

YOU COURT FILE NO.: 2401-15969

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp



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**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5

Telephone: 403 351 2920/ 403 351 2922

Facsimile: 403 648 1151

Email: joliver@cassels.com / dmarechal@cassels.com

File No.: 57100-4

Attention: Jeffrey Oliver/Danielle Marechal

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I. OVERVIEW

1. On November 14, 2024, on application by an ad hoc group of Canadian investors in various real estate and land investment projects (the "**Applicant Investors**"), this Honourable Court granted an initial order (the "**Initial Order**") providing protection to the Debtor Companies (as defined in the Initial Order) under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") and granting the following relief, among other things:
 - (a) appointing Alvarez & Marsal Canada Inc. as monitor of the Debtor Companies (in such capacity, the "**Monitor**") with certain enhanced powers;
 - (b) appointing Fasken Martineau DuMoulin LLP as representative counsel for the Canadian investors (in such capacity, the "**Canadian Representative Counsel**");
 - (c) appointing Norton Rose Fulbright Canada LLP as representative counsel for the investors outside of Canada (in such capacity, the "**Foreign Representative Counsel**", and together with Canadian Representative Counsel, "**Representative Counsel**");
 - (d) authorizing the Debtor Companies, with the enhanced oversight and control of the Monitor, to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof and to continue to carry on business in a manner consistent with the preservation of their businesses;
 - (e) granting a stay of proceedings (the "**Stay**"), for an initial period up to and including November 24, 2024 (the "**Initial Stay**") for the Debtor Companies, the Property, the Business, and the Affiliate Entities (as defined below);
 - (f) declaring that the Angus A2A Limited Partnership, Angus Manor Park A2A Limited Partnership, Fossil Creek A2A Trust, Hills of Windridge A2A Trust, Fossil Creek A2A Limited Partnership and Hills of Windridge A2A LP (collectively, the "**Affiliate Entities**") shall have the same benefit and the same protections and authorizations provided to the Debtor Companies in the Initial Order and all the property and business of the Affiliate Entities shall be deemed to be the Property and Business (each as defined in the Initial Order of the Debtor Companies);
 - (g) authorizing the Monitor to take whatever steps necessary with the Alberta, Federal and Ontario corporate registries to reinstate certain struck Debtor Companies and Affiliate Entities;
 - (h) authorizing the Debtor Companies to enter into an interim financing agreement with Pillar Capital Corp. ("**Pillar**" or the "**Interim Lender**") and to borrow from Pillar the initial principal

amount of \$500,000 with the ability in the future to borrow up to \$2,000,000 (the "**Interim Financing**");

- (i) granting the following charges over the Property in the following relative priorities:
 - (i) First – a charge in favour of the Monitor, its legal counsel, and Representative Counsel (the "**Administration Charge**") to a maximum amount of \$250,000; 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**");(collectively, the "**Charges**"); and
- (j) authorizing the Monitor to act as "Foreign Representative" of the A2A Group, in order to apply for a Temporary Restraining Order in the United States and subsequently apply to commence ancillary insolvency proceedings under Chapter 15 of Title 11 of the US Bankruptcy Code in the US Bankruptcy Court for the Northern District of Texas.

- 2. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Brief of the Applicant Investors, filed on November 12, 2024 (the "**Applicant Investors' Brief**").

II. INTRODUCTION

- 3. This bench brief is submitted on behalf of the Monitor in support of its application (the "**Comeback Application**") for an amended and restated initial order ("**ARIO**") pursuant to the CCAA, seeking the following, 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 up to and including February 28, 2025 (the "**Stay Period**"), with respect to the Debtor Companies and the Affiliate Entities;
 - (iii) declaring that Windridge Trust and Fossil Creek Trust shall have the same benefit, protections and authorizations provided to the Debtor Companies in the Initial Order (collectively the "**CCAA Protections**"), notwithstanding that these entities are not a "company" within the meaning of the CCAA;
 - (A) or in the alternative an order enjoining the sale of the Windridge Lands (as defined at paragraph 71 of the Edwards Affidavit) and the Fossil Creek Lands (as defined at paragraph 17 of the Lauzon Affidavit), and together with the Windridge Lands, the "**Texas Lands**");

