

COURT FILE NO.: 2401-15969

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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.

APPLICANT **ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor 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 **BENCH BRIEF OF THE MONITOR**

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## I. INTRODUCTION

### A. OVERVIEW

1. This bench brief is submitted on behalf of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as monitor (in such capacity, the "**Monitor**") of the Debtor Companies (as defined below) in support of its application (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**")<sup>1</sup>, seeking an order (the "**Order**"), among other things:
  - (i) abridging the time for service and deeming service of the Application and supporting materials to be good and sufficient;
  - (ii) extending the stay of proceedings (the "**Stay**") up to and including September 18, 2026 (the "**Stay Period**"), with respect to the Debtor Companies and the Affiliate Entities (each as defined in below);
  - (iii) approving the Tenth Report of the Monitor dated May 15, 2026 (the "**Tenth Report**") and the conduct and activities of the Monitor set out therein;
  - (iv) approving the professional fees and disbursements of:
    - (A) the Monitor for the period from November 28, 2025 to May 2, 2026;
    - (B) the Monitor's US counsel, Reed Smith LP ("**Reed Smith**"), for the period from November 28, 2025 to March 31, 2026 ; and
    - (C) the Monitor's Canadian counsel, Cassels Brock & Blackwell LLP ("**Cassels**") for the period from December 31, 2025 to March 31, 2026;(collectively, the "**Professional Fees**");
  - (v) granting an increase in the Administration Charge (as defined at paragraph 49 of the Amended and Restated Initial Order granted on November 25, 2024 (the "**ARIO**")) to a maximum amount of \$3,500,000; and
  - (vi) declaring that the Offshore Investors' (as defined below) interests in the Lands (as defined below), whether legal or beneficial, arising from the Offshore Investors' undivided fractional interest ("**UFIs**") in the Lands (as defined in the Tenth Report of the Monitor dated May 19, 2026 (the "**Tenth Report**")), and the Offshore Investors' interests in the proceeds of any sale of the Lands, including shall be treated as "property of the Debtor Companies" for the purposes of sections 11.2

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

and 11.52 of the CCAA<sup>2</sup> and authorizing an expansion of the Administration Charge and Interim Lender's Charge (as defined in paragraph 54 of ARIO) to attach to the Offshore Investors' UFI in the Lands and the Offshore Investors' interest, whether legal or beneficial, in the proceeds of any sale of the Lands, including, without limitation, the Offshore Investors' interest in the proceeds of the Fossil Creek Sale and the Water District Sale (each as defined below); or

(A) in the alternative, authorizing the Monitor to charge the Offshore Investors' interests, whether legal or beneficial, in the Lands, and the proceeds of any sale thereof, in accordance with the Deeds of Covenant (as defined below) and/or the Special POAs (as defined below), and declaring that the Monitor has a charge on the Offshore Investors' interest, whether legal or beneficial, in the proceeds of any sale of the Lands including the proceeds of the Fossil Creek Sale and the Water District Sale; and

(b) such further and other relief as this Honourable Court deems appropriate.

2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the ARIO and Tenth Report.

## **B FACTS**

3. The within CCAA proceedings (the "**CCAA Proceedings**") were initiated on application by an *ad hoc* group of Canadian investors in various real estate and land investment projects. On November 14, 2024, this Honourable Court pronounced an initial order pursuant to the CCAA which, among other things, granted the Debtor Companies a stay of proceedings under section 11.02 of the CCAA and appointed A&M as Monitor of the Debtor Companies with certain enhanced powers (the "**Initial Order**").

### **(i) Corporate and Project Structure**

4. The Debtor Companies (as defined below) form part of a larger inter-related corporate formerly group engaged in real estate and land investment in both Canada and the United States, with parent entities registered in Singapore (the "**A2A Group**").<sup>3</sup>
5. The entities which are subject to relief in these CCAA Proceedings as "debtor companies" are A2A Capital Services Canada Inc. ("**A2A CSC**"), Serene Country Homes (Canada) Inc. ("**Serene Canada**"), A2A Developments Inc. ("**A2A Developments**"), Angus A2A GP Inc. ("**Angus GP**"), Angus Manor Park A2A Developments Inc. ("**Angus Manor Developments**"), Angus Manor Park

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<sup>2</sup> [CCAA](#), ss. 11.2 and 11.52.

<sup>3</sup> [Angus A2A GP Inc \(Re\), 2025 ABKB 51](#) ["**January Decision**"] at para 21.

Capital Corp. ("**Angus Manor Capital**"), Angus Manor Park A2A GP Inc. ("**Angus Manor GP**"), Fossil Creek A2A GP Inc. ("**Fossil GP**"), Hills of Windridge A2A GP Inc. ("**Windridge GP**") and US entities Fossil Creek A2A Developments, LLC ("**Fossil Creek LLC**"), Windridge A2A Developments, LLC ("**Windridge LLC**") Wingham Creek A2A Developments Inc. ("**Wingham Developments**"), Lake Huron Shores A2A Developments Inc. ("**LHS Developments**"), and Meaford A2A Developments Inc. ("**Meaford Developments**" and collectively, the "**Debtor Companies**"). Fossil Creek LLC and Windridge LLC are collectively referred to as the "**US LLCs**" and the remaining debtor companies are referred to as the "**Canadian Debtors**").

6. The Initial Order related only to A2A CSC, Serene Canada, A2A Developments, Angus GP, Angus Manor Developments, Angus Manor Capital, Angus Manor GP, Fossil GP, Windridge GP, Fossil Creek LLC and Windridge LLC, while Wingham Developments, LHS Developments and Meaford Developments (collectively, the "**Additional Project Entities**") were added to these CCAA Proceedings later by the Additional Project Order (as defined below).
7. These CCAA Proceedings relate to the following A2A Group real estate and investment projects:
  - (a) Angus Manor Park ("**Angus Manor**"), advertised as a 167-acre residential development project located in Essa, Ontario (approximately 100 km north of Toronto);
  - (b) The Trails of Fossil Creek ("**Fossil Creek**"), advertised as a 93-acre residential development project located in Fort Worth, Texas;
  - (c) The Hills of Windridge ("**Windridge**"), advertised as a 415-acre residential development project in the Dallas/Fort Worth area;
  - (d) Wingham Creek ("**Wingham**"), advertised as a 90-acre residential development project located in North Huron, Ontario (approximately 200 km west of Toronto);
  - (e) Lake Huron Shores ("**LHS**"), advertised as a 96-acre residential development project located in Goderich, Ontario (approximately 225 km west of Toronto); and
  - (f) Meaford Highland Resorts ("**Meaford**"), advertised as a 380-acre residential development project located in Meaford, Ontario (approximately 200 km north of Toronto);

