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JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, RSC  
1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
CANACOL ENERGY LTD., 2654044  
ALBERTA LTD., CANACOL ENERGY  
ULC, 2498003 ALBERTA ULC, CANTANA  
ENERGY GMBH, CNE OIL & GAS, S.R.L,  
CANACOL ENERGY COLOMBIA S.A.S.,  
SHONA HOLDING GMBH, CNE ENERGY  
S.A.S., and CNE OIL & GAS S.A.S.

APPLICANTS

CANACOL ENERGY LTD., 2654044 ALBERTA LTD., CANACOL  
ENERGY ULC, 2498003 ALBERTA ULC, CANTANA ENERGY  
GMBH, CNE OIL & GAS, S.R.L, CANACOL ENERGY COLOMBIA  
S.A.S., SHONA HOLDING GMBH, CNE ENERGY S.A.S., and CNE  
OIL & GAS S.A.S.

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**BRIEF OF LAW**

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File No. G10088627

**APPLICATION BEFORE THE HONOURABLE JUSTICE JOHNSTON  
NOVEMBER 18, 2025 AT 2:00 PM ON THE CALGARY COMMERCIAL LIST**

## TABLE OF CONTENTS

	Page
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. FACTS .....</b>	<b>2</b>
<i>THE APPLICANTS.....</i>	<i>2</i>
<i>E&amp;P CONTRACTS.....</i>	<i>4</i>
<i>OFFTAKE AGREEMENTS.....</i>	<i>5</i>
<i>FINANCIAL POSITION OF THE APPLICANTS.....</i>	<i>5</i>
<i>EVENTS LEADING TO THIS CCAA PROCEEDING.....</i>	<i>9</i>
<i>IMPENDING PAYMENT DEFAULTS .....</i>	<i>9</i>
<i>OPERATIONAL CHALLENGES.....</i>	<i>9</i>
<i>EFFORTS TO RAISE CAPITAL .....</i>	<i>10</i>
<b>III. ISSUES.....</b>	<b>10</b>
<b>IV. LAW AND ARGUMENT.....</b>	<b>11</b>
<b>A. APPLICATION IS URGENT AND SERVICE SHOULD BE DISPENSED WITH/ABRIDGED.....</b>	<b>11</b>
<b>B. ALL OF THE APPLICANTS ARE ENTITLED TO SEEK RELIEF UNDER THE CCAA.....</b>	<b>13</b>
<b>C. THIS COURT IS THE PROPER FORUM FOR THE APPLICATION .....</b>	<b>16</b>
<b>D. CANADA IS THE CENTRE OF MAIN INTEREST FOR THE CANACOL GROUP .....</b>	<b>16</b>
<b>E. THE APPLICANTS SHOULD BE GRANTED PROTECTION AND A STAY UNDER THE CCAA .....</b>	<b>17</b>
<b>F. THE STAY SHOULD BE EXTENDED TO THE D&amp;O'S AND THE SUCURSAL ENTITIES.....</b>	<b>18</b>
<b>G. KPMG SHOULD BE APPOINTED AS MONITOR .....</b>	<b>21</b>
<b>H. THE MONITOR SHOULD BE APPOINTED AS FOREIGN REPRESENTATIVE OF THE APPLICANTS .....</b>	<b>21</b>
<b>I. THE ADMINISTRATION CHARGE AND THE DIRECTORS AND OFFICERS' CHARGE SHOULD BE APPROVED.....</b>	<b>23</b>
<b>J. THE APPLICANTS SHOULD BE PERMITTED TO MAKE LIMITED PRE-FILING PAYMENTS TO CRITICAL VENDORS.....</b>	<b>27</b>
<b>V. CONCLUSION AND RELIEF SOUGHT.....</b>	<b>28</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>

## I. INTRODUCTION

1. This Brief is filed on behalf of the Applicants, an integrated international group of companies engaged in gas and oil exploration and production, headquartered in Calgary and with operations in Colombia and financing through New York. The Applicants seek protection under the [Companies' Creditors Arrangement Act](#) ("CCAA")<sup>1</sup> on an urgent basis because the Applicants face a liquidity crisis, which includes imminent repayment obligations in relation to in excess of US\$670 million of indebtedness. The Applicants come to Court having put in their best efforts to achieve a refinancing solution outside a filing but having not succeeded thus far.
2. With the assistance of this Court, the Applicants intend to stabilize their business and preserve the *status quo* while seeking interim financing, all for the purpose of pursuing a twin track strategy premised on both sale and investment process measures and discussions with their creditors with a view to achieving a financial restructuring.
3. Should this Court grant the protections and stays provided for under the CCAA, it is the further intention of the Applicants, through the agency of the proposed Monitor as foreign representative, to seek to have their Canadian restructuring proceedings recognized under Chapter 15 of the US Bankruptcy Code and in Colombia under applicable law in that jurisdiction.
4. In commencing restructuring proceedings, the Applicants seek to preserve value for their stakeholders by avoiding the harms that may occur should creditors pursue their remedies and disrupt the operation of the business. The stakes in this matter go beyond the financial interests of creditors. Due to the Applicants' role as a supplier of significant natural gas inputs into the Colombian electricity generation grid, the stability of their enterprise and their ability to continue to produce and supply natural gas has ramifications for many customers and households in that country.

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<sup>1</sup> [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36 ("CCAA") [TAB 1].

## II. FACTS

5. The relevant facts in support of the relief sought in the Initial Order are only briefly described herein, and are more particularly set out in the Affidavit of Jason Bednar sworn November 16, 2025 (the “**Bednar Affidavit**”).<sup>2</sup>

### The Applicants

6. Canacol, the parent of the Canacol Group, was incorporated under the laws of British Columbia, and continued under the laws of Alberta. Canacol’s Head Office and Registered Office are located in Calgary, Alberta. Canacol is a publicly traded company, and operates as a holding company for the following wholly owned direct and indirect Subsidiaries, each of whom is an Applicant in these proceedings:<sup>3</sup>

(a) **The “Canadian Subsidiaries”**: 2654044 Alberta Ltd. (“**265 Alberta**”), Canacol Energy ULC (“**Canacol ULC**”), and 2498003 Alberta ULC (“**249 Alberta**”):

- (i) Each of the Canadian Subsidiaries were incorporated pursuant to the laws of Alberta. The Canadian Subsidiaries operate as holding companies.<sup>4</sup>

(b) **The “Colombian Subsidiaries”**: Canacol Energy Colombia S.A.S. (“**Canacol Colombia**”), CNE Energy S.A.S. (“**CNE Energy Colombia**”), and CNE Oil & Gas S.A.S. (“**CNE O&G Colombia**”):

- (i) Each of the Colombian Subsidiaries are registered under the laws of Colombia. Each of Canacol Colombia and CNE O&G are contractors under certain E&P Contracts with ANH (and, in respect of Canacol Colombia, the

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<sup>2</sup> Affidavit of Jason Bednar sworn November 16, 2025 [“**Bednar Affidavit**”]. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Bednar Affidavit. All references to monetary amounts are in U.S. dollars unless otherwise noted.

