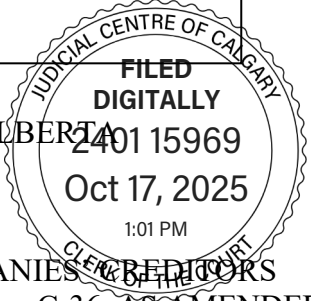


COURT FILE NUMBER	2401-15969	CLERK'S STAMP 
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTER	IN THE MATTER OF THE COMPANIES AND DIRECTORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED	

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**

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Application scheduled for October 29, 2025, commencing at 2:00 p.m.
before the Honourable Justice C. M. Jones

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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 “**Texas LLCs**”) in response to the expected application of the court-appointed monitor in these *Companies’ Creditors Arrangement Act*¹ (“**CCAA**”) proceedings, Alvarez & Marsal Canada Inc. (the “**Monitor**”), to extend the stay of proceedings as against the Texas LLCs. As a corollary to the Texas LLCs’ opposition to the extension of the stay of proceedings against them, the Texas LLCs also bring a cross-application to terminate the CCAA proceedings against them.

2. The Supreme Court of Canada confirms that efforts to reorganize under the CCAA can be terminated, and the stay of proceedings lifted, where the proposed reorganization has no reasonable prospect of success and is “doomed to failure.”²

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

4. This Court gave the Monitor a further opportunity to advance a plan for gaining control of the lands and proceeds and approved the Monitor’s plan in that regard.

5. That was over seven months ago. Over four months ago, the U.S. Bankruptcy Court dismissed motions brought by the Monitor to advance its plan. There has been no progress since then.

6. These CCAA proceedings over the Texas LLCs are doomed to failure.

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

² *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) [Century Services] at para 71 [TAB 2].

³ *Angus A2A GP Inc (Re)*, [2025 ABKB 51](#) [Comeback Decision] at paras 67, 88 [TAB 3].

7. The Monitor's application to extend the stay of proceedings as against the Texas LLCs should be dismissed, and these CCAA proceedings should terminate as against the Texas LLCs. This Brief sets out the Texas LLCs' submissions in that regard.

8. In accordance with the Honourable Justice Jones' direction on September 23, 2025 that all parties provide all materials which they wish him to consider for purposes of the application on October 29, 2025 to him by 12:00 p.m. on October 17, 2025, the Texas LLCs submit this Brief at this time, having not yet seen the Monitor's application or its report in support of the same. The Texas LLCs expect to have additional submissions upon receipt and review of the Monitor's application materials, which its counsel will address at the hearing.

II. FACTS

9. The facts in relation to these CCAA proceedings are extensive and complex. Considering this, the Texas LLCs have included a summary of the facts relevant to the Monitor's stay extension application and to their related cross-application to terminate the CCAA proceedings herein, but have also included a more comprehensive statement of the facts in relation to the CCAA proceedings as Appendix "A" to this Brief.

B. Brief Background to the CCAA proceedings

10. The Initial Order in these CCAA proceedings was granted November 14, 2024, essentially on an *ex parte* basis,⁴ and without an order for service *ex juris*⁵ 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 Project**" located in Ontario, (collectively, the "**Projects**"), filed an Originating Application⁶ under s. 11.02 of the CCAA for an Initial Order for a stay of proceedings and to appoint the

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

⁵ In the circumstances where no order for service *ex juris* had been sought or granted.

⁶ Originating Application filed November 12, 2024 [**TAB B**].

Monitor, with enhanced powers, over the respondents to these CCAA proceedings⁷ (the “**CCAA Respondents**”).⁸

11. The Honourable Justice Feasby granted the Initial Order on November 14, 2024⁹:

- (a) appointing the Monitor and granting, in the words of this Court, “very wide-ranging enhanced powers”¹⁰ to the Monitor to exercise the management and control of the CCAA Respondents (thus stripping them, including the Texas LLCs, of control of their own companies);
- (b) granting a stay of proceedings up to and including November 24, 2024 (the “**Stay Period**”);
- (c) appointing Fasken Martineau DuMoulin LLP as representative counsel (“**Canadian Representative Counsel**”) for Canadian investors in the Projects (the “**Canadian Investors**”);
- (d) appointing Norton Rose Fulbright Canada LLP as representative counsel (“**Offshore Representative Counsel**” and, together with Canadian Representative Counsel, “**Representative Counsel**”) for foreign investors in the Projects (the “**Offshore Investors**” and, together with the Canadian Investors, the “**Investors**”);
- (e) authorizing the Monitor to enter into an interim financing agreement with Pillar Capital Corp. (the “**Interim Lender**”) and to borrow funds from the Interim Lender;
- (f) granting an administrative charge and an interim lender’s charge against the property, assets and undertakings of the CCAA Respondents;

⁷ Angus A2A GP Inc., Angus Manor Park A2A GP Inc., Angus Manor Park A2A Capital Corp., Angus Manor Park A2A Developments Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A GP Inc., A2A Developments Inc., Serene Country Homes (Canada) Inc., A2A Capital Services Canada Inc., and the Texas LLCs.

⁸ It is important to note that the Texas LLCs have no involvement with the Angus Manor Park Project, nor do they take any position on the Monitor’s expected application to extend the stay of proceedings over those CCAA Respondents related to the Angus Manor Park Project. The Texas LLCs’ involvement (and its position vis-à-vis the Monitor’s expected stay extension application and the Texas LLCs’ own application to terminate the CCAA proceedings) relates only to Windridge Project and the Fossil Creek Projects, being the real estate development projects located in Texas.

⁹ Initial Order granted November 14, 2024 [**Initial Order**] [**TAB E**], paras 9-14.

¹⁰ November 25 Transcript, p 7/22-24 [**TAB D**].

- (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.

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

13. 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**”).¹¹

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

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

16. On November 25, 2024, Justice Simard issued his decision extending the Stay Period to and including December 18, 2024 for the limited purpose of gathering information, ruled that the Court had jurisdiction over the Texas LLCs, granted an Amended and Restated Initial Order (“**ARIO**”), directed the Monitor to provide a comprehensive report to the Court by December 13, 2024, directed the Texas LLCs and the other CCAA Respondents to provide certain information to the Monitor by December 6, 2024, and adjourned the Set Aside Application and the balance of the Comeback Application to a continuation of the Comeback Hearing on December 18, 2024.¹⁴ With respect to the limited purpose of the stay extension, Justice Simard directed that other than corresponding with the CCAA Respondents and preparing the comprehensive report, "the monitor should only be carrying out the tasks that it

¹¹ Application of the Monitor filed November 18, 2024 [TAB F].

¹² Application of the CCAA Respondents (including the Texas LLCs) filed November 21, 2024 [TAB G].

¹³ Transcript of proceedings before Justice C. D. Simard, November 21, 2024 [TAB J].