- (iv) authorizing the Monitor to register a copy of the ARIO on title to the Angus Manor Lands (as defined at paragraph 55 the Edwards Affidavit);
- (v) granting an increase in the Administration Charge to a maximum amount of \$500,000;
- (vi) granting an increase in borrowings under the Interim Lending Facility to a maximum principal amount of \$2,000,000 and granting a corresponding increase to the Interim Lender's Charge;
- (vii) authorizing an expansion of the Administration Charge and Interim Lender's Charge to all UFIs in the Property; and
- (viii) removing the current trustees of Hills of Windridge Trust, Fossil Creek Trust, Hills of Windridge A2A Trust and Fossil Creek A2A Trust (collectively, the "**Investor Trusts**") and replacing the trustees with the Monitor as new trustee.

(together with all other relief requested pursuant to the ARIO, the "**Comeback Relief**").

III. FACTS

4. The facts relevant to the Application are set out in detail in Applicant Investors' Brief. The Monitor adopts and relies on the facts set out in the Applicant Investors' Brief.

IV. ISSUES

5. The Monitor submits that the principal issues to be determined by this Honourable Court are whether:
- (a) the Comeback Relief should be approved;
 - (b) the Stay should be extended to February 28, 2025;
 - (c) the CCAA Protections should be extended to Windridge Trust and Fossil Creek Trust, or in the alternative, the sale of the Texas Lands should be enjoined;
 - (d) the Monitor should be permitted to register a copy of the ARIO on title to the Angus Manor Lands;
 - (e) the Charges should be increased and expanded to all UFIs in the Property; and
 - (f) the current trustees of the Investor Trusts should be removed and replaced with the Monitor.

V. LAW & ANALYSIS

A The Comeback Relief Should be Approved

6. The Monitor submits that this Honourable Court should exercise its discretion to grant the ARIO and approve the Comeback Relief for the following reasons:
 - (a) the Debtor Companies are insolvent;
 - (b) the CCAA applies to the Debtor Companies;
 - (c) the Comeback Relief is necessary to maximize recovery for all stakeholder; and
 - (d) the Monitor has provided notice of its intention to seek the ARIO and the Comeback Relief sought therein.
7. The CCAA applies in respect of a “debtor company or affiliated debtor companies” with outstanding claims against it of at least \$5,000,000.¹ With respect to paragraph 6(a) and (b) hereof, the Monitor specifically adopts and relies on paragraph 47 to 55 of the Applicant Investor’s Brief.
8. CCAA Courts have held that if there is an opportunity to reorganize, then that opportunity should be given to the Debtor Companies to achieve that purpose.² Restructuring proceedings under the CCAA provide a means for a court-supervised attempt to reorganize the affairs of the Debtor Companies and provides the Debtor Companies, via the Monitor, breathing space to do so.³
9. The CCAA proceedings will provide the Debtor Companies, via the Monitor, the flexibility to evaluate how best to reorganize their affairs to maximize recovery for all stakeholders.

B The Stay Should be Extended

10. Pursuant to section 11.02(3) of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that it has acted, and is acting, in good faith and with due diligence.⁴ There is no statutory time limit on how long a stay of proceedings can be extended.
11. The Initial Stay expires on November 24, 2024. The Monitor requests that the stay of proceedings be extended to the earlier of: (i) the termination of these CCAA Proceedings; or (ii) February 28, 2025.
12. 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

¹ [Companies’ Creditors Arrangement Act, RSC 1985, c C-36](#) [“CCAA”] at s 3(1) [Tab 1].

² [Re Northland Properties Ltd.](#), 1988 CanLII 2924 at para 7 [Tab 11].

³ [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60 [“Century Services”] at para 59 [Tab 9].

⁴ CCAA at ss 11.02(2) and (3) [Tab 1].

February 28, 2025 is necessary in order to allow the Monitor the time to secure the applicable assets, communicate with stakeholders, investigate the business and affairs of the Debtor Companies and Affiliate Entities, and assess potential realization strategies and restructuring options.

13. The conduct of the Debtor Companies, via the enhanced powers of the Monitor, to date have been lawful, proper, and consistent the Monitor's powers under the Initial Order.
14. With the benefit of the Interim Financing to be provided pursuant to the Interim Financing Term Sheet (as defined in the Initial Order), the Monitor, on behalf of the Debtor Companies, will have sufficient funding for the duration of the extended Stay Period. Further, no stakeholder will be materially prejudiced by an extension of the Stay Period and the requested extension is in the stakeholders' best interests.