<sup>3</sup> Bednar Affidavit, paras 24-26. The common shares of Canacol are listed on the TSX (trading symbol “CNE”), the OTCQX International Premier (trading symbol “CNNEF”) and the Bolsa de Valores de Colombia (trading symbol “BVC”).

<sup>4</sup> Bednar Affidavit, paras 28-29

Rancho Hermoso Participation Agreement). CNE Energy is a holding company.<sup>5</sup>

(c) ***The “Swiss Subsidiaries”***: Cantana Energy GmbH (“**Cantana Switzerland**”) and Shona Holding GmbH (“**Shona Switzerland**”):

(i) Each of the Swiss Subsidiaries are registered under the laws of Switzerland. Cantana Switzerland (acting thorough its Colombian branch, Cantana Energy Sucursal Colombia (“**Cantana Colombia**”)) is the contractor under certain E&P Contracts with ANH. Shona Switzerland is a holding company.<sup>6</sup>

(d) ***CNE Panama***: CNE Oil & Gas, S.R.L (“**CNE Panama**”):

(i) CNE Panama is registered under the laws of Panama. CNE Panama (acting through its Colombian branch, CNEOG Colombia Sucursal Colombia (“**CNEOG Colombia**”)) is the contractor under certain E&P Contracts with ANH.<sup>7</sup>

7. CNE Panama, the Swiss Subsidiaries and the Colombian Subsidiaries are collectively referred to as the “**Foreign Subsidiaries**”. Cantana Colombia and CNEOG Colombia are collectively referred to as the “**Sucursales**”.<sup>8</sup>

### *The Applicants’ Business*

8. The Canacol Group is engaged in the exploration, development, production, processing and sale of natural gas in Colombia. Financial control and reporting for the entire Canacol Group is based out of Canada.<sup>9</sup> All financing activities are conducted through the parent

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<sup>5</sup> Bednar Affidavit, paras 35-38

<sup>6</sup> Bednar Affidavit, paras 30-32

<sup>7</sup> Bednar Affidavit, paras 33-34

<sup>8</sup> Bednar Affidavit, paras 39-40

<sup>9</sup> Bednar Affidavit, paras 7-8

Canacol, which is the issuer and a principal obligor in relation to the equity and debt financing that funds the group's operations.

9. In the aggregate, the Canacol Group employs approximately 381 full-time employees across various jurisdictions. The majority of these employees are based in Colombia, and are employed by CNE Panama (through its Sucursal, CNEOG Colombia), CNE O&G Colombia and Canacol Colombia. The Canacol Group's employees in Canada are not unionized, and Canacol does not administer any pension plans. Certain of the Canacol Group's employees in Colombia are members of trade unions.<sup>10</sup>

#### *E&P Contracts*

10. Canacol holds, through its Subsidiaries CNE O&G Colombia, Canacol Colombia, CNE Panama (through its Sucursal, CNEOG Colombia) and Cantana Switzerland (through its Sucursal, Cantana Colombia), interests in onshore oil and gas production, development, appraisal and exploration properties across Colombia. These interests are documented under exploration and production contracts (each an "**E&P Contract**") with the Colombian Agencia Nacional de Hidrocarburos ("**ANH**") (the National Hydrocarbon Agency).<sup>11</sup>
11. Canacol also holds oil assets in the Llanos Basin region of Colombia, known as the "**Rancho Hermoso Field**". Oil production from the Rancho Hermoso Field is governed by a participation agreement with Hocol S.A. ("**Hocol**") (a subsidiary of Ecopetrol, S.A., the national oil company of Colombia) (the "**Rancho Hermoso Participation Agreement**").<sup>12</sup>
12. Under the Canacol Group's E&P Contracts, the group: (1) bears the risk and cost of exploration and development; (2) if commercial gas is discovered, owns the produced gas (subject to payment of royalties to the state) and may sell it under Colombian law; and (3) proceeds to explore, evaluate, and produce gas subject to specified timelines and work commitments.<sup>13</sup>

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<sup>10</sup> Bednar Affidavit, paras 55-58

<sup>11</sup> Bednar Affidavit, para 10

<sup>12</sup> Bednar Affidavit, para 12

<sup>13</sup> Bednar Affidavit, para 42

### *Offtake Agreements*

13. The Canacol Group sells most of its gas under long term, fixed price, U.S. dollar denominated to standard form gas offtake agreements (collectively, the “**Offtake Agreements**”).<sup>14</sup>
14. Revenues from sales pursuant to Offtake Agreements are received by the Canacol Group into (1) bank accounts operated by the Canacol Group (approximately 10% of revenues); and (2) into a trust (the “**Promigas Trust**”) held for Promigas S.A. E.S.P. (“**Promigas**”),<sup>15</sup> as beneficiary (approximately 90% of revenues). Promigas’ transport fees are deducted and the residual amounts are remitted to the Canacol Group into deposit accounts maintained by the Canacol Group in Colombia and New York (the “**Remittance Accounts**”).<sup>16</sup> In accordance with the loan documents in effect between Canacol and Macquarie, the Remittance Accounts are subject to deposit account control agreements (each, a “**DACA**”). Until the DACAs have been triggered, Canacol Group deals with monies in the Remittance Accounts to fund its operations.<sup>17</sup>

### *Financial Position of the Applicants*

#### *Assets and Liabilities*

15. As of September 30, 2025, the Canacol Group has combined total assets with a book value of approximately USD\$1,292,418,000, and total liabilities of approximately USD\$906,816,000.<sup>18</sup>

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<sup>14</sup> Bednar Affidavit, para 67

<sup>15</sup> Promigas transports a large portion of Colombia’s natural gas, and has an arrangement with the Canacol Group for the transport of the majority of Canacol’s natural gas, through Promigas’ network of pipelines. Bednar Affidavit, paras 48-49

