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CLERK OF THE COURT

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

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

DOCUMENT	**REPLY BRIEF OF THE OFFSHORE INVESTORS RE: APPLICATION TO ADD CCAA PARTIES**
PARTY FILING THIS DOCUMENT	OFFSHORE INVESTORS
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Norton Rose Fulbright Canada LLP 400 3rd Avenue SW, Suite 3700 Calgary, Alberta T2P 4H2 CANADA Howard A. Gorman, K.C. and D. Aaron Stephenson howard.gorman@nortonrosefulbright.com aaron.stephenson@nortonrosefulbright.com Tel: +1 403.267.8222 Fax: +1 403.264.5973 Lawyers for the Offshore Investors File no.: 1001326712

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I. INTRODUCTION

1 On July 22, 2025, the Monitor filed an Application and supporting materials to add Meaford A2A Development Inc. (**Meaford A2A**), Lake Huron A2A Development Inc. (**Lake Huron A2A**), and Wingham Creek A2A Development Inc. (**Wingham A2A** and together with Meaford A2A and Lake Huron A2A, the **Additional Project Entities**) to these proceedings under the *Companies Creditors' Arrangement Act* (**CCAA**) and for related relief.

2 On July 24-25, 2025, the Additional Project Entities served materials in response, and each of their Affiants were cross-examined.

3 This Brief is submitted on behalf of the Offshore Investors in reply to the Additional Project Entities, as authorized by Mah J.'s July 25, 2025 Order.[1]

4 This Brief addresses the following two issues:

(a) The Additional Project Entities meet the requisite insolvency test to be added as CCAA parties; and

(b) The objectives of the CCAA would be furthered by adding the Additional Project Entities to these CCAA proceedings.

II. REPLY SUBMISSION

a. Insolvency

Evidence of insolvency not overcome by evidence of solvency

5 The Additional Project Entities oppose their addition to these CCAA proceedings by relying principally on an Affidavit of Allan Lind, sworn July 5, 2025 (**Lind Affidavit**).

6 However, in almost all respects, the Lind Affidavit and Mr. Lind's cross-examination are corroborative of the Monitor's evidence of insolvency.

7 Financial statements can be used to rebut evidence of insolvency; however, Mr. Lind testified in cross-examination that he had not seen financial statements for Meaford A2A since approximately 2016 or "maybe" 2015.[2] It was "2016-2017, perhaps" for Wingham A2A.[3] Indeed, Mr. Lind's undertaking responses reveal that no financial statements were prepared for Meaford A2A or Wingham A2A after 2016,[4] which is strongly suggestive of insolvency.

8 Mr. Lind had no knowledge about the state of the books and records that Dirk Foo maintains for the Additional Project Entities.[5] He admitted that he does not have access to those books and records,[6] even though he swore in the Lind Affidavit that he used the

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[1] Order, pronounced July 29, 2025 (filed August 6, 2025) at para 6(c).
[2] Transcript of the Cross-examination of A. Lind dated September 4, 2025 (**Lind Cross-examination**) at 26:10-17.
[3] Lind Cross-examination at 53:15-19.
[4] Undertaking Responses from the September 4, 2025 Cross-examination of A. Lind (**Lind Undertaking Responses**) at # 3, 8.
[5] Lind Cross-examination at 23:12-15.
[6] Lind Cross-examination at 23:12-25; 25:11-15; 53:2-14.

"records of the relevant companies" to inform himself.[7] Mr. Lind also did not know if copies of the books and records for the Additional Project Entities are located in Ontario,[8] as required by the Deeds of Covenant.[9] No evidence was led from the books and records of the Additional Project Entities to rebut the Manager's evidence of insolvency.

9 The Additional Project Entities raised tens of millions of dollars from Offshore Investors,[10] only 5% of which was allocated to their Concept Planning Funds (**CPFs**).[11] Under the Deeds of Covenant, the CPFs were to cover "[a]ll expenses properly relating to the Property including, without limitation, cost of any Planning Activities".[12] The CPFs are now (and have long been) fully depleted.[13] Mr. Lind had no knowledge about what bank accounts were maintained by the Additional Project Entities for their CPFs.[14] He also had no knowledge of what happened to the remainder (95%) of the funds raised from Offshore Investors because he never had any discussions with Mr. Foo about that.[15] He did not know if funds beyond the CPFs were even received by the Additional Project Entities.[16] Mr. Lind's evidence is that the Additional Project Entities have no assets (cash or otherwise) other than small, undivided fractional interests in the Additional Projects.[17]

10 Mr. Lind swore in his Affidavit that all of the Additional Project Entities borrowed from other A2A entities because their CPFs were exhausted.[18] He cited section 5.01 of the Deeds of Covenant as authorizing such borrowings.[19] However, that section actually contemplates loans by the Additional Project Entities to Co-owners, i.e. not loans to the Additional Project Entities from other A2A group entities. In any event, any loans under section 5.01 must be authorized by special resolutions of the Offshore Investors, which there is no evidence of (and Mr. Lind denies any knowledge of).[20]

11 The intercompany loans to the Additional Project Entities are from unknown lenders in the A2A group, in unknown amounts, and are un-papered and un-tracked.[21] It is not only Mr. Lind who does not know what is owed by the Additional Project Entities to other A2A group entities. According to Mr. Lind's undertaking responses, nobody knows.[22] This is contrary to the obligation of each Additional Project Entity to maintain full and complete books of account under its Deed of Covenant.[23]

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[7] Affidavit of Allan Lind, sworn July 25, 2025 (**Lind Affidavit**) at para 2.
[8] Lind Cross-examination at 23:16-18.
[9] Lind Affidavit at Tab 1 of Ex C (Deed of Covenant for the Meaford Project, s. 12.01). The same provision is included in the Deeds of Covenant for the Lake Huron and Wingham Projects.
[10] Meaford A2A—2,231 x $10,000 = $22,310,000; Lake Huron A2A—839 UFIs x $10,000 = $8,390,000; Wingham A2A—1,148 UFIs x $10,000 = $11,480,000
[11] Lind Cross-examination at 66:17-20.
[12] Lind Affidavit at Tab 1 of Ex C (Deed of Covenant for the Meaford Project, s. 3).
[13] Lind Affidavit at paras 31, 35, 39, 66, 69, 73, 86; Lind Cross-examination at 19:7-14.
[14] Lind Cross-examination at 67:16-19.
[15] Lind Cross-examination at 67:6-15.
[16] Lind Cross-examination at 67:6-15.
[17] Lind Affidavit at paras 30, 65, 85.
[18] Lind Affidavit at paras 31-33, 66-67, 86-87.
[19] Lind Affidavit at para 32 and Tab 1 of Ex C (Deed of Covenant for the Meaford Project, s. 5.01).
[20] Lind Cross-examination at 70:1-4.
[21] Lind Undertaking Responses at # 2, 9, 10.
[22] *Ibid.*
[23] Lind Affidavit at Tab 1 of Ex C (Deed of Covenant for the Meaford Project, s. 12.01).

