



COURT FILE NUMBER

2401-15969

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March 3, 2025

JUDICIAL CENTRE

CALGARY

MATTER

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ANGUS A2A GP INC., ANGUS
MANOR PARK A2A GP INC., ANGUS MANOR PARK
A2A CAPITAL CORP., ANGUS MANOR PARK A2A
DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP
INC., WINDRIDGE A2A DEVELOPMENTS, LLC,
FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A
DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC.,
SERENE COUNTRY HOMES (CANADA) INC. and A2A
CAPITAL SERVICES CANADA INC.

DOCUMENT

**BRIEF OF FOSSIL CREEK A2A DEVELOPMENTS,
LLC AND WINDRIDGE A2A DEVELOPMENTS, LLC**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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Application scheduled for March 3, 2025, commencing at 2:00 p.m.
before the Honourable Justice G. A. Campbell

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I. INTRODUCTION

1. This Brief is filed on behalf of the Respondents Fossil Creek A2A Developments, LLC (“**Fossil Creek LLC**”) and Windridge A2A Developments, LLC (“**Windridge LLC**” and, together with Fossil Creek LLC, the “**LLCs**”) in response to the application of the court-appointed monitor in these *Companies’ Creditors Arrangement Act*¹ (“**CCAA**”) proceedings, Alvarez & Marsal Canada Inc. (the “**Monitor**”) to, *inter alia*, extend the stay of proceedings to April 30, 2025 and for this Court’s approval of its plan (the “**Texas Plan**”) in response to the direction of the Honourable Justice Feasby in his Reasons for Decision dated January 29, 2025 (the “**January 29 Decision**”) and related Order filed February 10, 2025.

2. Specifically, Justice Feasby dismissed the application of the respondents to these CCAA proceedings, including the LLCs (collectively, the “**CCAA Respondents**”), filed November 21, 2024 to set aside the CCAA proceedings (the “**Set Aside Application**”), but also held as follows:

Though I have confirmed that the *CCAA* proceedings are appropriate, the evidence is clear that the Windridge lands, the proceeds of the small parcel of the Windridge lands sold to TRWD, and the proceeds of the sale of the Fossil Creek lands remain outside the reach of the *CCAA*. If those lands and proceeds cannot be brought under the control of the Monitor through the Chapter 15 proceedings or otherwise, then the *CCAA* proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs. The Monitor shall have 21 days from the date of these Reasons to provide a plan for gaining control of the Windridge lands and the proceeds of the sales of the Windridge lands and Fossil Creek lands to the Court. If a reasonable plan is not provided to the Court within 21 days, then the *CCAA* proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs.²

3. The “Windridge and Fossil Creek entities, including the US LLCs” as described in the January 29 Decision are the following entities:

- (a) The LLCs (i.e., the same entities identified in the January 29 Decision as “the US LLCs”), each of which are incorporated in Texas and neither of which carry on business in or have any assets in Canada, represented by Bennett Jones LLP; and

¹ *Companies’ Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended [CCAA] [TAB 1].

² *Angus A2A GP Inc (Re)*, [2025 ABKB 51](#) [Comeback Decision] at paras 87-88 [TAB 2].

- (b) Fossil Creek A2A GP Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A Limited Partnership, Hills of Windridge A2A LP, Fossil Creek A2A Trust and Hills of Windridge A2A Trust, represented by Miles Davison LLP and by Metcalfe, Blainey & Burns LLP (collectively, the “**WFC Canadian Entities**”, and together with the LLCs, the “**WFC Entities**”).

4. The Monitor provided its Texas Plan to the Court via its Fourth Report filed February 19, 2025. By Order of Justice Feasby, the Court’s determination as to whether that Texas Plan is reasonable is scheduled to be determined by the Honourable Justice Campbell at a hearing on March 3, 2025.

5. The LLCs submit that the Monitor’s Texas Plan is not reasonable and should not be approved. The LLCs submit that the Monitor’s application for approval of the Texas Plan, and its application to extend the stay of proceedings as against the WFC Entities (including the LLCs) and for any other relief as against the WFC Entities should be dismissed, and that the CCAA proceedings must terminate as against the WFC Entities. This Brief sets out the LLCs’ reasons in that regard.

II. FACTS

6. Part A of these Facts sets out the background to these CCAA proceedings. Part B of these Facts sets out the background to the real estate development projects relating to the WFC Entities, and the role of the LLCs in relation to the same. Part C sets out the entitlements of the investors in those real estate development projects.

A. Background to the CCAA proceedings

7. The Initial Order in these CCAA proceedings was granted November 14, 2024, essentially on an *ex parte* basis,³ and without an order for service *ex juris*⁴ after Michael Edwards, Paul Lauzon, Isabelle Brousseau, Pat Wedlund, and Brian Richards (together, the “**Applicant Investors**”), being investors in certain real estate development projects known as the “**Windridge Project**” located in Texas, and the “**Fossil Creek Project**” located in Texas (together with the Windridge Project, the “**WFC Projects**”) and the “**Angus Manor Park**

³ Transcript of proceedings before Justice C.C.J. Feasby, November 14, 2024 (“**November 14 Transcript**”) [TAB A], p 4/23-27.

⁴ In the circumstances where no order for service *ex juris* had been sought or granted.

Project” located in Ontario, (collectively, the “**Projects**”), filed an Originating Application⁵ under s. 11.02 of the CCAA for an Initial Order for a ten-day stay of proceedings and to appoint the Monitor in respect of the CCAA Respondents, along with six Affidavits and a Pre-Filing Report of the proposed Monitor and (in the alternative) proposed receiver.

8. At the hearing on November 14, 2024, a two-week adjournment was requested by counsel (at that time) for the CCAA Respondents.⁶ Counsel for the Applicant Investors objected to the adjournment request, asserting there was urgency to the application due to a post on a Facebook page for disgruntled investors⁷ located by Azimuth, “an entity in Calgary that has previously assisted investors in exempt market offerings to obtain information and in some cases, pursue restructuring opportunities.”⁸ The Facebook post states that it relates to an offer to purchase property known as “Angus Manor Park”, of approximately 167 acres located in Essa Township, Ontario. The Facebook post includes no reference to the Windridge Project or to the Fossil Creek Project, and solicits votes on an offer on the Angus Manor Park Project.⁹ The adjournment request was denied due to a finding of urgency based on the Facebook post.¹⁰

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

- (a) appointing the Monitor and granted, in the words of this Court, “very wide-ranging enhanced powers”¹¹ to the Monitor to exercise the management and control of the “Debtor Companies” as defined therein¹² (thus stripping the CCAA Respondents, including the LLCs, of control of their own companies);
- (b) granting a stay of proceedings up to and including November 24, 2024 (the “**Stay Period**”);
- (c) appointing Fasken Martineau DuMoulin LLP as representative counsel (“**Canadian Representative Counsel**”) for Canadian investors in the Projects (the “**Canadian Investors**”);

⁵ Originating Application filed November 12, 2024 [TAB B].

⁶ November 14 Transcript, pp 11/17-13/30, 17/28-18/15 [TAB A].

⁷ Edwards Affidavit, Part 1, para 94, Part 6, Exhibit “39” [TAB C]; November 14 Transcript, p 7/24-31, 14/17-15/36, 17/37-18/15 [TAB A].

⁸ Edwards Affidavit, Part 1, para 94, Part 6, Exhibit “39” [TAB C].