<sup>16</sup> Bednar Affidavit, paras 47 - 50

<sup>17</sup> Bednar Affidavit, para 63

<sup>18</sup> Bednar Affidavit, paras 80, 88

*Secured Indebtedness*

16. Canacol is the borrower under the Macquarie Credit Agreement with Macquarie Bank Ltd. (“**Macquarie**”). The Macquarie Credit Facility is guaranteed by all of Canacol’s Subsidiaries.<sup>19</sup>
17. The Macquarie Credit Facility is a secured term loan facility for an aggregate commitment of US\$75,000,000. Canacol has drawn an initial borrowing of US\$50,000,000 from the Macquarie Credit Facility. To date, Canacol has not been able to request any subsequent borrowings under the Macquarie Credit Agreement as it has failed to achieve certain specified production targets that are a condition to any additional borrowings.<sup>20</sup>
18. As security for the Macquarie Credit Facility, U.S. and Colombian collateral documents were executed by the Canacol Group giving Macquarie (i) a first-priority security interest against the Canacol Group’s assets in Colombia and the United States, (ii) springing control over certain US and Colombian collection accounts pursuant to the DACAs, and (iii) pledges of the shares of key Subsidiaries.<sup>21</sup>
19. Macquarie has not filed financing statements in respect of Canacol or the Canadian Subsidiaries.<sup>22</sup>
20. The maturity date of the Macquarie Credit Facility is September 15, 2026, subject to earlier maturity, triggered by the failure by the Canacol Group to meet certain specified production metrics. These production metrics have not been achieved, and as a result, the Macquarie Credit Facility began to amortize over eight equal monthly installments starting on September 15, 2025.<sup>23</sup>

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<sup>19</sup> Bednar Affidavit, paras 89, 94

<sup>20</sup> Bednar Affidavit, para 91

<sup>21</sup> Bednar Affidavit, para 95

<sup>22</sup> Bednar Affidavit, para 96

<sup>23</sup> Bednar Affidavit, para 93

21. As at November 17, 2025, the indebtedness owing to Macquarie under this facility will be US\$37,500,000.<sup>24</sup>

*Unsecured Indebtedness*

*(1) Revolving Syndicated Credit Facility*

22. Canacol is the borrower under the Syndicate Credit Agreement with, among others, Deutsche Bank Trust Company Americas, as Administrative Agent, and a syndicate of lenders (the “**RCF Lenders**”). The facility is guaranteed by Canacol ULC, Canacol Colombia, CNE O&G Colombia, CNE Energy Colombia, CNE Panama, and Shona Switzerland.<sup>25</sup>
23. The facility is an unsecured revolving credit facility with an aggregate commitment of US\$200,000,000, available for multiple draws during the availability period.<sup>26</sup>
24. Interest on the facility is payable monthly. During any event of default, interest accrues at a rate 2.00% per annum above the rate otherwise applicable.<sup>27</sup>
25. The facility under the Syndicate Credit Agreement matures on February 14, 2027. As at November 17, 2025, the indebtedness owing to the lenders under this facility will be US\$200,000,000.<sup>28</sup>
26. The claims of the Bondholders are not secured against the Canacol Group’s assets.

*(2) Indenture*

27. Canacol is the issuer under the Indenture with Citibank, N.A., as Trustee, Security Registrar and Paying Agent, providing for the issuance of Canacol’s 5.750% Senior Notes

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<sup>24</sup> Bednar Affidavit, para 91

<sup>25</sup> Bednar Affidavit, paras 97, 101

<sup>26</sup> Bednar Affidavit, para 98

<sup>27</sup> Bednar Affidavit, para 99

<sup>28</sup> Bednar Affidavit, para 100

due 2028. The notes are guaranteed by Canacol ULC, Canacol Colombia, CNE O&G Colombia, CNE Energy Colombia, CNE Panama, and Shona Switzerland.<sup>29</sup>

28. The aggregate principal amount of the notes outstanding under the Indenture is now US\$495,000,000. The notes mature on November 24, 2028.<sup>30</sup> The holders of such notes are collectively referred to herein as the “**Bondholders**”.
29. The notes bear interest at a fixed rate of 5.750% per annum, payable semi-annually. A failure to pay any interest when due constitutes an event of default if it remains uncured for 30 days.<sup>31</sup>

#### *Letters of Credit*

30. The Canacol Group’s E&P Contracts described above require Canacol to provide guarantees and financial assurances for work commitments related to each contract. As at October 31, 2025, the Canacol Group had letters of credit outstanding totaling US\$61,272,727. Certain of these letters of credit expire as of December 31, 2025 and will need to be renewed or replaced at that time.<sup>32</sup>

#### *Litigation*

31. The Canacol Group is subject to a number of litigation proceedings. The most material of these include:<sup>33</sup>
  - (a) a proposed class action (the “**Class Action**”) against Canacol, alleging secondary market misrepresentation in connection with a pipeline (the Medellin pipeline) project; and
  - (b) a dispute arising from CNE O&G Colombia’s and CNE Panama’s (the “**Canacol Arbitration Parties**”) termination of three natural gas Offtake Agreements with

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<sup>29</sup> Bednar Affidavit, paras 102, 107

<sup>30</sup> Bednar Affidavit, paras 105-106

<sup>31</sup> Bednar Affidavit, para 104

<sup>32</sup> Bednar Affidavit, para 108

<sup>33</sup> Bednar Affidavit, paras 114-119

VP Ingenergía. This dispute was resolved by the Arbitral Tribunal in Colombia who determined that a net amount payable by the Canacol Arbitration Parties of approximately USD\$22,000,000

Events Leading to this CCAA Proceeding

*Impending Payment Defaults*

32. Payments of the following approximate amounts under the Macquarie Credit Agreement, the Syndicate Credit Agreement and the Indenture are due by Canacol in November 2025:
- (a) Under the Macquarie Credit Agreement: US\$6,746,972.69 due on November 18, 2025
  - (b) Under the Syndicate Credit Facility: US\$4,454,312.89 due on November 21, 2025; and
  - (c) Under the Indenture: US\$14,231,250.00 due on November 24, 2025
- (collectively, the “**November Payments**”).<sup>34</sup>
33. Canacol does not have sufficient liquidity to make the November Payments when due. As a result, Canacol group is at immediate risk of defaulting under the Macquarie Credit Agreement, and subsequently, the Syndicate Credit Agreement and Indenture.<sup>35</sup>

*Operational Challenges*

34. In the normal course, the natural depletion of oil and gas reserves is offset by successful exploration efforts (new reservoirs are discovered, and production follows as a result). Despite there being inherent geological risk that exploration efforts will be unsuccessful, the Canacol Group has encountered unexpected challenges in its recent exploration efforts. The lack of success in replacing 100% of produced reserves, along with limited exploration

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<sup>34</sup> Bednar Affidavit, para 124

<sup>35</sup> Bednar Affidavit, para 125

success and diminishing production from established wells, have directly impacted the Canacol Group's revenue generation while fixed operating costs have increased.<sup>36</sup>

35. Absent CCAA protection, the Canacol Group does not currently have sufficient liquidity to continue normal course operations, let alone incur the extensive capital costs attendant on new exploration processes. A disorderly shut down of operations at this time would not only destroy any prospect of the Canacol Group continuing as a going concern, it would have significant and material impacts on the supply of gas to Colombia's electricity grid.<sup>37</sup>

*Efforts to Raise Capital*

36. Since 2024, the Canacol Group has made significant and focused efforts to obtain additional liquidity from both current and outside lenders. Despite six out of seven of these efforts progressing to the term sheet phase, Canacol has not been able to successfully secure new financing. The Canacol Group has run out of time and alternatives to secure alternative cash sources in the immediate term in order to make the November Payments.<sup>38</sup>

**III. ISSUES**

37. The issues to be determined by this Honourable Court are as follows:
- (a) Should this Court abridge and/or dispense with service of the Originating Application and related materials on this Application for an Initial Order?
  - (b) Are the Applicants, including the Foreign Subsidiaries, entitled to seek relief under the *Companies' Creditors Arrangement Act* ("CCAA")?
  - (c) Is this Court the correct forum in Canada for this Application?
  - (d) Is Canada the centre of main interest ("COMI") of the Applicants?

