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
(returnable July 29, 2026)

July 28, 2026

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PART I - OVERVIEW

1. This factum is filed in support of a motion by the Debtors[1] for an order:

   (a) approving the engagement of BlueTree Advisors Inc. ("**BlueTree**") to provide the services of William E. Aziz ("**Mr. Aziz**") as Chief Restructuring Officer ("**CRO**") of the Debtors;

   (b) granting a charge to secure BlueTree's fees, disbursements and costs (other than the Tiered Success Fee, described below); and

   (c) granting a charge to secure the Tiered Success Fee.

2. As the Debtors have previously described to the Court, the Debtors' operations are highly complex and require significant time and expertise to manage effectively. The Debtors believe that a Chief Restructuring Officer could take on helpful roles in connection with this ongoing CCAA proceeding, including by engaging with stakeholders, reporting to the operating committee of the Debtors (the "**Operating Committee**") on developments in the CCAA proceeding, and supporting a sales and investment solicitation process ("**SISP**"), which is an important next step in this proceeding.

3. The relief sought on this motion is supported by the Monitor and several of the Debtors' key stakeholders. As part of resolving a contentious dispute concerning the Debtors' choice of debtor-in-possession ("**DIP**") financing, which was the DIP facility advanced by Export Development Canada ("**EDC**"), the Debtors and their secured

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[1] In this Factum (as in prior materials filed by the Applicants in this proceeding), the "Debtors" means the Applicants and Baffinland Iron Mines LP. Unless otherwise defined herein, capitalized terms in this Factum have the meanings given to them in the Affidavit of Jowdat Waheed sworn July 24, 2026 (the "**Waheed Affidavit**") [Motion Record of the Debtors dated June 24, 2026 ("**MR**"), Tab 2, p. 37].

lenders Oaktree Capital Management, L.P., Hartree Partners, LP, Polen Capital Credit, LLC and Brigade Capital Management LP (collectively, the "**Senior Secured Lenders**") and EDC agreed that a CRO would be selected in a process conducted by the Monitor.

4. Following the process conducted by the Monitor, the Debtors, the Senior Secured Lenders and EDC all determined to support the appointment of Mr. Aziz as CRO. Mr. Aziz is a highly experienced restructuring professional whose appointment as a CRO has previously been approved by Courts on numerous occasions.[2] His expertise will complement that of the Operating Committee and the Debtors' management team, particularly in communicating with stakeholders and assisting with the conduct of this CCAA proceeding, thereby freeing management to focus on day-to-day operations.[3]

5. In the Third Report of the Monitor dated July 26, 2026, the Monitor confirms that the process it followed in connection with the selection of a CRO was fair and reasonable.[4]

6. The Court should grant this motion without difficulty. As explained below, the Court has the jurisdiction to grant the relief sought under section 11 of the CCAA. The specific relief sought by the Debtors is supported by key stakeholders and the Monitor, and is expected to assist the Debtors in maximizing value for all stakeholders, including by

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[2] *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at paras 26-27; *Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107 at paras 28-31.
[3] Waheed Affidavit at paras 11, 13 [MR, Tab 2, p. 40-41].
[4] Waheed Affidavit at paras 10, 21-22, 27 [MR, Tab 2, pp. 40, 44, 46]; Third Report of the Monitor dated July 26, 2026 at paras 13(a), 13(c), 14, 60.

assisting the Debtors in moving forward with the SISP efficiently and effectively. The Debtors are not aware of any opposition from stakeholders to the relief sought.

PART II - SUMMARY OF FACTS

A. The CCAA Proceeding

7. On May 15, 2026, the Debtors obtained an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), appointing FTI Consulting Canada Inc. as monitor (the "**Monitor**"). The Initial Order was amended and restated on May 25, 2026 and again on June 11, 2026 (the "**Second ARIO**").[5]

8. Immediately following commencement of the CCAA proceeding, the Debtors and the Monitor launched a formal process to solicit DIP proposals. That process yielded three separate DIP proposals. The Debtors, in consultation with the Monitor, determined that they should proceed with a DIP credit facility from EDC (the "**EDC DIP Facility**"). The Court approved the EDC DIP Facility on an interim basis on June 10, 2026.[6]

