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COURT FILE NUMBER	2401-15969
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	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 ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.
DOCUMENT	**BRIEF OF DIRECTOR OF FOSSIL CREEK A2A DEVELOPMENTS, LLC AND WINDRIDGE A2A DEVELOPMENTS, LLC**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Kelsey Meyer / Chyna Brown Telephone No.: 403-298-3323 / 3244 Email: meyerk@bennettjones.com / brownc@bennettjones.com Fax No.: 403-265-7219 Client File No.: 98939.1

Application scheduled for September 9, 2026, commencing at 10:00 a.m.
before the Honourable Justice C. M. Jones

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I. INTRODUCTION

1. This Brief is filed in response to the Honourable Justice Jones' direction of July 30, 2026 that further written submissions be filed with respect to the issue of standing in relation to the application of Alvarez & Marsal Canada Inc. (the "**Monitor**") for an order declaring: (i) that the Offshore Investors' interests in the Lands and any sale proceeds are "property of the Debtor Companies" for the purposes of ss. 11.2 and 11.52 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), and that the Administration Charge and Interim Financing Charge attach to those interests and proceeds; (ii) alternatively, authorizing the Monitor, pursuant to the Deeds of Covenant and Special Powers of Attorney, to charge the Offshore Investors' interests in the Lands and any sale proceeds and declaring that the Monitor holds a charge over those interests; and (iii) costs of the application from anyone (party or non-party) who controls or directs the opposition to same in the name of any Debtor Company (collectively, the "**Application**"). Specifically, the Honourable Justice Jones asked that we address:

(a) Who our firm represents in connection with the Monitor's Application; and

(b) Why whomever our firm represents has status to make submissions in connection with the Monitor's Application.

2. Capitalized terms not otherwise defined herein shall bear the meanings given them in the June Brief.

II. THESE ARE THE SUBMISSIONS OF THE DIRECTOR OF THE TEXAS LLCS

3. The first question is addressed in the first sentence of paragraph 1 of our Brief filed June 19, 2026 in response to the Monitor's Application (the "**June Brief**"),[1] which states: "This Brief is filed on behalf of the director of Fossil Creek A2A Developments, LLC ("**Fossil Creek LLC**") and Windridge A2A Developments, LLC ("**Windridge LLC**" and, together with Fossil Creek LLC, the "**Texas LLCs**"), referred to herein as the Texas LLCs". Further, as with this Brief, the cover page of the June Brief includes the title: "Brief of Director of Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC". As confirmed in the June Brief,

[1] Brief on behalf of the Director of Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC filed June 19, 2026 (without attachments) ("**June Brief**") [**TAB A**].

the sole director of each of the Texas LLCs is Allan Lind. Our firm represents Mr. Lind, the sole director of the Texas LLCs, and this Brief is filed on behalf of the sole director of the Texas LLCs.

III. STANDING WITH RESPECT TO THE MONITOR'S APPLICATION

4. With respect to the second question, the June Brief includes submissions regarding standing, and regarding why we submit Mr. Lind has status to make submissions in connection with the Monitor's Application, at Part E, paragraphs 97-110.[2] Mr. Lind repeats and relies upon those submissions.

5. As a brief summary of those submissions (addressed more thoroughly at paragraphs 97-110 of the June Brief):

(a) This Court has, since the Initial Order and throughout these CCAA proceedings, granted specific relief against the director of the Texas LLCs.[3] On that basis, Mr. Lind should have standing to respond to these proceedings;

(b) The Monitor has consistently and repeatedly disparaged the director of the Texas LLCs, including in relation to this Application, and has painted a picture to the Courts of the directors and management of the respondent entities as "rogues", non-compliant, and non-cooperative.[4] That is not borne out by the actual evidence.[5] In those circumstances, Mr. Lind must be afforded standing to respond to these assertions by the Monitor;

(c) It remains to be seen whether the Monitor's "Texas Plan" will succeed; if it does not, this Court has already ordered that the CCAA proceedings must terminate.[6] In that case, Mr. Lind will presumably regain his authority as the director of the Texas LLCs. Mr. Lind thus has a residual interest in the Texas LLCs;

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[2] *Ibid*, paras 97-110 [**TAB A**].

[3] For example, Initial Order, paras 29 and 30 [Compendium of the Texas LLCs delivered to the Honourable Justice Jones on June 19, 2026 ("**LLC Compendium**"), **TAB G**].

[4] For example, Supplemental Brief of the Monitor dated June 12, 2026, para 12.

[5] Including but not limited to Second Lind Affidavit [**LLC Compendium, TAB M**]; Fourth Lind Affidavit [**LLC Compendium, TAB O**]; Third Lind Affidavit [**LLC Compendium, TAB N**].

[6] *Angus A2A GP Inc (Re)*, 2025 ABKB 51, paras 67, 88 **[TAB 1]**

(d) Nothing in the Initial Order or any amendments thereto precludes the current or former directors of any of the entities named as respondents in these CCAA proceedings from responding to or participating in these CCAA proceedings, nor does any caselaw; and

(e) The Monitor's proposed form of Order seeks costs of its application on a solicitor-client basis against Mr. Lind. Clearly, Mr. Lind must be permitted standing to respond to this requested relief.

6. With respect to the specific relief sought in the Monitor's Application, in the circumstances where the Texas LLCs played an important role at the outset of the Fossil Creek and Windridge land development projects (the Texas LLCs bought the WFC Lands and sold fractional interests in the WFC Lands), and particularly where Mr Lind as the director of the Texas LLCs has a residual interest in those entities, Mr. Lind has an interest in ensuring that this Honourable Court has an accurate understanding of those land development projects and the factual matrix of the related contracts.

7. By way of example, while the Monitor's Application seeks a declaration that the Monitor has a charge on the Offshore Investors' UFIs in the WFC Lands,[7] in fact, the UFIs in the WFC Lands were transferred pursuant to the governing agreements to the Offshore Trusts in 2014. This is a critical point: the Offshore Investors no longer hold, or have rights as holders of, UFIs in the WFC Projects.[8] As the director of the Texas LLCs, Mr. Lind is in the unique position in these proceedings to provide this Court with evidence on the history of the WFC Projects.

8. Other than Mr. Lind, no other party has raised any issues or concerns with the Monitor's Application. The Monitor seeks to charge the Offshore Investors' interest in the WFC Lands and the proceeds, notwithstanding that:

[7] Monitor's Amended Application filed June 12, 2026, para 1(a)(v).
[8] June Brief, para 16. The Monitor acknowledges this: Tenth Report of the Monitor filed May 19, 2026, paras 53, 64, 88 [**LLC Compendium, TAB A**]

(a) this Court already heard and dismissed a previous application by the Monitor to do the same thing; the Application is impermissible relitigation, is *res judicata*, and is an abuse of process;[9]

(b) there has been no material change in circumstances or new evidence;[10]

(c) the statutory restrictions in sections 11.2 and 11.52 cannot be overcome;[11] and

(d) the relief sought is an end-run around the Texas Plan, which reflects an acknowledgment by the Monitor and by this Court that the Monitor does not have control of the WFC Lands and the proceeds.[12]

9. These are important issues that Mr. Lind submits this Court ought to consider in determining whether to grant the Monitor's Application. Those issues cannot fairly be determined on a one-sided record. They are not frivolous or vexatious arguments. In the circumstances where the Monitor was granted enhanced powers over the respondent entities at the outset of these CCAA proceedings, on an *ex parte* basis, Mr. Lind submits it is important that this Honourable Court hear legitimate concerns or opposing views of those with a residual interest in the respondent entities.

IV. RELIEF SOUGHT

10. Mr. Lind respectfully requests that he, as the sole director of the Texas LLCs, be granted standing to respond to the Monitor's Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

BENNETT JONES LLP

Per: ______________________________

Kelsey Meyer / Chyna Brown
Counsel for Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC

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[9] June Brief, paras 46-67.
[10] June Brief, paras 68-76.
[11] June Brief, paras 77-85.
[12] June Brief, paras 86-96.

V. TABLE OF AUTHORITIES

TAB

1. *Angus A2A GP Inc (Re)*, 2025 ABKB 51

VI. REFERENCED DOCUMENT

TAB

A. Brief on behalf of the Director of Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC filed June 19, 2026 (without attachments)

TAB 1

Court of King's Bench of Alberta

Citation: Angus A2A GP Inc (Re), 2025 ABKB 51

Date: 20250129
Docket: 2401 15969
Registry: 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 ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.

Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby

I. Introduction

[1] The matter before the Court raises important questions about the proper use of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("*CCAA*"). The *CCAA* is an insolvency statute that is typically used to restructure a debtor company's affairs. The present application was commenced by creditors and equity investors to preserve assets, unseat management, conduct an investigation, and facilitate and maximize recovery for stakeholders. The *CCAA*'s greatest attribute is its flexibility; the question in the present case is whether it is flexible enough to accommodate the proposed use.

[2] A group of Canadian investors (the "Canadian Investors") applied for and were granted an Initial Order pursuant to the *CCAA* on November 14, 2024 in respect of various related entities involved in real estate development ventures in Ontario and Texas. I refer to the entities subject to the Initial Order as the Canadian Respondents and the US LLCs and when referring to

them together I call them the Respondents. The Initial Order appointed counsel to represent investors from outside Canada (the "Offshore Investors"). For convenience, I refer to the Canadian Investors and Offshore Investors as the Applicants even though the Offshore Investors are not, strictly speaking, applicants because the two groups are aligned in respect of the Initial Order and ARIO.

[3] The Respondents ask the Court to set aside the Initial Order and the Amended and Restated Initial Order ("ARIO") thereby terminating the *CCAA* proceedings. To decide whether the *CCAA* proceedings should continue, I must consider the purpose and reach of the *CCAA*. The Respondents submit that the Applicants are, in essence, equity investors who have misused the *CCAA* to advance what should be conventional civil claims. The Respondents further assert that management is best placed to maximize value for investors through the sale of the real estate projects. The Applicants concede that their use of the *CCAA* is novel but contend that it is consistent with the purposes of the *CCAA* and justified in the circumstances.

[4] The US LLCs also assert that the *CCAA* proceedings are destined to fail in relation to the US real estate projects because the Respondents' US real estate assets and bank accounts are beyond the reach of the *CCAA* proceedings. The US LLCs also contend that the Court has no jurisdiction over them because they are not doing business in Canada and thus cannot be "debtor companies" or "affiliated companies" as defined by the *CCAA*. The Applicants respond that the business of the US LLCs is inextricably intertwined with the various Canadian entities such that they are necessary parties to the *CCAA* proceedings regardless of whether they are doing business in Canada.

[5] The Applicants submit that if the Respondents are correct that the Court does not have jurisdiction under the *CCAA* or for other reasons the *CCAA* proceedings must be terminated, the Court should appoint a receiver over the Respondents. The Applicants assert that the Respondents are insolvent and have demonstrated an inability or unwillingness to manage their assets to maximize returns to investors. The Respondents submit that it would not be just or convenient to appoint a receiver because the management is in the best position to liquidate the real estate projects and the appointment of a receiver would prevent management from maximizing value.

[6] The present matter is a continuation of the Comeback Hearing to confirm the appropriateness of the *CCAA* proceedings and the Respondents' application to set aside the Initial Order and ARIO. I explained in ***A2A GP Inc (Re)***, 2024 ABQB 769 at para 22 the onus remains on the Applicants to show that *CCAA* proceedings are appropriate: see also, ***Target Canada (Re)***, 2015 ONSC 303 at para 84 *per* Morawetz RSJ, as he then was.

II. Procedural Background

A. Initial Order

[7] The Initial Order application was made before me on November 14, 2024. The application was presented as a matter of serious urgency because the Applicants feared that conditions on the sale of the Ontario property, Angus Manor Park ("Angus Manor"), would be waived the following day and the sale would become firm. The Respondents were represented by their corporate counsel who had little more than one day's notice of the application. The Initial Order application was effectively made *ex parte*.

[8] The Canadian Investors submitted that even though they did not have the right to vote on any sale of Angus Manor, they had the power to direct the corporate entity that serves as the general partner of the limited partnership that holds the interests in land. The Canadian Investors complained that they had not received notice or details of the pending sale. The Applicants further demonstrated that the corporate entity that was registered on the Angus Manor title had been struck from the Ontario corporate registry. The Applicants submitted that they had learned from a Facebook posting that the sale of Angus Manor was to be effected through a vendor take back (VTB) structure with a $3 million payment at closing with the balance of the $14 million purchase price to be paid in 2029.

[9] The Applicants submitted that they had standing to make the application because as trust and limited partnership unitholders, bondholders, and UFI holders they were the key and perhaps only real stakeholders in the Respondent entities. They further submitted that they were creditors or contingent creditors because they had or would have claims against the Respondents.

[10] The Applicants argued that the statutory requirements for a *CCAA* initial order were met because the Respondents were insolvent because they were not meeting their obligations as they became due, as evidenced by non-payment of Ontario taxes, and the debt owed by the Respondents exceeded $5 million. Among other debt, the Applicants pointed to a judgment of approximately US $3.8 million that they said was registered on title of the US properties as evidence supporting a finding that the Respondents had at least $5 million in debt.

[11] The Initial Order granted the Monitor expanded powers and took control of the Respondent entities away from management. An important consideration in granting the Initial Order pursuant to the *CCAA* rather than a receivership pursuant to the *Judicature Act*, RSA 2000, c J-2 or an injunction was the efficiency in enforcing the order given the seeming urgency. A *CCAA* stay order is immediately enforceable across the country without recognition proceedings in other provinces and it may be recognized and given effect in the US through proceedings under Chapter 15 of the *US Bankruptcy Code*. Both a receivership and an injunction would have required additional proceedings in an Ontario court that may not have been possible within the time available prior to sale of Angus Manor being completed.

B. Amended and Restated Initial Order

[12] The Comeback Hearing took place before Justice Simard on November 21, 2024. The Respondents brought a cross-application to set aside the Initial Order. Justice Simard reserved his decision and gave oral reasons on November 25, 2024. Simard J decided some of the issues relevant to the Comeback Hearing and adjourned others to be heard later after the Respondents had provided information to the Monitor and the Monitor had provided a comprehensive report to the Court. He also adjourned the cross-application to set aside the Initial Order.

[13] Before me at the continuation of the Comeback Hearing and the set-aside application, the parties adduced new evidence and offered new arguments on some of the issues decided by Justice Simard. I cannot revisit those issues. Though I discuss some of the new evidence and new arguments in these Reasons, I do not vary Justice Simard’s decision. Indeed, in my view, the new evidence and arguments reinforce his conclusions.

[14] Before Justice Simard, the Respondents were represented by litigation counsel who was retained after the Initial Order was granted. The Respondents submitted that the US LLCs had not been properly served with the Initial Order application. Justice Simard found that the defects

in service were excused by the urgency of the application and that all the Respondents had proper notice of the Comeback Hearing. He went on to find at page 8 of the transcript of his November 25, 2024 oral decision:

> The two Texas LLCs are proper respondents because they are inextricably intertwined in the corporate and investment structure of the Windridge and Fossil Creek projects that were marketed to Canadian investors in Canada through Alberta and Ontario corporations, limited partnerships, and trusts.
>
> Despite the deficiencies in service of the application for the initial order, I find that I have jurisdiction over all of the existing respondents, including the two Texas LLCs.

[15] Simard J later held at page 9 that, "I am satisfied by the evidence that all of the respondents are affiliated, and their businesses are inextricably intertwined with respect to the three projects. The respondents did not challenge that assertion."

[16] The Respondents argued that the Applicants, being equity investors, did not have standing pursuant to the *CCAA* to apply for an Initial Order. Justice Simard dismissed this argument at page 8 saying: "there is no prohibition in the *CCAA* on investors applying for an initial order." He further concluded at page 9 that the "applicant investors are persons interested, as described in Section 11.02(1) of the *Act*; and as a result, I find that the applicant investors had standing to make the initial order application."

[17] The Respondents disputed that they were insolvent. After reviewing the evidence concerning the debts of the Respondents and considering the Respondents' submissions, Simard J concluded at page 10 "based on the evidence currently before me, I am satisfied that the respondents are insolvent."

[18] The Applicants identified two trusts governed by Texas law that were not covered by the Initial Order (the "Texas Trusts") and requested that Justice Simard extend the ARIO to the Texas Trusts and the trustee, Dirk Foo. Justice Simard denied the Applicants' request because they had insufficient information concerning the Texas Trusts and Mr. Foo, being an individual, cannot be "treated as a debtor company under the CCAA, or an affiliate of a debtor company."

[19] Justice Simard directed the Respondents to provide information and records requested by the Monitor so that the Monitor could provide a comprehensive report to the Court. The information to be provided included corporate records, accounting records, investor records, contracts, title documents, other documents related to the real property, records of communications with investors concerning the sale of real property, and other material records. The Respondents were required to produce the requested records by December 6, 2024. The Monitor was directed to provide its comprehensive report by December 13, 2024.

