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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF BLUE SKY RESOURCES LTD.

DOCUMENT

**Bench Brief of the Applicants re Key Employee  
Retention Program, Sealing Order and Extension of  
Time to File a Proposal**

**Application – December 17, 2025 at 11:00 a.m.**

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## **I. INTRODUCTION**

1. This brief is submitted on behalf of Blue Sky Resources Ltd. (the “**Applicant**”).
2. The Applicant seek an Order, among other things:
  - a. Approving a key employee retention program (“**KERP**”) and KERP Charge;
  - b. Sealing an unredacted version of the KERP; and
  - c. Extending the time for the Applicant to file a proposal.

## **II. BACKGROUND**

3. The Applicant is an oil and gas exploration company with assets in Alberta, British Columbia and Saskatchewan.
4. On September 24, 2025, the Applicant filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The NOI filing was necessary to address the financial challenges facing the Applicant.
5. KSV Restructuring Inc. is the proposal trustee of the Applicant (in such capacity, the “**Proposal Trustee**”).

## **III. FACTS**

6. The facts in support of the Applicant's Application are set forth in the Affidavit of Mike Bouvier sworn December 10, 2025 (the “**Bouvier Affidavit**”), and the Third Report of the Proposal Trustee, to be filed (the “**Third Report**”). Capitalized terms used but not otherwise defined herein shall have the meaning set out in the Bouvier Affidavits.

## **IV. ISSUES**

7. This application raises the issues of whether this Honourable Court should approve:
  - a. The KERP and the KERP Charge;
  - b. The sealing of the unredacted copy of the KERP; and
  - c. The extension of the time to file the proposal.

## V. LAW AND ARGUMENT

### A. Key Employee Retention Program

15. The Applicant seeks the approval of the KERP for certain key employees and consultants of the Applicant (the “**KERP Recipients**”) and a third-ranking priority charge as security for payments under the KERP, up to a maximum amount of \$75,000 (the “**KERP Charge**”).
16. KERPs have frequently been approved in proposal proceedings under the BIA.<sup>1</sup> KERPs are approved in insolvency proceedings where the continued employment of key employees and consultants is deemed critical to the restructuring efforts of the debtor.<sup>2</sup>
17. In *Grant Forest Products Inc., Re*,<sup>3</sup> Newbould J. set out a non-exhaustive list of factors that the Court should consider in determining whether to approve a KERP, including the following:
  - a. whether the employees who are the subject of the KERP are truly “key employees” whose continued employment is critical to the successful restructuring;
  - b. whether the key employees who are the subject of the KERP are likely to pursue other employment opportunities absent the approval of the KERP;
  - c. whether the quantum of the proposed retention payments is reasonable;
  - d. whether the court-appointed officer supports the KERP; and
  - e. the business judgment of the board of directors regarding the necessity of the retention payments.
18. The Court’s role in assessing a request to approve a KERP is to assess the totality of circumstances to determine whether the process is reflective of objective business judgment and whether the end result is objectively reasonable. Three criteria underly the factors applicable to approving a KERP, namely: (i) arm’s length safeguards, (ii) necessity, and (iii) reasonableness of design. Within these parameters, the scope of the KERP and the amounts allocated to beneficiaries are both highly fact-dependent and based on the needs of the particular debtor and the role of the beneficiaries in the business and the restructuring.<sup>4</sup>

<sup>1</sup> [\*Danier Leather Inc., Re\*](#), 2016 ONSC 1044 [*Danier Leather*] at para 77

<sup>2</sup> *Ibid* at paras 72 and 75.

<sup>3</sup> [\*Grant Forest Products Inc., Re\*](#), 2009 Can LII 42026 (ONSC) at paras 8-22.

<sup>4</sup> [\*Aralez Pharmaceuticals Inc., Re\*](#), 2018 ONSC 6980 at paras 27-30.

19. The KERP Recipients are critical to the success of the NOI proceedings. The KERP Recipients include the three senior members of the Applicant's management, operations and finance teams. These individuals collectively provide critical leadership and experience necessary to run the Applicant's business and are necessary to provide strategic and technical direction which will enhance value for all stakeholders.
20. Due to their experience and expertise, the KERP Recipients will likely have more certain employment opportunities available to them with other companies and, without the benefit of the KERP, there is a real risk that the KERP Recipients will continue such opportunities.
21. The aggregate amount of payments under the KERP is reasonable and structured such that the KERP Recipients would only receive payments upon the earlier of, the sale of substantially all of the assets of the Applicant or the termination of the SISP. In addition, the KERP Recipients will only receive payments if they have not resigned or been terminated for cause.
22. Accordingly, the Applicant respectfully submits that this Honourable Court exercise its discretion to approve the KERP and the KERP Charge.

