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CALGARY

APPLICANTS

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended

AND IN THE MATTER OF ALPHABOW
ENERGY LTD.

DOCUMENT

RESPONSE BRIEF OF ALPHABOW ENERGY
LTD.

ADDRESS FOR SERVICE AND
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Commercial List Chambers Application
Scheduled for the 14th day of November, 2025
before The Honourable Justice Bourque

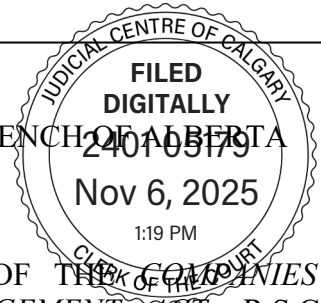


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I. INTRODUCTION

1. This Brief is filed in response to Kikino Metis Settlement's ("**Kikino**") application to lift the stay of proceedings afforded to AlphaBow Energy Ltd. ("**AlphaBow**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), and the amended and restated initial order granted by this Court on April 26, 2024 (the "**ARIO**").

2. Kikino seeks to advance proceedings (the "**MSAT Proceedings**") commenced before the Metis Settlement Appeal Tribunal (the "**Appeal Tribunal**") for the recovery of unpaid pre-filing surface lease obligations (the "**Lease Arrears**") under 112 surface leases with AlphaBow (collectively, the "**Surface Leases**") pursuant to section 121 of the *Metis Settlements Act*, RSA 2000, c M-14 (the "**MSA**"). Notwithstanding having participated in the claims process approved by this Court (the "**Claims Process**"), it does so with the objective of obtaining a direction to the President of Treasury Board and Minister of Finance to pay out of the General Revenue Fund the Lease Arrears to Kikino.

3. If obtained, a direction to the President of Treasury Board and Minister of Finance to pay the Lease Arrears will result in a claim pursuant to subsection 121(3) of the MSA in favour of the Crown in right of Alberta (the "**Crown**").

4. While AlphaBow does not object to Kikino receiving payment from the Crown, it does have concerns with the relief sought to the extent that:

- (a) AlphaBow would be required to expend time or resources participating in the MSAT Proceedings; and
- (b) any resulting payment by the Crown is viewed as a post-closing claim that could be enforced against AlphaBow.

5. A claim in favour of the Crown under subsection 121(3) of the MSA could pose a material risk to the closing of the reverse vesting transaction (the "**Corporate Transaction**") approved by this Court pursuant to a transaction approval and reverse vesting order (the "**RVO**"), which contemplates the vesting of the Surface Leases and the Lease Arrears in and to an entity to be incorporated (the "**Creditor Trust**") or any subsequent sale should the Corporate Transaction not proceed. That is, if the Lease Arrears are paid after the closing of

the Corporate Transaction, the Crown may attempt to assert that AlphaBow, and not the Creditor Trust, is liable for such indebtedness (the “**Potential Post-Closing Claim**”).

6. The Potential Post-Closing Claim would affect an absurd result that is not only antithetical to the purposes of the RVO and the Claims Process but, would convert Kikino’s pre-filing claim to be vested in the Creditor Trust to a post-filing claim against AlphaBow following its emergence from these proceedings.

7. Conceding that the Potential Post-Closing Claim would be contrary to the ARIO, the RVO and the purposes of the CCAA, and prejudicial to AlphaBow and its stakeholders, Kikino asserts that the Crown should be subrogated to its pre-filing claim.

8. It is only in this circumstance and where AlphaBow is not required to participate in the MSAT Proceedings that AlphaBow does not object to the relief sought. Otherwise, AlphaBow submits that Kikino has not met the “very heavy onus” imposed on a party seeking to lift the stay of proceedings under the CCAA.

9. To the extent the stay of proceedings is lifted in favour of Kikino, it must be for a limited purpose and accompanied by clear direction that the fundamental building blocks of these proceedings, including the ARIO, the Corporation Transaction, the RVO and the Claims Process, are not upended.

