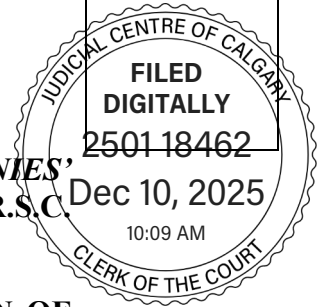


COURT FILE NO. 2501-18462
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT **IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

Clerk's
Stamp



**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**

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**APPLICATION BEFORE THE HONOURABLE JUSTICE MAH
DECEMBER 10, 2025 AT 10:00 AM (M.T.) ON THE EDMONTON COMMERCIAL
LIST**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE FACTS.....	2
	A. OVERVIEW	2
	B. KEY ISSUES REGARDING THE DIP SOLICITATION PROCESS AND THE RESULTING DIP FACILITY	4
	(i) The DIP Solicitation Process Was Flawed	4
	(ii) The DIP Quantum is Too Large.....	6
	(iii) Elevating the Priority of Pre-Filing Letters of Credit	6
	(iv) Unearned Fees.....	6
	(v) Unknown DIP Lenders	7
	(vi) Tunnel Vision and Disregard for the Impact on Stakeholders.....	7
	(vii) Lack of Appropriate Procedure for Disputed Litigation Matter	7
	(viii) Uncertainty.....	8
III.	ISSUES AND THE LAW	9
	A. APPROVAL OF DIP FINANCING REQUIRES SCRUTINY AND SHOULD NOT BE RUSHED.....	9
	B. A PRIMING DIP IS NOT APPROPRIATE HERE	10
	(i) The Company’s Process was Flawed.....	10
	(ii) Approval would set a Negative and Far-Reaching Precedent	11
	(iii) Approval Will Cause Uncertainty in These CCAA Proceedings	12
	(iv) Prejudice to Macquarie	13
	(v) Refusal of the DIP Facility is Likely to Lead to a Better Outcome	15
IV.	CONCLUSION	16

I. INTRODUCTION¹

1. Macquarie Bank Ltd. (“**Macquarie**”) files this Bench Brief in support of Macquarie’s request for an adjournment or an objection to the application of the Applicants for an order (the “**SARIO**”), among other things, seeking to:
 - (a) authorize the Applicants to enter an interim financing loan agreement (the “**Unsecured Noteholders’ DIP Term Sheet**”) with the Ad Hoc Group (as defined below) (the “**DIP Lenders**”), pursuant to which the DIP Lenders have agreed to advance to the Company the maximum principal amount of \$67,000,000 (the “**DIP Facility**”), which will be made available to the Company during these CCAA Proceedings, including:
 - (i) a delayed-draw term loan sub facility in the maximum principal amount of \$45,000,000, of which: (a) an initial amount up to the maximum amount of \$15,000,000 (the “**Initial Advance**”) will be advanced to the Company upon approval of the SARIO and the granting of the US Recognition Order (as defined below); and (b) a subsequent advance up to the maximum amount of \$30,000,000 (the “**Subsequent Advances**”, and each, a “**Subsequent Advance**”) is to be advanced upon satisfaction of certain conditions in the Unsecured Noteholders’ DIP Term Sheet, including the granting of the Colombian Recognition Order and the Colombian DIP Recognition Order in the Colombian Recognition Proceedings (each as defined below); and
 - (ii) a letter of credit sub-facility to renew and/or replace certain expiring letters of credit (the “**Tranche B Letters of Credit**”) in the aggregate maximum amount of \$20,000,000 (the “**Tranche B Sub-Facility**”); and
 - (iii) a letter of credit sub-facility for new letters of credit (the “**Tranche C Letters of Credit**”) in the aggregate maximum amount of \$2,000,000 (the “**Tranche C Sub-Facility**”); and
 - (b) grant a charge against the Property, including over foreign property located in Colombia (the “**DIP Charge**”) as security for the Company’s obligations under the Unsecured Noteholders’ DIP Term Sheet in the maximum principal amount of \$67,000,000 plus fees and interest.

¹ Capitalized terms that are not defined herein have the meanings given to them in the affidavit of Charles Angus Pickard sworn December 8, 2025 (the “**Pickard Affidavit**”) or in the Unsecured Noteholders’ DIP Term Sheet.

II. THE FACTS

A. OVERVIEW

2. Macquarie is the only secured lender of the Canacol Group and is owed approximately \$40,000,000. Macquarie believes that the DIP Facility is not in the best interests of the Company or its stakeholders, and results in material prejudice to Macquarie, the Canacol Group's only secured lender.²
3. Macquarie's main concern is the Company's attempt to prime Macquarie's secured claim through the proposed DIP Facility. Macquarie also has concerns with the proposed conditions, the quantum, the fees, and the structure of the tranches of the proposed DIP Facility.³
4. Compounding these concerns are process deficiencies in the DIP Solicitation Process and the time period to properly have the matter determined by the CCAA Court without a proper litigation schedule to provide a full and fair hearing on material matters.⁴
5. Just last year, Macquarie provided Canacol with much needed liquidity.⁵ Macquarie and Canacol, as borrower, and the other Applicants, as guarantors, entered into a credit agreement dated September 3, 2024 (the "**Macquarie Credit Agreement**"), pursuant to which Macquarie made available a secured term loan facility (the "**Term Loan**").⁶ Macquarie provided the Term Loan and received its broad security package at a time when the Company had previously issued \$500 million of Unsecured Notes under an Indenture dated November 24, 2021 and also had unsecured debt under a \$200 million revolving credit facility pursuant to a credit agreement dated February 14, 2023.⁷
6. The DIP Facility being proposed is a 'priming' DIP facility advanced by an unknown ad hoc group (the "**Ad Hoc Group**") of holders of approximately \$450,000,000 of the \$500 million principal amount of senior unsecured notes (the "**Unsecured Notes**") issued by Canacol.⁸
7. The Canacol Group's core business centers on discovering, producing, and selling natural gas in northern Colombia. Canacol's primary operating company is its Colombian subsidiary, CNE O&G Colombia, its customers are all based in Colombia and 352 of its 381 full-time employees are employed in Colombia. As described by Canacol in its annual information form for the year ended December 31, 2024 (the "**AIF**"), other than cash on

² Pickard Affidavit at para. 4.

