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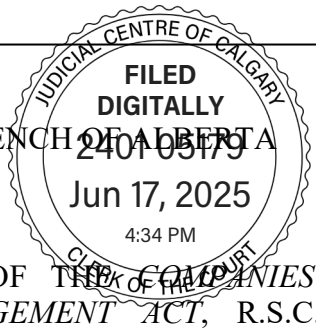

COURT FILE NUMBER	2401-05179
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF ALPHABOW ENERGY LTD.
DOCUMENT	BRIEF OF ARGUMENT OF ALPHABOW ENERGY LTD.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500, 855 – 2nd Street S.W. Calgary, Alberta T2P 4K7 Attention: Keely Cameron/Sophie Fiddes Telephone No.: 403-298-3324 Fax No.: 403-265-7219 Client File No.:

BRIEF OF ARGUMENT OF ALPHABOW ENERGY LTD.
WITH RESPECT TO THE APPLICATION TO BE HEARD BY
THE HONOURABLE JUSTICE R. ARMSTRONG

JUNE 26, 2025

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I. INTRODUCTION

1. AlphaBow Energy Ltd. ("**AlphaBow**") is in the process of completing its restructuring pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").

2. As a result of the court approved sales and investment solicitation process (the "**SISP**"), AlphaBow has located purchasers for all of its oil and gas assets, having obtained court approval for 20 transactions involving 18 parties.[1] Of the 20 transactions that were approved, the following transactions have yet to close:

(a) The asset transaction with 2661707 Alberta Ltd. ("**2661707**"); and

(b) the corporate transaction with 2628071 Alberta Ltd. ("**2628071**") and the asset transactions involving 2628071 and its affiliate, 2628069 Alberta Ltd. ("**2628069**"). These three transactions are currently scheduled to close concurrently. The license transfer application with 2628069 is under review by the Alberta Energy Regulator ("**AER**"), while 2628071 is still seeking AER license eligibility.[2]

3. This application seeks court approval of certain amendments to the four transactions noted above, to enable the earlier closing of the corporate transaction and to amend the asset listings for the asset transaction with 2661707 and the corporate transaction with 2628071.

4. Included in the amendments sought, is the inclusion of the CO_2 Stream Purchase and Sale Agreement with MEGlobal Canada ULC ("**MEGlobal**"), dated December 1, 2004 (the "**CO_2 Agreement**") as a "Retained Contract" under the Subscription Agreement which provides for the corporate sale of AlphaBow. It is proposed that the CO_2 Agreement be retained free and clear of the amounts claimed by MEGlobal. MEGlobal's recourse would be as against the Creditor Trust, as is the case for the other creditors of AlphaBow whose claims are not being retained.

II. STATEMENT OF FACTS

5. All capitalized terms used but not defined in this Brief have the meaning given to them in the Eleventh Affidavit of Ben Li sworn on June 17, 2025, filed (the "**Eleventh Li**

[1] Affidavit of Ben Li sworn June 17, 2025 ("**Eleventh Affidavit**") at para 9.
[2] Eleventh Affidavit at para 14.

Affidavit"). Facts not described herein supporting this proceeding are set out in the Eleventh Li Affidavit.

III. ISSUES

6. The issues to be considered on this application are whether:

(a) the transaction with 2661707 and associated Sale Approval and Vesting Order should be amended;

(b) the Sale Agreements with 2628071 and 2628069, should be amended;

(c) the Subscription Agreement should be amended; and

(d) the CO2 Agreement may be retained by 2628071 free and clear of any cure costs.

IV. ANALYSIS

A. Authority to Amend

7. Pursuant to Rule 9.15 of the Alberta *Rules of Court*, the Court has the authority to vary an order where information arose or was discovered after the order was made.[3]

8. The Court possesses express statutory authority to make an order it considers appropriate in the circumstances.[4] Appropriateness under the CCAA is assessed by determining whether the order sought advances the remedial purpose of the CCAA, including a successful restructuring that preserves a debtor company as a going concern.[5]

B. The 2661707 Sale Approval and Vesting Order Should Be Amended

9. Having regard for the factors developed by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp*. (the "**Soundair Principles**"),[6] Justice Lema approved the Asset Purchase and Sale Agreement between AlphaBow and 2661707 in February 2025 ("**2661707 Transaction**").

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[3] Alberta *Rules of Court*, Alta Reg 124/2010, s 9.15(4).
[4] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 CCAA, [CCAA] at s.11.
[5] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 [*Century Services*] at paras. 15, 70.
[6] *Royal Bank of Canada v Soundair Corp,* 1991 CanLII 2727 (ONCA).