II. STATEMENT OF FACTS

10. The facts relevant to this application are more fully set out in the Affidavit of Ben Li sworn and filed on January 27, 2025 (the “**Eighth Li Affidavit**”), and the Sixth and Seventh Reports of KSV Restructuring Inc., in its capacity as the Court-appointed monitor of AlphaBow (in such capacity, the “**Monitor**”), dated December 13, 2024, January 30, 2025 and September 18, 2025, respectively. Capitalized terms not otherwise defined herein have the meaning ascribed to them Eighth Li Affidavit.

B. The Procedural History of Kikino’s Application

11. Kikino applied to the Appeal Tribunal regarding the recovery of unpaid Lease Arrears pursuant to section 121 of the MSA.

12. On July 5, 2024, the Appeal Tribunal adjourned the hearing between Kikino and AlphaBow as a result of the stay of proceedings under the ARIO. On December 12, 2024, Kikino wrote to the Appeal Tribunal requesting that it reconvene for the hearing of the Kikino Appeal.¹

13. On January 16, 2025, the Appeal Tribunal wrote to AlphaBow, attaching Kikino's December 12, 2024 letter, providing notice of the recommencement of the Kikino appeal hearing for the first week of February 2025.²

14. On January 20, 2025, AlphaBow wrote to the Appeal Tribunal to advise of its position that the recommencement of the hearing would be contrary to the ARIO. On January 23, 2025, AlphaBow received a letter from the Appeal Tribunal (the "**January Letter**") indicating that it would convene to determine whether to commence the hearing and sought the availability of the parties, notwithstanding that Kikino had not obtained leave of this Court or the consent of AlphaBow and the Monitor to continue the MSAT Proceedings.³

15. Given the January Letter, AlphaBow filed an application on January 27, 2025, seeking, in part, an order declaring that Kikino was stayed from advancing its claim and application against AlphaBow pursuant to section 121 of the MSA and that the Appeal Tribunal was stayed from considering such application. The Monitor supported AlphaBow's application at the time, agreeing that Kikino and the Appeal Tribunal are stayed and that if permitted to proceed, that it would require expenditures by AlphaBow and would result in a post-filing claim.⁴ AlphaBow's application was ultimately adjourned pursuant to an order of this Court dated February 4, 2025.

16. Kikino now seeks to lift the stay of proceedings under the ARIO to allow it to advance the MSAT Proceedings. It does so with a view to obtaining a direction that the President of Treasury Board and Minister of Finance pay the Lease Arrears to Kikino out of the General Revenue Fund pursuant to subsection 121(2) of the MSA.

17. To the extent the President of Treasury Board and Minister of Finance is required to pay the Lease Arrears to Kikino out of the General Revenue Fund, subsection 121(3) of the

¹ Eighth Affidavit of Ben Li sworn January 27, 2025 [Eighth Affidavit] at Exhibit 1.

² Eighth Affidavit at para. 27.

³ Eighth Affidavit at Exhibit 3.

⁴ Monitor's Seventh Report at section 4.1.

MSA will deem such payment to be a debt owing by the existing mineral lease holder or operator (in this case AlphaBow) to the Crown.

C. The Sale Process and RVO

18. On April 26, 2024, this Court granted an order (the “**SISP Approval Order**”), among other things, approving a sale and investment solicitation process (the “**SISP**”) and authorizing the Monitor and Sayer Energy Advisors (the “**Sales Advisor**”) to conduct the SISP.⁵

19. Following the granting of the SISP Approval Order, AlphaBow, with the assistance of the Monitor and the Sales Advisor, identified, negotiated and sought approval of numerous value-maximizing sale transactions that materialized in the SISP. AlphaBow’s efforts in this regard included negotiating an Amended and Restated Subscription Agreement with 2628071 Alberta Ltd. (“**071 AB**”) dated December 16, 2024 (as amended from time to time, the “**Subscription Agreement**”).⁶