³ Pickard Affidavit at para. 5.

⁴ Pickard Affidavit at para. 6.

⁵ Pickard Affidavit at para. 60.

⁶ Pickard Affidavit at para. 7.

⁷ Initial Affidavit of Jason Bednar sworn November 16, 2025 [*First Bednar Affidavit*] at paras. 97, 98, 100, 103.

⁸ Pickard Affidavit at para. 8.

deposit, almost all of Canacol's assets are located in countries other than Canada (being Colombia).⁹

8. All of the Canacol Group's material assets and collateral are located in Colombia and Macquarie has a registered first ranking charge in such assets. The foreign location of the Canacol assets was identified as a risk by Canacol in the AIF in its ability to protect these assets as they are subject to non-Canadian jurisdictions with laws that may differ "materially".¹⁰
9. The location of the Canacol Group's assets, and the "materially" different laws they are subject to, were a key factor that was taken into consideration by Macquarie in its credit analysis prior to providing the Term Loan. In order to provide the Term Loan, Macquarie specifically bargained for a first ranking security interest over all of the Company's Colombian assets, and took comfort in doing so because it was aware that a secured lender with a first ranking security interest on assets domiciled in Colombia has material and significant protections as a first ranking secured creditor. To further protect its collateral, Macquarie negotiated the DACAs to perfect its security interests in cash proceeds from Colombian operations deposited into U.S. bank accounts.¹¹
10. The material and significant protections provided by Colombian law are confirmed in the Expert Report of Luis Guillermo Velez-Cabrera (the "**Expert Report**"). According to the Expert Report, Colombian insolvency law provides that:

39. Granting a First-Priority security interest over previously encumbered assets is only possible with the prior consent of the creditor whose interest will be subordinated.

40. In the absence of such consent, the insolvency judge only may authorize the creation of a First-Priority security interest on post-petition finance provided the debtor in bankruptcy demonstrates that, despite the new encumbrance, the originally secured creditor will enjoy "reasonable protection".

62. "Reasonable protection" means implementing measures to safeguard the originally secured creditor's position, which in practice means that such existing creditors must receive material value in the form of repayment, a substantial guarantee or security on new assets.

66. Evidence of no prejudice is not reasonable protection.¹²

⁹ Pickard Affidavit at para. 10.

¹⁰ Pickard Affidavit at paras. 9, 11.

¹¹ Pickard Affidavit at paras. 12, 35.

¹² Affidavit of Luis Guillermo Velez-Cabrera sworn December 8, 2025 [Valez Affidavit] at Exhibit B, paras. 39,40,62,66.

11. The Company is now asking this Court to grant a DIP Charge over foreign assets in order to inappropriately prime Macquarie, which materially prejudices the position of Macquarie. By granting the DIP Lenders a super-priority charge ahead of prepetition secured claims, the proposed DIP Facility effectively erodes any potential collateral cushion and subordinates Macquarie's bargained-for security interests without its consent or providing "reasonable protection", which is in contradiction to Colombian law.
12. Not only does the proposed DIP Facility contravene Colombian law, it is approximately 175% larger than Macquarie's priority secured obligations.¹³ The quantum of the proposed DIP Facility in priority to Macquarie is substantial and unwarranted.
13. The unprecedented DIP Facility is the result of a limited DIP Solicitation Process that Macquarie took issue with from the outset. Macquarie advised the Company that it would oppose any attempts by the Company to prime its security position. Macquarie reaffirmed this position upon receipt of the DIP Solicitation Letter and advised the Company that it should instead focus its efforts on seeking DIP Financing on a junior basis to Macquarie's secured position. This position was disregarded by the Company.¹⁴
14. The DIP Solicitation Process was fundamentally flawed and Macquarie's risk of recovery should not be materially increased where junior unsecured creditors are advancing the funding to protect their own economic interest. If the Court were to require that the proposed DIP Facility be structured as junior to Macquarie's security, the Ad Hoc Group, acting in a commercially reasonable manner, would still provide financing as it remains in their economic interest to do so, given their approximately \$450 million of unsecured debt that is subordinate to Macquarie.
15. If this Court grants an adjournment of the subject application or does not approve the relief being sought, Macquarie remains available to discuss providing interim financial support to the Company with its latest proposal submitted in the DIP Solicitation Process forming the basis of such discussions.¹⁵

B. KEY ISSUES REGARDING THE DIP SOLICITATION PROCESS AND THE RESULTING DIP FACILITY

(i) The DIP Solicitation Process Was Flawed

16. Around November 21, 2025, the Applicants sent Macquarie a solicitation letter ("**DIP Solicitation Letter**") regarding DIP Financing. The DIP Solicitation Letter indicated that the Company was seeking a minimum of \$60 million in DIP Financing on a senior super

¹³ Pickard Affidavit at para. 18.

¹⁴ Pickard Affidavit at para. 14.