9. Initially, the Senior Secured Lenders vigorously opposed the EDC DIP Facility. However, as noted above, the Debtors, EDC, and the Senior Secured Lenders, with oversight and support of the Monitor, negotiated a settlement of the dispute over the EDC DIP Facility (the "**DIP Resolution**").[7] In connection with the DIP Resolution, the Debtors,

[5] Waheed Affidavit at para 9 [MR, Tab 2, p. 40].
[6] Waheed Affidavit at para 15 [MR, Tab 2, p. 41].
[7] Waheed Affidavit at para 16 [MR, Tab 2, pp. 41-42].

EDC and the Senior Secured Lenders agreed that, among other things, a CRO would be selected through a process conducted by the Monitor.[8]

B. The Need for a Chief Restructuring Officer

10. In its Second Report dated June 4, 2026, the Monitor recommended that an experienced CRO be appointed to assist the Debtors with this CCAA proceeding, as is common in many Canadian restructuring proceedings.[9]

11. The Debtors agreed with the Monitor's recommendation. The Debtors' operations are complex and require significant time and expertise to oversee and conduct. The Debtors believe that a CRO could provide meaningful assistance by engaging with stakeholders, reporting to the Operating Committee and assisting with the conduct of this CCAA proceeding, thereby freeing up management capacity so that the Debtors can remain focused on their mining operations.[10]

C. Selection of the CRO

12. Pursuant to the DIP Resolution, the Monitor arranged interviews between members of the Operating Committee and four CRO candidates, including Mr. Aziz.[11] In advance of the interviews, the Monitor circulated the biographies and profiles of each CRO candidate to the Operating Committee, the Senior Secured Lenders and EDC. The DIP Resolution provided the Debtors with the right to interview each candidate in the

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[8] Waheed Affidavit at paras 12, 14-16 [MR, Tab 2, pp. 40-41].
[9] Waheed Affidavit at para 10 [MR, Tab 2, p. 40].
[10] Waheed Affidavit at para 11, 13 [MR, Tab 2, pp. 40-41].
[11] Waheed Affidavit at para 21 [MR, Tab 2, p. 44]; Third Report of the Monitor dated July 26, 2026 at paras 28, 30.

presence of the Monitor, to provide the Monitor with their views, and to object in Court to the CRO ultimately selected.[12]

13. Following the interviews, EDC and the Senior Secured Lenders selected Mr. Aziz (through BlueTree) for the CRO role, and the Monitor promptly advised the Operating Committee of that selection. The Debtors then engaged in discussions with the Monitor, the Senior Secured Lenders and EDC concerning, among other things, fee proposals and the scope of Mr. Aziz's duties as CRO.[13]

14. Having considered the views of the Monitor, EDC and the Senior Secured Lenders, and the terms of the DIP Resolution, the Operating Committee determined it was in the best interests of all stakeholders to seek Mr. Aziz's appointment as CRO.[14]

D. The CRO Engagement Letter and Mandate

15. By email dated July 18, 2026, the Monitor provided the Debtors' counsel with a draft engagement letter setting out proposed terms of BlueTree's engagement. Over the following days, the Debtors, through counsel, worked with the Monitor to review and revise these terms, including to incorporate the views of EDC and the Senior Secured Lenders. Ultimately, the Debtors, EDC and the Senior Secured Lenders were able to reach a compromise concerning the terms of the proposed engagement letter on July 23, 2026 (the "**CRO Engagement Letter**").[15]

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[12] Third Report of the Monitor dated July 26, 2026 at paras 27(b)-(c), 29-31.
[13] Waheed Affidavit at para 22 [MR, Tab 2, p. 44]; Third Report of the Monitor dated July 26, 2026 at paras 37-39.
[14] Waheed Affidavit at para 23 [MR, Tab 2, pp. 44-45].
[15] Waheed Affidavit at paras 24-25 [MR, Tab 2, p. 45].