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<sup>36</sup> Bednar Affidavit, para 127

<sup>37</sup> Bednar Affidavit, para 130

<sup>38</sup> Bednar Affidavit, para 131-132

- (e) Should the Applicants be granted protection under the CCAA, including a stay of proceedings?
- (f) Should the stay of proceedings be extended to include the Applicants' directors and officers and the rights of the Sucursales in relation to the Property?
- (g) Should KPMG Inc. be appointed as Monitor in these proceedings?
- (h) Should the Monitor be appointed as the foreign representative of the Applicants, for the purposes of taking recognition proceedings in foreign jurisdictions, including in the United States of America under Chapter 15 of title 15 of the United States Bankruptcy Code and Columbia under applicable law?
- (i) Should the Administration Charge and the Directors' Charge be approved as proposed for the Initial Stay Period?
- (j) Should the Applicants be permitted to pay certain pre-filing obligations to critical vendors, with the consent of the Monitor?

#### **IV. LAW AND ARGUMENT**

##### **A. APPLICATION IS URGENT AND SERVICE SHOULD BE DISPENSED WITH/ABRIDGED**

38. The Applicants face an immediate liquidity crisis following the breakdown of their refinancing efforts. They do not have sufficient cash resources to meet the November Payments in respect of their funded debt, which total approximately US\$25 million, including the November Payment to Macquarie in the amount of US\$6.7 million, due on November 18, 2025.<sup>39</sup>
39. It is critical to the ability of the Applicants to maintain their business as a going concern that they have access to their scarce cash resources while they seek interim financing and move forward with their restructuring plans. Given both the urgency of these proceedings

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<sup>39</sup> Bednar Affidavit, para 137

and the risk of creditors exercising remedies against the bank accounts of the Applicants, including Macquarie through exercise of DACA remedies,<sup>40</sup> proceeding with this Application on an *ex parte* basis was the only practicable approach that could be taken.

40. Since the Applicants are not seeking to prime their only senior secured creditor, Macquarie, and given that the Applicants will return to court for their comeback hearing in short order, there is no material prejudice to any individual creditor, including Macquarie, occasioned by abridging or dispensing with service.<sup>41</sup>
41. Under the Alberta Rules of Court, and in particular Rule 6.4 thereof,<sup>42</sup> this Court is empowered to abridge or dispense with service, provided that it is satisfied that serving notice might cause undue prejudice to the applicant. As indicated above, the potential prejudice to the Applicants if they are left vulnerable to creditor action against their cash reserves is material and could deprive them of the ability to restructure and preserve their enterprise.
42. In proceedings under the CCAA, section 11 of the statute specifically authorizes the court to make orders either on notice to any other person or without notice, as it may see fit.<sup>43</sup> This discretion granted to courts to make initial orders on an *ex parte* basis was recognized by the Supreme Court of Canada in in [Sun Indalex Finance, LLC v United Steelworkers](#). As in that case, where there is urgency and swift action is required to protect a debtor's assets, CCAA courts routinely make orders without notice.<sup>44</sup> This is the situation for the Canacol Group.

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<sup>40</sup> Bednar Affidavit, paras 63, 125

<sup>41</sup> Bednar Affidavit, para 4(l)

<sup>42</sup> [Alberta Rules of Court](#), Alta Reg 124/2010, Rules [6.3](#) and [6.4](#) [TAB 2].

<sup>43</sup> [CCAA, section 11](#) [TAB 1].

<sup>44</sup> [Sun Indalex Finance, LLC v United Steelworkers](#), 2013 SCC 6 at [para. 208](#) [TAB 3].

**B. ALL OF THE APPLICANTS ARE ENTITLED TO SEEK RELIEF UNDER THE CCAA**

43. The application of the CCAA is governed by section 3 of the statute and its included definitions:

**3 (1)** This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with [section 20](#), is more than \$5,000,000 or any other amount that is prescribed<sup>45</sup>.

44. For the purposes of the CCAA and these jurisdictional provisions, debtor companies include insolvent companies, wherever incorporated, having assets or doing business in Canada.<sup>46</sup>

45. Companies will satisfy the requirement of having assets in Canada where monies are held to their credit in Canada. Courts have held that this criteria may be met even if the only money held for an applicant foreign company takes the form of a retainer paid in trust to a Canadian law firm as part of an engagement. In the case of the Foreign Subsidiaries, each has money held to its credit in a Canadian bank.<sup>47</sup>

46. Overall, when determining whether the CCAA applies to foreign affiliate corporations, Canadian courts have frequently accepted that a multinational enterprise must be restructured as a global unit, even where operating units are located in foreign jurisdictions.<sup>48</sup> In particular, in situations in which foreign corporations are integrated with the operations of Canadian holding or parent corporations and where there is a measure of

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<sup>45</sup> [CCAA, section 3](#) [TAB 1].

<sup>46</sup> [CCAA](#), section 2(1) (“[company](#)” and “[debtor company](#)”) [TAB 1].

<sup>47</sup> [Re LTL Management LLC](#), 2021 ONSC 8357 at paras. [3](#) and [13](#); [TAB 4]; [Global Light Telecommunications Inc., \(Re\)](#), 2004 BCSC 745 at [para. 17](#) [TAB 5]; and [Syncreon Group BV, Re](#), 2019 ONSC 5774 at [para. 27](#). [TAB 6]; Pre-Filing Report of the Proposed Monitor, KPMG Inc. [the “**Pre-Filing Report**”]

<sup>48</sup> [In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al](#), 2024 ONSC 6199 at [para. 21](#) [TAB 7].

interdependence and control linking the group, courts will include foreign affiliates within CCAA proceedings where they are critical to a restructuring<sup>49</sup>

47. In the case of the Foreign Subsidiaries, the Canadian Applicants are tied to these subsidiaries and their gas and oil operations. The Foreign Subsidiaries are in turn dependent on the financing in place with Canacol, which is the group's public issuer of equity and the borrower or issuer under the debt instruments that provide funding for the group. When added to the fact that the seat of executive management is in Canada and the fact that all of the Applicants have business and assets in Canada, there can be no doubt that the Canacol Group as a whole, including the Foreign Subsidiaries, are companies to which the CCAA applies.<sup>50</sup>
48. In addition to being companies to which the CCAA applies, each of the Applicants is also a debtor company, within the meaning and for the purposes of the statute, which provides as follows in this regard:

**2 (1) *debtor company*** means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

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<sup>49</sup> *Re Ghana Gold Corporation*, 2013 ONSC 3284 at para. 56 [TAB 8].

