

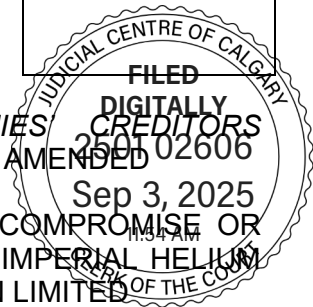
COURT FILE NUMBER 2501-02606

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES  
ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED  
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF ROYAL HELIUM LTD., IMPERIAL HELIUM  
CORP., AND ROYAL HELIUM EXPLORATION LIMITED

Clerk's Stamp



DOCUMENT **BRIEF OF LAW**

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File No.: 64793-8

**APPLICATION BEFORE THE HONOURABLE JUSTICE B.B. JOHNSTON  
TO BE HELD ON SEPTEMBER 11, 2025 AT 11:00 A.M. ON THE COMMERCIAL LIST**

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## I. OVERVIEW

1. This Brief is submitted on behalf of the Monitor in support of its application (the "**Application**") for:

- (a) an extension to the Stay Period; and
- (b) a Restricted Court Access temporarily sealing the Confidential Appendix (the "**Confidential Appendix**") to the Fifth Report of the Monitor dated September 3, 2025 (the "**Fifth Report**") on the Court Record.

2. The Confidential Appendix contains confidential information relating to the sales process (the "**SISP**") and the bids received therein. It should be sealed and kept confidential until the completion of a transaction in respect of the Companies' assets to avoid potential prejudice the negotiation with the Successful Bidder and/or to future efforts to liquidate the Property.

## II. FACTUAL BACKGROUND

3. The facts in support of the Application and background are set out more fully in the Fifth Report and are summarized below.

4. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Fifth Report.

### A. Status of the CCAA Proceedings

5. On February 19, 2025, the Companies sought and obtained an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed Monitor of the Companies (the "**Monitor**").<sup>1</sup>

6. On June 10, 2025, with the support of the Companies and the DIP Lenders, the Monitor sought and obtained an order granting it enhanced powers in respect of the Companies.<sup>2</sup>

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<sup>1</sup> Fifth Report at para 3.

<sup>2</sup> *Ibid* at para 7.

**B. The Progress of the SISP and the Transaction**

7. As outlined in further detail in the Fifth Report, the Monitor, with the assistance of the Companies, implemented the SISP contemplated in the SISP Order in respect of the Companies, their assets and business (the "**SISP**").<sup>3</sup>

8. In summary, the Monitor, with the assistance of the Companies:

- (a) canvassed the market and made best efforts to obtain potential bids for all or part of the Companies' business (the "**Business**") and property (the "**Property**");
- (b) created a broad but focused list of prospective bidders;
- (c) distributed teaser letters and non-disclosure agreements to potential bidders and published notice of the SISP in publications including but not limited to in the Globe and Mail, the BOE Report and Facility Calgary;
- (d) prepared and made available comprehensive marketing materials;
- (e) made key staff of the Companies, as well as its own representatives available to answer questions and provide information to prospective bidders (the "**Interested Parties**") who executed a non-disclosure agreement; and
- (f) reviewed and considered offers received by Phase II Bid Deadline in respect of the property subject to the SISP.<sup>4</sup>

9. Following the Phase II Bid Deadline on April 25, 2025, the Monitor has worked, reviewed and assessed bids, and has been engaged in extensive negotiations with the Successful Bidder to finalize (and later amend) the Amalgamation Agreement and advance the Companies' goal of consummating a transaction for the Companies assets and/or business and to maximize proceeds for the benefit of all stakeholders.<sup>5</sup>

10. Following a detailed analysis of the four offers received at the Phase II Bid Deadline, the Companies and the Monitor entered into a 60-day exclusivity agreement with the Successful Bidder (the "**Exclusivity Agreement**").<sup>6</sup> The Exclusivity Agreement was set to expire on

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<sup>3</sup> *Ibid* at paras 22-24.

<sup>4</sup> *Ibid*.

<sup>5</sup> *Ibid* at paras 23-25.

<sup>6</sup> *Ibid* at para 25.

