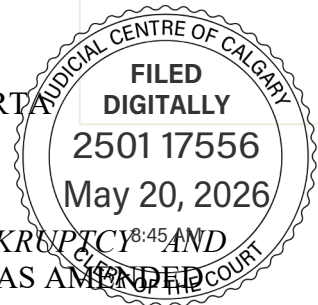


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COURT FILE NUMBER 2501-17556

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF EXRO TECHNOLOGIES INC., DPM TECHNOLOGIES INC., AND CELLEX ENERGY INC.

DOCUMENT **BENCH BRIEF OF LAW**

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File No. G10072963

**APPLICATION BEFORE THE HONOURABLE JUSTICE DUNLOP  
MAY 29, 2026 AT 2:00 PM ON THE EDMONTON COMMERCIAL LIST**

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**PART 1      INTRODUCTION**

1. The applicant, FTI Consulting Canada Inc. (“**FTI**”), as receiver and manager (the “**Receiver**”) over the assets, undertaking and property (the “**Property**”) of Exro Technologies Inc. (“**Exro Canada**”), DPM Technologies Inc. (“**DPM**”), and Cellex Energy Inc. (“**Cellex**” and together with Exro Canada and DPM, collectively, the “**Debtors**” and each individually, a “**Debtor**”) applies for an Order (the “**Discharge Order**”):

- (i) declaring that the within Application is properly returnable and that service of the Application on the service list established in these proceedings is deemed good and sufficient;
- (ii) approving the Receiver’s and its legal counsel Gowling WLG (Canada) LLP’s (“**Gowling**”) professional fees, costs and disbursements for the period of November 14, 2025 up to and including May 15, 2026, as set out in the Second Report of the Receiver dated May 19, 2026 (the “**Second Report**”) and the Affidavit of Brett Wilson, sworn May 19, 2026 (“**Fee Affidavit**”);
- (iii) approving the estimated fees to complete the receivership (“**Estimated Completion Fees**”), including the Receiver’s and Gowling’s estimated fees and disbursements without the necessity of a formal assessment of accounts, as defined and set out in the Second Report, for incidental duties as may be required to complete the administration of the receivership herein;
- (iv) approving the Receiver’s and its legal counsel’s activities as set out in the Second Report;
- (v) approving the discharge of the Receiver as receiver and manager over the assets, undertaking and property of the Debtors;
- (vi) authorizing and directing the continued maintenance of the corporate books, records and documents of the Debtors (the “**Documents**”) by the Receiver;

- (b) The Receiver further applies for advice and direction as to whether the Receiver should provide any Documents to any person pending the Receiver's discharge, unless ordered by the Court;
- (c) Such other relief as this Honourable Court deems appropriate.

## **PART 2      FACTS**

2. The facts are set out in detail in the Second Report and are only summarized here as necessary.<sup>1</sup> Unless otherwise stated, capitalized terms used in this Bench Brief are defined in the Second Report.

### **Background**

3. The Debtors are part of an international group of clean technology companies that developed new-generation power control electronics technologies that expand the capabilities of electric motors and batteries and supports stationary energy storage for commercial and industrial applications.<sup>2</sup>
4. On November 14, 2025, FTI was appointed as Receiver of all of the current and future assets, undertakings and properties of the Debtors pursuant to a Consent Receivership Order of the Honourable Justice K.G. Nielsen of the Court of King's Bench of Alberta (the "**Receivership Order**").<sup>3</sup>
5. The Receivership Order authorized the Receiver to market any or all of the Debtors' Property, including advertising and soliciting offers in respect of the Property.<sup>4</sup> Accordingly, in an effort to maximize recoveries and minimize monthly carrying costs for the benefit of stakeholders, the Receiver launched a sale solicitation process on December 5, 2025 to solicit offers to purchase its right, title and interest in the Property (the "**SSP**"),

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<sup>1</sup> Second Report of Fti Consulting Canada Inc., In Its Capacity as Court Appointed Receiver and Manager Of Exro Technologies Inc., Dpm Technologies Inc., And Cellex Energy Inc [Second Report].

<sup>2</sup> Second Report at para 15.

<sup>3</sup> Second Report, at para 1.

<sup>4</sup> Second Report at para 22.

all as summarized in detail in the Receiver's First Report to the Court dated February 2, 2026 (the "**First Report**").<sup>5</sup>

6. On February 9, 2026, this Honourable Court granted an order, among other things, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and NBIMC Quantitative Strategies Fund – Class N as credit bidding lender, and 773948 N.B. Inc. and 773951 N.B. Inc. as purchasers.<sup>6</sup> The Receiver determined the Transaction provided for the highest and overall best recovery to the Debtors' creditors and stakeholders and, from an economic standpoint, was the best available alternative in the circumstances.
7. The Transaction has been completed, the funds remaining in the Debtors' estates are nominal and the Receiver's mandate is now substantially complete.<sup>7</sup>

#### *The Activities of the Receiver*

8. The Second Report sets out a description of the activities which have been undertaken by the Receiver and its legal counsel since the filing of the Receiver's First Report dated February 2, 2026.<sup>8</sup> The prior activities of the Receiver in the First Report were approved by the Court on February 18, 2026, by way of order of Justice Feasby.
9. All actions, activities and conduct of the Receiver and its legal counsel have been undertaken in accordance with the Receivership Order and have been performed by the Receiver in good faith, prudently, not arbitrarily, in a commercially reasonable manner and in the best interest of the Debtors' estates and their stakeholders.