<sup>50</sup> Bednar Affidavit, paras 7, 51-54, 89, 97, 102, 135

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)<sup>51</sup>.

49. Each of the Applicants qualifies as a debtor under the statute on the basis of their insolvency. As noted, Canacol is indebted to its lenders in an aggregate principal amount of more than US\$670 million.<sup>52</sup> Each of the other Applicants is liable to Canacol's lenders, or certain of them, as guarantors of Canacol's indebtedness.<sup>53</sup> The November Payments due in the next 14 days substantially exceed Canacol Group's existing available cash. Since Canacol Group has not been able to source further financing to date, it cannot meet its liabilities as they fall due.<sup>54</sup>
50. Canacol Group's insolvency is further exacerbated by the US\$22 million Arbitral Award made against CNE Panama and CNE O&G Colombia and by its substantial liabilities in relation to its outstanding Letters of Credit and the approximately US\$107.607 million owed to its trade creditors.<sup>55</sup>
51. Although Canacol Group currently meets the test for insolvency under the Bankruptcy and Insolvency Act (the "BIA"), if there were any doubt on this score, the Applicants note that the test for insolvency under the CCAA is broader. Applicant companies will be found to be insolvent for the purposes of the CCAA where there is "a looming liquidity condition or crisis that will result in the applicant running out of money to pay its debts as they generally become due in the future without the benefit of the stay and ancillary protections"<sup>56</sup> There can be no doubt that Canacol Group is in precisely this situation, or worse.

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<sup>51</sup> CCAA, section 2(1) [TAB 1].

<sup>52</sup> Bednar Affidavit, paras 88(b)(i)

<sup>53</sup> Bednar Affidavit, paras 94, 101, 107

<sup>54</sup> Bednar Affidavit, paras 124-125

<sup>55</sup> Bednar Affidavit, paras 108, 110, 118

<sup>56</sup> Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, § 20:11. "Debtor Company" [TAB 9]; See also Stelco Inc., Re, 2004 CanLII 24933 (ON SC) at para. 40 [TAB 10].

52. The Applicants also note that their entry into these proceedings as insolvent companies is part of a larger challenge that they wish to address through a restructuring: that is the pattern of falling revenues from their production activities coupled with their significant long term debt obligations.<sup>57</sup>

**C. THIS COURT IS THE PROPER FORUM FOR THE APPLICATION**

53. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the Court that has jurisdiction in the province where the debtor company has its “head office or chief place of business”.<sup>58</sup>

54. Canacol and the Canadian Subsidiaries have their registered and head offices in Calgary, Alberta and thus this Honourable Court is the correct geographic forum for Canacol’s application. Affiliated corporations to which the CCAA applies, which as noted above includes both the Canadian Subsidiaries and the Foreign Subsidiaries in the present case, seek relief as part of the corporate group. This Court is accordingly the correct geographic forum in Canada for all Subsidiaries of Canacol as well.

**D. CANADA IS THE CENTRE OF MAIN INTEREST FOR THE CANACOL GROUP**

55. For the purposes of insolvency law, the presumptive COMI of a company or a group of companies is where the executive officers for the parent company exercise their functions and where they are domiciled. The test for COMI is a multi-factor test. The presence or absence of any one of the indicia of COMI is not determinative. The COMI analysis has been described as a “points of contact” exercise.<sup>59</sup>

56. Prior cases have found that COMI exists in the jurisdiction where an international corporate group has its headquarters and registered office, where a significant group member’s shares are listed, and where the principal obligor on its financings is located. For the Canacol Group, this jurisdiction is Canada and COMI resides in this country.

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<sup>57</sup> Bednar Affidavit, paras 126-130

<sup>58</sup> [CCAA, section 9\(1\)](#) [TAB 1].

<sup>59</sup> [Re Just Energy Corp.](#), 2021 ONSC 1793 [at paras. 40 – 47](#) [TAB 11].

57. Notwithstanding the foregoing, the Applicants recognize that it is the function of a court hearing a recognition proceeding (for example, a US Bankruptcy Court hearing a Chapter 15 application) to make the ultimate determination of where COMI resides.<sup>60</sup>

**E. THE APPLICANTS SHOULD BE GRANTED PROTECTION AND A STAY UNDER THE CCAA**

58. Under s. 11.02 of the CCAA, a Court may grant an Initial Order staying all proceedings in respect of a debtor company for a period of no more than 10 days if the Court is satisfied that circumstances exist that make the order appropriate.<sup>61</sup>

59. A key purpose of the CCAA is to maintain the *status quo* to allow the debtor company the breathing room to deal with its liquidity issues, consult with stakeholders, and develop a viable restructuring plan with a view to continuing operations for the benefit of all stakeholders. The interests to be considered include those of employees, directors, and even other parties doing business with the insolvent company.<sup>62</sup>

60. The Applicants urgently require the protection of a stay of proceedings to maintain the *status quo* and protect their ability to continue as a going concern while they work with their stakeholders on a financial restructuring and develop a sale and investment solicitation process in tandem.<sup>63</sup>

61. In the absence of protection and the typical broad-based stays being sought, there is a material risk that creditors of the Applicants, including their secured creditor Macquarie, will avail themselves of remedies that will deprive the Applicants of the ability to operate. In particular, if Macquarie can exercise DACA rights against the Remittance Accounts operated by the Applicants, it will prevent the Applicants from making the payments necessary to operate their business and to pay the fees required to move forward with a restructuring. If this were to occur, it is likely that there would be a substantial dissipation

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<sup>60</sup> [Cinram International Inc. \(Re\)](#), 2012 ONSC 3767 at para 42 [TAB 12].

<sup>61</sup> CCAA, sections 11.02(1) and 11.02(3) [TAB 1].

<sup>62</sup> [Century Services Inc. v Canada \(Attorney General\)](#), 2010 SCC 60 at para. 60 [TAB 13].