10. The 2661707 Transaction contemplated at section 11.2(d) of the Asset Purchase and Sale Agreement the potential for 2661707 to have to post security in an amount not to exceed $13,074,351, which was the amount understood to represent Alberta Energy Regulator ("**AER**") deemed liabilities for the assets being purchased.

11. Following court approval of the transaction in February 2025 and submission of the AER application to transfer the licenses to 2661707, 2661707 learned that the deemed liabilities associated with the assets had increased as a result of AER amendments made in February 2025.[7] As a result it sought to amend the transaction such that it continued to only be assuming assets with deemed AER liabilities of around $13 million.

12. The 2661707 Transaction as amended continues to satisfy the Soundair Principles as the process has not changed, and the 2661707 Transaction continues to be superior to the other offers received in terms of the number of assets and liabilities being assumed and the purchase price.[8] The alternative to approving the 2661707 Transaction as sought would be for the assets and liabilities to remain with AlphaBow and form part of the assets retained under the Subscription Agreement. The 2661707 Transaction is preferable as it enables AlphaBow to reduce the number of non-core assets retained and reduce the overall liabilities.

13. For the above noted reasons, the Applicant submits that the proposed amendments to the 2667071 Transaction are appropriate in the circumstances and should be approved.

C. <u>The Sale Agreements with 2628071 and 2628069 and the Subscription Agreement Should be Amended</u>

14. The Court possesses express statutory authority to make an order it considers appropriate in the circumstances.[9] Appropriateness under the CCAA is assessed by determining whether the order sought advances the remedial purpose of the CCAA, including a successful restructuring that preserves a debtor company as a going concern.[10]

15. The amendments sought in respect of the Asset Purchase and Sale Agreements with 2628071 and 2628069 are intended to provide flexibility and facilitate the purposes of the CCAA through permitting AlphaBow to close the Subscription Agreement earlier. The effect

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[7] Eleventh Affidavit at para 17.
[8] Eleventh Affidavit at para 21.
[9] CCAA, *supra* note 4 at s.11.
[10] *Century Services, supra* note 7 at paras 15, 70.

of which would be to have AlphaBow exit the CCAA process and proceed to close the remaining transactions while the Monitor administers the Creditor Trust and distributes the funds in the estate.

16. As currently drafted the Subscription Agreement, which contains the majority of AlphaBow's remaining assets, is to close concurrently with the 2628071 and 2628069 transactions after the closing of the 2661707 Transaction.

17. As noted in the Eleventh Affidavit, while the AER's decision is expected shortly in respect of the 2628069 Transaction, there is uncertainty as to when the other two asset transactions will be in a position to be closed. In the interim, AlphaBow's assets continue to be in the care of the Orphan Well Association at the expense of the AlphaBow estate.

18. The amendments to the Subscription Agreement relate primarily to updating the schedules to reflect the exclusion of assets based on the closing of transactions and the retaining of assets from sales to other parties that will not be proceeding, as well as revising the Subscription Agreement to close prior to all of the other three transactions closing and to provide for the retainment of the CO_2 Agreement free and clear of claims.

19. The CO_2 Agreement was previously excluded under the Subscription Agreement because 2628071 was in discussions with MEGlobal regarding entering into a new agreement.[11] A new agreement did not materialize and so the amendment to the Subscription Agreement is sought as this is a key agreement for the purchaser and their business model which has enabled them to seek to assume significant amounts of environmental liability from AlphaBow.

20. The amendments sought would not change the fundamental terms of the Corporate Transaction but rather clarify the circumstances in which cure costs will and will not be paid in the case of a Retained Contract. The proposed amendments clarify that cure costs will be paid in respect of Retained Contracts to address monetary defaults determined under the Claims Process where required to secure a counterparty's or any other necessary Person's consent to the assignment of such Retained Contract pursuant to its terms or in accordance

[11] Eleventh Affidavit at para 39.

with applicable legislation, including to remedy any monetary default determined to be valid under the Claims process in respect of any surface leases or mineral leases.

21. The definition of "cure costs" does not include those claims advanced by MEGlobal in respect of the CO_2 Agreement. Not only does AlphaBow dispute those claims for the reasons provided below, the claims advanced by MEGlobal are not required to be paid by the purchaser in the circumstances.

22. "Cure Costs" are required to be paid under section 11.3 of the CCAA, when seeking to force the assignment of a contract except in circumstances where the monetary defaults in relation to the agreement arise by reason only of a company's insolvency. [12]

23. Any alleged cure costs arise as a result of AlphaBow's insolvency, as discussed below, and therefore are not required to be paid under section 11.3 of the CCAA. Regardless, in this case there will be no forced assignment of the CO_2 Agreement since the transaction contemplated by the terms of the Subscription Agreement, which was approved by the Reverse Vesting Order (RVO) granted by the Court on December 19, 2024, will be a share transaction.