C. US Bankruptcy Code Chapter 15 Recognition Proceedings

[20] On December 20, 2024, a US Bankruptcy Judge of the US Bankruptcy Court, Northern District of Texas, Fort Worth Division issued an "Order Granting Recognition of Foreign Main Proceeding and Additional Relief." The US Bankruptcy Judge held that the Chapter 15 proceedings were properly commenced and that the *CCAA* proceeding in the Alberta Court of King's Bench should be recognized as a foreign main proceeding and a stay should extend to the Respondents and their property within the territorial jurisdiction of the US. The US Bankruptcy Judge further held that granting relief was "in the interest of the public and international comity,

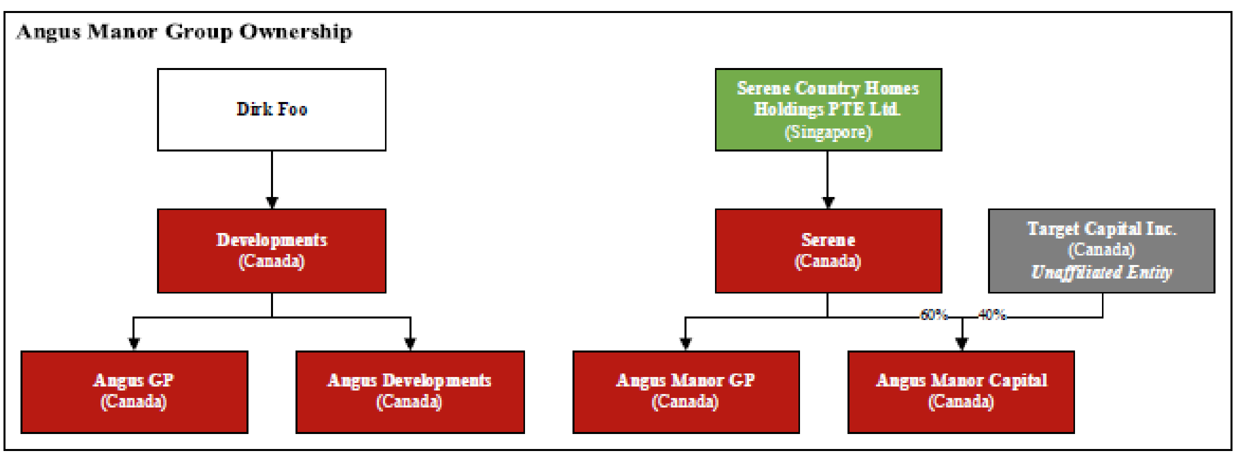
consistent with the public policy of the United States, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted."

III. The Respondents' Business and the Applicants' Investments

A. The Respondents' Organizational Structure

[21] All the relevant corporations are direct or indirect subsidiaries of Serene Country Homes Holdings PTE Ltd ("Serene Country"), a Singapore company, and are controlled by Dirk Foo. Below Serene Country sit three corporate groups that correspond to the three real estate development projects. One project, Angus Manor, is in Ontario and two projects, The Hills of Windridge ("Windridge") and The Trails of Fossil Creek ("Fossil Creek"), are in Texas. Several of the relevant corporations, limited partnerships, and trusts are Alberta entities. There are also Ontario, Texas, and Singapore entities that play important roles. Each of the Respondent corporate entities has different directors. The directors and trustees of the various Respondent entities include Grayson Ambrose, Dirk Foo, Allan Lind, and Joseph Attrux. Mr. Ambrose is a resident of Calgary, Mr. Foo and Mr. Lind reside in Singapore, and Mr. Attrux is identified in corporate filings as a resident of Texas. Justice Simard found, and I agree, that Alberta is an appropriate venue for these proceedings despite there being connections to other jurisdictions.

[22] Angus Manor is a 167-acre residential development project located in Essa Township which is just southwest of Barrie, Ontario. The Angus Manor Group ownership is depicted on the chart below taken from the Monitor's Third Report. Angus Manor Park A2A GP Inc, shown below as Angus GP (Canada), is an Alberta corporation that was struck from the corporate registry on September 2, 2021. Angus GP (Canada) is the general partner of the Angus Manor Park A2A Limited Partnership ("Angus Manor LP") which is an Alberta limited partnership. Angus Manor A2A Capital Corp ("Angus Manor Capital") owned 100% of the units of Angus Manor LP and issued bonds (discussed below) to finance the development of the Angus Manor project. Angus Manor Park A2A Developments Inc, shown below as Angus Developments (Canada), is an Ontario corporation. Angus Developments (Canada) was the company responsible for developing the Angus Manor real estate project.



[23] The Angus Manor lands were put on the market on August 15, 2024. The best offer was structured as a VTB bearing 3% interest for four years with an initial payment of $3 million and the balance of $11 million due in 2029. The Monitor concluded in its First Supplement to the

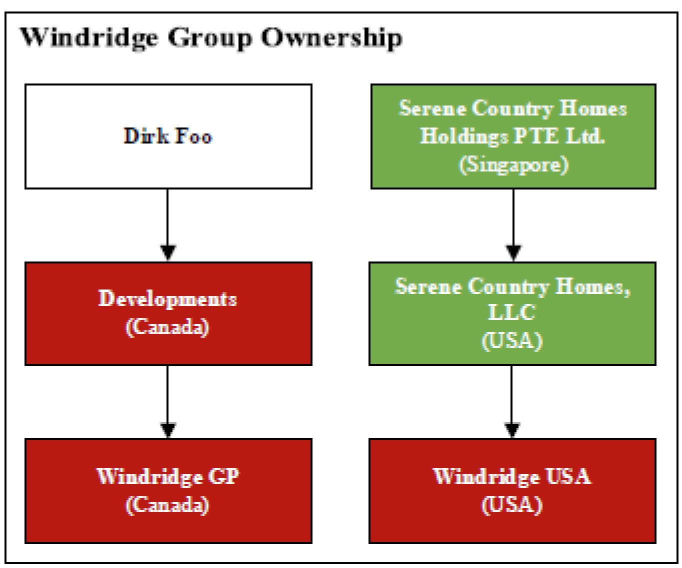
Third Report that the proposed purchase price for the Angus Manor lands is fair. However, the Respondents proposed to use the whole $3 million initial payment to cover transaction fees and management fees. The Monitor expressed concern that "the VTB structure must be done in a way to protect the interest of the A2A Investors and be done so in a clear and transparent manner."

[24] Windridge is a 415-acre residential development in the Dallas/Fort Worth area of Texas. The Windridge Group ownership depicted on the chart below is taken from the Monitor's Third Report. Hills of Windridge A2A GP Inc., shown below as Windridge GP (Canada), is an Ontario corporation. Windridge GP (Canada) is the general partner of Hills of Windridge A2A LP ("Windridge LP"), an Ontario limited partnership which is not shown on the chart. Investors own units in the Hills of Windridge A2A Trust ("Windridge Trust"), an Ontario trust, also not shown on the chart, which, in turn, owns the units of the Windridge LP. Windridge LP owns undivided factional interests ("UFIs") in the Windridge lands.

[25] Hills of Windridge A2A Developments LLC ("Windridge LLC") referred to below as Windridge USA is a Texas entity. The Further Amended and Restated Confidential Offering Memorandum provided to investors described the role of Windridge LLC, which it called Windridge Developments, as follows:

> Windridge Developments was established for the sole purpose of acquiring and overseeing all aspects of the development of the Property. It is the vendor of the UFIs under the UFI Purchase Agreement and will have a significant amount of strategic input and operational and administrative responsibilities for the development of the Property, the sales of lots or homes thereon, pursuant to the terms of the Deed of Covenant.

[26] Windridge LLC was the original owner of the Windridge lands. Windridge LLC sold UFIs in the Windridge lands to Windridge LP. The units of the Windridge LP are held by the Windridge Trust.



[27] Records obtained by the Monitor indicate that Windridge LP transferred the UFIs to a different Windridge Trust, governed by Texas law ("Windridge Texas Trust") which now holds

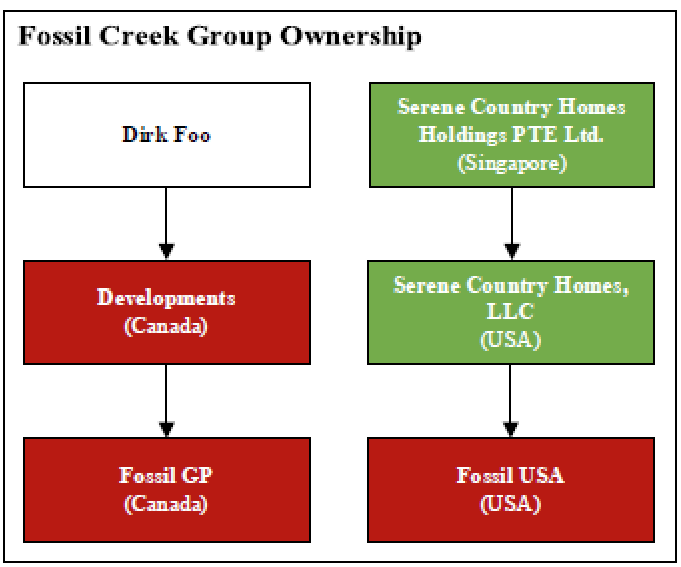
title to the Windridge lands. The trustee of Windridge Texas Trust is Dirk Foo. A small parcel of the Windridge lands was transferred by the Windridge Texas Trust to a new limited partnership, the general partner of which is Windridge LLC, for the purposes of effecting a sale to the Tarrant Regional Water District ("TRWD"). The small parcel was to have been expropriated if Windridge had not agreed to sell. The Monitor applied to extend the *CCAA* proceedings to the Windridge Texas Trust and Dirk Foo on the grounds that they are affiliates of the Respondents but the application was denied by Justice Simard.

[28] Fossil Creek is a 93-acre residential development with 487 single detached family homes located in Fort Worth, Texas. The Fossil Creek Group ownership depicted on the chart below is taken from the Monitor's Third Report. Fossil Creek A2A GP Inc., shown below as Fossil GP (Canada), is an Alberta corporation. Fossil GP (Canada) is the general partner of Fossil Creek A2A Limited Partnership ("Fossil Creek LP") which is an Alberta limited partnership. Investors own units in the Fossil Creek A2A Trust (the "Fossil Creek Trust"), an Alberta trust, also not shown on the chart, which, in turn, owns the units of the Fossil Creek LP.

[29] Fossil Creek A2A Developments, LLC ("Fossil Creek LLC"), referred to in the chart below as Fossil USA, is a Texas entity. The Amendment to the Offering Memorandum for Fossil Creek Trust units described the role of Fossil Creek LLC, which it called Fossil Creek Developments, as follows:

> Fossil Creek Developments was established for the sole purpose of acquiring and overseeing all aspects of the development of the Property. It is the vendor of the UFIs under the UFI Purchase Agreement and will have a significant amount of strategic input and operational and administrative responsibilities for the development of the Property, the sales of lots or homes thereon, pursuant to the terms of the Deed of Covenant.

[30] According to the Amendment to the Offering Memorandum, Fossil Creek LLC sold UFIs in the Fossil Creek lands to Fossil Creek LP.



[31] Records obtained by the Monitor show that Fossil Creek LP transferred its UFIs to Fossil Creek Trust, a Texas trust ("Fossil Creek Texas Trust"). The trustee of Fossil Creek Texas Trust

is Dirk Foo. The Fossil Creek Texas Trust transferred its interest in the Fossil Creek Lands to a new Texas limited partnership, the general partner of which was Fossil Creek LLC, in 2024, to facilitate the sale of the Fossil Creek lands to a third party. The Monitor applied to extend the *CCAA* proceedings to the Fossil Creek Texas Trust and Dirk Foo on the grounds that they are affiliates of the Respondents but the application was denied by Justice Simard.

B. The Applicants' Interests and Rights

i. The Securities, the Rights of the Applicants, and the Obligations and Conduct of the Respondents

[32] Angus Manor LP sold limited partnership units to investors in 2015. The units were priced at $100 with a minimum investment of $5,000 required. Unitholders have no right to take an active part in the business of Angus Manor LP. Counsel for the Canadian Respondents explained that Angus GP "is vested with the authority to make virtually all decisions on behalf of the investors." He further described the investors as "passive participants." The only right that investors have in relation to the governance of the Angus Manor entities and project is the right to receive an annual report containing financial statements of Angus Manor LP each year. But the Respondents never provided investors with an annual report containing financial statements.

[33] Angus Manor Capital sold bonds ("Bonds") in 2016 to investors for $1 each with a minimum investment of $6,300 required. Each bond bears a 5% annual fixed rate of interest. The interest that accrued from the date of purchase to September 30, 2021 was to be paid on September 30, 2021. A2A Capital failed to pay the interest accrued to September 30, 2021 to bondholders. Any interest accrued after September 30, 2021 is to be paid within six months of the Bonds being redeemed in full. The Maturity Date of the Bonds is September 30, 2026. Angus Manor Capital was required to file annual financial statements with securities regulators and make them reasonably available to each bondholder. No financial statements for Angus Manor Capital have been provided by the Respondents to the Monitor despite the Court's direction to do so. The inference that I draw from the non-production of Angus Manor Capital financial statements is that they were never prepared.

[34] The Respondents argue that the Bonds are, in effect, equity instruments because the Confidential Offering Memorandum specified that the Bonds are "entitled to share in the Net Profits or Income" of Angus Manor LP and that the Bonds rank *pari passu* with other unsecured obligations of Angus Manor Capital. The peculiar structure of the Bonds was driven by the fact that limited partnership units are not RRSP and TFSA eligible. The Angus Manor group wanted to make investing in Angus Manor RRSP and TFSA eligible so that it was more attractive. The result is an interest-bearing security that Angus Manor Capital marketed as a bond but otherwise has the characteristics of equity. As a matter of consistency and fairness, the Respondents cannot style a security as a "bond" – a paradigm example of a debt instrument – to obtain certain attributes as a matter of tax law to assist in soliciting investment and then claim in the *CCAA* process that the same security is really equity. Be that as it may, I explain later in these Reasons, whether the bonds are debt instruments or equity is beside the point because Angus Manor Capital failed to make the September 30, 2021 interest payment making the bondholders creditors regardless of the nature of their security.

[35] The Offshore Investors hold UFIs in the Angus Manor lands. Angus Manor UFI holders have the right to vote on the sale of all or any part of the Angus Manor lands. Some of the

Angus Manor UFI holders were given proxies to vote on the Angus Manor transaction that was halted by the Initial Order.

[36] Canadian Investors in Fossil Creek own units in the Fossil Creek Trust. The Fossil Creek A2A Trust Declaration provides that a meeting of Fossil Creek Trust investors is to be called within 18 months of the effective date of Fossil Creek A2A Trust Declaration and then a meeting is to occur at least every 15 months. 21-days prior to each meeting, the administrator of the Fossil Creek Trust is required to provide investors with annual financial statements. No financial statements for the Fossil Creek Trust (or any entities associated with the Fossil Creek project) have been provided to the Monitor despite the direction of the Court. The inference that I draw from non-production is that financial statements were never prepared.

[37] Offshore Investors in Fossil Creek own UFIs which are governed by the Fossil Creek Deed of Covenant. The UFI holders do not have any rights to participate in the development of the Fossil Creek lands but the have the right to vote on the sale of all or any part of the Fossil Creek lands. Pursuant to the Fossil Creek Deed of Covenant, Fossil Creek LLC as "Facilitator" is required to maintain accurate books and records and make such books and records available for inspection by UFI holders at Fossil Creek LLC's office in Texas. The Fossil Creek Deed of Covenant provides that a Facilitator other than Fossil Creek LLC may be appointed. It is not clear whether a different Facilitator was appointed and, if so, what entity was appointed. No financial records for Fossil Creek were produced by the Respondents despite the direction of the Court. The inference that I draw from non-production is that financial records were not kept.

[38] The Fossil Creek lands were sold in Fall 2024 by Trails of Fossil Creek Properties LP, a new limited partnership created to facilitate the sale. The general partner of Fossil Creek Properties LP is Fossil Creek LLC. The Monitor reports that, as of the date of the Monitor's Third Report, "no Offshore Investor has advised the Monitor or its consultants that it was asked to vote to approve the Fossil Creek Sale." Mr. Lind confirmed on cross-examination that he was unaware of approval for the sale being sought from UFI holders. According to Mr. Lind, the proceeds of the sale of the Fossil Creek lands are being held by a Texas company not party to these *CCAA* proceedings at the direction of Mr. Foo. The funds are apparently deposited at a branch of the Chase bank but Mr. Lind refused an undertaking request to disclose the location of the specific branch where the funds are deposited. The Monitor advised in its First Supplement to the Third Report that the sale of the Fossil Creek lands was made to a *bona fide* third-party purchaser at below the appraised value. The Monitor was "unable to comment on whether the sale was made improvidently."