⁹ *Ibid.*

¹⁰ November 14 Transcript, p 17/41-18/3 [TAB A].

¹¹ November 25 Transcript, p 7/22-24 [TAB D].

¹² Initial Order granted November 14, 2024 (“**Initial Order**”) [TAB E], paras 9-14.

- (d) appointing Norton Rose Fulbright Canada LLP as representative counsel (“**Offshore Representative Counsel**” and, together with Canadian Representative Counsel, “**Representative Counsel**”) for foreign investors in the Projects (the “**Offshore Investors**” and, together with the Canadian Investors, the “**Investors**”);
- (e) authorizing the Monitor to enter into an interim financing agreement with Pillar Capital Corp. (the “**Interim Lender**”) and to borrow \$500,000, with the ability in the future to borrow up to \$2,000,000, from the Interim Lender;
- (f) granting an administrative charge and an interim lender’s charge against the property, assets and undertakings of the CCAA Respondents;
- (g) authorizing the Monitor to act as foreign representative of the CCAA Respondents in relation to ancillary insolvency proceedings to be commenced under Chapter 15 of Title 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Texas.

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

11. An Initial Order commenced by a party that is neither a debtor, a creditor, or a representative of creditors (i.e., a receiver or an interim receiver) appears to be, prior to this case, unprecedented in Canadian law.¹³

12. On November 18, 2024, the Monitor filed an application returnable on November 21, 2024, seeking an amended and restated initial order in the CCAA proceedings (the “**Comeback Application**”).¹⁴

¹³ K. Forbes, “An Exploration of Creditor-Initiated CCAA Proceedings”, in Insolvency Institute of Canada, IIC-ART Vol. 13-1 [*Forbes*] [TAB 3], p 2. No precedent for CCAA proceedings commenced by investors, as compared to creditors, has been located: Review of Government of Canada, CCAA records search (after 2014), online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/CCAA-records-search-after-2014> [TAB 4]; Government of Canada, CCAA - Records search (2014-2009), online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/ccaa-records-2009-2014> [TAB 5].

¹⁴ Application of the Monitor filed November 18, 2024 [TAB F].

13. On November 20, 2024, the CCAA Respondents, including the LLCs, served the Set Aside Application,¹⁵ to be heard November 21, 2024 (the “**Comeback Hearing**”).
14. On November 20, 2024, the Monitor filed the First Report of the Monitor.¹⁶
15. On November 21, 2024:
 - (a) the CCAA Respondents, including the Applicants, filed the Affidavit of Allan Lind sworn November 21, 2024 (the “**First Lind Affidavit**”),¹⁷ the Affidavit of Grayson Ambrose sworn November 21, 2024 (the “**First Ambrose Affidavit**”), and the second Affidavit of Grayson Ambrose sworn November 21, 2024 (the “**Second Ambrose Affidavit**”) in support of the Set Aside Application; and
 - (b) the Honourable Justice Simard heard submissions on the Comeback Application, granted an order extending the Stay Period to and including November 26, 2024, and reserved his decision on the Comeback Application and the Set Aside Application.¹⁸
16. On November 22, 2024, the Monitor filed the First Supplement to the First Report of the Monitor.
17. On November 25, 2024:
 - (a) the Monitor filed the Second Supplement to the First Report of the Monitor; and
 - (b) Justice Simard extended the Stay Period to and including December 18, 2024 for the limited purpose of gathering information, ruled that the Lower Court had jurisdiction over the LLCs, granted an Amended and Restated Initial Order (“**ARIO**”), directed the Monitor to provide a comprehensive report to the Lower Court by December 13, 2024, directed the LLCs and the other CCAA Respondents to provide certain information to the Monitor by December 6,

¹⁵ Application of the CCAA Respondents (including the LLCs) filed November 21, 2024 [TAB G].

¹⁶ First Report of the Monitor filed November 20, 2024 [TAB H].

¹⁷ Affidavit of Allan Lind sworn November 21, 2024 [First Lind Affidavit] [TAB I].

¹⁸ Transcript of proceedings before Justice C. D. Simard, November 21, 2024 [TAB J].

2024, and adjourned the Set Aside Application and the balance of the Comeback Application to a continuation of the Comeback Hearing on December 18, 2024.¹⁹

18. Justice Simard noted that the Applicant Investors “collectively speak for about 0.1 percent of the total investors in the Windridge property” and “probably speak for about 0.18 percent of the total UFIs in the Fossil Creek lands”, and stated as follows:

This extremely small proportionate interest raises three important considerations – and maybe more than these three – but the three I have identified are as follows:

First, is it appropriate that a process started by these applicant investors should be allowed to continue with the risk that the potentially very large costs of the process will be borne by a much larger group of stakeholders who have not consented and are not even aware that this is happening?

Second, in the overall context of the investments, are these applicant investors’ rights being infringed? What rights did they bargain for, as extremely small fractional owners? Do they have the power to hold up sales if the majority has approved them?

And third, a related question: It is one thing to say your investment is being managed poorly, and that you are not receiving any communications. There are corporate and common law remedies for that kind of wrong. It is quite another thing to say that your extremely fractional interest being ignored entitles you to freeze the totality of the investments and effectively take control of the entities out of the hands of management and directors.²⁰

19. On November 28, 2024, the Monitor filed the Second Report of the Monitor.

20. On November 29, 2024, Justice Simard granted an order authorizing an increase to the interim lender’s charge to \$1,250,000 plus interest, fees and expenses.

21. On December 6, 2024 and thereafter, the CCAA Respondents provided records and information to the Monitor in response to Justice Simard’s direction where possible to do so,

¹⁹ Amended and Restated Initial Order granted November 25, 2024 [TAB K], November 25 Transcript, p 13/19-21 [TAB D].

²⁰ November 25 Transcript, pp 11/18-12/11 [TAB D]; First Lind Affidavit, paras 6(l) and 18 [TAB I].

and provided correspondence, explanations and affidavit evidence where they were unable to do so because such information did not exist or could not otherwise be provided.²¹

22. On December 13, 2024:

- (a) the Monitor filed the Third Report of the Monitor in accordance with Justice Simard's direction,²² secretarial affidavits were filed on behalf of the Investors, and the LLCs and the other CCAA Respondents filed the second Affidavit of Allan Lind sworn December 13, 2024 (the "**Second Lind Affidavit**")²³ and the third Affidavit of Grayson Ambrose sworn December 13, 2024 (the "**Third Ambrose Affidavit**");
- (b) the LLCs retained their current counsel, Bennett Jones LLP.

23. On December 16, 2024:

- (a) the LLCs and the other CCAA Respondents (other than the LLCs, and represented by Miles Davison LLP and Metcalfe, Blainey & Burns LLP – the "**Other CCAA Respondents**"):
 - (i) each filed and served an application for permission to appeal the Initial Order;²⁴ and
 - (ii) each filed and served an application for permission to appeal the ARIO;²⁵ and
- (b) the LLCs delivered to Justice Feasby and to the Service List in the CCAA proceedings an unfiled application to extend the time to appeal the Initial Order (the "**Extension Application**") and wrote to Justice Feasby to inquire as to a

²¹ Third Report, Appendices "B", "D" to "J", "M" to "Z" [TAB L]; Second Lind Affidavit, paras 50-54, Exhibit "O" [TAB M]; Affidavit of Allan Lind sworn December 31, 2024, filed by Miles Davison LLP [Third Lind Affidavit] [TAB N], paras 3-10; Affidavit of Allan Lind sworn December 31, 2024 and filed by Bennett Jones LLP, paras 4-6 [TAB O].

