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	**BRIEF**

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I. INTRODUCTION

1. This brief is filed on behalf of Sue Ozdemir and Rodney Copes in response to the Application for a Mediation Order and Ancillary Relief (the "**Application**") filed May 19, 2026 by an "Ad Hoc Committee of Holders of Exro Technologies' Convertible Debentures" and proposed class action plaintiffs Allan Crosier and Mike Zienchuk (collectively, the "**Mediation Applicants**") in *Crosier v Exro Technologies Inc. et al*, Action No. 2401-16988 (the "**2024 AB Class Action**") and *Zienchuk v Exro Technologies Inc. et al*, Action No. 2501-18329 (collectively, the "**Alberta Class Actions**").

2. The Alberta Class Actions have not been certified. The 2024 AB Class Action is case managed by Justice Poelman.

3. Ms. Ozdemir is the former Chief Executive Officer of Exro Technologies Inc. ("**Exro**"). Mr. Copes is the former Chairman of the Board of Directors of Exro. Both individuals are defendants in the Alberta Class Actions.

4. Ms. Ozdemir and Mr. Copes oppose the Application and do not agree with the proposed Mediation Order.

5. FTI Consulting Canada Inc. (the "**Receiver**") was appointed the receiver and manager of Exro pursuant to a Consent Receivership Order of the Honourable Justice K.G. Nielsen on November 14, 2025 (the "**Receivership Proceeding**").[1]

II. LAW AND ARGUMENT

Ms. Ozdemir and Mr. Copes Were Not Served with the Application

6. Ms. Ozdemir and Mr. Copes were not served with the Application despite being named as respondents. Appendix B to the Second Report of the Receiver, which is described as "Correspondence with Class Counsel", includes an email dated May 13, 2026 from Applicant's counsel, purporting to serve the Application on the Receiver and others; neither Ms. Ozdemir and Mr. Copes nor their counsel are included as recipients to this email.[2]

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[1] Second Report of the Monitor, filed May 20, 2026 [Second Receivers' Report], at para 1.
[2] Second Receivers' Report, *supra* note 1 at pp 53-58.

7. Proper service of applications is a fundamental step, and not merely a perfunctory, procedural hoop, as it allows affected parties sufficient time to review and respond to applications that impact their rights.

8. As parties to the Alberta Class Actions, they should have been served. The Service List in this Receivership Proceeding does not dictate service in the Alberta Class Actions, which is only one of the reasons that demonstrates why this Application is being improperly brought within this Receivership Proceeding.

9. Ms. Ozdemir and Mr. Copies file this brief late as a result of the lack of service on them of the Application.

Ms. Ozdemir and Mr. Copes Agree with the Position of the Receiver

10. The Receiver objects to the Mediation Order. In its Second Report of the Receiver, filed May 20, 2026 (the "**Second Receiver's Report**"), the Receiver sets out the reasons for why it opposes the Application. Ms. Ozdemir and Mr. Copes agree with the position of the Receiver outlined at paragraphs 39(a) – (p) of the Second Receiver's Report.[3]

11. Significantly, and as noted by the Receiver, a stay of proceedings exists as against Exro and the Receiver pursuant to paragraphs 7 to 9 of the Receivership Order, and the stay of proceedings will continue to exist if the bankruptcy order sought by NBIMC Quantitative Strategies Fund – Class N ("**NBIMC**"), Exro's senior secured creditor, is granted.

12. Furthermore, there is a stay of proceedings with respect to the entirety of the Alberta Class Actions by virtue of Rule 4.34 of the Alberta *Rules of Court* (the "***Rules***") which provides that when a party's interest or liability has been transferred to another party, such as through the appointment of a receiver, the action is stayed until an order to continue the action by or against the other parties has been received;[4] no such order has been sought to date.

13. It is a breach of the stay to seek an order compelling these parties to participate in a mediation. The Mediation Applicants have flagrantly ignored the Receivership Order in

[3] Second Receivers' Report, *supra* note 1 at paras 39(a)-(p).
[4] *Rules of Court*, Alta Reg 124/2010, r 4.34 [*Rules*] **[TAB 1]**.

pursuing this Application. They must first obtain an order to lift the stay of proceedings before being granted the Mediation Order.

