERP Payments are disclosed in the public record, permitting stakeholders to assess the KERP. The amounts payable to each KERP Recipient and their personal identifying information are of no practical use to

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[55] *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC), at paras. 49-52.
[56] Supplemental Report, para. 29 [E1962].
[57] Supplemental Report, para. 29 [E1962].

stakeholders. Sealing them is only a minimal intrusion into the public's right to access information relating to these CCAA Proceedings.

36. In contrast, the implementation of the KERP will enable the Debtors to maintain stability in their operations and pursue the SISP. The disclosure of the terms of the KERP could harm the Debtors and the KERP Recipients and breach their privacy interests. Protecting this information serves an important commercial interest that warrants a sealing order.

PART V – ORDER SOUGHT

37. The Applicants respectfully request that the Court grant the Order substantially in the form included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2026.

Sean Monahan

DAVIES WARD PHILLIPS & VINEBERG LLP

SCHEDULE "A"
List of Authorities

Caselaw

1. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC)
2. *Danier Leather Inc. (Re)*, 2016 ONSC 1044 (CanLII)
3. *Grant Forest Products Inc. (Re)*, 2009 CanLII 42046 (ON SC)
4. *Hudson's Bay Company, Re*, 2025 ONSC 1897 (CanLII)
5. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 (CanLII)
6. *Re Essar Steel Algoma Inc. et al*, 2015 ONSC 7656 (CanLII)
7. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), [2002] 2 SCR 522
8. *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the *Rules of Civil Procedure*, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (R.4.06.1(2.2)).

October 28, 2026
Date

Sean Monahan
Signature

SCHEDULE "B"
Legislation

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11**

General Power of the 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.

***Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2)**

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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Proceeding Commenced at Toronto

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