²² Third Report [TAB L].

²³ Second Lind Affidavit [TAB M].

²⁴ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Initial Order, filed December 16, 2024 [TAB P].

²⁵ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Amended and Restated Initial Order, filed December 16, 2024 [TAB Q].

process for the determination of the Extension Application, in consideration of the Court's upcoming December break.

24. On December 17, 2024:

- (a) the Other CCAA Respondents delivered to Justice Feasby and to the Service List an unfiled application to extend the time to appeal the Initial Order and wrote to Justice Feasby to inquire as to a process for the determination of that application (together with the Extension Application of the LLCs, the “**Extension Applications**”);
- (b) the Monitor filed the First Supplement to its Third Report;
- (c) Justice Feasby advised that he was willing to hear the Extension Applications on December 20, 2024.

25. On December 18, 2024:

- (a) the LLCs' Extension Application was filed and served.²⁶
- (b) Justice Simard, formerly a partner at Bennett Jones LLP, recused himself from hearing further applications in these CCAA proceedings and extended the Stay Period to and including December 20, 2024.

26. On December 20, 2024:

- (a) due to the judicial conflict and to allow for cross-examinations on affidavit evidence of the CCAA Respondents, the continuation of the Comeback Application, and the hearing of the Set-Aside Application, Justice Feasby granted an order, *inter alia*, extending the Stay Period to and including January 17, 2025, adjourned the continuation of the Comeback Hearing (including the Set Aside Application and the balance of the Comeback Application) to January 17, 2025, increased the administration charge, approved a litigation schedule

²⁶ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC to extend the time to appeal the Initial Order, filed December 18, 2024 [TAB R].

leading up to the continuation of the Comeback Hearing, and heard the Extension Applications; and

- (b) pursuant to Chapter 15 of the U.S. Bankruptcy Code, the U.S. Bankruptcy Court granted an Order recognizing and enforcing the Initial Order and the CCAA proceedings in Texas.

27. On December 23, 2024, Justice Feasby issued reasons for decision²⁷ dismissing the Extension Applications (the “**Extension Dismissal Order**”).

28. From January 3, 2025 to January 13, 2025, the parties filed and served supplemental affidavits, including the third Affidavit of Allan Lind sworn December 31, 2024 and filed by Miles Davison LLP (the “**Third Lind Affidavit**”),²⁸ the fourth Affidavit of Allan Lind sworn December 31, 2024 and filed by Bennett Jones LLP (the “**Fourth Lind Affidavit**”),²⁹ the fourth Affidavit of Grayson Ambrose sworn January 3, 2025 (the “**Fourth Ambrose Affidavit**”), and secretarial affidavits on behalf of the Investors, conducted questioning of representatives of the CCAA Respondents, including a representative of the LLCs, the representatives of the CCAA Respondents responded to undertakings requested of them, and the parties filed and served briefs in relation to the Comeback Hearing, in accordance with the litigation schedule approved by Justice Feasby.

29. On January 13, 2025, the LLCs filed and served an application for permission to appeal the Extension Dismissal Order.³⁰

30. On January 17, 2025, Justice Feasby:

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

²⁷ *Angus A2A GP Inc (Re)*, [2024 ABKB 769](#) [TAB 6].

²⁸ Third Lind Affidavit [TAB N].

²⁹ Fourth Lind Affidavit [TAB O].

³⁰ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Extension Dismissal Order, filed January 13, 2025 [TAB S].

- (b) adjourned certain relief sought by the Monitor and by Canadian Representative Counsel *sine die*;³¹ and
- (c) heard the Set Aside Application and the balance of the Comeback Application and reserved his decision regarding the same.³²

31. The Monitor's Fourth Report confirms that on January 27, 2025, without notice to the CCAA Respondents and contrary to the limited purposes of the CCAA proceedings pending the determination of the Set Aside Application and the balance of the Comeback Application and contrary to the ARIO,³³ counsel for the Monitor sent a letter to JPMorgan Chase Bank, N.A. ("**Chase Bank**"), stating in part:

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

Notwithstanding that neither of the Trails of Fossil Creek Properties LP or the Hills of Windridge LP (collectively, the "**Texas LPs**") are CCAA Respondents, and notwithstanding that the Monitor has no authority over the Texas LPs or their assets, the Monitor requested that Chase Bank immediately freeze all withdrawals and transfers from any and all accounts held by Chase Bank and owned by either of the LLCs and by either of the Texas LPs, and requested that Chase Bank produce any and all account numbers, account balances and account statements relating to any such bank accounts.³⁴

32. Chase Bank responded on February 4, 2025 and February 12, 2025, and provided account numbers and balances for accounts held in the names of the Texas LPs and confirmed that it did not hold any accounts in the names of the LLCs. Chase Bank's responses indicated it was in response to a Temporary Restraining Order from the Monitor; no such temporary restraining order exists over the Texas LPs.³⁵ No court order has ever been granted over the Texas LPs in the CCAA proceedings or the Chapter 15 proceedings.

³¹ Order granted by Justice Feasby January 17, 2025, filed January 20, 2025 [TAB T].

³² Transcript of proceedings before Justice C. C. J. Feasby, January 17, 2025 [TAB U].

³³ November 25 Transcript, p 12/29-40 [TAB D]; Amended and Restated Initial Order, para 31 [TAB K].

³⁴ Fourth Report of the Monitor filed February 19, 2025 [Fourth Report], Appendix "I" [TAB V].

³⁵ Fourth Report, Appendix "J" [TAB V].

33. On January 29, 2025, Justice Feasby issued Reasons for Decision on the Set Aside Application and the balance of the Comeback Application (the “**Comeback Decision**”).³⁶

- (a) dismissing the Set Aside Application;
- (b) directing that the Monitor shall have 21 days from the date of the Reasons for Decision to provide a plan for gaining control of the lands that are the subject of the Windridge Project (the “**Windridge Lands**”), the proceeds of sale of a portion of the Windridge Lands that were sold to Tarrant Regional Water District (“**TRWD**”), and the proceeds of sale of the lands that are the subject of the Fossil Creek Project (the “**Fossil Creek Lands**” and, together with the Windridge Lands, the “**Lands**”) to the Lower Court, and that if a reasonable plan is not provided to the Lower Court within 21 days (i.e., the Texas Plan), then the CCAA proceedings shall terminate in respect of the WFC Entities. The proceeds of sale of the portion of the Windridge Lands that were sold to TRWD and the proceeds of sale of the Fossil Creek Lands are collectively referred to as the “**Proceeds**”.

34. On February 11, 2025, Justice Feasby extended the Stay Period to March 4, 2025. The Monitor’s application set out that the extension would afford the Monitor sufficient time to develop the Texas Plan within the timeline ordered by Justice Feasby and to present the Texas Plan to the Court for approval, in the circumstances where this application had been scheduled for March 3, 2025.

35. On February 19, 2025:

- (a) the Monitor filed and served its Fourth Report, setting out its Texas Plan; and
- (b) the LLCs and the WFC Canadian Entities each filed applications for permission to appeal the January 29 Decision.

36. On February 24, 2025, the Monitor filed its application, scheduled to be heard March 3, 2025 by the Honourable Justice Campbell, seeking, *inter alia*, to approve the Texas Plan, to extend the Stay Period up to and including April 30, 2025, to amend the ARIO and increase

³⁶ [Comeback Decision](#) [TAB 2]

the Administration Charge to a maximum amount of \$2,500,000, and to approve the professional fees and disbursements of the Monitor and its counsel for the period up to January 31, 2025 (the “**March 3 Application**”).