16. Pursuant to the CRO Engagement Letter, and subject to the approval of this Court, BlueTree will be engaged as an independent contractor to fulfill a mandate (the "**CRO Mandate**") led personally by Mr. Aziz. BlueTree and Mr. Aziz represented and warranted that they have the necessary knowledge, experience and skill to carry out the CRO Mandate, and that they will act honestly, in good faith and in a professional, competent and diligent manner in fulfilling the CRO Mandate.[16]

17. The CRO Mandate, which is attached as Schedule "A" to the CRO Engagement Letter, sets out the CRO's duties in greater detail. As described in the Third Report of the Monitor, those duties include, among other things:[17]

(a) providing input, recommendations and assistance to the Operating Committee and the Debtors, as necessary, in connection with operational decisions that can reasonably be expected to have an impact on the Debtors' restructuring activities and the CCAA proceeding, including with respect to current, new or potential offtake parties, fuel suppliers and other contracts identified by the CRO, and participating in related negotiations and communications;

(b) advising and providing recommendations to the Operating Committee and attending all meetings of the Operating Committee in respect of the Debtors' restructuring activities and the CCAA proceeding, including the disclaimer of agreements, the development of the SISP, the development of a restructuring plan, and any key employee retention plan being proposed;

[16] Waheed Affidavit, Exhibit "E", CRO Engagement Letter [MR, Tab 2, pp. 78-90].
[17] Third Report of the Monitor dated July 26, 2026 at para 61(a)-(j).

(c) assisting the Monitor with the review of any pre-filing transactions, if requested by the Monitor;

(d) assisting with the negotiation of, and executing, the engagement letter for the Transaction Advisor;

(e) coordinating with the Transaction Advisor and others on the resources and information needed to effect the SISP;

(f) managing negotiations and communications involving the Debtors' creditors and other stakeholders with respect to matters arising in connection with the CCAA proceeding, as deemed necessary by the CRO;

(g) assisting the Debtors in the preparation and review of CCAA cash flow modelling and with compliance of the Debtors' reporting obligations, both financial and non-financial, to EDC and the Senior Secured Lenders, including under the EDC DIP Facility and the DIP Resolution;

(h) attending any meetings with the Qikiqtani Inuit Association or Nunavut Tunngavik Inc. and the Debtors, as deemed appropriate by the CRO in consultation with the Monitor and the Debtors;

(i) working with the Monitor to coordinate the foregoing restructuring activities; and

(j) providing such other services as may be needed in respect of the Debtors' restructuring and the CCAA proceeding, as determined by the CRO, in consultation with the Monitor and the Operating Committee.

18. Under the CRO Engagement Letter, BlueTree's compensation consists of: (a) a Work Fee of US$100,000 per month plus applicable taxes commencing on the date of Mr. Aziz's appointment; and (b) a Success Fee payable on closing or implementation of

a Transaction, comprising a base component of US$500,000 plus a Tiered Success Fee (discussed in more detail below) calculated by reference to recoveries for stakeholders.[18]

E. The Proposed Charges

19. Pursuant to the CRO Engagement Letter, the Debtors must seek to ensure that BlueTree's fees, disbursements and costs are secured by two Court-ordered charges:[19]

(a) a charge ranking *pari passu* with the Administration Charge (as defined in the Second ARIO) to secure BlueTree's fees, disbursements and costs under the CRO Engagement Letter, other than the Tiered Success Fee (the "**CRO Fee Charge**"); and

(b) a charge to secure the Tiered Success Fee payable to BlueTree (the "**CRO Tiered Success Fee Charge**"), ranking subordinate to the existing Charges and Encumbrances (as defined in the Second ARIO) securing the indebtedness owing to EDC and the Senior Secured Lenders, but ranking ahead of any other Encumbrances (as defined in the Second ARIO), except the rights of the Canadian Imperial Bank of Commerce or The Bank of Nova Scotia in respect of any Cash Collateral for LC Payment Obligations (or, in the case of The Bank of Nova Scotia, Corporate Card Obligations).