C The CCAA Protections should be extended to Windridge Trust and Fossil Creek Trust, or in the alternative, the sale of the Texas Lands should be enjoined

15. The Monitor understood, from the FC and the Windridge OM that the Canadian Investors' investments in the Fossil Creek Lands are held through Fossil Creek A2A Limited Partnership and the Canadian Investors investments in the Windridge Lands are held through Hills of Windridge A2A LP. However, certain documents, (which will be further particularized in the First Report of the Monitor (the "**First Report**")) indicate the Texas Lands may in fact be registered in the name of Dirk Foo, as trustee of Hills of Windridge A2A Trust and/or Hills of Windridge Trust and Fossil Creek A2A Trust and/or Fossil Creek Trust.
16. The Monitor has requested from its US counsel title particulars to definitively determine which entities are listed as the registered owners on title to the Texas Lands.
17. Pursuant to section 11 of the CCAA, this Court has the broad discretion to make any order that is considers appropriate in the circumstances, subject only to the restrictions contained in the CCAA.⁵ Accordingly, the Monitor is seeking an order declaring that Fossil Creek Trust and Hills of Windridge Trust shall have the same benefit, protections and authorizations provided to the Debtor Companies in the ARIO, and that all the property and business of the Fossil Creek Trust and Hills of Windridge Trust shall be deemed to be the Property and Business of the Debtor Companies or, in the alternative, an order enjoining the sale of all or any part of the Texas Lands pending determination of the rightful ownership of the Texas Lands.

⁵ CCAA at s 11 [Tab 1].

(i) Extension of CCAA Protections

18. Notwithstanding that the definition of an eligible “company” under section 3 of the CCAA does not include partnerships or trusts, CCAA courts have exercised jurisdiction to extend benefits, protections and authorizations provided pursuant to the CCAA to where it is just and convenient to do so.⁶
19. In this case, this Honourable Court: (i) declared that certain Affiliate Entities (as defined in the Initial Order), including Fossil Creek A2A Trust and Hills of Windridge A2A Trust, are integrally related to the Debtor Companies’ business and the Applicant Investors’ interests; and (ii) ordered that the Affiliate Entities shall have the same benefit, protections and authorizations provided to the Debtor Companies in the Initial Order, and all the property and business of the Affiliate Entities shall be deemed to be the Property and Business of the Debtor Companies.
20. The Monitor submits that it is just and convenient to further extend the scope of these CCAA proceedings to include Hills of Windridge Trust and Fossil Creek Trust until such time as the Monitor is able to definitively determine those entities which are listed as the registered owners on title to the Texas Lands in order to prevent the transfer of the Texas Lands (or any interest therein) outside of the scope of these CCAA proceedings.
21. Additionally, pursuant to paragraph 32(b) of the Initial Order, the Monitor was granted authority to, among other things, preserve, protect and exercise control over the Property (as defined in the Initial Order), wherever the Monitor considers it necessary to do so.
22. An order declaring that Fossil Creek Trust and Hills of Windridge Trust shall have the same benefit, protections and authorizations provided to the Debtor Companies in the ARIO, and that all the property and business of the Fossil Creek Trust and Hills of Windridge Trust shall be deemed to be the Property and Business of the Debtor Companies is necessary for the Monitor to preserve, protect and exercise control over the Texas Lands. This relief is consistent with the relief granted in the Initial Order with respect to Windridge A2A Trust and Fossil Creek A2A Trust, and is necessary for the efficacy and efficiency of these proceedings.

(ii) Enjoining the Sale of the Texas Lands

23. In the alternative, the Monitor submits that this Court should exercise its broad discretion under section 11 of the CCAA to enjoin the sale of the Texas Lands until such time as the Monitor is able to definitively determine ownership of the Texas Lands.

⁶ [Canwest Global Communications Corp \(Re\)](#), [2009] CarswellOnt 6184, [2009] OJ No 4286 at para 29 [Tab 7].