#### *Fees and disbursements of the Receiver and its counsel*

10. The total fees of the Receiver since the commencement of the receivership proceeding to May 15, 2026, total \$364,000, (comprised of fees of \$365,000, of disbursements of

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<sup>5</sup> Second Report, at para 22; First Report of the Receiver, dated February 2, 2026.

<sup>6</sup> Second Report at paras 23-24.

<sup>7</sup> Second Report at paras 25 and 29(b).

<sup>8</sup> Second Report at para 21.

\$15,000, and GST of \$19,000, less a retainer of \$34,000).<sup>9</sup>

11. The total fees and disbursements of Gowling since the commencement of the receivership proceeding to May 15, 2026, total \$201,000, (comprised of fees of \$176,000, of disbursements of \$2,000, and GST of \$23,000).<sup>10</sup>
12. In addition, the Receiver requests that the Court approve the Estimated Completion Fees to cover the Receiver's and Gowling's further fees and disbursements and certain ancillary expenses incurred or to be incurred to complete the administration of the receivership.<sup>11</sup>

Litigation, Leave for Derivative Action, Mediation Order and Interrogatories

13. At the initial application for the Receivership Order, representative counsel to the Class Members (the "**Class Counsel**") sought language in the Receivership Order providing leave to commence or continue litigation matters where policies of insurance were maintained by the Debtors.<sup>12</sup> The Court granted the Receivership Order without the inclusion of the requested language.<sup>13</sup>
14. Following the granting of the Receivership Order, Class Counsel commenced communications with the Receiver to seek a lifting of the stay of proceedings as against Exro under *Crosier v. Exro Technologies et al.* Action No. 2401-16899 (the "**Alberta Class Action**").<sup>14</sup> Thereafter in January, 2026, Stikeman Elliot LLP ("**Stikeman**") previously representing Exro (prior to the Receivership Proceedings) and Exro's directors in the Alberta Class Action, and Torys LLP ("**Torys**") as counsel for the insurance underwriters insuring National Bank Financial ("**NBF**") also advised the Receiver that their respective clients supported lifting the stay of proceedings with respect to Exro in the Alberta Class Action.<sup>15</sup>

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<sup>9</sup> Second Report at para 51,

<sup>10</sup> Second Report at para 51.

<sup>11</sup> Second Report at paras 6 and 55.

<sup>12</sup> Second Report at para 29.

<sup>13</sup> Second Report at para 29.

<sup>14</sup> Second Report at para 30.

<sup>15</sup> Second Report at para 30.

15. The Receiver took no position regarding the lifting of the stay in the Alberta Class Action for Exro other than requiring that adequate protections be included in a form of court order which would be sought by Class Counsel in a lift stay application.<sup>16</sup> To assist the parties, the Receiver and its counsel in good faith prepared and revised a draft lift-stay order, circulated it to Class Counsel, Stikeman and Torys, and invited them to confer on any further revisions. The draft order contemplated that Exro's documents would be provide to Stikeman.<sup>17</sup> Although Class Counsel had initially requested that the stay be lifted, they have not since taken steps to advance the application.<sup>18</sup> The Receiver has nevertheless incurred time and costs in preparing the draft order to assist the parties.
16. Class Counsel has filed an originating petition in British Columbia on April 2, 2026, for leave to commence a derivative action ("**Derivative Action Petition**") on behalf of Exro against NBF.<sup>19</sup> The Receiver has advised Class Counsel of the stay of proceedings and that they do not have the Receiver's consent to have filed the application.<sup>20</sup> Class Counsel has since amended its leave petition to add Vestcor as a party.<sup>21</sup>
17. Class Counsel has filed an application seeking a form of mediation order within the Receivership Proceedings (the "**Mediation Order**").<sup>22</sup> The Receiver has advised Class Counsel of the stay of proceedings and that they do not have the Receiver's consent to have filed the application as it directly implicates the Receiver and Exro.<sup>23</sup>
18. "Mediation" under the Mediation Order is defined as a mediation of numerous parties who have asserted a claim against Exro, or against whom Exro has or seeks to assert claims to participate in mediation.<sup>24</sup> The Mediation Order references a minimum of 15 entities, not including what could potentially be numerous unnamed insurers and other unnamed persons.<sup>25</sup> The Mediation Order intends to cover the Alberta Class Action where Exro

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<sup>16</sup> Second Report at para 31.

<sup>17</sup> Second Report at paras 31-32.

<sup>18</sup> Second Report at para 31-32.

<sup>19</sup> Second Report at para 34.

<sup>20</sup> Second Report at para 34.

<sup>21</sup> Second Report at para 34.

<sup>22</sup> Second Report at para 35.

<sup>23</sup> Second Report at para 39(a).

<sup>24</sup> Second Report at para 36.

<sup>25</sup> Second Report at para 36.