<sup>63</sup> Bednar Affidavit, para 140

of value, to the prejudice of the general body of the creditors and stakeholders of the Applicants, including the Bondholders and the RCF Lenders.<sup>64</sup>

62. In the event of a disorderly wind-down of the Applicants' business in Colombia following an enforcement action against their cash reserves and/or other property, there is also a risk of supply disruption to counterparties and end-use energy customers in Colombia, including citizens whose electricity is generated using gas supplied by the Applicants.<sup>65</sup>
63. In the circumstances, and particularly where, as on this application for initial relief, the order requested is limited to the minimum reasonably necessary to continue the Applicants' operations during the initial stay period, it is appropriate to grant the protection sought.

**F. THE STAY SHOULD BE EXTENDED TO THE D&O'S AND THE SUCURSAL ENTITIES**

64. Section 11.03 of the CCAA empowers the Court to stay proceedings against the directors of a debtor company with respect to pre-filing claims relating to legal liability they incur in their capacity as directors for obligations of the company. Such a stay may be extended to officers of a debtor company by exercise of the Court's inherent jurisdiction under s. 11 of the CCAA.<sup>66</sup>
65. The directors and officers of the Applicants provide the critical governance and management of the business. To ensure that these functions continue during these proceedings and that the directors and officers are not prevented from devoting their time and attention to running the business and managing the restructuring, it is appropriate and necessary that the stay in favour of the Applicants extend to their directors and officers.
66. In addition to the extension of the stay of proceedings to the directors and officers, the Applicants seek an order that the stay also extends to the Sucursales. Under Colombian law (based on the advice of Colombian counsel), Sucursales operate as branches of foreign

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<sup>64</sup> Bednar Affidavit, paras 18, 125

<sup>65</sup> Bednar Affidavit, para 9

<sup>66</sup> [Laurentian University of Sudbury](#), 2021 ONSC 1098 [at paras. 80 – 82](#) [TAB 14].

corporate entities. Sucursales do not have independent legal personality separate and apart from their parent corporate entities and hold all property and rights for the account of their parent corporate entity.<sup>67</sup>

67. In the present case, the Sucursales have rights to control and administer certain assets of the Canacol Group business, including E& P Contracts and bank accounts. Accordingly, with a view to taking recognition or comparable proceedings in Colombia in relation to the Foreign Subsidiaries, including those carrying on business through the Sucursales, it is necessary and appropriate for this Court to extend the stay to apply to any property controlled by the Sucursales. In the proposed form of Initial Order sought by the Applicants, this is achieved by including property owned, held, controlled, administered or recorded in the name of the Sucursales within the definition of “Property”.
68. This Court has the authority to extend the stay of proceedings to a non-applicant entity pursuant to sections 11 and 11.02(1)<sup>68</sup> of the CCAA, which allow the Court to make an initial order on any terms that it may impose. To the extent that the Sucursales and the property and rights that they hold, control or administer are analogous to non-applicant corporate entities, the discretion to extend the stay should apply with equal effect. Applying the established test for considering stay extension to non-applicant third parties, with necessary changes, the Court must consider whether:
- (a) the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
  - (b) extending the stay to the third party would help maintain stability and value during the CCAA process;
  - (c) declining to extend the stay to the third party would have a negative impact on the debtor company’s ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;

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<sup>67</sup> Bednar Affidavit, para 40

<sup>68</sup> [CCAA](#), sections [11](#) and [11.02\(1\)](#) [TAB 1].

- (d) the economic harm would be far-reaching and significant if the debtor company were prevented from concluding a successful restructuring with its creditors;
- (e) failure of the restructuring would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;
- (f) if the restructuring proceedings were successful, whether the debtor company would continue to operate for the benefit of all of its stakeholders, and its stakeholders would retain all of their remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and,
- (g) the balance of convenience favours extending the stay to the third party.<sup>69</sup>

(the “**JTI Factors**”).

69. Considering the JTI Factors, it is apparent that the business and operations of the Sucursal Entities are fully integrated with the Canacol Group, as they hold, control or administer property for the account of members of the group.<sup>70</sup> Since the property under the control of the Sucursales includes valuable E&P Contracts and bank accounts, leaving any doubt as to the applicability of the stay to this property would jeopardize the success of a restructuring of the Canacol Group, causing significant economic harm to creditors and stakeholders. Since staying claims against the property controlled by the Sucursales merely gives practical effect to the stay protecting the Canacol Group members, who are the ultimate beneficiaries of that property and the ultimate parties liable, there is little or no real prejudice to anyone with a claim against the Sucursales or their controlled property. Accordingly, the JTI Factors (e) through (g) are either satisfied or irrelevant.

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<sup>69</sup> *JTI-Macdonald Corp. Re*, 2019 ONSC 1625 [at para. 15](#) [TAB 15].

<sup>70</sup> Bednar Affidavit, paras 32, 34, 39

**G. KPMG SHOULD BE APPOINTED AS MONITOR**

70. Pursuant to s. 11.7<sup>71</sup> of the CCAA, the Court must appoint a person to monitor the business and financial affairs of a debtor company when an initial CCAA order is made.<sup>49</sup> Section 11.7(2)<sup>72</sup> also sets out certain requirements for, and restrictions on, who may act as a monitor, including that a monitor must be a trustee within the meaning of subsection 2 of the BIA<sup>73</sup> and not have been an auditor of the debtor company during the preceding two years.
71. KPMG fulfils the requirements of a trustee for the purposes of the applicable provision and has not audited any member of the Canacol Group in the preceding two years. Further, KPMG has extensive experience in acting as a monitor for debtor companies in CCAA proceedings, including cross-border and international proceedings. KPMG is therefore a suitable and highly appropriate monitor for Canacol Group.<sup>74</sup>

**H. THE MONITOR SHOULD BE APPOINTED AS FOREIGN REPRESENTATIVE OF THE APPLICANTS**

72. Should this Court appoint KPMG as Monitor, the Applicants request that the Court also appoint the Monitor as the foreign representative of the Applicants, for the purposes of commencing and continuing recognition or comparable proceedings in relation to these CCAA proceedings, in jurisdictions outside Canada. Subject to this Court's decision, the proposed Monitor intends to immediately seek recognition of these proceedings and the Initial Order in the United States Bankruptcy Court sitting in the Southern District of New York, under Chapter 15 of the United States Bankruptcy Code, and in Colombia under Law 1116 of 2006 of the Republic of Colombia.
73. Pursuant to section 56<sup>75</sup> of the CCAA, the Court is empowered to authorize any person or body to act as a representative for the purposes of having a proceeding under the CCAA

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<sup>71</sup> [CCAA, section 11.7\(1\)](#) [TAB 1].

<sup>72</sup> [CCAA, section 11.7\(2\)](#) [TAB 1].