[39] The Canadian Investors in Windridge own units in the Windridge Trust. The Hills of Windridge A2A Trust Declaration provides that a meeting of Windridge Trust investors may be called by investors holding at least 25% of the units. The Windridge Trustees are required to provide investors with annual financial statements from time to time as required by applicable law and to prepare and maintain accounting records. No financial statements for the Windridge Trust (or any entities associated with the Windridge project) have been provided to the Monitor despite the direction of the Court. The inference that I draw from non-production is that financial statements were never prepared.

[40] The Offshore Investors in Windridge own UFIs which are governed by the Windridge Deed of Covenant. The UFI holders do not have any rights to participate in the development of the Windridge lands but they have the right to vote on the sale of all or any part of the Windridge

lands. Pursuant to the Windridge Deed of Covenant, Windridge LLC as "Facilitator" is required to maintain accurate books and records and make such books and records available for inspection by UFI holders at Windridge LLC's office in Texas. The Windridge Deed of Covenant provides that a Facilitator other than Windridge LLC may be appointed. It is not clear whether a different Facilitator was appointed and, if so, what entity was appointed. No financial records for Windridge were produced by the Respondents despite the direction of the Court. The inference that I draw from non-production is that financial records were not kept.

[41] A small parcel of the Windridge lands was sold to TRWD. The Monitor reports that the Offshore Investors were not aware of the sale and, accordingly, it may be inferred that they did not vote on the sale. The Respondents provided no information to the Monitor concerning the location of the sale proceeds. Mr. Lind refused to answer an undertaking request concerning the location of the sale proceeds.

[42] The Respondents submit that the Applicants' real issue is that the Respondents failed to communicate with investors. They contend that this is something that should be dealt with through a normal civil action rather than the *CCAA* process. I will return to this question later in these Reasons, but it is important to note that the Applicants' concerns go beyond the Respondents' poor communications. The Monitor concluded from its investigation, and I accept, that the Respondents are "either incapable of or unwilling to undertake the fiduciary responsibilities to act as a 'Facilitator' or 'Trustee' in the realization and distribution process when A2A Group projects are monetized." The Monitor further concluded that the Respondents have failed to:

(a) comply with basic requirements to keep and maintain accurate books and records;

(b) comply with basic reporting requirements to which the A2A Investors are entitled;

(c) maintain corporate registrations of key entities in the A2A Group; and

(d) fully account for the source and uses of funds of the A2A Group.

[43] The evidence of the Applicants, which was not available to the Monitor at the time of the Third Report, shows that the Respondents have paid some Windridge and Fossil Creek investors and not others. The discrepancies cannot be explained on the grounds that the various investors own different classes of securities. All Canadian investors in Windridge own the same class of security but some have received payments and others have not. The same is the case for Fossil Creek. And among those who have received payments, the payments vary in ways that do not appear to be proportionate to the size of investment. The evidence of the Applicants is consistent with the Monitor's conclusion that the Respondents are incapable of meeting their responsibilities to investors. I conclude that the Respondents' dilatory recordkeeping and general disregard for investor rights mean that the Respondents will not be able (even if they were willing) to conduct a realization and distribution process that is fair to all investors.

ii. The (In)significance of Investor Contractual Rights

[44] The Canadian Investors are "accredited investors" as that term is used in securities law. Accredited investors are required to have income or financial resources greater than prescribed thresholds. Net worth and income are used by securities law as a proxies for investor sophistication. Because the Applicants are accredited investors, the securities sold by the

Respondents were exempt from the prospectus requirements of securities laws in Canada. The securities regulatory regime that applied to the Offshore Investors is not clear to the Court. The securities purchased by the investors were limited partnership units, trust units, bonds, and UFIs, so the Applicants do not enjoy the rights afforded to shareholders in corporate law nor do they have recourse to statutory remedies in corporate or securities law. The terms of the securities and the rights of the Applicants are set out in the offering memoranda for each security and other material agreements relevant to each project.

[45] A theme of the Respondents' written and oral submissions was that the Applicants have limited rights pursuant to the terms of their securities and did not bargain for the rights now afforded to them pursuant to the *CCAA*. The Respondents submit that the Applicants should be restricted to their contractual rights and nothing more. The Canadian Respondents assert that the Applicants "are effectively asking the Courts to give them rights they did not bargain for." The US LLCs submit that the "appropriate" thing for the Applicants to do is "commence litigation for breach of contract." There are several flaws in this line of reasoning.

[46] The idea that the investors bargained for anything is incorrect even though Courts often speak of securityholders bargaining for rights. The word bargaining suggests that there was a negotiation between parties with the ability to engage in trade-offs. The rights that attached to the LP units, Trust units, Bonds, and UFIs in the present case were determined by the Respondents and then the securities were sold as "financial products" by agents who had no authority to vary their terms. The investors had a choice to buy the securities or not. They did not negotiate the terms of the securities. The legal rights that attach to the securities, in this sense, are no different than the terms any other standard form contract. I discuss this in greater detail in Colin Feasby, "Bondholders and Barbarians: BCE and the Supreme Court's New View on Directors' Duties" in Todd L. Archibald & Randall Scott Echlin, *The Annual Review of Civil Litigation* (Toronto: Carswell, 2009) 83 at 88-89.

[47] Whether rights were bargained for or offered on a take it or leave it basis has legal significance in two ways. First, a lack of bargaining or unequal bargaining power affects the approach to contract interpretation: ***Jesuit Fathers of Upper Canada v Guardian Insurance Co of Canada***, 2006 SCC 21 at para 28 and ***Douez v Facebook, Inc***, 2017 SCC 33 at para 173 *per* McLachlin CJC and Côté J dissenting. Second, whether a contract is negotiated or a standard form determines the standard of review of contractual interpretation on appeal: ***Ledcor Construction Ltd v Northbridge Indemnity Insurance Co***, 2016 SCC 37 at paras 28 & 46. The Respondents do not point to any language in the documents governing the securities that can be interpreted as preventing securityholders from using the *CCAA*. I reject the suggestion that there was a negotiation between the Applicants and Respondents that somehow prevents them from asserting their rights under a statute of general application like the *CCAA*. Nor does the fact that the Applicants only paid for certain contractual rights mean that statutory rights are not available to them if they satisfy the requirements of the statute.

IV. Are *CCAA* Proceedings Appropriate?

A. The Solvency of the Respondents

[48] Justice Simard concluded that the Respondents were insolvent, but certain additional evidence that has come to light since his decision must be noted. Simard J's decision on the solvency of the Respondents turned, in part, on the fact that there was an unpaid $3.8 million

judgment against the US LLCs in Texas. The Respondents submit that the Texas judgment should not be considered a liability because it is a default judgment and does not impede the Windridge and Fossil Creek projects. In addition, whether the Texas judgment can be considered turns on the status of the US LLCs as parties to this proceeding, an issue that will be dealt with in a later section of these Reasons.

[49] The fact that the Texas judgment is a default judgment as opposed to a trial judgment is of no consequence. The US LLCs made a conscious decision not to defend the allegations against them. Perhaps that was because they had no money to defend the case, maybe it was because they knew the allegations to be true, or possibly there were other reasons. Whatever the reason, a default judgment is a liability in the same way as any other judgment. The US LLCs also quibbled in oral argument with the characterization of the Texas judgment as a finding of fraud. As I understand the objection, it is because the judgment specifically states that the judgment against other defendants is for fraud and misappropriation of funds but there is no similar statement regarding the US LLCs. To emphasize the fact that other defendants such as Joseph Attrux, a director of some of the Respondent entities, were expressly found liable for fraud whereas the US LLCs were only found jointly and severally liable "on all causes of action in the Plaintiffs' First Amended Petition" is to highlight a distinction without a difference.

[50] The Monitor highlighted in its Third Report that Angus Manor had liabilities of $5,560,644 as of December 10, 2018 which is the most recent date for which information was provided by the Respondents. Similarly, Serene Country Homes (Canada) Inc ("Serene Canada") is shown as having $5,329,059 in liabilities as of December 4, 2018, the most recent date for which financial information was provided by the Respondents. Other Respondents are also shown by the Third Report to have liabilities, though less than Angus Manor and Serene Canada. Given that the reason given for not preparing and providing more recent financial information is that the Respondents were facing financial challenges and there is no evidence of Angus Manor or Serene Canada receiving a cash injection since 2018, I infer that the current liabilities of Angus Manor and Serene Canada are equal to or greater than that stated by the Monitor as of December 2018. So even if the Texas judgment is not considered, the Respondents have liabilities of more than $5 million as required by the *CCAA*.

[51] There is also considerable evidence that the Respondents cannot meet their liabilities as they come due. Mr. Lind, director and trustee of several of the Respondent entities, explained in his December 31, 2024 affidavit that the Respondents had experienced "financial challenges." He described how these financial challenges caused the Respondents to fail to meet their contractual obligations to the Respondents:

> One impact of these financial challenges was that there were limited funds available to pay accountants, maintain offices, or continue software subscriptions that the companies had utilized. Documents ended up spread over multiple places held by different accountants or law firms that we had not maintained contact with. In some cases, financial statements simply were not prepared, as funds were tight and most of the entities involved did not have operations beyond holding assets.

[52] Mr. Lind further advised on cross-examination that records concerning Windridge and Fossil Creek were lost when the Respondents were locked out of their Fort Worth office by their landlord in 2018 and not permitted to retrieve their records. I infer from this evidence that the

Respondents were not paying their rent as it came due. Mr. Lind also admitted on cross-examination that the Respondents were unable to produce certain information concerning UFIs because they failed to maintain their subscription to a software service that they used to keep track of land ownership interests because of financial constraints. The failure of the Respondents, a corporate group involved in land development, to maintain a software subscription that was essential to tracking land ownership interests is a further indication of their insolvency.

[53] The continuing failure of Angus Manor Capital to pay the bondholders interest that had accrued to September 30, 2021 was not addressed in submissions before Justice Simard and, accordingly, was not noted in his reasons for decision. The failure to pay interest due to bondholders is evidence of insolvency.

[54] The evidence that has come to light since Justice Simard's decision or was not brought to his attention supports his conclusion that the Respondents were insolvent. If I were required to consider the question afresh based on the evidence now before me, I would conclude that the Respondents are insolvent.

B. Equity and the Purposes of the *CCAA*

[55] Perhaps the most important question raised by the Respondents is whether the Applicants' use of the *CCAA* is appropriate. The Respondents submit that the Applicants are equity investors who enjoy minimal contractual rights. The Applicants, according to the Respondents, are using the *CCAA* to acquire rights that they did not bargain for. Further, the Respondents submit that the Applicants are using the *CCAA* to obtain injunctive relief and to conduct an investigation rather than restructure or liquidate the Respondent entities.

[56] The Respondents submit that Justice Simard agreed with their position. The Respondents place great emphasis on his observation that "there are limits to the [*CCAA*'s] flexibility. As its name suggests, the purpose of the *Act* is to assist insolvent companies in developing and seeking compromises and arrangements with their creditors. The continuation of a stay <u>may</u> not be appropriate <u>if</u> the purpose of the proceedings is not to further that fundamental purpose of the *Act*" [emphasis added]. Justice Simard's comments demonstrate that he recognized that the issue raised by the Respondents must be taken seriously. Indeed, he directed the Respondents to provide additional information to the Monitor so that the issue could be considered with the benefit of a more robust evidential record.

[57] The Respondents conducted a survey of all *CCAA* filings since 2009. Their survey revealed that 94.1% of all *CCAA* proceedings were commenced by debtor companies, 4.5% were commenced by secured creditors, 0.5% were commenced by unsecured creditors, 0.5% were commenced by a receiver, 0.2% were commenced by an interim receiver, and 0.2% were commenced by a liquidator/monitor together with a debtor company. The Respondents submit that the absence of any *CCAA* proceedings being commenced by equity investors over the last 15 years is proof that equity investors cannot commence *CCAA* proceedings. The fact that equity investors have not commenced *CCAA* proceedings does not mean that it is impossible for them to do so, but it suggests that when presented with an application by equity investors to commence *CCAA* proceedings a Court should proceed with extra care.

[58] The idea that equity investors may never commence *CCAA* proceedings sits uneasily with the fact that equity holders sometimes have significant economic interests in companies that are

insolvent. This can be illustrated with the definition of insolvency typically used in the *CCAA* context which is found in the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("*BIA*"), s 2:

> **insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

[59] The *BIA* s 2 definition of insolvent person is not cumulative. A person (or company) may be insolvent if any of the three criteria are satisfied. A company may be insolvent where it is unable to meet its obligations as they become due even though the value of its assets exceeds its liabilities – this is sometimes called a liquidity crisis. Where there is a liquidity crisis, it is possible that equity holders will have the most significant economic stake in a debtor company. Normally, the board and management of a debtor company – who directly or indirectly represent the interests of equity (though fiduciary obligations are owed to the corporation as a whole) – will commence *CCAA* proceedings to deal with a liquidity crisis. And, in that sense, it may be said that most *CCAA* proceedings are commenced by representatives of equity. However, it is possible to envision circumstances where a debtor company's board or management fail to act in the face of insolvency as is arguably what has happened in the present case. The strength of the *CCAA* as a statutory framework for managing insolvency problems is its malleability. In my view, it would be unwise to constrain unanticipated future uses of the *CCAA* by stating categorically that equity investors may never commence *CCAA* proceedings.

[60] The Respondents, in making the submission that equity investors cannot commence *CCAA* proceedings, also appear to be making a collateral attack on Justice Simard's decision that the Applicants have standing. Justice Simard questioned whether the Applicants were contingent creditors as they claimed without deciding the issue but went on to find that they nevertheless have standing pursuant to *CCAA* s 11 because they are interested persons. The Applicants emphasized in submissions before me (though not before Simard J) that the bondholders are not just equity investors or contingent creditors, they are proper creditors. The bondholders are creditors because the interest that was due to them on September 30, 2021 was not paid and remains outstanding. If the question of standing were presented today, it would not be necessary to determine whether equity investors or contingent creditors have standing because there are actual amounts due and owing to some of the Applicants.

[61] Leaving aside that it is now obvious that some of the Applicants are proper creditors, Justice Simard's determination that the Applicants, as equity investors, have standing pursuant to *CCAA* s 11 is not determinative of whether the *CCAA* is being used properly. That is clear from his reasons. The relevant question is not whether, in the abstract, equity investors have standing; rather, it is whether these Applicants are using the *CCAA* consistent with its purposes.

[62] So, what are the purposes of the *CCAA*? Chief Justice Wagner and Justice Moldaver, writing for the Court, explained what they considered to be the "overarching remedial objectives" of "Canada's insolvency statutes" in ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 at paras 40-41:

> (a) providing for timely, efficient, and impartial resolution of a debtor's insolvency;
>
> (b) preserving and maximizing the value of a debtor's assets;
>
> (c) ensuring fair and equitable treatment of the claims against a debtor;
>
> (d) protecting the public interest; and
>
> (e) in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.

[63] Karakatsanis J, concurring, in ***Canada v Canada North Group Inc***, 2021 SCC 30 at para 137 held "the purpose of the *CCAA* is remedial; it provides a means for companies to avoid the devastating social and economic consequences of commercial bankruptcies" citing ***Century Services Inc v Canada (Attorney General)***, 2010 SCC 60 at paras 15 and 59. Wagner CJC and Moldaver J observed in ***Callidus Capital*** at para 41 that "the typical *CCAA* case has historically involved an attempt to facilitate the reorganization and survival of the pre-filing debtor in an operational state – that is, as a going concern. Where such a reorganization was not possible, the alternative course of action was seen as a liquidation either through a receivership or under the *BIA* regime." Later at para 42 they noted that "liquidating CCAAs" are "now commonplace."

[64] The Applicants submit that the use of the *CCAA* in the present case is consistent with the purposes of the *CCAA*. The Applicants contend that the Monitor is necessary to preserve and maximize any value that remains in the Respondent entities because the Respondents have demonstrated that they are unable or unwilling to do so. They further assert that the Monitor can promote the fair and equitable treatment of investors by, among other things, administering a claims process. Absent the *CCAA* stay and Monitor's involvement there is the prospect of competing investor claims in multiple jurisdictions. I agree that the proposed use of the *CCAA* is the most efficient way to move forward and is the process most likely to result in the best return for stakeholders subject to my concerns about the Monitor's ability to bring the US assets into the *CCAA* process set out below in paras 68 and 88. The safeguard of a court-appointed monitor ensures that stakeholders have a transparent and responsive interlocutor, guarantees that stakeholders will be treated fairly, and will facilitate the administration of a fair claims process.

