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Clerk's Stamp

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

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

DOCUMENT **BRIEF OF LAW**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 – 8th Avenue SW
Calgary, AB T2P 1G1
Lawyers: David LeGeyt
Ryan Algar
Jessica MacKinnon
Phone Number: (403) 260-0210 / 0126 / 0112
Fax Number: (403) 260-0332
Email Address: dlegeyt@bdplaw.com
ralgar@bdplaw.com
jmackinnon@bdplaw.com
File No.: 64793-8

APPLICATION BEFORE THE HONOURABLE JUSTICE B.B. JOHNSTON
TO BE HELD ON OCTOBER 1, 2025 AT 10:00 A.M. ON THE COMMERCIAL LIST

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I. OVERVIEW

1. This Brief is submitted on behalf of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed Monitor of Royal Helium Ltd., Royal Helium Exploration Limited and Imperial Helium Corp. (collectively, the "**Companies**" or "**Royal Helium**"), in support of its application (the "**Application**") for three orders:

(a) an Ancillary Relief Order:

(i) declaring that the time for service of Application is abridged, and the application is properly returnable on October 1, 2025;

(ii) approving the activities of the Monitor as described in the Fourth Report of the Monitor dated July 21, 2025, the Fifth Report of the Monitor dated September 3, 2025 and the Sixth Report of the Monitor, dated September 24, 2025 (the "**Sixth Report**");

(iii) approving the fees of the Monitor and its counsel as set out in the Sixth Report (including the Forecast Fees); and

(iv) granting temporary sealing relief in respect of the Confidential Appendices (the "**Confidential Information**") to the Sixth Report (such relief being the "**Sealing Relief**");

(b) an Approval and Reverse Vesting Order ("**ARVO**"), among other things:

(i) approving the sale transaction and other steps (the "**Transactions**") contemplated by the reorganization and amalgamation agreement dated September 25, 2025 (the "**Amalgamation Agreement**");

(ii) upon the Monitor filing the Monitor's Certificate: (A) removing the Companies as applicants in these CCAA Proceedings; (B) adding Residualco as an applicant in these CCAA Proceedings; and (C) authorizing the Monitor to assign ResidualCo into bankruptcy; and

(iii) approving the Releases (as defined below); and

(c) a Distribution, Conditional Discharge and Termination Order:

(i) approving the Interim Distribution and the Final Distribution in favour of the Secured Lenders as described in the Sixth Report;

(ii) authorizing the termination of the CCAA Proceedings upon the Monitor filing the Termination Certificate;

(iii) approving the Monitor's conditional discharge; and

(iv) extending the Stay Period.

2. Following the completion of the SISP, the Monitor has been working diligently with the Keranic Industrial Gas Inc. ("**Keranic**" or the "**Successful Bidder**") and the Lenders to finalize an agreement (the "**Amalgamation Agreement**") in respect of the Transactions, by which the shareholders of Keranic (the "**Purchaser**") would acquire the majority interest in RHL, the parent company of RHEL and IHC.

3. As of the date of filing the Application, the Monitor and Keranic had agreed on the material terms of the Amalgamation Agreement, and the Monitor anticipated that the parties' signing an Amalgamation Agreement prior to the date of the Application.

4. The Confidential Appendices contain confidential information relating to the Transactions (including a comparison between the Prior Amalgamation Agreement (defined below) and a draft of the revised Amalgamation Agreement), and should therefore be sealed and kept confidential until the completion of the Transactions (if approved) or any other transaction in respect of the assets to avoid potential prejudice the negotiation with the Successful Bidder and/or to future efforts to market the Property.

II. FACTUAL BACKGROUND

5. The facts and background for the Application are set out more fully in the Sixth Report and are summarized below.

6. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Sixth Report.