20. The Subscription Agreement contemplates a reverse vesting transaction pursuant to which 071 AB will acquire all of the common shares (the “**Purchased Shares**”) of AlphaBow, AlphaBow will retain the Retained Assets, Retained Contracts and Retained Liabilities (each as defined in the Subscription Agreement), and all of the Transferred Assets, Transferred Contracts, and Transferred Liabilities (each as defined in the Subscription Agreement), including the Surface Leases and any and all liabilities arising thereunder would be transferred to the Creditor Trust.⁷

21. In accordance with the Subscription Agreement and to facilitate the Corporate Transaction, AlphaBow sought and, on December 19, 2024, obtained the RVO. Pursuant to the RVO, the following will occur upon the Effective Time (as defined in the RVO):

- (a) all, right, title and interest of AlphaBow in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively, without recourse, in the Creditor Trust and all Losses and Encumbrances (each as defined in the

⁵ Sixth Report of the Monitor at section 1.0

⁶ Sixth Report of the Monitor at sections 2.1 and 2.1.1

⁷ Sixth Report of the Monitor at section 2.1.1

Subscription Agreement) attached to the Transferred Assets (other than the Retained Liabilities) shall continue to attach to the Transferred Assets;

- (b) all Losses and Encumbrances in respect of AlphaBow (including the Transferred Liabilities), other than the Retained Liabilities, shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the Creditor Trust, and shall no longer be liabilities of AlphaBow, and such Losses and Encumbrances (including the Transferred Liabilities) shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time;
- (c) all Losses and Encumbrances (including, without limitation, the Transferred Liabilities) other than the Retained Liabilities shall be irrevocably and forever expunged, released and discharged as against AlphaBow, 071 AB (or its nominee), the Purchased Shares and the Retained Assets; and
- (d) all persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Monitor, AlphaBow, 071 AB (or its nominee) or the Retained Assets, in any way relating to, arising from or in respect of: (i) the Transferred Assets; (ii) any and all Losses or Encumbrances other than the Retained Liabilities against or relating to AlphaBow, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time; (iii) the insolvency of AlphaBow prior to the Effective Time; (iv) the commencement or existence of these proceedings; or (v) the completion of the Corporate Transaction.⁸

22. The Corporate Transaction has not yet closed.

⁸ Sixth Report at sections 2.1.1 and 2.1.2.

D. The Claims Process

23. On September 20, 2024, AlphaBow sought and obtained an order (the “**Claims Process Order**”) authorizing it to undertake the Claims Process. The Claims Process Order imposed a claims bar date of October 23, 2024.

24. As of the claims bar date, the Monitor had received approximately 631 proofs of claim, with additional proofs of claim being late-filed thereafter. Both Kikino and the Government of Alberta Treasury Board submitted proofs of claim in the Claims Process.⁹

III. ISSUES

25. The sole issue to be considered on this application is whether it is appropriate to lift the stay of proceedings afforded to AlphaBow to permit Kikino to advance the MSAT Proceedings.

26. For the reasons set out in this Response Brief, AlphaBow respectfully submits that this Court’s discretion to lift the stay of proceedings should only be exercised, if at all, in a manner that prevents AlphaBow’s limited time and financial resources from being exhausted and that does not undermine the Corporate Transaction, the RVO and the Claims Process to the detriment of AlphaBow’s stakeholders.

IV. ANALYSIS

A. Kikino Remains Subject to the Stay of Proceedings

27. Pursuant to section 11.02 of the CCAA and the ARIO, AlphaBow was provided protection from the commencement or continuation of any “proceeding or enforcement process”, and the exercise of “all rights and remedies”, against or in respect of AlphaBow or affecting its business or property.¹⁰

28. The stay of proceedings under section 11.02 of the CCAA is the primary tool that “allows the CCAA to achieve its restructuring objective”.¹¹ As such, it is to be interpreted purposively, having regard to the CCAA’s remedial objectives. Namely, to provide “for timely, efficient and impartial resolution of a debtor’s insolvency”, afford a debtor “breathing room

⁹ Monitor’s Seventh Report at section 4.1.