Canada is named as a defendant, a B.C. Oppression Claim where Exro is not named as a defendant, the Derivative Action, and the court Action in which the Receivership Order exists under.<sup>26</sup>

19. The Receiver understands that discoveries have not occurred in the Alberta and British Columbia Class Proceedings and they have not been certified.<sup>27</sup> Only an originating petition has been filed in the British Columbia Supreme Court for the Derivative Action.<sup>28</sup>
20. The Mediation Order application seeks various heads of relief that directly effect the Receiver, including:
  - (a) mandating that the Receiver participate as a party to the mediation;
  - (b) requiring that the Receivership Proceedings continue indefinitely as the Mediation Applicants intend to use the Receivership Proceedings as the legal forum for one or more mediations;
  - (c) requiring that the Receiver appoint within 30 days an “officer of the Court” to act as a neutral third-party mediator in relation to the mediation;
  - (d) requiring that the Receiver produce all documents in the data room established for the SSP for the sale of Exro Canada’s assets;
  - (e) requiring that the Receiver be paid its fees and disbursements from insurance policies which name Exro Canada and/or Exro Canada’s directors as named insureds.<sup>29</sup>

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<sup>26</sup> Second Report at para 36.

<sup>27</sup> Second Report at para 37.

<sup>28</sup> Second Report at para 37.

<sup>29</sup> Second Report at para 38.

21. The Receiver opposes the granting of the Mediation Order and is not agreeable to participate in mediation for the reasons described in detailed in the Second Report and summarized in this brief.<sup>30</sup>
22. The Receiver has been issued interrogatories by Class Counsel within the Receivership. The Receiver is not a party to any litigation as against any of Class Counsel's clients.<sup>31</sup> The Receiver has responded to the interrogatories in the Second Report and this Bench Brief.

### Discharge and Release

23. The Receiver is seeking an order discharging FTI as Receiver of the Debtors. All matters pertaining to the administration of the receivership are substantially completed, except for certain ancillary administrative tasks pending the Receiver's discharge.<sup>32</sup>

### **PART 3**      **ISSUES**

24. The issues to be determined by this Honourable Court are as follows:
  - (a) Should the Receiver's activities as set out in the Second Report, be approved?
  - (b) Should the Receivers' professional fees and those fees of its legal counsel, and Estimated Completion Fees be approved?
  - (c) Should the application for the Mediation Order be dismissed? and
  - (d) Should an order approving the discharge of the Receiver as receiver and manager over the assets, undertaking and property of the Debtors and ancillary relief be granted?

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<sup>30</sup> Second Report at para 39.

<sup>31</sup> Second Report at para 41.

<sup>32</sup> Second Report at para 60.

**PART 4      LAW AND ARGUMENT**

**A.      The Court should approve the Second Report and the Receiver’s activities described therein**

25.      Courts have held that there are good policy and practical reasons for approving a court officer’s reports and activities, including that Court approval:

- (a)      allows the court officer to move forward with the next steps in the proceedings;
- (b)      brings the court officer’s activities before the Court;
- (c)      allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;
- (d)      enables the Court to satisfy itself that the court officer’s activities have been conducted in a prudent and diligent manner;
- (e)      provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f)      protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.<sup>33</sup>

26.      The same observations apply to the activities of a Court-appointed receiver because the activities of any court officer “can and should be considered by the Court as against the mandate, powers and authority of that officer.”<sup>34</sup>

27.      The authority for court approval of the Receiver’s activities arises from two sources. First, section 23 of the Receivership Order provides: “the Receiver shall pass its accounts from time to time...”.<sup>35</sup> Passing of accounts allows the court to ensure the Receiver’s activities, fees and disbursements are reasonable and fair. “Time to time” has been interpreted as

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<sup>33</sup> [Target Canada Co, Re, 2015 ONSC 7574](#) at para 12 [Tab 1].

<sup>34</sup> [Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400](#) at para 65, 66, and 67 [Tab 2].

<sup>35</sup> Receivership Order at para 23.

periodically throughout a receivership. Second, the court has the inherent jurisdiction to approve the activities of a court-appointed receiver. The receiver must meet the objective test of showing it has acted reasonably, prudently and not arbitrarily in order for court approval to be granted.<sup>36</sup>

28. The activities of the Receiver described in the Second Report, which consist primarily of closing the Transaction and moving forward with its discharge, were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were, in each case, performed prudently and not arbitrarily, and in the best interest of the Debtors' stakeholders. Further, the Second Report was served on the service list maintained in these proceedings and posted on the Receiver's website.
29. The Receiver therefore respectfully submit that the Second Report and the activities described therein should be approved.

**B. The Court should approve the fees and disbursements of the Receiver and its counsel**

30. The Receiver is seeking approval of the professional fees and disbursements incurred by it and its legal counsel, in addition to the Estimated Completion Fees as described in the Second Report.<sup>37</sup>
31. The Receivership Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges.<sup>38</sup>
32. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities

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<sup>36</sup> [Yukon \(Government of\) v BYG Natural Resources Inc, 2025 YKSC 59](#) at paras [20-21](#). [Tab 3].

<sup>37</sup> Second Report at para 6.

<sup>38</sup> Receivership Order at para 18.

assumed, (h) the results of the receiver's efforts and (i) the cost of comparable services when performed in a prudent and economical manner.<sup>39</sup>

33. In applying the above factors, it is not necessary for the court to go through the supporting documentation for the fees "line by line" to determine what the appropriate fees are. The value provided should pre-dominate the consideration of what a fair and reasonable amount is appropriate.<sup>40</sup>
34. The fees and disbursements are fair and reasonable and have been properly incurred.<sup>41</sup> Since the granting of the Receivership Order, the Receiver, with the assistance of its counsel, has acted in good faith and with due diligence.<sup>42</sup>
35. The Receiver is of the view that the professional fees were charged by Gowling have been necessarily incurred and that the hours and rates charges are fair and reasonable in the circumstances.<sup>43</sup>
36. The Receiver is also of the view that the Estimated Completion Fees are reasonable and appropriate in the circumstances as it provides for the estimated fees incurred or to be incurred by the Receiver and Gowling and any ancillary costs to complete the administration of the receivership.<sup>44</sup>
37. The Receiver has sworn and filed a fee affidavit in accordance with more recent practice directives.<sup>45</sup>
38. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of the Receiver and its counsel and the Estimated Completion Fees in the circumstances.