(collectively the "**Projects**").
8. The Initial Order extended the CCAA protections to certain non-Debtor Companies, namely the following Canadian entities: Angus A2A Limited Partnership ("**Angus LP**"), Angus Manor Park A2A Limited Partnership ("**Angus Manor LP**"), Fossil Creek A2A Trust ("**Fossil Trust**"), Hills of Windridge A2A Trust ("**Windridge Trust**"), Fossil Creek A2A Limited Partnership ("**Fossil LP**") and Hills of Windridge A2A Limited Partnership ("**Windridge LP**" and collectively, the "**Affiliate**

**Entities**") due to the Affiliate Entities being inextricably intertwined in the Projects' investment structure.

9. The A2A Group solicited investment in Angus Manor, Fossil Creek and Windridge from both Canadian Investors and Offshore Investors (as defined below).
10. In Canada, the Canadian Investors primarily invested in Angus Manor via the purchase of units in a limited partnership (*i.e.*, Angus LP). The proceeds from the sale of units of Angus LP were then used by Angus LP to purchase UFIs in the Angus Manor Lands (as defined in the Tenth Report) from Angus Developments.<sup>4</sup>
11. Canadian Investors' investments in Fossil Creek and Windridge were made via the purchase of units in trusts (*i.e.*, Fossil Trust and the Windridge Trust, respectively). Proceeds from the sale of the trust units were then used to purchase units in limited partnerships (*i.e.*, Fossil LP and Windridge LP, respectively) with the proceeds of the limited partnership units ultimately being used by Fossil LP and Windridge LP to purchase UFIs in the Fossil Creek Lands and the Windridge Lands (each as defined in the Tenth Report) from Fossil LLC and Windridge LLC, respectively.<sup>5</sup>
12. The A2A Group solicited investment in all six of the Projects from Offshore Investors through the sale of the UFIs in the Lands directly to Offshore Investors for Angus Developments, Fossil LLC, Windridge LLC, Wingham Developments, LHS Developments and Meaford Developments, as the case may be.<sup>6</sup>
13. A corollary of the investment structure employed by the A2A Group is that beneficial and legal ownership of each of the Angus Manor Lands, the Fossil Creek Lands, the Windridge Lands, the Wingham Lands, the LHS Lands and the Wingham Lands (each as defined in the Tenth Report and collectively, the "**Lands**"), and the interest and entitlement to the proceeds of any sale thereof, are fractured into thousands of UFIs held by various individuals and entities (each a "**UFI Holder**").
14. The UFI Holder's interests in the Project are governed by materially identical deeds of covenant for each Project (the "**Deeds of Covenant**").<sup>7</sup>
15. Pursuant to the Deeds of Covenant, the UFI Holders in each of Angus Manor, Fossil Creek, Windridge, Wingham, LHS and Meaford agreed to appoint Angus Manor Developments, Fossil LLC, Windridge LLC, Wingham Developments, LHS Developments and Meaford Developments,

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<sup>4</sup> [January Decision](#) at paras 22 and 32; Tenth Report of the Monitor dated May 19, 2026 at para 37 ["**Tenth Report**"]

<sup>5</sup> [January Decision](#) at paras 24-26 and 28-30; Tenth Report at paras 47 and 58.

<sup>6</sup> [January Decision](#) at paras 35, 37 and 40; Tenth Report at paras 38, 48, 59, 68, 75 and 82.

<sup>7</sup> [January Decision](#) at paras 37 and 40; Tenth Report at paras 41, 49, 60, 70, 77 and 84.; Copies of the Deeds of Covenant are appended to the Tenth Report as Appendix "D", Appendix "E", Appendix "F", Appendix "G", Appendix "H" and Appendix "I",

respectively, as “**Facilitator**” over the respective Project (collectively, the “**Project Facilitators**”).<sup>8</sup> The Project Facilitators are all Debtor Companies under the CCAA in the within CCAA Proceedings.

16. The duties of the Facilitator pursuant to the Deeds of Covenant in each Project include, without limitation:
- (a) to execute, deliver and carry out all agreements which require implementation, delivery or execution by or on behalf of the UFI Holders;
  - (b) to commence and defend on behalf of the UFI Holders at the cost and expense of the UFI Holders any and all actions and other proceedings pertaining to the Lands; and
  - (c) to distribute proportionately among the UFI Holder’s their respective shares in the net proceeds arising from the sale of the Lands, after payment of all expenses,
- (the “**Facilitator Duties**”).<sup>9</sup>
17. Pursuant to the Deeds of Covenant, the UFI Holders in each of the Projects agree to indemnify and pay, and hold forever harmless, among others, the Facilitator and their servants, against any loss from any claim, demand, or action that is brought against, incurred by, among others, the Facilitator or by reason of acts, omissions or alleged acts or omissions arising out of the activities of the Facilitator on behalf of the UFI Holders or in furtherance of the interest of the UFI Holders, provided such acts, omissions or the alleged acts or omissions were performed by such Facilitator in good faith and not performed or omitted fraudulently or as a result of willful misconduct or the gross negligence of such Facilitator (the “**Facilitator Indemnifications**”).<sup>10</sup>
18. Finally, each of the Deeds of Covenant contain provisions empowering, but not obliging, the Project Facilitator for its respective Project to advance funds to the UFI Holders (the “**Facilitator Lending Provisions**”).<sup>11</sup>
19. The Facilitator Lending Provisions contained in the Angus Deed of Covenant (as defined in the Tenth Report) and the Windridge Deed of Covenant (as defined in the Tenth Report) read as follows:

**“The Facilitator may, in its discretion and on such terms and conditions as the Facilitator deems appropriate, at any time and from time to time, but shall not be under any obligation, lend money to one or more of the Co-Owners, upon such terms and conditions as are acceptable to the Facilitator and the Co-Owner(s), for the purposes of assisting a Co-Owner’s in satisfying and performing such Co-Owner’s financial obligations under this Deed, including, without limitation, any financial obligations relating**

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<sup>8</sup> Tenth Report at paras 41 ,49, 60, 70, 77 and 84.

<sup>9</sup> Tenth Report at paras 42 ,50, 61, 71, 78 and 85.

<sup>10</sup> Tenth Report at paras 43 ,51, 62, 72, 79 and 86.

