

COURT FILE NUMBER

2501-18642

COURT

COURT OF KING'S BENCH OF ALBERTA

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.

DOCUMENT

BOOK OF AUTHORITIES

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File No. G10088627

TABLE OF AUTHORITIES

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1.	<u>Alberta Rules of Court, Alta Reg 124/2010.</u>
2.	<u>Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 (CanLII)</u>
3.	<u>Companies' Creditors Arrangement Act, RSC 1985, c C-36.</u>
4.	<u>Canwest Publishing Inc. / Publications Canwest Inc., Re 2010 ONSC 222</u>
5.	<u>Re Just Energy Corp., 2021 ONSC 1793 (CanLII)</u>
6.	<u>Springer Aerospace Holdings Limited, 2022 ONSC 6581.</u>

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This regulation replaces Alta Reg 390/1968.

Current version: as posted ⁽ⁱ⁾ on 2025-07-22

Link to the latest version ⁽ⁱ⁾: <https://canlii.ca/t/8nhs>

Stable link to this version ⁽ⁱ⁾: <https://canlii.ca/t/56k9m>

Citation to this version: Alberta Rules of Court, Alta Reg 124/2010, <<https://canlii.ca/t/56k9m>> retrieved on 2026-02-20

Currency: Last updated from the [Alberta King's printer](#) on 2026-02-18

(Consolidated up to 158/2025)

ALBERTA REGULATION 124/2010

Judicature Act

ALBERTA RULES OF COURT

Part 1

Foundational Rules

Division 1

Purpose and Intention of These Rules

What these rules do

1.1(1) These rules govern the practice and procedure in

- (a) the Court of King's Bench of Alberta, and
- (b) the Court of Appeal of Alberta.

(2) These rules also govern all persons who come to the Court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer.

AR 124/2010 s1.1;218/2022

Purpose and intention of these rules

1.2(1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.

(2) In particular, these rules are intended to be used

(b) judgments and orders.

Counting days

13.3 When counting to or from an event or activity in days, the date on which the event or activity occurs is not counted.

Counting months and years

13.4(1) When counting to or from a date in months, time is calculated from the date on which the event or activity occurs in the month to the same-numbered day in a subsequent or previous month, as the case requires.

(2) If the count ends on the 29th, 30th or 31st and there is no same-numbered date in the subsequent or previous month, the count ends on the last day of the subsequent or previous month, as the case requires.

(3) When counting to or from an event or activity in years, time is calculated from the date on which the activity or event occurs in a year to the same-numbered date in a subsequent or previous year, as the case requires.

(4) If the count starts on February 29th and ends in a year that is not a leap year, the count ends on February 28th of that year.

AR 124/2010 s13.4;143/2011

Variation of time periods

13.5(1) Unless the Court otherwise orders or a rule otherwise provides, the parties may agree to extend any time period specified in these rules.

(2) The Court may, unless a rule otherwise provides, stay, extend or shorten a time period that is

(a) specified in these rules,

(b) specified in an order or judgment, or

(c) agreed on by the parties.

(3) The order to extend or shorten a time period may be made whether or not the period has expired.

Division 3 Pleadings

Pleadings: general requirements

13.6(1) A pleading must be

(a) succinct, and

(b) divided into consecutively numbered paragraphs, with dates and numbers expressed in numerals unless words or a combination of words and numerals makes the meaning clearer.

(2) A pleading must state any of the following matters that are relevant:

(a) the facts on which a party relies, but not the evidence by which the facts are to be proved;

(b) a matter that defeats, or raises a defence to, a claim of another party;

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re)*,
2016 BCSC 107

Date: 20160126
Docket: S1510120
Registry: Vancouver

**In the Matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 as Amended**

And

**In the Matter of the *Business Corporations Act*,
S.B.C. 2002, c. 57, as Amended**

And

**In the Matter of a Plan of Compromise or Arrangement
of Walter Energy Canada Holdings, Inc. and the Other
Petitioners Listed on Schedule "A"**

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for the Petitioners:

Marc Wasserman
Mary I.A. Buttery
Tijana Gavric
Joshua Hurwitz

Counsel for United Mine Workers of America
1974 Pension Plan and Trust:

John Sandrelli
Tevia Jeffries

Counsel for Steering Committee of First Lien
Creditors of Walter Energy, Inc.:

Matthew Nied

Counsel for Her Majesty the Queen in Right
of the Province of British Columbia:

Aaron Welch

Counsel for Morgan Stanley Senior Funding,
Inc.:

Kathryn Esaw

[24] No stakeholder, including the 1974 Pension Plan, opposed this relief. All concerned recognize the need to monetize, if possible, the assets held by the Walter Canada Group. I conclude that the proposed SISF is reasonable and it is approved.

Appointment of Financial Advisor and CRO

[25] The more contentious issues are who should conduct the SISF and manage the operations of the Walter Canada Group pending a transaction and what their compensation should be.

[26] The Walter Canada Group seeks the appointment of a financial advisor and CRO to assist with the implementation of the SISF.

[27] In restructuring proceedings it is not unusual that professionals are engaged to advance the restructuring where the existing management is either unable or unwilling to bring the required expertise to bear. In such circumstances, courts have granted enhanced powers to the monitor; otherwise, the appointment of a CRO and/or financial advisor can be considered.

[28] A consideration of this issue requires some context in terms of the current governance status of the Walter Canada Group. At present, there is only one remaining director, who is based in West Virginia. The petitioners' counsel does not anticipate his long-term involvement in these proceedings and expects he will resign once the U.S. sale completes. Similarly, the petitioners have been largely instructed to date by William Harvey. Mr. Harvey is the executive vice-president and chief financial officer of Walter Energy Canada Holdings, Inc., one of the petitioners. He lives in Birmingham, Alabama. As with the director, the petitioners' counsel expects him to resign in the near future.

[29] The only other high level employee does reside in British Columbia, but his expertise is more toward operational matters, particularly regarding environmental and regulatory issues.

[30] Accordingly, there is a legitimate risk that the Walter Canada Group ship may become rudderless in the midst of these proceedings and most significantly, in the midst of the very important sales and solicitation process. This risk is exacerbated by the fact that the management support traditionally provided by the U.S. entities will not be provided after the sale of the U.S. assets. Significant work must be done to effect a transition of those shared services in order to allow the Canadian operations to continue running smoothly. It is anticipated that the CRO will play a key role in assisting in this transition of the shared services.

[31] In these circumstances, I am satisfied that professional advisors are not just desirable, but indeed necessary, in order to have a chance for a successful restructuring. Both appointments ensure that the SISP will be implemented by professionals who will enhance the likelihood that it generates maximum value for the Walter Canada Group's stakeholders. In addition, the appointment of a CRO will allow the Canadian operations to continue in an orderly fashion, pending a transaction.

[32] The proposal is to retain PJT Partners LP ("PJT") as a financial advisor and investment banker to implement the SISP. PJT is a natural choice given that it had already been retained in the context of the U.S. proceedings to market the Walter Group's assets, which of course indirectly included the Walter Canada Group's assets. As such, PJT is familiar with the assets in this jurisdiction, knowledge that will no doubt be of great assistance in respect of the SISP.

[33] In addition, the proposal is to retain BlueTree Advisors Inc. as the CRO, by which it would provide the services of William E. Aziz. Mr. Aziz is a well-known figure in the Canadian insolvency community; in particular, he is well known for having provided chief restructuring services in other proceedings (see for example *Mobilicity Group (Re)*, 2013 ONSC 6167 at para. 17). No question arises as to his extensive qualifications to fulfil this role.