August 6, 2025.<sup>7</sup> During this time, the Monitor and the Successful Bidder negotiated to finalize a sales agreement in consultation with the Secured Lenders and the DIP Lenders.<sup>8</sup>

11. The transaction contemplated with the Successful Bidder (the "**Transaction**") was structured as a share sale in the form of a three-cornered amalgamation and a "reverse vesting" transaction, whereby RHL would acquire all of the issued and outstanding shares of Keranic, which was to include retention of RHL's business and assets on a "free and clear" basis and all Excluded Assets, Excluded Contracts, and Excluded Liabilities (each as defined in the Amalgamation Agreement) being transferred to ResidualCo.<sup>9</sup>

12. On July 31, 2025, the Monitor and the Successful Bidder entered into a sales agreement (the "**Amalgamation Agreement**") which included a financing condition (the "**Financing Condition**") that was to be waived by the Successful Bidder on or before August 15, 2025.<sup>10</sup> The Financing Condition was critical to the Transaction as it was intended to allow the Successful Bidder time to complete its equity raise and debt financing to fund the Transaction. However, the Successful Bidder was unable to waive or satisfy the Financing Condition.<sup>11</sup>

13. The Successful Bidder requested that the parties amend the Amalgamation Agreement to modify the deadline to waive the Financing Condition to August 29, 2025, which was agreed to by the Monitor, with the support of the Secured Lenders and the DIP Lenders.<sup>12</sup>

14. On August 29, 2025, the Successful Bidder was again unable to waive or satisfy the Financing Condition, and instead provided an amended proposal to close the Transaction for the same purchase price, but upon different payment terms (the "**Revised Offer**").<sup>13</sup>

15. On August 30, 2025, the Monitor terminated the Amalgamation Agreement in accordance with its terms, which provided that the deposit paid by the Successful Bidder was non-refundable.<sup>14</sup> The Monitor remains in discussion with the Successful Bidder, the DIP Lenders and the Secured Lenders to determine the feasibility of the Revised Offer.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid* at para 26.

<sup>10</sup> *Ibid* at para 27.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid* at para 28.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid* at para 29.

### **C. The Stay Period**

16. The Stay Period (as defined in the Initial Order) is currently set to expire on September 12, 2025.<sup>15</sup> However, as a result of the termination of the Amalgamation Agreement, an extension to the Stay Period is required for the Monitor to continue these proceedings to examine its options regarding a sale of the Companies' property, including but not limited to (i) negotiating a revised transaction with the Successful Bidder, (ii) restarting negotiations with other interested parties that previously submitted LOIs at the Phase II Bid Deadline, or (iii) initiating a modified SISP.<sup>16</sup>

### **III. ISSUES**

17. The issues to be determined by this Court are whether:

- (a) the Stay Period should be extended; and
- (b) whether the Confidential Appendix should be temporarily sealed on the Court Record.

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

#### **A. The Stay Period Should Be Extended**

18. The Stay Period currently expires on September 12, 2025.<sup>17</sup> Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period it "considers necessary", provided that the applicants are acting in good faith and with due diligence.<sup>18</sup>

19. A stay of proceedings is appropriate where it provides debtors with breathing room, whether they seek to restore their solvency and emerge from their restructuring on a going concern basis or conduct an orderly liquidation or wind-down.<sup>19</sup> Further, a stay of proceedings is appropriate where it advances the purpose of the CCAA – including avoiding the social and economic effects of bankruptcy.<sup>20</sup>

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid* at para 31.

<sup>17</sup> *Ibid* at para 45.

<sup>18</sup> CCAA at s 11.02(2) [BOA TAB 1].

<sup>19</sup> *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 14 [BOA TAB 2].

<sup>20</sup> *Ibid* at paras 14-15 and 70 [BOA TAB 2].

20. The Monitor, pursuant to its Enhanced Powers, and with the support of the Companies and the DIP Lenders, seeks an extension of the Stay Period from September 12, 2025 to October 17, 2025.<sup>21</sup>

21. An extension to the Stay Period is necessary and is in the best interests of the Companies as additional time is required to consult with the Companies' stakeholders and determine the appropriate next steps as it relates to the marketing and sale of the assets.