<sup>11</sup> Tenth Report at paras 44 ,52, 63, 73, 80 and 87.

to the maintenance, construction, re-zoning or development of the Property. The Facilitator shall be entitled to repay the amount loaned out of such Co-Owner's Proportionate Share of the sales proceeds arising from the sale of the Property. **If a Facilitator has made such a loan, it shall be a condition of any such loan to a Co-Owner that the Facilitator shall have priority of re-payment of principal and interest over any claim of such Co-Owners to the balance of the Development Fund, Net Income or sale proceeds arising from sale of the Property.**<sup>12</sup>[emphasis added]

20. The Facilitator Lending Provisions contained in the Fossil Deed of Covenant, the Wingham Deed of Covenant, the LHS Deed of Covenant and the Meaford Deed of Covenant (each as defined in the Tenth Report) are substantially similar to the Facilitator Lending Provisions in the Angus Deed of Covenant and Windridge Deed of Covenant except that they require that the terms of any loan advanced by their respective Project Facilitators be agreed on by the UFI Holders pursuant to a Special Resolution under the Deeds of Covenant.<sup>13</sup>
21. In addition to the Deeds of Covenants, when the Offshore Investors purchased their UFIs in the Projects, each Offshore Investor also granted the Facilitator for the respective Project a special power of attorney which grants the Facilitator in such Project the power to sell, transfer, assign, lease, or to otherwise deal in any way whatsoever with such Offshore Investor's interest in the Lands or any part thereof including to "execute, deliver, convey, enter into agreements, documents and other instruments pertaining to the zoning, rezoning, severance, development, re-development of the Property or any part thereof and to release any and all possessory and proprietary rights as to the Lands or any part thereof as may be deemed necessary (the "**Special POA**").<sup>14</sup>

**(ii) Procedural Background**

22. Amongst other things, the Initial Order:
- (a) appointed A&M as Monitor, with enhanced powers (the "**Enhanced Powers**"), of the Debtor Companies;
  - (b) granted a stay of proceedings for an initial period up to and including November 24, 2024 (the "**Stay Period**");
  - (c) appointed Fasken Martineau DuMoulin LLP ("**Canadian Rep Counsel**") as representative counsel for all Canadian investors in the Business and Property of the Debtor Companies and the Affiliate Entities, including without limitation, the Applicant Investors (the "**Canadian Investors**");

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<sup>12</sup> Tenth Report at paras 44 and 63.

<sup>13</sup> Tenth Report at paras 52, 73, 80 and 87.

<sup>14</sup> Tenth Report at para 88; A copy of a sample Special POA is appended to the Tenth Report as Appendix "J".

- (d) appointed Norton Rose Fulbright Canada LLP ("**Offshore Rep Counsel**" and together with Canadian Rep Counsel, "**Representative Counsel**") as representative counsel for all non-Canadian investors in in the Business and Property of the Debtor Companies and Affiliate Entities (the "**Offshore Investors**" and together with the Canadian Investors, the "**Investors**");
  - (e) declared that the Affiliate Entities shall have the same benefit, and the same protections and authorizations provided to the Debtor Companies notwithstanding that these entities are not a "company" within the meaning of the CCAA;
  - (f) authorized the Debtor Companies to enter into an interim financing agreement with Pillar Capital Corp. (the "**Interim Lender**") and to borrow from Pillar the initial principal amount of \$500,000 with the ability to borrow up to \$2,000,000;
  - (g) granted the following charges over the Property in the following relative priorities:
    - (i) First – a charge in favour of the Monitor, its legal counsel, Canadian Rep Counsel and Offshore Rep Counsel (the "**Insolvency Professionals**") to a maximum amount of \$250,000 (the "**Administration Charge**"); and
    - (ii) Second – a charge in favour of Pillar in respect of the Interim Financing to a maximum amount of \$500,000 (the "**Interim Lender's Charge**");
  - (h) authorized the Monitor to act as "Foreign Representative" of the A2A Group, in order to apply for a Temporary Restraining Order in the US and subsequently apply to commence ancillary insolvency proceedings under chapter 15 of Title 11 of the US Bankruptcy Code (the "**Chapter 15 Proceeding**") in the US Bankruptcy Court for the Northern District of Texas (the "**US Bankruptcy Court**"); and
  - (i) declared that all current and former directors and officers of the Debtor Companies (collectively, "**Management**") shall have no further power or authority to direct the Debtor Companies.
23. On November 18, 2024, the Monitor filed an application (the "**ARIO Application**") returnable on November 21, 2024 seeking, among other things, an Order that this Court extend the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") over the UFIs of the Offshore Investors.

24. On November 20, 2024, the Debtor Companies filed an application returnable November 21, 2024 seeking, among other things, an order setting aside the Initial Order and terminating these CCAA Proceedings (the "**Set Aside Application**").
25. On November 25, 2024, the Honourable Justice Simard granted the ARIO and adjourned the Set Aside Application, but declined to grant the expansion of the Charges over the Offshore Investor's UFIs at that time because, among other reasons, Justice Simard found, based on the evidence before this Court at that time, that the Offshore Investor's UFI's were not "property of the Debtor Companies" as prescribed by the CCAA.<sup>15</sup> Since the ARIO Application there have been significant factual developments which distinguish the within Application from the ARIO Application.
26. On January 29, 2025, the Honourable Justice Feasby released his decision (the "**January Decision**") and granted an order under the CCAA granting the following relief:
- (a) dismissing the Set Aside Application; and
  - (b) directing the Monitor to, within 21 days of the Decision, provide this Court with a reasonable plan for gaining control of the Texas Lands and the proceeds of the Fossil Creek Sale and the Water District Sale (the "**Texas Plan**"). If the Texas Plan was not provided within 21 days and subsequently approved by this Court, then the CCAA proceedings would terminate as against Fossil Creek A2A Developments, LLC, Windridge A2A Developments, LLC (collectively, the "**US Debtor Companies**"), 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 (together with the US Debtor Companies, the "**Windridge and Fossil Creek Entities**") and the Initial Order and the ARIO would be vacated as against the Windridge and Fossil Creek Entities,
- (the "**Dismissal Order**").
27. In the written reasons for the January Decisions, this Court found that the Debtor Companies and Management are incapable of meeting their responsibilities to the Investors and incapable of conducting a realization and distribution process with respect to the Lands which is fair to all of the Investors.<sup>16</sup>

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<sup>15</sup> Transcript of the Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta, November 25, 2024, before the Honourable Justice C Simard, Court File No. 2401-15969 ["**November 25 Transcripts**"] at 13:27-41 to 14:1-26, contained as Appendix "B" to the Tenth Report; [CCAA](#), ss. 11.2 and 11.52.

<sup>16</sup> [January Decision](#) at paras 42-43.

28. On March 5, 2025, the Honourable Justice Campbell granted an Order under the CCAA, among other things approving the Texas Plan as outlined in the Fourth Report of the Monitor dated February 24, 2025.
29. On October 23, 2025, the Court ordered, among other things, that Wingham Developments, LHS Developments, and Meaford Developments be added as respondents in these CCAA Proceedings, declared all prior orders made in the within CCAA Proceedings shall apply to the Additional Project Entities as of the date thereof, and amended the style of cause accordingly.
30. On January 19, 2026, this Court granted an Order, among other things, approving a sale process for the Wingham Lands, the LHS Lands and the Meaford Lands (each as defined in the Tenth Report and collectively, the “**Additional Project Lands**”) in conjunction with a sale advisor (the “**Additional Project Sale Process**”).
31. The Court has made various further procedural orders in these CCAA Proceedings including:
  - (a) extending the Stay Period in these CCAA Proceedings, most recently, up to and including to May 31, 2026;
  - (b) approving various increases to the Interim Lender's Charge and Administration Charge and changing their respective priorities. The current quantum of the Interim Lender's Charge and the Administration Charge are \$1,500,000 and \$3,000,000 respectively, with the following relative priorities:
    - (i) First – the Interim Lender's Charge to a maximum amount of \$1,500,000 plus the amount of all interest, fees and expenses in respect of the principal amount advanced with respect to the Interim Financing; and
    - (ii) Second – an Administration Charge, to a maximum of \$3,000,000; and
  - (c) approving all of the activities and conduct of the Monitor up to and including those activities listed in the Ninth Report of the Monitor dated January 12, 2026 (the “**Ninth Report**”); and
  - (d) approving the fees and disbursements of the Monitor, the Monitor's Canadian counsel, the Monitor's US counsel, and the Monitor's US conflicts counsel up to and including the fee periods listed in the Ninth Report.