14. The Receiver has further expressed that it would not benefit the estate to proceed with a complex and costly mediation at this time.[5]

A Mediation Order is Not Appropriate in the Circumstances

15. The authorities cited in the Application do not support the Court ordering a mediation as proposed, without the consent of all parties. There is no precedent for ordering a mediation in the context of a receivership under the *Bankruptcy and Insolvency Act*[6] (the "***BIA***").

16. For example, the Application cites *1057863 B.C. Ltd. (Re)*[7] ("***105 BC***"), but that case relates to a proceeding under the *Companies' Creditors Arrangement Act*[8] (the "***CCAA***"), not a receivership under the *BIA*. In *105 BC*, a mediation order was being sought by the debtor companies directly, with respect to litigation they had commenced against the Province of Nova Scotia after entering into *CCAA* proceedings. In bringing the application for a mediation order, the debtor companies argued that allowing the mediation to proceed could allow the estate to realize on a valuable asset and that the resulting funds could be used to successfully restructure and exit CCAA, to the benefit of all stakeholders. Notably, the application was supported by the major secured creditor and the interim lender, with Nova Scotia appearing to be the only party in opposition.[9] In other words, that application proceeded mostly by consent, and was for the benefit of all stakeholders in that CCAA proceeding. *105 BC* is entirely distinguishable from the present circumstance, where the Mediation Applicants are not the debtors, the Receiver is not supportive, the Application is opposed by at least several parties (and possibly all parties), and this Receivership is not proceeding under the flexible regime of the *CCAA*. *105 BC* is entirely distinguishable from the current Application.

17. The Mediation Applicants also reference the *CCAA* proceedings of Poseidon Concepts Corp. ("**Poseidon**") wherein the Honourable Justice Strekaf granted a mediation order

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[5] Second Receivers' Report, *supra* note 1 at paras 39(a)-(p).
[6] RSC 1985, c B-3 **[TAB 2]**.
[7] 2022 BCSC 759 [*105 BC*] **[TAB 3]**.
[8] RSC 1985, c C-36 **[TAB 4]**.
[9] *105 BC* at para 3 **[TAB 3]**.

(the "**Poseidon Order**"). Notably, however, in that case, the proposed mediation order was applied for by the Monitor and consented to by the secured creditors of Poseidon and various of the litigation counterparties.[10] Accordingly, the Poseidon Order proceeded by consent. The Poseidon Order also specifically noted that any person or entity that has claims relating to the issues in the mediation *may* also participate in the mediation. The Poseidon Order did not mandate that non-consenting parties participate in the mediation.

18. There are differences in the form of insolvency proceeding that are important for understanding why these other examples are not relevant here. A receivership is fundamentally different from proceedings under the *CCAA* as, in a receivership, the Receiver is appointed by a secured creditor to realize on specific assets for the benefit of that secured creditor, whereas proceedings under the *CCAA* are flexible and require a monitor to supervise the company's activities during restructuring or liquidation, to ensure that all stakeholders' interests are taken into account.

19. In this case, Ms. Ozedemir and Mr. Copes understand that NBIMC, the senior secured creditor responsible for appointing the Receiver with respect to Exro, does not support the mediation order sought by the Mediation Applicants. Therefore, the Receivership Proceedings are not a proper venue for the determination of matters that do not benefit that senior secured creditor.

20. Furthermore, even if a mediation order was appropriate in the circumstances, a decision to grant the mediation order cannot be made in the Receivership Proceeding, as the 2024 AB Class Action is under case management by the Honourable Justice Poelman. Pursuant to Rule 4.14(2) of the *Rules*, a case management judge must hear every application filed with respect to the action for which the case management judge is appointed[11] and, as such, any application for a mediation order in the 2024 AB Class Action must be heard by Justice Poelman.

The Proposed Mediation would be Inefficient and is Doomed to Fail

21. As noted by the Receiver in the Second Receiver's Report, the proposed Mediation Order involves a minimum of fifteen parties, not including what could be numerous unnamed

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[10] Seventeenth Report of PricewaterhouseCoopers Inc. in its capacity as Monitor of Poseidon Concepts Corp. et al, dated October 10, 2023 [Poseidon Monitor's Report] at para 2.2.
[11] *Rules*, *supra* note 4, r 4.14(2) **[TAB 1]**.

insurers and persons that may be required to participate pursuant to the broad terms of the Mediation Order.