22. The Companies have acted, and are continuing to act, in good faith and with due diligence, including in advancing the SISP and executing the Amalgamation Agreement and the amendment thereto.<sup>22</sup>

23. The Monitor terminated the Amalgamation Agreement on August 30, 2025, and has retained the Deposit in accordance with the terms of the Amalgamation Agreement.<sup>23</sup> As a result, the Monitor has forecasted that the Companies will have sufficient liquidity during the Stay Period but anticipates that an increase to the New DIP Facility will be required.<sup>24</sup>

## **B. The Confidential Appendix Should be Sealed**

24. The Monitor is seeking to seal the Confidential Appendix.<sup>25</sup>

25. Pursuant to Part 6, Division 4 of the Alberta *Rules of Court*, AR 124/2010, this Court has the discretionary authority to order that a document filed in a civil proceeding is confidential, may be sealed, and not form part of the public record of the proceedings.<sup>26</sup>

26. The Supreme Court of Canada decision in *Sherman Estate*<sup>27</sup> confirms that sealing orders may be granted where (a) Court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>28</sup>

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<sup>21</sup> Fifth Report at para 45.

<sup>22</sup> *Ibid* at para 46(e).

<sup>23</sup> *Ibid* at para 21(e).

<sup>24</sup> *Ibid* at para 30.

<sup>25</sup> *Ibid* at para 43.

<sup>26</sup> *Rules of Court*, AR 124/2010, Part 6, Division 4, [Rule 6.28\(b\)](#). [BOA TAB 3].

<sup>27</sup> *Sherman Estate v Donovan*, [2021 SCC 25](#) ("*Sherman Estate*") [BOA TAB 4].

<sup>28</sup> *Ibid* at [para 38](#) [BOA TAB 4].

27. As set out by Justice Mah in *Long Run*,<sup>29</sup> it is recognized in Alberta and elsewhere that commercial interests, particularly in the context of Court supervised insolvency proceedings, are an important interest deserving of protection.<sup>30</sup>

28. Similar to the case in *Long Run*, the disclosure of the information contained in the Confidential Appendix contains details of bids made during the SISP.<sup>31</sup> If released, its disclosure could have a detrimental impact on future negotiations with the Successful Bidder, and also on any future sale efforts of the Monitor and the Monitor, should the Transaction not ultimately close and the Monitor needs to re-market the assets.<sup>32</sup>

29. The Monitor is not aware of any stakeholders who would be prejudiced by the sealing of the Confidential Appendix.

30. The proposed form of Sealing Order contemplates that the Order will remain in place for a period of approximately than 3 months, and provides that any interested party can apply to unseal the Confidential Appendix. For those reasons, the salutary effects of a sealing order outweigh any negative effects to the principles of Court openness.

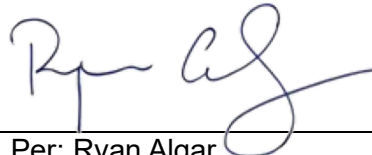
31. The proposed Sealing Order is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information.

## V. RELIEF SOUGHT

32. The Monitor submits that it has have met all of the qualifications required to obtain the requested relief and respectfully requests that this Court grant the proposed forms of Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> DAY OF SEPTEMBER, 2025.**

**BURNET, DUCKWORK AND PALMER LLP**



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Per: Ryan Algar  
Solicitor for the Monitor

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<sup>29</sup> *Long Run Exploration Ltd (Re)*, [2024 ABKB 710](#) ("Long Run") [BOA TAB 5].

<sup>30</sup> *Ibid* at [para 116](#) [BOA TAB 5], citing *Alberta Treasury Branches v Elaborate Homes Ltd*, [2014 ABQB 350](#) at [para 54](#).

<sup>31</sup> Fifth Report at para 43.

<sup>32</sup> *Ibid* at para 40.



## LIST OF AUTHORITIES

### A. Legislation

1. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
2. *Rules of Court*, AR 124/2010

### B. Case Law

1. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
2. *Sherman Estate v Donovan*, 2021 SCC 25
3. *Long Run Exploration Ltd (Re)*, 2024 ABKB 710