¹⁵ Pickard Affidavit at para. 19.

priority basis and imposed a bid deadline of 5:00 p.m. on November 27, 2025, only one day after the Comeback Hearing.¹⁶

17. Given the truncated timeline, there was no realistic possibility that any party other than the Company's existing lenders could provide DIP Financing. As such, the DIP Solicitation Process was flawed from the outset as it was not a competitive or robust process, which prejudiced all stakeholders of the Company, including Macquarie.¹⁷
18. Not only was the DIP Solicitation Process truncated, but the conditions and requirements for the DIP Financing, including the quantum required, were constantly in flux. This directly prejudiced Macquarie, as it did not have sufficient time or consistent information from the Company to participate meaningfully. Macquarie has not been provided with reliable Cash Flow Forecasts. The Pre-Filing Report and the First Report contained two different Cash Flow Forecasts, with the First Report indicating that the Company anticipated an unsustainable liquidity position by the week ending December 20, 2025. However, according to the Affidavit of Jason Bednar sworn December 5, 2025 (the "**Bednar Affidavit**"), the Company now expects this deficit position will not arise until early January 2026, contingent on the Unsecured Noteholders' DIP Term Sheet referenced in the Second Report of the Monitor (the "**Second Report**"), to be filed in connection with this application.¹⁸ As of 9:00 pm EST on December 10, 2025, Macquarie still has not received a copy of the Second Report.
19. Furthermore, the Company's drilling assumptions and proposed capital expenditures are not very clear and are based on exploration activities which may carry significant risk. Macquarie is of the view that material capital expenditures on risky activities by the Company in advance of a sale process creates additional risk to the secured position of Macquarie as such expenditures may not increase the value of the business but the overall debt burden on the Company will nevertheless have been increased.¹⁹
20. The Company does not have a Chief Restructuring Officer and has no or limited board or management restructuring experience. Furthermore, the Company's financial advisor, Plexus Capital LLC, who conducted the DIP Solicitation Process, has never participated in any CCAA Proceedings, which resulted in the Company running a flawed DIP Solicitation Process.²⁰
21. This flawed process has now led to a contested DIP Facility that raises material concerns regarding the feasibility of its conditions and milestones, issues that could affect the entirety of the Company's CCAA Proceedings.

¹⁶ Pickard Affidavit at para. 14.

¹⁷ Pickard Affidavit at para. 39.

¹⁸ Affidavit of Jason Bednar sworn December 5, 2025 [*Third Bednar Affidavit*] at para. 54.

¹⁹ Pickard Affidavit at para. 46.

²⁰ Pickard Affidavit at para. 49.

(ii) *The DIP Quantum is Too Large*

22. According to the Bednar Affidavit, the Company does not expect to be in a deficit cash flow position until January, 2026 should the Unsecured Noteholders' DIP Term Sheet not be approved.²¹ Yet, the Applicants are requesting a proposed priming DIP Facility of \$67 million, which represents nearly 175% of Macquarie's secured outstanding obligations.

(iii) *Elevating the Priority of Pre-Filing Letters of Credit*

23. The DIP Facility contemplate advancing new money on a senior basis to Macquarie and also includes the Tranche B Sub-Facility to be used to renew or replace letters of credit set to expire by the end of December 2025 (the "**Expiring LCs**").²²
24. This is a misstep by the Company. The Company's Expiring LCs were issued by various lenders (the "**LC Lenders**"), and any exposure on these pre-filing Expiring LCs would constitute unsecured obligations of the Company. If any third parties draw on the Expiring LCs (which they appear entitled to do) they would hold cash for the Company's obligations, leaving the Company with an unsecured pre-filing obligation to the LC Lenders. In such circumstances, there is no need for a new priming DIP Facility to replace or cash collateralize these Expiring LCs.²³
25. The Company appears to have focused exclusively on a path to "replace or collateralize" the Expiring LCs under the proposed DIP Facility, without considering that these pre-filing obligations are unsecured and therefore junior to Macquarie's security. By creating a priming letter of credit facility under the DIP Facility, the Company is effectively elevating obligations that would otherwise remain unsecured.²⁴

(iv) *Unearned Fees*

26. The DIP Facility obligates the Company to pay the DIP Lenders a commitment fee equal to 5% of the maximum amount under Tranche A (\$45,000,000) (the "**Commitment Fee**"). This fee becomes fully earned upon issuance of the DIP Approval Order and is payable in full, even though the entire Tranche A will not be advanced unless the Colombian DIP Recognition Order is granted.²⁵ In practical terms, the Company seeks approval for a significant fee tied to financing that it may never receive. This arrangement imposes an immediate and unnecessary cost on the estate without delivering corresponding value, raising serious concerns about fairness and alignment with the objectives of the CCAA.

²¹ Third Bednar Affidavit at para. 54.

²² Pickard Affidavit at para. 51.

²³ Pickard Affidavit at para. 53.

²⁴ Pickard Affidavit at para. 53.

²⁵ Third Bednar Affidavit at Exhibit K, p.5.

(v) *Unknown DIP Lenders*

27. The Unsecured Noteholders' DIP Term Sheet appended to the Bednar Affidavit, does not include executed signature pages identifying the actual members of the Ad Hoc Group.²⁶ Macquarie cannot properly ascertain whether there are new lenders involved, nor the amounts such lenders are individually providing as members of the Ad Hoc Group. The CCAA Court and the Company's stakeholders have a right to know the identity of the proposed DIP Lenders and their respective debt-holdings.