[34] The materials as to how Mr. Aziz was selected were somewhat thin, which raised some concerns from the 1974 Pension Plan as to the appropriateness of his

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Companies' Creditors Arrangement Act, RSC 1985, c C-36

Current version: in force since 2024-12-12

Link to the latest version ⁽ⁱ⁾: <https://canlii.ca/t/7vdw>

Stable link to this version ⁽ⁱ⁾: <https://canlii.ca/t/56fc5>

Citation to this version: Companies' Creditors Arrangement Act, RSC 1985, c C-36, <<https://canlii.ca/t/56fc5>> retrieved on 2026-02-20

Currency: This statute is current to 2026-02-04 according to the [Justice Laws Web Site](#)

Companies' Creditors Arrangement Act

R.S.C., 1985, c. C-36

An Act to facilitate compromises and arrangements between companies and their creditors

Short Title

Short title

1 This Act may be cited as the *Companies' Creditors Arrangement Act*.

R.S., c. C-25, s. 1.

Interpretation

Definitions

2 (1) In this Act,

aircraft objects [Repealed, 2012, c. 31, s. 419]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

R.S., c. C-25, s. 9.

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Relief reasonably necessary

11.001 An order made under [section 11](#) at the same time as an order made under [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

2005, c. 47, s. 128; 2009, c. 33, s. 28.

Meaning of regulatory body

11.1 (1) In this section, **regulatory body** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Removal of directors

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

Filling vacancy

(2) The court may, by order, fill any vacancy created under subsection (1).

1997, c. 12, s. 124; 2005, c. 47, s. 128.

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

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

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a

debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

- (a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and
- (b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from
 - (i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or
 - (ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

1997, c. 12, s. 124.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,

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CITATION: Canwest Publishing Inc., 2010 ONSC 222
COURT FILE NO.: CV-10-8533-00CL
DATE: 20100118

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST
INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

COUNSEL: *Lyndon Barnes, Alex Cobb and Duncan Ault* for the Applicant LP Entities
Mario Forte for the Special Committee of the Board of Directors
Andrew Kent and Hilary Clarke for the Administrative Agent of the Senior
Secured Lenders' Syndicate
Peter Griffin for the Management Directors
Robin B. Schwill and Natalie Renner for the Ad Hoc Committee of 9.25% Senior
Subordinated Noteholders
David Byers and Maria Konyukhova for the proposed Monitor, FTI Consulting
Canada Inc.

PEPALL J.

REASONS FOR DECISION

Introduction

[1] Canwest Global Communications Corp. (“Canwest Global”) is a leading Canadian media company with interests in (i) newspaper publishing and digital media; and (ii) free-to-air television stations and subscription based specialty television channels. Canwest Global, the entities in its Canadian television business (excluding CW Investments Co. and its subsidiaries) and the National Post Company (which prior to October 30, 2009 owned and published the National Post) (collectively, the “CMI Entities”), obtained protection from their creditors in a

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

[54] I am satisfied that the issue of notice has been appropriately addressed by the LP Entities. As to whether the amounts are appropriate and whether the charges should extend to the proposed beneficiaries, the section does not contain any specific criteria for a court to consider in its assessment. It seems to me that factors that might be considered would include:

- (a) the size and complexity of the businesses 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.

This is not an exhaustive list and no doubt other relevant factors will be developed in the jurisprudence.

[55] There is no question that the restructuring of the LP Entities is large and highly complex and it is reasonable to expect extensive involvement by professional advisors. Each of the professionals whose fees are to be secured has played a critical role in the LP Entities restructuring activities to date and each will continue to be integral to the solicitation and restructuring process. Furthermore, there is no unwarranted duplication of roles. As to quantum of both proposed charges, I accept the Applicants' submissions that the business of the LP Entities and the tasks associated with their restructuring are of a magnitude and complexity that justify the amounts. I also take some comfort from the fact that the administrative agent for the LP Secured Lenders has agreed to them. In addition, the Monitor supports the charges requested. The quantum of the administration charge appears to be fair and reasonable. As to the quantum

of the charge in favour of the Financial Advisor, it is more unusual as it involves an incentive payment but I note that the Monitor conducted its own due diligence and, as mentioned, is supportive of the request. The quantum reflects an appropriate incentive to secure a desirable alternative offer. Based on all of these factors, I concluded that the two charges should be approved.

