

COURT FILE NUMBER 2401-02606

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDING

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROYAL HELIUM LTD., IMPERIAL HELIUM CORP., AND ROYAL HELIUM EXPLORATION LIMITED.

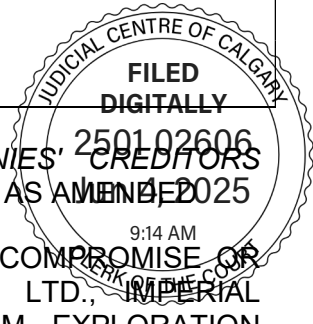
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**BRIEF OF LAW – MONITOR'S ENHANCED POWERS, STAY EXTENSION & APPROVAL OF ACTIVITIES AND FEES**

ADDRESS FOR SERVICE  
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**Hearing via Webex before the Honourable Justice J.T. Neilson  
on the Commercial List, on June 10, 2025, commencing at 2:00 p.m.**

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## I. INTRODUCTION AND OVERVIEW

1. This Bench Brief is submitted on behalf of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor (A&M in such capacity, the "**Monitor**") of the applicants in these proceedings, Royal Helium Ltd., Royal Helium Exploration Limited, and Imperial Helium Corp. (each individually, an "**Applicant**", and collectively, the "**Applicants**"), who seeks an order granting the following relief (the "**Order**"), substantially in the form attached to **Schedule "A"** to the Application:
  - (a) declaring that the time for service of the application (the "**Application**") and the Third Report of the Monitor, dated June 3<sup>rd</sup>, 2025 (the "**Third Report**") is abridged, that the Application is properly returnable on June 10, 2025, that service of the Application and the Third Report, on the service list maintained by the Monitor in these CCAA Proceedings (the "**Service List**") is good and sufficient, and that no persons other than those on the Service List are entitled to service of the Third Report, the Application or any orders arising therefrom;
  - (b) granting the Monitor enhanced powers with respect to the Applicants (the "**Enhanced Powers**");
  - (c) extending the Stay Period up to and including August 1, 2025;
  - (d) approving the activities of the Monitor as set out in the pre-filing report dated February 18, 2025 (the "**Pre-filing Report**"), the first report dated March 24, 2025 (the "**First Report**"), the second report dated May 1, 2025 (the "**Second Report**") and the Third Report (collectively, the "**Monitor's Reports**");
  - (e) approving the fees of the Monitor and its counsel, Burnet, Duckworth & Palmer LLP ("**BD&P**") as set out in the Third Report; and
  - (f) such further and other relief as may be sought by the Monitor and granted by this Honourable Court.
2. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Third Report.

## II. FACTS

### A. Details of CCAA Proceedings to Date

3. The factual background is set forth in greater detail in the Third Report.
4. On January 17, 2025, the Applicants each filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**Proposal Proceedings**").<sup>1</sup>
5. On February 19, 2025, the Court granted the Applicants' application for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), such that the Proposal Proceedings were taken up and continued under the CCAA. At that time, A&M was appointed as Monitor.<sup>2</sup>
6. On February 19, 2025, the Court also granted an order (the "**SISP Approval Order**") approving a sale and investment solicitation process ("**SISP**"). The SISP is being conducted by the Monitor in consultation with the Applicants.<sup>3</sup>
7. Following the granting of the SISP Approval Order, the Monitor has worked with the Applicants to advance the SISP.
8. On March 28, 2025, the Court granted an order which, among other things, extended the Stay Period up to and including May 17, 2025 and discharged Grant Thornton Limited as proposal trustee.<sup>4</sup>
9. On April 25, 2025 (the Phase II Bid Deadline), the Monitor received bids from four of the five Qualified Bidders. The Monitor, in consultation with the Applicants and the DIP Lenders, assessed the Phase II Bids to determine the most favourable offer and select a successful bid (the "**Successful Bid**").
10. On May 8, 2025, the Court granted an order (the "**Second Stay Extension Order**") which, among other things, extended the Stay Period up to and including June 27, 2025.<sup>5</sup>

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<sup>1</sup> Third Report at para 1.

<sup>2</sup> *Ibid* at para 2.

<sup>3</sup> *Ibid* at para 3.

<sup>4</sup> *Ibid* at para 4.

<sup>5</sup> *Ibid* at para 5.