12 Mr. Lind's belief that intercompany loans to the Additional Project Entities are not repayable until projects are sold is unnecessary and unreliable hearsay, being based "solely" on what he was told by Mr. Foo.[24]

13 In any event, the fact that rescue financing was taken by the Additional Project Entities at all is strong evidence of insolvency. By Mr. Lind's own admission, the Additional Project Entities have no assets except small, undivided, fractional interests in the Additional Projects,[25] which means they are totally illiquid despite their intercompany borrowings.

14 Mr. Lind argues in his Affidavit that the liability of the Additional Project Entities for property taxes is limited to non-existent funds in their CPFs, citing section 3.01(d) of the Deeds of Covenant.[26] That is not correct. Property taxes are assessed against the Additional Project Entities (in some cases, together with other A2A entities). Section 3.01(d) in the Deeds of Covenant states that the Facilitators do not guarantee the sufficiency of the CPFs to cover property taxes; however, it does not state that the Additional Project Entities are not liable for the property taxes that are assessed against them. Municipal taxing authorities would undoubtedly be surprised to learn that tax arrears are not owed by the Additional Project Entities against which taxes were assessed,[27] but are instead owed by thousands of overseas residents who do not appear on any tax rolls.

15 Mr. Lind never had a role in reporting to Offshore Investors about the Additional Projects.[28] He did not know if anything was ever reported to the Offshore Investors about the exhaustion of the CPFs, the accumulation of property tax arrears, the intercompany borrowings by the Additional Project Entities, nor the conditional offer (that fell through) on the Meaford Project, except as told to him by Mr. Foo.[29]

16 The Manager led evidence, including in its Seventh Report, to establish the insolvency of the Additional Project Entities. Without limitation, the Additional Project Entities are failing to meet governance, reporting and record-keeping obligations to the Offshore Investors, owe property tax arrears, and are incapable of conducting a fair realization and distribution process with respect to the Additional Projects. That evidence was not countered by the Additional Project Entities. Indeed, the evidence of the Additional Project Entities is corroborative because it proves that all CPFs are exhausted, and that the Additional Project Entities must borrow from other A2A group entities to stay afloat, are totally illiquid despite their borrowings, and own no meaningful or liquid assets.

17 The Additional Project Entities are insolvent. Each therefore meets the CCAA's definition of "debtor company" (in addition to meeting the CCAA's definition of "affiliated company").

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[24] Lind Cross-examination at 24:1-25:15; 27:6-13; 54:4-15; 55:6-10; 59:7-19; 70:5-71:14; 76:7-77:5.
[25] Lind Affidavit at paras 30, 65, 85
[26] Lind Affidavit at para 34; see also Bench Brief of the Additional Project Entities at paras 27-28.
[27] Seventh Report of the Monitor, filed July 22, 2025 (**Seventh Report**) at paras 48, 57, 63 and Apps E, H, K.
[28] Lind Cross-examination at 67:24-68:2.
[29] Lind Cross-examination at 27:20-28:7; 36:8-24; 69:1-25.

Insolvency is not limited to financial obligations

18 The Additional Project Entities are wrong to deny the relevance of non-financial obligations to the insolvency analysis under the CCAA.[30]

19 The definition of *insolvent person* under the *Bankruptcy and Insolvency Act* (**BIA**) informs the insolvency analysis under the CCAA.[31] That definition has three elements, any one of which is sufficient to establish a person's insolvency, as follows:

> ***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> **(a) who is for any reason unable to meet his obligations as they generally become due,**
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (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, would not be sufficient to enable payment of all his obligations, due and accruing due[32]

20 The definition of insolvency is not restricted to balance sheet insolvency (aggregate debts exceeding aggregate assets) and cash flow insolvency (not paying current obligations as they generally become due). A person may also be insolvent by not satisfying its obligations as they generally become due "for any reason". In that way, a person cannot avoid a finding of insolvency by declining to incur the costs of satisfying its obligations as they generally become due.

21 The Additional Project Entities are balance sheet insolvent and cash flow insolvent; however, they are also insolvent because they are not meeting their governance, reporting and record-keeping obligations to Offshore Investors as they generally come due, and are incapable of conducting a fair realization and distribution process with respect to the Additional Projects.

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[30] Bench Brief of the Additional Project Entities at para 30.
[31] Bench Brief of the Additional Project Entities at para 24.
[32] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 2.

Insolvent enterprises with intertwined operations

22 The CCAA also applies to solvent entities with operations that are intertwined with those of debtor companies and/or affiliated companies.

23 Solvency is not evaluated on an entity-by-entity basis if operations are intertwined. Justices Simard and Feasby held as much in their earlier decisions in this CCAA proceeding.[33]

24 *First Leaside* is another example. In that case, a lender objected to the inclusion of a real estate project's general partner in a CCAA proceeding because it was solvent. Justice Brown nevertheless included that general partner as a CCAA party because it was "part of an intertwined whole" irrespective of whether it was insolvent itself: "Consequently, whether Queenston Manor General Partner Inc. falls under the Initial Order by virtue of being a 'debtor company', or by virtue of being a necessary party as part of an intertwined whole, is, in the circumstances of this case, a distinction without a practical difference."[34] Justice Brown also extended full rights and benefits under the CCAA Initial Order to the limited partnership (among others).[35]

25 This aspect of Justice Brown's *First Leaside* decision was recently affirmed and applied by Justice Steele in *Earth Boring*, as follows:

> For the CCAA to apply in respect of a "debtor company" or "affiliated company" the total claims against the debtor or affiliate must be greater than $5 million. **Where there is an affiliated group, as in the instant case, companies that are part of the group are not required to individually satisfy the definition of insolvency if the group, taken as a whole, is insolvent, and if it is appropriate that all the companies in the group be included as part of the restructuring and CCAA orders**: *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299, at paras. 25-30.[36]

26 The Additional Project Entities argue that they are only "part of a larger corporate structure" in the "broad sense".[37] However, the Additional Project Entities rely on the same administrative entities as the Angus Manor, Fossil Creek and Windridge entities that are already CCAA parties. The Additional Project Entities are also each wholly owned subsidiaries of A2A Developments, which is another CCAA party.

27 Even if one or more of the Additional Project Entities were solvent, which is not the case, this Court should take guidance from Justice Brown's decision in *First Leaside*, whereby a solvent real estate was included in the CCAA proceeding as a "debtor company" or necessary party because it was part of a broader insolvent enterprise.

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[33] Transcript of the Decision of Simard J. dated November 25, 2024 at 9:17-23; *Angus A2A GP Inc (Re)*, 2025 ABKB 51 at paras 77, 79.
[34] *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299 at para 30.
[35] *Ibid*.
[36] *Re Earth Boring Co. Ltd*, 2025 ONSC 2422 at para 26 (emphasis added).
[37] Bench Brief of the Additional Project Entities at para 10.