**(iii) Appeals**

32. The Debtor Companies filed six applications for permission to appeal Orders granted in these CCAA proceeds (the “**Appeal Applications**”). The Appeal Applications were heard by a single justice of the Alberta Court of Appeal on March 6, 2025.
33. On April 28, 2025, the Court of Appeal of Alberta granted permission to appeal on the following questions:
- (a) Did the supervising justice err in concluding that the Canadian Investors came within the scope of the CCAA, and that the use of the CCAA in these circumstances was proper either in the decision reported at 2025 ABKB 51 or in the earlier unreported decision on November 25, 2024?
  - (b) Did the supervising justice err in concluding that entities within the A2A Group, including the Windridge and Fossil Creek Groups and the US LLCs, were subject to the CCAA in his decision reported at 2025 ABKB 51, or in the earlier unreported decision on November 25, 2024?
- (the “**Appeals**”).
34. The Appeals were heard in the Alberta Court of Appeal on September 8, 2025. On May 11, 2026, the Court of Appeal of Alberta dismissed all of the Appeals (the “**Appeal Dismissal**”).<sup>17</sup>

**II. ISSUES**

23. The Monitor submits that the principal issues to be determined by this Honourable Court are whether:
- (a) the Stay Period should be extended to September 18, 2026;
  - (b) the Monitor's activities and conduct should be approved;
  - (c) the Professional Fees should be approved;
  - (d) the Administration Charge should be increased; and
  - (e) the Charges should be expanded to charge the Offshore Investors UFI's and the Offshore Investors' interests, whether beneficial or legal, in the proceeds of any sale of the Lands.

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<sup>17</sup> [Angus A2A GP Inc v Alvarez & Marsal Canada Inc, 2026 ABCA 156](#) [“**Appeal Dismissal**”] at para 9.

### III. LAW & ANALYSIS

#### A The Stay Period Should Be Extended

24. The Stay expires on May 31, 2026. The Monitor requests that the stay of proceedings be extended to September 18, 2026 (the "**Stay Extension**").
25. Pursuant to section 11.02(2) of the CCAA, this Court has discretion to make an order extending the Stay granted in an initial order for any period that the court considers necessary.<sup>18</sup> The length of an extension is dependent on the facts of each case.<sup>19</sup> The Court has discretion to extend the stay of proceedings if the applicant satisfies the Court that the extension is appropriate and that the Debtor Companies have acted, and are acting, in good faith and with due diligence.<sup>20</sup>
26. The criteria for whether circumstances exist that make the extension appropriate are assessed by reference to whether the requested extension advances the objectives of the CCAA.<sup>21</sup>
27. On a proper application of the legislative and remedial purposes of the CCAA, it is appropriate to extend the Stay of Proceedings in the circumstances because the Stay Extension furthers the remedial purposes of the CCAA.
28. Canada's insolvency statutes (including the CCAA) pursue a range of remedial objectives, including:<sup>22</sup>
- (a) providing for timely, efficient and impartial resolution of a debtor's insolvency;
  - (b) preserving and maximizing the value of the 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 debtor's business.
29. In the present circumstances the Monitor submits that the Stay Extension furthers the joint objectives of preserving and maximizing the value of the Debtor Companies' assets for all stakeholders and providing for a timely, efficient and impartial resolution of the Debtor Companies'

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<sup>18</sup> [CCAA](#), s 11.02(2).

<sup>19</sup> [Stelco Inc \(Re\), 2004 CanLII 24933 \(ONSC\)](#) at para 19

<sup>20</sup> [CCAA](#), s 11.02(3).

<sup>21</sup> [Re Canada North Group Inc, 2017 ABQB 508](#), ["**Canada North Group**"] at para 34.

<sup>22</sup> [9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10](#) ["**Callidus**"] at para 40.

insolvency, both of which have been recognized by Canadian courts as fundamental purposes of the CCAA.<sup>23</sup>

30. The circumstances surrounding the Debtor Companies and Affiliate Entities are complex, with thousands of stakeholders in multiple jurisdictions. An extension of the stay of proceedings until September 18, 2026, is necessary and reasonable as it will provide the Monitor with sufficient time to, among other things:
- (a) in light of the Appeal Decision, continue to advance the Texas Plan to gain control of the Texas Lands and the proceeds of the Water District Sale and the Fossil Creek Sale and vigorously pursue the necessary litigation that is the subject of the Texas Plan;
  - (b) continue the marketing of the Angus Manor Lands and the Additional Projects Lands; and
  - (c) with the assistance of Offshore Rep Counsel, attempt to contact Offshore Investors to seek information relevant to the proceedings,
- (the "**Stay Activities**").<sup>24</sup>
31. It is just and reasonable to grant the Stay Extension for the following reasons:
- (a) the Stay Extension is appropriate and advances the objectives of the CCAA;
  - (b) the Monitor on behalf of the Debtor Companies, has acted and continues to act in good faith and with due diligence, and in a manner consistent with the Monitor's Enhanced Powers under the ARIO;
  - (c) the Angus Manor Sale Process and the Additional Projects Sale Process are ongoing and the requested Stay Extension is necessary to allow the Monitor to oversee such processes until their conclusion;
  - (d) assuming the Administration Charge is increased, there will be sufficient coverage to fund the Stay Extension; and
  - (e) no stakeholder will be materially prejudiced by the Stay Extension and the requested Stay Extension is in the stakeholders' best interests.
32. The Stay Extension will enable the Monitor to oversee and facilitate the completion of the Stay Activities. The Monitor submits that it is just and reasonable for this Court to exercise its discretion and approve the Stay Extension in these proceedings.

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<sup>23</sup> [Callidus](#) at para 40.

<sup>24</sup> Tenth Report at para 138.