11. The Monitor informed the offeror of the Successful Bid (the "**Successful Bidder**") that it had been selected, and with the approval of the Applicants and the DIP Lenders, entered into an exclusivity agreement with the Successful Bidder on May 23, 2025 in order to enter into a definitive agreement in respect of the Transaction, which is proposed to be completed by way of Reverse Vesting Order (subject to Court approval).<sup>6</sup>
12. In order to promote efficiency, the Monitor and the Applicants discussed various cost saving measures, which included the possibility of the Monitor assuming an enhanced and increased role in closing the transaction with the Successful Bidder and the completion of the CCAA Proceedings.<sup>7</sup>
13. This would, among other things, enable the current directors to step down and reduce additional legal costs of those of Applicants' counsel, resulting in a cost savings to the Applicants' estates. The Monitor intends to extend consulting agreements to the Applicants' two remaining employees on a part-time basis to assist with the various matters required to assist with the remainder of the CCAA Proceedings.<sup>8</sup>
14. Upon further discussion between the Applicants and the Monitor, along with the support of the DIP Lenders, the Applicants have agreed to the Monitor assuming this increased role with enhanced powers.<sup>9</sup>
15. The Enhanced Powers are required for the Monitor to lead the negotiations and close the Transaction (subject to Court approval) and complete any ancillary steps following closing of the Transaction.<sup>10</sup>
16. As the Transaction is proposed to proceed by way of Reverse Vesting Order, ResidualCo will have assets and property requiring administration and, eventually, distribution, within the CCAA proceedings. Following the closing of the Transaction, however, ResidualCo will have no employees or management and will otherwise be unable to manage its own affairs. Accordingly, the proposed Enhanced Powers are necessary in order to enable the

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<sup>6</sup> *Ibid* at para 31.

<sup>7</sup> *Ibid* at para 36.

<sup>8</sup> *Ibid* at para 38.

<sup>9</sup> *Ibid* at para 36.

<sup>10</sup> *Ibid* at para 37.

Applicants and ResidualCo to take steps necessary to conclude these CCAA Proceedings.<sup>11</sup>

17. The Enhanced Powers are designed to maximize the value of the Applicants' Property, and Business and promote efficiency in these proceedings, all to the benefit of their creditors and stakeholders.<sup>12</sup>
18. An extension to the Stay Period is required in order to negotiate and close the Transaction (subject to Court approval). As such, if granted the Enhanced Powers, the Monitor seeks an extension of the Stay Period up to and including August 1, 2025.

**B. Activities of the Monitor**

19. The Monitor retained BD&P as its independent counsel in these CCAA Proceedings.
20. Pursuant to the Initial Order, the Monitor and counsel to the Monitor, among others, are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these CCAA Proceedings. The Initial Order authorizes and directs the Applicants to pay the accounts of the Monitor and its counsel. The Initial Order also provides that the Monitor and its legal counsel shall pass its accounts from time to time.<sup>13</sup>
21. The Monitor's Reports outline the activities taken by the Monitor in these CCAA Proceedings for which the Monitor seeks approval by this Honourable Court. Summaries of these activities are set out in paragraph 17 of the First Report, paragraph 17 of the Second Report, and paragraph 18 of the Third Report.
22. As outlined in the Monitor's Reports, and in accordance with its duties under the orders granted in these CCAA Proceedings, including the Initial Order and under the CCAA, the Monitor has, among others:
  - (a) assisted in preparing and monitoring the Applicants' cash flow forecasts;
  - (b) responded to inquiries from the Applicants' stakeholders;

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<sup>11</sup> *Ibid* at para 39.

<sup>12</sup> *Ibid* at para 40.

<sup>13</sup> Initial Order at paras 29-30.

- (c) engaged in various forms of correspondence with interested parties regarding the SISP;
- (d) assessed and selecting the Successful Bid, in consultation with the Applicants and the DIP Lenders; and
- (e) engaged in various communications with the DIP Lenders and their respective counsel on file matters, including the cash flow forecast and the SISP.