¹⁴ Amended and Restated Initial Order granted November 25, 2024 [TAB K], November 25 Transcript, p 13/19-21 [TAB D].

is empowered to carry out under the initial order that are necessary."¹⁵ He also dismissed the Monitor's application to add the Trails of Fossil Creek Trust or the Hills of Windridge Trust (the "**Offshore Trusts**"), which held the lands that were the subject of the WFC Projects (the "**Lands**"), or the trustee in each case, to the CCAA proceedings, finding that he clearly did not have authority or jurisdiction to do that, nor to grant an order enjoining the sale of the Lands.¹⁶

17. On December 6, 2024, and thereafter, the CCAA Respondents provided records and information to the Monitor in response to Justice Simard's direction where possible to do so, and provided correspondence, explanations and affidavit evidence where they were unable to do so because such information did not exist or could not otherwise be provided.¹⁷ This is an important point, as the Monitor and the Investors have repeatedly asserted throughout the CCAA proceedings that the CCAA Respondents failed or refused to produce records as ordered by the Court. Those assertions ignore the CCAA Respondents' evidence in this regard.

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

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

20. On January 17, 2025, Justice Feasby:

- (a) granted an Order extending the Stay Period to and including February 14, 2025 or such other time as determined by the Court upon delivery of his decision arising from the Comeback Hearing; and
- (b) heard the Set Aside Application and the balance of the Comeback Application and reserved his decision regarding the same.¹⁸

¹⁵ November 25 Transcript, p 17/6-10 [TAB D].

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

¹⁷ 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 [Fourth Lind Affidavit] [TAB O], paras 4-6.

¹⁸ Transcript of proceedings before Justice C. C. J. Feasby, January 17, 2025 [TAB Q].

21. The Monitor's Fourth Report confirms that on January 27, 2025, without notice to the CCAA Respondents and contrary to the limited purposes of the CCAA proceedings as directed by Justice Simard pending the determination of the Set Aside Application and the balance of the Comeback Application and contrary to the ARIO,¹⁹ counsel for the Monitor sent a letter to JPMorgan Chase Bank, N.A. ("**Chase Bank**") in the U.S., stating in part:

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

Notwithstanding that neither of the Trails of Fossil Creek Properties LP or the Hills of Windridge LP (collectively, the "**Texas LPs**") are CCAA Respondents, and notwithstanding that the Monitor has no authority over the Texas LPs or their assets, the Monitor requested that Chase Bank immediately freeze all withdrawals and transfers from any and all accounts held by Chase Bank and owned by either of the Texas LLCs and by either of the Texas LPs, and requested that Chase Bank produce any and all account numbers, account balances and account statements relating to any such bank accounts.²⁰

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

23. On January 29, 2025, Justice Feasby issued Reasons for Decision (the "**Comeback Decision**") dismissing the Set Aside Application, but also 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 ARIO. According to the [CCAA] Respondents, the CCAA proceedings are destined to fail because the Windridge lands and Fossil Creek lands and the bank accounts that contain the proceeds of such of those lands that have already

¹⁹ November 25 Transcript, p 12/29-40 [TAB D]; Amended and Restated Initial Order, para 31 [TAB K].

²⁰ Fourth Report of the Monitor filed February 19, 2025 [Fourth Report], Appendix "I" [TAB R].

²¹ Fourth Report, Appendix "J" [TAB R].

been sold are beyond the reach of this Court. This objection is potentially fatal for the CCAA proceedings concerning Windridge and Fossil Creek because without control over the US assets, there is no prospect for recovery for stakeholders through the CCAA proceedings. Though the assets may prove to be beyond the reach of the Monitor, in my opinion, it is premature to conclude that the Monitor will fail and the CCAA proceedings must be terminated in respect of Windridge and Fossil Creek. Justice Simard's decision that this Court does not have jurisdiction over the Texas Trusts does not prevent the Monitor from taking other steps in Canada or legal action in the US, whether under the rubric of Chapter 15 or otherwise, to achieve its objectives. So far, the Monitor has not articulated a plan for gaining control of the remaining Windridge lands and the bank accounts that hold the proceeds of the sales of the Fossil Creek and Windridge lands. This is a critical point that I will return to in the Conclusion of these Reasons.²²

...

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.²³

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

- (a) The Texas LLCs (i.e., the same entities identified in the Comeback Decision as "the US LLCs"), each of which are incorporated in Texas and neither of which carry on business in or have any assets in Canada, represented by Bennett Jones LLP; and
- (b) Fossil Creek A2A GP Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A Limited Partnership, Hills of Windridge A2A LP, Fossil Creek A2A Trust and Hills of Windridge A2A Trust, represented by Miles Davison LLP (collectively,

²² [Comeback Decision](#), para 67 [TAB 3].

²³ [Ibid](#) at para 88 [TAB 3].

the “**WFC Canadian Entities**”, and together with the Texas LLCs, the “**WFC Entities**”).

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

26. The Monitor provided its plan (the “**Texas Plan**”) to gain control of the remaining Windridge lands and the proceeds of sale of the Windridge lands and Fossil Creek lands (collectively, the “**Lands and Proceeds**”) to the Court via its Fourth Report filed February 19, 2025. On February 24, 2025, the Monitor filed its application seeking, *inter alia*, an Order approving the Texas Plan, which was heard by the Honourable Justice Campbell on March 3, 2025.

27. On March 5, 2025, Justice Campbell issued her oral decision approving the Texas Plan.²⁴ The decision states, in part:

It is recognized that the Texas Plan is a fluid one. It may well be that as the Monitor progresses with the Chapter 11 proceedings, information comes to light that requires amendments to the Texas Plan or a determination that the Texas Plan is indeed futile and doomed to fail and in the result CCAA proceedings would be terminated against all or some of the Texas Related Respondents.²⁵

[emphasis added]

28. The Texas LLCs and the Canadian WFC Entities sought permission to appeal the ARIQ, the Comeback Decision, and other Orders. Those applications were heard by the Court of Appeal of Alberta on March 6, 2025. The Honourable Justice Hawkes issued his decision granting the Texas LLCs and the Canadian WFC Entities permission to appeal the ARIQ and the Comeback Decision on the questions of whether the supervising justice erred in concluding that the Canadian investors fell within the scope of the CCAA and that its use in these circumstances was proper, and whether the supervising justice erred in determining that entities within the A2A Group were subject to the CCAA.²⁶ In granting permission to appeal, Justice

²⁴ Transcript of decision of Justice G. A. Campbell, March 5, 2025, filed April 1, 2025 [March 5 Transcript] [TAB V].

²⁵ March 5 Transcript at p 8/28-9/2, 11/34-38 [TAB V].

²⁶ *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, [2025 ABCA 147](#) [Leave Decision] [TAB 4].

Hawkes specifically noted that the Texas LLCs and the Canadian WFC Entities were not seeking to stay the CCAA proceedings pending the outcome of the appeals.²⁷

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

30. On June 5, 2025, the Honorable Edward L. Morris, U.S. Bankruptcy Judge, heard the Motions and rendered his decision, and subsequently issued Orders dismissing the Motions, filed at the U.S. Bankruptcy Court.²⁹ His decision explains that the targets in relation to the Motions are the Texas LPs and certain assets that they are holding, and that the Texas LPs filed an objection to the Motions.³⁰ With respect to questions asked of the Monitor during testimony at the hearing before him, Judge Morris notes that the Monitor:

- (a) was not aware of any assets or has not identified any assets of the Texas LLCs that were within the possession of the Texas LPs;
- (b) had not identified any transfers of property by the Texas LLCs to the Texas LPs;
- (c) did not have any current knowledge that any cash in the Chase Bank accounts is in fact property of the estates of the Texas LLCs;
- (d) did not have any current knowledge that either of the Texas LPs was in fact the recipient of an avoidable transfer by the Texas LLCs.³¹

²⁷ *Ibid* at para 36 [TAB 4].