**B The Monitor's Activities and Conduct Should Be Approved**

33. The Monitor is seeking approval of its activities and conduct as described in the Tenth Report.
34. As noted in *Target Canada Co. (Re)*,<sup>25</sup> "there are good policy and practical reasons for the court to approve of monitor's reports and activities [...] during the CCAA process."<sup>26</sup> The policy and practical reasons for approving the activities of the Monitor include that it:
- (a) brings the court-officer's activities before the Court;
  - (b) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
  - (c) enables the Court to satisfy itself that the court-officer's activities have been conducted in a prudent and diligent manner;
  - (d) provides protection for the court-officer; and
  - (e) protects the creditors from the delay in distribution that would be caused by re-litigation of steps taken to date, and potential indemnity claims by the court-officer.<sup>27</sup>
35. The Monitor has acted, and continues to act, in the furtherance of the best interests of all of the Debtor Companies' stakeholders throughout these CCAA proceedings. Those activities, as described in greater detail in the Tenth Report, include:
- (a) communicating with its counsel, Canadian Rep Counsel and Offshore Rep Counsel regarding the relief sought in the Application and, with the assistance of its consultant, Azimuth Risk Management Inc. ("**Azimuth**"), coordinating communication to the Offshore Investors with respect to the relief sought in the Application;
  - (b) engaging in meetings with prospective sales agents for the Additional Projects Sale Process;
  - (c) commissioning appraisals from Cushman & Wakefield ULC for the Additional Project Lands;
  - (d) entering into listing agreements for the Additional Project Lands pursuant to the Additional Project Sale Process; and
  - (e) conducting meetings with Azimuth regarding the status of the Angus Lands Official Plan and instructing a representative of Azimuth to attend a public open house on April 8, 2026 hosted by the Township of Essa.<sup>28</sup>

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<sup>25</sup> [Target Canada Co \(Re\), 2015 ONSC 7574](#) [**"Target"**].

<sup>26</sup> [Target](#) at para 22.

<sup>27</sup> [Target](#) at para 23.

<sup>28</sup> Tenth Report at para 92.

36. The Monitor has acted fairly, reasonably and in good faith in these CCAA Proceedings, and in accordance with its Enhanced Powers granted pursuant to the ARIO.

37. Accordingly, the Monitor's conduct and activities as set out in the Tenth Report should be approved.

**C The Professional Fees Should Be Approved**

38. The Monitor is seeking approval of the Professional Fees.

39. The AIRO provides that the Monitor and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges and that the Monitor and its counsel shall pass their accounts from time to time.<sup>29</sup>

40. In determining whether to approve the fees and accounts of a court-appointed monitor, the Court shall focus on “whether the fees are fair and reasonable in all of the circumstances”<sup>30</sup> ensuring the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.<sup>31</sup> In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness”<sup>32</sup> assessing the following non-exhaustive factors in determining the reasonableness of the fees:

- (a) the nature, extent and value of the assets;
- (b) the complications encountered;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent;
- (e) the monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the monitor's efforts; and
- (i) the cost of comparable services when performed in a prudent and economical manner.<sup>33</sup>

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<sup>29</sup> ARIO at paras 47-48.

<sup>30</sup> [Winalta Inc. \(Re\), 2011 ABQB 399](#), [“*Winalta Inc*”] at para 30.

<sup>31</sup> [Winalta Inc.](#), at para 30; [Re Nortel Networks Corporation et al, 2017 ONSC 673](#) [“*Nortel 2017*”] at para 13.

<sup>32</sup> [Nortel Networks Inc., 2022 ONSC 6680](#) [“*Nortel 2022*”] at para 10.

<sup>33</sup> [Nortel 2017](#) at para 14; [Nortel 2022](#) at para 11.

41. Similar factors have been considered when assessing the accounts of legal counsel to the court officer.<sup>34</sup>
42. In the present circumstances, the Monitor submits that the Professional Fees are fair and reasonable in light of, among other things;
  - (a) the complexity and size of these CCAA proceedings;
  - (b) the Monitor's Enhanced Powers under the ARIO; and
  - (c) the resources expended to implement the Texas Plan, the Angus Manor Sale Process and the Additional Project sale process.
43. Furthermore, the quantum of the Professional Fees are reasonable in the context of the lack of cooperation from Debtor Companies and Management in these CCAA Proceedings, which have resulted in additional administrative burdens for the Monitor and its counsel, and in the context of the consistent opposition presented by Management despite Management having no true financial stake in the Lands.
44. Approval of the Professional Fees are appropriate at this time because the Monitor, with the assistance of the Monitor's Counsel, has acted in good faith and with due diligence. The Professional Fees were properly incurred and reflect the Monitor's careful efforts to efficiently carry out its court-ordered duties and responsibilities. The hourly rates charged and time spent by the Monitor and its Counsel are consistent with comparable firms practicing in insolvency law in the Alberta and Texas markets.
45. The Monitor respectfully submits that its fees and disbursements, its Canadian counsel, Cassels, and that of its US counsel, Reed Smith, are fair and reasonable in the circumstances, and therefore, should be approved.

**D The Administration Charge Should Be Increased**

46. The Administration Charge has been increased multiple times throughout these proceedings and most recently was increased to an aggregate maximum amount of \$3,000,000 on January 19, 2026.
47. In connection with this Application, on the basis of the projected cashflow of the Debtor Companies (as further particularized in the Tenth Report), the Monitor submits that this Honourable Court

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<sup>34</sup> [Redcorp Ventures Ltd. \(Re\), 2016 BCSC 188](#) at para 33.

should increase the total aggregate amount of the Administration Charge from \$3,000,000 to \$3,500,000.<sup>35</sup>

48. Section 11.52 of the CCAA provides statutory jurisdiction to order the Administration Charge.<sup>36</sup> The following list of non-exhaustive factors are to be considered by this Court when considering an increase to the administration charge:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.<sup>37</sup>

49. In consideration of the above factors, the Monitor submits that it is appropriate for this Honourable Court to exercise its jurisdiction and increase the amount of the Administration Charge, given that:

- (a) the Debtor Companies and Affiliate Entities consist of a large and intertwined group of companies and entities, formed under the laws of at least two Canadian provinces and the United States, which have invested in real property assets in both countries by attracting investment from investors globally. Consequently, these CCAA Proceedings require a high degree of involvement, expertise and advice from the Insolvency Professionals;
- (b) the size and complexity of the CCAA Proceedings continue to increase and expand as additional information is provided, new entities and projects are uncovered and complex corporate governance structures and sale transactions are exposed;
- (c) the Insolvency Professionals have contributed, and will continue to contribute, to the restructuring efforts of Debtor Companies and there is no unwarranted duplication of efforts; and
- (d) the Monitor has compared the quantum of the proposed Increased Administration Charge with those in other recent CCAA proceedings and is satisfied that it is commercially reasonable and not 'off-market' in these circumstances.

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<sup>35</sup> Tenth Report at para 130.

<sup>36</sup> [CCAA](#) at s 11.52.

<sup>37</sup> [Canwest Publishing Inc \(Re\), 2010 ONSC 222](#) at para 54; see also [Alderbridge Way GP Ltd \(Re\), 2022 BCSC 1694](#) at para 45.

50. The proposed increase to the Administration Charge is appropriate and necessary in light of the Business, Property, the Monitor's duties, the duties of the Monitor's Counsel, and the duties and necessity for Representative Counsel. Such an increase to the Administration Charge is necessary to encourage the participation of the Insolvency Professionals associated with this matter, who are integral to the success of the proceeding.