20. The CRO Engagement Letter is terminable by BlueTree or the Debtors on 60 days' prior written notice, with the consent of the Monitor.[20]

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[18] Waheed Affidavit, Exhibit "E", CRO Engagement Letter [MR, Tab 2, pp. 78-90]; Waheed Affidavit at para 26 [MR, Tab 2, pp. 45-46].
[19] Waheed Affidavit, Exhibit "E", CRO Engagement Letter [MR, Tab 2, pp. 78-90]; Waheed Affidavit at para 30 [MR, Tab 2, p. 47].
[20] Waheed Affidavit, Exhibit "E", CRO Engagement Letter [MR, Tab 2, pp. 78-90]; Waheed Affidavit at para 26(d) [MR, Tab 2, pp. 45-46].

21. The terms of the CRO Engagement Letter and the proposed CRO Mandate are described in greater detail in the Third Report of the Monitor.[21]

PART III - THE ISSUES

22. This motion raises two issues:

(a) whether this Court should approve the CRO Engagement Letter and appoint Mr. Aziz (through BlueTree) as CRO of the Debtors; and

(b) whether this Court should approve the CRO Fee Charge and the CRO Tiered Success Fee Charge.

23. For the reasons set out below, both of these questions should be answered in the affirmative.

PART IV - LAW & ARGUMENT

A. This Court Should Approve the CRO Engagement Letter and the Appointment of Mr. Aziz as CRO

24. In considering whether to appoint a CRO, Courts have repeatedly relied on the broad discretionary jurisdiction conferred by section 11 of the CCAA. That provision states that the Court "may, subject to the restrictions set out in this Act, on the application of any person interested in the matter, … make any order that it considers appropriate in the circumstances".[22]

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[21] Third Report of the Monitor dated July 26, 2026 at paras 61-64.
[22] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.

25. As this Court has held, the appointment of a CRO is appropriate where the proposed CRO has expertise that will assist the debtor and the monitor in achieving the objectives of the CCAA.[23]

26. In assessing whether to approve the appointment of a CRO, Courts have considered a number of criteria and factors. These include: (a) the complexity of the debtor's business and of the CCAA proceeding;[24] (b) whether a CRO would assist the existing management team in operating the debtor's business;[25] (c) whether the process for selecting the CRO was fair and appropriate; (d) whether the proposed CRO has industry knowledge, is independent from stakeholders, and has a significant reputation and restructuring expertise; (e) whether the costs associated with the appointment and work of the proposed CRO are reasonable;[26] and (f) whether the Monitor supports the appointment.[27]

27. Applying these criteria and factors, there is no doubt that it is appropriate for the Court to approve the appointment of a CRO in the case at bar:

(a) as noted above, the Debtors' business and this CCAA proceeding are highly complex. The Debtors operate a large-scale remote Arctic mining operation

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[23] *Boreal Capital Partners Ltd et al (Re)*, 2021 ONSC 7802 at paras 31-33; *The Cannabist Company Holdings Inc. et al*, 2026 ONSC 2063 at paras 17-21. See also *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at para 35.
[24] *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at para 43; *The Cannabist Company Holdings Inc. et al*, 2026 ONSC 2063 at paras 19-20.
[25] *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at para 26; *Boreal Capital Partners Ltd et al (Re)*, 2021 ONSC 7802 at paras 31-33.
[26] *Pascan Aviation inc. (Arrangement relatif à)*, 2015 QCCS 4227 at paras 68-69; *Boreal Capital Partners Ltd et al (Re)*, 2021 ONSC 7802 at paras 31-33; *Earth Boring Co. Ltd., Re*, 2025 ONSC 2422 at paras 71-73.
[27] *Pride Group Holdings Inc. et al.*, 2024 ONSC 2026 at para 12(c).

with approximately 1,200 employees and numerous stakeholders, including Inuit communities, regulators and lenders. The CCAA proceeding has also proven to be complex, including because of the contentious DIP dispute and the number of stakeholders with strongly-held views concerning the CCAA proceeding;[28]

(b) the existing management team would benefit from an experienced CRO to engage stakeholders, support the SISP, and free up management capacity to focus on the Debtors' day-to-day operations;[29]

(c) the process for selecting the CRO was fair, transparent and led by the Monitor. Indeed, the Monitor confirms in its Third Report that the CRO selection process it conducted was fair and reasonable;[30]