[65] The Respondents submit that the *CCAA* should not be used to obtain injunctive relief or conduct an investigation. The Respondents' submission that the *CCAA* should not be used to obtain injunctive relief is just another way of making their argument that the Applicants should be limited to their contractual rights. I have discussed this argument elsewhere in these Reasons. The contention that a *CCAA* proceeding should not have an investigatory function is incorrect. *CCAA* s 23(1)(c) provides that among the duties and functions of a Monitor is to:

> make, or cause to be made, any appraisal or <u>investigation</u> the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings [emphasis added].

[66] Recent cases confirm that it is appropriate for a Monitor to undertake an investigation, especially where there is suspected fraud or where debtor companies or their principals are not forthcoming with information and records to assist the Monitor perform its functions: ***Aquino v Aquino***, 2021 ONSC at paras 17-18; ***Aquino v Bondfield Construction Co***, 2024 SCC 31 at paras 11-12; ***Arrangement relatif à Bloom Lake General***, 2021 QCCA 2946 at paras 76-85; and ***Original Traders Energy Ltd., (Re)***, 2024 ONSC 325 at para 84.

[67] The Respondents submit that the present *CCAA* proceedings cannot achieve the purposes of the *CCAA*, at least with respect to Windridge and Fossil Creek, because the Texas Trusts and the trustee, Dirk Foo, are not subject to the ARIO. According to the Respondents, the *CCAA* proceedings are destined to fail because the Windridge lands and Fossil Creek lands and the bank accounts that contain the proceeds of such of those lands that have already been sold are beyond the reach of this Court. This objection is potentially fatal for the *CCAA* proceedings concerning Windridge and Fossil Creek because without control over the US assets, there is no prospect for recovery for stakeholders through the *CCAA* proceedings. Though the assets may prove to be beyond the reach of the Monitor, in my opinion, it is premature to conclude that the Monitor will fail and the *CCAA* proceedings must be terminated in respect of Windridge and Fossil Creek. Justice Simard's decision that this Court does not have jurisdiction over the Texas Trusts does not prevent the Monitor from taking other steps in Canada or legal action in the US, whether under the rubric of Chapter 15 or otherwise, to achieve its objectives. So far, the Monitor has not articulated a plan for gaining control of the remaining Windridge lands and the bank accounts that hold the proceeds of the sales of the Fossil Creek and Windridge lands. This is a critical point that I will return to in the Conclusion of these Reasons.

[68] The Respondents say that neither the Applicants nor the Monitor have put forward a "germ of a plan" and, as such, there is no reasonable possibility of successfully restructuring the debtor companies: ***Re Inducon Development Corp***, 1991 CarswellOnt 219 at para 14; more recently, see ***Industrial Properties Reginal Limited v Copper Sands Land Corp***, 2018 SKCA 36 at para 20 and ***Delta 9 Cannabis Inc (Re)***, 2024 ABKB 657 at para 58. The Respondents are correct that the Applicants and the Monitor have not outlined a plan, but the present circumstances are unusual, and a contextual approach is warranted.

[69] First, the Applicants must be held to a different standard than is normally the case when a *CCAA* process is commenced by a debtor company or a sophisticated secured creditor that possesses intimate knowledge of the debtor company. When a *CCAA* proceeding is commenced by a debtor company or sophisticated secured creditor, it follows that the Court expects there to be something of a plan even in the early stages. That cannot be the case where, as here, the Applicants had little knowledge of the inner workings of the Respondents because the Respondents were delinquent in their reporting obligations. For that reason, the Monitor's primary task in the early phase of these proceedings, as reflected in the ARIO, was to gather information from the Respondents. The Monitor was also admonished not to do more work than necessary which, it now says, caused it not to allocate resources to the development of a plan. To defeat the *CCAA* proceedings because the Applicants and the Monitor did not have enough information to articulate a plan at the Initial Order stage would reward the Respondents for their recalcitrance.

[70] Second, it does not take much imagination to know what a plan in this case will look like at a high level. The debtor companies control real estate that, following their own business model, must be sold before money is returned to investors. Precisely how that is to be done and

what steps must be taken prior to the sales are details that the Applicants and Monitor cannot be expected to know at this stage of the proceedings. The reality is that the Applicants' "germ of a plan" is the same as the Respondents'. The difference between the two is that the Applicants believe that the process of liquidating real estate assets and returning money to investors should be under the control of a professional, neutral, independent, competent ,and trustworthy steward (*i.e.* the Monitor, not management).

C. Do the Applicants Represent the Interests of Investors?

[71] The Respondents submit that the Applicants do not represent the interests of most investors and that the *CCAA* proceedings are effectively conscripting the funds of all investors in pursuit of the interests of a minority of the investors. The Respondents are correct that, together, Fasken and Norton Rose do not have the support of the majority of investors. The Respondents ask, in effect, that the Court infer that a silent majority of investors supports management and opposes the *CCAA* proceedings. The Respondents produced many proxies supporting the Angus Manor sale transaction that was halted by the Initial Order. However, I do not consider the Angus Manor proxies to be an indication that investors oppose the *CCAA* proceedings, because they predate the Initial Order. The Respondents have adduced no evidence to show investor support after the Initial Order.

[72] Fasken, counsel to the Canadian Investors, has been contacted by 120 investors who represent approximately CAD $2.85 million. Of those 120 Canadian Investors, 114 expressed support for the Monitor, two stated no opinion, and four were unsure or required more information to decide. An obvious difficulty in this case is that many of the investments were made a decade ago and there has been little communication with investors since. Some investors may have lost interest or given up and others may have changed their contact information. The response to Fasken suggests that those of the Canadian Investors who can be contacted and remain interested in their investment overwhelmingly support the *CCAA* proceedings.

[73] Norton Rose, counsel to the Offshore Investors, has been contacted by 303 Offshore Investors representing US $8,910,462 and CAD $4,649,021 plus small amounts denominated in other currencies. Of those 303 Offshore Investors, 291 indicated their support for the Monitor and only five opposed the appointment of the Monitor with seven expressing no opinion. The Respondents' submission that Norton Rose does not represent the interests of most Offshore Investors is meritless. Norton Rose requested a list of the Offshore Investors that included contact information. Mr. Lind deposed that the information was controlled by a non-*CCAA* affiliate based in Singapore, not the Respondents, and could not be provided because of Singapore privacy law. Counsel for the Offshore Investors submitted, and I agree, that the Respondents could have requested their Singapore affiliate to notify Offshore Investors of the *CCAA* process and provide them with contact information for Norton Rose and the Monitor but they did not.

[74] Of the investors who have made their views known, the vast majority support the *CCAA* process. To the extent that Fasken and Norton Rose are unable to contact investors to solicit their views, that is attributable one way or another to the conduct and choices of the Respondents. The inference that I draw from the facts set forth in this section is not that a silent majority opposes the *CCAA* process; to the contrary, I infer that if it was possible to contact and inform all investors, a strong majority would support the *CCAA* process.

V. Jurisdiction over US LLCs

[75] Justice Simard, as noted earlier in these Reasons, concluded that this Court has jurisdiction over the US LLCs. The objection raised by the US LLCs before me is different. The US LLCs submit that because they are not doing business in Canada they do not fit within the *CCAA* s 2(1) definition of "company" and, as such, they cannot be subject to these *CCAA* proceedings. *CCAA* s 2(1) provides that:

> **company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or <u>doing business in Canada</u>, wherever incorporated, and any income trust.... [emphasis added]

[76] Are the US LLCs doing business in Canada? Counsel conceded in oral argument that the US LLCs had done business in Canada during the capital raising phase when funds were solicited from Canadian investors but submitted that they had ceased to do business in Canada upon transferring the Fossil Creek lands and Windridge lands to the Texas Trusts. I agree that the US LLCs were not doing business in Canada at the time of the Initial Order, but that does not dispose of the issue.

[77] The approach taken by leading insolvency judges to the *CCAA* definition of company has been flexible, consistent with the remedial purpose of the statute. Chief Justice Morawetz, citing a long list of authorities, observed in ***Pride Holdings Group Inc***, 2024 ONSC 1830 at para 30: "This Court has found it just and reasonable to extend the protection of the stay of proceedings to non-applicant limited partnerships and non-applicant affiliates where such parties are integrally and closely interrelated to the debtor companies' business in order to ensure that the purposes of the CCAA can be achieved." Morawetz J, as he then was, in ***Priszm Income Fund (Re)***, 2011 ONSC 2061 at paras 10 & 20 extended a *CCAA* stay order to "an unincorporated, limited purpose trust" whose function was to hold limited partnership units on the basis that it could be characterized as an "income trust" which is included in the *CCAA* definition of "company." This approach is very much in evidence in the Initial Order in the present case which applies to the debtor companies and affiliated entities including various limited partnerships and trusts.

[78] When a debtor corporation is the applicant, courts have been willing to take jurisdiction over non-applicant affiliated foreign entities and extend a *CCAA* stay to those entities. Justice Osborne in ***BZAM Ltd. Plan of Arrangement***, 2024 ONSC 1645 found the applicants to be debtor companies and Ontario was determined to be the proper jurisdiction for the proceedings. Osborne J then considered the extension of the *CCAA* stay to direct and indirect foreign subsidiaries of the applicants based in Germany, the Netherlands, and Delaware. "None [of the non-applicants] carry on active business" (para 43), Justice Osborne observed, and thus cannot be said to have been doing business in Canada. Osborne J explained at para 42 that "[t]he court has authority to extend the stay to non-parties pursuant to ss 11 and 11.02(1) of the CCAA, which permits the court to make an initial order on any terms imposed." He concluded at para 44: "I am satisfied that the stay should be extended to these parties to prevent uncoordinated realization and enforcement attempts from being made in different jurisdictions, all of which would be counterproductive to the maximization and protection of value for stakeholders of the Applicants."

[79] Where, as in the present case, the applicants are creditors and equity investors, a court should apply the same principles outlined for debtor corporation applicants by Osborne J in

BZAM. The US LLCs are analogous to the BZAM affiliates based in Europe and the US that did not conduct business in Canada. The inclusion of the US LLCs is appropriate and necessary because, as Simard J found, they are intextricably intertwined in the business of the debtor companies. Further, the inclusion of the US LLCs mitigates the risk of uncoordinated realization and enforcement and promotes the maximization and protection of value for stakeholders.

[80] I cannot accept the Respondents' submission that there is no purpose in the US LLCs being subject to the *CCAA* process because they are, in effect, inactive. The assertion of inactivity is contrary to the statement in the relevant offering memoranda that the purpose of the US LLCs was "overseeing all aspects of the development of the [Windridge and Fossil Creek lands]." Further, the LLCs were used in 2024 to facilitate sales of Windridge and Fossil Creek lands. The Fossil Creek lands were sold to Bloomfield Homes LP in Fall 2024. Details are sketchy because the Respondents have provided only limited documentation concerning the sale to the Monitor. From the documentation that was provided, it is evident that Fossil Creek LLC was used to facilitate the sale of the Fossil Creek lands. Windridge LLC was also used to facilitate the sale of some of the Windridge lands to TRWD. This recent activity suggests that the Texas LLCs have ongoing relevance to the Respondents' business. Further, since the Texas LLCs are the ones that conducted business with the Texas Trusts, it is prudent to keep them under the *CCAA* umbrella so that the Monitor can use the Texas LLCs to further any legal steps that may be taken in Texas in respect of the Texas Trusts or Mr. Foo.

V. *CCAA* v Receivership

[81] The Applicants' alternative remedy is the appointment of a receiver pursuant to *Judicature Act*, RSA 2000, c J-2, s 13(2). The test for the appointment of a receiver is whether it is just and convenient to do so: ***BG International Ltd v Canadian Superior Energy Inc***, 2009 ABCA 127 at para 17. For the same reasons that I have concluded that a *CCAA* proceeding is appropriate, I find that a receivership is just and convenient in the circumstances. The real question is which is the more appropriate procedure in the present circumstances.

[82] Where a court is not satisfied that management should be displaced it may opt for *CCAA* proceedings instead of a receivership because in a typical *CCAA* proceeding management remains in control. That was obviously not a relevant consideration in choosing between a receivership and *CCAA* proceedings in the present case as I was satisfied that management should be unseated as reflected in the Initial Order. The Respondents point out that I characterized the effect of the Initial Order differently in my decision denying their request to extend time for seeking leave to appeal the Initial Order: ***A2A GP Inc (Re)*** at para 4. The sentence in my earlier decision about not unseating management was something that I meant to remove from the final version of the decision but failed to do so in my haste to get the parties a prompt answer over the last weekend before the holiday break. The error has now been corrected by way of a corrigendum.

[83] Courts faced with the question of choosing between *CCAA* and receivership proceedings in the context of real estate development ventures often opt for a receivership: see, for example, ***Ashcroft Urban Developments Inc. (Re)***, 2024 ONSC 7192 and the discussion in Jeremy Opolsky, Jacob Babad, & Mike Noel, "Receivership versus CCAA in Real Property Development: Constructing a Framework for Analysis" (2020) 18 *Annual Review of Insolvency*

Law 199. A Court's decision between *CCAA* and receivership proceedings often turns on a weighing of the prejudice and benefits to creditors.

[84] The present case is different from the typical real estate development insolvency in an important way. There is no secured creditor that might be prejudiced by *CCAA* proceedings. The absence of a secured creditor also means that there is no party with security that provides the right to appoint a receiver and, accordingly, there is no party with standing to apply for the appointment of a receiver pursuant to the *BIA*. The only alternative in the present case is to apply pursuant to the *Judicature Act* as the Applicants have done.

[85] A *BIA* receivership offers many of the same advantages as a *CCAA* proceeding. A *BIA* receiver or *CCAA* Monitor does not need to seek the assistance of courts in other provinces because the *BIA* and *CCAA* are federal statutes. Similarly, a *BIA* receiver and *CCAA* Monitor may be recognized and empowered to act in the US pursuant to Chapter 15 of the *US Bankruptcy Code*. A *Judicature Act* receiver, however, must commence proceedings in other provinces and in the US for recognition and to protect a debtor company's property. A *Judicature Act* receivership is a less efficient and effective tool than a *BIA* receivership or *CCAA* proceeding. And efficiency is an important consideration in the insolvency context where parties are seeking to preserve a diminishing pool of assets.

[86] Where national and international coordination is required to preserve a debtor's assets and maximize recovery for creditors, a federal insolvency statute is usually preferable to a provincial statute like Alberta's *Judicature Act*. A *CCCA* proceeding is more appropriate in the present case than a *Judicature Act* receivership.

VI. Conclusion

[87] The evidence now before the Court is significantly more robust than was available at the Initial Order application on November 14, 2024 or at the first phase of the Comeback Hearing on November 21, 2024. The additional evidence provided by both parties, together with the Monitor's investigation and analysis, reinforces my view that my decision to grant the Initial Order was correct and that *CCAA* proceedings are appropriate. The Respondents' application to set aside the Initial Order and ARIO is dismissed.

[88] Though I have confirmed that the *CCAA* proceedings are appropriate, the evidence is clear that the Windridge lands, the proceeds of the small parcel of the Windridge lands sold to TRWD, and the proceeds of the sale of the Fossil Creek lands remain outside the reach of the *CCAA*. If those lands and proceeds cannot be brought under the control of the Monitor through the Chapter 15 proceedings or otherwise, then the *CCAA* proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs. The Monitor shall have 21 days from the date of these Reasons to provide a plan for gaining control of the Windridge lands and the proceeds of the sales of the Windridge lands and Fossil Creek lands to the Court. If a reasonable plan is not provided to the Court within 21 days, then the *CCAA* proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs.

Heard on the 17th day of January, 2025.
Dated at the City of Calgary, Alberta this 29th day of January, 2025.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Kelsey J. Meyer and Luc Rollingson, Bennett Jones LLP
for Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC

Daniel Jukes, Miles Davison LLP
Sammy Lee, and Stephen Barbier, Metcalfe, Blainey & Burns LLP
for Angus A2A GP Inc., Angus Manor Park A2A GP Inc., Angus Manor Park A2A Capital Corp., Angus Manor Park A2A Developments Inc., Hills of Windridge A2A GP Inc, Fossil Creek A2A GP Inc., A2A Developments Inc., Serene Country Homes (Canada) Inc., A2A Capital Services Canada Inc.