(vi) *Tunnel Vision and Disregard for the Impact on Stakeholders*

28. Based on the Unsecured Noteholders' DIP Term Sheet, it appears that the Company conducted and advanced the DIP Solicitation Process without adequately considering the specific circumstances of this situation. These include the quantum of the Macquarie Term Loan, its priority in foreign jurisdictions, the nature and location of the Company's material assets in Colombia, the size of the proposed DIP Facility, the treatment of Expiring LCs, and the material conditions attached to the DIP Facility.²⁷
29. The Company should have prioritized securing a junior DIP from the outset from the Ad Hoc Group (or alternatively pursued a more fulsome DIP financing that would have repaid the Macquarie Term Loan). Such an approach would have provided greater certainty and avoided the material stakeholder disputes now arising in these CCAA Proceedings and in foreign courts.
30. The Company's goal should have been to achieve a consensual DIP, yet based on Macquarie's discussions with the Company and its advisors, limited steps were taken in that direction.²⁸

(vii) *Lack of Appropriate Procedure for Disputed Litigation Matter*

31. As early as November 21, 2025, Macquarie advised that it would not consent and would vigorously oppose any and all charges that Canacol sought from the Court in priority to Macquarie's security over its collateral including any Administration Charge, Directors' Charge or DIP Charge. Such matters were also raised by Macquarie's counsel at the Comeback Hearing, and have been repeated to the Company throughout the DIP Solicitation Process.²⁹
32. The Company has not been proactive throughout these CCAA Proceedings and should have worked with Macquarie and other stakeholders on a liquidity solution instead of creating the multi-jurisdictional dispute it finds itself in today.

²⁶ Third Bednar Affidavit at para. 35.

²⁷ Pickard Affidavit at para. 62.

²⁸ Pickard Affidavit at para. 62.

²⁹ Pickard Affidavit at paras. 22, 25.

33. The Company served its application record in respect of the SARIO Application during the evening of December 5, 2025 for a hearing scheduled to be heard on Wednesday, December 10, 2025. As of 9:00 pm EST on Tuesday, December 9, 2025, a monitor's report in support of the SARIO Application has not been served. There has been no opportunity for any cross-examinations or document discoveries.

(viii) Uncertainty

34. The Subsequent Advances under the Tranche A Sub Facility of \$30,000,000 are conditional upon, among other things, the granting of a Colombian recognition order generally in respect of these CCAA proceedings (the "**Colombian Recognition Order**") and, further, the DIP Facility and DIP Charge thereafter being recognized by the Colombian Court (the "**Colombian DIP Recognition Order**").³⁰
35. The Expert Declaration provides that this later condition will not be satisfied as:
- “a measure priming the existing secured debt as proposed in the DIP facility term sheet, would be denied by a Colombian court as manifestly contrary to public policy (orden público) as provided by Article 91 of L.1116.”³¹
36. The Expert Declaration provides that secured parties are to obtain “reasonable protection” in the relevant circumstances under Colombian law. Such reasonable protection entails “establishing or implementing measures to safeguard the secured creditor's position, such as making a full or partial prepayment of the secured obligations, replacing the secured asset with an equivalent one, making periodic payments, among others”.³²
37. The Company is not establishing any measures to safeguard Macquarie's secured position. Instead, the Company is eroding Macquarie's secured position with the proposed DIP Facility.
38. A hearing in respect of the Colombian Recognition Order is anticipated to be scheduled in late December, 2025, or early January, 2026 and a hearing has not been scheduled in respect of the Colombian DIP Recognition Order.³³
39. The Applicants are asking this CCAA Court to have the Colombian Court apply Canadian law in the foreign jurisdiction where all the Company's material assets are located. The Expert has provided an opinion that the DIP Facility will not be approved in Colombia in its current form.

³⁰ Pickard Affidavit at para. 51.

³¹ Valez Affidavit at Exhibit B, para. 56.

³² Valez Affidavit at Exhibit B, para. 55.

³³ Pickard Affidavit at para. 64.

III. ISSUES AND THE LAW

40. The issue on this application is whether the proposed DIP Facility should be approved on a limited record with limited notice, which proposed DIP Facility seeks unprecedented relief that would materially prejudice Macquarie, the Company's only secured lender.
41. Macquarie submits that the SARIO Application should be adjourned to allow sufficient time for all parties to review and consider materials and issues raised. The Company is not in a deficit liquidity position until January and Macquarie remains available to discuss providing interim financial support to the Company with its latest proposal submitted in the DIP Solicitation Process forming the basis of such discussions.
42. This approach is in keeping with the CCAA objective of providing a structured environment consistent with CCAA principles.³⁴ It strikes an appropriate balance to provide the Company with the necessary financing needed to fund their operations without unfairly prejudicing the Company's only secured lender.
43. Failing an adjournment, the proposed DIP Facility should not be approved by this Court as its provides unprecedented relief, is both procedurally and structurally deficient, and will result in material prejudice to Macquarie.

A. APPROVAL OF DIP FINANCING REQUIRES SCRUTINY AND SHOULD NOT BE RUSHED

44. In *Temple City Housing Inc., Re*, this Court stated that "it is also undoubtedly true that, since DIP financing may erode the security of creditors, the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor."³⁵
45. Moreover, courts must "scrutinize" any interim financing proposals to ensure that they are "reasonable and appropriate in the circumstances" and that they "do not inappropriately advantage one party over another to the detriment of that party and the stakeholders generally."³⁶ Such scrutiny is necessary because stakeholders may use their existing leverage to secure advantages for themselves at the expense of other stakeholders which, once approved by court order, cannot be revisited. The court "must be constantly vigilant against such strategies."³⁷

³⁴ *Re Lehndorff General Partner Ltd.* (1993), [17 C.B.R. \(3d\) 24](#) (Ont. Ct. J. – Gen. Division CL) at paras. 5-6., Macquarie Book of Authorities ("Macquarie BOA"), Tab 1.