(d) the proposed CRO is highly experienced, well-qualified, and a suitable choice as CRO, given the scope of the proposed CRO Mandate;[31]

(e) as explained further below, the fees BlueTree proposes to charge are fair, reasonable and appropriate in all of the circumstances; and

(f) as noted above, the Monitor supports the appointment of the CRO and reports that the terms of the CRO Engagement Letter are otherwise reasonable and consistent with comparable engagements.[32]

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[28] Waheed Affidavit at paras 7-8 [MR, Tab 2, p. 39].
[29] Waheed Affidavit at para 11 [MR, Tab 2, p. 40].
[30] Third Report of the Monitor dated July 26, 2026 at para 13(a).
[31] Third Report of the Monitor dated July 26, 2026 at paras 13(b)-(d).
[32] Third Report of the Monitor dated July 26, 2026 at para 13(e)-(f).

28. Mr. Aziz, through BlueTree, has acted as CRO in numerous CCAA proceedings, including *Walter Energy Canada Holdings, Inc.* (2015-16)[33] and *JTI-Macdonald Corp.* (2019).[34] His appointment has been approved by Canadian courts on each occasion.

29. The Debtors are satisfied that Mr. Aziz's experience, expertise and successful track record as a CRO across a variety of complex businesses and mandates will provide an important perspective that complements the Operating Committee's expertise. The Monitor's Third Report further confirms that Mr. Aziz has experience interfacing with governments and Indigenous groups on previous CRO mandates, which will be valuable in light of the Debtors' ongoing engagement with the Qikiqtani Inuit Association and other Inuit organizations.[35] No issue has been raised concerning Mr. Aziz's independence. He is not an insider of the Debtors' management or Operating Committee, and will be able to carry out the CRO Mandate independently. The Debtors look forward to working with Mr. Aziz collaboratively for the benefit of all stakeholders.[36]

B. <u>This Court Should Approve the CRO Fee Charge and the CRO Tiered Success Fee Charge</u>

30. Section 11.52(1) of the *CCAA* provides that, on notice to affected secured creditors, "the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge—in an amount that the court considers appropriate—in respect of the fees and expenses of … any financial, legal or other

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[33] *Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107 at paras 33-35, 48.
[34] *JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at para 19.
[35] Third Report of the Monitor dated July 26, 2026 at para 61(h).
[36] Waheed Affidavit at paras 10, 21-23, 29 [MR, Tab 2, pp. 40, 44-45, 47].

experts engaged by the company for the purpose of proceedings under this Act". Subsection 11.52(2) permits the Court to order that such a charge rank in priority over the claims of any secured creditor.[37]

31. The Supreme Court of Canada has confirmed the breadth of the remedial jurisdiction to fashion appropriate charges in CCAA proceedings.[38] Moreover, this Court held that "[i]t is both commonplace and essential to order a super-priority in respect of charges securing professional fees and disbursements … in restructurings under the CCAA".[39] As observed in *Re Earth Boring Co. Ltd.,* "for a CCAA restructuring to succeed" it is "essential 'to order a super-priority in respect of charges securing professional fees and disbursements'".[40]

32. In *Re Canwest Publishing Inc.,* this Court enumerated the following non-exhaustive factors to guide the Court in determining whether to approve a charge under section 11.52 of the CCAA:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears fair and reasonable;

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[37] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.52(1)-(2).
[38] *Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 SCR 571 at para 70.
[39] *US Steel Canada Inc. (Re)*, 2014 ONSC 6145 at para 22.
[40] *Earth Boring Co. Ltd., Re*, 2025 ONSC 2422 at paras 55-61, citing *US Steel Canada Inc. (Re)*, 2014 ONSC 6145 at paras 20, 22.

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the Monitor.[41]

33. In the case at bar, these factors weigh in favour of granting both the CRO Fee Charge and the CRO Tiered Success Fee Charge.