¹⁰ [Companies’ Creditors Arrangement Act, RSC 1985, c. B-3 s 11.02\(2\)](#) [CCAA].

¹¹ *Montréal (City) v Deloitte Restructuring Inc.*, [2021 SCC 53](#) at para 46 [Montréal (City)].

during which to negotiate with its creditors”, preserve and maximize “the value of a debtor’s assets”, prevent “any creditors from gaining an advantage” or maneuvering “for positioning”, and ensure the “fair and equitable treatment of the claims against a debtor”.¹²

29. The term “remedy” covers “any kind of attempt at recovery, judicial or extrajudicial”, “any remedial right” and the “means by which a right is enforced or the violation of a right is prevented, redressed or compensated”.¹³ The term “proceeding” captures any step to “be taken vis-à-vis the insolvent company for a creditor to enforce its rights”, which may include “judicial and extrajudicial debt-collection steps.”¹⁴

30. In addition to preserving the *status quo*, the scope of the stay of proceedings also extends to “conduct which could seriously impair” a debtor company’s ability to effectuate a restructuring.¹⁵

31. The MSAT Proceedings are plainly stayed. That Kikino ultimately seeks to obtain recovery as against the Crown pursuant to subsection 121(2) of the MSA does not alter this conclusion.

32. As the Alberta Surface Rights Board determined in *PetroGlobe Inc v Lemke* in the context of section 36 of the *Surface Rights Act*, RSA 200, c S-24 (a similar provision to section 121 of the MSA), a creditor’s efforts to obtain recovery from the debtor, which are a prerequisite to obtaining a direction to the Crown to pay, are stayed by a stay of proceedings afforded to such debtor under an insolvency statute.¹⁶ The Alberta Surface Rights Board’s holding in *PetroGlobe Inc v Lemke* is consistent with direction subsequently issued by the Alberta Government earlier in August of 2024.¹⁷

B. It is not Appropriate to Lift the Stay of Proceedings Absent Safeguards

33. There is a “very heavy onus” on the moving party to establish that there are “sound reasons” for lifting the stay of proceedings consistent with the CCAA’s objectives, having

¹² *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para 15; 9354-9186 *Québec inc. v Callidus Capital Corp.*, 2020 SCC 10 at para 40; *Canadian Airlines Corp. (Re)* [2000] A.J. No. 1692 at paras 17-19.

¹³ *Blade Energy Services Corp (Re)*, 2024 ABKB 100 at para 14 [Blade].

¹⁴ *Ibid* at para 14; *Nortel Networks Corporation (Re)*, 2010 ONSC 1304 at paras 37-39.

¹⁵ *Montréal City*, *supra* at para 54; *Campeau v Olympia & York Developments Ltd.*, [1992] O.J. No. 1946 at para 20; *Chef Ready Foods Ltd. v Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.) at para 18.

¹⁶ See generally, *PetroGlobe Inc v Lemke*, 2015 ABSRB 740.

¹⁷ <https://open.alberta.ca/dataset/7c049a3c-1bfe-4323-b2ce-67f7b4c9a16b/resource/1909c181-193d-475e-9342-f4de5c6d175d/download/agi-fao-language-of-insolvency-2024.pdf>

regard to the relative prejudice to the parties, the balance of convenience and, where relevant, the merits of the moving party's claim.¹⁸

34. The circumstances in which the relative prejudice experienced by the parties and the balance of convenience may militate in favour of lifting the stay of proceedings include where:

- (a) the plan is likely to fail;
- (b) the moving party establishes hardship caused by the stay;
- (c) the moving party demonstrates necessity for payment;
- (d) the moving party would be significantly prejudiced by the refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;
- (e) it is necessary to permit the moving party to take steps to protect a right that could be lost by the passage of time;
- (f) after the lapse of a significant period, the debtor is no closer to a proposal than at the commencement of the stay period;
- (g) there is a real risk that the moving party will become unsecured during the stay period;
- (h) it is necessary to allow the moving party to perfect a right that existed prior to the commencement of the stay period; and
- (i) it is in the interests of justice to do so.¹⁹

35. Courts have declined to lift the stay of proceedings under the CCAA where it is prejudicial to the debtor's ongoing restructuring efforts,²⁰ it is prejudicial to creditors and other stakeholders,²¹ the debtor's restructuring efforts are progressing and the moving party is not

¹⁸ *Re Timminco Limited*, [2012 ONSC 2515](#) at paras [16-17](#); *Canwest Global Communications Corp. (Re)*, [2009 CanLII 70508 \(ON SC\)](#) at para [32](#) [Canwest].

¹⁹ *Canwest*, *ibid* at para [33](#).

²⁰ *Azure Dynamics Corporation (Re)*, [2012 BCSC 781](#) at para [27](#) [Azure].

²¹ *Ibid* at paras [11-12](#); *505396 B.C. Ltd. (Re)*, [2013 BCSC 1580](#) at para [22](#).

prejudiced by the continued operation of the stay,²² or any prejudice experienced by the moving party is shared by other stakeholders.²³

36. While Kikino ultimately aims to obtain payment from the Crown as opposed to AlphaBow, the effect of the relief sought is to advance the MSAT Proceedings to determine amounts owed by AlphaBow, which if successful, may result in a post-filing claim against AlphaBow in favour of the Crown. In this regard, subsection 121(3) of the MSA states that:

If the President of Treasury Board and Minister of Finance pays money to a person under this section, the amount paid constitutes a debt owing by the existing mineral lease holder or the operator to the Crown in right of Alberta.²⁴

37. To the extent the Crown pays the Lease Arrears subsequent to the closing of the Corporate Transaction, the Crown may attempt to assert that AlphaBow, and not the Creditor Trust, is liable for such indebtedness. Acknowledging the absurdity of this result and the significant prejudice it will impose on AlphaBow and its stakeholders, Kikino proposes that the Crown be subrogated to its pre-filing claim. Should this Court accept Kikino's subrogation argument, it materially reduces the prejudice to AlphaBow and its stakeholders.

38. While casting itself as disproportionately prejudiced by the impact of the stay of proceedings, notwithstanding the other landowners in similar circumstances, Kikino understates the material prejudice that may result should the lifting of the stay create new obligations that AlphaBow or its purchaser(s) would need to assume. Such an outcome would undermine existing Court approvals in these proceedings and the Claims Process, which were intended to provide certainty to enable transactions to proceed.

39. It is further noted that the continuation of the MSAT Proceedings is contrary to the single proceeding model, is duplicative of the Claims Process and may drain AlphaBow of its financial and other resources if it is required to participate in the MSAT Proceedings. The single proceeding model is one "of the central features of the CCAA scheme".²⁵ It "favours the enforcement of stakeholder rights through a centralized judicial process" and "protects the clear 'public interest in the expeditious, efficient and economical clean-up of the aftermath of

²² *Azure*, *ibid* at paras 15-22.

²³ *Hazleton Development Corporation* (February 22, 2024), Toronto, CV-22-00679931-00CL (Endorsement of Justice Cavanagh) (ONSC) at paras 17-22.

²⁴ *Metis Settlements Act*, RSA 2000, c M-14 s 121(3).

²⁵ *Newfoundland and Labrador v AbitibiBowater Inc.*, 2012 SCC 67 at para 21.

a financial collapse”.”²⁶ The significance of the single proceeding model is pronounced where, as in this case, a Court-approved claims process for the submission, quantification and resolution of claims against a debtor company has been implemented.