²⁸ Affidavit of Allan Lind sworn October 16, 2025 [Fifth Lind Affidavit], Exhibit "1" (Fossil Creek Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors) [TAB X]; Fifth Lind Affidavit, Exhibit "2" (Windridge Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors) [TAB X].

²⁹ Fifth Lind Affidavit, Exhibit "3" (Transcript of decision of Judge Edward L. Morris, June 5, 2025, filed at the U.S Bankruptcy Court [Morris Transcript]), Exhibit "4" (Order Denying Fossil Creek Motion), and Exhibit "5" (Order Denying Windridge Motion) [TAB X].

³⁰ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 4/18-5/17, 25/12-26/10) [TAB X].

³¹ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/5-14) [TAB X].

31. Judge Morris also held that:

- (a) the Texas LLCs do not hold or own the Chase Bank accounts or any accounts;
- (b) the Texas LLCs do not have an ownership interest in the Texas LPs, other than one of the Texas LLCs owns a one-ten-thousandth interest in one of the Texas LPs;
- (c) by the end of 2014 or early 2015, all UFIs in the WFC Properties had been sold and the Texas LLCs no longer held any interest in them;
- (d) there was no clear-cut evidentiary trail to find that any of the monies in the Chase Bank accounts, or any property held by the Texas LPs at all, is property of the estates of the Texas LLCs;
- (e) there had been "no satisfaction of the burden of proof of establishing the existence of a colorable claim which would give the estates the right to the property involved, at least at this stage."³²

32. While the dismissal of the Motions was not a final adjudication of property rights,³³ to date, as far as the Texas LLCs are aware, the Motions are the only steps the Monitor has taken to advance the Texas Plan.

33. Otherwise, the Monitor's Seventh Report filed July 22, 2025 states that the Monitor and its U.S. legal counsel are reevaluating the Texas LLCs' claims against the Texas LPs and others, and that meetings of creditors in the Chapter 11 cases were held on April 23, 2025 and June 11, 2025.³⁴ The Monitor's counsel has also referenced subpoenas issued or to be issued on behalf of the Monitor during submissions before the Court on July 29, 2025. At present, there is no evidence of any other steps taken by the Monitor to advance the Texas Plan.

34. At the Monitor's last application to extend the stay of proceedings heard by the Honourable Justice Mah on July 29, 2025, counsel for the Monitor stated that the Monitor does not dispute that if the Texas Plan is doomed to fail, that the CCAA should terminate (as against

³² Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/15-29/15, 40/18-22, 43/3-4) [TAB X].

³³ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at p 43/3-25) [TAB X].

³⁴ Seventh Report of the Monitor filed July 22, 2025, paras 33-34 [TAB W].

the Windridge and Fossil Creek entities), but that it was premature to determine that at that time.

35. Justice Mah granted the stay extension to October 31, 2025, stating that if the Monitor makes a further stay extension application and the Texas LLCs wish to oppose it or argue that the Texas Plan has failed, they can do so and/or they can file a cross-application.

36. The appeals of the Texas LLCs and of the WFC Canadian Entities were heard by the Alberta Court of Appeal on September 8, 2025. The panel reserved its decision.

37. It is important to note that the issues on appeal differ from the issues before this Court in relation to the Monitor's application to extend the stay of proceedings and the Texas LLCs' cross-application to terminate the CCAA proceedings. There is no need for this Court to defer consideration of the applications before it on October 29, 2025, pending the Court of Appeal issuing its decision.

38. Over seven months have passed since the Texas Plan was approved by this Court. The Monitor's Motions were dismissed by the U.S. Bankruptcy Court over four months ago, and the Motions are the only substantive step taken by the Monitor to advance the Texas Plan. The Monitor has failed to bring the Lands and Proceeds within its control or within the scope of these CCAA proceedings. The Texas LLCs submit that the CCAA proceedings are destined to fail in respect of the WFC Entities, including the Texas LLCs, and therefore, consistent with Justice Feasby's Comeback Decision, must be terminated.

III. ISSUES

39. Should this Court grant an extension of the stay of proceedings in these CCAA proceedings as against the Texas LLCs?

40. Should this Court terminate the CCAA proceedings in relation to the Texas LLCs?

IV. ARGUMENT

A. The Monitor's Application to Extend the Stay of Proceedings

41. Pursuant to sections 11.02(2) and (3) of the CCAA, the court shall not make an order extending a stay of proceedings unless:

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.³⁵

42. The lack of any progress in advancing the Texas Plan in over seven months, where the Lands and Proceeds are outside the control of the Monitor, constitutes circumstances that make a further extension of the stay over the Texas LLCs *inappropriate*. The Comeback Decision confirms that a failure to bring the Lands and Proceeds within the Monitor's control is potentially fatal to the CCAA proceedings.³⁶

43. The lack of any progress in advancing the Texas Plan for over seven months also constitutes evidence that the Monitor has not acted with due diligence in the CCAA proceedings against the Texas LLCs.

44. A substantial portion of the Texas Plan was that the Monitor would "cause the [Texas LLCs] to commence a voluntary chapter 11 case in the United States Bankruptcy Court for the Northern District of Texas for the purpose of initiating an adversary proceeding and seeking judgment that Fossil Creek and Windridge are recoverable by [the Texas LLCs] as avoidable fraudulent transfers under 11 U.S.C. §§ 544 and 548 and related declaratory relief under 28 U.S.C. § 2201."

45. Presumably one reason why the Monitor has not advanced the Texas Plan is because *it isn't actually possible to do so*. In 2014 and 2015, the Texas LLCs sold undivided fractional interests ("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.³⁷ The Monitor has provided no explanation as to how there could be an avoidable fraudulent transfer under the applicable legislation in those circumstances.

³⁵ CCAA, s 11.02 [TAB 1].

³⁶ [Comeback Decision](#), para 67 [TAB 3].

³⁷ 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].

46. If the Texas Plan fails in its entirety, then the Lands and Proceeds have not been brought under the control of the Monitor, and in that case, per Justice Feasby's own words, "the CCAA proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs [i.e., the Texas LLCs]."³⁸

47. The CCAA is a remedial statute intended to facilitate restructuring,³⁹ not to perpetuate proceedings indefinitely in the absence of active or meaningful progress toward an approved plan.

48. The CCAA proceedings, initiated almost a full year ago, have clearly now failed in relation to the WFC Projects. The stay of proceedings should not be extended in relation to the Texas LLCs.