24. This court has previously noted that the assignment of contracts is not required where they are being retained, as is the case in a RVO.[13].

25. Even if the nature of the transaction had required the CO_2 Agreement to be assigned, AlphaBow can assign the agreement under its terms. Sections 11.3(1) and 11.3(4) of the CCAA permits the Court to assign an agreement to another party subject to the obligation to pay cure costs, other than those arising from the company's insolvency. There is no statutory obligation for a debtor to pay cure costs (however arising) prior to assigning a contract that does not require consent for assignment.

26. In *Re Razor Energy Corp*. and the resulting order appended to the Eleventh Affidavit, the Court confirmed that cure costs were not required in respect of "unrestricted contracts". In

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[12] CCAA, *supra* note 4 at s. 11.3(4): The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

[13] *Re Razor Energy Corp*., 2025 ABKB 30, [*Razor*] at paras 60, 62. See also *Arrangement relatif à Lion Electric Company*, 2025 QCCS 1806 at para 44.

doing so, the Court cited Justice Penny's decision in *Acerus Pharmaceuticals Corporation (Re)* where pre-filing cure costs were similarly not paid.[14]

27. Section 13.12 of the CO_2 Agreement states:

> Neither this Agreement nor any of the rights and obligations hereunder shall be assignable by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, that a Party may assign this Agreement and the rights hereunder to:
>
> a) an Affiliate thereof provided that no such assignment shall release the assigning Party from the performance of its obligations hereunder;
>
> b) a lender or other creditor of the Party by way of security, provided that such lender or other creditor agrees to be bound by the terms of this Agreement;
>
> c) in the circumstances of a bona fide disposition by an entity comprising Seller of its entire interest in P1 or P2, as applicable, to the acquiring Person;
>
> d) in the circumstances of a bona fide disposition by Buyer of its entire interest in the CO_2 System, Downstream Equipment and the Ground Lease and by Buyer and each of its Affiliates of all Oil Properties to a single acquirer, to the acquiring person,
>
> provided however that
>
> e) in circumstances described in Section 13.12(c) and (d), the non-assigning Party is satisfied acting reasonably, with the financial capability, creditworthiness, business reputation and operating practices of the proposed assignee, both current and historical; and
>
> f) in the case of Section 13.12(d), Buyer must assign its interest in the Ground Lease to the acquiring Person.

28. Section 13.12(a) and (d) is applicable in this instance, with 2628071 and its affiliate assuming AlphaBow's entire interest in the CO_2 System, Downstream Equipment and the Ground Lease.

29. The non-payment of the alleged cure costs to MEGlobal in these circumstances would treat it no differently than it would be treated in the case of an asset transaction since the CO_2 Agreement does not require contractual consent to assign it in these circumstances nor does it require the acquiring person to assume any amounts outstanding under the agreement.

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[14] *Razor, supra* note 13 at para 60, citing *Acerus Pharmaceuticals Corporation (Re,)* 2023 ONSC 3314.

30. Even if it is argued that the proposed amendments to the transaction would result in a loss or diminishment of MEGlobal's alleged claim, AlphaBow submits that the equities of the circumstances clearly weigh in favour of the requested changes.[15] As further set out below, MEGlobal's claim is unsupported, invalid, and excessive, and permitting it to derail the resolution of this matter at this late stage would cause outsized and disproportionate prejudice to the other parties involved.

31. As a practical matter, if cure costs were required to be paid whenever a contract was assigned in CCAA proceedings, there would be little ability for parties to negotiate and absolutely no reason for any party to consent to the assignment of their contracts, regardless of whether the parties have a contractual right to withhold consent. Further, it would provide counterparties to an agreement an effective veto over an insolvency process, potentially blocking a transaction that would otherwise be in the best interest of the debtor's stakeholder, such as the 2628071 transaction which will result in the assumption of over $100 million in environmental liabilities.

D. No Cure Costs are Owing in Any Event

32. In the alternative, even if there was an obligation to pay cure costs in respect of the CO_2 Agreement, which AlphaBow disputes, no amounts are properly owing to MEGlobal either under section 11.3 of the CCAA due to AlphaBow's insolvency or under the CO_2 Agreement.