24. CCAA courts have held that section 11 discretionary relief under the CCAA is appropriate in circumstances where the relief sought advances the CCAA's remedial objectives.⁷ An order enjoining the sale of the Texas Lands is sought to, among other things: (i) facilitate the single proceedings model by preventing the transfer of the Texas Lands outside the scope of these CCAA proceedings; and (ii) preserving the *status quo* for a period of time to allow the Monitor to investigate and review the current business and affairs of the Debtor Companies to identify and assess potential restructuring options.⁸

D The Monitor should be permitted to register a copy of the ARIO on title to the Angus Manor Lands

25. The Monitor is seeking relief in the ARIO which would permit the ARIO to be registered by the Ontario Land Registry Office (the "**ON Registry**") on title to the Angus Manor Lands.
26. Pursuant to paragraph 32(b) of the Initial Order, the Monitor was granted authority to, among other things, preserve, protect and exercise control over the Property (as defined in the Initial Order), wherever the Monitor considers it necessary to do so.
27. The ON Registry requires explicit language in a court order to permit registration of such order on title.
28. As set out in detail at paragraphs 94 to 98 of the Edwards Affidavit, there is significant concern about an impending sale of the Angus Manor Lands.
29. The Applicant Investors only became aware of a possible sale of the Angus Manor Lands when the Sale Notice (as defined in the Edwards Affidavit) was posted to a Facebook page which appears to be created by disgruntled A2A Group investors.⁹
30. The Monitor is seeking this Court's approval to register the ARIO on title to the Angus Manor Lands to prevent a premature sale until there has been sufficient time for the Monitor to investigate concerns surrounding the potential Angus Manor transaction including, without limitation, the apparent lack of notice provided to the Canadian Investors by the A2A Group.

E The Charges should be increased and expanded to all UFI's in the Property

31. The Monitor is seeking the approval of this Honourable Court to increase the Charges in the ARIO and expand such Charges to all UFI's in the Property.

⁷ [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at para 49 [**Tab 4**].

⁸ [Century Services](#) at para 77 [**Tab 9**].

⁹ Affidavit of Michael Edwards, sworn November 12, 2024 [the "**Edwards Affidavit**"] at para 94.

(i) Administration Charge

32. The Initial Order established an Administration Charge, in the amount of \$250,000. The initial amount of the Administration Charge was intended to provide security for the respective fees and disbursements of the beneficiaries of the Administration Charge, during the initial ten (10) day Initial Stay. In connection with the Comeback Application, on the basis of the projected cashflow of the Debtor Companies (which shall be affixed to the First Report), the Monitor requests that this Honourable Court increase the amount of the Administration Charge to \$500,000.
33. Section 11.52 of the CCAA provides statutory jurisdiction to order the Administration Charge.¹⁰ The following list of non-exhaustive factors are to be considered by this Court when considering an increase to the value of an 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.¹¹
34. 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, any sale or restructuring of the Property will be complex given the number of stakeholders and the necessity for cross-border insolvency proceedings;
 - (b) all beneficiaries of the Administration Charge (*i.e.*, the Monitor, counsel to the Monitor and Representative Counsel) have contributed, and will continue to contribute, to the restructuring efforts of Debtor Companies and there is no unwarranted duplication of roles; and

¹⁰ CCAA at s 11.52 [Tab 1].

¹¹ [Canwest Publishing Inc \(Re\), 2010 ONSC 222](#) at para 54 [Tab 8]; see also [Alderbridge Way GP Ltd \(Re\), 2022 BCSC 1694](#) at para 45 [Tab 5].

- (c) the quantum of the charge is fair and reasonable in light of the enhanced powers and responsibilities of the Monitor under the ARIO, and the professional expertise and knowledge required by the Monitor and other beneficiaries of the Administration Charge in order to successfully navigate these CCAA Proceedings and maximize value for the benefit of all stakeholders.

- 35. The proposed increase to the Administration Charge is appropriate and necessary in light of the Businesses, Properties, the Monitor's duties, the duties of counsel to the Monitor, and the duties and necessity for Representative Counsel.
- 36. 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.