B. The Context of the Texas Plan

49. In relation to the Set Aside Application, the Texas LLCs submitted that these CCAA proceedings, as they relate to the Texas 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.⁴⁰

50. As set out above, Justice Feasby acknowledged in the Comeback Decision that absent the Monitor gaining control of the Lands and Proceeds, there is no prospect of recovery for stakeholders through the CCAA proceedings, which would be fatal for the CCAA proceedings concerning the WFC Projects.⁴¹ The context for this finding is the following submissions that were made by the Texas LLCs on the Set Aside Application before Justice Feasby.

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

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

³⁸ [Comeback Decision](#), para 88 [TAB 3].

³⁹ [Century Services](#), para 59 [TAB 2].

⁴⁰ 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 5].

⁴¹ [Comeback Decision](#), para 67 [TAB 3].

- (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.⁴²

52. The CCAA generally prioritizes the objective of avoiding the social and economic losses resulting from liquidation of an insolvent company.⁴³

53. There cannot be timely, efficient or impartial resolution of a debtor's insolvency with respect to the Texas LLCs because it 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 and Proceeds. This Court has already determined it does not have jurisdiction over the trustee in these proceedings, and that (absent the success of the Texas Plan), the Lands and Proceeds are outside the Monitor's control.⁴⁴

54. As such, it is not possible for these CCAA proceedings to further the purposes and objectives of the CCAA to affect a compromise or arrangement or to otherwise restructure or monitor the WFC Projects.

55. It is well established that efforts to reorganize under the CCAA can be terminated, and the stay of proceedings lifted, where the proposed reorganization has no reasonable prospect of success and is "doomed to failure."⁴⁵ Justice Feasby confirms this.⁴⁶

56. In *Arrangement relatif à Servites de Marie*,⁴⁷ the Superior Court of Québec denied an application for an initial order where the application was opposed by the main creditor, the representative of a class action relating to allegations of sexual assault committed by priests

⁴² 9354-9186 *Québec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 40 [*Callidus*] [TAB 6];

⁴³ *Callidus* at para 41 [TAB 6]; *Century Services* at paras 15, 70 [TAB 2].

⁴⁴ November 25 Transcript, p 15/17-16/1 [TAB D]; *Comeback Decision*, paras 67, 88 [TAB 3].

⁴⁵ *Century Services*, para 71 [TAB 2].

⁴⁶ *Comeback Decision*, paras 67, 88 [TAB 3].

⁴⁷ *Arrangement relatif à Servites de Marie*, 2021 QCCS 2212 [TAB 7].

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.

57. In *Shire International Real Estate Investments*, this Court declined to extend a stay of proceedings. Justice Kent held that the objective of the CCAA and the large number of unsecured investors were appropriate considerations; however, there was a strong likelihood that continuing the proceeding would not enhance the value of the real property assets and could potentially put the secured creditors at risk.⁴⁸

58. 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.

59. It is not in the public interest for this Court to further extend a stay of proceedings over the Texas LLCs in this case, in a manner that is inconsistent with the purpose and objectives of the CCAA.

D. The Texas Plan

60. The Monitor's Texas Plan was to commence Chapter 11 proceedings in relation to the Texas LLCs. There is no possibility that the Texas Plan can bring the Lands and Proceeds under the control of the Monitor and to date, the Monitor has failed to do so:

(a) The Texas 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, and

⁴⁸ *Re Shire International Real Estate Investments Ltd.*, [2010 ABQB 84](#) at paras 9-10 [TAB 8].

this Court has declined jurisdiction over the Offshore Trusts and the trustee thereof;

- (ii) There is no relationship or affiliation between the Texas LLCs and the Offshore Trusts;
 - (iii) The Fossil Creek Lands and a portion of the Windridge Lands were sold to arm's length purchasers for value. There is no relationship or affiliation between the Texas LLCs and those parties;
- (b) The Texas LLCs have no interest in the Proceeds:⁴⁹
- (i) the Proceeds are held by the Texas LPs;
 - (ii) the assets of the Texas LPs are *not* assets of the general partners of the Texas LPs;
 - (iii) the Texas LLCs were removed as general partner of the Texas LPs as of December 20, 2024;⁵⁰
 - (iv) there is no relationship or affiliation between the Texas 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 Texas LLCs, but also of the Texas LPs,⁵¹ that representation was false. The Texas LPs are not CCAA Respondents. The Texas LLCs are CCAA Respondents, but they do not hold any bank accounts at Chase Bank, they have no interest in the accounts of the Texas LPs in which the Proceeds are held, they

⁴⁹ Other than one of the Texas LLCs holds a one-ten-thousandth interest in one of the Texas LPs: Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/15-29/15, 40/18-22, 43/3-4) [TAB X].

⁵⁰ Fourth Lind Affidavit, paras 7-8 [TAB O]

⁵¹ Fourth Report of the Monitor, Appendix "I" [TAB R]

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.⁵²

- (c) Because the Texas LLCs have no interest in the Lands and Proceeds, the bankruptcy proceeding commenced by the Monitor over the Texas 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 Texas 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 [Texas LLCs] as avoidable fraudulent transfers under 11 U.S.C. §§ 544 and 548 and related declaratory relief under 28 U.S.C. §2201."⁵³ In 2014 and 2015, the Texas 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.⁵⁴ The Monitor has provided no explanation as to how its Texas Plan could succeed in those circumstances;
- (e) Even if successful, the Texas Plan does not necessarily present a means for the Lands and Proceeds to be recovered by the Investors. The Investors' own evidence confirms that there are American judgment creditors against the Texas LLCs – Global Forest, LLC and Forest Funding, LLC – which have a judgment in the amount of USD \$3,844,256.50 against the Texas LLCs, jointly and severally with other defendants (the "**Global Forest Judgment**"),⁵⁵ and M3 Fort Worth Developer, LLC and The Youngestone, LLC, which have a judgment in the amount of USD \$529,275.80 against the Texas LLCs, jointly

⁵² Other than a one-ten-thousandth interest in one of the Texas LPs: Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/15-29/15, 40/18-22, 43/3-4) [TAB X].

⁵³ Fourth Report, para 76 [TAB R].

⁵⁴ Second Lind Affidavit, paras 8, Exhibits "E" and "G" [TAB M]; Lind Questioning p 2/4-20, 26/21-27/13 [TAB T], referencing First Lind Affidavit, Exhibits "A" and "B" [TAB I].

⁵⁵ Edwards Affidavit, Exhibit "36" [TAB C].

and severally, along with exemplary damages against the Texas LLCs in the amounts of USD \$1,058,551.60 and \$1,008,408.80 (the “**M3 Judgment**”).⁵⁶ 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 Texas LLCs, would go to satisfy claims of *creditors* of the Texas 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 Texas LLCs) are equity claims, which rank subordinate to all creditor claims. Even if it were possible to recover the Lands and Proceeds through Chapter 11 proceedings against the Texas LLCs, which it is not, the Texas Plan does not necessarily result in recovery by the Investors;

- (f) To date, the Texas Plan has failed to bring the Lands and Proceeds within the Monitor's control or within the scope of the CCAA proceedings. The Motions were dismissed as of June 5, 2025, over four months ago, and the Texas LLCs are not aware of any progress by the Monitor since then in bringing the Lands and Proceeds within the Monitor's control.