37. The extant applications for permission to appeal (including the applications of the LLCs for permission to appeal the Initial Order, the Extension Denial Order, the ARIQ, and the January 29 Decision) are all scheduled to be heard by the Court of Appeal of Alberta on March 6, 2025.

38. The LLCs have, through the Affidavit of Allan Lind sworn November 21, 2024³⁷ and December 31, 2024,³⁸ advised the Court and parties on the Service List for these proceedings that they do not attorn to the jurisdiction of this Court, and that they challenge this Court’s jurisdiction. Notwithstanding that, as the Initial Order and subsequent Orders have been granted against them, they have had no choice but to respond to the same, without prejudice to their position.

B. Background to the WFC Projects and the Role of the LLCs

39. In and around 2014, the Applicant Investors invested in the three real estate Projects:

- (a) the Angus Manor Project, which is a 167-acre project north of Toronto;
- (b) the Fossil Creek Project, a 93-acre project in Fort Worth, Texas; and
- (c) the Windridge Project, a 415-acre project in the Dallas / Fort Worth area of Texas.³⁹

40. The LLCs have never had any role in relation to the Angus Manor Project (nor do any of the WFC Entities have any role in relation to the Angus Manor Project).

41. Fossil Creek LLC is the former owner of the 93 acres of land (the Fossil Creek Lands) that constitute the Fossil Creek Project, having purchased the same in 2013.⁴⁰ In or about 2015, pursuant to a sale agreement and ancillary documents (the “**Fossil Creek UFI Sale**”

³⁷ First Lind Affidavit, para 16 [TAB I].

³⁸ Fourth Lind Affidavit, para 3 [TAB O].

³⁹ Edwards Affidavit [TAB C], Part 1, para 14; November 25 Transcript, p 3/11-13 [TAB D].

⁴⁰ Second Lind Affidavit [TAB M], para 8, Exhibit “H”.

Agreement”),⁴¹ Fossil Creek LLC sold undivided fractional interests (“**UFIs**”) in the Fossil Creek Lands to Fossil Creek A2A Limited Partnership. The units in Fossil Creek A2A Limited Partnership were held by the Fossil Creek A2A Trust. Canadian investors purchased units in the Fossil Creek A2A Trust (the units in which were offered to investors pursuant to a confidential offering memorandum dated May 7, 2014, amended on November 18, 2014 (the “**FC OM**”)),⁴² which in turn used the proceeds of sale of those units to purchase the units of Fossil Creek A2A Limited Partnership. Fossil Creek A2A Limited Partnership used those proceeds of sale to purchase UFIs from Fossil Creek LLC.⁴³

42. Similarly, Windridge LLC is the former owner of the 415 acres of land (the Windridge Lands) that constitute the Windridge Project, having purchased the same in 2012.⁴⁴ In or about 2014, pursuant to a sale agreement and ancillary documents (the “**Windridge UFI Sale Agreement**”),⁴⁵ Windridge LLC sold UFIs in the Windridge Lands to Hills of Windridge A2A LP. The units in Hills of Windridge A2A LP were held by the Windridge A2A Trust. Canadian investors purchased units in the Windridge A2A Trust (the units in which were offered to investors pursuant to an Amended and Restated Confidential Information Memorandum of Hills of Windridge A2A Trust dated November 13, 2013 (the “**Windridge OM**”)),⁴⁶ which in turn used the proceeds of sale of the units in the Windridge A2A Trust to purchase the units of Hills of Windridge A2A LP. Hills of Windridge A2A LP used those proceeds of sale to purchase UFIs from Windridge LLC.⁴⁷

43. The Fossil Creek UFI Sale Agreement and the Windridge UFI Sale Agreement each contemplated that the co-owners (i.e., Fossil Creek A2A Limited Partnership and Hills of Windridge A2A LP) would further transfer their interests (i.e., the UFIs) to a trustee to hold the property and develop it on their behalf.⁴⁸ The Fossil Creek Lands were transferred to the Trails of Fossil Creek Trust, and the Windridge Lands were transferred to the Hills of Windridge Trust, the trustee of each of which is Dirk Foo.⁴⁹ Neither the Trails of Fossil Creek

⁴¹ Second Lind Affidavit, para 8, Exhibit “G” [TAB M].

⁴² Affidavit of Paul Lauzon filed November 12, 2024, paras 10-11, Exhibit “A” [TAB W].

⁴³ November 25 Transcript [TAB D], p 3/36-4/3; Transcript of Questioning of Allan Lind on Affidavits held January 7, 2025 [Lind Questioning] [TAB X], p 26/4-20 referencing First Lind Affidavit, Exhibit “A”.

⁴⁴ Second Lind Affidavit, para 8, Exhibit “F” [TAB M].

⁴⁵ Second Lind Affidavit, para 8, Exhibit “E” [TAB M].

⁴⁶ Edwards Affidavit, paras 69-70, Exhibit “29” [TAB C].

⁴⁷ Second Lind Affidavit, para 8, Exhibit “E” [TAB M]; Lind Questioning, pp 26/21-27/13 [TAB X], referencing First Lind Affidavit, Exhibit “B”.

⁴⁸ Second Lind Affidavit, para 12 [TAB M].

⁴⁹ Second Lind Affidavit, para 12, Exhibit “E” [TAB M]; Lind Questioning, pp 75/12-77/23 [TAB X].

Trust or the Hills of Windridge Trust (the “**Offshore Trusts**”), or the trustee in each case, Dirk Foo, an individual residing in the Philippines, are CCAA Respondents. On November 25, 2024, this Court declined an application by the Monitor to add the Offshore Trusts to the CCAA proceedings or to grant other relief in relation to them.⁵⁰ That decision has not been appealed.

44. The express purpose of each of the Offshore Trusts is “to receive and convey real property on behalf of the Settlers and to distribute the Net Income ... from the sale of real estate to the Beneficiaries.” Both of the Offshore Trusts give the trustee thereof broad powers and protections regarding the ownership, development and/or sale of the property. In addition to broad powers, each of the Offshore Trusts require a majority vote of the settlors to replace the trustee and provides the indemnity for the trustee (including attorneys’ fees) from the Hills of Windridge Trust and from Fossil Creek Trust (as applicable) to the full extent of its assets. The Offshore Trusts both also incorporate the method of calculation of “net income” for purposes of distribution to the beneficiaries of the trust, in each case.⁵¹

45. After selling the UFIs in the Fossil Creek Lands and in the Windridge Lands in 2015 and 2014, respectively, Fossil Creek LLC and Windridge LLC effectively became dormant until the spring of 2024.⁵² In about June 2024, for expediency and convenience, Fossil Creek LLC was appointed as the general partner of Trails of Fossil Creek Properties LP, and in about May 2024, also for expediency and convenience, Windridge LLC was appointed as the general partner of Hills of Windridge LP, as a result of the following:

- (a) The Fossil Creek Lands, other than one individual lot, were sold to Bloomfield Homes, L.P. (“**Bloomfield**”, a large homebuilder at arm’s length to the Trails of Fossil Creek Trust and the CCAA Respondents) in the fall of 2024,⁵³ after marketing of the same by an arm’s length commercial broker, The Michael Group.⁵⁴ Solely to facilitate the closing of the sale of the Fossil Creek Lands, the Fossil Creek Lands were transferred from the Trails of Fossil Creek Trust

⁵⁰ November 25 Transcript, pp 15/17-16/6 [TAB D].