22. An order to mediate in such circumstances would be of little benefit to the parties if they are unwilling to participate in mediation at first instance. Mediation is best when the parties are voluntary participants as it is a non-binding process that cannot be used to force parties into a settlement.[12] It is also unreasonable to expect these many disparate, non-consenting stakeholders to be able to meaningfully and successfully participate in a mediation.

23. Furthermore, Ms. Ozdemir and Mr. Copes submit that a mediation would be premature in terms of the state of the Alberta Class Actions as they have not yet been certified and no questioning has occurred to date.[13] As such, there has been no testing of evidence that would allow the parties to assess the merits of the Alberta Class Actions and the prospects of a settlement occurring at this stage therefore appear extremely unlikely. This problem has, in fact, been addressed by this Court, which has previously held that "forcing mediation of an individual action before it is known whether a class action would be certified would be unreasonable and unproductive and is reason to grant an exemption" to the dispute resolution requirement in the *Rules*.[14]

24. The Mediation Applicants appear to have also implicitly acknowledged this informational problem from the fact that, as part of their Application, they are seeking broad discovery rights that would allow parties to essentially submit information requests to each other in advance of mediation and parties receiving such requests would be required to "not unreasonably reject the request".[15] Essentially, the Mediation Applicants are attempting to engage in discovery in the Alberta Class Actions despite the Alberta Class Actions currently being stayed and despite the fact that the Mediation Applicants have not brought any application to lift the stay of proceedings. In fact, upon examination of the process outlined in the Mediation Applicants' proposed Mediation Order, what the Mediation Applicants are truly seeking is a form of truncated litigation process that includes:

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[12] See e.g., *Adeshina v Litwiniuk & Co*, 2010 ABQB 80 at para 141 **[TAB 5]**.
[13] Poseidon Monitor's Report, *supra* note 10 at para 39(g).
[14] *IBM Canada Ltd v Kossovan*, 2011 ABQB 621 at para 30 **[TAB 6]**, citing *Dumoulin v. Ontario,* 2005 CanLII 33534 (ON SC) at para 6 **[TAB 7]**.
[15] Applicants' Proposed Form of Order at paras 19-25.

a. exchanges of “Statements of Issues” and “Responses to the Statements of Issues”, which are to essentially be Statements of Claim and Statements of Defence, by any “Mediation Party” which is defined broadly to include not only the Mediation Applicants and Respondents, but also any other person or entity that may have or may be subject to any claims related to the Merger (as defined in the Mediation Order), which would permit the Mediation Applicants to skip the requisite certification stage required in class action proceedings;

b. production of documents as detailed above; and

c. exchange of mediation briefs and responding mediation briefs

all of which is anticipated to occur on a very short timeline, despite not knowing how many claims would need to be responded to, how many information requests may arise as a result or how there would be sufficient time to formulate reasonable assessments of any such claims and associated risks to be able to determine positions on settlement.

25. Ms. Ozdemir and Mr. Copes submit that this backdoor attempt to essentially continue litigating the Alberta Class Actions and circumvent this Court’s prior orders staying the Alberta Class Actions should not be countenanced by this Court.

26. If the Mediation Applicants wish to engage in discovery and proceed to mediation, then it remains open to them to bring an application to lift the stay of proceedings with respect to the Alberta Class Actions.

III. CONCLUSION

27. Pursuant to the *Rules*, there is no requirement that mediation occur at this stage, with the parties only being required to certify that they have undertaken a dispute resolution process prior to applying for trial dates.[16]

28. Given the extremely early stage of the Alberta Class Actions and the broad opposition amongst the parties the Application, it does not make sense to compel the parties to attend mediation at this time.

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[16] *Rules*, *supra* note 4, r 8.4-8.5 **[TAB 1]**.

29. As noted by the Receiver in the Second Receiver's Report, the Mediation Applicants will not be materially prejudiced if the Application is not granted, as the Alberta Class Actions will not be compromised and mediation can be pursued outside of the Receivership Proceedings.[17]

30. As such, Ms. Ozdemir and Mr. Copes submit that it is not appropriate for this Court to grant the mediation order sought by the Mediation Applicants.

DATED at the City of Calgary, in the Province of Alberta, this 26th day of May, 2026.

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[17] Second Receiver's Report, *supra* note 3 at para 39(k).

TABLE OF AUTHORITIES