61. The CCAA proceedings in relation to the Texas LLCs are destined to fail. They cannot be permitted to continue indefinitely, without any evidence of success or even progress in advancing the same. The CCAA proceedings thus must terminate in respect of the Texas LLCs, in accordance with Justice Feasby’s Comeback Decision.⁵⁷

62. At the Monitor's previous application to extend the stay of proceedings heard by Justice Mah on July 29, 2025, counsel for the Monitor stated that the Monitor does not dispute that if the Texas Plan is doomed to fail, that the CCAA should terminate (as against the Windridge and Fossil Creek entities), but that it was premature to determine that at that time. As of the date of the hearing before Justice Jones on October 29, 2025, three months will have passed since then, and there is now not only opposition to the further extension of the stay of

⁵⁶ Fourth Report, para 61, Appendix “L” [TAB R].

⁵⁷ [Comeback Decision](#), para 88 [TAB 3].

proceedings, but also a cross-application before this Court to terminate the CCAA proceedings against the Texas LLCs.

V. RELIEF SOUGHT

63. The Texas LLCs seek an Order:

- (a) dismissing the Monitor's application to extend the stay of proceedings in relation to the Texas LLCs;
- (b) immediately terminating the CCAA proceedings as against the Texas LLCs;
- (c) discharging the Monitor in its capacity as Monitor of the Texas LLCs; and
- (d) granting costs in favour of the Texas LLCs.

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, s 11.02.
2. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
3. *Angus A2A GP Inc (Re)*, [2025 ABKB 51](#)
4. *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, [2025 ABCA 147](#)
5. *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, [2008 BCCA 327](#)
6. *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#)
7. *Arrangement relatif à Servites de Marie*, [2021 QCCS 2212](#)
8. *Re Shire International Real Estate Investments Ltd.*, [2010 ABQB 84](#)
9. *Angus A2A GP Inc (Re)*, [2024 ABKB 769](#)

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 Texas 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. Order granted by Justice Feasby January 17, 2025, filed January 20, 2025
- Q. Transcript of proceedings before Justice C. C. J. Feasby, January 17, 2025
- R. Fourth Report of the Monitor filed February 19, 2025
- S. Affidavit of Paul Lauzon filed November 12, 2024
- T. Transcript of Questioning of Allan Lind on Affidavits held January 7, 2025
- U. First Supplement to the Third Report of the Monitor filed December 17, 2024
- V. Seventh Report of the Monitor filed July 22, 2025
- W. Fifth Affidavit of Allan Lind, sworn October 16, 2025

VIII. APPENDIX "A" – COMPREHENSIVE STATEMENT OF FACTS

1. 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 Texas 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

2. The Initial Order in these CCAA proceedings was granted November 14, 2024, essentially on an *ex parte* basis,⁵⁸ and without an order for service *ex juris*⁵⁹ 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 Project**” located in Ontario, (collectively, the “**Projects**”), filed an Originating Application⁶⁰ under s. 11.02 of the CCAA for an Initial Order for a ten-day stay of proceedings and to appoint the Monitor, with enhanced powers, over the respondents to these CCAA proceedings (the “**CCAA Respondents**”) , along with six Affidavits and a Pre-Filing Report of the proposed Monitor.

3. At the hearing on November 14, 2024, a two-week adjournment was requested by counsel (at that time) for the CCAA Respondents.⁶¹ 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 investors⁶² 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.”⁶³ 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

⁵⁸ Transcript of proceedings before Justice C.C.J. Feasby, November 14, 2024 (“**November 14 Transcript**”) [TAB A], p 4/23-27.

⁵⁹ In the circumstances where no order for service *ex juris* had been sought or granted.

⁶⁰ Originating Application filed November 12, 2024 [TAB B].

⁶¹ November 14 Transcript, pp 11/17-13/30, 17/28-18/15 [TAB A].

⁶² 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].

⁶³ Edwards Affidavit, Part 1, para 94, Part 6, Exhibit “39” [TAB C].

Project.⁶⁴ The adjournment request was denied due to a finding of urgency based on the Facebook post.⁶⁵

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

- (a) appointing the Monitor and granting, in the words of this Court, “very wide-ranging enhanced powers”⁶⁶ to the Monitor to exercise the management and control of the CCAA Respondents, including the Texas LLCs, of control of their own companies);
- (b) granting a stay of proceedings up to and including November 24, 2024 (the “**Stay Period**”);
- (c) appointing Fasken Martineau DuMoulin LLP as representative counsel (“**Canadian Representative Counsel**”) for Canadian investors in the Projects (the “**Canadian Investors**”);
- (d) appointing Norton Rose Fulbright Canada LLP as representative counsel (“**Offshore Representative Counsel**” and, together with Canadian Representative Counsel, “**Representative Counsel**”) for foreign investors in the Projects (the “**Offshore Investors**” and, together with the Canadian Investors, the “**Investors**”);
- (e) authorizing the Monitor to enter into an interim financing agreement with Pillar Capital Corp. (the “**Interim Lender**”) and to borrow \$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

⁶⁴ *Ibid* [TAB C].

⁶⁵ November 14 Transcript, p 17/41-18/3 [TAB A].

⁶⁶ November 25 Transcript, p 7/22-24 [TAB D].

under Chapter 15 of Title 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Texas.

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

6. 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**”).⁶⁷

7. On November 20, 2024, the CCAA Respondents, including the Texas LLCs, served an application to set aside the CCAA Proceedings (the “**Set Aside Application**”)⁶⁸ to be heard November 21, 2024 (the “**Comeback Hearing**”).

8. On November 20, 2024, the Monitor filed the First Report of the Monitor.⁶⁹

9. 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**”),⁷⁰ 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, granted an order extending the Stay Period to and including November 26, 2024, and reserved his decision on the Comeback Application.⁷¹

10. On November 22, 2024, the Monitor filed the First Supplement to the First Report of the Monitor.

⁶⁷ Application of the Monitor filed November 18, 2024 [TAB F].

⁶⁸ Application of the CCAA Respondents (including the LLCs) filed November 21, 2024 [TAB G].

⁶⁹ First Report of the Monitor filed November 20, 2024 [TAB H].

⁷⁰ Affidavit of Allan Lind sworn November 21, 2024 [First Lind Affidavit] [TAB I].

⁷¹ Transcript of proceedings before Justice C. D. Simard, November 21, 2024 [TAB J].