**E The Charges Should Be Expanded to the Offshore Investors Proprietary Interests in the Projects**

51. The Monitor requests that this Honourable Court exercise its broad discretion pursuant to section 11 of the CCAA to grant an order:

- (a) declaring that the Offshore Investors' interests in the Lands, whether legal or beneficial, arising from the Offshore Investors' UFI in the Lands and the Offshore Investors' interests in the proceeds of any sale of the Lands, including the Offshore Investors interest in the proceeds of the Fossil Creek Sale and the Water District Sale shall be treated as "property of the Debtor Companies" for the purposes of sections 11.2 and 11.52 of the CCAA; and
- (b) authorizing an expansion of the Charges to attach to the Offshore Investors' UFI in the Lands and the Offshore Investors' interest in the proceeds of any sale of the Lands, including, without limitation, the Offshore Investors' interest in the proceeds of the Fossil Creek Sale and the Water District Sale,  
  
(collectively, the "**Charge Extension**").

52. The Interim Lenders Charge and the Administration Charge are statutory charges prescribed pursuant to section 11.2 and 11.52 of the CCAA respectively.

53. Section 11.2(1) of the CCAA states:<sup>38</sup>

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

54. Section 11.52(1) of the CCAA states:<sup>39</sup>

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

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<sup>38</sup> [CCAA](#), s 11.2(1)

<sup>39</sup> [CCAA](#), s 11.52(1)

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

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act. [emphasis added]

55. As detailed earlier in this Brief, the Monitor previously requested relief expanding the Charges to the Offshore Investors UFI's interest in the Lands (the "**Previous Charge Extension Request**") as a head of relief within the ARIO Application. While the ARIO Application was granted in part, this Court declined to grant the Previous Charge Extension Request at that time.
56. At the time of the Previous Charge Extension Request, the Honourable Justice Simard declined to extend the Charges to the Offshore Investors' UFIs in the Lands because Justice Simard characterized the references to "company's property" and the "property of the debtor companies" in section 11.2 and 11.52 of the CCAA, respectively, as restrictions on this Court's broad authority under section 11 of the CCAA to expand the Charges to attach to the Offshore Investors' UFIs.<sup>40</sup>
57. The within Application is distinguishable from the Previous Charge Extension Request because there is new evidence before this Court which militates in favour of treating (i) the Offshore Investors' UFIs in the Lands, and (2) the Offshore Investors' interest in the proceeds of any sale of the Lands (hereinafter collectively referred to as the "**Offshore Investors' Proprietary Interests**") as "property of the Debtor Companies". Justice Simard was not privy to such new evidence at the time of the Previous Charge Extension Request.
58. At the time of the Previous Charge Extension Request, there was no evidence before Justice Simard with respect to:
- (a) the Project Facilitators' interest in the Offshore Investors' proportionate interest in the proceeds of any sale of the Lands pursuant to the Facilitator Lending Provisions contained in the Deeds of Covenants; or
  - (b) the Project Facilitators' power to, among other things, transfer or release the Offshore Investors' possessory and proprietary interest in the Offshore Investors UFIs pursuant to the Special POAs.

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<sup>40</sup> November 25 Transcripts at 14:9-26

59. Furthermore, when the Previous Charge Extension Request was before Justice Simard, such application was being made effectively without notice to, or consent from, the Offshore Investors.
60. When Justice Simard declined to grant the Previous Charge Extension Request, he had not contemplated a situation where the Offshore Investors had contracted for, and consented to, their interests being encumbered; the evidence of the foregoing which is now before the Court was not before Justice Simard.
61. Based on the evidence before the Court in the within Application, it is fair and reasonable for the Offshore Investors' Proprietary Interests to be treated as "property of the Debtor Companies" for the purposes of section 11.2 and section 11.52 of the CCAA because, pursuant to the Deeds of Covenants and the Special POAs, the Monitor, on behalf of the Project Facilitators, is entitled to charge the Offshore Investors' Proprietary Interests.
62. Moreover, the Charge Extension is fair and reasonable in the circumstances of these CCAA Proceedings because:
- (a) the Offshore Investors support the Charge Extension;<sup>41</sup>
  - (b) absent the Charge Extension, the Canadian Investors will unfairly bear all of the costs and risks of these CCAA Proceedings;<sup>42</sup> and
  - (c) the Charge Extension is needed to ensure that these CCAA Proceedings continue for the benefit of all stakeholders.
63. Finally, the Charge Extension is consistent with a large and liberal application of the CCAA in order to give effect to the statute's remedial purposes.
- (i) Contractual Rights, Powers and Duties of the Facilitator**
64. Under the Deeds of Covenants:
- (a) pursuant to the Facilitator Lending Provisions, the Project Facilitators may advance funds to the holders of the UFI in the Lands and, when such advances are made the Project Facilitators are entitled to receive repayment of those advances from any proceeds of the sale of the Lands in priority to any UFI Holders' (including the Offshore Investors') claim on their proportionate interest in such sale proceeds;<sup>43</sup> and

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<sup>41</sup> Tenth Report at para 123.

<sup>42</sup> Tenth Report at para 124(f).

<sup>43</sup> *Supra* notes 12 and 13.

- (b) pursuant to the Facilitator Indemnifications, the holders of the UFI in the Lands agreed to indemnify and pay, and forever hold harmless the Project Facilitators, and their servants, from and against any and all demands, claims, actions, causes of action, losses, costs, expenses, liabilities and damages incurred by the Facilitator by reason of acts, omissions or alleged acts or omissions arising out of the activities of the Facilitator on behalf of the UFI Holders in furtherance of the interests of the UFI Hodlers.<sup>44</sup>
65. Under the Special POAs, the Project Facilitators have the power to deal in any way whatsoever with the Offshore Investors' Proprietary Interests, including to release any and all possessory and proprietary rights as to the Lands or any part thereof as the Project Facilitators may be deemed necessary.<sup>45</sup>
66. The Monitor has stepped into the shoes of the Project Facilitators as a successor in rights under the Deeds of Covenant and the Special POAs following the pronouncement of the Initial Order and the ARIO, which granted the Monitor the Enhanced Powers and declared that Management shall have no further power or authority to direct the Debtor Companies.<sup>46</sup>
67. Moreover, the Facilitator Duties include those activities which the Monitor has undertaken, or will undertake, in the course of these CCAA Proceedings including:
- (a) the execution and carrying out of agreements on behalf of the Offshore Investors for the purposes of marketing the Lands;
  - (b) engaging in and defending actions in these CCAA Proceedings and pursuant to the Texas Plan on behalf of, and for the benefit of, all UFI Holders, including the Offshore Investors; and
  - (c) the future distribution of the proceeds of any sale of the Lands proportionately among all of the holders of UFIs in the Lands after the payment of expenses.<sup>47</sup>
68. Accordingly, as the Monitor has stepped into the shoes of the Project Facilitator, the Monitor is entitled to exercise the Project Facilitators rights and powers under the Deeds of Covenant and the Special POAs, including, without limitation the power to charge the Offshore Investors' Proprietary Interests.