A. Status of the CCAA Proceedings

7. On February 19, 2025, the Companies sought and obtained an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"). Pursuant to the Initial Order, A&M was appointed Monitor of the Companies.[1]

8. On June 10, 2025, with the support of the Companies and the DIP Lenders, the Monitor was granted enhanced powers in respect of the Companies.[2]

B. The Progress of the SISP and the Transactions

9. As outlined in further detail in the Monitor's Sixth Report, the Monitor, with the assistance of the Companies, implemented the SISP in respect of the Companies, their assets and business (the "**Business**").[3]

10. The Monitor and the Companies canvassed the market to obtain potential bids for all or part of the Business and/or property (the "**Property**").

11. The Exclusivity Agreement was set to expire on August 6, 2025. Following the Phase II Bid Deadline, the Monitor and the Successful Bidder continued to negotiate an agreement in consultation with the Lenders.[4]

12. Ultimately, on July 31, 2025, the Monitor and the Successful Bidder entered into an agreement (the "**Prior Amalgamation Agreement**") which included a financing condition (the "**Financing Condition**") that was to be waived by the Successful Bidder on or before August 15, 2025.[5]

13. The Financing Condition was critical to the Transaction as it was intended to allow the Successful Bidder time to complete its equity raise and debt financing to fund the Transaction. However, the Successful Bidder was unable to waive or satisfy the condition, and instead provided an amended proposal to close the Transaction for the same purchase price, but upon different payment terms (the "**Revised Offer**").[6]

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[1] Sixth Report at para 3.
[2] *Ibid* at para 7.
[3] *Ibid* at para 7.
[4] *Ibid* at paras 23-26.
[5] Ibid at para 25.
[6] *Ibid*.

14. On August 30, 2025, the Monitor terminated the Prior Amalgamation Agreement in accordance with its terms, which provided that the deposit paid by the Successful Bidder was non-refundable, and informed the Successful Bidder that it would explore whether the Revised Offer would be feasible.[7]

15. Following the termination of the Prior Amalgamation Agreement, the Monitor worked with the Successful Bidder and the Secured Lenders to reach an agreement by which the Revised Offer could proceed. The Revised Offer contemplated the same transaction structure and also provided that portion of the secured debt of the Companies would continue as Retained Liabilities, guaranteed by Keranic (the "**Revised Transaction**").

16. On September 25, 2024, the Monitor and the Successful Bidder entered into a finalized Amalgamation Agreement.

17. The Revised Transaction is structured as a share sale in the form of a three-cornered amalgamation and a "reverse takeover" transaction, whereby:

(a) the Purchaser would acquire the majority of the issued and outstanding shares of RHL, indirectly acquiring the Business and Property of the Helium Entities, and acquiring the Retained Assets (as defined in the Amalgamation Agreement) on a "free and clear" basis (subject to certain Permitted Encumbrances); and

(b) all Excluded Assets and Excluded Liabilities (each as defined in the Amalgamation Agreement) will be transferred to ResidualCo.[8]

III. ISSUES

18. The issues to be determined by the Court at the Application are whether:

(a) the activities of the Monitor, its fees and the fees of its legal counsel should be approved;

(b) the Sealing Relief in respect of the Confidential Information should be granted;

[7] *Ibid* at para 25.
[8] *Ibid* at para 30.

(c) the Transactions should be approved, including the proposed form of ARVO, which includes:

(i) the Releases in favour of the Released Parties; and

(ii) upon the filing of the Monitor's Certificate, the discharge of the Companies, and the addition of ResidualCo to these CCAA Proceedings;

(d) the Interim Distribution and the Final Distribution to the Secured Lenders should be authorized;

(e) the Conditional Discharge and termination in respect of these CCAA Proceedings should be granted; and

(f) the Stay Period should be extended.

IV. LAW AND ARGUMENT

A. Activities and Fees of the Monitor and its Legal Counsel Should be Approved;

19. Pursuant to the Initial Order, the Monitor and its counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Companies as part of the costs of these CCAA Proceedings. The Initial Order also provides that the Monitor and their legal counsel shall pass their accounts from time to time.[9]

20. The Monitor's Reports outline the activities taken by the Monitor in these CCAA Proceedings for which the Monitor seeks approval.[10]

21. As noted by Regional Senior Justice Morawetz (as he then was) in *Target*, there are good policy and practical reasons for the court to approve of a Monitor's activities(, including?) providing a level of protection for Court-appointed Monitors during the CCAA process.[11]

[9] Initial Order at para 39.
[10] Fourth Report at para 9, Fifth Report at para 21 and Sixth Report at para 22.
[11] *Target Canada Co (Re),* 2015 ONSC 7574 **[*Target*]** at para 22. **[TAB 1]**

22. By proceeding in this manner, Court approval serves the purposes set out by Justice Morawetz above. Specifically, Court approval: [12]

(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 a prudent and diligent manner;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(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.