28 The Additional Projects Entities are individually insolvent; however, even if they were not, their operations are integrally intertwined with insolvent A2A entities that are existing CCAA parties. That is a separate basis upon which the Additional Project Entities can be added to these CCAA proceedings.

b. CCAA Objectives

29 The Additional Project Entities argue that they are unlike Angus Manor, which is rightly a CCAA party because it "was admittedly a mess, having been drastically undersold and therefore drastically underfunded from the beginning."[38] However, the Additional Project Entities have no assets beyond small, fractional, undivided interests in the Additional Projects, owe property tax arrears, are indebted to other A2A group entities in unknown amounts, and are incapable of carrying out their obligations to Offshore Investors. Each is a "mess" in its own right.

30 The evidence does not bear out that any sales of the Additional Projects were lost based on the spectre of adding the Additional Project Entities to these CCAA proceedings. Royal Lepage listed the Lake Huron Shores Project on July 16, 2021 and has been trying to sell it continuously since then. Interest from the market was never more than tepid. Two conditional offers were received on the Lake Huron Shores Project. One was not pursued because the offeror dropped its price.[39] The other was not pursued because the offeror identified a site servicing issue.[40] A conditional offer was also made but not pursued on the Meaford Project after it sat on the market without attracting interest for almost three years.[41] The due diligence period for that conditional offer was ultimately extended from 90 to 435 days,[42] which indicates a due diligence issue. Market interest in the Additional Projects was low before there was even a hint of CCAA proceedings.

31 Indeed, these CCAA proceedings may be useful in facilitating sales of the Additional Projects. Mr. Lind noted in his Affidavit that conveyancing will be a challenge because titles for the Additional Project are split between hundreds or even thousands of Offshore Investors. Mr. Lind proposed using a Vesting Order as a tool to streamline conveyancing and reduce associated fees: "[T]he actual transfer may be able to be effected by a vesting Order from the Ontario Court, rather than needing to separately submit over 1,100 separate transfers [for the Meaford Project], which will reduce the conveyancing costs estimate."[43] Of course, Vesting Orders are features of CCAA and other types of insolvency proceedings.

32 Finally, applying the CCAA to Wingham A2A is appropriate because it is acting as though it is still the Wingham Project's Facilitator, even though it is not. Wingham A2A was replaced as the Facilitator in approximately 2021[44] and was never re-appointed. Yet Mr. Foo and Mr. Ambrose have continued to act like Wingham A2A was not replaced, including

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[38] Bench Brief of the Additional Project Entities at para 62.
[39] Chambers Affidavit at para 19(b).
[40] Chambers Affidavit at para 19(c).
[41] Warshafsky Cross-examination at 25:21-26:1.
[42] Warshafsky Cross-examination at 13:17-21.
[43] Lind Affidavit at para 50.
[44] Lind Affidavit at para 96 and Ex R.

by causing it to retain Royal Lepage in 2024 to list the Wingham Project.[45] Royal Lepage was not advised that Wingham A2A was replaced as the Facilitator.[46]

33 Extending these CCAA proceedings is reasonably necessary to preserve value and respect stakeholder rights, all of which is consistent with the objectives of the CCAA.

III. CONCLUSION AND RELIEF SOUGHT

34 For the reasons above, the Additional Project Entities qualify under the CCAA to be added to these CCAA proceedings, and the facts and circumstances justify their being so added.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 2025.

NORTON ROSE FULBRIGHT CANADA LLP

Per: _____

D. Aaron Stephenson,
Representative Counsel for the Offshore Investors

[45] Lind Affidavit at Ex C; Lind Cross-examination at 56:17-24.
[46] Chambers Cross-examination at 12:14-18.

TABLE OF AUTHORITIES

Tab	Authority
1	Transcript of the Decision of Simard J. dated November 25, 2024 at 9:17-23
2	*Angus A2A GP Inc (Re)*, 2025 ABKB 51
3	*First Leaside Wealth Management Inc (Re)*, 2012 ONSC 1299
4	*Re Earth Boring Co Ltd*, 2025 ONSC 2422

Tab 1

Action No.: 2401-15969
E-File No.: CVK24ANGUS
Appeal No.: _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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

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

P R O C E E D I N G S

Calgary, Alberta
November 25, 2024

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Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

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November 25, 2024	Afternoon Session
The Honourable Justice Simard	Court of King's Bench of Alberta
D. Jukes (remote appearance)	For the A2A Companies
J.L. Oliver (remote appearance)	For the Court Monitor
N.E. Thompson (remote appearance)	For the Court Monitor
R. Donnelly (remote appearance)	For the Court Monitor
D. Jorgenson (remote appearance)	For the Court Monitor
H. Gorman, KC (remote appearance)	For the Offshore Investor
O. Konowalchuk (remote appearance)	For the Court Monitor
K. Kashubahuk (remote appearance)	For Piller Capital Corp.
R. Gurofskyuk (remote appearance)	For the Canadian Ambassadors
K. Wong (remote appearance)	For the Canadian Ambassadors
A. McClelland (remote appearance)	For the Canadian Ambassadors
J. Ku (remote appearance)	For the Debtor Company
E. Choi (remote appearance)	For the Debtor Company
S. Lee (remote appearance)	For the Debtor Company
I. Cyr	Court Clerk

THE COURT: I think everyone can hear me all right?

MR. JUKES: I can hear you, Sir. Dan Jukes, from Miles Davison here. My apologies, I think the delay there was my fault. I had not realized that my friends from Ontario (INDISCERNIBLE) link, so I have forwarded it to them. I see at least one of them has since logged in. I hope the others will be here in a moment.

THE COURT: Okay. Where, Madam Clerk, where is the camera that is picking me up? Is it the one at the back of the courtroom?

THE COURT CLERK: It's the forward one.

THE COURT: Okay. I will face forward, because I see counsel over here -- okay.

Decision

THE COURT: Well, you are here, Mr. Jukes, so I will start. The punch line comes at the end, so hopefully your colleague will join by then.

Any preliminary matters before I give everyone my decision from last Thursday? Hearing nothing and seeing nothing -- and I did receive, I received the supplemental affidavit of Mr. Ambrose on Friday, and then I got the monitor's second supplement to the first report this morning. So thank you for that. I did have a chance to briefly review those.

So I am going to give you -- given the urgency of these applications -- I am going to give you my decision and my reasons today orally. And at the end, there will probably be some questions about the details to go in a Court order. I will ask Mr. Oliver to draft that Court order. I know he is not here, but I see his colleague is here.

If anyone requests a transcript of this decision, obviously I reserve my rights to make any minor proof reading or clean-up changes, but I will not, obviously, change anything substantive.

So Introduction.

On November 14th, 2024, this Court granted an initial order under the CCAA against 11 debtor companies -- 4 Alberta corporations, 4 Ontario corporations, and 1 corporation incorporated under the laws of Canada, 2 limited liability corporations incorporated the Texas.

The initial order also covered certain affiliated entities: 4 limited partnerships -- 3 registered in Alberta, 1 in Ontario; and 2 trusts, one of which was established in Ontario, and the other in Alberta.

I will collectively refer to the entities, all of entities covered by the initial order as the A2A Group.