³⁵ *Temple City Housing Inc., Re*, [2007 ABQB 786](#) at para. 14, Macquarie BOA, Tab 2.

³⁶ *Re Fire & Flower Holdings Corp.*, [2023 ONSC 4048](#) [*Fire and Flower*] at para. 40, citing *Re Great Basin Gold Ltd.*, [2012 BCSC 1459](#) [*Re Great Basin*]; see also *Quest University Canada (Re)*, [2020 BCSC 318](#) at para. 97, Macquarie BOA, Tabs, 3, 4 and 5.

³⁷ *Re Great Basin* at para. 179, Macquarie BOA, Tab 4.

46. For the court to properly perform its “gatekeeper” role in ensuring that any agreement proposed by stakeholders seeking to gain an advantage is reasonable and appropriate in the circumstances, it is critical that the court have evidence of the underlying reason for the transaction, the due diligence performed and negotiations undertaken, the consequences of not obtaining the relief, and the alternatives available.³⁸
47. Consequently, a court considering interim financing must be wary of being rushed to make decisions in the face of “manufactured” urgency:
- ... the court must be vigilant to ensure that it is not rushed to a decision based on an illusory sense of urgency which is not supported by the evidence. ... The court must guard against deciding issues in the face of “manufactured” urgency, whether created by leverage from a stakeholder seeking certain relief or otherwise.³⁹
48. As summarized, and discussed in further detail in the Pickard Affidavit, both the terms of the DIP Facility and the process leading to its selection raise material issues and concerns. The Company’s accelerated timetable curtails the full review of the issues and evidence necessary to determine whether the DIP Facility should be approved.
49. In *Re Royal Oak Mines Inc*, Justice Blair established that DIP financing with super-priority status should be limited to only what is reasonably necessary to meet the debtor company’s urgent needs and “keep the lights on” over the first 30-day period.⁴⁰ The Company is not in a deficit liquidity position until January and Macquarie remains available to discuss providing interim financial support to the Company. There is no need for the DIP Facility to be approved on an exceedingly tight schedule over the objections of the Company’s only secured lender.

B. A PRIMING DIP IS NOT APPROPRIATE HERE

(i) The Company’s Process was Flawed

50. The DIP Solicitation Process was conducted on an extremely expedited basis and failed to appropriately canvas the market, to the detriment of all stakeholders. The DIP Solicitation Process was marked by constantly shifting conditions and requirements for the DIP Financing, including the quantum sought.⁴¹ This lack of consistency directly prejudiced Macquarie, as it was not afforded sufficient time or reliable information from the Company to participate meaningfully. Most DIP processes are initiated and run prior to a CCAA filing in order to provide a responsible and reasonable time period to deal with parties in a fair and reasonable manner. The Company failed to run a reasonable DIP process.

³⁸ *Re Great Basin* at para. [181](#), Macquarie BOA, Tab 4.

³⁹ *Re Great Basin* at para. [182](#), Macquarie BOA, Tab 4.

⁴⁰ *Royal Oak Mines Inc., Re*, [6 C.B.R. \(4th\) 314](#) (ON SC) at para. [24.](#), Macquarie BOA, Tab 6.

⁴¹ Pickard Affidavit at para. 67.

51. Macquarie submits that it is not appropriate for this Court to exercise its discretion to approve the DIP Facility following such a flawed process, particularly in light of the Supreme Court of Canada’s observation in *Century Services* that “Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.”⁴²
52. The Bednar Affidavit points to the Board of Directors having exercised their business judgment in selecting the DIP Facility⁴³, which is not determinative or possibly even material.⁴⁴ The Court is required to reach its own “independent determination”, having regard to the factors set out in s. 11.2 of the CCAA.⁴⁵ In any event, the Company has not provided any evidence or materials to support its business judgment decision.

(ii) Approval would set a Negative and Far-Reaching Precedent

53. Approving the DIP Facility would constitute an extraordinary and unprecedented step. The Applicants have not identified any authority where this Court, or any Canadian court, has sanctioned a contested priming DIP facility of comparable magnitude, particularly one involving only Canadian holding companies where all the main secured assets are located in a foreign jurisdiction, such as Colombia. Such approval would therefore set a far-reaching precedent, raising significant concerns about cross-border enforceability.
54. The DIP Facility expressly conditions the Subsequent Advance on recognition of both the Colombian Recognition Order and the Colombian DIP Recognition Order. However, according to the Expert Declaration, this later condition cannot be satisfied as:

In absence of consent from the primed secured creditor the insolvency judge will reject an order of a foreign court as manifestly contrary to public policy if the displacement of original secured creditor occurs and “reasonable protection” is not met.

Diminution of rights by originally secured creditors will not be accepted as it fails the reasonable protection test. The insolvency judge will reject an order of a foreign court as manifestly contrary to public policy if the displacement of the original secured creditor occurs without full coverage.

A statement that the secured creditor may not be prejudiced will not be considered “reasonable protection” and I am of the view a Colombian court would not grant such relief. The common practice in Colombia is to have the consent of any existing secured creditor, as priming such a creditor is not an executable strategy. Secured

⁴² *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para. [70](#), as cited in *Re Crystallex*, [2012 ONCA 404](#) [*Crystallex*] at para. [63](#) and *Re Great Basin* at para. [12](#), Macquarie BOA, Tabs 7,8.

⁴³ Third Bednar Affidavit at para. 37.