(ii) Interim Lender's Charge

- 37. The Initial Order authorized the Monitor, on behalf of the Debtor Companies, to obtain and borrow under the Term Sheet and/or Definitive Documents, interim financing in an initial principal amount not to exceed \$500,000 and granted an Interim Lender's Charge in an amount to secure all obligations under the Term Sheet and/or Definitive Documents.
- 38. In connection with: (i) the Term Sheet and/or Definitive Documents; and (ii) the Consolidated Cash Flow Forecast (as defined in the First Report), the Monitor requests that this Honourable Court increase the amount that the Monitor, on behalf of the Debtor Companies, is permitted to borrow under the Term Sheet and/or Definitive Documents from \$500,000 to \$2,000,000 and requests a corresponding increase in the Interim Lender's Charge to secure all obligations under the Term Sheet and/or Definitive Documents.
- 39. Section 11.2 of the CCAA provides this Court with the necessary authority to grant a charge in respect of interim lending, on notice to affected secured creditors, having regard to the Debtor Companies' cash flow forecast.¹²
- 40. In granting an increase to the amount of the interim financing and the Interim Lender's Charge, this Honourable Court must consider:
 - (a) the period during which the Debtor Companies are expected to be subject to CCAA proceedings;
 - (b) how the Debtor Companies' business and financial affairs are to be managed;
 - (c) whether major creditors are confident in the Debtor Companies;

¹² CCAA at s 11.2 [Tab 1].

- (d) whether the DIP Facility (as defined in the Interim Financing Term Sheet) would enhance the prospects of a viable compromise or arrangement being made in respect of the Debtor Companies;
 - (e) the nature and value of the Property;
 - (f) whether any creditor would be materially prejudiced by the increase to the Interim Lender's Charge; and
 - (g) the position of the Monitor.¹³
41. The Monitor has reviewed the terms and economics of the Term Sheet and is of the view that it is commercially reasonable in the circumstances, including the annual interest rate and the Interim Lender's Charge.
42. The increase in the interim financing and Interim Lender's Charge will further assist in ensuring that the Business and the Property remain viable and marketable during the Stay Period. The failure to increase the amount of the interim financing and the Interim Lender's Charge will result in the Debtor Companies, via the enhanced powers of the Monitor, being unable to have sufficient liquidity to cover the expenses of the Business and will not preserve the value of the Property for the benefit of all stakeholders for the duration of the Stay Period.
43. In light of the foregoing, the Monitor respectfully requests that the Court approve the increase in the amount of the interim financing and the Interim Lender's Charge.

(iii) Expansion of the Charges to all UFI's in the Property

44. The Monitor requests that this Honourable Court exercise its broad discretion pursuant to section 11 of the CCAA to grant an order declaring that the Charges shall attach to the UFI's.
45. Due to the fractional nature of title to the Property resulting from the UFI's, expansion of the Charges to all UFI's in the Property is required for the furtherance of the remedial objectives of the CCAA including, without limitation: (i) the single proceeding model; and (ii) maximization of value for all stakeholders.
46. 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".¹⁴

¹³ [*Soccer Express Trading Corp. \(Re\)*, 2020 BCSC 749](#) at para 99 [Tab 12].

¹⁴ [*Century Services*](#) at para 77 [Tab 9].

47. In *Century Services*, the SCC affirmed the importance of the single proceeding model of insolvency law:

The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor's limited assets while the other creditors attempt a compromise.¹⁵

48. 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."¹⁶
49. If the Charges are not expanded to all UFIs in the Property, the Canadian Investors whose interest in the Property are held through various Affiliate Entities will be prejudiced and the Offshore Investors will be unjustly enriched at the expense of the Canadian Investors. Further, the ARIO preserves future rights of stakeholders to allocate the Charges as between all stakeholders, including as between Canadian Investors and the Offshore Investors.
50. While the UFI's represent property interests of Offshore Investors that are not owned by the Debtor Companies, CCAA Courts have expanded the application of CCAA charges to attached to the property interests of third parties where those parties will benefit from the proceedings.¹⁷
51. Further, the expansion of the Interim Lending Charge to the UFI's is a condition precedent to further funding from the Interim Lender, as will be described further in the First Report of the Monitor.
52. In conclusion, the object and purpose of these CCAA Proceedings will be furthered through the expansion of the Charges to the UFIs, subject to rights of allocation and other protections contained in the ARIO.

F The Current Trustees of the Investor Trusts Should be Removed and Replaced with the Monitor

53. The Monitor requests that this Honourable Court grant an order removing the trustees of the Investor Trusts and appointing the Monitor as named trustee of the Investor Trusts.
54. According to the FC OM and the Windridge OM, Fossil Creek A2A Trust was established under the laws of the Province of Alberta and Hills of Windridge A2A Trust was established under the laws of

¹⁵ [Century Services](#) at para 22 [Tab 9].