(g) Directors and Officers

[56] The Applicants also seek a directors and officers charge (“D & O charge”) in the amount of \$35 million as security for their indemnification obligations for liabilities imposed upon the Applicants’ directors and officers. The D & O charge will rank after the Financial Advisor charge and will rank *pari passu* with the MIP charge discussed subsequently. Section 11.51 of the CCAA addresses a D & O charge. I have already discussed section 11.51 in *Re Canwest*¹⁴ as it related to the request by the CMI Entities for a D & O charge. Firstly, the charge is essential to the successful restructuring of the LP Entities. The continued participation of the experienced Boards of Directors, management and employees of the LP Entities is critical to the restructuring. Retaining the current officers and directors will also avoid destabilization. Furthermore, a CCAA restructuring creates new risks and potential liabilities for the directors and officers. The amount of the charge appears to be appropriate in light of the obligations and liabilities that may be incurred by the directors and officers. The charge will not cover all of the directors’ and officers’ liabilities in a worse case scenario. While Canwest Global maintains D & O liability insurance, it has only been extended to February 28, 2009 and further extensions are unavailable. As of the date of the Initial Order, Canwest Global had been unable to obtain additional or replacement insurance coverage.

[57] Understandably in my view, the directors have indicated that due to the potential for significant personal liability, they cannot continue their service and involvement in the

¹⁴ *Supra* note 7 at paras. 44-48.

Tab

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CITATION: Re Just Energy Corp., 2021 ONSC 1793
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20210309

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JUST ENERGY GROUP INC., JUST
ENERGY CORP., ONTARIO ENERGY COMMODITIES
INC., UNIVERSAL ENERGY CORPORATION, JUST
ENERGY FINANCE CANADA ULC, HUDSON ENERGY
CANADA CORP., JUST MANAGEMENT CORP., JUST
ENERGY FINANCE HOLDING INC., 11929747 CANADA
INC., 12175592 CANADA INC., JE SERVICES HOLDCO I
INC., JE SERVICES HOLDCO II INC., 8704104 CANADA
INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS
CORP., JUST ENERGY INDIANA CORP., JUST ENERGY
MASSACHUSETTS CORP., JUST ENERGY NEW YORK
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY,
LLC, JUST ENERGY PENNSYLVANIA CORP., JUST
ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS
INC., HUDSON ENERGY SERVICES LLC, HUDSON
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC,
FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL
HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY
MARKETING CORP., JUST ENERGY CONNECTICUT
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS
CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

BEFORE: Koehnen J.

- [107] The largest expenditures in the administration charge involve the retainer of counsel in Canada and the United States for Just Energy and the retainer of the Monitor and its counsel.
- [108] In addition, the company seeks a financial advisor charge of \$1.8 million to retain BMO Nesbitt Burns as a financial advisor to assist in exploring potential alternative transactions.
- [109] The directors and officers charge sought is in the amount of \$30 million.
- [110] The Monitor estimates that director liabilities in the United States for sales taxes, wages, source deductions and accrued vacation come to approximately \$13.1 million. Director and officer exposure in Canada may be as high as \$5.8 million.
- [111] While insurance with an aggregate limit of \$38.5 million is in place, the complexity of the overall enterprise creates the risk that it might not provide sufficient coverage against the potential liability that the directors and officers could incur in relation to this CCAA proceeding.
- [112] In determining whether to approve administration charges, the Court will consider: (a) the size and complexity of the businesses under CCAA protection; (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 is fair and reasonable; (e) the position of secured creditors likely to be affected by the charge; and (f) the position of the Monitor.²¹
- [113] The Just Energy business is large and complex. The proposed beneficiaries are essential to the success of the CCAA. No CCAA proceeding can advance without a Monitor or counsel. The addition of a financial advisor would appear to be a prudent step given the complexity of the business. Monetizing or restructuring all or portions of the Just Energy business is substantially more complicated than a sale of hard assets. It would appear to make good sense to have a financial advisor involved. The Monitor agrees to the appointment of a financial advisor. I infer from the Monitor's agreement that Nesbitt Burns will bring to the table a skill set or attributes that the Monitor either does not have or cannot exercise given its role as Monitor.