⁵¹ Second Lind Affidavit, para 14, Exhibit “E”, p 118 of 124 [TAB M]; First Lind Affidavit, Exhibit “C” [TAB I]. See also Lind Questioning, p 77/11-23 [TAB X], confirming that the document at Exhibit “D” to the Affidavit of Allan Lind sworn November 21, 2024 is in error and that the correct document is in the Second Lind Affidavit at Exhibit “E” starting at p 347.

⁵² Fourth Lind Affidavit, para 6 [TAB O].

⁵³ Third Report, paras 100-102, 112, and Appendix “T” [TAB L].

⁵⁴ Lind Questioning, pp 32/17-22, 35/4-9, 38/4-11 [TAB X].

to Trails of Fossil Creek Properties LP, a limited partnership formed pursuant to the laws of Texas in which Dirk Foo as trustee of the Trails of Fossil Creek Trust is the sole limited partner, and Fossil Creek LLC was the general partner.⁵⁵ This was necessary because the foreign-based trusts that own the Fossil Creek Lands are not “bankable”, and there may have also been tax reasons. Documents relating to that sale and banking records are in the control of Dirk Foo in his capacity as the trustee of the Trails of Fossil Creek Trust.⁵⁶

- (b) Other than a portion of the Windridge Lands that were sold to the TRWD in or about July 2024 pursuant to a negotiated purchase in response to an expropriation notice, and five small lots with show homes plus an amenities centre, the title for which is being corrected to Dirk Foo as Trustee of the Hills of Windridge Trust, the Windridge Lands remain in the name of the Hills of Windridge Trust.⁵⁷ Solely to facilitate the closing of the sale of the portion of the Windridge Lands to TRWD, those lands were transferred to Hills of Windridge LP, a limited partnership formed pursuant to the laws of Texas in which Dirk Foo as trustee of the Hills of Windridge Trust is the sole limited partner, and Windridge LLC was the general partner,⁵⁸ and then conveyed to TRWD.⁵⁹ This was necessary because the foreign-based trusts that own the Windridge Lands are not “bankable”, and there may have also been tax reasons.⁶⁰ Documents relating to the sale to TRWD and banking records are in the control of Dirk Foo in his capacity as the trustee of the Hills of Windridge Trust.⁶¹

46. The LLCs do not have bank accounts or recent financial statements, and other than having being appointed as general partners of the Texas LPs in or about the spring of 2024 to facilitate the sales of the Fossil Creek Lands and the portion of the Windridge Lands, both of which occurred prior to the commencement of these CCAA proceedings, the only function of

⁵⁵ Second Lind Affidavit, paras 46 [TAB M]; Fourth Lind Affidavit, paras 6-7 [TAB O].

⁵⁶ Second Lind Affidavit, paras 44-48 [TAB M]; Lind Questioning, p 35/12-14 [TAB X].

⁵⁷ Second Lind Affidavit, paras 15, 40, 43 [TAB M].

⁵⁸ Fourth Lind Affidavit, paras 6-7 [TAB O].

⁵⁹ First Supplement to the Third Report of the Monitor filed December 17, 2024, paras 31-34 and Appendix “B” [TAB Y].

⁶⁰ Second Lind Affidavit, para 41 [TAB M].

⁶¹ Second Lind Affidavit, para 42 [TAB M].

the LLCs had been to hold and sell UFI in the Fossil Creek Lands and the Windridge Lands.⁶² While the FC OM and the Windridge OM indicated that the LLCs were to oversee the development of the Lands, the authority to develop and manage the WFC Projects was given to the trustee of the Offshore Trusts at the outset of the investments, in 2014 and 2015.⁶³ The LLCs were appointed as general partners of the Texas LPs in each case solely so that the Texas LPs could be formed for the sole purpose of holding and transferring the Fossil Creek Lands and a portion of the Windridge Lands from the Offshore Trusts to the purchasers in each case.

47. As a result of the recognition and enforcement of these CCAA proceedings against the LLCs by the U.S. Bankruptcy Court and the resulting declaration of insolvency by the U.S. Bankruptcy Court, by Texas statute, the LLCs have ceased to be general partners of the Texas LPs.⁶⁴

48. The Texas LPs are not CCAA Respondents.

49. There is no evidence before this Honourable Court that either of the LLCs:

- (a) are incorporated (whether extra-provincially or otherwise) anywhere in Canada;
- (b) carry on business in Canada;
- (c) have any assets in Canada;
- (d) owe any funds to the Investors, or to any other investor in the WFC Projects;
- (e) have any ownership interest, or any other interest, in the Proceeds of sale of the Fossil Creek Lands or that portion of the Windridge Lands that was sold to TRWD, or in the remaining Windridge Lands;
- (f) have any affiliation with either of the Texas LPs.⁶⁵

⁶² Fourth Lind Affidavit, para 6 [TAB O].

⁶³ First Lind Affidavit, Exhibit "C", Article Nine, Section A, Exhibit "D", Article Six, Section A [TAB I]; Second Lind Affidavit, Exhibit "E", pp 347-353, Article Nine, Section A [TAB M].

⁶⁴ Fourth Lind Affidavit, para 8 [TAB O].

⁶⁵ *Ibid.*

C. The Rights of Investors

50. The FC OM for Fossil Creek A2A Trust and the Windridge OM for Hills of Windridge A2A Trust expressly state the risks associated with the investments. The FC OM includes the following statements, and essentially the same language and warnings are included in the Windridge OM:

- (a) **This is a risky investment.**
- (b) **The Trust is not a reporting issuer or equivalent in any jurisdiction.**
- (c) **Risk factors “Limited Control Over Fossil Creek Development”:** Even in the case of a Maximum Offering, the Trust will only indirectly hold 13.05% of the UFI. **As such, it will have limited control over the activities and decisions of Fossil Creek LP and Fossil Creek Developments, and, with respect to the Property, will be subject to the decisions of a majority of the Co-owners who will be Offshore Investors.**
- (d) **Distributions Not Guaranteed:** The return on an investment in the Units is not comparable to the return on an investment in a fixed income security. Cash distributions, including a return of a Unitholder’s original investment, are not guaranteed and the anticipated return on investment is based upon many performance assumptions. It is important for Subscribers to consider the particular risk factors that may affect the real estate investment markets generally and therefore the availability and stability of the distributions to Unitholders. See Item 8 - “Risk Factors” section of this Offering Memorandum for a more complete discussion of these risks and their potential consequences.
- (e) **Risks involved in the land development and homebuilding industry:** The land development and home building industry is cyclical and is significantly affected by changes in general and local economic and industrial conditions...**Fossil Creek Developments may have to sell homes at a loss or hold land inventory longer than planned. Inventory carrying costs can be significant and can result in a loss in anticipated profits.**

- (f) **ITEM 9 - REPORTING OBLIGATIONS:** The Trust is not, and currently has no intention of becoming, subject to continuous reporting and disclosure obligations which the securities legislation in any province or territory of Canada would require of a “reporting issuer” as defined in such legislation. **There is, therefore, no statutory requirement that the Trust make disclosure of its affairs, including, without limitation, the prompt notification of material changes by way of press releases and formal filings or the preparation of quarterly unaudited financial statements.** Pursuant to the Declaration of Trust, the Trust has agreed to provide annual audited financial statements.⁶⁶