40. Collectively, the ARIO, the RVO and the Claims Process Order: (i) stay the continuation of the MSAT Proceedings and the exercise of all rights and remedies against or in respect of AlphaBow or affecting its business or property; (ii) authorize the implementation of a value-maximizing restructuring transaction intended to vest the shares of AlphaBow in 071 AB free and clear of all of the Transferred Assets, Transferred Contracts and Transferred Liabilities, including the Surface Leases and any and all liabilities arising thereunder; and (iii) provide a process for the identification, quantification and resolution of all claims against AlphaBow. AlphaBow, 071 AB and the stakeholders affected by these proceedings have taken steps and acted in accordance with these orders and the landscape they’ve created.

41. In summary, it is neither appropriate nor in the interests of justice to lift the stay of proceedings afforded to AlphaBow absent certainty that AlphaBow’s limited resources, and the terms, spirit and intention of the Corporate Transaction, the RVO and the Claims Process, will be preserved.

V. CONCLUSION

42. For the foregoing reasons, AlphaBow respectfully requests that Kikino’s application be denied unless the stay of proceedings can be lifted in a manner that preserves AlphaBow’s limited time and financial resources and the spirit and intention of the Corporate Transaction, the RVO and the Claims Process. AlphaBow respectfully submits that this result can only be achieved if:

- (a) the lifting of the stay of proceedings is for the limited purpose of allowing Kikino to determine the Lease Arrears owing by AlphaBow and obtain a direction to the President of Treasury Board and Minister of Finance to pay such Lease Arrears;

²⁶ *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#) at para 55.


- (b) AlphaBow has no obligation whatsoever to respond to, appear in or take any steps in connection with the MSAT Proceedings;
- (c) any claim in favour of the Crown arising from the payment of the Lease Arrears pursuant to subsection 121(3) of the MSA, whether prior to or following the closing of the Corporate Transaction, constitutes a Transferred Liability (by virtue of subrogation or otherwise); and
- (d) any enforcement efforts, steps or remedies available in connection with the payment of the Lease Arrears pursuant to subsection 121(3) of the MSA are stayed, absent further order of the Court or the consent of AlphaBow or the Creditor Trust, as applicable, and the Monitor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 6th day of November, 2025.

Estimated Time for
Argument: 15 minutes

BENNETT JONES LLP

Per: _____


Keely Cameron
Counsel for AlphaBow Energy Ltd.

VI. TABLE OF AUTHORITIES

1. *Companies' Creditors Arrangement Act*, [RSC 1985 c C-36](#)
2. *Metis Settlements Act*, [RSA 2000, c M-14](#)
3. *Montréal (City) v Deloitte Restructuring Inc.*, [2021 SCC 53](#)
4. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
5. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)
6. *Canadian Airlines Corp. (Re)* [\[2000\] A.J. No. 1692](#) (ABQB)
7. *Blade Energy Services Corp (Re)*, [2024 ABKB 100](#)
8. *Nortel Networks Corporation (Re)*, [2010 ONSC 1304](#)
9. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [\[2005\] O.J. No. 4733](#) (C.A.)
10. *PetroGlobe Inc v Lemke*, [2015 ABSRB 740](#)
11. *Re Timminco Limited*, [2012 ONSC 2515](#)
12. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 70508 \(ON SC\)](#)
13. *Azure Dynamics Corporation (Re)*, [2012 BCSC 781](#)
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15. *Hazleton Development Corporation* [\(February 22, 2024\), Toronto, CV-22-00679931-00CL \(Endorsement of Justice Cavanagh\) \(ONSC\)](#)
16. *Metis Settlements Act*, [RSA 2000, c M-14](#)
17. *Newfoundland and Labrador v AbitibiBowater Inc.*, [2012 SCC 67](#)
18. *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#)