23. The approval sought by the Monitor is for activities which are detailed in the Monitor's Reports filed and were done pursuant to, and in accordance with, the terms of the Initial Order, the EMP Order and the provisions of the CCAA.

24. The Initial Order provides that the Monitor shall be paid its reasonable fees and disbursements incurred at their standard rates and charges, as part of the costs of these proceedings.[13] The Initial Order also provides that the Monitor and its legal counsel shall pass their accounts from time to time.[14]

[12] *Ibid* at paras 12 and 23. **[TAB 1]**
[13] Initial Order at para 29.
[14] *Ibid* at para 30.

25. In *Winalta*, an application to approve a Monitor's fees in a CCAA proceeding, Justice Topolniski confirmed that: [15]

> 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.

26. 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;

(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.[16]

27. Courts have also considered a similar non-exhaustive list of factors when conducting assessments of accounts of legal counsel to a court officer, including:

(a) the time expended;

(b) the complexity of the proceeding;

(c) the degree of responsibility assumed by the lawyers;

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[15] *Winalta Inc (Re)*, 2011 ABQB 399 **[*Winalta*]** at para 30 **[TAB 2]**; *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para 13. **[*Nortel*] [TAB 3]**

[16] *Nortel* at para 14; *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 33. **[TAB 4]**

(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. [17]

28. 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 Reports.

29. With respect to the Monitor's Fees, the Monitor respectfully 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, particularly in light of the responsibilities imposed by the EMP Order;

(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.

30. 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

[17] *Redcorp Ventures Ltd (Re)*, 2016 BCSC 188 at para 33. **[TAB 5]**

(c) the invoices were provided to the Monitor when rendered, and all have been approved by the Monitor.

B. The Sealing Relief Should be Granted

31. The Monitor is seeking a restricted Court access order (the "**Sealing Relief**"), temporarily sealing the Confidential Information on the Court record.

32. Pursuant to Part 6, Division 4 of the Alberta *Rules of Court*, AR 124/2010, this Court has the discretionary authority to order that a document filed in a civil proceeding is confidential, may be sealed, and not form part of the public record of the proceedings.[18]

33. The Supreme Court of Canada decision in *Sherman Estate* provides that sealing orders may be granted where:

(a) Court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[19]

34. As set out by Justice Mah in *Long Run*, it is recognized in Alberta and elsewhere that commercial interests, particularly in the context of Court-supervised insolvency proceedings, are an important interest deserving of protection.[20]

35. The disclosure of the information contained in the Confidential Appendices contains details of bids made during the SISP, which if released, could have a detrimental impact on negotiations with the Successful Bidder, and also on any future sale efforts of the Monitor, should the Transaction not ultimately close and the Monitor need to re-market the assets.[21]

36. The Monitor is not aware of any stakeholders who would be prejudiced by the sealing of the Confidential Appendices.

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[18] *Rules of Court*, Alta Reg 124/2010, Part 6, Division 4, Rule 6.28(b). **[TAB 6]**
[19] *Sherman Estate v Donovan*, 2021 SCC 25 at para 38. **[*Sherman Estate*] [TAB 7]**
[20] *Long Run Exploration Ltd (Re),* 2024 ABKB 710 at para 116. **[*Long Run*] [TAB 8]**
[21] Fifth Report at para 40.