51. The ARIO directed the Monitor to report on the rights of Investors, in its Third Report.

52. The Third Report reflects that only obligations of any of the CCAA Respondents to any of the Investors represented by Representative Counsel in these proceedings are to call meetings (in the case of Canadian investors in Fossil Creek A2A Trust),⁶⁷ to provide annual financial statements of Fossil Creek A2A Trust and Hills of Windridge A2A Trust to Canadian investors,⁶⁸ and, in the case of Windridge A2A Trust, to provide other reports to the Canadian investors as required by applicable law and to prepare and maintain adequate accounting records for the Hills of Windridge A2A Trust.⁶⁹ The rights of the Offshore Investors in the Windridge Project were to vote on certain ordinary and special resolutions, including approving the sale of all or any part of the Windridge Property other than the sale of a UFI to another Windridge Co-Owner, and to inspect full and adequate books of account and records, pursuant to the Windridge Deed of Covenant.⁷⁰ The Offshore Investors agreed, at the outset of their investments, to give the trustee of the Hills of Windridge Trust the authority to develop, sell and convey the Windridge Lands.⁷¹

53. Similarly, the rights of Offshore Investors in the Fossil Creek Project were to vote on certain ordinary and special resolutions, including approving the sale of all or any part of the Fossil Creek Property other than the sale of a UFI to another Fossil Creek Co-Owner, and to

⁶⁶ First Lind Affidavit, para 32 [TAB I]; Edwards Affidavit, Exhibits “15” and “29” [TAB C].

⁶⁷ Third Report, Appendix “N”, ss 12.1(a) and (c) [TAB L].

⁶⁸ Third Report, para 137, Appendix “N”, s 16.7 [TAB L].

⁶⁹ Third Report, para 137 [TAB L].

⁷⁰ Third Report, paras 138-139 [TAB L].

⁷¹ Third Report, Appendix “Y” [TAB L].

inspect full and adequate books of account and records, pursuant to the Fossil Creek Deed of Covenant, dated January 9, 2015.⁷² The Offshore Investors agreed, at the outset of their investments,⁷³ to give the trustee of the Fossil Creek Trust the authority to develop, sell and convey the Fossil Creek Lands.⁷⁴

54. It should be noted that in the circumstances of these long-term investments, in a structure where the Canadian Investors own units in a trust that holds units in a limited partnership that transferred its UFI in land to a trustee, annual financial statements of the first-mentioned trust would not show any different or meaningful information from year-to-year, unless and until the land was sold and the proceeds distributed.

55. These are the only obligations that are owed to the Investors by any of the CCAA Respondents. None of these obligations are owed by the LLCs to the Investors. The agreements, voluntarily entered into by the Investors, do not entitle Investors to a guaranteed return on, or even *of*, their investment, nor to any other rights.

III. ISSUE

56. Should this Court find the Texas Plan to be reasonable and approve the same?

57. Should this Court grant an extension of the stay of proceedings in these CCAA proceedings?

58. Should this Court grant the rest of the relief sought in the March 3 Application, including:

- (a) amending the ARIO and granting an increase in the Administration Charge to a maximum amount of \$2,500,000; and
- (b) approving the professional fees and disbursements of the Monitor and the Monitor's counsel for the period up to January 31, 2025?

⁷² Third Report, paras 96-97, Appendix "Q" [TAB L].

⁷³ Third Report, Appendix "S" [TAB L].

⁷⁴ Third Report, Appendix "R", Article One, Article Four, Sections D and G and Article Nine [TAB L].

IV. ARGUMENT

A. The Context of the Texas Plan

59. In relation to the Set Aside Application, the LLCs submitted that these CCAA proceedings, as they relate to the LLCs, are inconsistent with the fundamental purposes of the CCAA. As was held by Justice Simard in his November 25 decision, the continuation of a stay may not be appropriate if the purpose of the proceedings is not to further that fundamental purpose of the CCAA.⁷⁵

60. In his January 29 Decision, Justice Feasby held as follows:

The [CCAA] Respondents submit that the present *CCAA* proceedings cannot achieve the purposes of the *CCAA*, at least with respect to Windridge and Fossil Creek, because the Texas Trusts and the trustee, Dirk Foo, are not subject to the ARIIO. According to the [CCAA] Respondents, the *CCAA* proceedings are destined to fail because the Windridge lands and Fossil Creek lands and the bank accounts that contain the proceeds of such of those lands that have already been sold are beyond the reach of this Court. This objection is potentially fatal for the *CCAA* proceedings concerning Windridge and Fossil Creek because without control over the US assets, there is no prospect for recovery for stakeholders through the *CCAA* proceedings.⁷⁶

61. Justice Feasby returned to this in the conclusion to his January 29 Decision, holding (as stated above) that:

... the evidence is clear that the Windridge lands, the proceeds of the small parcel of the Windridge lands sold to TRWD, and the proceeds of the sale of the Fossil Creek lands remain outside the reach of the *CCAA*. If those lands and proceeds cannot be brought under the control of the Monitor through the Chapter 15 proceedings or otherwise, then the *CCAA* proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs. The Monitor shall have 21 days from the date of these Reasons to provide a plan for gaining control of the Windridge lands and the proceeds of the sales of the Windridge lands and Fossil Creek lands to the Court. If a reasonable plan is not provided to the Court within 21 days, then the *CCAA* proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs.⁷⁷

⁷⁵ November 25 Transcript, pp 6/41-7/5-10 [TAB D], citing *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, [2008 BCCA 327](#) [TAB 7].

⁷⁶ [Comeback Decision](#), para 67 [TAB 2].

⁷⁷ [Comeback Decision](#), para 88 [TAB 2].

62. The context for this finding is the following submissions that were made by the LLCs on the Set Aside Application before Justice Feasby.

B. These proceedings are inconsistent with the fundamental purposes of the Companies' Creditors Arrangement Act

63. This section of this Brief sets out submissions that were made by the LLCs on the Set Aside Application before Justice Feasby, as context for his January 29 Decision.

64. Notably, the purpose of assisting companies in developing and seeking compromises and arrangements with their *creditors* is reflected in the title of the statute itself – both the short version and its long title (*An Act to facilitate compromises and arrangements between companies and their creditors*), which “indicates that its objective is to assist insolvent companies in developing and seeking approval of compromises and arrangement with their creditors.”⁷⁸ The investors represented by Representative Counsel in these proceedings are not creditors [of any of the WFC Entities, including the LLCs].

65. In *9354-9186 Québec Inc v Callidus Capital Corp*, the Supreme Court of Canada summarized the objectives of the CCAA as:

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

66. The CCAA generally prioritizes the objective of avoiding the social and economic losses resulting from liquidation of an insolvent company.⁷⁹

67. There cannot be timely, efficient or impartial resolution of a debtor's insolvency with respect to the LLCs because, leaving aside the lack of any evidence that they are insolvent, it

⁷⁸ L. W. Houlden, G. B. Morawetz & J. P. Sarra, *The 2024 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2024) [*Annotated BIA*] at §19:4 [TAB 8].