11. 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 Court had jurisdiction over the Texas LLCs, granted an Amended and Restated Initial Order (“**ARIO**”), directed the Monitor to provide a comprehensive report to the Court by December 13, 2024, directed the Texas LLCs and the other CCAA Respondents to provide certain information to the Monitor by December 6, 2024, and adjourned the Set Aside Application and the balance of the Comeback Application to a continuation of the Comeback Hearing on December 18, 2024.⁷² With respect to the limited purpose of the stay extension, Justice Simard directed that other than corresponding with the CCAA Respondents and preparing the comprehensive report, "the monitor should only be carrying out the tasks that it is empowered to carry out under the initial order that are necessary."⁷³ He also dismissed the Monitor's application to add the Trails of Fossil Creek Trust or the Hills of Windridge Trust (the “**Offshore Trusts**”), which held the lands that were the subject of the WFC Projects (the “**Lands**”), or the trustee in each case, to the CCAA proceedings, finding that he clearly did not have authority or jurisdiction to do that, nor to grant an order enjoining the sale of the Lands.⁷⁴

12. 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 [undivided fractional interests (“**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:

⁷² Amended and Restated Initial Order granted November 25, 2024 [TAB K], November 25 Transcript, p 13/19-21 [TAB D].

⁷³ November 25 Transcript, p 17/6-10 [TAB D].

⁷⁴ November 25 Transcript, p 15/17-16/1 [TAB D].

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.⁷⁵

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

14. 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.

15. On December 6, 2024, and thereafter, the CCAA Respondents provided records and information to the Monitor in response to Justice Simard's direction where possible to do so, and provided correspondence, explanations and affidavit evidence where they were unable to do so because such information did not exist or could not otherwise be provided.⁷⁶ This is an important point as the Monitor and the Investors have repeatedly asserted throughout the CCAA proceedings that the CCAA Respondents failed or refused to produce records as ordered by the Court; these assertions ignore the CCAA Respondents' evidence in this regard.

16. On December 13, 2024:

- (a) the Monitor filed the Third Report of the Monitor in accordance with Justice Simard's direction,⁷⁷ secretarial affidavits were filed on behalf of the Investors, and the Texas LLCs and the other CCAA Respondents filed the second

⁷⁵ November 25 Transcript, pp 11/18-12/11 [TAB D]; First Lind Affidavit, paras 6(l) and 18 [TAB I].

⁷⁶ 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 [Fourth Lind Affidavit] [TAB O].

⁷⁷ Third Report [TAB L].

Affidavit of Allan Lind sworn December 13, 2024 (the “**Second Lind Affidavit**”)⁷⁸ and the third Affidavit of Grayson Ambrose sworn December 13, 2024 (the “**Third Ambrose Affidavit**”);

(b) the Texas LLCs retained their current counsel, Bennett Jones LLP.

17. On December 16, 2024:

(a) the Texas LLCs and the other CCAA Respondents (other than the Texas 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;⁷⁹ and

(ii) each filed and served an application for permission to appeal the ARO;⁸⁰ and

(b) the Texas 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 process for the determination of the Extension Application, in consideration of the Court’s upcoming December break.

18. 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 Texas LLCs, the “**Extension Applications**”);

⁷⁸ Second Lind Affidavit [TAB M].

⁷⁹ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Initial Order, filed December 16, 2024.

⁸⁰ 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.

- (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.
19. On December 18, 2024:
- (a) the Texas LLCs' Extension Application was filed and served.⁸¹
 - (b) Justice Simard, formerly a partner at Bennett Jones LLP, recused himself from hearing further applications in these CCAA proceedings due to a conflict, and extended the Stay Period to and including December 20, 2024.
20. 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 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.
21. On December 23, 2024, Justice Feasby issued reasons for decision⁸² dismissing the Extension Applications (the “**Extension Dismissal Order**”).

⁸¹ 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.

⁸² *Angus A2A GP Inc (Re)*, [2024 ABKB 769](#) [TAB 9].

22. 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**”),⁸³ the fourth Affidavit of Allan Lind sworn December 31, 2024 and filed by Bennett Jones LLP (the “**Fourth Lind Affidavit**”),⁸⁴ 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 Texas 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.

23. The Texas LLCs have, through the Affidavit of Allan Lind sworn November 21, 2024⁸⁵ and December 31, 2024,⁸⁶ 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.

24. On January 13, 2025, the Texas LLCs filed and served an application for permission to appeal the Extension Dismissal Order.⁸⁷

25. On January 17, 2025, Justice Feasby:

- (a) granted an Order extending the Stay Period to and including February 14, 2025 or such other time as determined by the Court upon delivery of his decision arising from the Comeback Hearing;
- (b) adjourned certain relief sought by the Monitor and by Canadian Representative Counsel *sine die*;⁸⁸ and

⁸³ Third Lind Affidavit [TAB N].

⁸⁴ Fourth Lind Affidavit [TAB O].

⁸⁵ First Lind Affidavit, para 16 [TAB I].

⁸⁶ Fourth Lind Affidavit, para 3 [TAB O].

⁸⁷ Application of Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC for permission to appeal the Extension Dismissal Order, filed January 13, 2025.

⁸⁸ Order granted by Justice Feasby January 17, 2025, filed January 20, 2025 [TAB P].

- (c) heard the Set Aside Application and the balance of the Comeback Application and reserved his decision regarding the same.⁸⁹

26. The Monitor's Fourth Report confirms that on January 27, 2025, without notice to the CCAA Respondents and contrary to the limited purposes of the CCAA proceedings as directed by Justice Simard pending the determination of the Set Aside Application and the balance of the Comeback Application and contrary to the ARIO,⁹⁰ counsel for the Monitor sent a letter to JPMorgan Chase Bank, N.A. ("**Chase Bank**") in the U.S., stating in part:

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

Notwithstanding that neither of the Trails of Fossil Creek Properties LP or the Hills of Windridge LP (collectively, the "**Texas LPs**") are CCAA Respondents, and notwithstanding that the Monitor has no authority over the Texas LPs or their assets, the Monitor requested that Chase Bank immediately freeze all withdrawals and transfers from any and all accounts held by Chase Bank and owned by either of the Texas LLCs and by either of the Texas LPs, and requested that Chase Bank produce any and all account numbers, account balances and account statements relating to any such bank accounts.⁹¹

27. Chase Bank responded on February 4, 2025 and February 12, 2025, provided account numbers and balances for accounts held in the names of the Texas LPs and confirmed that it did not hold any accounts in the names of the Texas LLCs. Chase Bank's responses indicated they were in response to a Temporary Restraining Order from the Monitor; no such temporary restraining order exists over the Texas LPs.⁹² No court order has ever been granted over the Texas LPs in the CCAA proceedings or the Chapter 15 proceedings.

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

⁸⁹ Transcript of proceedings before Justice C. J. Feasby, January 17, 2025 [TAB Q].

⁹⁰ November 25 Transcript, p 12/29-40 [TAB D]; Amended and Restated Initial Order, para 31 [TAB K].

⁹¹ Fourth Report of the Monitor filed February 19, 2025 [Fourth Report], Appendix "I" [TAB R].

⁹² Fourth Report, Appendix "J" [TAB R].

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. Though the assets may prove to be beyond the reach of the Monitor, in my opinion, it is premature to conclude that the Monitor will fail and the CCAA proceedings must be terminated in respect of Windridge and Fossil Creek. Justice Simard's decision that this Court does not have jurisdiction over the Texas Trusts does not prevent the Monitor from taking other steps in Canada or legal action in the US, whether under the rubric of Chapter 15 or otherwise, to achieve its objectives. So far, the Monitor has not articulated a plan for gaining control of the remaining Windridge lands and the bank accounts that hold the proceeds of the sales of the Fossil Creek and Windridge lands. This is a critical point that I will return to in the Conclusion of these Reasons.⁹³

...