H. Should Noncorporate Entities Be Captured by The Stay?

- [114] Many of the gas and electricity licences pursuant to which the Just Energy group conducts business in Canada are granted to limited partnerships.

²¹ *Canwest* 2010, , at para 54. *Target*, , at paras 74 and 75; *Lydian*, , paras 43 to 54; *Laurentian*, at paras. 48 to 59.

KERP, or if they are executives who make decisions about risk allocation, what Just Energy should insure against, to what extent it should hedge against weather risks and so on, I would want a more granular understanding about why the bonuses should be paid.

J. Should a Sealing order be Granted?

- [123] Just Energy requests a sealing order in relation to the BMO Engagement Letter and the summary of the KERP, both of which are attached as confidential exhibits to the affidavit of Michael Carter sworn March 9, 2021.
- [124] I am satisfied that the applicants have met the test established by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*.²⁴ The materials contain commercially sensitive information and/or personal information (in the case of the KERP). The order is necessary to prevent a serious risk to an important personal or commercial interest and the benefits of a sealing order outweigh the rights of others to a fair determination of the issues. No one advanced any need to see the information that is proposed to be sealed nor can I see any need for anyone to access such information in order to assert their rights fully within this proceeding.

Disposition

- [125] In view of the foregoing, I granted an initial order in the form requested with the exception of authorization for bonus payments which will be addressed at the comeback hearing.
- [126] The order will in effect provide that:
- (a) Ontario is the Centre of Main Interest for the CCAA proceeding.
 - (b) Just Energy meets the insolvency requirements of the CCAA.
 - (c) The proposed DIP financing is approved.
 - (d) Any regulatory actions should be stayed.
 - (e) Commodity suppliers and ISO Service Providers who sign qualified service agreements will benefit from a charge.
 - (f) Set off rights of banks which may allow them to sweep accounts will be stayed.

²⁴ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53; see also *Target* above at paras 28-30; *Laurentian University*, above at paras. 60 to 64.

(g) The administrative, financial advisor and directors and officers charges are granted.

(h) Noncorporate entities will be captured by the stay.

(i) A sealing order will be granted.

[127] The comeback date for the continuation of any CCAA relief is set for 10 AM on Friday, March 19, 2021.

Koehnen J.

Date: March 9, 2021

Tab

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CITATION: Springer Aerospace Holdings Limited, 2022 ONSC 6581
COURT FILE NO.: CV-22-00690657-00CL
DATE: 20221124

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the “CCAA”)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS LIMITED AND 1138969 ONTARIO INC.

BEFORE: Penny, J.

COUNSEL: *Sharon Kour, Caitlin Fell and Joel Turgeon*, Counsel for the Applicants

Miranda Spence and Matilda Lici, Counsel for Proposed Monitor, MNP

Haddon Murray and Katherine Yurkovich, Counsel for Caisse Desjardins Ontario Credit Union Inc.

Vern DaRe, Counsel for the Proposed DIP Lender

HEARD: November 23, 2022

ENDORSEMENT

Overview and Issues

- [1] This is an application for relief under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36. It is made by 1138969 Ontario Inc. (o/a Springer Aerospace) (which I will refer to as “Springer”) and its sole shareholder, Springer Aerospace Holdings Limited (referred to as “Holdco”). Following the hearing, I granted the initial order with reasons to follow. These are the reasons.
- [2] Springer operates one of the largest aircraft maintenance, repair and overhaul businesses in Canada, dating back to 1972. Springer is one of the only “one-stop-shops” for aircraft maintenance in Canada. It is located in Echo Bay, near Sault Ste. Marie, Ontario. Springer employs about 100 people. It is the second largest employer in the region. The loss of employment and income for 100 households in a town of 1,600 residents would have serious implications in the local area. Springer is the only aerospace business in Northern Ontario, such that it is unlikely that the company’s employees would find similar employment in the area. Springer provides maintenance services to most of the airlines