The application for the initial order was made by five individuals who had invested in the A2A Group's project. I will call them the applicant investors. On November 21st, 2024, I heard two applications: The application of Alvarez and Marsal Canada Inc. -- the Court-appointed monitor, for an extension of the stay of proceedings and other relief; and the application of the A2A Group, asking that I set aside or stay the initial order, or adjourn the hearing to allow for more fulsome evidence and argument.

Background, first, with respect to the applicant investors.

The five applicant investors personally invested $76,000 in A2A's projects. They also

gave evidence about their family members or clients who had invested a further $105,500 in the projects.

The structure of the A2A Group and the projects.

The A2A Group raised money for the purpose of purchasing real estate that has a potential for large-scale residential development. The applicant investors have invested in three A2A real estate projects that have consequently been included in the initial order. I was advised that there might be as many as eight other A2A projects.

The three projects are Angus Manor, which is a 167-acre project north of Toronto; Fossil Creek, a 93-acre project in Fort Worth, Texas; and Windridge, a 415-acre project in Texas in the Dallas/Fort Worth area. The structure of the Angus Manor project is as follows: A development corp. -- or DevCo -- originally held title to the Angus Manor lands. Undivided fractional interests -- or UFIs -- in the lands were then transferred to be held by or for investors in the following ways: In the first offering, Canadian investors purchased units in a limited partnership. The limited partnership used the proceeds of those unit sales to purchase UFIs from the DevCo, and foreign investors did not invest through the limited partnership; rather, they bought UFIs directly from the DevCo.

In the second offering, Canadian investors bought bonds issued by a capital corp.. The capital corp. used the proceeds of those bond sales to buy limited partnership units in a second limited partnership, and that second limited partnership bought UFIs in the lands from DevCo.

The title to the Angus Manor lands was in evidence. It shows 2,300 UFIs owned as follows: 893 by the DevCo, 212 held in the first limited partnership structure, 65 in the second limited partnership structure, and 1,130 by foreign UFI owners.

The applicant investors say that the numbers held by the limited partnerships for Canadian investors are lower than promised. According to the offering memoranda, the two offerings were to raise about $17 million, of which $4.2 million was used to purchase the lands, $1.15 million was to get lands to the development-ready stage, and the rest was made up of different fees and commissions.

The structure of Windridge and Fossil Creek is different than Angus Manor, but generally the same as between those two Texas projects. For each project, a Texas limited liability corporation -- a DevCo -- originally held title to the entirety of the lands. UFIs were then transferred to be held by or for investors in the following ways: Canadian investors purchased units in a trust -- those were the Windridge A2A Trust and the Fossil Creek A2A Trust respectively. The trust used the proceeds of those unit sales to purchase units

of a limited partnership. The limited partnership used those proceeds to purchase UFIs from the DevCo. And then, foreign investors did not invest through the limited partnership or trust structure; rather, they bought UFIs directly from the DevCo.

A title search of Windridge lands was put in evidence by the applicant investors, but the registered ownership picture is not clear. One of the applicant investors, Mr. Edwards, says that title to the property is split between the DevCo Dirk Foo, as trustee of another trust called the Hills of Windridge Trust, and various individual and corporate owners of specific lots.

The Hills of Windridge Trust is one of the two newly identified trusts that the monitor asks me to include in these proceedings. There's no evidence about the structure of this trust, other than the fact that Mr. Foo -- an individual -- is believed to be the trustee.

No title search of Fossil Creek lands was put in evidence, so the registered ownership picture for those lands is unknown. The Fossil Creek Trust is the other newly identified trust that the monitor asks to be included in these proceedings. Similarly, there is no evidence about the structure of that trust, other than the fact that Mr. Foo is believed to be the trustee.

So next, the November 14th application.

The applicant investors' application was heard on November 14th. It was essentially ex parte. The materials filed and relied on were about 2,000 pages long. Service was attempted on November 12th by email and courier on various members of the A2A Group, or their directors or representatives. No service ex juris order was sought for the parties outside of Alberta.

Counsel for at least some of the A2A Group appeared and requested an adjournment. The applicant investors opposed to adjournment request, mostly on the basis that there was evidence of an imminent sale of the Angus Manor pending, so that urgent relief was necessary.

The primary complaint of the investors -- which was amply established on the evidence -- is an almost total lack of communication from the A2A Group, and extremely derelict governance. A large number of the companies involved in the investments and the project have been struck from the relevant corporate registries.

The applicant investors also pointed to what they called red flags in the evidence about the misconduct of the A2A Group -- although the vast majority of that was hearsay evidence.

The urgent circumstances of the application that justified the short service was evidence that the applicant investors had discovered a Facebook post indicating that a sale of the Angus Manor property with respect to which they held limited partnership units was imminent, but that none of them had heard about this sale or asked to approve it. There was evidence that investor voting had been called for any November 12th, and were to be tabulated on November 15th. The applicant investors had not been asked to vote.

The record before me on November 21st.

By November 21st, the respondents were represented by counsel in Toronto and Calgary -- although they had only been retained earlier in the week, and were still getting up to speed. The evidence before me was comprised of the affidavits of the five applicant investors from the November 14th application; the monitor's pre-filing report, first report, and supplement to the first report; and three affidavits submitted by the respondents -- two from directors of A2A Group entities, and one from the real estate agent involved in the sale of the Angus Manor lands.

No party asked for an adjournment of the November 21st hearing to cross-examine or for any other reason, despite the fact that there are substantial factual disputes on the evidence; therefore, my ability to assess the credibility of the affiants is limited.

After the hearing, the respondents sent me, on November 22nd, a supplemental affidavit of Mr. Ambrose, in which he provides what he says are the investors' proxies approving the sale of the Angus Manor lands.

On November 25th, the monitor sent a second supplement to its first report, commenting on discrepancies in those proxies, and attaching more correspondence received from UFI owners.

I will now outline the parties' positions.

The monitor asks for an order granting an amended and restated initial order; extending the stay of proceedings to February 28th, 2025; adding the two trusts I have named to the initial order -- that is, the Hills of Windridge Trust and the Fossil Creek Trust -- I will refer to those as the two new trusts; next, the monitor asked that I authorize it to register a copy of the amended and restated initial order on title to the Angus Manor lands in Ontario; increasing the administration charge from 250,000 to 500,000; increasing the interim financing charge from 500,000 to 2 million; attaching all UFIs with those two charges; removing the trustees of the two trusts already included in the initial order and the two new trusts.

The respondents ask that I said aside or stay the initial order, or adjourn the hearing for the following reasons: They say the initial order was effectively granted ex parte, without due process; service of foreign members of A2A Group was invalid because no service ex juris order was obtained, so the Court has no jurisdiction over those parties; the evidence before the Court in the November 14th application was incorrect, misleading, and speculative, and it did not prove malfeasance by the A2A Group; they say the A2A Group is not insolvent; some members of the A2A Group are not properly included in these proceedings; the properties are being marketed and sold for fair market value in arm's length transactions, fully in accordance with the bargained-for rights of all investors, including the applicant investors; and finally, that the applicant investors lacked standing to commence these proceedings, and they represent only a tiny fraction of investors; the rights they are entitled to as investors has not been infringed upon, and their commencement of these proceedings is prejudicing a much larger group of investors who have no notice of these proceedings.