### **C. Fees of the Monitor and Counsel to the Monitor**

- 23. The details of the Monitor's fees and disbursements are more fully set out in the Affidavit of Orest Konowalchuk, to be sworn (the "**First Alvarez & Marsal Affidavit**"). As will be set out in paragraphs 5-8 of the First Alvarez & Marsal Affidavit, the Monitor billed approximately 487.5 hours in connection with these CCAA Proceedings, representing total fees and disbursements incurred by the Monitor at their standard rates and charges during the relevant period of approximately \$336,717.72, inclusive of taxes.<sup>14</sup>
- 24. The details of BD&P's fees and disbursements are set out in the Affidavit of David LeGeyt, sworn June 3, 2025 (the "**First Burnet, Duckworth & Palmer Affidavit**"). As set forth in paragraph 46 of the First Burnet, Duckworth & Palmer Affidavit, BD&P billed approximately 226.1 hours in connection with these CCAA Proceedings, representing total fees and disbursements incurred by BD&P at their standard rates and charges during the relevant period of approximately \$176,743.88, inclusive of taxes.

### **III. ISSUES**

- 25. The issues before this Honourable Court at the Application are whether:
  - (a) the Monitor should be granted the Enhanced Powers;
  - (b) the Stay Period should be extended up to and including August 1, 2025;
  - (c) the activities of the Monitor should be approved; and
  - (d) the Fees of the Monitor and its counsel should be approved.

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<sup>14</sup> First Alvarez & Marsal Affidavit at paras 5-8 and Exhibit "A".

#### IV. LAW AND ARGUMENT

##### A. The Monitor Should be Granted Expanded Powers

26. This Court has the authority to expand the powers of the Monitor, pursuant to Sections 11 and 23(1)(k) of the CCAA. Section 23(1)(k) of the CCAA provides that a monitor shall "carry out any other functions in relation to the [debtor] company that the court may direct".<sup>15</sup>
27. As the Supreme Court of Canada held in *Callidus*, section 11 of the CCAA provides the Court with a broad discretion that should be exercised in furtherance of the remedial objectives of the CCAA, where it has been demonstrated that: (a) the order sought is appropriate in the circumstances; and (b) the applicant has been acting in good faith and with due diligence.<sup>16</sup>
28. Appropriateness is assessed by determining whether the order sought advances the remedial purpose of the CCAA.<sup>17</sup>
29. It has become broadly accepted that, in appropriate circumstances, a monitor's powers may be enhanced to allow it to function as a "super monitor" under the CCAA, including allowing a monitor to exercise the powers of the board of directors of an entity or carry out other steps with respect to the administration of the company; akin to a receiver.<sup>18</sup>
30. In determining whether to exercise their discretion to grant enhanced powers, Courts have considered whether enhancing a monitor's powers provides a more effective approach than allowing current management to address the issues in a proceeding.<sup>19</sup>
31. The Monitor and the Applicants seek to minimize costs and promote efficiency through the remainder of the CCAA Proceedings, as such, the Applicants and the Monitor have agreed that it would be appropriate for the Monitor to assume an enhanced and increased role in closing the Transaction with the Successful Bidder and the completion of the CCAA

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<sup>15</sup> [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36, ss 11 and 23(1)(k) [CCAA][BOA TAB 1].

<sup>16</sup> [9354-9186 Québec Inc v Callidus Capital Corp](#), 2020 SCC 10, at paras 47-49 [Callidus] [BOA TAB 2].

<sup>17</sup> [Century Services Inc v Canada \(Attorney General\)](#), 2010 SCC 60 at paras 15, 70 [Century Services] [BOA TAB 3]; *Callidus*, at para 50 [BOA TAB 2].

<sup>18</sup> [Arrangement relatif à 9323-7055 Québec inc. \(Aquadis International Inc.\)](#), 2020 QCCA 659, at para 68 [Aquadis] [BOA TAB 4].

<sup>19</sup> [Mantle Materials Group, Ltd \(Re\)](#), 2024 ABKB 19 at para 66 [BOA TAB 5].