⁴⁴ *Crystallex* at para. [84](#), Macquarie BOA, Tab 8.

⁴⁵ *Crystallex* at para. [85](#), Macquarie BOA, Tab 8.

creditors' priority rights in Colombia need to be protected with consent or material valuable consideration.⁴⁶

55. The Company has only provided a statement to this Court that Macquarie will not be prejudiced.⁴⁷ Such a statement is not accurate based on Macquarie's evidence. There are no current valuations, binding investment or sale agreements or any fairness opinions or any other detailed financial analysis to support the Company's view that Macquarie will not be prejudiced.⁴⁸
56. Consequently, Macquarie submits that a Colombian court would deny recognition of any provision granting a priming lien as contemplated in the Unsecured Noteholders' DIP Term Sheet. This fundamental incompatibility renders the Subsequent Advance illusory and underscores the impracticality of approving the DIP Facility in its current form.
57. Courts approving DIPs have relied on s. 11 of the CCAA, but the exercise of discretion under s. 11 "has limits and ... must accord with the objectives of the CCAA". These objectives include "preserving and maximizing the value of a debtor's assets" and "ensuring fair and equitable treatment of the claims against a debtor"⁴⁹. Approving a DIP Facility that strips creditors of bargained for protections under foreign law would not only undermine these objectives but would also set a far-reaching precedent⁵⁰. Such an order raises serious concerns about the cross-border enforceability of Canadian insolvency proceedings in Colombia and will undoubtedly be subject to close scrutiny by the Colombian Court and call into question comity with that Court.
58. Simply put, the relief the Applicants are requesting is unusual and extraordinary.
(iii) Approval Will Cause Uncertainty in These CCAA Proceedings
59. The Company's stated intention in commencing and advancing the US Recognition Proceedings and the Colombian Recognition Proceedings is to recognize and enforce these CCAA Proceedings in those jurisdictions.⁵¹
60. If approved, the DIP Facility will have the opposite effect of what the Colombian Recognition Proceedings were intended to achieve, as Macquarie will be put in a position where it has to oppose both the Colombian Recognition Order and the Colombian DIP Recognition Order on various grounds. This will create additional litigation that could have been avoided by the Company, and will create significant uncertainty in these CCAA

⁴⁶ Valez Affidavit at Exhibit B, paras. 64, 65, 66.

⁴⁷ Third Bednar Affidavit at para. 71.

⁴⁸ Pickard Affidavit at para. 55.

⁴⁹ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at para. 32, Macquarie BOA, Tab 9.

⁵⁰ *Mjardin Group, Inc. (Re)* (3 April 2023), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682101-00CL ([Endorsement of Kimmel J](#)), Macquarie BOA, Tab 10.

⁵¹ First Bednar Affidavit at para. 21.

proceedings and potentially delay the Canacol Group's stated objective of engaging with stakeholders to pursue a financial restructuring, sale, or recapitalization of its business.⁵²

(iv) *Prejudice to Macquarie*

(a) Quantum

61. Under section 11.2(4) of the CCAA, the assessment of "material prejudice" requires consideration of the extent to which existing creditors are being subordinated by a priority DIP charge.⁵³ Macquarie is currently owed approximately \$40 million, yet the proposed priming DIP Facility of \$67 million represents nearly 175% of Macquarie's outstanding obligations. This disproportionate priming significantly impairs Macquarie's secured position and cannot be dismissed as immaterial.
62. Mr Bednar states that "it is my view that no prejudice to Macquarie will result from the proposed priority of the DIP Lenders' Charge (in addition to the other Charges), in light of the value of the assets of the Canacol Group, which exceeds the indebtedness owing to Macquarie and the amounts secured (or proposed to be secured) by the Charges".⁵⁴
63. The sole basis for this claim is the unaudited book value of assets reported in the Company's Interim Consolidated Financial Statements (Unaudited) for the three and nine months ended September 30, 2025 and three and six months ended June 30, 2025.⁵⁵ That is the only financial or economic evidence being advanced by the Company to support a proposed priming charge. There are no current valuations, binding investment or sale agreements nor any fairness opinions or any other detailed financial analysis to support this general and vague statement.
64. Furthermore, to say there is "no prejudice" is plainly incorrect. A subordination of the Term Loan by approximately \$70 million without Macquarie's consent is inherently prejudicial and materially increases the risk of repayment by the Company who is insolvent and in CCAA proceedings.
65. In contrast, market indicators, such as the Unsecured Notes trading at approximately 18 cents on the dollar, reflect the market's assessment of the Company's distressed financial condition and recovery prospects. Based on such trading, the implied value of the Company's assets is approximately \$200 million, which figures differ dramatically from the Company unaudited asset book value.⁵⁶
66. The fact that the Unsecured Notes trade at such a significant discount signals that the market believes the Company's enterprise value is much lower than its book value

⁵² First Bednar Affidavit at para. 133.

⁵³ *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. [108](#), Macquarie BOA, Tab 11.

⁵⁴ Third Bednar Affidavit at para. 71.

⁵⁵ First Bednar Affidavit at para. 80.

⁵⁶ Pickard Affidavit at para. 56.

demonstrating, at the very least, significant uncertainty regarding the value of the Company and its assets.⁵⁷

67. Applying scrutiny to the DIP Facility shows that the DIP Facility it is not reasonable and appropriate in the circumstances and it would inappropriately advantage junior unsecured lenders to the detriment of Macquarie and stakeholders generally.⁵⁸
68. Macquarie submits that the DIP Facility is entirely for the benefit of the Ad Hoc Group, and if there is no prejudice to Macquarie due to the asset value of the Company, then there is clearly no prejudice to the DIP Facility being provided on a junior basis to Macquarie and ahead of other unsecured claims. In this situation, the risk should be borne by the Ad Hoc Group and not impair Macquarie by approximately \$70 million.