So next, the issues.

The issues I must decide are whether I should extend the initial order; if so, on what terms. And whether I should grant the respondent's application to set aside or stay or adjourn.

Next, my analysis.

I will make some initial observations at the start. First of all, with respect to real-time litigation, this is a genuine case of real-time litigation. The applicant investors brought their application because they had received information indicating that the Angus Manor property was going to be sold imminently, and they had not received prior notice.

The A2A Group's position is that they are in the midst of marketing, selling, and distributing the proceedings of the properties, all of which is being done with arm's-length parties for fair market value, and in accordance with the investors' rights and entitlements. However, they say that the existence of these proceedings is hampering those efforts, and could result in extreme prejudice to the vast majority of investors and UFI owners who did not start these proceedings, and indeed, are unaware of them.

The parties will need ongoing access to the Court to ensure that this matter proceeds in a timely way so that stakeholders' interests are protected, and unwarranted prejudice is avoided or minimized. I will ensure that that happens in the order I am granting today.

Secondly, some comments on the purpose of the CCAA. The CCAA is broad and

remedial legislation that I must interpret in a large and liberal manner. However, there are limits to the *Act*'s flexibility. As its name suggests, the purpose of the *Act* is to assist insolvent companies in developing and seeking compromises and arrangements with their creditors. The continuation of a stay may not be appropriate if the purpose of the proceedings is not to further that fundamental purpose of the *Act*.

And the authority for that proposition is *Cliffs Over Maple Bay* 2008 BCCA 327. That decision must be read with caution because it was decided before the 2009 amendments to the *Act*. However, the principle it stated is still sound. The CCAA is not a statute that exists to serve the purpose of all parties who have disputes with insolvent entities.

As the applicant investors advised the Court on November 14th, this is not a conventional CCAA proceeding. It was not commenced in the way the vast majority of these cases are, by an insolvent debtor entity who needs protection from its creditors to be able to put together a plan.

It was also not commenced by creditors. It was commenced by investors whose rights and entitlements are unclear, based on the evidence before me presently.

The applicant investors' complaints are not that they are owed debts that are not being paid; but instead, that the respondents have completely failed to communicate with them, and that their governance appears to be highly deficient. The initial order effectively supplanted management on day one of this case by giving the monitor very wide-ranging enhanced powers. Two of the three projects covered by the initial order are not in Canada, but are located in Texas.

There is no hint that the applicant investors have any plan for a compromise or arrangement of the debtors, or even a process that would lead to out of the ordinary course sales. They essentially started this action to try to stop sales and to investigate the facts.

I will discuss these issues in more detail later in my decision, but at this point, I want to acknowledge that the concerns raised by the respondents are legitimate, and they cannot be dismissed out of hand. It is possible that the continuation of these proceedings -- while unquestionably driven by the genuine desire to protect investors' interests -- might be stretching the CCAA beyond its proper limits.

Next, my analysis of the issues.

Many of the issues raised in the parties' competing applications overlap, so I will analyze them in the order that seems most logical.

First, jurisdiction and authority.

The applicant investors' service of their November 14th application for the initial order was imperfect, short, and with respect to the Texas LLCs, defective because no service ex juris order was sought. However, there was legitimate urgency to the application, as I have already described.

The respondents now all have substantive notice of these proceedings and are represented by counsel. The two Texas LLCs are proper respondents, because they are inextricably intertwined in the corporate and investment structure of the Windridge and Fossil Creek projects that were marketed to Canadian investors in Canada through Alberta and Ontario corporations, limited partnerships, and trusts.

Despite the deficiencies in service of the application for the initial order, I find that I have jurisdiction over all of the existing respondents, include the two Texas LLCs. I will address the two new trusts later in this decision.

The standing of the applicant investors.

Section 11 of the CCAA states, quote:

> If an application is made under this *Act* in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this *Act*, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

That section is silent about who can make an application under the CCAA. Section 11.02(1), which governs applications for initial orders is also silent on who may apply for an initial order, but it repeats the same language:

> On an application in respect of a debtor company.

So there is no prohibition in the CCAA on investors applying for an initial order.

The applicant investors and the monitor have argued that the applicant investors are also creditors because they have contingent claims against the respondent. The basis for this argument seems to be that the amount of money raised with respect to the Angus Manor project exceeds the current proposed purchase price. There are many assumptions built into that chain of reasoning for which there is no supporting evidence.

Based on the evidence that is before me at this time, I am not satisfied that the applicant investors have contingent claims as creditors, but I do not have to decide that issue now.

The applicant investors are persons interested, as described in Section 11.02(1) of the *Act*; and as a result, I find that the applicant investors had standing to make the initial order application.

Next, insolvency.

Section 3(1) of the *Act* states that:

> This *Act* applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

There is ample case law for the proposition that affiliates that are not companies, but instead are partnerships, can be included within the group that is covered by the initial order.

I am satisfied by the evidence that all of the respondents are affiliated, and their businesses are inextricably intertwined with respect to the three projects. The respondents did not challenge that assertion.

However, the respondents say that they are not insolvent because the approximate $12,000 tax liability owed on the Angus Manor lands has been paid, the approximate $1.3 million liability to the Angus Manor bond holders, quotes, "is not an actual liability and is not owed"; and finally, the US $3.8 million judgment was a default judgment. The respondents say that it was not challenged, as it did not pose a risk to any active A2A entities.

Mr. Lind, one of the respondent's affiants, said in his affidavit that this judgment does not effect title to the Windridge property, quote: (as read)

> And this has been confirmed by vigorous title reviews in relation to the ongoing negotiations to sell the Windridge property.

The monitor and the applicant investors agree that the $12,000 property tax bill was paid, although they note that this was only done after the interim order was granted.

The respondents' argument that the $1.3 million bond liability, quote, "Is not an actual

liability," is not supported by the evidence. The evidence they pointed to in the second Angus Manor offering memorandum does establish that the principle and interest on the bonds is not currently due and owing, and will only become owing on the maturity date, which is September 30th, 2026.

It is clear in the current negotiated purchase price for the Angus Manor lands that if that sale closes and those proceeds are brought in, the bonds will not be repaid in full. The bonds are to be repaid pari-passu with the limited partnership investments, and the purchase price from which significant fees are to be deducted, is well below the total amounts to be repaid to the LP unit owners and the bond holders. It is not possible to determine at this time what portion of the bonds would not be repaid.

Similarly, the respondents' assertion that the $3.8 million US judgment does not affect title to the Windridge property is not borne out by the evidence. Mr. Edwards, one of the applicant investors attached an August 2024 title search showing the property registered to the Windridge DevCo -- one of the debtor companies -- the judgment was registered on title as an encumbrance. The respondents do not contest the existence of the judgment, or that it remains unpaid. At the current exchange rate, this debt exceeds $5 million Canadian.