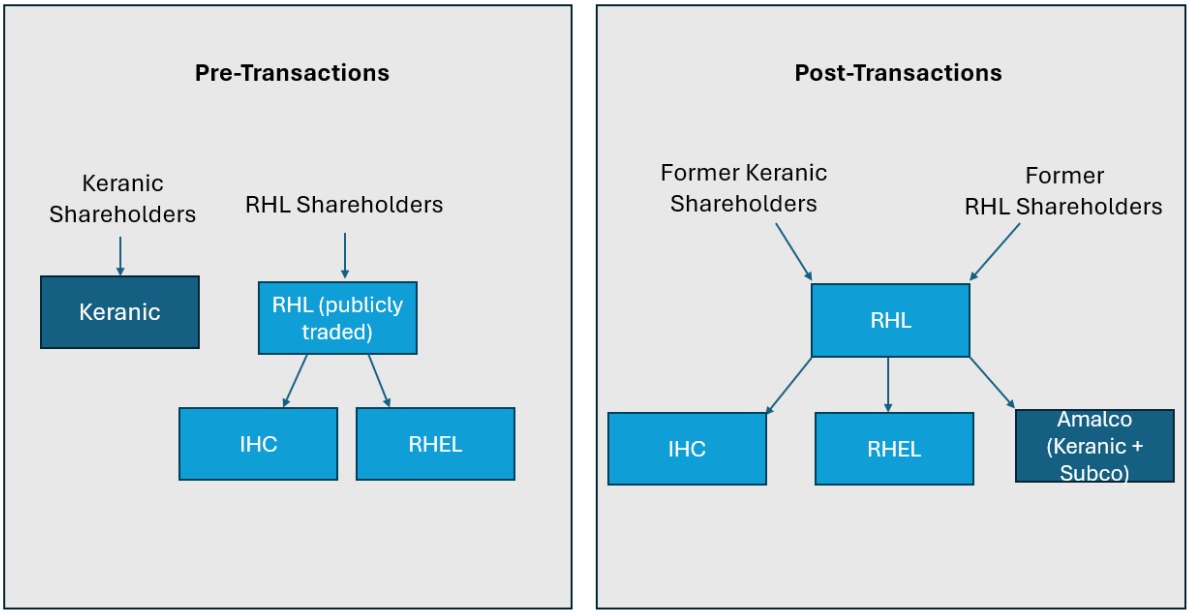
37. The proposed form of Sealing Order contemplates that the Order will remain in place for a period of less than 3 months, and provides that any interested party can apply to unseal the Confidential Appendices. For those reasons, the Monitor submits that salutary effects of a sealing order outweigh any negative effects to the principles of Court openness.

38. The proposed Sealing Relief is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information.

C. <u>The Transaction Should be Approved</u>

39. The Monitor seeks approval of the proposed form of Amalgamation Agreement and the Transactions contemplated therein.

40. The proposed Transactions culminate in a 3-cornered amalgamation, which is illustrated below:



41. Ultimately, the Transactions will result in:

(a) the shareholders of Keranic (the "**Purchaser**") acquiring the majority interest in RHL;

(b) RHL becoming the sole shareholder of Amalco (a new entity comprised of Keranic and a newly formed entity) and remaining the sole shareholder of IHC and RHEL;

(c) the Companies retaining the Retained Assets, including the key assets and the Business of the Companies (subject only to the Permitted Encumbrances); and

(d) the Excluded Assets and Excluded Liabilities being vested out and transferred, into a newly incorporated entity or an existing shell entity, referred to as "ResidualCo".[22]

42. A detailed listing of the steps of the Transactions is listed at Schedule "D" to the Amalgamation Agreement.

43. Pursuant to sections 11 and 36 of the CCAA, the Court has jurisdiction to approve a transaction through an ARVO.[23] Specifically, section 11 of the CCAA gives this Court broad authority to make any order it considers appropriate in the circumstances. [24]

44. Subsection 36(3) of the CCAA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale or disposition of assets outside of the ordinary course:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

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[22] Sixth Report at para 30.
[23] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ss 11 and 36 **[*CCAA*] [TAB 10]**; *Harte Gold Corp (Re)*, 2022 ONSC 653 at para 24 – 37 **[*Harte Gold*] [TAB 11]**; *Quest University Canada (Re),* 2020 BCSC 1883 at paras 40 and 157 [Quest] **[TAB 12]**; *Just Energy* at para 29. **[TAB 9]**
[24] *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 **[*Just Energy*]** at para 27 and 29. **[TAB 9]**