34. ***Size and complexity of the business***. As stated above, the Debtors operate a large-scale, remote Arctic mining operation with approximately 1,200 employees. The business is subject to stringent regulatory requirements and the Debtors must navigate complex stakeholder relationships.[42]

35. ***Role of the beneficiary of the charges***. This Court recognized in *Re Victorian Order of Nurses for Canada* that CROs and other professionals "played and will continue to play a necessary and integral role in the restructuring activities".[43] The same is true in the case at bar. BlueTree's role is necessary and integral to the Debtors' restructuring. As stated above, Mr. Aziz will engage with stakeholders, report to the Operating Committee and the Monitor, and support the SISP, all in accordance with the terms of the proposed CRO Mandate.[44]

36. ***No unwarranted duplication***. The proposed CRO Mandate has been carefully prepared and is distinct from the Monitor's statutory role, from the role of the Operating Committee and from management's existing operational responsibilities. As set out in the

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[41] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 54.
[42] Waheed Affidavit at paras 7-8 [MR, Tab 2, p. 39].
[43] *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 at paras 27, 29-33.
[44] Waheed Affidavit at paras 11, 13, 26-27 [MR, Tab 2, pp. 40-41, 45-46].

proposed CRO Mandate, the CRO will focus on stakeholder engagement, the *CCAA* proceeding and reporting, while existing management remains focused on day-to-day mining operations.[45] There is no unwarranted duplication of roles.

37. ***Quantum is fair and reasonable.*** The quantum of the CRO Fee Charge and the CRO Tiered Success Fee Charge is fair, reasonable, and appropriately structured. Under the CRO Engagement Letter, BlueTree is entitled to the following compensation, secured by the proposed charges, as applicable:[46]

(a) *Secured by CRO Fee Charge:* a monthly Work Fee of US$100,000 plus applicable taxes, payable monthly in advance commencing on the date on which Mr. Aziz is appointed CRO;

(b) *Secured by CRO Fee Charge:* a base Success Fee of US$500,000, payable in any circumstance on closing and implementation of a Transaction; and

(c) *Secured by CRO Tiered Success Fee Charge:* a Tiered Success Fee of: (i) US$1,000,000 if all indebtedness, liabilities and obligations under the Senior Secured Debt Documents are paid in full, payable in cash immediately on closing of a Transaction; (ii) 0.5% of the next US$250 million of Proceeds; (iii) 0.25% of the next US$500 million of Proceeds; and (iv) 0.125% of any Proceeds beyond those thresholds.

38. The US$100,000 per month Work Fee is consistent with the rate previously approved by Courts for Mr. Aziz's CRO engagements.[47] The proposed monthly Work Fee

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[45] Waheed Affidavit at paras 11, 26-27 [MR, Tab 2, pp. 40, 45-46].
[46] Waheed Affidavit, Exhibit "E", CRO Engagement Letter, "Fees and Expenses" section [MR, Tab 2, pp. 79-81].
[47] *Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107 at para 38.

is also consistent with market rates accepted by Courts for a CRO of Mr. Aziz's seniority and experience.[48] In addition, the Monitor's Third Report confirms that the Work Fee is commercially reasonable in light of the size and complexity of the Debtors' business.[49]

39. The Success Fee and Tiered Success Fee structure aligns BlueTree's incentives with those of stakeholders, since the Success Fee is payable only upon completion of a Transaction and the Tiered Success Fee is tied to the level of recovery for stakeholders. Notably, the Tiered Success Fee is only payable if all indebtedness under the Senior Secured Debt Documents is paid in full.[50]

40. ***Position of secured creditors***. All of the secured creditors impacted by the proposed charges were served with notice of this motion.[51] Pursuant to the terms of the DIP Resolution, EDC and the Senior Secured Lenders played a key role in the CRO selection process. They support the terms of the CRO Engagement Letter, the CRO Mandate and the proposed charges.[52] As the Court observed in *Just Energy Group Inc.,* stakeholder support weighs in favour of approving proposed charges.[53]

41. ***Position of the Monitor***. As explained in the Third Report of the Monitor, the Monitor participated throughout the CRO selection process, assisting in the finalization of the terms of the CRO Engagement Letter, and engaged with EDC and the Senior Secured