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.⁹⁴

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

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

⁹³ [Comeback Decision](#), para 67 [TAB 3].

⁹⁴ [Ibid.](#), para 88 [TAB 3].

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

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

31. On February 19, 2025:

- (a) the Monitor filed and served its Fourth Report, setting out its “**Texas Plan**” to gain control of the remaining Windridge lands and the proceeds of sale of the Windridge lands and Fossil Creek lands (collectively, the “**Lands and Proceeds**”); and
- (b) the Texas LLCs and the WFC Canadian Entities each filed applications for permission to appeal the Comeback Decision.

32. 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 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.

33. On March 5, 2025, Justice Campbell issued her oral decision approving the Texas Plan and further extended the stay of proceedings, stating, *inter alia*, as follows:

There is no dispute that, as directed by Justice Feasby, the Monitor has provided to the Court, within 21 days, a plan to gain control of the Texas Assets. The key issue is whether the Monitor has provided a plan that is a reasonable one that would permit the Monitor to gain control of the Texas Assets. This assessment

of reasonableness engages the Court's discretion. In this reasonability assessment, the Court considered the following principles:

A reasonable plan need not be perfectly detailed and set out;

A reasonable plan need not ensure it will be a successful one;

It is recognized that a plan is but a plan not a guarantee;

A plan is fluid. As new information comes to light a plan may be amended or tweaked to incorporate or reflect new information or abandon and terminate it because it has become clear to its author that their plan, as originally envisioned, cannot achieve what it set out to do.⁹⁵

It is recognized that the Texas Plan is a fluid one. It may well be that as the Monitor progresses with the Chapter 11 proceedings, information comes to light that requires amendments to the Texas Plan or a determination that the Texas Plan is indeed futile and doomed to fail and in the result CCAA proceedings would be terminated against all or some of the Texas Related Respondents.⁹⁶

[emphasis added]

34. The extant applications of the Texas LLCs and of the Canadian WFC Entities for permission to appeal (including the applications of the Texas LLCs for permission to appeal the Initial Order, the Extension Denial Order, the ARIO, and the Comeback Decision) were heard by the Court of Appeal of Alberta on March 6, 2025. The Honourable Justice J. B. Hawkes granted the Texas LLCs and the Canadian WFC Entities permission to appeal the ARIO and the Comeback Decision on the questions of whether the supervising justice erred in concluding that the Canadian investors fell within the scope of the CCAA and that its use in these circumstances was proper, and whether the supervising justice erred in determining that entities within the A2A Group were subject to the CCAA.⁹⁷ In granting permission to appeal, Justice Hawkes specifically noted that the Texas LLCs and the Canadian WFC Entities were not seeking to stay the CCAA proceedings pending the outcome of the appeals.⁹⁸

B. Texas Motions

35. On March 17, 2025, the Monitor, in its capacity as an appointed representative of the Texas LLCs, caused the Texas LLCs to file Motions with the U.S. Bankruptcy Court for the

⁹⁵ March 5 Transcript at p 10/28-11/2 [TAB V].

⁹⁶ March 5 Transcript at p 8/28-9/2, 11/34-38 [TAB V].

⁹⁷ [Leave Decision](#) [TAB 4].

⁹⁸ [Ibid](#) at para 36 [TAB 4].

Northern District of Texas Fort Worth Division (the “**Motions**”).⁹⁹ In the Motions, the Texas LLCs are collectively described as the “Debtors”, and seek an Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors.

36. On June 5, 2025, the Honorable Edward L. Morris, U.S. Bankruptcy Judge, heard the Motions and rendered his decision, and subsequently issued Orders dismissing the Motions, filed at the U.S. Bankruptcy Court.¹⁰⁰ His decision explains that the targets in relation to the Motions are the Texas LPs and certain assets that they are holding, and that the Texas LPs filed an objection to the Motions.¹⁰¹ With respect to questions asked of the Monitor during testimony at the hearing before him, Judge Morris notes that the Monitor:

- (a) was not aware of any assets or has not identified any assets of the Texas LLCs that were within the possession of the Texas LPs;
- (b) had not identified any transfers of property by the Texas LLCs to the Texas LPs;
- (c) did not have any current knowledge that any cash in the Chase Bank accounts is in fact property of the estates of the Texas LLCs;
- (d) did not have any current knowledge that either of the Texas LPs was in fact the recipient of an avoidable transfer by the Texas LLCs.¹⁰²

37. Judge Morris also held that:

- (a) the Texas LLCs do not hold or own the Chase Bank accounts or any accounts;
- (b) the Texas LLCs do not have an ownership interest in the Texas LPs, other than one of the Texas LLCs owns a one-ten-thousandth interest in one of the Texas LPs;

⁹⁹ Affidavit of Allan Lind sworn October 16, 2025 [**Fifth Lind Affidavit**], Exhibit "1" (Fossil Creek Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors) [**TAB X**]; Fifth Lind Affidavit, Exhibit "2" (Windridge Motion for Entry of Order (i) Confirming the Automatic Stay Applies to All Assets of the Debtors, Wherever Located, (ii) Extending the Automatic Stay to Debtor Property Held in the Name of Nondebtor Entities, or (iii) in the Alternative, Imposing the Automatic Stay to Debtor Property Held in the Name of Nondebtors) [**TAB X**].

¹⁰⁰ Fifth Lind Affidavit, Exhibit "3" (Transcript of decision of Judge Edward L. Morris, June 5, 2025, filed at the U.S Bankruptcy Court [**Morris Transcript**]), Exhibit "4" (Order Denying Fossil Creek Motion), and Exhibit "5" (Order Denying Windridge Motion) [**TAB X**].

¹⁰¹ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 4/18-5/17, 25/12-26/10) [**TAB X**].

¹⁰² Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/5-14) [**TAB X**].

- (c) by the end of 2014 or early 2015, all UFIs in the WFC Properties had been sold and the Texas LLCs no longer held any interest in them;
- (d) there was no clear-cut evidentiary trail to find that any of the monies in the Chase Bank accounts, or any property held by the Texas LPs at all, is property of the estates of the Texas LLCs;
- (e) there had been "no satisfaction of the burden of proof of establishing the existence of a colorable claim which would give the estates the right to the property involved, at least at this stage."¹⁰³

38. While the dismissal of the Motions was not a final adjudication of property rights,¹⁰⁴ to date, as far as the Texas LLCs are aware, the Motions are the only steps the Monitor has taken to advance the Texas Plan.

39. Otherwise, the Monitor's Seventh Report filed July 22, 2025 states that the Monitor and its U.S. legal counsel are reevaluating the Texas LLCs' claims against the Texas LPs and others, and that meetings of creditors in the Chapter 11 cases were held on April 23, 2025 and June 11, 2025.¹⁰⁵ The Monitor's counsel has also referenced subpoenas issued or to be issued on behalf of the Monitor, during submissions before the Court on July 29, 2025. At present, there is no evidence of any other steps taken by the Monitor to advance the Texas Plan.