So based on the evidence currently before me, I am satisfied that the respondents are insolvent.

Extending the stay.

Pursuant to Section 11.02(3) of the CCAA, the Court may grant an extension of a stay of proceedings where:

> Circumstances exist that make the order appropriate; and
>
> The applicant satisfies the Court that it has acted and is acting in good faith and with due diligence.

The monitor is the applicant in this come-back application, and there is no question that it is acting in good faith and with due diligence. The real issue here is whether extending the day and permitting this very unusual CCAA proceeding to continue is appropriate in all the circumstances.

The following matters raised by the respondents are among the factors I must consider in deciding whether a stay extension is appropriate.

The applicant investors hold only a very small fraction of the investments in these projects. Their collective investments, including the investments of others that they've been in contact with, and that they describe in their affidavits, appear to amount to the following: First, with respect to Angus Manor, they hold 700 limited partnership units in the Angus Manor limited partnership. The title search discloses that there are 2,300 UFI interests, and the limited partnerships hold 212 -- although Mr. Edwards said this should be 424.

Based on Mr. Edwards' evidence, it seems that the applicant investors speak for about 2.2 percent of the limited partnership unit holders, and an aggregate of about 0.2 interest in the total UFIs. Although, if Mr. Edwards is correct about the miscounting, that may be twice as high, as much as 0.4 percent of the total UFIs.

With respect to Windridge, the applicant investors and those they describe hold 665 trust units in the trust. The respondents say there were 21,615 trust units sold, so the applicant investors speak collectively for about 3.1 percent of the trust beneficiaries.

The limited partnership that is owned by the trust bought 209 UFIs out of a total of 4,412, so the applicant investors speak collectively for about 0.1 percent of the total investors in the Windridge property.

With respect to Fossil Creek, the applicant investors and those they speak for bought 300 trust units in the trust. It's impossible to determine exactly what interest in the Fossil Creek lands that equates to on the evidence that I have. These 300 units likely represent between 1.8 percent of the total limited partnership units, and 1.1 percent of the limited partnership units, depending on whether the minimum or the maximum amount was raised. Mr. Lauzon's evidence suggests that depending on the amount raised, the limited partnership would hold between 209 and 349 UFIs in the land. 1,826 UFIs were sold directly to foreign investors, so it seems likely that the applicant investors probably speak for about 0.18 percent of the total UFIs in the Fossil Creek lands.

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

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

> investors' rights being infringed? What rights did they bargain for, as extremely small fractional unit 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 to you freeze the totality of the investments and effectively take control of the entities out of the hands of management and directors.

The respondents' evidence is that the Fossil Creek property has been sold, the Angus Manor property is under contract for sale, and negotiations are being held to sell the Windridge property. As I have mentioned, the respondents say that all of these sales or sale processes are arm's-length for fair market value and in accordance with the investors' rights and entitlements. They might be. If they are, it may be difficult for the applicant investors to justify the continuation of these proceedings.

At this time, I do not have enough evidence to definitively decide these issues. The monitor and the applicant investors say this dearth of evidence is because the A2A Group never reported to investors, and since November 14th, have not complied with the provisions in the initial order requiring them to give information to the monitor.

The respondents say that they have not failed to comply and have corresponded with the monitor, but have had very little time to take meaningful steps, as they've been occupied with responding to the application.

I find that it is appropriate to continue the stay, considering these circumstances, but only for a limited time, and only for a limited purpose.

I extend the stay to and including December 18th, 2024. The purpose of this extension is to allow the respondents to provide the monitor with the necessary information to allow the monitor to create a comprehensive report for me and for the other stakeholders, so that we have a proper record, and I can properly decide whether continuation after that date is appropriate; and if so, on what terms.

Based on the respondents' evidence, this relatively short extension will not prejudice any of the existing sales or sale processes. It will also provide what both parties want, and what I need: Time for all of the relevant information to be brought forward.

I will not be overly prescriptive as to the contents of this comprehensive report from the monitor, but I expect that the report will provide a full picture about the following things:

> The respective rights and entitlements of each class of investors, including the investors' rights to approve property sales;
>
> The ownership of the properties;
>
> The value of the properties;
>
> The marketing processes that were conducted or are being conducted for the properties; and.
>
> The investor approval process conducted for any sales, including how investors were notified of sales, what they were told, what opportunities they were given to approve sales, and how sales were approved, including by whom, and under what authority.

I'm adjourning the respondents' application and those parts of monitor's application that I am not deciding today to 10 AM on Wednesday, December 18th , for a half-day hearing before me.

I will now outline the parts of the monitor's application that I am deciding today, because clarity on these points will help the parties decide what they need to do as this matter moves forward.

So first, the monitor's request to extend the charges to attach to the UFIs. The monitor asks that I extend the administration charge and the interim financing charge to attach to the interests of UFI owners in the three projects. As I explained earlier, it appears that the vast majority of each of the three projects is owned directly by many hundreds, or maybe even thousands of foreign purchasers of UFIs.

After the interim order was granted, the monitor implemented a communication plan to try to reach other investors, including these foreign UFI owners. By the time of the hearing on November 21st, the monitor said it had heard from 72 UFI owners. By today, November 25th, it said that had increased to 126 UFI owners.

The monitor included samples of correspondence with those parties in its first and second supplement to its first report. These communications generally raise similar concerns, as those voiced by the applicant investors. Allegations of fraud or misconduct by the A2A Group, and complaints about a lack of disclosure and reporting. However, there was

some reluctance expressed in some of the communications about the costs to the UFI owners of participating in the process.

These 126 investors who have been in touch with the monitor are still a very small fraction of the total group of UFI owners. No party provided me with any precedent authority for the proposition that I can extend charges under the CCAA to property owned by third-party. And the *Act* does not allow that.

In Section 11.2, which deals with interim financing charges, that section authorizes the Court to grant an order declaring that, quote:

> All or part of the company's property is subject to a security or charge.

Section 11.52, which covers administration charges, uses the exact same language.

While Section 11 authorizes me to make any order I see fit, my authority under that section is expressly subject to the restrictions set out in the *Act*. Section 11.2 and Section 11.52 set out very clear restrictions on the property that can be made subject to an administration charge or an interim financing charge. It is only the property of the debtor companies.

In the context of this case, that is the interests held by the debtor companies and their affiliates in each of the three properties, and any other property of those members of A2A Group.

Therefore, the monitor's request to charge the UFI owners' interests is dismissed.

I am going to ensure that it is open to the monitor or to any other party to make an application under the costs allocation provision in the interim order, of the costs of these proceedings shared by UFI owners.

So I will give you a moment, counsel, to pull up the interim order, but I am going to direct that paragraph 55 be amended. Paragraph 55 currently reads: (as read)

> Any interested person may apply to this Court on notice to any other party likely to be affected for an order to allocate the charges amongst the various assets comprising the property.

So what I am going to add at the end is, after "the property": (as read)

> Or the costs of these proceedings among any parties who have benefitted

from these proceedings.

Is that wording clear? I see a nod, thank you.