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<sup>44</sup> *Supra* note 10.

<sup>45</sup> *Supra* note 14.

<sup>46</sup> Tenth Report at paras 116.

<sup>47</sup> *Supra* note 11; Tenth Report at para 115.

**(ii) Offshore Investor Support of the Charge Extension**

69. The Offshore Investors, with whom the Monitor has been in contact, are overwhelmingly in support of the Charge Extension.<sup>48</sup>
70. When the Previous Charge Extension Request was before Justice Simard the Monitor and its consultant, Azimuth, were only in contact with 127 Offshore Investors, most of whom had indicated their support for these CCAA Proceedings but all of whom had provided no opinion of the Previous Charge Extension Request.<sup>49</sup>
71. Conversely, in this instance, the Monitor, with the assistance of Azimuth, has been in contact with 408 Offshore Investors (which Offshore Investors have made aggregate investments of more than \$15,000,000 in the Projects). Of the 408 Offshore Investors with whom the Monitor was able to make contact, all but one of such Offshore Investors responded in favour of the Charge Extension.<sup>50</sup>

**(iii) Unfair Allocation of Risks and Costs to the Canadian Investors**

72. The Charges do not currently attach to the Offshore Investors' Proprietary Interests. Accordingly, the Offshore Investors do not currently bear any of the risks and costs of these CCAA Proceedings, notwithstanding that the Monitor has engaged with this stakeholder group and has engaged in activities for which the Offshore Investors directly benefit, such as the Additional Project Sales Process. As there are no Canadian Investors in the Additional Projects and the Additional Project Entities hold only a nominal number of UFI's in the Additional Project Lands. Accordingly, the Additional Project Sales Process is almost exclusively being undertaken for the benefit of the Offshore Investors.<sup>51</sup>
73. Conversely, the Canadian Investors currently bear the entirety of the cost of these CCAA Proceedings because the Canadian Investors' interests in the Lands and the proceeds of any sale of the Lands are held through the Canadian Investors' equity investment in certain of the CCAA debtors. As the CCAA Debtors' hold legal title to the Canadian Investors' interests, the Canadian Investors' interests are treated as "property of the Debtor Companies" for the purpose of attaching to the Charges.<sup>52</sup>
74. As a result of the foregoing, there exists an imbalance in the risk allocation of the Charges among the Canadian Investors and the Offshore Investors. The Canadian Investors currently bear the entirety of the cost of the Additional Project Sale Process but stand to gain none of the benefit.

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<sup>48</sup> Tenth Report at paras 121-123.

<sup>49</sup> November 25 Transcripts at 13:27-41 to 14:1-5.

<sup>50</sup> *Supra* note 41.

<sup>51</sup> Tenth Report at paras 111-112.

<sup>52</sup> Tenth Report at paras 110 and 113.

75. If the Charges are not expanded to the Offshore Investors' Proprietary Interests, the Canadian Investors will be unfairly prejudiced and the Offshore Investors unjustly enriched at the expense of the Canadian Investors.

76. Notwithstanding that the Canadian Investors and the Offshore Investors bargained for substantially the same underlying beneficial interests in the Projects, only the Canadian Investors' interests are charged because only the Canadian Investors interests are held within an investment structure which renders the Canadian Investors interests as "property of the Debtor Companies". Meanwhile the Debtor Companies' economic stake in the Projects are virtually non-existent.

**(iv) The Charge Extension is Required for the Continuation of these CCAA Proceedings**

77. The Interim Lender has indicated that it will not advance any more funds to the Monitor on behalf of the Debtor Companies unless the Monitor is able to secure a charge over the Offshore Investors' UFI in the Angus Manor Lands and the Additional Project Lands or monetize the Angus Manor Lands and the Additional Project Lands.<sup>53</sup>

78. The Interim Lending Facility has been drawn in full. The Monitor, on behalf of the Debtor Companies, currently has no other source of funds until the conclusion of the Angus Manor Sale Process and the Additional Project Sale Process, which could take several months. Absent the Charge Extension, the Monitor, on behalf of the Debtor Companies (including the Development Vehicles) will struggle to obtain the necessary liquidity to monetize the Lands for the benefit of all stakeholders including the Offshore Investors.<sup>54</sup>

79. Furthermore, the Charge Extension as it relates to the Administration Charge is required to protect the Insolvency Professionals and ensure their continued involvement in these CCAA Proceedings for the benefit of all stakeholders.

**(v) The Charge Extension is Consistent with a Purposive Interpretation of the CCAA**

80. The CCAA is a broad and remedial statute that must be interpreted purposively.<sup>55</sup> In most cases a purposive and liberal interpretation of the provisions of the CCAA will be sufficient to ground measures necessary to achieve the statute's remedial objectives.<sup>56</sup>

81. Typically, the CCAA is utilized for the purpose of facilitating voluntary compromises among various stakeholders with economic interests in "debtor companies." However, in this case the economic interests of the stakeholders are not in the Debtor Companies themselves, but rather in the Projects

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<sup>53</sup> *Supra* note 42.

<sup>54</sup> *Supra* note 42.

<sup>55</sup> *Callidus* at para 75.

<sup>56</sup> *Callidus* at para 65; [Century Services Inc. v Canada \(Attorney General\), 2010 SCC 60](#) ["**Century Services**"] at para 65.

in which the Canadian and Offshore Investors invested; the Canadian Investors through their purchase of units in limited partnerships and trusts that ultimately purchased UFIs in the projects and the Offshore Investors directly in UFIs.

82. Justice Simard noted that the purpose of the restrictions in section 11.2 and 11.52 of the CCAA are to prevent against the charging the interests of unwilling or involuntary participants with no economic stake in the “debtor company” whose insolvency the CCAA is engaged to address. The Offshore Investors are not “unwilling or involuntary participants”. Rather, the Offshore Investors represent a key class of stakeholders who have benefitted, and will continue to benefit from, these CCAA Proceedings. Moreover, the Offshore Investors have benefitted, and will continue to benefit from, the Charges as follows:
- (a) Offshore Rep Counsel has been appointed for the benefit of the Offshore Investors; the Professional Fees of Offshore Rep Counsel are secured by the Administration Charge; and
  - (b) due to, among other reasons, the highly fractured nature of the Lands, the complex investment structures employed by the A2A Group in the Projects and Management’s failure to discharge its obligations to the Investors, it is unlikely that the Debtor Companies would be able to conduct a realization and distribution process that is fair all Investors outside of these CCAA Proceedings.<sup>57</sup>
83. The within CCAA Proceedings present unique circumstances in which no stakeholder has a true economic interest in the Debtor Companies or the property of the Debtor Companies. The Offshore Investors’ and the Canadian Investors’ investments were in the Projects, and it’s the Projects’ insolvency which the Applicant Investors initiated these CCAA proceedings to address. The foregoing is evidenced by the fact that it is impossible to address the Debtor Companies’ insolvency without first addressing the Projects’ insolvency via the liquidation of the Lands. Accordingly, the “property” which should be charged pursuant to the Charges is not the “property of the Debtor Companies” but rather the UFI’s, which in reality constitutes the Project property.
84. Notwithstanding the foregoing, as matters currently stand, the only stakeholders whose interest in the Projects is currently encumbered by the Charges is the Canadian Investors, and not the Offshore Investors.
85. Accordingly, the Monitor requests that this Court make a declaration that the Offshore Investors Proprietary Interests be treated as “property of the Debtor Companies” pursuant to sections 11.2 and 11.52 of the CCAA in order to give effect to the Charge Extension.