<sup>73</sup> [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, [section 2](#) [TAB 16].

<sup>74</sup> Bednar Affidavit, paras 141-144

<sup>75</sup> [CCAA, section 56](#) [TAB 1].

recognized in jurisdictions outside Canada. Consistent with the principles of comity and the coordination of insolvency proceedings involving businesses like the Canacol Group with activities in a number of jurisdictions, Canadian Courts have frequently appointed CCAA monitors as foreign representatives. By way of example, in [\*Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd.\*](#), the British Columbia Court of Appeal approved of the trial court's appointment of the monitor in that case as a foreign representative for the purposes of seeking recognition under Chapter 15 of the US Bankruptcy Code.<sup>76</sup>

74. Similarly, in [\*Re PT Holdco Inc.\*](#), the Ontario Superior Court of Justice specifically appointed the monitor in that CCAA proceeding as the foreign representative of the debtor company for the purposes of seeking recognition under Chapter 15 of the US Bankruptcy Code and held as follows:

Courts have consistently encouraged comity and cooperation between courts in cross-border insolvencies to enable enterprises to restructure on a cross-border basis. To authorize FTI to act as foreign representative and seek recognition of these proceedings in the United States is consistent with and gives full effect to these principles.

The commencement of proceedings in the United States is necessary and appropriate under the circumstances because, among other things, Primus operates a cross-border business that is operationally and functionally integrated in several significant respects. Among other things, Primus has assets and employees in the United States and many affected creditors are located in the United States. As a result, it is possible that one or more parties in the United States will seek to commence proceedings against one of more of the U.S. Primus entities.

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<sup>76</sup> [\*Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd.\*](#), 2014 BCCA 419 [at para. 28](#) [TAB 17].

The appointment of FTI as foreign representative is granted.<sup>77</sup>

75. In the present case, the appointment of the proposed monitor as foreign representative will be equally necessary and appropriate, as it will allow the enforcement of the stay of proceedings, thereby enabling a restructuring and providing a mechanism for seeking a worldwide stay through the authority of the US Bankruptcy Court and under Colombian law. The Applicants' restructuring efforts will be further assisted by the appointment of the proposed monitor as foreign representative, insofar as it is likely that the courts and authorities in Colombia will more readily recognize and give effect to the measures taken on behalf of the Applicants if they are led by a Court officer.<sup>78</sup>

## **I. THE ADMINISTRATION CHARGE AND THE DIRECTORS AND OFFICERS' CHARGE SHOULD BE APPROVED**

### *GENERAL PRINCIPLES*

76. In accordance with section 11.001 of the CCAA, the relief sought on an initial application is limited to what is reasonably necessary to continue operations in the ordinary course during the initial stay period.<sup>79</sup> While this requirement applies to all of the relief sought by Canacol Group and is satisfied, including with respect to the extension of the stay to the directors and officers and the rights of the Sucursales, and the appointment of the Monitor as foreign representative, it is particularly applicable to the Court ordered charges being sought. As is set out in more detail below, the only two charges being sought on the initial return of this application are an administration charge and a directors and officers charge.
77. In respect of both the Administration Charge and the Directors' Charge, the fact that these charges do not seek to prime the Applicants' only senior secured creditor, Macquarie, reflects and is consistent with limited relief principle. This fact also permits the Applicants

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<sup>77</sup> *PT Holdco, Inc. Re*, 2016 ONSC 495 at paras. 45-47 [TAB 18].

<sup>78</sup> Bednar Affidavit, paras 152-153

<sup>79</sup> *CCAA, section 11.001* [TAB 1]; *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras. 22-26 [TAB 19], Per *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802 at para. 16 [TAB 20], the relief reasonably required to maintain operations for the initial period is a contextual and factual determination to be made on a case-by-case basis.

to proceed without notice in relation to this initial application, as the subordinate priority being sought for the Administration Charge and the Directors' Charge will not be likely affect Macquarie as secured creditor.<sup>80</sup>

### *ADMINISTRATION CHARGE*

78. The Applicants are seeking to charge their Property with the Administration Charge to secure the fees and expenses of the professionals directly involved in this filing. During the initial stay period, the Applicants request that Administration Charge be granted up to a maximum of \$1,000,000, subject to further order of the Court, and that it secure the fees and disbursements of the Proposed Monitor (KPMG Inc.), its counsel (Bennett Jones LLP as Canadian counsel and Pachulski Stang Ziehl & Jones LLP as U.S. Counsel), and the Applicants' counsel (Gowling WLG (Canada) LLP as Canadian counsel, Nelson Mullins as U.S. counsel and Duarte García Abogados S.A.S. as Colombian counsel).
79. Pursuant to section 11.52 of the CCAA<sup>81</sup>, courts will grant a charge for the fees and expenses of financial, legal and other advisors or experts acting in a proceeding based on consideration of the following non-exhaustive factors: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge, and (f) the position of the Monitor.<sup>82</sup>
80. In the present case, the relevant factors weigh in favour of the Administration Charge requested. The Canacol Group business being restructured is substantial in size and is financially, operationally and geographically complex. The professionals benefiting from the charge will have significant workloads during the initial stay period, as the Applicants prepare for the required comeback hearing.

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<sup>80</sup> See [CCAA](#), sections [11.51](#) and [11.52](#) [TAB 1], which only require notice of requests for charges for directors and officers and administration costs, respectively, where the charges are likely to affect secured creditors.

<sup>81</sup> [CCAA](#), section [11.52](#) [TAB 1].

<sup>82</sup> [Canwest Publishing Inc](#), 2010 ONSC 222 at para. 54 [TAB 21]. See also [Springer Aerospace Holdings Limited](#), 2022 ONSC 6581 at paras. 18 – 19 [TAB 22].

81. The proposed Administration Charge and its quantum have been discussed with the Proposed Monitor and with the parties benefitting from it. As indicated in the Pre-Filing Report, it is the view of the Proposed Monitor that, in the circumstances of this complex and urgent multi-jurisdictional case, the amount of the proposed charge is reasonable and proportionate in the circumstances.
82. As further set out in the Pre-Filing Report, the Proposed Monitor is similarly of the view that the proposed charge is limited to what is necessary during the initial stay period in order to secure the fees of the professionals who are critical to the commencement and continuation of these restructuring proceedings. The roles of these professionals are not duplicative and they are unlikely to participate in these proceedings without the Administrative Charge as sought.
83. The Administration Charge sought is to rank behind the secured claims of Macquarie over the Property that is subject to those claims, but in priority to all other claims against the Applicants and the Property.