Robyn Gurofsky and Kaitlyn M. G. Wong, Fasken Martineau DuMoulin LLP
for the Canadian Investors

Howard A. Gorman, KC and Daniel L.W. Stethem, Norton Rose Fulbright LLP
for Offshore Investors

Jeffrey Oliver and Danica Jorgenson, Cassels Brock & Blackwell LLP
Counsel for Alvarez & Marsal Canada Inc. (the Monitor)

Kyle Kashuba, Torys LLP
for Pillar Capital Corp. (the Interim Lender)

TAB A

	CLERK'S STAMP
COURT FILE NUMBER	2401-15969
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	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 ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.
DOCUMENT	**BRIEF OF DIRECTOR OF FOSSIL CREEK A2A DEVELOPMENTS, LLC AND WINDRIDGE A2A DEVELOPMENTS, LLC**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Kelsey Meyer / Chyna Brown Telephone No.: 403-298-3323 / 3244 Email: meyerk@bennettjones.com / brownc@bennettjones.com Fax No.: 403-265-7219 Client File No.: 98939.1

Application scheduled for July 10, 2026, commencing at 2:00 p.m.
before the Honourable Justice C. M. Jones

TABLE OF CONTENTS

I. INTRODUCTION

1. This Brief is filed on behalf of the director of Fossil Creek A2A Developments, LLC ("**Fossil Creek LLC**") and Windridge A2A Developments, LLC ("**Windridge LLC**" and, together with Fossil Creek LLC, the "**Texas LLCs**"), referred to herein as the Texas LLCs,[1] in response to the application of the Court-appointed monitor in these *Companies' Creditors Arrangement Act*[2] ("**CCAA**") proceedings, Alvarez & Marsal Canada Inc. (the "**Monitor**"), seeking an order declaring: (i) that the Offshore Investors' interests in the Lands and any sale proceeds are "property of the Debtor Companies" for the purposes of ss. 11.2 and 11.52 of the CCAA, and that the Administration Charge and Interim Financing Charge attach to those interests and proceeds; (ii) alternatively, authorizing the Monitor, pursuant to the Deeds of Covenant and Special Powers of Attorney, to charge the Offshore Investors' interests in the Lands and any sale proceeds and declaring that the Monitor holds a charge over those interests; and (iii) costs of the application from anyone (party or non-party) who controls or directs the opposition to same in the name of any Debtor Company (collectively, the "**Application**").

2. While the materials filed by the Monitor in support of the Application relate to the "Lands" (as defined in the Monitor's Tenth Report), this Brief is filed in response to the Application as it relates specifically to the Fossil Creek Lands and the Windridge Lands (as defined in the Monitor's Tenth Report, and collectively referred to herein as the "**WFC Lands**") and proceeds of sale thereof (the "**Proceeds**"). The Fossil Creek Lands were sold to Bloomfield Homes LP, and a portion of the Windridge Lands were sold (in response to an expropriation notice) to Tarrant Regional Water District in the fall of 2024, prior to the commencement (or any notice) of these CCAA proceedings. The remaining Windridge Lands and the Proceeds of sale of the Windridge Lands and Fossil Creek Lands are collectively referred to herein as the "**WFC Lands and Proceeds**".[3]

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[1] While the term "Texas LLCs" has been used in materials filed and submissions made before this Court and before the Alberta Court of Appeal throughout these CCAA proceedings, for the sake of precision, and in the circumstances where the Court of Appeal has now dismissed the appeals before it, thus resolving the question of corporate authority with respect to the Texas LLCs (as described in further detail herein), these are the submissions of the director of the Texas LLCs. The sole director of each of the Texas LLCs is Allan Lind.

[2] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended [***CCAA***] [**TAB 1**].

[3] The Monitor's Amended Application incorrectly asserts, at paras 26-28, that the Windridge Lands were sold to Bloomfield Homes LP. This is incorrect. As referenced in paras 34(b) and 65 of the Tenth Report of the Monitor filed May 19, 2026 [**Tenth Report**] [**TAB A**], the Fossil Creek Lands were sold to Bloomfield Homes LP, and a portion of the Windridge Lands were conveyed to the Tarrant Regional Water District (in response to an expropriation notice), in the fall of 2024 (prior to the commencement of the CCAA proceedings).

3. Over ten years ago, the Texas LLCs were the original vendors of interests in land for two real estate development projects located in Texas. This Court has confirmed that the WFC Lands and Proceeds (which are all held by entities that are not subject to these CCAA proceedings) are outside the reach of the CCAA and the court-appointed Monitor.[4] Further, if those WFC Lands and Proceeds cannot be brought within the control of the Monitor in these CCAA proceedings, this Court has held there is no prospect of recovery for stakeholders through the CCAA proceedings, and the CCAA proceedings are destined to fail in respect of the Texas LLCs.[5]

4. This Court gave the Monitor a further opportunity to advance a plan for gaining control of the WFC Lands and Proceeds and approved the Monitor's plan in that regard.[6] The U.S. Bankruptcy Court dismissed motions brought by the Monitor to advance its plan.[7] There has been no substantive progress in relation to the Monitor's plan.[8]

5. The Monitor's Application also seeks personal costs against non-parties, including Dirk Foo and Allan Lind, on the basis that they allegedly control or direct opposition to the Application in the name of the Texas LLCs.[9] At the same time, the Monitor asserts that opposition advanced in the name of the Texas LLCs should not be heard because those same individuals allegedly lack authority or standing to oppose the relief sought. The Monitor therefore seeks both to impose personal liability on those individuals and to deny the parties affected by that relief a meaningful opportunity to be heard.

6. The Monitor's Application should be dismissed. This Brief sets out the submissions of the Texas LLCs in that regard.

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[4] Transcript of decision of Justice C. D. Simard, November 25, 2024 [**November 25 Transcript**] [**TAB B**] p 7/22-24; 14/9-26.
[5] *Angus A2A GP Inc (Re)*, 2025 ABKB 51 [**Comeback Decision**] at paras 67 and 88 [**TAB 2**].
[6] Comeback Decision at para 88 [**TAB 2**]; Transcript of decision of Justice G.A. Campbell, March 5, 2025, filed April 1, 2025 [**March 5 Transcript**] [**TAB C**] at p 11/27-32.
[7] Fifth Affidavit of Allan Lind sworn October 16, 2025 [**Fifth Lind Affidavit**] [**TAB D**], Exhibit "3" (Transcript of decision of Judge Edward L. Morris, June 5, 2025, filed at the U.S. Bankruptcy Court [**Morris Transcript**]), p 43/3-4.
[8] Tenth Report [**TAB A**] at para 100.
[9] As referenced above, Allan Lind is the sole director of each of the Texas LLCs.

II. FACTS

7. The facts in relation to these CCAA proceedings are extensive and complex. Considering this, the Texas LLCs have included a summary of the facts relevant to the history of these CCAA proceedings and to the Monitor's Application.

A. Background to the CCAA proceedings

8. The Initial Order in these CCAA proceedings was granted November 14, 2024, essentially on an *ex parte* basis,[10] and without an order for service *ex juris*[11] after Michael Edwards, Paul Lauzon, Isabelle Brousseau, Pat Wedlund, and Brian Richards (together, the "**Applicant Investors**"), asserting themselves to be representatives of investors in certain real estate development projects known as the "**Windridge Project**" located in Texas, and the "**Fossil Creek Project**" located in Texas (together with the Windridge Project, the "**WFC Projects**") and the "**Angus Manor Park Project**" located in Ontario, (collectively, the "**Projects**"), filed an Originating Application[12] under s. 11.02 of the CCAA for an Initial Order for a stay of proceedings and to appoint the Monitor, with enhanced powers, over the respondents to these CCAA proceedings[13] (the "**CCAA Respondents**").[14]

9. The Honourable Justice Feasby granted the Initial Order on November 14, 2024[15]:

(a) appointing the Monitor and granting, in the words of this Court, "very wide-ranging enhanced powers"[16] to the Monitor to exercise the management and control of the CCAA Respondents (thus stripping them, including the Texas LLCs, of control of their own companies);

(b) granting a stay of proceedings up to and including November 24, 2024 (the "**Stay Period**");

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[10] Transcript of proceedings before Justice C.C.J. Feasby, November 14, 2024 [**November 14 Transcript**] [**TAB E**], p 4/23-27.
[11] In the circumstances where no order for service *ex juris* had been sought or granted.
[12] Originating Application filed November 12, 2024 [**TAB F**].
[13] Angus A2A GP Inc., Angus Manor Park A2A GP Inc., Angus Manor Park A2A Capital Corp., Angus Manor Park A2A Developments Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A GP Inc., A2A Developments Inc., Serene Country Homes (Canada) Inc., A2A Capital Services Canada Inc., and the Texas LLCs.
[14] It is important to note that the Texas LLCs have no involvement with the Angus Manor Park project, the Wingham Creek project, the Lake Huron Shores project, or the Meaford project, nor do they take any position on the CCAA proceedings related to those projects. The Texas LLCs' involvement relates only to Windridge Project and the Fossil Creek Project, being the real estate development projects located in Texas.
[15] Initial Order granted November 14, 2024 [**Initial Order**] [**TAB G**] at paras 9-14.
[16] November 25 Transcript [**TAB B**] p 7/22-24.

(c) appointing Fasken Martineau DuMoulin LLP as representative counsel ("**Canadian Representative Counsel**") for Canadian investors in the Projects (the "**Canadian Investors**");

(d) appointing Norton Rose Fulbright Canada LLP as representative counsel ("**Offshore Representative Counsel**" and, together with Canadian Representative Counsel, "**Representative Counsel**") for foreign investors in the Projects (the "**Offshore Investors**" and, together with the Canadian Investors, the "**Investors**");

(e) authorizing the Monitor to enter into an interim financing agreement with Pillar Capital Corp. (the "**Interim Lender**") and to borrow funds from the Interim Lender;

(f) granting an administrative charge and an interim lender's charge against the property, assets and undertakings of the CCAA Respondents;

(g) authorizing the Monitor to act as foreign representative of the CCAA Respondents in relation to ancillary insolvency proceedings to be commenced under Chapter 15 of Title 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Texas.

10. The Texas LLCs are incorporated in Texas. Neither of the Texas LLCs carry on business or have any assets in Canada. Neither of the Texas LLCs owe any funds to any of the Investors.

11. On November 18, 2024, the Monitor filed an application returnable on November 21, 2024, seeking an amended and restated initial order in the CCAA proceedings (the "**Comeback Application**").[17]

12. On November 20, 2024, the CCAA Respondents, including the Texas LLCs, served an application to set aside the CCAA proceedings (the "**Set Aside Application**"),[18] to also be heard November 21, 2024 (the "**Comeback Hearing**").

[17] Application of the Monitor filed November 18, 2024 [**TAB H**].
[18] Application of the CCAA Respondents (including the Texas LLCs) filed November 21, 2024 [**TAB I**].

13. On November 21, 2024, the Honourable Justice Simard heard submissions, granted an order extending the Stay Period to and including November 26, 2024, and reserved his decision on the Comeback Application.[19]

14. On November 25, 2024, Justice Simard issued his decision extending the Stay Period to and including December 18, 2024 for the limited purpose of gathering information, ruled that the Court had jurisdiction over the Texas LLCs, granted an Amended and Restated Initial Order ("**ARIO**"), directed the Monitor to provide a comprehensive report to the Court by December 13, 2024, directed the Texas LLCs and the other CCAA Respondents to provide certain information to the Monitor by December 6, 2024, and adjourned the Set Aside Application and the balance of the Comeback Application to a continuation of the Comeback Hearing on December 18, 2024.[20] In doing so, Justice Simard recognized that the concerns raised by the CCAA Respondents were legitimate and could not be dismissed out of hand, and cautioned that continuation of these unusual CCAA proceedings might be stretching the CCAA beyond its proper limits.[21] With respect to the limited purpose of the stay extension, Justice Simard directed that other than corresponding with the CCAA Respondents and preparing the comprehensive report, "the monitor should only be carrying out the tasks that it is empowered to carry out under the initial order that are necessary."[22] He also dismissed the Monitor's application to add the Trails of Fossil Creek Trust or the Hills of Windridge Trust (the "**Offshore Trusts**"), which held the WFC Lands, or the trustee in each case, to the CCAA proceedings, finding that he clearly did not have authority or jurisdiction to do that, nor to grant an order enjoining the sale of the WFC Lands.[23] He held that he did not have the jurisdiction to grant a charge against property held by third parties that were not debtors in the CCAA proceedings.[24] Neither the Monitor nor the Investors sought to appeal Justice Simard's decision.

15. With respect to the WFC Projects, the UFIs in the WFC Lands were transferred pursuant to the governing agreements to the Offshore Trusts in 2014.[25] The former UFI holders thereby became beneficiaries of the Offshore Trusts, and the Offshore Trusts became responsible to

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[19] Transcript of proceedings before Justice C. D. Simard, November 21, 2024 [**November 21 Transcript**] [**TAB J**].
[20] Amended and Restated Initial Order granted November 25, 2024 [**TAB K**]; November 25 Transcript [**TAB B**], p 13/19-21.
[21] November 25 Transcript [**TAB B**], p7/31-35.
[22] November 25 Transcript [**TAB B**], p 17/6-10.
[23] November 25 Transcript [**TAB B**], p 15/17-16/1.
[24] November 25 Transcript [**TAB B**], p 20/19-29, 21/1-7.
[25] The Monitor acknowledges this: Tenth Report [**TAB A**], paras 53, 64, 88.

develop, improve and sell the WFC Lands. The Deeds of Covenant and related transaction documents pre-dated the ARIO and formed part of the same contractual structure under which the UFIs were transferred. As a result, the Offshore Investors no longer hold, or have rights as holders of, UFIs in the WFC Projects; the relevant interests are beneficial interests under the Offshore Trusts. The Monitor's relief sought is an attempt to charge beneficial interests in Texas property held in trust – notwithstanding that this Court has already determined that it does not have authority or jurisdiction to do so.[26]

16. On December 6, 2024, and thereafter, the CCAA Respondents provided records and information to the Monitor in response to Justice Simard's direction where possible to do so, and provided correspondence, explanations and affidavit evidence where they were unable to do so because such information did not exist or could not otherwise be provided.[27] This is an important point, as the Monitor and Representative Counsel have repeatedly asserted throughout the CCAA proceedings that the CCAA Respondents failed or refused to produce records as ordered by the Court. Those assertions are misleading and ignore the CCAA Respondents' evidence in this regard.

17. The Monitor filed its Third Report on December 13, 2024.

18. Due to a request by the Monitor to cross-examine affiants on behalf of the CCAA Respondents and due to a judicial conflict, the stay of proceedings was further extended to January 17, 2025, and the Set Aside Application and the balance of the Comeback Application were adjourned to be heard by Justice Feasby on that date.

19. On January 17, 2025, Justice Feasby:

(a) granted an Order extending the Stay Period to and including February 14, 2025, or such other time as determined by the Court upon delivery of his decision arising from the Comeback Hearing; and

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[26] November 25 Transcript [**TAB B**], p 15/17-16/1, 20/19-29, 21/1-7.

[27] Third Report of the Monitor, filed December 13, 2024 [**Third Report**] [**TAB L**], Appendices "B", "D" to "J", "M" to "Z"; Second Affidavit of Allan Lind sworn December 13, 2024 [**Second Lind Affidavit**] [**TAB M**] at paras 50-54 and Exhibit "O"; Affidavit of Allan Lind sworn December 31, 2024, filed by Miles Davison LLP [**Third Lind Affidavit**] [**TAB N**] at paras 3-10; Fourth Affidavit of Allan Lind sworn December 31, 2024 and filed by Bennett Jones LLP [**Fourth Lind Affidavit**] [**TAB O**] at paras 4-6.

(b) heard the Set Aside Application and the balance of the Comeback Application and reserved his decision regarding the same.[28]

20. The Monitor's Fourth Report confirms that on January 27, 2025, without notice to the CCAA Respondents and contrary to the limited purposes of the CCAA proceedings as directed by Justice Simard pending the determination of the Set Aside Application and the balance of the Comeback Application and contrary to the ARIO,[29] counsel for the Monitor sent a letter to JPMorgan Chase Bank, N.A. ("**Chase Bank**") in the U.S., stating in part:

> The Monitor has reason to believe that the monies being held by Chase Bank for [Trails of Fossil Creek Properties LP] and [Hills of Windridge LP] are the proceeds of sale of certain real property, which is owned, legally or beneficially, by one or more of the Debtors in the Canadian Proceeding and Chapter 15 Case.

Notwithstanding that neither of the Trails of Fossil Creek Properties LP or the Hills of Windridge LP (collectively, the "**Texas LPs**") are CCAA Respondents, and notwithstanding that the Monitor has no authority over the Texas LPs or their assets, the Monitor requested that Chase Bank immediately freeze all withdrawals and transfers from any and all accounts held by Chase Bank and owned by either of the Texas LLCs and by either of the Texas LPs, and requested that Chase Bank produce any and all account numbers, account balances and account statements relating to any such bank accounts.[30]

21. Chase Bank responded to the Monitor's counsel on February 4, 2025, and February 12, 2025, provided account numbers and balances for accounts held in the names of the Texas LPs, and confirmed that it did not hold any accounts in the names of the Texas LLCs. Chase Bank's responses indicated they were in response to a Temporary Restraining Order from the Monitor; no such temporary restraining order exists over the Texas LPs.[31] No court order has ever been granted over the Texas LPs in the CCAA proceedings or the Chapter 15 proceedings.