33. MEGlobal asserts a prefiling claim in amount of $6,700,734.11 and a post-filing claim in the amount of $3,592,321.09 under the CO_2 Agreement. MEGlobal has failed to support its claim for cure costs with the requisite particulars and supporting documentation. Despite the Court's clear requirement for parties to provide the full particulars of any claims, MEGLobal's Proof of Claim baldly asserts a claim of over $10 million with effectively nothing to support it. While MEGlobal has provided a copy of the CO_2 Agreement and its amendments as well as related communications between the parties, it has provided nothing that would support the alleged entitlement. That it is, it has provided no particulars describing how the entitlement arose or how it was calculated. No invoices or demands for payments, and no details that would permit a proper consideration.

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[15] *Ibid* at para 44.

34. In any event, AlphaBow submits that the applicable *force majeure* provisions of the CO_2 Agreement as set out at Article 11.1 exempt it from any alleged failure to comply with its obligations under that agreement. Article 11.1 provides that (emphasis added): "If either Party fails to observe or perform any of the covenants or obligations imposed upon it by this Agreement and such failure is occasioned by or in consequence of Force Majeure, **such failure will be excused and deemed not to be a breach of such covenants or obligations**. No Force Majeure relieves a Party of its obligation to pay any amounts. [sic]"

35. AlphaBow promptly informed MEGlobal of the suspension of its licenses by the AER, which directed the suspension of operations. The AER's direction was as a result of AER concerns that AlphaBow was insolvent which was ultimately demonstrated by its inability to post security.[16] MEGlobal therefore had prompt actual and constructive knowledge of the fact that AlphaBow would be unable to meets its obligations under the CO_2 Agreement as a result of intervening events beyond its control.

36. The interpretation of a *force majeure* clause requires a close reading of the wording in the clause itself.[17] The choice of language in the CO_2 Agreement shows that AlphaBow and MEGlobal agreed to the inclusion of a broad *force majeure* clause which would include "any occurrence, condition, situation, or threat thereof that renders the Party unable to perform its obligations under this Agreement", subject to certain exceptions and non-application described at Articles 1.1(x) and 11.2, none of which apply here.

37. As described in the Eleventh Affidavit, AlphaBow was subject to a discretionary demand by the AER to post over $15 million in security. AlphaBow was unable to meet this requirement, and its licenses were subsequently suspended. AlphaBow is continuing to appeal this decision by the AER. Regardless, it is not a standard or usual expectation for a company in AlphaBow's position to be able to post a $15 million security deposit upon request nor was it reasonably foreseeable that AER would exercise its discretion to require such a deposit and suspend its licenses and prevent AlphaBow from accessing its sites when AlphaBow was unable to provide the funds in the time period directed.

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[16] Affidavit of Ben Li, sworn April 15, 2024 at paras 12-27.
[17] *Windsor-Essex Catholic District School Board v. 231846 Ontario Limited*, 2021 ONSC 3040 at paras 18 – 20.

38. The suspension of its licenses and the direction that the Orphan Well Association assume custody over AlphaBow's assets made it impossible for AlphaBow to comply with its obligations under the CO_2 Agreement; this kind of scenario is the exact type which the force majeure provision was intended to protect. AlphaBow is entitled to benefit of the contractual protections expressly agreed to between the parties which relieve AlphaBow from needing to pay MEGLobal under the take-or-pay provisions.

E. No Prejudice to MEGlobal

39. In the absence of the CO_2 Agreement being retained, it would be transferred to the AlphaBow Creditor Trust in accordance with the Transaction and Reverse Vesting Order, with no further services being provided. In either circumstance, MEGlobal's claims will be considered through the Court approved claims process to the extent funds are available for distribution.

40. Through the contract being retained, MEGlobal will have the ability to obtain services through 2628071 and have a solvent party to seek the removal of equipment when the agreement is ultimately terminated.

V. CONCLUSION

41. For all of the foregoing reasons, AlphaBow respectfully requests that its application be granted. The relief sought will substantially assist in advancing these proceedings in a manner that is most advantageous to the stakeholders of AlphaBow through enabling the assumption of all of its environmental liabilities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF June, 2025.

Estimated Time for Argument: 45 minutes

BENNETT JONES LLP

Per: Keely Cameron

Keely Cameron/ Sophie Fiddes
Counsel for AlphaBow Energy Ltd.

VI. TABLE OF AUTHORITIES

1. Alberta *Rules of Court*, Alta Reg 124/2010
2. *Companies' Creditors Arrangement Act*, RSC 1985 c C-36
3. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
4. *Royal Bank of Canada v Soundair Corp,* 1991 CanLII 2727 (ONCA)
5. *Re Razor Energy Corp*., 2025 ABKB 30
6. *Arrangement relatif à Lion Electric Company*, 2025 QCCS 1806
7. *Acerus Pharmaceuticals Corporation (Re,)* 2023 ONSC 3314
8. *Windsor-Essex Catholic District School Board v. 231846 Ontario Limited*, 2021 ONSC 3040