**B. Sealing Order**

23. The Applicant requests a sealing order with respect of the KERP.
24. Pursuant to Part 6, Division 4 of the *Alberta Rules of Court*, AR 124/2010, this Court has the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.<sup>5</sup>
25. The test to obtain a sealing order was set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*<sup>6</sup> and revised by the Supreme Court of Canada in *Sherman Estate v Donovan* requires the Applicant to establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

<sup>5</sup> [\*Alberta Rules of Court\*](#), Part 6, Division 4, AR 124/2010.

<sup>6</sup> [\*Sierra Club of Canada v Canada \(Minister of Finance\)\*](#), 2002 SCC 41, at para 53.

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>7</sup>

26. It is common practice for the details of a KERP to be subject to a sealing order, as Courts have recognized the potentially damaging impact that disclosure of such sensitive information could have on the debtor, a potential restructuring and the employees subject to the KERP. These considerations were discussed in *Danier Leather* by Penny J:

[82] In the insolvency context, courts have applied [the *Sierra Club* test] and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.

[83] It would be detrimental to the operations of Danier to disclose the identity of the individuals who will be receiving the KERP payments as this may result in other employees requesting such payments or feeling underappreciated. Further the KERP evidence involves matters of a private, personal nature.

[...]

[85] The sealing order is necessary to protect the important commercial interests of Danier and other stakeholders. This salutary effect greatly outweighs the deleterious effects of not sealing the KERPs...

27. The unredacted KERP meets the test for a sealing order, the unredacted KERP contains personal information that is confidential and of a highly sensitive commercial nature, including a list of the KERP Employee, their respective retention payments and a summary of their roles and importance to the Applicant's business and restructuring efforts.
28. The Applicant submits that the disclosure of the unredacted KERP would be prejudicial to the Applicant and the KERP Recipients. The only reasonable way to protect the disclosure of this private and personal information relating to the salary and compensation levels of the KERP Employees is pursuant to a sealing order, which keeps the unredacted KERP sealed.
29. There are no reasonable alternatives that would protect the sensitive private and personal interests and still permit the unredacted KERP to be available to this Honourable Court for review in connection with this application.

<sup>7</sup> [Sherman Estate v Donovan](#), 2021 SCC 25 at para 38.

30. The Applicant submits that the salutary effects of a sealing order outweigh any negative effects from the temporary limits on any public access to the information pursuant to the open court principle.

**C. Extension of Time to File the Proposal**

31. Section 50.4(9) of the BIA provides that an insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that:
- a. the insolvent person has acted, and is acting, in good faith and with due diligence;
  - b. the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
  - c. no creditor would be materially prejudiced if the extension being applied for were granted.<sup>8</sup>
32. Since filing the NOIs, the Applicant has been working diligently with its counsel and the Proposal Trustee to, among other things, complete their cashflow projections, negotiate the Interim Financing Facility and develop the SISP.
33. The Applicant is requesting a 45 day extension of the time to file their proposal to February 7, 2026 to allow for the continuation of the SISP.
34. The Applicant respectfully submits that it is acting in good faith and with due diligence and that the continuation of the SISP will maximize value for all stakeholders and enhance its ability to make a viable proposal. Further, the extension of time will not materially prejudice any creditors.
35. The Applicant has sufficient liquidity to continue the SISP and has already booked time on February 3, 2026 for the purpose of seeking a further extension to complete the SISP.

<sup>8</sup> [BIA](#), section 50.4(9).

36. Accordingly, the Applicant respectfully submits that this Honourable Court grant the extension of the time to file a proposal to February 7, 2026.

**VI. RELIEF REQUESTED**

35. The Applicant respectfully requests that this Honourable Court grant the relief sought in the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10<sup>th</sup> DAY of DECEMBER, 2025**



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DLA Piper (Canada) LLP  
Carole J. Hunter  
Counsel for the Applicant



**TABLE OF AUTHORITIES**

1. [Danier Leather Inc.](#), Re, 2016 ONSC 1044
2. [Grant Forest Products Inc.](#), Re, 2009 Can LII 42046 (ONSC)
3. [Aralez Pharmaceuticals Inc.](#), Re, 2018 ONSC 6980
4. [Alberta Rules of Court](#), Part 6, Division 4, AR 124/2010
5. [Sierra Club of Canada v Canada \(Minister of Finance\)](#), 2002 SCC 41.
6. [Sherman Estate v Donovan](#), 2021 SCC 25.
7. [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3, s.50.4(9)