(b) Letters of Credit

69. In order for DIP financing with super-priority status to be authorized pursuant to the CCAA, there must be cogent evidence that the benefit of such financing clearly outweighs the potential prejudice to secured creditors whose security is being eroded.⁵⁹
70. The DIP Facility not only contemplates advancing new money on a priming basis ahead of Macquarie's secured position, but it also includes the Tranche B Sub-Facility intended to renew or replace the Expiring LCs. This structure is highly problematic. If any of the Expiring LCs are drawn, approval of the proposed DIP Facility would effectively convert a pre-filing unsecured obligation of Canacol into a primed obligation ranking ahead of Macquarie's senior secured claim, leading to further prejudice to Macquarie.
71. In *Canwest Global Communications Corp. (Re)*, Pepall J. (as she then was), in deciding whether to approve a DIP, stressed the importance that a DIP must not secure an obligation that existed before an order is made⁶⁰. The proposed DIP Facility does just that.

(c) Consolidation of Assets

72. If approved, the DIP Facility would unfairly and unlawfully, effectively consolidate all assets and liabilities of Canacol and its subsidiaries across multiple jurisdictions, including Colombia, Panama, and Switzerland. This consolidation would alter existing creditor priorities and unjustly interfere with Macquarie's creditor rights under Colombian law that it specifically bargained for, which, in effect, amounts to substantive consolidation.

⁵⁷ Pickard Affidavit at para. 58.

⁵⁸ *Fire and Flower* at para. 40, Macquarie BOA, Tab 3

⁵⁹ *Simpson's Island Salmon Ltd., Re*, 2006 NBQB 6 at para. 16. See also *United Used Auto & Truck Parts Ltd., Re*, [1999] B.C.J. No. 2754 (B.C. S.C. [In Chambers]), affirmed in *United Used Auto & Truck Parts Ltd. v. Aziz*, 2000 BCCA 146 [*United Used Auto*] at para. 30, Macquarie BOA, 12, 13, 14

⁶⁰ *Canwest Global Communications Corp. (Re)*, 59 C.B.R. (5th) 72 at 34, followed in *Index Energy Mills Road Corporation (Re.)* 2017 ONSC 4944 at para. 39, Macquarie BOA, Tabs 15,16.

73. Canadian courts have held that substantive consolidation is an exceptional remedy and must not unjustly interfere with creditor rights.⁶¹ In *Redstone*, the Ontario Superior Court of Justice considered whether three related corporations should be substantively consolidated. On an unconsolidated basis, one group of creditors was projected to recover 86%, while two other creditor groups would recover little to nothing. Consolidation increased the other two creditor group recoveries to 28%. Morawetz C.J. declined to order consolidation, finding that it would be “extremely prejudicial” to the first group of creditors.⁶² He emphasized that substantive consolidation is an extraordinary equitable remedy aimed at ensuring fairness to all creditors.
74. The proposed DIP Facility is not aimed at ensuring fairness to all creditors. Instead the Company and the Ad Hoc Group are attempting to use these CCAA Proceedings to inappropriately prime Macquarie on all of the Company’s Colombian assets that Macquarie specifically bargained for a first ranking priority interest over.

(d) Compressed Litigation Timeline

75. Macquarie has been materially prejudiced by the compressed litigation timeline on a contested DIP motion that primes its position by 175%. In *Tacora*, which involved a contested DIP Motion, the Court set a litigation schedule that included cross-examinations, while in these CCAA Proceedings, Macquarie had less than three days (over a weekend) to respond without any examinations.⁶³

(v) *Refusal of the DIP Facility is Likely to Lead to a Better Outcome*

76. In seeking approval of the DIP Facility in its current form, the Applicants are seeking relief that is, by any measure, unprecedented. This Court is not obliged to grant such relief simply because it is sought. Indeed, as held by Morawetz J. (as he then was) in *Target*, “it is incumbent upon the court, in its supervisory role, to ensure that the CCAA process unfolds in a fair and transparent manner.”⁶⁴ Morawetz J. (as he then was) further held, in *Nortel*, that “the court retains the ability to control its own process...within a CCAA process”.⁶⁵ Such exercise of judicial restraint is not only appropriate, it is essential to the integrity of the CCAA process, and the court’s role in ensuring transparency and fairness. The relief sought represents unprecedented relief, and this Court should decline to grant it.
77. Despite support from a court-appointed officer, Canadian courts have nonetheless declined to approve DIP financing where there is unfair treatment of creditors.⁶⁶ In *Payless*, Morawetz J., as he then was, was not persuaded to recognize an interim DIP order as,

⁶¹ *Redstone Investment Corporation (Re)*, [2016 ONSC 4453](#) at para. 89. [*Redstone*], Macquarie BOA, Tab 17.

⁶² *Redstone* para. 86.

⁶³ *Tacora Resources Inc. (Re)* (13 October 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707394-00CL ([Endorsement of Kimmel J](#)) at para 3, Macquarie BOA, Tab 18.

⁶⁴ *Target Canada Co. (Re)*, [2016 ONSC 316](#) [*Target*], at para 72, Macquarie BOA, Tab 19.

⁶⁵ *Nortel Networks Corporation (Re)*, [2010 ONSC 1304](#) at para 36, Macquarie BOA, Tab 20.