#### *DIRECTORS' CHARGE*

84. The Applicants are seeking to charge the Property of the Applicants with the Directors' Charge to secure the indemnity in favour of their directors and officers. During the initial stay period, the Applicants request that Directors' Charge be granted up to a maximum of \$1,000,000, subject to further order of the Court.
85. Pursuant to section 11.51 of the CCAA<sup>83</sup>, the Court is authorized to grant the Directors' Charge in the amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it. As noted above, given that no secured creditor is being primed in this case, notice is not required.
86. Section 11.51 of the CCAA also provides that the Directors' Charge should not be granted to the extent that adequate insurance coverage is available or could be obtained at a reasonable cost. In the present case, the Applicants have directors and officers' insurance,

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<sup>83</sup> [CCAA, section 11.51](#) [TAB 1].

however, given the very significant complexity and risks of the Canacol Group's gas exploration and development activities, the directors and officers are justifiably concerned about the scope of their coverages.<sup>84</sup> Although the quantum of the charge sought for the interim stay period is \$1,000,000, in the circumstances it is not currently certain that even this amount will fully protect the directors and officers from any uninsured but indemnifiable risk.

87. The proposed Directors' Charge and its quantum have been discussed with the Proposed Monitor and with the parties benefitting from it. As indicated in the Pre-Filing Report, it is the view of the Proposed Monitor that, in the circumstances of this case, the amount of the proposed charge is reasonable and proportionate in the circumstances.<sup>85</sup>
88. As further set out in the Pre-Filing Report, the Proposed Monitor is similarly of the view that the proposed charge is limited to what is necessary during the initial stay period in order to secure the indemnity in favour of the Applicants' directors and officers to the extent of any uninsured liabilities.<sup>86</sup> A successful restructuring of the Applicants will only be possible with the continued participation of its directors and officers and they are unlikely to remain in their positions to fulfil their roles in the absence of the Directors' Charge.
89. The Applicants also note that the Directors' Charge being proposed does not extend to any liability incurred as a result of a director's or officer's gross negligence or wilful misconduct, consistent with section 11.51(4) of the CCAA.<sup>87</sup>
90. The Directors' Charge sought is to rank behind the secured claims of Macquarie over the Property that is subject to those claims and the Administration Charge, but in priority to all other claims against the Applicants.<sup>88</sup>

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<sup>84</sup> Bednar Affidavit, para 149-151

<sup>85</sup> Pre-Filing Report

<sup>86</sup> Pre-Filing Report

<sup>87</sup> [CCAA, section 11.51\(4\)](#) [TAB 1].

<sup>88</sup> Bednar Affidavit, para 4(1)

**J. THE APPLICANTS SHOULD BE PERMITTED TO MAKE LIMITED PRE-FILING PAYMENTS TO CRITICAL VENDORS**

91. The proposed Initial Order authorizes, but does not require, the Applicants to pay amounts owing for goods or services supplied to the Applicants prior to the date of the Initial Order, if in the opinion of the Applicants, with the consent of the Monitor, such payments are required to ensure the ongoing supply of critical goods and services. Such payments will only be made if they are necessary to avoid the disruption of the business of the Applicants.
92. The Court is empowered to grant this type of critical vendor relief by exercise of its general jurisdiction under section. 11 of the CCAA<sup>89</sup>. Courts have routinely granted orders allowing CCAA applicants to pay pre-filing amounts to critical suppliers with the consent of the monitor.<sup>90</sup> In doing so, Courts have considered the following criteria: (a) whether the goods and services concerned are integral to the business; (b) the applicant's need for the uninterrupted supply of the goods or services; (c) the Monitor's support and willingness to work with the applicant to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate; and (d) the effect on the applicant's ongoing operations and ability to restructure if it were unable to make pre-filing payments to its critical suppliers.<sup>91</sup>
93. In the present case, the criteria for making limited payments to critical vendors for pre-filing amounts are met. Suppliers of goods and services to the gas operations of the Applicants in Colombia and other suppliers to the operating business are essential to the Applicants' continued production. Where these suppliers, in turn, are at risk of serious financial distress if unpaid, or may not be willing to provide ongoing even in the face of these proceedings, practical considerations mitigate in favour of allowing payment. To conserve scarce cash resources, both the Applicants and the Monitor intend to take a very conservative approach to these types of discretionary payment.<sup>92</sup>

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<sup>89</sup> [CCAA, section 11](#) [TAB 1].

<sup>90</sup> [Cinram International Inc. \(Re\)](#), 2012 ONSC 3767 at paras. 23 – 24 [TAB 12]; [JTI-Macdonald Corp. Re](#), 2019 ONSC 1625 at paras. 24 – 25 [TAB 15]; [Springer Aerospace Holdings Limited](#), 2022 ONSC 6581 at paras. 25 – 27 [TAB 22]; and [McEwan Enterprises Inc.](#), 2021 ONSC 6453 at paras. 32 – 33 [TAB 23].

<sup>91</sup> [McEwan Enterprises Inc.](#), 2021 ONSC 6453 at paras. 32 – 33 [TAB 23].

<sup>92</sup> Bednar Affidavit, paras 111, 157

**V. CONCLUSION AND RELIEF SOUGHT**

94. On the basis of the foregoing, the Applicants seek the relief set out in the Originating Application, on the terms set out in the draft Initial Order filed with this Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of November, 2025.**

**Gowling WLG (Canada) LLP**

A handwritten signature in blue ink, appearing to read "C. Prophet", is written above a horizontal line.

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Counsel to the Applicants

Per: Clifton Prophet

## TABLE OF AUTHORITIES

### TAB AUTHORITY

1. [Companies' Creditors Arrangement Act](#), RSC 1985, c-C 36, as amended [CCAA].
2. [Alberta Rules of Court](#), Alta Reg 124/2010.
3. [Sun Indalex Finance, LLC v United Steelworkers](#), 2013 SCC 6.
4. [Re LTL Management LLC](#), 2021 ONSC 835.
5. [Global Light Telecommunications Inc., \(Re\)](#), 2004 BCSC 745.
6. [Syncreon Group BV, Re](#), 2019 ONSC 5774.
7. [In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al](#), 2024 ONSC 6199.
8. [Re Ghana Gold Corporation](#), 2013 ONSC 3284.
9. Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, § 20:11. “Debtor Company”.
10. [Stelco Inc., Re](#), 2004 CanLII 24933 (ON SC).
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15. [JTI-Macdonald Corp, Re](#), 2019 ONSC 1625.
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17. [\*Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd.\*](#), 2014 BCCA 419.
18. [\*PT Holdco, Inc. Re\*](#), 2016 ONSC 495.
19. [\*Lydian International Limited \(Re\)\*](#), 2019 ONSC 7473.
20. [\*Boreal Capital Partners Ltd et al. \(Re\)\*](#), 2021 ONSC 7802.
21. [\*Canwest Publishing Inc.\*](#), 2010 ONSC 222.
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