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<sup>39</sup> [Bank of Nova Scotia v Diemer, 2014 ONCA 851](#) at paras 33, 44-45 [Tab 4].

<sup>40</sup> [Re Nortel Networks Corporation et al, 2017 ONSC 673](#) at para 21 [Tab 5].

<sup>41</sup> Second Report at para 54.

<sup>42</sup> Second Report at para 54.

<sup>43</sup> Second Report at para 54.

<sup>44</sup> Second Report at paras 6 and 55.

<sup>45</sup> Affidavit of Brett Wilson, sworn May 19, 2026; Second Report at paras 52-53.

**C. The Court should dismiss the Mediation Order application**

39. Class Counsel has filed an application seeking a form of mediation order within the Receivership Proceedings, as described in detail in the Second Report.<sup>46</sup> The Receiver opposes the granting of the Mediation Order.<sup>47</sup>
40. Most importantly, the Receivership Order grants a stay of proceedings as against the Debtors and the Receiver which provides that no proceedings may be commenced against or in respect of the Debtors, the Receiver, or the Property, and no rights and remedies may be pursued against or in respect of the Debtors or the Property, without the consent of the Receiver or leave of the Court.<sup>48</sup> The application for the Mediation Order is as against the Receiver and Exro as parties obligated to participate.<sup>49</sup> Filing the Application without the consent of the Receiver or leave of the Court is in direct contravention of the Receivership Order.<sup>50</sup> The stay has not been lifted and the Receiver advised Class Counsel of its position that it did not consent to the filing of their application.<sup>51</sup>
41. The test for lifting a stay imposed under a receivership order “focuses on the totality of circumstances and the relative prejudice to the parties involved in the receivership”.<sup>52</sup> The onus is on the applicant to prove that the stay should be lifted. In applying that test, the Court may draw guidance from section 69.4 of the *BIA*, which requires the applicant to establish that it is likely to be materially prejudiced by the continuation of the stay, or that it is otherwise equitable to lift the stay.<sup>53</sup> Relief from a stay is not granted as a matter of course; there must be sound reasons to justify lifting the stay.<sup>54</sup> The applicant, in order to

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<sup>46</sup> Second Report at para 35.

<sup>47</sup> Second Report at para 39(a).

<sup>48</sup> Receivership Order at paras 7 to 9.

<sup>49</sup> Second Report at para 39(c).

<sup>50</sup> Second Report at para 39(c).

<sup>51</sup> Second Report at para 39(a).

<sup>52</sup> [Alignvest Private Debt Ltd. v. Surefire Industries Ltd., 2015 ABQB 148 \[Alignvest\]](#) at para 40 [Tab 6].

<sup>53</sup> [Alignvest](#) at para 41. [Tab 6]; citing [Ma v Toronto-Dominion Bank, 2001 CanLII 24076 \(ON CA\) \[Ma, Re\]; Bankruptcy and Insolvency Act, RSC 1985, c B-3, Part -1, s 38](#) at s 69.4 [Tab 15].

<sup>54</sup> [Alignvest](#) at para 43 [Tab 6]; citing [Ma, Re](#) at para 3.

show material prejudice, must show that it would be treated differently, or some way unfairly, or would suffer worse harm than other creditors if the stay remains in place.<sup>55</sup>

42. Granting the Mediation Order would impose material prejudice to the Receiver and the Debtors' estates, as, among other things, the Receiver would need to become familiarized with significant, complex, expensive litigation that involves a multitude of parties and would be incredibly costly to the estate, at a stage where the receivership proceeding has run its course, there are no remaining estate assets to administer and nominal funds remaining in the estates.<sup>56</sup> On the other hand, Class Counsel will not be materially prejudiced if the Mediation Order is not granted.<sup>57</sup> The litigation will still be available and other more appropriate avenues of mediation remain outside of the Receivership Proceedings.<sup>58</sup>
43. The Mediation Order imposes obligations on the Receiver without an application having been filed to lift the stay of proceedings as against the Receiver.<sup>59</sup> These obligations include:
- a) requiring that the Receiver produce all documents in the data room established in the SSP for the sale of Exro's assets.<sup>60</sup> Such documents were only available to parties who entered into non-disclosure agreements subject to confidentiality provisions;
  - b) requiring that the Receiver appoint within 30 days an "officer of the Court" to act as a neutral third-party mediator.<sup>61</sup> It's unclear to the Receiver what is meant by an officer of the Court in the form of Order. Furthermore, Receiver's being required to appoint third party mediators would create further costs to the Debtors' estates and not provide an economic benefit to them;

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<sup>55</sup> *Alignvest* at para 43 [Tab 6]; citing *Golden Griddle Corp. v Fort Erie Truck & Travel Plaza Inc.* 2005 CanLII 81263 (ON SC) at paras 18-19.

<sup>56</sup> Second Report at para 39(g)-(h).

<sup>57</sup> Second Report at para 39(k).