¹⁶ *Ibid* at para 47 [Tab 9].

¹⁷ [Western Express Air Lines Inc \(Re\)](#), 2005 BCSC 53 at para 18 [Tab 13]; see also [Atlantica Diversified Transportation Systems Inc. \(Re\)](#), 2018 NSSC 77 at para 44 [Tab 6].

the Province of Ontario. The Monitor does not have full insight into the Fossil Creek Trust and the Hills of Windridge Trust.


55. Dirk Foo is known be the trustee of Fossil Creek A2A Trust and Hills of Windridge A2A Trust, and believed to be the trustee of Fossil Creek Trust and the Hills of Windridge Trust. Dirk Foo is a defendant in a number of claims brought in the United States which allege, among other things, fraudulent conveyance, breach of trust, mismanagement, and fraud (the “**Ongoing Litigation**”).¹⁸
56. Pursuant to section 20(2) of the *Trustee Act* (Alberta)¹⁹ and sections 5(1) of the *Trustee Act* (Ontario),²⁰ a Court may remove a trustee when it is expedient to appoint a new trustee and it is found inexpedient, difficult or impracticable to do so without the assistance of the Court.
57. The welfare of the beneficiaries is the governing principle on which the Courts have relied to determine whether or not a trustee should be removed.²¹ The onus is on the party seeking the removal of a particular trustee to convince the Court that the removal of a particular trustee is clearly necessary and that non-removal would prevent the trust being properly carried out.²²
58. The Monitor submits that the removal of the trustees of the Investor Trusts is clearly necessary as a result of the Management Misconduct (further particularized in the Applicant Investors’ Brief) including various alleged acts of breach of trust. As a result of the Ongoing Litigation and the Management Misconduct, the Applicant Investors have lost all faith in the ability of the trustees of the Investor Trust to carry out their fiduciary duties and act in a manner that preserves and protects the rights of the Applicant Investors and other stakeholders.

VI. CONCLUSION

59. Based on the foregoing, the Monitor requests that this Honourable Court grant the ARIO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of November, 2024.

Cassels Brock & Blackwell LLP

Per: 

Jeffrey Oliver
Counsel for the Monitor

¹⁸ Edwards Affidavit at paras 88-92.

¹⁹ [Trustee Act, SA 2022, c T-8.1](#) at s 20 [Tab 3].

²⁰ [Trustee Act, RSO 1990, c T.23](#) at s 5(1) [Tab 2].

²¹ [Limebeer Estate \(Re\)](#), [2005] OJ No 375, [2005] OTC 87 at para 20 [Tab 10].

²² [Ibid](#) at para 22 [Tab 10].

VII. LIST OF AUTHORITIES

STATUTES

Tab	Authority
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- | | |
|----|---|
| 1. | <u>Companies' Creditors Arrangement Act, RSC 1985, c C-36</u> |
| 2. | <u>Trustee Act, RSO 1990, c T.23</u> |
| 3. | <u>Trustee Act, SA 2022, c T-8.1</u> |

JURISPRUDENCE

Tab	Authority
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| 4. | <u>9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10</u> |
| 5. | <u>Alderbridge Way GP Ltd (Re), 2022 BCSC 1694</u> |
| 6. | <u>Atlantica Diversified Transportation Systems Inc. (Re), 2018 NSSC 77</u> |
| 7. | <u>Canwest Global Communications Corp (Re), [2009] CarswellOnt 6184, [2009] OJ No 4286</u> |
| 8. | <u>Canwest Publishing Inc (Re), 2010 ONSC 222</u> |
| 9. | <u>Century Services Inc. v. Canada (Attorney General), 2010 SCC 60</u> |
| 10. | <u>Limebeer Estate (Re), [2005] OJ No 375, [2005] OTC 87</u> |
| 11. | <u>Re Northland Properties Ltd, 1988 CanLII 2924</u> |
| 12. | <u>Soccer Express Trading Corp. (Re), 2020 BCSC 749</u> |
| 13. | <u>Western Express Air Lines Inc (Re), 2005 BCSC 53</u> |