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.[25]

45. The factors developed by the Ontario Court of Appeal in *Soundair* for the approval of a sale or disposition by a Court Officer overlap with the factors in subsection 36(3) of the CCAA and are frequently considered by CCAA courts when considering the statutory test:

(a) whether the Court-appointed officer has made sufficient efforts to get the best price and has not acted improvidently;

(b) whether the interests of all parties have been considered; the efficacy and integrity of the process by which offers have been obtained; and

(c) whether there has been unfairness in the working out of the process. [26]

46. In *Sanjel*, Justice Romaine, relied upon the Supreme Court of Canada comments in *Abitibi* and suggested that a court should give due consideration to two further factors, namely:

> … the business judgment rule, in that a court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the monitor in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient; and the weight to be given to the recommendation of the monitor.[27]

47. In *Acerus*, the Court held that the transaction in question, which contemplated an RVO, satisfied section 36 of the CCAA and the *Soundair* factors.[28]

48. As was the case in *Acerus*, the Transactions satisfy the above factors for, among others, the following reasons:

(a) the SISP leading to the proposed Transactions was implemented by the Monitor, approved by this Court, and was reasonable and fair;

(b) the Monitor and the Companies made sufficient efforts to get the best price did not act improvidently;

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[25] *CCAA* at s. 36(3). **[TAB 10]**
[26] *Royal Bank v Soundair Corp,* 1991 CanLII 2727 (ONCA) at paras 16, 82. **[*Soundair*] [TAB 13]**
[27] *Re Sanjel Corp*, 2016 ABQB 257 at para 57. **[*Sanjel*] [TAB 14]**
[28] *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 [***Acerus***] at para 42. **[TAB 15]**

(c) the Monitor's Sixth Report sets out its opinion that the Transactions are the best and highest offer for the Companies' Business;

(d) the Monitor consulted the interested creditors (and specifically the Secured Creditors), who are the fulcrum creditors, and the effects of the proposed Transactions on the creditors and other interested parties were considered;

(e) the consideration to be received is reasonable and fair;

(f) the SISP was fair, reasonable, transparent and efficient; and

(g) the Monitor recommends that the Transactions, and the ARVO, be approved.[29]

D. The Reverse Vesting Order is Appropriate and Meets the Test in *Harte Gold*

49. Sections 36 and 11 of the CCAA confer courts with jurisdiction to approve a transaction through an RVO.[30] There is no provision in the CCAA that prohibits an RVO,[31] and this Court has approved RVOs where it deemed doing so was appropriate.

50. In *Harte Gold*, the Court outlined that in addition to the *Soundair* principles, a reverse vesting order requires the court to consider four additional questions:

(a) Why is the RVO necessary?

(b) Does the RVO structure produce an economic result that is at least as favourable as any other viable alternative?

(c) Is any stakeholder worse off under the RVO structure than they would have been under another viable alternative? and

(d) Does the consideration being paid reflect the value of the intangible assets being preserved under the RVO?[32]

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[29] Sixth Report at para 36.
[30] *Just Energy* at para 29. **[TAB 9]**
[31] *Ibid*, citing Quest. **[TAB 9]**
[32] *Harte Gold*, supra at para 38. **[TAB 11]**; *Invico Diversified Income Limited Partnership v NewGrange Energy Inc*, 2024 ABKB 214 at para 20. **[*Invico*] [TAB 16]**

51. In *Acerus*, the Court granted an RVO, noting that the insolvent company operated in a heavily regulated sector where its licenses were essential to the capability of the business to run.[33]

52. Reverse vesting transactions have been recognized in at least three types of circumstances:

(a) where the debtor operates in a highly-regulated environment in which its existing permits, licenses or other rights are difficult or impossible to assign to a purchaser;

(b) where the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and

(c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.[34]

53. The Monitor submits that the reverse vesting order structure as contemplated is appropriate and satisfies the *Harte Gold* factors due to, among others, the presence of the following:

(a) the RVO is necessary due to the highly regulated nature of the Companies' business, the value of which is dependent on maintaining the existing licenses. The reverse vesting structure is the only way to preserve the Licenses, and ensure that the Companies may continue their business while transferring the Excluded Assets and Excluded Liabilities to Residualco;

(b) the Monitor believes that no stakeholders will be prejudiced by the reverse vesting structure, which in the Monitor's view: (i) provides an economic result at least as favourable as any other viable alternative; and (ii) does not leave any stakeholder worse off than they would be under any other viable alternative. Further, there were no bids made in the SISP that provided for higher consideration than the Successful Bid. As a result, the Companies' creditors are not prejudiced by the Transactions proceeding by way of a reverse vesting order as opposed to an alternative structure; and

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[33] *Acerus*, at para 13. **[TAB 15]**
[34] *Just Energy* at para 34 **[TAB 9]**; *Arrangement relative a Blackrock Metals Inc.*, 2022 QCCS 2828 **[*Blackrock*]** at paras 114 to 116. **[TAB 17]**

(c) the Consideration being paid reflects the value of the Companies' assets and business. The consideration reflects the value of the Companies' assets, including the Licenses, which were extensively marketed by the Applicants and the Monitor in accordance with the Court-approved SISP.

54. For the reasons set out above, the Monitor submits that section 36(3) of the CCAA, the *Soundair* test, and the *Harte Gold* factors have all been met in the circumstances and the requested RVO ought to be granted.

E. The Releases Should be Granted

55. In connection with the Transactions, the Monitor also seeks the issuance of the Releases in favour of the Released Parties in respect of the Released Claims.

56. It is well established that CCAA courts have jurisdiction to sanction plans containing third-party releases.[35] The relevant factors for the Court to consider in determining whether to approve releases in CCAA proceedings include:

(a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

(b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

(c) whether the plan could succeed without the releases;

(d) whether the parties being released were contributing to the plan;

(e) whether the release benefitted the debtors as well as the creditors generally; and

(f) whether the releases are fair, reasonable and not overly broad.[36]

[35] *Metcalfe & Mansfield Alternative Investments II Corp, Re*, 2008 ONCA 587 **[*Metcalfe & Mansfield*]** at para 78. **[TAB 18]**
[36] *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 53. **[TAB 19]**

57. As with most discretionary exercises, it is not necessary for each of the factors to apply in order for the release to be granted, and some factors may assume greater weight in one case than another. [37]

58. The same test governs third-party releases within court-sanctioned restructuring transactions, including reverse vesting orders. The Court in *Blackrock Metals* confirmed that it is "now commonplace for third-party releases, in favour of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.[38]

59. In this case, it is the Monitor's respectful submission that each of the Released Parties were necessary for the restructuring, and ultimately, the implementation of the Transactions.

F. ResidualCo should be added as an Applicant

60. The CCAA applies in respect of "debtor company" or "affiliated debtor companies" whose liabilities amount to more than $5,000,000.[39]

61. The term "debtor company" is defined as "any company" that is, among other things, "insolvent" and the term "company" is defined as "any company, corporation or legal persons incorporated by or under any Act of Parliament or of the legislature of a province." [40]

62. Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and Insolvency Act* (the "**BIA**") and the expanded concept of insolvency adopted by Canadian Courts and articulated in *Stelco*.[41]

63. The BIA defines "insolvent person" as a person:

(a) who is for any reason unable to meet its obligations as they generally become due;

(b) who has ceased paying its current obligations in the ordinary course of business as they generally become due; or

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[37] *Re Green Relief Inc.,* 2020 ONSC 6837 at paras 27-30. **[*Green Relief*] [TAB 20]**
[38] *Blackrock* at para 128 **[TAB 17]**; see also *Green Relief* at paras 23 to 25 **[TAB 20]**; *8640025 Canada Inc, Re*, 2021 BCSC 1826 at para 43. **[TAB 21]**
[39] *CCAA*, s 3(1). 63 CCAA, s 2(1). **[TAB 10]**
[40] *CCAA*, s. 2.(1), "debtor company" and "company". **[TAB 10]**
[41] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), s 2(1), "insolvent person" **[TAB 22]**; *Stelco Inc., Re,* [2004], 2004 CanLII 24933, OJ No. 1257 (ONSC) **[*Stelco*]** at para 26. **[TAB 23]**