<sup>58</sup> Second Report at para 39(i)-(k).

<sup>59</sup> Second Report at par 39(n).

<sup>60</sup> Second Report at para 39(n).

<sup>61</sup> Second Report at para 39(o).

- c) requiring that the Receiver be paid from proceeds of insurance policies of Exro Canada and their directors. Such assurance of payment is speculative and provides no certainty the Receiver will be paid its fees and disbursements.<sup>62</sup> The Mediating Applicants are essentially seeking that the Receiver continue indefinitely on a contingency basis which is not commercially appropriate or reasonable;<sup>63</sup>
44. The Receiver has made good faith efforts to assist the relevant parties to lift the stay as against Exro in the Alberta Class Action, as an example, so that any insurer of Exro can proceed with defending Exro.<sup>64</sup> Notwithstanding this, and curiously, no lift stay application has been sought for any of the litigation commenced by Class Counsel.<sup>65</sup> It appears that Class Counsel has made a strategic decision to proceed forward with opposing the Receiver's discharge, seek the Mediation Order and not seek to lift the stay with respect to the Alberta Class Action, despite their prior representations to the Court and prior cooperation of the Receiver to do so.
45. Class Counsel in their application for the Mediation Order has relied on several cases which are not applicable in these circumstances. First, in *Peace River Hydro Partners v Petrowest Corp.* ("**Petrowest**")<sup>66</sup>, the Supreme Court of Canada dealt with the tension between the right of parties to rely upon arbitration clauses to resolve their disputes and the single proceeding insolvency model in receivership. Class Counsel has submitted in its Application for mediation that the case stands for the principle that section 183(1) of the *BIA* confers broad authority to force voluntary mediation of litigation within a receivership proceeding. However, that is not what the case stands for. *Petrowest* stands for the principle that a court-appointed receiver of an insolvent company, if it meets a two-part test, can bypass valid contractual arbitration clauses and litigate disputes in court if enforcing arbitration would compromise the orderly and efficient resolution of the receivership proceedings. The case does not stand for the principle that section 183(1) of the *BIA* and the principle of the single insolvency proceeding model should be used as a means to impose voluntary

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<sup>62</sup> Second Report at para 39(p).

<sup>63</sup> Second Report at para 39(p).

<sup>64</sup> Second Report at para 39(j).

<sup>65</sup> Second Report at para 39(j).

<sup>66</sup> [Peace River Hydro Partners v Petrowest Corp., 2022 SCC 41 \[Tab 7\]](#).

mediation of complex, costly, litigation claims at their infancy on a Receiver and a receivership proceedings, and prevent a Receiver's discharge when the administration of the receivership has almost completed.

46. Second, in *1057863 B.C. Ltd. (Re)*, 2022 BCSC 759 ("**105 BC**"), the British Columbia Supreme Court confirmed its jurisdiction to grant a mandatory mediation order pursuant to section 11 of the *CCAA*, which confers broad discretionary power on a supervising court to make any order it considers appropriate in the circumstances.<sup>67</sup> That case arose under the *CCAA*, where the court's broad section 11 jurisdiction was exercised in an ongoing restructuring to facilitate a settlement with an important stakeholder that was found to be critical to the petitioners' plan to restart its pulp mill and emerge as a going concern. The debtor in that case in its restructuring sought mediation (not the creditor) against the Province of Nova Scotia with the support of the Monitor, the primary secured creditor and DIP Lender. In that case, the court found that the mediation had a real potential to advance the *CCAA*'s remedial objectives and could materially enhance the prospects of a successful restructuring.
47. These Receivership Proceedings are not *CCAA* proceedings, and the facts of this case are not the facts in *105 BC*. The proposed mediation Class Counsel has sought is not a step necessary to preserve going-concern value of a debtor, fund operations, or produce a plan for creditors like the debtor was attempting to accomplish in *105 BC*. The Receivership Proceedings are complete: the Debtors' assets have been sold as previously approved by this Honourable Court and the available funds in the estate are now almost exhausted. The proposed Mediation Order is inconsistent with the mandate of the Receiver in these proceedings and would impose significant and costly obligations upon the Receiver and the Debtors' estates.<sup>68</sup>
48. Third, Class Counsel relies upon the decision of the Supreme Court of Canada in *9354-9186 Québec inc. v. Callidus Capital Corp.*<sup>69</sup> The case is also not applicable. The decision focused on the central role a supervising judge plays in *CCAA* proceedings. The two issues

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<sup>67</sup> [1057863 B.C. Ltd. \(Re\), 2022 BCSC 759](#) [Tab 8].

<sup>68</sup> Second Report at para 39(d).

<sup>69</sup> [9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10](#) [Tab 9].

considered were: (a) whether a supervising judge has the discretion, under section 11 of the *CCAA*, to bar a creditor from voting on a plan of arrangement where the court determines that the creditor is acting for an improper purpose; and (b) whether a supervising judge can approve third-party litigation funding as interim financing under section 11.2 of the *CCAA*.<sup>2</sup> The Supreme Court of Canada's answer to both questions was yes.