22. On January 29, 2025, Justice Feasby issued Reasons for Decision (the "**Comeback Decision**") dismissing the Set Aside Application, but also held as follows:

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[28] Transcript of proceedings before Justice C.C.J. Feasby, January 17, 2025 [**TAB P**].
[29] November 25 Transcript [**TAB B**], p 12/29-40; Amended and Restated Initial Order [**TAB K**] at para 31.
[30] Fourth Report of the Monitor filed February 19, 2025 [**Fourth Report**] [**TAB Q**], Appendix "I".
[31] Fourth Report [**TAB Q**], Appendix "J".

> The [CCAA] Respondents submit that the present CCAA proceedings cannot achieve the purposes of the CCAA, at least with respect to Windridge and Fossil Creek, because the Texas Trusts and the trustee, Dirk Foo, are not subject to the ARIO. According to the [CCAA] Respondents, the CCAA proceedings are destined to fail because the Windridge lands and Fossil Creek lands and the bank accounts that contain the proceeds of such of those lands that have already been sold are beyond the reach of this Court. This objection is potentially fatal for the CCAA proceedings concerning Windridge and Fossil Creek because without control over the US assets, there is no prospect for recovery for stakeholders through the CCAA proceedings. Though the assets may prove to be beyond the reach of the Monitor, in my opinion, it is premature to conclude that the Monitor will fail and the CCAA proceedings must be terminated in respect of Windridge and Fossil Creek. Justice Simard's decision that this Court does not have jurisdiction over the Texas Trusts does not prevent the Monitor from taking other steps in Canada or legal action in the US, whether under the rubric of Chapter 15 or otherwise, to achieve its objectives. So far, the Monitor has not articulated a plan for gaining control of the remaining Windridge lands and the bank accounts that hold the proceeds of the sales of the Fossil Creek and Windridge lands. This is a critical point that I will return to in the Conclusion of these Reasons.[32]
>
> …
>
> Though I have confirmed that the *CCAA* proceedings are appropriate, the evidence is clear that the Windridge lands, the proceeds of the small parcel of the Windridge lands sold to TRWD, and the proceeds of the sale of the Fossil Creek lands remain outside the reach of the *CCAA*. If those lands and proceeds cannot be brought under the control of the Monitor through the Chapter 15 proceedings or otherwise, then the *CCAA* proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs. The Monitor shall have 21 days from the date of these Reasons to provide a plan for gaining control of the Windridge lands and the proceeds of the sales of the Windridge lands and Fossil Creek lands to the Court. If a reasonable plan is not provided to the Court within 21 days, then the *CCAA* proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs.[33]

23. The "Windridge and Fossil Creek entities, including the US LLCs" as described in the Comeback Decision are the following entities:

(a) The Texas LLCs (i.e., the same entities identified in the Comeback Decision as "the US LLCs"), each of which are incorporated in Texas and neither of which carry on business in or have any assets in Canada, represented by Bennett Jones LLP; and

[32] Comeback Decision at para 67 [**TAB 2**].
[33] Comeback Decision at para 88 [**TAB 2**].

(b) Fossil Creek A2A GP Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A Limited Partnership, Hills of Windridge A2A LP, Fossil Creek A2A Trust and Hills of Windridge A2A Trust, represented by Miles Davison LLP (collectively, the "**WFC Canadian Entities**", and together with the Texas LLCs, the "**WFC Entities**").

24. On February 11, 2025, Justice Feasby extended the Stay Period to March 4, 2025. The Monitor's application for that stay extension set out that the extension would afford the Monitor sufficient time to develop its plan within the timeline ordered by Justice Feasby and to present the plan to the Court for approval.

25. The Monitor provided its plan (the "**Texas Plan**") to gain control of the WFC Lands and Proceeds to the Court via its Fourth Report filed February 19, 2025. On February 24, 2025, the Monitor filed its application seeking, *inter alia*, an Order approving the Texas Plan, which was heard by the Honourable Justice Campbell on March 3, 2025.

26. On March 5, 2025, Justice Campbell issued her oral decision approving the Texas Plan. The decision states, in part:

> It is recognized that the Texas Plan is a fluid one. It may well be that as the Monitor progresses with the Chapter 11 proceedings, information comes to light that requires amendments to the Texas Plan <u>or a determination that the Texas Plan is indeed futile and doomed to fail and in the result CCAA proceedings would be terminated against all or some of the Texas Related Respondents</u>.[34]
>
> [emphasis added]

27. The Texas LLCs and the Canadian WFC Entities sought permission to appeal the ARIO, the Comeback Decision, and other Orders. Those applications were heard by the Court of Appeal of Alberta on March 6, 2025. The Honourable Justice Hawkes issued his decision granting the Texas LLCs and the Canadian WFC Entities permission to appeal the ARIO and the Comeback Decision on the questions of whether the supervising justice erred in concluding that the Canadian investors fell within the scope of the CCAA and that its use in these circumstances was proper, and whether the supervising justice erred in determining that entities within the A2A Group were

[34] March 5 Transcript [**TAB C**] at p 8/28-9/2, 11/34-38.

subject to the CCAA.[35] In granting permission to appeal, Justice Hawkes specifically noted that the Texas LLCs and the Canadian WFC Entities were not seeking to stay the CCAA proceedings pending the outcome of the appeals.[36]

28. On March 17, 2025, the Monitor, in its capacity as an appointed representative of the Texas LLCs as a result of the expanded powers granted to it in the CCAA proceedings,[37] caused the Texas LLCs to file Motions with the U.S. Bankruptcy Court for the Northern District of Texas Fort Worth Division (the "**Motions**").[38] In the Motions, the Texas LLCs are collectively described as the "Debtors", and seek an Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors.

29. On June 5, 2025, the Honorable Edward L. Morris, U.S. Bankruptcy Judge, heard the Motions and rendered his decision, and subsequently issued Orders dismissing the Motions, filed at the U.S. Bankruptcy Court.[39] His decision explains that the targets in relation to the Motions are the Texas LPs and certain assets that they are holding, and that the Texas LPs filed an objection to the Motions.[40] With respect to questions asked of the Monitor during testimony at the hearing before him, Judge Morris notes that the Monitor:

(a) was not aware of any assets or has not identified any assets of the Texas LLCs that were within the possession of the Texas LPs;

(b) had not identified any transfers of property by the Texas LLCs to the Texas LPs;

[35] *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2025 ABCA 147 [**Leave Decision**] [**TAB 3**].
[36] Leave Decision at para 36 [**TAB 3**].
[37] Initial Order [**TAB G**] at paras 32 and 39.
[38] Fifth Lind Affidavit [**TAB C**], Exhibit "1" (Fossil Creek Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors), Exhibit "2" (Windridge Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors).
[39] Fifth Lind Affidavit [**TAB C**], Exhibit "3" (Morris Transcript, p 43/3-4), Exhibit "4" (Order Denying Fossil Creek Motion), and Exhibit "5" (Order Denying Windridge Motion).
[40] Fifth Lind Affidavit [**TAB C**], Exhibit "3" (Morris Transcript at pp 4/18-5/17, 25/12-26/10).

(c) did not have any current knowledge that any cash in the Chase Bank accounts is in fact property of the estates of the Texas LLCs;

(d) did not have any current knowledge that either of the Texas LPs was in fact the recipient of an avoidable transfer by the Texas LLCs.[41]

30. Judge Morris also held that:

(a) the Texas LLCs do not hold or own the Chase Bank accounts or any accounts;

(b) the Texas LLCs do not have an ownership interest in the Texas LPs, other than one of the Texas LLCs owns a one-ten-thousandth interest in one of the Texas LPs;

(c) by the end of 2014 or early 2015, all UFIs in the WFC Properties had been sold and the Texas LLCs no longer held any interest in them;

(d) there was no clear-cut evidentiary trail to find that any of the monies in the Chase Bank accounts, or any property held by the Texas LPs at all, is property of the estates of the Texas LLCs;

(e) there had been "no satisfaction of the burden of proof of establishing the existence of a colorable claim which would give the estates the right to the property involved, at least at this stage."[42]

31. While the dismissal of the Motions was not a final adjudication of property rights,[43] to date, as far as the Texas LLCs are aware, the Motions are the only substantive steps the Monitor has taken to advance the Texas Plan.[44]

32. On June 19, 2025, the Honourable Justice Neufeld of this Court granted an order extending the Stay Period to August 29, 2025, approving the fees and disbursements of the Monitor and the

[41] Fifth Lind Affidavit [**TAB C**], Exhibit "3" (Morris Transcript at pp 28/5-14).
[42] Fifth Lind Affidavit [**TAB C**], Exhibit "3" (Morris Transcript at pp 28/15-29/15, 40/18-22, 43/3-4).
[43] Fifth Lind Affidavit [**TAB C**], Exhibit "3" (Morris Transcript at p 43/3-25).
[44] Tenth Report [**TAB A**] at para 100.

Monitor's counsel, and approving the First Supplement to the Fifth Report, the Sixth Report, and the Monitor's conduct and activities set out therein.[45]

33. The Monitor's Seventh Report filed July 22, 2025 stated that the Monitor and its U.S. legal counsel were reevaluating the Texas LLCs' claims against the Texas LPs and others, and that meetings of creditors in the Chapter 11 cases were held on April 23, 2025 and June 11, 2025.[46] The Monitor's counsel also referenced subpoenas issued or to be issued on behalf of the Monitor during submissions before the Court on July 29, 2025.

34. On July 29, 2025, the Monitor's application to extend the stay of proceedings was heard by the Honourable Justice Mah of this Court. During that hearing, counsel for the Monitor acknowledged that if the Texas Plan ultimately proved unworkable, the CCAA proceedings should be terminated as against Windridge and Fossil Creek. The Monitor's position, however, was that it was premature at that stage to conclude that the Texas Plan could not succeed.

35. Justice Mah granted the stay extension to October 31, 2025, and noted that, on any subsequent application to further extend the stay, the Texas LLCs would be entitled to oppose the requested relief and argue that the Texas Plan had failed and file a cross-application if they considered it appropriate to do so.

36. The Monitor's Eighth Report filed October 17, 2025, outlined that the Monitor's U.S. counsel issued subpoenas to Bloomfield Homes LP, Tarrant Regional Water District and Secured Title, and that meetings of creditors in the Chapter 11 cases were held on April 23, 2025, and June 11, 2025.[47] The Texas LPs voluntarily produced documents after communications with the Monitor's U.S. counsel; no subpoena or formal request for production of documents was ever issued to the Texas LPs. The First Supplement to the Eighth Report filed October 28, 2025, corrected the Monitor's earlier statement that subpoenas had been filed or served on the Texas LPs.[48]

[45] Order granted by Justice Neufeld, filed June 19, 2025 [**TAB R**].
[46] Seventh Report of the Monitor filed July 22, 2025 [**TAB S**] at paras 33-34.
[47] Eighth Report of the Monitor filed October 17, 2025 [**TAB T**] at para 13.
[48] Supplement to the Eighth Report of the Monitor filed October 28, 2025 [**TAB U**] at para 14-15.

37. On October 31, 2025, the Honourable Justice Jones granted the Monitor's requested stay extension to January 30, 2026, approved increases to the Administration Charge and the Interim Lender's Charge and the amended priorities between them, approved the Monitor's activities as set out in Seventh Report, First Supplemental to the Seventh Report, the Eighth Report, and the First Supplemental to the Eighth Report, adjourned the Texas LLCs' cross-application *sine die*, and directed written costs submissions if the parties could not agree on costs.[49] On December 1, 2025, Justice Jones delivered correspondence to all parties' counsel, which stated that he had reviewed the submissions tendered jointly on behalf of the Offshore Investors and the Canadian Investors and submissions tendered jointly on behalf of the Texas LLCs and the Canadian WFC Entities, and advised that he was not prepared to award costs unless an application was brought on notice.[50] No such application was made.

38. On January 19, 2026, the Honourable Justice Neilson granted a further order extending the Stay Period to May 31, 2026, approving the Additional Projects Sale Process, authorizing the Monitor to implement that process with a sale advisor, approving registration of the Additional Projects Order on title to the Additional Project Lands where necessary or desirable, approving the Monitor's activities set out in the Ninth Report filed January 13, 2026,[51] and approving the professional fees set out in that report.[52]

39. On September 8, 2025, the appeals of the Texas LLCs and of the WFC Canadian Entities were heard by the Alberta Court of Appeal. On May 11, 2026, the Court of Appeal dismissed the appeals and upheld the continuation of the CCAA proceedings, including the inclusion of the Texas LLCs and the Canadian WFC Entities in the Initial Order notwithstanding that the Texas LLCs were not debtor companies under the CCAA (the "**Appeal Decision**").[53]

40. The Monitor's Tenth Report, filed on May 19, 2026, identified no concrete steps to advance the Texas Plan. Instead, it stated that, following the dismissal of the appeals, the Monitor now

[49] Order granted by Justice Jones, filed November 3, 2025 [**TAB V**].
[50] Correspondence from Justice Jones dated December 1, 2025 [**TAB W**].
[51] Ninth Report of the Monitor filed January 13, 2026 [**TAB X**] at para 37.
[52] Order granted by Justice Neilson, filed January 20, 2026 [**TAB Y**].
[53] *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2026 ABCA 156 [**Appeal Decision**] [**TAB 4**].

intends to pursue the litigation contemplated by the Texas Plan, while acknowledging that the process is expected to take several more months.[54]

41. At present, there is no evidence of any other steps taken by the Monitor to advance the Texas Plan. Over a year has passed since the Texas Plan was approved by this Court. The Monitor's Motions have been dismissed by the U.S. Bankruptcy Court, and the Motions are the only substantive steps taken by the Monitor to advance the Texas Plan. The Monitor has failed to bring the WFC Lands and Proceeds within its control or within the scope of these CCAA proceedings.

42. Notwithstanding the foregoing, and this Court's previous decision that it did not have jurisdiction to charge the WFC Lands and Proceeds (which was not appealed), the Monitor now brings this Application to do exactly that.

III. ISSUES

43. Do the WFC Lands and Proceeds constitute "property of the Debtor Companies" for the purposes of ss. 11.2 and 11.52 of the CCAA?

44. Do the Texas LLCs and other affected persons have standing to oppose the Application?

45. Should the Monitor's request for costs against parties and non-parties be dismissed?

IV. LAW AND ARGUMENT

A. <u>The Monitor's Application Constitutes Impermissible Relitigation</u>

46. The Monitor's Application constitutes an impermissible attempt to relitigate issues that were previously determined by this Court.

47. *Res judicata* is one of several common law doctrines, including collateral attack and abuse of process through relitigation, designed to protect the integrity of the judicial process by

[54] Tenth Report [**TAB A**] at para 100.

preventing its misuse.[55] It operates to bar parties from relitigating a dispute that has already been finally determined between them.[56]

48. The doctrine of *res judicata* is founded on two overarching principles of public policy:

(a) a litigant's interest in fairness; and

(b) society's interest in the conclusion of disputes and the finality of judicial decisions.[57]

49. With respect to fairness, *res judicata* seeks to prevent the economic and psychological hardship resulting from a litigant being "twice vexed in the same cause."[58] It is both unreasonable and unjust to permit a claim to be litigated afresh between parties to a dispute where the claim has been finally decided in a prior proceeding.[59] These concerns are particularly acute in CCAA proceedings, which are intended to maximize value for stakeholders and ensure that court-supervised restructurings are conducted efficiently and economically.[60] Relitigation depletes the estate, increases professional costs, diverts stakeholder resources, and forces the same affected parties to respond to issues that should have been resolved through the original hearing or an appeal.