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[48] *Re: Mobilicity Group*, 2013 ONSC 6167 at para 48; *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 at para 28; *Re Earth Boring Co. Ltd.*, 2025 ONSC 2422 at paras 71-72.
[49] Third Report of the Monitor dated July 26, 2026 at para 13(e)-(f).
[50] Waheed Affidavit, Exhibit "E", CRO Engagement Letter, "Fees and Expenses" section [MR, Tab 2, pp. 79-81].
[51] Waheed Affidavit at para 31 [MR, Tab 2, p. 48].
[52] Waheed Affidavit at paras 12, 14-16, 22-23 [MR, Tab 2, pp. 40-42, 44-45].
[53] *Just Energy Group Inc., Re*, 2021 ONSC 1793 at paras 107-113.

Lenders on the CRO Mandate.[54] The Monitor supports the relief sought on this motion, including the proposed charges.

42. For all of these reasons, the Debtors submit that both the CRO Fee Charge and the CRO Tiered Success Fee Charge meet the test under section 11.52 of the *CCAA* and should be approved, consistent with the approach taken in *Laurentian*,[55] *Pride Group*,[56] *Earth Boring*,[57] and *Cannabist*.[58]

PART V - ORDER SOUGHT

43. For all of the reasons set out above, the Applicants respectfully request that this Honourable Court grant an Order:

(a) approving the engagement of BlueTree Advisors Inc. to provide the services of William E. Aziz as Chief Restructuring Officer to the Debtors on the terms substantially in the form of the CRO Engagement Letter;

(b) granting BlueTree a charge ranking *pari passu* with the Administration Charge to secure the fees, disbursements and costs owing to BlueTree under the CRO Engagement Letter, other than the Tiered Success Fee payable to BlueTree; and

(c) granting BlueTree a charge to secure the Tiered Success Fee payable to BlueTree, ranking subordinate to the existing Charges and Encumbrances (as defined in the Second ARIO) securing the indebtedness owing to EDC and the Senior Secured Lenders, but ranking ahead of any other

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[54] Waheed Affidavit at paras 10, 21-22, 24-25, 27 [MR, Tab 2, pp. 40, 44-46].
[55] *Laurentian University of Sudbury*, 2021 ONSC 1098 at paras 67-71.
[56] *Pride Group Holdings Inc. et al.*, 2024 ONSC 2026 at paras 35-45.
[57] *Earth Boring Co. Ltd., Re*, 2025 ONSC 2422 at paras 55-61.
[58] *The Cannabist Company Holdings Inc. et al*, 2026 ONSC 2063 at paras 25-26.

Encumbrances (as defined in the Second ARIO), except the rights of the Canadian Imperial Bank of Commerce or The Bank of Nova Scotia in respect of any Cash Collateral for LC Payment Obligations (or, in the case of The Bank of Nova Scotia, Corporate Card Obligations).

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

DAVIES WARD PHILLIPS & VINEBERG LLP

SCHEDULE "A"

List of Authorities

Caselaw

1. *Boreal Capital Partners Ltd et al (Re)*, 2021 ONSC 7802
2. *Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 SCR 571
3. *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222
4. *Earth Boring Co. Ltd., Re*, 2025 ONSC 2422
5. *JTI-Macdonald Corp., Re*, 2019 ONSC 1625
6. *Just Energy Group Inc., Re*, 2021 ONSC 1793
7. *Laurentian University of Sudbury*, 2021 ONSC 1098
8. *Pascan Aviation inc. (Arrangement relatif à)*, 2015 QCCS 4227
9. *Pride Group Holdings Inc. et al.*, 2024 ONSC 2026
10. *The Cannabist Company Holdings Inc. et al*, 2026 ONSC 2063
11. *US Steel Canada Inc. (Re)*, 2014 ONSC 6145
12. *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371
13. *Walter Energy Canada Holdings, Inc (Re)*, 2016 BCSC 107

I certify that I am satisfied as to the authenticity 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)).

July 28, 2019
Date

Signature

SCHEDULE “B”

Legislation

***Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11 & s. 11.52(1)-(2).**

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.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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

Court File No. CL-26-00000219-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPLICANTS / DEBTORS
(returnable July 29, 2026)

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