49. Although judicial authorities provide that the *CCAA* and *BIA* are often sought to be read harmoniously, the discretion Class Counsel is seeking that this Honourable Court exercise is to force complex, expensive mediation upon the Receiver (including where Exro's estate is not even a part to other litigation sought to be included), which is not appropriate or commercially reasonable given the circumstances. It is submitted that the facts asserted by Class Counsel would stretch even section 11 of the *CCAA* beyond its limits as such an order would not be appropriate in the circumstances.
50. Furthermore, it's unclear what jurisdiction the Court would have in the Receivership Proceeding to order mediation of any of the claims in which Exro is not a party.<sup>70</sup> Specifically, the B.C. Oppression Claim does not include Exro Canada as a party and the applicants to the Derivative Actions have not been granted leave to commence those claims on behalf of Exro Canada.<sup>71</sup> Accordingly, it is unclear to the Receiver how this Honourable Court could include those proceedings in a court ordered mediation within the context of the Receivership Proceedings.<sup>72</sup> It appears that the only proceeding that this Court could take jurisdiction upon in the Receivership Proceedings would be the Alberta Class Action as Exro Canada is only named in that proceeding. However, as discussed above, the Receiver has already offered its support to have the stay lifted for the Alberta Class Action and that proceeding could be mediated outside of the Receivership Proceedings if the stay were lifted.<sup>73</sup> Notwithstanding, Class Counsel has taken no steps to lift the stay.<sup>74</sup>

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<sup>70</sup> Second Report at para 39(1).

<sup>71</sup> Second Report at para 39(1).

<sup>72</sup> Second Report at para 39(1).

<sup>73</sup> Second Report at para 39(1).

<sup>74</sup> Second Report at para 32 and 42(c).

51. Furthermore, Class Counsel has filed the Derivative Action Petition on behalf of Exro, while it previously filed a concurrent claim in the Alberta Class Action against Exro Canada.<sup>75</sup> It is unclear how Class Counsel intends to represent Exro on the one hand in a mediation, but claim against its estate or its insurers on the other.<sup>76</sup>
52. Granting of the Mediation Order would also directly override numerous discretionary powers granted to the Receiver in the Receivership Order:
- (a) the Mediation Order mandates an obligation upon the Receiver to participate in mediation which is not provided for in the Receivership Order, wherein the Receiver's power under 3(g) of the Receivership Order to settle claims of Exro is discretionary and not obligatory.<sup>77</sup> Such obligations also directly contradict the Receivership Order by directing the Receiver's continued involvement in the Receivership Proceedings despite it having completed its mandate and it seeking its discharge.<sup>78</sup> It is not commercially reasonable in the circumstances to require that the Receiver proceed forward with complex, costly mediation within the Receivership Proceedings given the receivership proceedings are at its conclusion;<sup>79</sup>
  - (b) pursuant to paragraph 3(j) of the Receivership Order, only the Receiver has the authority to commence a claims process within the Receivership Proceedings, and the proposed mediation is a forum for settling claims as against Exro.<sup>80</sup> Furthermore, the Receiver does not consider it necessary or desirable for it or the estates of the Debtors to participate in mediation within the Receivership Proceedings for the reasons set out herein.<sup>81</sup>
53. Furthermore, NBIMC Quantitative Strategies Fund – Class N as the appointing secured creditor in the Receivership Proceedings and who has been funding the Receivership

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<sup>75</sup> Second Report at para 39(m).

<sup>76</sup> Second Report at para 39(m).

<sup>77</sup> Second Report at para 39(s); Receivership Order at para 3(g).

<sup>78</sup> Second Report at para 39(c).

<sup>79</sup> Second Report at para 39(c)-(d).

<sup>80</sup> Second Report at para 39(f); Receivership Order at para 3(j).

<sup>81</sup> Second Report at para 39(e),(g)-(h).

Proceedings from its commencement does not support the mediation, and does not support the Receiver using borrowed funds for professional fees to participate in a mediation process.<sup>82</sup> No remaining funds exist in the estate that can be used to pay proven claims of the Debtors' creditor; any remaining funds following the conclusion of the administration of the Debtors' estates must be repaid to NBIMC arising from the borrowings it provided to the Receiver within the Receivership Proceedings.<sup>83</sup> Accordingly, there is significant risk and high probability of no economic value to the Debtors' estates through a forced mediation to the detriment of the Debtors' secured creditors.<sup>84</sup>

54. To conclude, the Receiver, acting in good faith has determined that mediation of complex multi-jurisdictional litigation claims involving numerous parties, including claims where Exro is not named as a party, is not desirable, commercially reasonable, or beneficial to the Debtors' estates, particularly where no estate funds are available for proven claims and any remaining estate funds are repayable to NBIMC.<sup>85</sup> Imposing mediation inside the receivership merely burdens the Receiver and the Debtors' estates with additional expenses. The Receiver has substantially completed its mandate following the closing of the Transaction and has maximized the available value for the Debtors' estates for the benefit of stakeholders.<sup>86</sup> The application for the Mediation Order should be dismissed.

#### **D. Receiver's Position on Interrogatories**

55. Class Counsel served the Receiver with written interrogatories on May 13, 2026.<sup>87</sup> They were served prior to the Receiver filing and serving its Second Report. The Receiver has not consented to being served written interrogatories, nor has Class Counsel filed an application seeking leave of the Court to serve them, as required by the Receivership Order.<sup>88</sup>

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<sup>82</sup> Second Report at paras 19-20 and 39(q).

<sup>83</sup> Second Report at 39(h).

<sup>84</sup> Second Report at para 39(h).

<sup>85</sup> Second Report at para 39(g)-(h).

<sup>86</sup> Second Report at para 39(b).

<sup>87</sup> Second Report at para 41.