50. With respect to finality, *res judicata* plays an important societal function by limiting the ability of parties to reopen disputes. Finality is critical not only for the certainty of the parties, but also for the integrity of the judicial process.[61] Therefore, *res judicata* serves to maintain respect for and public confidence in the administration of justice by guarding against inconsistent results and inconclusive proceedings and by preventing duplicative litigation that drains resources.[62]

51. The finality of decisions is essential because relitigating issues outside of the formal appeal process opens up the possibility of inconsistent findings of fact and the inconsistent application of

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[55] *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 20 [***Danyluk***] [**TAB 5**]; *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 22 [***Toronto (City)***] [**TAB 6**].
[56] *Danyluk* at para 20 [**TAB 5**]; *Hoque v Montreal Trust Co*, 1997 NSCA 153 at para 21 [***Hoque***] [**TAB 7**].
[57] *Patrick Street Holdings Ltd. v 11368 NL Inc*, 2026 SCC 15 at para 36 [***Patrick Street***] [**TAB 8**].
[58] *Toronto (City)* at para 50 [**TAB 6**]; *Patrick Street* at para 37 [**TAB 8**].
[59] *Patrick Street* at para 37 [**TAB 8**].
[60] *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 40 [**TAB 9**].
[61] *Hoque* at para 77 [**TAB 7**]; *Patrick Street* at para 38 [**TAB 8**].
[62] *Danyluk* at para 18 [**TAB 5**]; *Patrick Street* at para 38 [**TAB 8**].

the law to those facts.[63] It undermines the finality and authority of judicial decisions that, once rendered and not appealed, are binding on the parties.[64]

52. Unwarranted relitigation undermines the credibility, finality, and authority of judicial decisions, diminishing "their moral force" and wasting scarce judicial resources through the unnecessary duplication of court proceedings and adjudicative effort.[65]

53. In *Toronto (City) v CUPE, Local 79*, the SCC held that issue estoppel operates to bar the relitigation of issues that have already been judicially determined. The preconditions that must be met to invoke issue estoppel are:

(a) the issue must be the same as the one decided in the prior decision;

(b) the prior judicial decision must have been final; and

(c) the parties to both proceedings must be the same, or their privies.[66]

54. Each of these requirements is satisfied in the present case.

55. One of the issues before Justice Simard on November 21, 2024, was whether the Offshore Investors' interests could be subjected to Court-ordered charges under sections 11.2 and 11.52 of the CCAA. During the hearing, Justice Simard raised concerns regarding the Court's jurisdiction to grant the relief sought by the Monitor. In particular, Justice Simard noted that sections 11.2 and 11.52 authorize charges against a debtor company's property and questioned whether those provisions permitted the Court to charge property owned by third parties:

> I do have concerns about extending the charges to the undivided fractional interests, where is my authority to do that? And so as to not ambush you, section 11.2 of the Act says I can grant changes against the debtor's property…So where do I find the authority to do that? Because the UFI properties owned by Mr. Gorman's clients, not by the debtors. Can I charge those properties?…Well, section 11 does give me broad discretion, but it is subject to the restrictions set out in the Act…I do not see that I have the jurisdiction at all to charge third-parties properties.[67]

[63] *Patrick Street* at para 185 [**TAB 8**]; *Danyluk* at para 18 [**TAB 5**].
[64] *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at para 34 [**TAB 10**].
[65] *Patrick Street* at para 185 [**TAB 8**]; *Hoque* at paras 67 and 77 [**TAB 7**]; *Petrelli v. Lindell Beach Holiday Resort Ltd.*, 2011 BCCA 367 at para 71 [**TAB 11**].
[66] *Danyluk* at para 25 [**TAB 5**]; *Toronto (City)* at para 23 [**TAB 6**].
[67] November 21 Transcript at p 20/19-29, 21/1-7 [**TAB J**].

[emphasis added]

56. Justice Simard's concern was not merely evidentiary, rather, it was directed to a threshold jurisdictional question arising from the express language of sections 11.2 and 11.52 of the CCAA and whether those provisions permit Court-ordered charges to attach to property owned by non-debtors.

57. On November 25, 2024, Justice Simard resolved that question. In dismissing the Monitor's request to extend the Administration Charge and Interim Financing Charge to the Offshore Investors' interests, he held that sections 11.2 and 11.52 contain express statutory limits restricting such charges to "the company's property":

> Section 11.2 and Section 11.52 set out very clear restrictions on the property that can be made subject to an administration charge or an interim financing charge. It is only the property of the debtor companies. In the context of this case, that is the interests held by the debtor companies and their affiliates in each of the three properties, and any other property of those members of A2A Group. Therefore, the monitor's request to charge the UFI owners' interests is dismissed.[68]

58. The ARIO was a final determination that the Offshore Investors' interests could not be subjected to Court-ordered charges under sections 11.2 and 11.52 because those interests were not property of the Debtor Companies. The Monitor did not appeal that decision.

59. The Monitor now seeks a declaration that those same interests are to be treated as "property of the Debtor Companies" for purposes of sections 11.2 and 11.52. While the legal formulation of the relief has changed, the underlying issue remains identical: whether the Offshore Investors' interests may be subjected to Court-ordered CCAA charges notwithstanding that they are owned by non-debtors.

60. While the Monitor attempts to characterize the present Application as different, the practical effect of the relief sought remains unchanged. Whether framed as an extension of the Administration Charge and Interim Lender's Charge, a declaration that the Offshore Investors' beneficial interests are to be treated as property of the Debtors, or a charge over the Offshore Investors' beneficial interests in the WFC Lands and Proceeds held through the Offshore Trusts, the objective remains the same: to subject non-debtor property to Court-ordered CCAA charges.

[68] November 25 Transcript at p 14/9-26 [**TAB B**].

The framing is imprecise insofar as it refers to Offshore Investors' UFIs in the WFC Projects: those UFIs were transferred to the Offshore Trusts in 2014. The Offshore Investors no longer hold UFIs in the WFC Projects. The Offshore Investors' interests are beneficial interests as beneficiaries of those Offshore Trusts.

61. The practical effect of the relief sought is likewise unchanged. Whether framed as an extension of the Administration Charge and Interim Financing Charge, or as a declaration deeming the Offshore Investors' interests to be property of the Debtor Companies, the Monitor seeks the same result that Justice Simard expressly refused to grant.

62. The subject matter, parties, and underlying controversy are therefore identical. What has changed is only the legal theory advanced by the Monitor. However, the doctrines of *res judicata*, issue estoppel and abuse of process preclude not only issues that were actually argued, but also legal theories and arguments that properly belonged in the earlier proceeding and could have been advanced with reasonable diligence.

63. Abuse of process by relitigation is not confined to the strict technical requirements of *res judicata*.[69] It is "the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision."[70] The focus is on the integrity of the judicial decision making as a branch of the administration of justice, and less on the interests of the parties.[71] It prevents a party from attempting to impeach a prior judicial finding through the impermissible route of relitigation rather than through the appeal or review mechanisms that give finality its proper scope.

64. That is the concern here. Justice Simard expressly refused to extend the Administration Charge and Interim Financing Charge to non-debtor interests because sections 11.2 and 11.52 of the CCAA are limited to property of the debtor companies. The Monitor did not appeal that determination. The Monitor now asks this Court to reach the same practical result by declaring or treating the same non-debtor interests as property of the Debtor Companies, or by authorizing a

[69] *Toronto (City)* at para 38 and 42 [**TAB 6**].
[70] *Toronto (City)* at para 40 [**TAB 6**].
[71] *Toronto (City)* at para 43 [**TAB 6**].

charge under the Deeds of Covenant and Special POAs. That is precisely the kind of re-litigation and collateral attack that abuse of process is intended to prevent.

65. Just as a respondent may be barred from withholding a defence, an applicant is barred from withholding an entitlement theory and advancing it later.[72] No discretionary exception applies.

66. The Monitor's request is a collateral attack on the ARIO and an abuse of process by relitigation. It seeks to reopen a settled determination outside the appeal route, undermining finality and duplicating proceedings.

67. The Monitor is this Honourable Court's appointed officer. Should this Honourable Court agree that the Monitor is improperly re-litigating an issue already determined by this Court, as set out above, that is highly troubling, particularly in the circumstances where the Monitor takes the extraordinary and egregious position that no one has standing to oppose it, and that enhanced or solicitor-client costs should be awarded against "any person (party or non-party) who controls or directs opposition to the relief sought by the Monitor." This Court should not condone efforts to intimidate debate of legitimate legal issues, nor should it grant relief sought by any applicant – even a court-appointed monitor - absent a sound legal basis to do so. For the reasons set out in this Brief, the Texas LLCs submit there is no sound basis for this Court to grant the relief sought by the Monitor here.

B. There Has Been No Material Change in Circumstances or New Evidence

68. The Monitor contends that the present Application is distinguishable from the ARIO because it is supported by additional evidence that was not before Justice Simard. In particular, the Monitor relies upon the Deeds of Covenant, Special Powers of Attorney, Facilitator Lending Provisions and related contractual arrangements between the Offshore Investors and various members of the A2A structure. These documents existed as part of the original investment structure: the Offshore Investors executed Deeds of Covenant contemporaneously with the purchase of their UFIs, and the Special Powers of Attorney were likewise granted contemporaneously with those purchases. This is not new evidence.

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[72] *Hoque* [**TAB 7**].

69. The Monitor submits that these materials justify revisiting Justice Simard's determination and support the declaration now sought. Respectfully, that submission should be rejected.

70. Relitigation concerns may be diminished where there has been a genuine change in circumstances or where material new evidence emerges that could not, with reasonable diligence, have been presented in the earlier proceeding.[73] However, that is not the situation before this Court.

71. The Deeds of Covenant, Special Powers of Attorney and Facilitator Lending Provisions are not newly created rights. They existed long before the ARIO hearing and formed part of the very structure through which the Offshore Investors acquired their interests in the WFC Lands. The Monitor does not contend otherwise. Nor does the Monitor contend that those documents only came into existence following the ARIO.

72. The Monitor's position is that it now wishes to rely upon those documents to support a legal argument that was previously unsuccessful. That is not a change in circumstances, and it is not new evidence in any meaningful sense. It is merely a new theory advanced in support of substantially the same relief.

73. Permitting relitigation whenever a party identifies additional documents or develops a more sophisticated legal argument would significantly undermine the finality of judicial decisions. A party dissatisfied with a prior ruling could simply return to Court armed with a new affidavit, a more detailed record, or a reformulated legal theory and seek to have the issue decided again. The doctrine does not prevent a court from addressing genuine changes in circumstances or material facts arising after the earlier decision, including later evidence bearing on whether a court-approved process remains viable. It does, however, preclude a party from revisiting an issue that has already been determined by relying on evidence, arguments, or legal characterizations that could have been advanced in the original proceeding.

74. That is precisely what has occurred here, and is the type of relitigation that the doctrines of abuse of process, issue estoppel and *res judicata* are intended to prevent. The Monitor does not rely on events occurring after the ARIO hearing that materially alter the factual landscape. Rather, it relies on additional documents and a revised legal characterization of the Offshore Investors'

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[73] *Danyluk* at para 24 [**TAB 5**]

beneficial interests to seek relief that is substantively the same as the conclusions reached in the ARIO hearing.

75. Even accepting the Monitor's evidence at its highest, the documents relied upon establish only that certain contractual rights may exist between the Offshore Investors and entities within the A2A structure. They do not establish that the Offshore Investors' interests became property of the Debtor Companies. There is no evidence that the property the Monitor seeks to charge is property of the Debtor Companies.

76. In these circumstances, the purported "new evidence" does not justify revisiting Justice Simard's determination and does not diminish the relitigation concerns raised by the present Application.

C. The Statutory Restrictions in ss. 11.2 and 11.52 Cannot Be Overcome by Contractual Recharacterization

77. Even if the Court concludes that the Application is not barred by issue estoppel, abuse of process, or *res judicata*, the Monitor's requested relief should nevertheless be dismissed.

78. The Application is premised upon the proposition that contractual arrangements between the Offshore Investors and entities within the A2A structure permit the Court to treat the Offshore Investors' interests as "property of the Debtor Companies" for purposes of sections 11.2 and 11.52 of the CCAA. That proposition is inconsistent with both the language of the statute and Justice Simard's prior determination.

79. Section 11.2 authorizes the Court to grant an interim financing charge over "the company's property."[74] Section 11.52 employs identical language in relation to administration charges.[75] As Justice Simard recognized, these provisions impose express statutory limits on the Court's authority.

80. While section 11 grants broad discretionary powers, that discretion remains subject to the restrictions contained elsewhere in the CCAA.

[74] *CCAA*, s 11.2 [**TAB 1**].
[75] *CCAA*, s 11.52 [**TAB 1**].

81. The Monitor's Application seeks to circumvent that restriction through contractual recharacterization. The Deeds of Covenant, Special Powers of Attorney and Facilitator Lending Provisions may create contractual rights and remedies. However, they do not establish that the WFC Lands or Proceeds became property of the Debtor Companies. That conclusion is reinforced by the fact that the UFIs in the WFC Projects were transferred to the Offshore Trusts in 2014, and the Offshore Investors no longer hold those UFIs or have rights as UFI holders.[76]

82. The Texas LLCs rely upon the facts set out in the Canadian Respondents' Brief in this regard.[77] As set out therein, none of the Investors hold UFIs in the WFC Lands, and none of the Investors are "co-owners" as defined in the Deeds of Covenant in relation to the WFC Lands.[78] The sole co-owner is Dirk Foo as trustee of the Offshore Trusts, over whom this Court has already determined it does not have authority or jurisdiction.[79]

83. The Monitor appears to rely upon Article 5 of the WFC Deeds of Covenant to claim authority of the Texas LLCs as Facilitators to loan funds to the UFIs, which it asserts gives rise to the ability of the Facilitator to charge the UFI holders' interests.[80] However, that is not borne out by the contractual provisions:

(a) Any loan pursuant to Article 5 would have to be for the purpose of assisting a co-owner in satisfying and performing the co-owner's financial obligations under the Deed. Funding Canadian litigation and insolvency proceedings, including in relation to unrelated projects, is not permitted under Article 5;[81]

(b) Article 5 of the WFC Deeds of Covenant allows for loans for those limited purposes to <u>co-owners</u>, not, as the Monitor asserts, to UFI holders.[82] The trustee of the Offshore Trusts is the only co-owner. Loans pursuant to Article 5 thus could only be made to the trustee;[83]

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[76] The Monitor admits this: Tenth Report [**TAB A**] paras 53, 64.
[77] Brief of the Canadian Respondents to be filed June 19, 2025, "Windridge and Fossil Creek".
[78] Tenth Report [**TAB A**], paras 53 and 64, Appendices "E" and "F", s 1.1, "Co-Owners". Co-Owners are defined as the registered title owner of a UFI. As all UFIs in the WFC Lands were transferred to the trustee of the Offshore Trusts, the sole "Co-Owner" is the trustee, Dirk Foo. Second Lind Affidavit [**TAB M**], para 12; see also Third Report [**TAB L**], paras 98 and 140.
[79] November 25 Transcript [**TAB B**], p 15/17-16/1.
[80] Tenth Report [**TAB A**], para 52.
[81] Tenth Report [**TAB A**], Appendices "E" and "F", s 5.1.
[82] Second Lind Affidavit [**TAB M**], para 12.
[83] Tenth Report [**TAB A**], para 53, Appendices "E" and "F", s 5.1.

(c) Articles 5.1 and 9.1(b) of the WFC Deeds of Covenant specifically require Special Resolution approval by the Co-Owners for loans or advances from the Facilitator.[84] Dirk Foo, as the trustee of the Offshore Trusts which is, in each case, the sole co-owner, is the only party who can vote on the special resolution.

84. The Monitor cannot transform beneficial interests held by trust beneficiaries into property of the Debtor Companies by invoking contractual provisions that pre-date, and formed part of, the same structure under which the UFIs were transferred.

85. The statutory precondition imposed by sections 11.2 and 11.52 cannot be overcome by recharacterizing third-party property as debtor property through contractual arrangements. Accordingly, even if all of the contractual rights relied upon by the Monitor are accepted, the relief sought remains unavailable because the property in question (the WFC Lands and Proceeds) is not property of the Debtor Companies.

D. The Monitor's Application Is an End-Run Around the Texas Plan

86. The Monitor's Application is also inconsistent with the framework established by Justice Feasby following the ARIO and effectively seeks to accomplish through this Court what it was directed to pursue through the Texas Plan process, having failed to do so through this Court.[85]

87. Following the Comeback Hearing, Justice Feasby considered the implications of Justice Simard's determination that the Offshore Investors' interests could not be subjected to Court-ordered charges under sections 11.2 and 11.52 of the CCAA and the related concerns regarding the Court's jurisdiction over the Texas Trusts and the WFC Lands.

88. Rather than revisiting Justice Simard's ruling, Justice Feasby proceeded on the basis that the ruling stood and directed the Monitor to formulate a plan to obtain control of the WFC Lands and Proceeds, the Texas Plan.

[84] Tenth Report [**TAB A**], Appendices "E" and "F", ss 5.1 and 9.1(b).
[85] November 25 Transcript [**TAB B**] p 7/22-24; 14/9-26.

89. Therefore, the Texas Plan process was premised on a fundamental proposition that the WFC Lands and Proceeds were not already subject to the Monitor's control through the existing CCAA proceedings and that additional steps would be required to obtain such control.

90. Justice Feasby expressly contemplated that the Monitor may need to pursue legal proceedings in the U.S. and other mechanisms outside the existing Alberta orders in order to achieve that objective.[86]

91. Significantly, neither Justice Feasby nor the Monitor suggested at that time that the solution was simply to return to this Court and seek a declaration that the WFC Lands and Proceeds constitute or should be treated as property of the Debtor Companies. The Texas Plan was intended to provide a pathway by which the Monitor could attempt to obtain control over assets that were already held by this Honourable Court to be outside the direct reach of the CCAA proceedings.