So that will be a change in the amended and restated initial order.

As I said, I find that I do not have the power to extend the charges to the UFI owners properties, but I am not precluding anyone from arguing at any appropriate point in the future that if those parties have benefitted from these proceedings, an application can be made to share costs with them.

I am also not precluding the possibility that UFI owners may agree at some point to have their interests attached by the charges. Obviously we are at a very early stage of these proceedings potentially. And if they agree to do so, I would have the authority to make that order.

The next matter I will deal with today is adding the two new trusts to these proceedings. The monitor asks that I add the Hills of Windridge trust and the Fossil Creek trust to these proceedings as affiliates of the debtor companies. It was suggested that I have the authority to do that under Section 11, and that it would be just and convenient to extend the scope of the proceedings to these two trusts to prevent the transfer of the Texas lands, quote: (as read)

> Until such time as the monitor is able to definitively determine which entities are the registered owners.

With respect, that reasoning is backwards. A desire for an order granted because it is considered just or convenient does not create jurisdiction in the Court to grant the order.

This request would require me to order that Mr. Foo -- an individual -- should be treated as a debtor company under the CCAA, or an affiliate of a debtor company. I clearly do not have the authority to do that.

The monitor asked that in the alternative, I grant an order enjoining the sale of the Texas lands. It is equally clear that power to do that is well beyond the jurisdiction of this Court.

I note that the interests of the debtor companies and their affiliates in the properties cannot be sold under the current interim order, except by the monitor, and subject to the limitations in paragraph 15(a) of the interim order. But with respect to the request to extend the initial order to cover the two new trusts, that part of the monitor's application is

dismissed.

Next, removing the trustees from all four trusts. The monitor requested that I remove the trustees of the two trusts that are currently part of these proceedings, and the two new trusts. Obviously I will not be doing that with respect to the two new trusts, because I am not adding them. But I also find it is premature for me to do that with respect to the two trusts that are already included in these proceedings, so I adjourn that part of the monitor's application to 10 AM, on December 15th.

Here is a list of miscellaneous items from the monitor's application that I am dealing with at this time:

> So service, I will deem service of the come-back application good and sufficient.
>
> The request to approve the requested protections for representative counsel and the other requested changes in paragraphs 26 to 33 of the amended and restated initial order are granted.
>
> I do authorize the monitor to register the initial order and/or the amended and restated initial order on title to the Angus Manor lands.
>
> And I do declare that the monitor and representative counsel have the necessary standing to apply to add other debtor companies or affiliates to these proceedings.

The rest of the -- other than the extension of stay, which I am going to get into in a bit more detail now -- the rest of the monitor's application is adjourned to December 18th.

Between now and December 18th, I direct the parties to take the following steps: By 4 PM, this Thursday, November 28th, the monitor will provide a second report to the Court and to the other stakeholders. This will be a very limited purpose report, reporting on two things: The expenditures and accruals to date, broken down as between the service providers; and second, a revised cash-flow statement listing all proposed expenditures to get to and complete the December 18th hearing date, again, broken down as between the service providers. I want a description of what each professional will be doing up to and including December 18th, in keeping with the limited scope of the stay extension I am granting.

Next, we have a hearing this Friday, at 9 AM -- although we can discuss that afterwards, because it looks like the rest of my morning was cleared, which I was not anticipating. It

will be a one-hour hearing. The purpose of that hearing will be based on the second report to decide whether the charges and the limit on the interim loan should be increased for the interim stay extension period to December 18th. What I expect from the monitor is to see a very realistic and prudent cash flow.

As I will make clear, the monitors and its counsel's primary task over the next month will be corresponding with the respondents and preparing the comprehensive report I have requested for the December 18th hearing. Other than that, the monitor should only be carrying out the tasks that it is empowered to carry out under the initial order that are necessary.

Same is true for representative counsel. Obviously they will be communicating with their respective groups of investors, and all of the professionals will need to prepare for and attend the November 29th and December 18th hearings. But beyond what I have described, only absolutely necessary steps should be taken.

If I am reading the first report correctly, it appears that the interim lender has advanced $500,000, of which 378,000 has gone to the monitor. The balance are fees and an interest reserve. Professional fees to November 22nd were estimated to be $309,000. Very close scrutiny of the cash flow is necessary at this time, in my view, because I remain unconvinced that a long and comprehensive stay extension is warranted, bringing with it what would be very substantial fees, projected in the first report, that would be borne by all the investors.

My dismissal of the monitor's request to extend the charges to the UFIs will be something that the monitor will have to discuss with the interim lender between now and Thursday. The monitor will also have to do the same with its US counsel, so that it can give me, and so that it has an understanding of what steps will be necessary this a Chapter 15 proceedings, and what possibly could be delayed in those proceedings between now and December 18th.

And as I said, at the end of the decision today, I can answer any questions you have about these details, but I think the parties understand the overall gist of my direction.

I will not be approving a $2 million cash-flow on Friday, and I expect everybody to work together in good faith to help the monitor come up with the most modest and realistic cash-flow possible.

Turning to the respondents, I am specifically directing them to provide to the monitor the information that the monitor will need to prepare the comprehensive report I am expecting for December 18th. It is most efficient to describe the respondents' information

obligations with reference to Appendix C from the first report, which is the November 15th letter that Mr. Oliver sent to the respondents' former counsel, but which all the parties now have notice of, because it was included in the report. I am just going to pull that letter up.

So this information, I will get into a bit more detail, this information has, Mr. Jukes, has to be provided by the respondents by 4 PM on Friday, December 6th, at the latest. First of all, if you look at that Appendix C, that is the November 15th letter, Schedule A is the group to which the information requests relate. I am directing that the two new trusts be added to that list.

The respondents put information in evidence about those trusts. It is obvious from the scant evidence that I have that those trusts are involved at the very least in the holding of title to the Texas lands. So they will be added to this list, and they will be covered by the information requests.

I think the entity in number 9 -- which says Hills of Windridge Trust -- I think that is supposed to be Hills of Windridge A2A Trust, that is one of the two trusts currently in the proceedings. So what the respondents have to provide by the deadline I have stated is all of the corporate records -- that is the first section -- turning now to Schedule B in that letter; the accounting records in the second section.

With respect to current bank accounts, the respondents have to provide a daily update to the monitor so that the monitor can see if balances are changing in those current accounts.

The investor records in the third section have to be provided.

The contracts, all that information in the fourth section.

The contacts in the fifth section.

And then the other records in the final section.

I am adding some specific items to that other section, so take note of this, Mr. Jukes -- and they may be covered, but I am stating them in more detail, because these have to be included in the monitor's report: So all title documents for the properties; all documents related to the marketing of the properties, data rooms, or due diligence materials related to the marketing of the properties; any valuation or appraisal information for the properties in any form; and all information about the investor approval process conducted for any sales, including what I mentioned before -- how investors were notified of sales, what they were told about those sales, what opportunities they were given to approve

sales, how sales were approved, including who provided those approvals and under what authority.