Proceedings. This would, among other things, enable the current directors to step down, resulting in a cost savings to the Applicants' estates. The DIP Lenders have also agreed to the Monitor assuming this increased role with the Enhanced Powers.<sup>20</sup>

32. Orders providing for enhanced powers, including to exercise management functions or to bankrupt entities, have also been granted in connection with administering "residual companies" in connection with reverse vesting transactions.<sup>21</sup>
33. Following the closing of the Transaction (upon approval of the Court), ResidualCo will have assets and property requiring administration and, ultimately, distribution, within the CCAA Proceedings. However, ResidualCo will have no employees, management, or operators and will otherwise be unable to manage its own affairs. Accordingly, the proposed Enhanced Powers are necessary to enable ResidualCo to take steps necessary to conclude these CCAA Proceedings.<sup>22</sup>
34. The Enhanced Powers are in the best interests of the Applicants and their stakeholders in order to maximize the value of the property, assets, and undertakings vested in ResidualCo.<sup>23</sup>

#### **B. The Stay Period Should be Extended**

35. The Stay Period currently expires on June 27, 2025. Section 11.02(2) of the CCAA gives this court the authority to grant an extension of the Stay Period for any period it "considers necessary", provided that the applicants are acting in good faith and with due diligence.<sup>24</sup>
36. A stay of proceedings is appropriate where it provides debtors with breathing room, whether they seek to restore their solvency and emerge from their restructuring on a going concern basis or conduct an orderly liquidation or wind-down. Further, a stay of proceedings will be appropriate where it advances the purpose of the CCAA – including avoiding the social and economic effects of bankruptcy.<sup>25</sup>

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<sup>20</sup> Third Report at paras 36-42.

<sup>21</sup> [Aquadis](#) at para 82 [BOA TAB 4].

<sup>22</sup> Third Report at para 39.

<sup>23</sup> *Ibid* at paras 40-42.

<sup>24</sup> [CCAA](#) at s 11.02(2) [BOA TAB 1].

<sup>25</sup> [Century Services](#) at paras 14-15 and 70 [BOA TAB 3].

37. The Monitor, with the support of the Applicants and the DIP Lenders, seeks an extension of the Stay Period from June 27, 2025 to August 1, 2025.
38. An extension to the Stay Period is necessary and in the best interests of the Applicants as additional time is required to finalize the terms of the Transaction, seek Court approval, and allow the Monitor to, among other things, close the Transaction, to the benefit of all creditors and stakeholders.
39. The Applicants have acted, and are continuing to act, in good faith and with due diligence, including in advancing the SISP, selecting the Successful Bidder, and advancing the Transaction toward an executable agreement. The Monitor has forecasted that the Applicants will have sufficient liquidity during the Stay Period.

**C. The Monitor's Activities Should be Approved**

40. The Monitor seeks this Court's approval of its activities as set out in the Monitor's Reports.
41. As noted by Regional Senior Justice Morawetz (as he then was) in *Target Canada Co. (Re)*, there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process.<sup>26</sup>
42. By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:<sup>27</sup>
  - (a) allows the Monitor to move forward with the next steps in the CCAA Proceedings;
  - (b) brings the Monitor's activities before the Court;
  - (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
  - (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
  - (e) provides protection for the Monitor not otherwise provided by the CCAA; and

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<sup>26</sup> [\*Target Canada Co \(Re\)\*](#), 2015 ONSC 7574 at para 22 [BOA TAB 6].

<sup>27</sup> *Ibid* at paras 12 and 23.

- (f) protects the creditors from the delay and distribution that would be caused by:
  - (i) re-litigation of steps taken to date, and
  - (ii) potential indemnity claims by the Monitor.

43. The approval sought by the Monitor is for the approval of the specific activities taken by the Monitor as detailed in the Monitor's Reports filed with this court. Such activities taken by the Monitor were done pursuant to and in accordance with, the terms of the Initial Order and the provisions of the CCAA.

**D. The Fees of the Monitor and its Counsel Should be Approved**

44. The Initial Order provides that the Monitor (among others) shall be paid its reasonable fees and disbursements incurred both before and after the granting of the Consolidation Order in the NOI Proceedings and both before and after the granting of the Initial Order, in each case at their standard rates and charges, as part of the costs of these proceedings.<sup>28</sup>

45. The Initial Order also provides that the Monitor and its legal counsel shall pass their accounts from time to time.<sup>29</sup>

46. In *Winalta Inc. (Re)*, Justice Topolniski, held that on an application to approve a Monitor's fees in a CCAA proceeding: <sup>30</sup>

The question is whether the fees are fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.

47. Courts consider the following non-exhaustive factors in assessing the reasonableness of a court officer's fees:

- (a) the nature, extent and value of the assets;

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<sup>28</sup> Initial Order at para 29.