<sup>88</sup> Receivership Order at para 7.

56. In *Pinnacle Capital Resources Ltd v Kraus Inc*<sup>89</sup>, the applicants brought an application requiring the receiver to answer interrogatories. The written questions were sent in connection with the receiver's discharge motion.<sup>90</sup> The Ontario Superior Court found that the majority of the claimant's questions amounted to a fishing expedition<sup>91</sup> and did not require the court-appointed receiver to answer written questions.<sup>92</sup> The court noted that court-appointed receivers must respond to reasonable questions from those with an interest in the receivership.<sup>93</sup>
57. Class Counsel's written interrogatories regarding the Debtors' documents were commented upon in the First Report and now the Second Report. The Debtors' documents have been maintained, safeguarded and copied by the Receiver.<sup>94</sup> Under paragraph 3(n) of the Receivership Order, the Receiver is empowered but not obligated to share information with effected Persons subject to terms as to confidentiality as the Receiver deems advisable.<sup>95</sup> The Receiver has determined it is not appropriate for the Debtors' documents to be shared for the purposes of litigation when the Receiver is not a party to any litigation as it would amount to the Receiver providing discovery where the subject claims against Exro Canada are stayed.<sup>96</sup> Sharing the documents would amount to the Receiver participating in discovery.<sup>97</sup> No court order has been sought directing that the Receiver provide document disclosure regarding any litigation.<sup>98</sup> The Receiver made efforts to assist Class Counsel by preparing a draft lift stay order which contemplated Exro's documents being handed over to Stikeman if the stay of the Alberta Class Action were lifted.<sup>99</sup>

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<sup>89</sup> [Pinnacle Capital Resources Ltd v Kraus Inc, 2012 ONSC 6376 \[Tab 10\]](#).

<sup>90</sup> [Pinnacle](#) at para [23](#), [24\(b\)](#), [25](#), and [27](#) [Tab 10].

<sup>91</sup> [Pinnacle](#) at para [30](#) [Tab 10].

<sup>92</sup> [Pinnacle](#) at para [30](#) and [33](#) [Tab 10].

<sup>93</sup> [Pinnacle](#) at para [28](#) [Tab 10]; citing [Battery Plus Inc., Re, 2002 CanLII 49569 \(ON SC\)](#) at para [19](#).

<sup>94</sup> Second Report at paras 40 and 42.

<sup>95</sup> Second Report at para 42(n); Receivership Order at para 3(n).

<sup>96</sup> Second Report at 42(c).

<sup>97</sup> Second Report at 42(b).

<sup>98</sup> Second Report at 42(c).

<sup>99</sup> Second Report at 42(d).

58. The information requests relating to Exro's insurance policies falls under paragraph 3(n) of the Receivership Order and amounts to requests for discovery information from the Receiver when the Receiver is not a party to any litigation.<sup>100</sup>
59. Information requests relating the Receiver's decision not to proceed with litigation claims on behalf of Exro as referenced in the Derivative Action Petition is included in the Second Report.<sup>101</sup>

**E. The Court should grant the Discharge Order**

60. In the normative course of events, the discharge of a receiver can be sought upon the completion of the administration of the estate in receivership.<sup>102</sup> It is the standard practice of this Court to approve the discharge of a receiver where the receiver only have relatively minor activities to complete.<sup>103</sup> In the present case, the Debtors' assets have been realized upon to their potential by the Receiver and the administration of the receivership are substantially completed, except for certain ancillary administrative tasks pending the Receiver's discharge. These tasks can be readily completed by the Receiver without further direction from the Court.<sup>104</sup> Upon the completion of these ancillary administrative tasks, the Receiver will have fulfilled its mandate as set out in the Receivership Order.
61. A receiver has the discretionary power to commence litigation and is under no duty to litigate.<sup>105</sup> Accordingly, a receiver may properly elect not to proceed with litigation.<sup>106</sup>
62. In *Chien v Canada Eighty-Eight Fund*, 2005 BCSC 466, the Court the Receiver sought directions from the court and recommended that litigation should not be continued or

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<sup>100</sup> Second Report at para 43.

<sup>101</sup> Second Report at para 44.

<sup>102</sup> [Royal Bank of Canada v. 1514357 Ontario Ltd.](#), 2013 ONSC 2602 (CanLII) at para 17 [TAB 11]

<sup>103</sup> Model Template Order (order for final distribution, approval of receiver's fees and disbursements, approval of receiver's activities and discharge of receiver), at para 8

<sup>104</sup> Second Report at para 60.

<sup>105</sup> [Meadow Rue Holdings Ltd. v. Alberta](#), 1989 CanLII 3433 (AB QB) at para 21 [Tab 12]; see also [Haunert-Faga v Faga](#), 2013 ONSC 1581 at para 12 [Tab 13].