The Charges

The DIP

- [15] Section 11.2(4) of the CCAA establishes a non-exhaustive list of criteria that the court must consider in deciding whether to grant a DIP lender's charge: the period during which the Applicants are expected to be subject to CCAA proceedings, how the Applicants' business and financial affairs are to be managed during the proceedings, whether the Applicants' management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the Applicants' property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the monitor supports the charge. DIP financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.
- [16] While management no longer enjoys the confidence of Desjardins, I am satisfied, at this stage of the application for an initial order, that the factors, considered as a whole, favour the grant of the relief sought. In particular, where the funding is sought on an interim basis, the Court must consider if the terms of the loan are limited to what is reasonably necessary for the continued operations of the company.
- [17] The initial proposed DIP loan and charge is \$600,000. The Applicants need liquidity to continue their operations during the restructuring period. According to the cash flows, the Applicants need to draw on the DIP loan to meet their payroll obligations this week. The proposed amount is roughly tailored to the initial 10 days. A first charge is a condition of advancing the DIP loan. The terms of the DIP loan term sheet are typical for such facilities approved in similar matters before the Commercial List. The DIP lender's charge will not secure any obligations existing before the initial order is made, satisfying the terms set out in s. 11.2(1) of the CCAA. The Monitor supports the approval of the DIP loan and the DIP lenders charge in the circumstances.

Administration Charge

- [18] The Court has jurisdiction to grant an administration charge under s. 11.52 of the CCAA. I am to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor.
- [19] The success of the Applicants' restructuring is dependent on the involvement of the Monitor and legal counsel. Those roles are not duplicative. While estimating the quantum of an administration charge is "an inexact exercise", the quantum of the administration charge sought is commensurate with the complexity of the Applicants' business and anticipated restructuring. The Applicants have incurred fees leading to this Application and are forecast to incur further fees in connection with the restructuring, including to prepare for the comeback hearing, communicating with employees and stakeholders following the

initial filing, and complying with statutory notices, mailings and communications. It is appropriate for the Court to grant the initial administration charge sought of \$80,000.

The Directors' Charge

- [20] The Applicants currently have no director and officer liability insurance. Obtaining director and officer insurance at this stage is unlikely to be within the realm of reasonable possibility.
- [21] To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers, who have considerable institutional knowledge and specialized expertise. The proposed directors' charge is for the maximum amount of \$165,000, which is equivalent to approximately two weeks of the Applicants' payroll, including source deductions. That is the only reasonably anticipated potential exposure of directors and officers for the initial 10-day period of these CCAA proceedings. The proposed directors' charge provides assurance to employees that directors' liability for unpaid wages and vacation pay will be satisfied.
- [22] The directors' charge does not prime Desjardins' security and Desjardins suffers no prejudice. The proposed directors' charge secures only obligations and liabilities incurred after the commencement of the proceedings and does not apply to liability incurred as a result of gross negligence or wilful misconduct, which satisfies the requirements of s. 11.51(1) and 11.51(4) of the CCAA.
- [23] Finally, the Monitor supports the Applicants' request for the directors' charge.
- [24] The directors' charge is approved in the amount of \$165,000.

Pre-filing Amounts Owed to Key Suppliers

- [25] Courts have often granted orders under s. 11 of the CCAA allowing applicants to pay pre-filing amounts to critical suppliers with the consent of the monitor. In doing so, courts have considered: whether the goods and services concerned are integral to the business, the applicants' need for the uninterrupted supply of the goods or services, the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate, and the effect on the applicants' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.
- [26] Given Springer's location in Northern Ontario and the specialized nature of the aerospace business, Springer has limited vendors who are able to supply the specific products and services that Springer requires. Any interruption of supply would have a material adverse effect on the business. Springer is particularly vulnerable to interruptions as it does not stockpile significant inventory of parts and supplies in the ordinary course.
- [27] It is appropriate that the Applicants be entitled but not required to pay, with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the