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, insufficient to enable payment of all of its obligations, due and accruing due.[42]

64. A company is also insolvent for the purposes of the CCAA if "there is a reasonably foreseeable (at the time of filing) expectation that there is a looming liquidity condition or crisis which will result in the applicant running out of 'cash' to pay its debts as they generally become due in the future without the benefit of the [stay] and ancillary protection."[43]

65. In order to complete the Transactions, the Excluded Assets and Excluded Liaiblities will be transferred and vested into ResidualCo which will allow the business of the Companies to be acquired on a free and clear basis (subject to the Permitted Encumbrances).

66. Upon the transfer of the Excluded Assets and Excluded Liabilities, the realizable value of ResidualCo's assets will be insufficient to satisfy all of its obligations and it will be unable to meet its obligations as they generally become due. As a result, ResidualCo will be insolvent and face an imminent liquidity crisis, making it a debtor company to which the CCAA applies.

67. ResidualCo should therefore be added as an applicant in these CCAA proceedings and the style of cause should be amended accordingly.

68. The Monitor also requests that the ARVO grant it the right to (i) assign Residual Co, or cause ResidualCo to be assigned, into bankruptcy; and (ii) apply to the Court for advice and direction or any orders necessary to carry out its powers and obligations under the ARVO or any other Order granted by the Court in these proceedings.

69. The Monitor has been granted enhanced powers with respect to the Companies, which the Monitor respectfully submits should also be extended to ResidualCo. The Monitor has the requisite experience to oversee ResidualCo while achieving an expeditious path forward to the conclusion of the CCAA proceedings. It is appropriate to expand the powers of the Monitor to facilitate the efficient administration and wind-down of these CCAA proceedings.

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[42] *Ibid.* [**TAB 23]**
[43] *Stelco* at paras 26 and 40. **[TAB 23]**

G. The Distributions Should be Authorized

70. Courts often permit interim distributions in the context of insolvency proceedings. As discussed in *Abitibi*:

> …it is neither unusual nor unheard of to proceed with an interim distribution of net proceeds in the context of a sale of assets in a CCAA reorganization. Nothing in the CCAA prevents similar interim distribution of monies. There are several examples of such distributions having been authorized by Courts in Canada. [44] *[emphasis added.]*

71. As more recently set out in *First Source Financial Management*:

> The court routinely grants orders authorizing interim distributions in insolvency proceeding…
>
> In determining whether it is appropriate to authorize an interim distribution the court may consider: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed interim distribution amount; and (c) whether the proposed interim distribution would result in interest savings…[45] [*citations omitted*]

72. Similarly, in *SemCanada*, Justice Romaine acknowledged that interim distributions are not without precedent, but consideration should be given to any stakeholders that may be prejudiced by the distribution.[46]

73. As set forth above, the Lenders have valid secured claims against the Companies as both DIP Lenders and Secured Lenders, and the Monitor is proposing an Interim Distribution in an amount that does not exceed the DIP Loan amount (including interest), with a Final Distribution to be made to the Lenders in amount less than each of their secured claim, resulting in shortfall.[47]

74. The Monitor is not aware of any other claimant that ranks in priority to the Secured Lenders' Security, apart from the beneficiaries under the Administration Charge which will be transferred to ResidualCo and paid with the Holdback.[48] As a result, no stakeholder is unfairly prejudiced by the proposed Distributions.

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[44] *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 **[*Abitibi*]** at para 71 **[TAB 24].**
[45] *First Source Financial Management v Chacon Strawberry Fields,* 2024 ONSC 7229 at paras 44-45 **[*First Source Management]* [TAB 25]**, citing *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 and *Abitibi* at paras 70-75.
[46] *SemCanada Crude Company (Companies' Creditors Arrangement Act) (Re)*, 2009 ABQB 90 at para 27 **[TAB 26]**.
[47] Sixth Report at paras 2 and 58-62.
[48] Sixth Report at paras 58-62.