<sup>106</sup> [Meadow Rue Holdings Ltd. v. Alberta](#), 1989 CanLII 3433 (AB QB) para 21 [Tab 12].

commenced given the cost and uncertainty of recovery.<sup>107</sup> The Court accepted those recommendations.<sup>108</sup>

63. In this case, during the Receivership Proceedings, Class Counsel advised the Receiver that they intended to file a derivative action against Vestcor on behalf of Exro.<sup>109</sup> Based on the complexity of such proposed litigation, the extensive costs that would need to be incurred by the Receiver and the lack of funding available to the Debtors' estates to fund an investigation and prosecution of such litigation, the Receiver determined that there would be an inability for the Debtors' estates to proceed forward with these alleged claims on behalf of Exro.<sup>110</sup> Class Counsel has now filed for their clients a petition in British Columbia to bring derivative actions on behalf of Exro as against Vestcor and NBF. The Receiver's views remain the same as before.<sup>111</sup> The Receiver's decision not to proceed forward with the litigation, on the basis that doing so is not economically reasonable for the Debtors' estates, was a commercially reasonable election that the Receiver was entitled to make and should not stand in the way of the granting of the Discharge Order.
64. The Receiver also understands that NBIMC intends to bring a bankruptcy order to bankrupt Exro.<sup>112</sup> Following a potential granting of a bankruptcy order, the claims referenced in the Derivative Action Petition can be considered by the Trustee in Bankruptcy upon instruction from the creditors' inspectors, as set out in the *BIA*.<sup>113</sup> The Receiver anticipates that formal proceedings may be taken by creditors of the Debtors pursuant to section 38(1) of the *Bankruptcy and Insolvency Act*, where a creditor can request the trustee to take any proceeding that in his opinion would be for the benefit of the estate of a bankrupt and if the trustee refuses or neglects to take the proceeding, a creditor may obtain from a court order authorizing him to take the proceeding in his own name and at his own expense and risk.<sup>114</sup>

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<sup>107</sup> [Chien v Canada Eighty-Eight Fund, 2005 BCSC 466](#) at para 6 [Tab 14].

<sup>108</sup> [Chien v Canada Eighty-Eight Fund, 2005 BCSC 466](#) at para 7 [Tab 14].

<sup>109</sup> Second Report at para 33.

<sup>110</sup> Second Report at para 33.

<sup>111</sup> Second Report at para 34.

<sup>112</sup> Second Report at para 46.

<sup>113</sup> Second Report at para 48.

<sup>114</sup> Second Report at para 48; [Bankruptcy and Insolvency Act, RSC 1985, c B-3, Part -1, s 38](#) [Tab 15].

65. Accordingly, in all of the circumstances of this proceeding, it is just and appropriate for the Receiver to be discharged subject to the filing of the Receiver's Certificate. Any delay in the Receiver's discharge application would result in further unnecessary costs for the receivership estate.
66. The discharge order contains standard provisions providing for the Receiver's release from liability upon its discharge (subject to any liability arising out of any fraud, gross negligence or willful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties.
67. The discharge order further includes specific language referencing that the Receiver will not be liable for not having pursued litigation on behalf of the Debtors. It is commercially reasonable, appropriate and necessary for the Receiver to have such protections given (a) ongoing allegations of impropriety by Class Counsel against the Receiver and its counsel, and threats of commencing proceedings against the Receiver for not starting litigation claims on behalf of Exro, and (b) the Receiver's pending discharge.
68. The Receiver is agreeable to maintain the records of the Debtors until its discharge as Receiver and thereafter as trustee in bankruptcy over the Debtors' estates. The Receiver is seeking advice and direction from the Court whether the Debtors' records should be provided by the Receiver in that capacity to any other person pending its discharge unless upon further order of the Court. The draft form of Discharge Order in the Receiver's application provides for such language.<sup>115</sup>

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<sup>115</sup> Second Report at para 61.

**PART 5      CONCLUSION AND RELIEF SOUGHT**

69. For the reasons above, the Receiver respectfully recommends and request that the Court grants the relief sought in their application as they are fair, necessary and reasonable in the circumstances.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May 2026.**

**GOWLING WLG (CANADA) LLP**

Per: \_\_\_\_\_



Sam Gabor  
Counsel for FTI Consulting Canada Inc.

**TABLE OF AUTHORITIES**

<b>Tab</b>	<b>Authority</b>
1.	<a href="#"><u>Target Canada Co, Re, 2015 ONSC 7574</u></a>
2.	<a href="#"><u>Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400</u></a>
3.	<a href="#"><u>Yukon (Government of) v BYG Natural Resources Inc, 2025 YKSC 59</u></a>
4.	<a href="#"><u>Bank of Nova Scotia v Diemer, 2014 ONCA 851</u></a>
5.	<a href="#"><u>Re Nortel Networks Corporation et al, 2017 ONSC 673</u></a>
6.	<a href="#"><u>Alignvest Private Debt Ltd. v. Surefire Industries Ltd., 2015 ABQB 148</u></a>
7.	<a href="#"><u>Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41</u></a>
8.	<a href="#"><u>1057863 B.C. Ltd. (Re), 2022 BCSC 759</u></a>
9.	<a href="#"><u>9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10</u></a>
10.	<a href="#"><u>Pinnacle Capital Resources Ltd v Kraus Inc, 2012 ONSC 6376</u></a>
11.	<a href="#"><u>Royal Bank of Canada v. 1514357 Ontario Ltd., 2013 ONSC 2602 (CanLII)</u></a>
12.	<a href="#"><u>Meadow Rue Holdings Ltd. v. Alberta, 1989 CanLII 3433 (AB QB)</u></a>
13.	<a href="#"><u>Hauert-Faga v Faga, 2013 ONSC 1581</u></a>
14.	<a href="#"><u>Chien v Canada Eighty-Eight Fund, 2005 BCSC 466</u></a>
15.	<a href="#"><u>Bankruptcy and Insolvency Act, RSC 1985, c B-3, Part -1</u></a>