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<sup>57</sup> [January Decision](#) at para 43

86. The Charge Extension is required for the furtherance of the remedial objectives of the CCAA including, without limitation: (i) the single proceeding model;<sup>58</sup> (ii) maximization of value for all stakeholders<sup>59</sup> and (iii) balancing the costs and benefits of these CCAA Proceedings amongst all stakeholders.<sup>60</sup>
87. Without the Charge Extension, the Canadian Investors must assume all of the costs and risks of these CCAA Proceedings until such time as the Projects are monetized.
88. As recognized by the Supreme Court of Canada (“**SCC**”) in *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 (“**Century Services**”), the “CCAA creates conditions for preserving the status quo while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all”.<sup>61</sup>
89. Where there is not equal footing amongst creditors, the SCC has also warned that there may be “skewed incentives against reorganizing under the CCAA” and this would “only undermine that statute’s remedial objectives and risk inviting the very social ills that it was enacted to avert.”<sup>62</sup>
90. The Monitor, as an officer of this Court, believes that the failure to grant the Charge Extension would undermine the CCAA’s remedial objective and skew incentives against a successful liquidation of the Projects under the CCAA because the Canadian Investors would be bearing all of the initial cost and risk in the CCAA Proceedings.
91. In light of all of the foregoing, the Monitor believes it is necessary and reasonable for this Court to make a declaration that the Offshore Investors interests in the Lands and the Offshore Investors’ interests in the proceeds of any sale of the Lands should be treated as “property of the Debtor Company” and that the Charges should attach to the Offshore Investors interests in the Lands and the Offshore Investors’ interests in the proceeds of any sale of the Lands.
92. The Charge Extension will ensure equitable treatment as between the Canadian Investors and Offshore Investors and finance the continuation of these CCAA Proceeding. This will allow for the resolution of the Debtor Companies’ insolvency and those Offshore Investors whom the Monitor has been able to contact are overwhelmingly in favour of the Charge Extension over their interests in the Lands to allow for the continuation of these CCAA Proceedings.

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<sup>58</sup> [Century Services](#) at para 22.

<sup>59</sup> [Callidus](#) at para 40 and 59.

<sup>60</sup> [Century Services](#) at para 47.

<sup>61</sup> [Century Services](#) at para 77.

<sup>62</sup> [Century Services](#) at para 47.

**(vi) Alternative Relief**

93. In the alternative, the Monitor requests that this Court grant an order authorizing the Monitor to charge the Offshore Investors' Proprietary Interests, in accordance with the Deeds of Covenant and the Special POAs, and declaring that the Monitor has a charge on the Offshore Investors' interest, whether legal or beneficial, in the proceeds of any sale of the Lands including the proceeds of the Fossil Creek Sale and the Water District Sale.
94. As further detailed in paragraphs 66 to 68 of this Brief, the Monitor has stepped into the shoes of the Project Facilitators as a successor in rights and obligation under the Deeds of Covenant and the Special POAs following the pronouncement of the Initial Order and the ARIO.
95. The Monitor, on behalf of the Project Facilitators, has undertaken, and will continue to undertake, the Facilitator Duties and in so doing has incurred significant costs and expenses. These costs and expenses incurred for the benefit of all UFI Holders, including the Offshore Investors, are essentially in-kind advances by the Monitor to the Offshore Investors in the amount of unpaid professional fees.
96. Pursuant to the Facilitator Lending Provisions in the Deeds of Covenant, such in-kind loan is already secured by a priority interest in the Offshore Investors' interest and rights in and to their proportionate share of the proceeds from the sale of the Lands, or any portion thereof.<sup>63</sup>
97. Furthermore, pursuant to the Special POAs the Monitor has the power, on behalf of the Project Facilitators, to deal with the UFI Holders' interests in any way whatsoever, including to release any and all possessory and proprietary rights of the Offshore Investors as to the Lands or any part thereof as the Project Facilitators may deem necessary for the benefit of the UFI Holders.<sup>64</sup>
98. Charging the lands, including the Offshore Investors' Proprietary Interests is in the best interests of all UFI Holders, including the Offshore Investors, because it will provide the liquidity necessary in these CCAA Proceedings to monetize the Projects for the benefit of all stakeholders.
99. Accordingly, the Monitor seeks the alternative relief of a declaration from this Court confirming the existence of a charge over the Investors' Proprietary Interests pursuant to the Facilitator Lending Provisions and a declaration authorizing the Monitor to charge the Offshore Investors' Proprietary Interests pursuant to the Special POAs.

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<sup>63</sup> *Supra* notes 12 and 13.

<sup>64</sup> *Supra* note 14.

**IV. CONCLUSION**

100. Based on the foregoing, the Monitor requests that this Honourable Court grant the Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of May, 2026.

**Cassels Brock & Blackwell LLP**

Per: 

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Jeffrey Oliver  
Counsel for the Monitor

V. LIST OF AUTHORITIES

STATUTES	
Tab	Authority
1.	<a href="#">Companies' Creditors Arrangement Act, RSC 1985, c C-36</a>
JURISPRUDENCE	
Tab	Authority
2.	<a href="#">Angus A2A GP Inc (Re), 2025 ABKB 51</a>
3.	<a href="#">Angus A2A GP Inc v Alvarez &amp; Marsal Canada Inc, 2026 ABCA 156</a>
4.	<a href="#">Stelco Inc (Re), 2004 CanLII 24933 (ONSC)</a>
5.	<a href="#">Re Canada North Group Inc, 2017 ABQB 508,</a>
6.	<a href="#">9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10</a>
7.	<a href="#">Target Canada Co (Re), 2015 ONSC 7574</a>
8.	<a href="#">Winalta Inc. (Re), 2011 ABQB 399</a>
9.	<a href="#">Re Nortel Networks Corporation et al, 2017 ONSC 673</a>
10.	<a href="#">Nortel Networks Inc., 2022 ONSC 6680</a>
11.	<a href="#">Redcorp Ventures Ltd. (Re), 2016 BCSC 188</a>
12.	<a href="#">Canwest Publishing Inc (Re), 2010 ONSC 222</a>
13.	<a href="#">Alderbridge Way GP Ltd (Re), 2022 BCSC 1694</a>
14.	<a href="#">Century Services Inc. v Canada (Attorney General), 2010 SCC 60</a>