75. Accordingly, the Monitor submits that the proposed Distributions are fair and reasonable, and respectfully requests that this Honourable Court approve the Distributions as set out in the Sixth Report.

H. The Conditional Discharge Should be Granted

76. The Monitor anticipates that it will only have administrative tasks remaining in respect of ResidualCo (the "**Remaining Tasks**") and is of the view that it is in the best interests of the Companies, ResidualCo and their stakeholders to avoid a further court application where the Monitor would subsequently seek its discharge.

I. The Stay Period Should be Extended

77. The Stay Period currently expires on October 17, 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.[49]

78. 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 is appropriate where it advances the purpose of the CCAA – including avoiding the social and economic effects of bankruptcy.[50]

79. The Monitor, with the support of the Lenders, seeks an extension of the Stay Period from October 17, 2025, to the earlier of: (a) filing of the Termination Certificate; and (b) further order of the Court, in order to complete the Remaining Tasks.

80. An extension to the Stay Period is necessary and in the best interests of the Companies and ResidualCo as additional time may be required to consult with their stakeholders and determine the appropriate next steps as it relates to the marketing and sale of the assets.

81. The Companies (including by and through the Monitor) have acted, and are continuing to act, in good faith and with due diligence, including in advancing the SISP, executing the Amalgamation Agreement, and working toward closing the Transactions.

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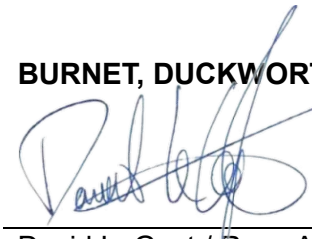
[49] CCAA at s 11.02(2). **[TAB 10]**
[50] Century Services Inc v Canada (AG) , 2010 SCC 60 at paras 14-15 and 70. **[TAB 27]**

V. RELIEF SOUGHT

82. The Monitor submit that it has met all of the qualifications required to obtain the requested relief and respectfully requests that this Court grant the proposed forms of Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th DAY OF SEPTEMBER 2025.

BURNET, DUCKWORTH & PALMER LLP



David LeGeyt / Ryan Algar
Solicitors for the Monitor

LIST OF AUTHORITIES

A. Legislation

1. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
2. *Rules of Court*, AR 124/2010
3. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

B. Case Law

1. *Target Canada Co (Re),* 2015 ONSC 7574
2. *Winalta Inc (Re)*, 2011 ABQB 399
3. *Re Nortel Networks Corporation et al*, 2017 ONSC 673
4. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851
5. *Redcorp Ventures Ltd (Re),* 2016 BCSC 188
6. *Sherman Estate v Donovan*, 2021 SCC 25
7. *Long Run Exploration Ltd (Re),* 2024 ABKB 710
8. *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354
9. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
10. *Harte Gold Corp (Re)*, 2022 ONSC 653
11. *Quest University Canada (Re),* 2020 BCSC 1883
12. *Royal Bank v Soundair Corp, 1991 CanLII 2727 (ONCA)*
13. Re Sanjel Corp, 2016 ABQB 257
14. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
15. *Invico Diversified Income Limited Partnership v NewGrange Energy Inc*, 2024 ABKB 214
16. *Arrangement relative a Blackrock Metals Inc*, 2022 QCCS 2828
17. *Metcalfe & Mansfield Alternative Investments II Corp, Re*, 2008 ONCA 587
18. *Lydian International Limited (Re)* 2020 ONSC 4006
19. *Re Green Relief Inc,* 2020 ONSC 6837

20. 8640025 Canada Inc, Re, 2021 BCSC 1826

21. *Stelco Inc., Re,* [2004] OJ No. 1257 (ONSC)

22. *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461

23. *First Source Financial Management v. Chacon Strawberry Fields*, 2024 ONSC 7229

24. *SemCanada Crude Company (Companies' Creditors Arrangement Act) (Re)*, 2009 ABQB 90

25. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60