40. At the Monitor's last application to extend the stay of proceedings heard by the Honourable Justice D. R. Mah on July 29, 2025, counsel for the Monitor stated that the Monitor does not dispute that if the Texas Plan is doomed to fail, that the CCAA should terminate (as against the Windridge and Fossil Creek entities), but that it was premature to determine that at that time.

41. Justice Mah granted the stay extension to October 31, 2025, stating that if the Monitor makes a further stay extension application and the Texas LLCs wish to oppose it or argue that the Texas Plan has failed, they can do so and/or they can file a cross-application.

¹⁰³ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at pp 28/15-29/15, 40/18-22, 43/3-4) [TAB X].

¹⁰⁴ Fifth Lind Affidavit, Exhibit "3" (Morris Transcript at p 43/3-25) [TAB X].

¹⁰⁵ Seventh Report of the Monitor filed July 22, 2025, paras 33-34 [TAB W].

42. The appeals of the Texas LLCs and of the WFC Canadian Entities were heard by the Alberta Court of Appeal on September 8, 2025. The panel reserved its decision.

C. Background to the WFC Projects and the Role of the Texas LLCs

43. 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.¹⁰⁶

44. The Texas 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).

45. 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 2013.¹⁰⁷ In or about 2015, pursuant to a sale agreement and ancillary documents (the “**Fossil Creek UFI Sale Agreement**”),¹⁰⁸ 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**”)),¹⁰⁹ 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.¹¹⁰

46. 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 2012.¹¹¹ In or about 2014, pursuant to a sale agreement and ancillary documents (the “**Windridge UFI Sale**

¹⁰⁶ Edwards Affidavit [TAB C], Part 1, para 14; November 25 Transcript, p 3/11-13 [TAB D].

¹⁰⁷ Second Lind Affidavit, para 8, Exhibit “H” [TAB M].

¹⁰⁸ Second Lind Affidavit, para 8, Exhibit “G” [TAB M].

¹⁰⁹ Affidavit of Paul Lauzon filed November 12, 2024, paras 10-11, Exhibit “A” [TAB S].

¹¹⁰ 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 T], p 26/4-20 referencing First Lind Affidavit, Exhibit “A” [TAB I].

¹¹¹ Second Lind Affidavit, para 8, Exhibit “F” [TAB M].

Agreement”),¹¹² Windridge LLC sold UFI 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**”)),¹¹³ 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.¹¹⁴

47. 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.¹¹⁵ 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.¹¹⁶ Neither the Trails of Fossil Creek 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.¹¹⁷ That decision has not been appealed.

48. 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 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.

¹¹² Second Lind Affidavit, para 8, Exhibit “E” [TAB M].

¹¹³ Edwards Affidavit, paras 69-70, Exhibit “29” [TAB C].

¹¹⁴ Second Lind Affidavit, para 8, Exhibit “E” [TAB M]; Lind Questioning, pp 26/21-27/13 [TAB T], referencing First Lind Affidavit, Exhibit “B” [TAB I].

¹¹⁵ Second Lind Affidavit, para 12 [TAB M].

¹¹⁶ Second Lind Affidavit, para 12, Exhibit “E” [TAB M]; Lind Questioning, pp 75/12-77/23 [TAB T].

¹¹⁷ November 25 Transcript, pp 15/17-16/6 [TAB D].

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.¹¹⁸

49. After selling the UFI 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 2024.¹¹⁹ 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 2024,¹²⁰ after marketing of the same by an arm’s length commercial broker, The Michael Group.¹²¹ 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 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.¹²² 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.¹²³
- (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

¹¹⁸ 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 T], 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.

¹¹⁹ Fourth Lind Affidavit, para 6 [TAB O].

¹²⁰ Third Report, paras 100-102, 112, and Appendix “T” [TAB L].

¹²¹ Lind Questioning, pp 32/17-22, 35/4-9, 38/4-11 [TAB T].

¹²² Second Lind Affidavit, paras 46 [TAB M]; Fourth Lind Affidavit, paras 6-7 [TAB O].

¹²³ Second Lind Affidavit, paras 44-48 [TAB M]; Lind Questioning, p 35/12-14 [TAB T].

Windridge Trust.¹²⁴ 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,¹²⁵ and then conveyed to TRWD.¹²⁶ This was necessary because the foreign-based trusts that own the Windridge Lands are not “bankable”, and there may have also been tax reasons.¹²⁷ 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.¹²⁸

50. The Texas 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 the Texas LLCs had been to hold and sell UFI in the Fossil Creek Lands and the Windridge Lands.¹²⁹ While the FC OM and the Windridge OM indicated that the Texas 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 2015.¹³⁰ The Texas 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.

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

¹²⁴ Second Lind Affidavit, paras 15, 40, 43 [TAB M].

¹²⁵ Fourth Lind Affidavit, paras 6-7 [TAB O].

¹²⁶ First Supplement to the Third Report of the Monitor filed December 17, 2024, paras 31-34 and Appendix “B” [TAB U].

¹²⁷ Second Lind Affidavit, para 41 [TAB M].

¹²⁸ Second Lind Affidavit, para 42 [TAB M].

¹²⁹ Fourth Lind Affidavit, para 6 [TAB O].

¹³⁰ 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].

of the Texas LPs, and the Texas LPs have removed the Texas LLCs as general partners in each case.¹³¹

52. The Texas LPs are not CCAA Respondents.

53. There is no evidence before this Honourable Court that either of the Texas 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.¹³²

D. The Rights of Investors

54. 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**

¹³¹ Fourth Lind Affidavit, paras 7-8 [TAB O].

¹³² *Ibid* [TAB O].

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.¹³³

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

¹³³ First Lind Affidavit, para 32 [TAB I]; Edwards Affidavit, Exhibits "15" and "29" [TAB C].

56. 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),¹³⁴ to provide annual financial statements of Fossil Creek A2A Trust and Hills of Windridge A2A Trust to Canadian investors,¹³⁵ 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.¹³⁶ 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.¹³⁷ 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.¹³⁸

57. 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 inspect full and adequate books of account and records, pursuant to the Fossil Creek Deed of Covenant, dated January 9, 2015.¹³⁹ The Offshore Investors agreed, at the outset of their investments,¹⁴⁰ to give the trustee of the Fossil Creek Trust the authority to develop, sell and convey the Fossil Creek Lands.¹⁴¹

58. 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.

¹³⁴ Third Report, Appendix “N”, ss 12.1(a) and (c) [TAB L].

¹³⁵ Third Report, para 137, Appendix “N”, s 16.7 [TAB L].

¹³⁶ Third Report, para 137 [TAB L].

¹³⁷ Third Report, paras 138-139 [TAB L].

¹³⁸ Third Report, Appendix “Y” [TAB L].

¹³⁹ Third Report, paras 96-97, Appendix “Q” [TAB L].

¹⁴⁰ Third Report, Appendix “S” [TAB L].

¹⁴¹ Third Report, Appendix “R”, Article One, Article Four, Sections D and G and Article Nine [TAB L].

59. 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 Texas 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.