So I want to be clear about what this production process will look like. I was encouraged to see in the monitor's second supplement to its first report that there has been contact, and I think the respondents appear to be that they initiated conversations to hold a meeting tomorrow. I expect this production process to be a dialogue between the respondents and the monitor that should start immediately. It should be a steady flow of information. This will not be silence until 3:59 PM, on December 6th, and then a large data dump. That will not allow the monitor to prepare its report, which will be a sizable undertaking.

The respondents' obligation is not limited to producing documents that exist. If the monitor has questions within these topics or areas I have described, it can ask them, and the respondents must respond in correspondence.

There may be legitimate disputes about the scope of what monitor is entitled to receive. I would expect any such disputes to be resolved on the side of inclusion, not exclusion. There may be legitimate disputes about whether some materials that the monitor wants are confidential. The respondents can identify as confidential any information they provide, but they cannot refuse to send it on that basis. The only basis on which they can refuse to send information is if it is privileged. What I mean is if it is covered by the topics I have outlined, they have to produce it, except for privileged information.

For any information the respondents do describe or identify as confidential, the monitor will keep it confidential, and will only include it in a confidential appendix to its report. And if there is an argument about confidentiality, we can have that on December 18th.

So I expect in this disclosure of information, and then in the subsequent report, a full picture of all the topics I have described.

All stakeholders, including the respondents, are under the express duty of good faith set out in Section 18.6 of the *Act*. And I expect the respondents to comply with this order by cooperating with the monitor fully and completely.

Serious allegations have been raised by the applicant investors and others, and the respondents now have an opportunity to demonstrate that as they have argued, everything is in order. And a failure by them to comply with this order in good faith and to provide the necessary materials would be a factor that I would consider very seriously on December 18th, especially since the stay remedy they have requested, I will note, is an equitable remedy. That will be well known to Mr. Jukes.

And finally, the monitor will provide to the Court and to the other parties what I have been calling its comprehensive report, and any confidential supplement, by 4 PM on Friday, December 13th.

The respondents, if they want to file any additional evidence for December 18th, they can do so by that same deadline -- 4 PM on Friday, December 13th.

And if parties want to file briefs in advance of the December 18th hearing, they can do that by Monday, 4 PM on Monday, December 16th.

Discussion

THE COURT: So that was a lot, and I anticipate that parties may have questions about that. So I will open the floor up to anyone who has questions. Do I see Mr. Oliver? The screen shots I am seeing are very small, but has Mr. Oliver joined us perhaps?

MR. OLIVER: I have, yes. My other hearing finished, thank you, Sir.

THE COURT: Okay. I do not know what you heard of that, or when you came in, Mr. Oliver, but there is fairly, what I hope are fairly clear directions to the monitor on the limited purpose of this extension, and then a fairly sizable undertaking to produce a comprehensive report so I have the necessary evidence.

MR. OLIVER: I think I got it all, Sir. Thank you. And if not, I think my colleagues will have as well.

THE COURT: Okay.

Any questions from anyone else?

MR. JUKES: Sir, this is more of a mundane procedural type question, but in terms of getting a transcript, I guess firstly, we would need some courtroom information to do that; but secondly, is there any way that we could get some kind of note to the transcript management to expedite here? I took as many of these notes as I could, but my hand is maybe not as quick as some on the note-taking.

THE COURT: Sure. First of all, we are in Courtroom 1003, so that is the courtroom you need to specify to order a transcript.

You know, I think what I will do is I read in pretty detailed notes. I think I can probably put together -- do not treat this as definitive, but I think it will probably be the most efficient way for everyone to work together to draft this Court order and to understand what the parties' obligations -- I will put together at least a point-form in an email. I will send it to my assistant, and she will send it out to everyone this afternoon. So you can see what I think are the directions with respect to what is going to happen next.

MR. OLIVER: Thank you, Sir.

One question I had, if I may, was for the hearing on the 18th of December, just in the interest of sort of perfecting materials correctly, would you be looking for, for example, an application for advice and direction from the monitor with this information as well, with the information that you asked for, as well as recommendations with respect to the path forward? Would that be of assistance?

THE COURT: Well, yes, the way I am viewing December 18th is an adjournment of your larger stay extension application -- other than the specific things I dealt with today -- an adjournment of that application and an adjournment of Mr. Jukes' application. If we are going to be a month forward into the future, if you think other relief is required, or you need to amend that existing application, you are certainly free to do that. The deadline for that should probably be -- well, send it out as soon as you can, but no later than that Friday afternoon deadline for your report.

MR. OLIVER: Thank you.

THE COURT: But the more notice the respondents certainly have, if you are seeking different relief or advice and directions on different matters, the earlier the better. You can make that application returnable at that time.

So yes, this Friday, I imposed hearing dates on all of you. That is just a practical reality, because looking at my schedule, there are not many days. Given the real-time nature of this, and given that the commercial list is fully booked until well into January, you are not going to get time in front of other Judges. So I am jamming you with those dates and times.

As I said, I thought I was sitting for the whole morning this coming Friday. It looks like I may not be. So if 9 AM is incredibly onerous or impossible for somebody, we could talk about moving that to later on Friday morning.

Okay, hearing nothing.

Similarly, for December 18th. That is pretty much the only time I would have a half-day open between now and the holiday break. If there is violent opposition to doing that in the morning, we could move that to 2 PM, but I think given the volume of the materials that people will have, and hopefully the amount of dialogue that will occur between now and then, I think a half-day is sufficient to argue that motion, those motions.

Okay. Assuming people have access to their calendars, and no one is screaming about 10 AM, we will do it at 10 AM on December 18th.

And, Madam Clerk, you have both of those dates. We will have a physical courtroom as well as Webex?

THE COURT CLERK: Yes.

THE COURT: Anything else arising that anyone can think of? As I said, the first thing I will do when I go upstairs is put together this email that you will get from my assistant, hopefully helping you with the process of drafting the order and understanding where this is going.

MR. LEE: My Lord, Mr. Jukes has indicated to me that he will have very limited time in December. I want to make sure he will be available on December 18th.

THE COURT: Okay.

MR. JUKES: Yes, I can make that work, yes.

MR. LEE: Great, thank you.

THE COURT: Okay. Speak now or forever hold your peace.

Okay. Thank you, all. As I say, stay tuned for that email a little later this afternoon, and then if you have trouble, obviously, if you have trouble settling the terms of the order between now and Friday, we can do it on Friday. But I think with what I have said today, and with the email I will send shortly, I think that gives everyone enough detail to know what they need to be doing in the short-term.

Thank you, all, for attending. Good afternoon.

PROCEEDINGS ADJOURNED UNTIL 9:00 AM, NOVEMBER 29, 2024

Certificate of Record

I, India Cyr, certify that this recording is the record made of the evidence in the proceedings in the Court of King's Bench, held in Courtroom 1003, at Calgary, Alberta, on the 25th day of November, 2024, and that I was the court official in charge of the sound-recording machine at all times.

Certificate of Transcript

I, J. Aubé, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

690512 NB Inc.
Order Number: TDS-1073424
Dated: December 12, 2024