92. The Monitor's current position is difficult to reconcile with that history.

93. The relief now sought proceeds on the premise that the Offshore Investors' interests in the WFC Lands and Proceeds may be treated as property of the Debtor Companies for purposes of sections 11.2 and 11.52 of the CCAA. If that proposition were correct, there would have been no need for a Texas Plan. There would likewise have been no need for Chapter 11 proceedings in Texas aimed at obtaining control of the WFC Lands and Proceeds.

94. The very existence of the Texas Plan reflects an acknowledgment by the Monitor and the Court that control over those assets had not already been obtained through the CCAA proceedings. The Monitor now seeks to bypass the process contemplated by Justice Feasby by obtaining through judicial declaration what it was unable to obtain through this Court or through the Texas Plan.

95. The Monitor asks this Court to grant relief that would effectively render the Texas Plan unnecessary and retroactively transform assets previously acknowledged as third-party property into property of the Debtor Companies.

96. Therefore, the Application amounts to an end-run around both Justice Simard's determination and the framework subsequently established by Justice Feasby. This Court should

[86] Comeback Decision at para 67 [**TAB 2**].

decline the invitation to circumvent that process and to permit relitigation of an issue already determined by this Court.

E. The Texas LLCs and Affected Persons Have Standing to Oppose the Application

97. The Monitor argues that the Texas LLCs cannot oppose the Application in their own names because, under the ARIO, the Monitor has the exclusive power to manage and direct the Debtor Companies. The Monitor further asserts that former management lacks standing to oppose the Application and should bear personal costs if they are found to be directing opposition in the name of any Debtor Company.

98. The Texas LLCs have filed materials and made submissions before this Court and before the Court of Appeal of Alberta throughout these CCAA proceedings. Up until the Court of Appeal's decision was issued on May 11, 2026, issues concerning corporate authority for the Texas LLCs remained contested and subject to a pending appeal decision. For the sake of precision, and in the circumstances where the Court of Appeal has now dismissed the appeals before it, it is acknowledged that these are the submissions of the director of each of the Texas LLCs.

99. Nothing in the Initial Order or any amendments thereto precludes the current or former directors of any of the Debtor Companies from responding to or participating in these CCAA proceedings. Indeed, the Orders of this Honourable Court grant specific relief against current and former directors of the Debtor Companies; clearly, they have standing.[87] Although the Monitor and the Investors assert a lack of compliance with the same, that is contrary to the evidence.[88] Further, clearly those who previously had control of the Debtor Companies had standing to challenge Orders of this Court stripping them of the same.[89]

[87] Initial Order [**TAB G**], para 29; Amended and Restated Initial Order [**TAB K**], paras 36, 37, 75 and 78 (paras 75 and 78 use the term "the Debtor Companies", which demonstrates that the Monitor and the Court have used this terminology in an Order directing "the Debtor Companies" to provide information to the Monitor (in para 75) and directing that "Any interested party (including the Debtor Companies and the Monitor) may provide to this Court and Service List a brief of law with respect to [the Comeback Hearing]."

[88] Including but not limited to Second Lind Affidavit [**TAB M**]; Fourth Lind Affidavit [**TAB O**]; Third Lind Affidavit [**TAB N**].

[89] This challenge was advanced through opposition to the Monitor's application for the Amended and Restated Initial Order (i.e., the Comeback Application) and appeals heard by the Court of Appeal of Alberta, for which the Court of Appeal found that the test for leave to appeal was met (i.e., that the appeal raised a serious question or general importance and that it had a reasonable chance of success: Leave Decision at paras 28, 36-38 [**TAB 3**]). While the Monitor asserts in the First Supplement to the Tenth Report filed June 15, 2026 at para 27 and in its Supplemental Brief filed June 15, 2026 at para 12 that the Texas LLCs have opposed the Monitor's efforts "frequently on grounds which have already been decided by this Court", that submission fails to recognize that opposing a Comeback Application, seeking leave to appeal, and arguing an appeal for which leave has been granted by the Court of Appeal of Alberta is not "relitigation of previously decided matters", nor improper.

100. The Monitor and the Investors have also repeatedly disparaged the directors of the Debtor Companies; that in and of itself necessitates that they have standing to respond to allegations against them.[90]

101. The Monitor's position that directors of the Debtor Companies do not have standing to participate in these proceedings is inconsistent with the procedural history of these proceedings. The Texas LLCs have been recognized participants whose submissions have been received and adjudicated throughout these proceedings by both this Court and the Court of Appeal.[91]

102. As acknowledged by the Monitor, it remains that if the Texas Plan is unsuccessful, the CCAA proceedings against the WFC Entities will terminate. The Texas LLCs already have an application to terminate the CCAA proceedings as against the WFC Entities on that basis, which Justice Jones adjourned *sine die.*[92] In that case, this Court's Order removing the director's authority with respect to the WFC Entities will also terminate. As the Texas Plan for the Monitor to gain control of the WFC Lands and Proceeds has not succeeded to date, the director of the Texas LLCs continues to have an interest in these proceedings.

103. Procedural fairness is not advanced by insulating extraordinary relief from adversarial testing, particularly where the relief seeks to affect non-debtor property and expose non-parties to personal costs.[93] Impartiality, fair and equitable treatment, and the public interest require that persons directly affected by the requested relief have an opportunity to respond.

104. The Monitor cannot seek extraordinary relief affecting non-debtor property and beneficial interests, and personal costs against alleged non-party promoters of opposition, while simultaneously maintaining that no affected person has standing to oppose the relief. If the relief sought is sufficiently connected to the Texas LLCs, the Offshore Investors, Allan Lind, or other non-parties to justify orders affecting their interests or exposing them to personal costs, those persons are necessarily sufficiently affected to be heard.

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[90] For example, Tenth Report [**TAB A**], para 28.

[91] Both the Court of King's Bench of Alberta and the Court of Appeal of Alberta have acknowledged that the Initial Order removed powers of management and control of the Debtor Companies from their directors and officers: Comeback Decision [**TAB 2**] at para 11; Appeal Decision [**TAB 4**] at para 39.

[92] Order granted by Justice Jones, filed November 3, 2025 [**TAB V**].

[93] *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 [**TAB 12**] at para 23.

105. The Application directly engages the rights of affected persons. The Monitor seeks declarations and charge relief that would affect beneficial interests in the WFC Lands and Proceeds and seeks costs against anyone who allegedly controls or directs opposition in the name of a Debtor Company. The form of Order sought expressly seeks costs against Dirk Foo and Allan Lind. Those issues cannot fairly be determined on a one-sided record. The Court should not decide whether non-debtor interests may be charged, or whether individuals should face personal costs exposure, while at the same time precluding the affected parties from responding.

106. The Monitor's argument improperly conflates two distinct concepts: authority to manage or direct a debtor company, and standing to be heard in response to relief that affects legal rights. Even if directors no longer possess authority over the Debtor Companies under the ARIO, that does not mean the Court should determine substantive property issues, charge issues, or personal costs issues without hearing from the persons whose rights or liabilities are directly engaged.

107. Nor does the Monitor's reliance on the Appeal Decision discussion of "interested persons" answer the question. The Court of Appeal held that that the phrases "any person interested" and "interested person" must be interpreted consistently with the broad remedial objectives of the CCAA, including resolving insolvency efficiently and impartially, preserving and maximizing value, treating claims fairly and equitably, protecting the public interest, and balancing the costs and benefits of restructuring or liquidation.[94] That purposive interpretation does not support a categorical rule that only persons with an economic entitlement to distributions may be heard on an application that affects procedural rights or potential personal liability. Further, the Court of Appeal's decision in that regard related to who may *bring* an application pursuant to the CCAA – not who may respond to one.

108. Properly applied, those objectives support standing here. The Monitor's proposed reading would invert the Court of Appeal's purposive approach by using the CCAA's remedial objectives to exclude the very persons whose participation or liabilities the Monitor asks the Court to determine.

[94] Appeal Decision at para 67 [**TAB 4**].

109. To the extent the Monitor seeks personal costs against any non-party on the basis that such person controls or directs opposition to the Application, that request further underscores that the Application affects interests beyond those of the Monitor and the Debtor Companies. The Court need not determine the standing of any such person on this Application. It is sufficient that the Texas LLCs, whose interests are directly affected by the relief sought, are entitled to be heard.

110. Accordingly, the Monitor's standing objection should be dismissed. The Texas LLCs and any person against whom the Monitor seeks personal costs have a direct legal interest in the outcome of the Application and are entitled to be heard. Procedural fairness requires no less.

F. The Monitor's Request for Costs Should be Dismissed

111. The Monitor's requested relief is particularly extraordinary because it seeks costs not only against parties to the Application, but also against any person (party or non-party) who controls or directs opposition to the relief sought. The Monitor specifically seeks solicitor-client costs against Dirk Foo and Allan Lind.[95]

112. The general approach to costs in CCAA proceedings is that each party bears its own costs.[96] This reflects the reality that many stakeholders participate involuntarily and are required to respond to the debtor's restructuring efforts in order to protect their interests.[97] As a result, courts have recognized that costs awards are rare and generally inappropriate absent exceptional conduct.

113. While the Court retains broad discretion under s.11 of the CCAA, costs are awarded only where a party engages in frivolous, vexatious, or abusive conduct or otherwise causes unnecessary expense that prejudices other parties.[98] A party's good-faith opposition to relief sought by a Monitor, without more, is insufficient to justify an award of costs.

114. The Monitor relies on the general principle under r 10.29 of the Alberta *Rules of Court* that a successful party is ordinarily entitled to costs. However, CCAA proceedings are governed by a distinct costs framework that recognizes the unique nature of insolvency proceedings, where

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[95] The form of Order appended to the Monitor's Amended Application filed June 5, 2026 expressly seeks solicitor-client costs against Dirk Foo and Allan Lind.

[96] *Re Calpine Canada Energy Limited*, 2008 ABQB 537 at para 1 [***Calpine***] [**TAB 13**]; *Silver Streams Homes Inc*, 2017 ONSC 314 at para 13 [**TAB 14**]; *Re San Francisco Gifts Ltd*, 2004 ABQB 705 at para 53 [**TAB 15**].

[97] *Calpine* at para 1 [**TAB 13**]; *Re Indalex Ltd*, 2011 ONCA 578 at para 4 [**TAB 16**].

[98] *BuildDirect.com Technologies Inc (Re)*, 2018 BCSC 210 [**TAB 17**]; *Urbancorp Toronto Management Inc (Re)*, 2019 ONCA 757 [**TAB 18**]; *Uniforêt Inc (Re)*, 2004 CanLII 45406 (QC CS) [**TAB 19**].

stakeholders are frequently involuntary participants compelled to protect their interests. Accordingly, the prevailing convention is that each party bears its own costs, absent exceptional circumstances warranting a departure from that approach. No such circumstances exist in this case.

115. The Monitor has not identified any conduct on the part of the Texas LLCs, the Offshore Investors, or any other stakeholder that could properly be characterized as frivolous, vexatious, abusive, or undertaken in bad faith.

116. To the contrary, the present Application raises serious and legitimate issues concerning the scope of this Court's jurisdiction under the CCAA, the ownership of the WFC Lands and Proceeds, the interpretation of prior decisions of this Court, and the extent to which Court-ordered charges may attach to property owned by non-debtors.

117. The Texas LLCs oppose the relief sought because they maintain that Justice Simard already determined that the Offshore Investors' interests are not property of the Debtor Companies and cannot be subjected to charges under sections 11.2 and 11.52 of the CCAA. That position is neither frivolous nor abusive. It is grounded in the language of the ARIO, the transcript of the Comeback Hearing, and the principles of finality that underpin the doctrines of *res judicata* and abuse of process.

118. The fact that a party opposes relief sought by a Monitor does not, without more, justify an award of costs. If it did, stakeholders would be deterred from advancing legitimate legal positions in insolvency proceedings out of concern that an adverse result could expose them, or persons associated with them, to personal liability for costs.

119. Such an approach would have a significant chilling effect on participation in CCAA proceedings. Insolvency proceedings frequently involve complex and novel issues affecting the rights of numerous stakeholders with competing interests. The proper functioning of the CCAA regime depends upon those stakeholders being able to participate in good faith and advance legitimate arguments without fear of punitive costs consequences.

120. The concern is particularly acute in the present case. The Monitor seeks novel and extraordinary relief, including a declaration that property beneficially owned by non-debtors should be treated as property of the Debtor Companies and subjected to Court-ordered charges.

Opposition to such relief cannot reasonably be characterized as improper or exceptional conduct warranting special costs consequences.

121. In the absence of any finding of misconduct, bad faith, abuse of process, or other exceptional circumstances, there is no basis to depart from the general principle applicable in CCAA proceedings that stakeholders should bear their own costs. That is especially so where the Monitor seeks enhanced costs, including solicitor-and-client costs.[99]

122. The Monitor's request for costs against any parties and non-parties should therefore be dismissed.

V. RELIEF SOUGHT

123. The Texas LLCs respectfully request that this Honourable Court dismiss the Monitor's Application, including the request for costs against parties or non-parties. The Texas LLCs respectfully submit that each party should bear its own costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

BENNETT JONES LLP

Per: ______________________________

Kelsey Meyer / Chyna Brown
Counsel for Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC

[99] *Weatherford Canada Partnership v Artemis Kautschuk und Kunstoff-Technik GmbH,* 2019 ABCA 92 [**TAB 20**] at para 14; *AC and JF v Alberta*, 2020 ABCA 354 [**TAB 21**].

VI. TABLE OF AUTHORITIES

TAB

1. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, ss 11.2, 11.52.
2. *Angus A2A GP Inc (Re)*, 2025 ABKB 51
3. *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2025 ABCA 147
4. *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2026 ABCA 156
5. *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44
6. *Toronto (City) v CUPE, Local 79*, 2003 SCC 63
7. *Hoque v Montreal Trust Co*, 1997 NSCA 153
8. *Patrick Street Holdings Ltd. v 11368 NL Inc*, 2026 SCC 15
9. *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10
10. *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52
11. *Petrelli v. Lindell Beach Holiday Resort Ltd.*, 2011 BCCA 367
12. *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643
13. *Re Calpine Canada Energy Limited*, 2008 ABQB 537
14. *Silver Streams Homes Inc*, 2017 ONSC 314
15. *Re San Francisco Gifts Ltd*, 2004 ABQB 705
16. *Re Indalex Ltd*, 2011 ONCA 578
17. *BuildDirect.com Technologies Inc (Re)*, 2018 BCSC 210
18. *Urbancorp Toronto Management Inc (Re)*, 2019 ONCA 757
19. *Uniforêt Inc (Re)*, 2004 CanLII 45406 (QC CS)
20. *Weatherford Canada Partnership v Artemis Kautschuk und Kunstoff-Technik GmbH,* 2019 ABCA 92
21. *AC and JF v Alberta*, 2020 ABCA 354

VII. COMPENDIUM OF DOCUMENTS

TAB

A. Tenth Report of the Monitor filed May 19, 2026

B. Transcript of decision of Justice C. D. Simard, November 25, 2024

C. Transcript of decision of Justice G.A. Campbell, March 5, 2025, filed April 1, 2025

D. Fifth Affidavit of Allan Lind sworn October 16, 2025

E. Transcript of proceedings before Justice C.C.J. Feasby, November 14, 2024

F. Originating Application filed November 12, 2024

G. Initial Order granted November 14, 2024

H. Application of the Monitor filed November 18, 2024

I. Application of the CCAA Respondents (including the Texas LLCs) filed November 21, 2024

J. Transcript of proceedings before Justice C. D. Simard, November 21, 2024

K. Amended and Restated Initial Order granted November 25, 2024

L. Third Report of the Monitor, filed December 13, 2024

M. Second Affidavit of Allan Lind sworn December 13, 2024

N. Third Affidavit of Allan Lind sworn December 31, 2024, filed by Miles Davison LLP

O. Fourth Affidavit of Allan Lind sworn December 31, 2024, filed by Bennett Jones LLP

P. Transcript of proceedings before Justice C.C. J. Feasby, January 17, 2025

Q. Fourth Report of the Monitor filed February 19, 2025

R. Order granted by Justice Neufeld, filed June 19, 2025

S. Seventh Report of the Monitor filed July 22, 2025

T. Eighth Report of the Monitor filed October 17, 2025

U. Supplement to the Eighth Report of the Monitor filed October 28, 2025

V. Order granted by Justice Jones, filed November 3, 2025

W. Correspondence from Justice Jones dated December 1, 2025

X. Ninth Report of the Monitor filed January 13, 2026

Y. Order granted by Justice Neilson, filed January 20, 2026