⁶⁶ *Payless Holdings LLC (Re)*, [2017 ONSC 2321](#) [*Payless*] at paras. 32 and 43, Macquarie BOA, Tab 21.

among other things, it did not adequately protect the interests of one group of creditors. He emphasized that it was not the role of the court to resolve the DIP issue; such matters should be addressed by the parties themselves.⁶⁷

78. The appropriate resolution to the Company's liquidity challenge lies in structuring financing in a manner that minimizes stakeholder prejudice while ensuring operational stability. In this regard, the Ad Hoc Group should either advance funds on a junior basis, thereby preserving the priority of existing secured creditors, or alternatively propose a "take-out" DIP facility. This latter approach has precedent in *Re Toys "R" Us.*, where the court approved a take-out DIP in circumstances supported by significant asset value.⁶⁸
79. Previous cases have demonstrated that, if the Court declines to approve a proposed transaction and requires the company and its stakeholders to proceed in accordance with the CCAA, they will eventually reach an economic solution.⁶⁹ Given their approximately \$450 million of unsecured debt that is subordinate to Macquarie, if the Court were to require that the proposed DIP Facility be structured as junior to Macquarie's security, the Ad Hoc Group, acting in a commercially reasonable manner, would likely provide financing as it remains in their economic interest to do so.

IV. CONCLUSION

80. If the relief being sought today by Canacol is granted by this Court, it would set a negative and far-reaching precedent in the context of CCAA proceedings, DIP approval orders and international commerce involving Canadian companies doing business in foreign jurisdictions such as Colombia. Moreover, this unprecedented relief is being sought with improper and unfair timelines with no litigation schedule to provide for any appropriate and necessary cross-examinations or limited document productions.
81. The DIP Facility before the Court for approval is much larger than is required by Canacol as part of a DIP. It amounts to approximately 175% of the senior secured position of Macquarie which is being sought to be primed. The DIP Facility also provides for the cash collateralization of Canacol's letters of credit obligations which, in effect, elevates those pre-filing unsecured obligations to be super-priority obligations also priming the secured position of Macquarie. In addition, the DIP Facility is aimed at funding material capital expenditures in the form of exploration activities which carry significant risk. This risk should not be borne by Macquarie as the senior secured creditor but rather should be borne by the unsecured creditors providing the DIP Facility who would largely benefit from the potential of such risky activities. This is especially the case where there is no valuation

⁶⁷ Payless at para. [49](#).

⁶⁸ *Re Toys R US (Canada Ltd)*, [2017 ONSC 5571](#) at paras. [1](#), [15](#), Macquarie BOA, Tab 22.

⁶⁹ See for example J. Sarra, "Reverse Vesting Orders-Developing Principles and Guardrails to Inform Judicial Decisions", [2022 CanLIIDocs 431](#) (January 16, 2022) at p. 19, citing *McEwan Enterprises Inc.*, [2021 ONSC 6878](#) and *McEwan Enterprises Inc.*, [2021 ONSC 8423](#); see also *Target* at para. [87](#) and *Target Canada Co. (Re)*, [2016 ONSC 3651](#) at paras. 4-7, 9-11, 49-50, Maquarie Tabs, 23, 24, 25, 26.

evidence provided by Canacol and market evidence demonstrates that the implied value of the Company's assets is materially less than book value.

82. The unprecedented nature of the relief sought from this Canadian Court is highlighted by the fact that assets over which Canacol is seeking a super-priority charge are located in a foreign jurisdiction with materially different relevant laws. This is the reason that a significant portion of the DIP Facility is conditioned upon Canacol taking a priming Order from this Court and having it recognized in Colombia. Expert evidence, however, indicates that a Canadian Court order that includes the priming of Macquarie's secured position and the related charging of assets located in Colombia will not be recognized by a Colombian Court.
83. Macquarie has provided uncontradicted evidence that the approval of the DIP Facility will cause it material prejudice by increasing the risk to it as the sole secured creditor of the Canacol Group. There is no evidence that the DIP Lenders are not prepared to provide DIP funding to the Company on a basis junior to the security position of Macquarie. Further, Macquarie remains prepared to provide interim financing to Canacol to provide the necessary stability in a properly informed and fair fashion. Unfortunately, Macquarie continues not to be provided with critical and timely information as further evidenced by the fact that the Monitor's Second Report, which is to include updated cash-flows for the Company upon which the need for the DIP Facility is premised, will only be served the night before the hearing of this application.
84. It is not sufficient for Canacol to simply rely on its vague statement that there is no prejudice to Macquarie. The evidence establishes that Macquarie, as sole secured creditor of Canacol will be materially prejudiced if this Court grants the unprecedented relief sought in the approval of the DIP Facility.
85. In the circumstances, an adjournment of the Company's application for the SARIO is appropriate. An adjournment will ensure that the Court and stakeholders have the benefit of a complete record and meaningful opportunity to address the implications of the extraordinary proposed relief.
86. Failing an adjournment, the DIP Facility should not be approved by this Court. Approving the DIP Facility and granting a super-priority charge ahead of Macquarie's first-ranking security would alter creditor priorities in a number of jurisdictions, effectively consolidate assets across jurisdictions and subordinate Macquarie's security interests to unsecured creditors, all materially prejudicing Macquarie's position as the Company's sole secured creditor. Granting the requested relief will also create uncertainty with respect to the Company's restructuring objectives and force litigation in Canada, the United States and Colombia, diverting focus and resources from the restructuring process to the detriment of all stakeholders, including Macquarie.
87. ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 9th day of December, 2025.

Goodmans LLP

Erik Axell

Robert J. Chadwick / Joseph Pasquariello / Erik Axell
Counsel to Macquarie Bank Ltd.

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