⁷⁹ *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at para 40-41 [TAB 9]; *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) [*Century Services*] at paras 15, 70 [TAB 10].

will not be possible to effect a timely, efficient and impartial resolution (or any resolution) of the insolvency, absent jurisdiction over the trustee of the Offshore Trusts in these CCAA proceedings or over the lands that form the Windridge Project and the Fossil Creek Project. This Court has already determined it does not have that jurisdiction in these proceedings.⁸⁰

68. As the Applicant Investors are a tiny percentage of the investment interests in the Windridge Project and the Fossil Creek Project, it will not be possible to ensure fair and equitable treatment of the claims in relation to those projects (nor is there any authority that the CCAA is intended to be used by investors to force recovery on investments explicitly stated to be “risky”).

69. With respect to the LLCs, it is not possible for these CCAA proceedings to further the purposes and objectives of the CCAA to effect a compromise or arrangement or to otherwise restructure or monitor the real estate development projects that the Applicant Investors invested in. This is due to the fact that the Lands that are the subject of the Fossil Creek Project and the Windridge Project are located in Texas, and the entities that control the Windridge Lands, and the proceeds of sale of the Fossil Creek Lands,⁸¹ are trusts subject to the laws of Texas, the trustee of each of which is an individual and not a “debtor company” pursuant to the CCAA. This Court has already confirmed that it cannot extend these CCAA proceedings to the Hills of Windridge Trust and the Trails of Fossil Creek Trust, nor to the trustee thereof, Mr. Dirk Foo.⁸²

70. It is not possible to achieve the objectives of a CCAA proceeding – a compromise and arrangement, or even a liquidation - where the Offshore Trusts and the Lands (or the proceeds thereof) are not and cannot be subject to the CCAA proceedings.

71. It is well established that efforts to reorganize under the CCAA can be terminated and the stay of proceedings against the debtor lifted if the reorganization is “doomed to failure.”⁸³

72. In *Arrangement relatif à Servites de Marie*,⁸⁴ the Superior Court of Québec denied an application for an initial order where the application was opposed by the main creditor, the

⁸⁰ November 25 Transcript, p 15/17-16/1 [TAB D].

⁸¹ Second Lind Affidavit, para 44-47 [TAB M].

⁸² November 25 Transcript, p 15/17-16/1 [TAB D].

⁸³ *Century Services*, supra note 100 at para 71 [TAB 10].

⁸⁴ *Arrangement relatif à Servites de Marie*, 2021 QCCS 2212 [TAB 11].

representative of a class action relating to allegations of sexual assault committed by priests against students (the class action being the only ongoing legal proceeding or recovery measure). Dumais J. held that the primary purpose of the CCAA is to allow for a restructuring and refinancing of a company, and questioned the need for protection in this case, where the creditors did not want it, and it would involve giving a priority of at least \$250,000 to the monitor. Dumais J. also noted that given s 19(2) of the CCAA, unless the victims of the class action group vote in favour, the arrangement would not be enforceable against them, and thus a CCAA process was unlikely to resolve anything.

73. *Nothing* that has been done by the Monitor or by Representative Counsel to date will increase the value of the Lands – nor are the Monitor or Representative Counsel proposing to do anything that will increase the value of the Lands, or create any financial benefit for any investors. All efforts of the Monitor and of Representative Counsel to date have reduced the value that will be available to investors.

74. It is not in the public interest for this Court to apply the CCAA in this case, in a manner that is inconsistent with its purpose and objectives.

C. The Texas Plan is not reasonable and the CCAA proceedings should be dismissed against the WFC Entities, including the LLCs

75. The Monitor's Texas Plan is to commence Chapter 11 proceedings in relation to the LLCs. There is no possibility that the Texas Plan can bring the Lands or the Proceeds under the control of the Monitor:

- (a) The LLCs have no interest in the Lands:
 - (i) The Lands were (and the remaining Windridge Lands continue to be) held by Dirk Foo in his capacity as trustee of the Offshore Trusts;
 - (ii) There is no relationship or affiliation between the LLCs and the Offshore Trusts;
 - (iii) The Fossil Creek Lands and the portion of the Windridge Lands that were sold to the TRWD have been sold to Bloomfield and to TRWD,

respectively, each of whom are arm's length purchasers for value. There is no relationship or affiliation between the LLCs and those parties;

- (b) The LLCs have no interest in the Proceeds:
- (i) the Proceeds are held by the Texas LPs, in bank accounts held in the names of the Texas LPs;
 - (ii) the assets of the Texas LPs are *not* assets of the general partners of the Texas LPs;
 - (iii) the LLCs ceased to be general partners of the Texas LPs as of December 20, 2024;⁸⁵
 - (iv) there is no relationship or affiliation between the LLCs and the Texas LPs;
 - (v) notwithstanding the Monitor's representation to Chase Bank that "the monies being held by Chase Bank for [the Texas LPs] are the proceeds of the sale of certain real property, which is owned, legally or beneficially by one or more of the Debtors in the Canadian Proceeding [i.e., the CCAA proceedings] and Chapter 15 Case" and its demand that Chase freeze all accounts of not only the LLCs, but also of the Texas LPs,⁸⁶ that representation was false. The Texas LPs are not CCAA Respondents. The LLCs are CCAA Respondents, but they do not hold any bank accounts at Chase, they have no interest in the accounts of the Texas LPs in which the Proceeds are held, they have no interest in the Proceeds, they have no interest in the Lands, they are no longer general partners of the Texas LPs, and even if (or while) they were general partners of the Texas LPs, that does not (and did not) give them any ownership interest in the assets, including the Proceeds, of the Texas LPs.

⁸⁵ Fourth Lind Affidavit, para 8 [TAB O]

⁸⁶ Fourth Report of the Monitor, Appendix "I" [TAB V]

- (c) Because the LLCs have no interest in the Lands or the Proceeds, a bankruptcy proceeding commenced by the Monitor over the LLCs pursuant to Chapter 11 of the U.S. Bankruptcy Code will not and cannot bring the Lands or the Proceeds within the Monitor's control;
- (d) The Texas Plan is for the Monitor to cause the LLCs to commence Chapter 11 proceedings "for the purpose of initiating an adversary proceeding and seeking judgment that Fossil Creek and Windridge are recoverable by the [LLCs] as avoidable fraudulent transfers under 11 U.S.C. §§ 544 and 548 and related declaratory relief under 28 U.S.C. §2201."⁸⁷ The Monitor has not put forth any evidence on the applicability of 11 U.S.C. §§ 544 and 548 and 28 U.S.C. §2201; it is thus not possible for this Court to make a determination, based on the Monitor's application materials, as to whether that constitutes a "reasonable plan" to bring the Lands and Proceeds under the control of the Monitor. In 2014 and 2015, the LLCs sold UFIs in the Fossil Creek Lands and in the Windridge Lands to Fossil Creek A2A Limited Partnership and to Hills of Windridge A2A LP, pursuant to the Fossil Creek UFI Sale Agreement and the Windridge UFI Sale Agreement, respectively, and for consideration.⁸⁸
- (e) Further, the only basis upon which the Monitor has any authority to commence Chapter 11 proceedings on behalf of the LLCs is because of these CCAA proceedings and this Court's Initial Order granting the Monitor enhanced powers and control of the LLCs. The Monitor's Texas Plan would amount to using the CCAA proceedings, which Justice Feasby has confirmed are "destined to fail" in respect of the WFC Entities *because* of the fact that the Lands and Proceeds are outside of the reach of the CCAA proceedings (and thus inconsistent with the fundamental purpose of the CCAA), to then bring the Lands and Proceeds within the control of the Monitor (were that possible⁸⁹) to justify the continuation of the CCAA proceedings. Even if the LLCs had any interest in the Lands or the Proceeds (which they do not), to allow the Monitor

⁸⁷ Fourth Report, para 76 [TAB V].