<sup>29</sup> *Ibid* at para 30.

<sup>30</sup> *Winalta Inc. (Re)*, 2011 ABQB 399 at para 30 [BOA TAB 7]; *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para 13 [*Nortel*] [BOA TAB 8].

- (b) the complications and difficulties encountered by the monitor; the degree of assistance provided by the debtor;
  - (c) the time spent by the monitor and the monitor's knowledge, experience and skill;
  - (d) the diligence and thoroughness displayed by the monitor;
  - (e) the responsibilities assumed;
  - (f) the results of the monitor's efforts; and
  - (g) cost of comparable services when performed in a prudent and economical manner.<sup>31</sup>
48. Courts have considered similar factors when conducting assessments of accounts of legal counsel to the court officer, such non-exhaustive factors include: <sup>32</sup>
- (a) the time expended;
  - (b) the complexity of the proceeding;
  - (c) the degree of responsibility assumed by the lawyers;
  - (d) the amount of money involved, including the amount of proceeds after payments to the creditors;
  - (e) the degree and skill of the lawyers involved;
  - (f) the results achieved; and
  - (g) the client's expectations as to the fee.
49. The Monitor submits that its fees and disbursements, and those of its legal counsel, BD&P, are fair and reasonable in the circumstances as evidenced in the Monitor's Report, the First Burnet, Duckworth & Palmer Affidavit and the First Alvarez & Marsal Affidavit.

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<sup>31</sup> *Nortel* at para 13 [BOA TAB 8]; [Bank of Nova Scotia v Diemer](#), 2014 ONCA 851 at para 33 [BOA TAB 9].

<sup>32</sup> [Redcorp Ventures Ltd \(Re\)](#), 2016 BCSC 188 at para 33 [BOA TAB 10].

50. With respect to the Monitor's Fees, the Monitor submits that :
- (a) the fees and disbursements were properly incurred, and consistent with fees charged by other insolvency firms of a similar size for work of a similar size, nature and complexity in Alberta;
  - (b) the work completed by the Monitor was delegated to the appropriate professionals within A&M's organization, with the appropriate seniority and appropriate hourly rates; and
  - (c) the work completed by the Monitor was necessary to the Monitor carrying out its obligations pursuant to the Initial Order and the provisions of the CCAA.
51. The Monitor further submits that BD&P's fees are fair and reasonable in the circumstances as:
- (a) the fees and disbursements were properly incurred, and consistent with fees charged by other law firms of a similar size for work of a similar size, nature and complexity in Alberta;
  - (b) the work completed by BD&P was delegated to the appropriate professionals within BD&P's organization, with the appropriate seniority and appropriate hourly rates; and
  - (c) the invoices were provided to the Monitor when rendered, and all have been approved by the Monitor.

**V. CONCLUSION**

52. The Monitor submits that it is appropriate to grant the Enhanced Powers and extend the Stay Period, and respectfully requests that this Court grant the proposed form of Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> DAY OF June, 2025.**

**BURNET, DUCKWORTH & PALMER LLP**

Per: 

David LeGeyt  
Solicitors for the Monitor

## LIST OF AUTHORITIES

TAB	DOCUMENT
1.	<a href="#"><i>Companies' Creditors Arrangement Act</i></a> , RSC 1985, c C-36
2.	<a href="#"><i>9354-9186 Québec inc v Callidus Capital Corp</i></a> , 2020 SCC 10
3.	<a href="#"><i>Century Services Inc v Canada (Attorney General)</i></a> , 2010 SCC 60
4.	<a href="#"><i>Arrangement relatif à 9323-7055 Québec inc (Aquadis International Inc)</i></a> , 2020 QCCA 659
5.	<a href="#"><i>Mantle Materials Group, Ltd (Re)</i></a> , 2024 ABKB 19
6.	<a href="#"><i>Target Canada Co (Re)</i></a> , 2015 ONSC 7574
7.	<a href="#"><i>Winalta Inc (Re)</i></a> , 2011 ABQB 399
8.	<a href="#"><i>Re Nortel Networks Corporation et al</i></a> , 2017 ONSC 673
9.	<a href="#"><i>Bank of Nova Scotia v Diemer</i></a> , 2014 ONCA 851
10.	<a href="#"><i>Redcorp Ventures Ltd (Re)</i></a> , 2016 BCSC 188