⁸⁸ Second Lind Affidavit, paras 8, Exhibits "E" and "G" [TAB M]; Lind Questioning p 2/4-20, 26/21-27/13, referencing First Lind Affidavit, Exhibits "A" and "B" [TAB I].

⁸⁹ It is not possible to bring the Lands and Proceeds under the control of the Monitor through a Chapter 11 proceeding in relation to the LLCs, because the LLCs have no interest in the Lands, the Proceeds, or the entities that hold the Lands or the Proceeds.

to rely upon its control of the LLCs as a *result* of the CCAA proceedings which are doomed to fail, to then commence Chapter 11 proceedings over the LLCs so as to gain control of the Lands and the Proceeds (were that possible⁹⁰) and bring them within the reach of the CCAA and within the control of the Monitor is illogical;

- (f) If the Monitor were to commence Chapter 11 proceedings over the LLCs to gain control of the Lands and the Proceeds (were that possible⁹¹), then there would be no reason for the CCAA proceedings to continue in relation to the WFC Entities – there *still* would be no purpose to the CCAA proceedings over the LLCs, or over the WFC Entities;
- (g) Finally, the Texas Plan does not necessarily present a means for the Lands or the Proceeds to be recovered by the Investors. The Investors’ own evidence confirms that there are American judgment creditors against the LLCs – Global Forest, LLC and Forest Funding, LLC – which have a judgment in the amount of USD \$3,844,256.50 against the LLCs, jointly and severally with other defendants (the “**Global Forest Judgment**”),⁹² and M3 Fort Worth Developer, LLC and The Youngestone, LLC, which have a judgment in the amount of USD \$529,275.80 against the LLCs, jointly and severally, along with exemplary damages against the LLCs in the amounts of USD \$1,058,551.60 and \$1,008,408.80 (the “**M3 Judgment**”).⁹³ Any recovery arising out of the Lands and Proceeds, were it possible for the Monitor to gain control of them through a Chapter 11 proceeding over the LLCs,⁹⁴ would go to satisfy claims of *creditors* of the LLCs, including the Global Forest Judgment creditors and the M3 Judgment creditors, subject to payment of the costs of the Chapter 11 proceedings, prior to any distribution being made to the Investors, in the circumstances where the Investors’ claims against the WFC Entities (but not against the LLCs) are equity claims, which rank subordinate to all creditor claims. Even if it were possible to recover the Lands and Proceeds through

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Edwards Affidavit, Exhibit “36” [TAB C].

⁹³ Fourth Report, para 61, Appendix “L” [TAB V].

⁹⁴ It is not.

Chapter 11 proceedings against the LLCs, which it is not, the Texas Plan does not necessarily result in recovery by the Investors.

76. The Monitor asserts that there is uncertainty over who has proper title to the Lands. This is simply due to the fact that the Texas land title system is a recording system, not a registration system; there is nothing unique or complicated about it.⁹⁵

77. The Texas Plan is not reasonable. The CCAA proceedings in relation to the WFC Entities are destined to fail. The CCAA proceedings thus must terminate in respect of the WFC Entities, including the LLCs, in accordance with Justice Feasby's January 29 Decision.⁹⁶

D. The Monitor's application to extend the stay of proceedings

78. As the LLCs' position is that the CCAA proceedings must be terminated as against the WFC Entities, the LLCs oppose the Monitor's application to extend the stay of proceedings in relation to the WFC Entities, including in relation to the LLCs.

E. The Monitor's application to amend the ARIO and increase the Administration Charge

79. As the LLCs' position is that the CCAA proceedings must be terminated as against the WFC Entities, the LLCs submit that the Monitor's application to amend the ARIO or to increase the Administration Charge must also be dismissed as it relates to the WFC Entities. The Monitor takes no position on the relief sought in relation to the CCAA Respondents other than the WFC Entities.

F. The Monitor's Application for approval of professional fees and disbursements

80. The LLCs take no position on this aspect of the Monitor's application.

V. RELIEF SOUGHT

81. The LLCs seek an Order that:

- (a) the Texas Plan is not reasonable and is not approved;

⁹⁵ Second Lind Affidavit, paras 24-28 [TAB M].

⁹⁶ [Comeback Decision](#), para 88 [TAB 2].

- (b) the Monitor's application to extend the stay of proceedings in relation to the WFC Entities is dismissed; and
- (c) the CCAA proceedings terminate immediately as against the WFC Entities, including the LLCs.

82. The LLCs do not take any position with respect to the Monitor's application in relation to the CCAA Respondents other than the WFC Entities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

BENNETT JONES LLP

Per:



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

VI. TABLE OF AUTHORITIES

TAB

1. *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended.
2. *Angus A2A GP Inc (Re)*, [2025 ABKB 51](#)
3. K. Forbes, "An Exploration of Creditor-Initiated CCAA Proceedings", in Insolvency Institute of Canada, IIC-ART Vol. 13-1
4. Review of Government of Canada, CCAA records search (after 2014), online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/CCAA-records-search-after-2014>
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7. *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, [2008 BCCA 327](#)
8. L. W. Houlden, G. B. Morawetz & J. P. Sarra, *The 2024 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2024) at §19:4
9. *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#)
10. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
11. *Arrangement relatif à Servites de Marie*, [2021 QCCS 2212](#)

VII. COMPENDIUM OF DOCUMENTS

TAB

Key Documents

- A. Transcript of proceedings before Justice C.C.J. Feasby, November 14, 2024
- B. Originating Application filed November 12, 2024
- C. Affidavit of Michael Edwards, filed November 12, 2024
- D. Transcript of decision of Justice C. D. Simard, November 25, 2024
- E. Initial Order granted November 14, 2024
- F. Application of the Monitor filed November 18, 2024
- G. Application of the CCAA Respondents (including the LLCs) filed November 21, 2024
- H. First Report of the Monitor filed November 20, 2024
- I. First Affidavit of Allan Lind sworn November 21, 2024
- J. Transcript of proceedings before Justice C. D. Simard, November 21, 2024
- K. Amended and Restated Initial Order granted November 25, 2024
- L. Third Report of the Monitor, filed December 13, 2024
- M. Second Affidavit of Allan Lind, sworn December 13, 2024
- N. Third Affidavit of Allan Lind sworn December 31, 2024, filed by Miles Davison LLP
- O. Fourth Affidavit of Allan Lind sworn December 31, 2024, filed by Bennett Jones LLP
- P. Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Initial Order, filed December 16, 2024
- Q. Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Amended and Restated Initial Order, filed December 16, 2024
- R. Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC to extend the time to appeal the Initial Order, filed December 18, 2024
- S. Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Extension Dismissal Order, filed January 13, 2025
- T. Order granted by Justice Feasby January 17, 2025, filed January 20, 2025

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

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

W. Affidavit of Paul Lauzon filed November 12, 2024

X. Transcript of Questioning of Allan Lind on Affidavits held January 7, 2025

Y. First Supplement to the Third Report of the Monitor filed December 17, 2024

Secondary Sources

3. K. Forbes, “An Exploration of Creditor-Initiated CCAA Proceedings”, in Insolvency Institute of Canada, IIC-ART Vol. 13-1
8. L. W. Houlden, G. B. Morawetz & J. P. Sarra, *The 2024 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2024) at §19:4