

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED (THE “**CCAA**”)

AND IN THE MATTER OF AN APPLICATION OF BLUE LOBSTER CAPITAL LIMITED, 3284906 NOVA SCOTIA LIMITED, 3343533 NOVA SCOTIA LIMITED AND 4318682 NOVA SCOTIA LIMITED (COLLECTIVELY, THE “**APPLICANTS**”)

BRIEF OF AUTHORITIES

October 16, 2025

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IN THE MATTER OF THE COMPANIES CREDITORS
ARRANGEMENT ACT, RSC 1985, C C-36, AS AMENDED (THE
“CCAA”)

AND IN THE MATTER OF AN APPLICATION OF BLUE
LOBSTER CAPITAL LIMITED, 3284906 NOVA SCOTIA
LIMITED, 3343533 NOVA SCOTIA LIMITED AND 4318682
NOVA SCOTIA LIMITED (COLLECTIVELY, THE
“APPLICANTS”)

BRIEF OF AUTHORITIES

1. *Re Toys “R” Us (Canada) Ltd*, 2018 ONSC 609
2. *Re Just Energy Entities*, (September 15, 2021), Ont SCJ (Commercial List), Court File No. CV-21-00658423-00CL (Claims Procedure Order)
3. *Re ScoZinc Ltd*, 2009 NSSC 136
4. *Re US Steel Canada Inc*, 2017 ONSC 1967
5. *Timminco Limited (Re)*, 2014 ONSC 3393
6. *Re Aralez Pharmaceuticals*, (October 10, 2018), Ont SCJ (Commercial List), Court File No. CV18-603054-00CL (Claims Procedure Order)
7. *Re Timminco*, (June 15, 2012), Ont SCJ (Commercial List), Court File No. CV-12-9539-00CL (Claims Procedure Order)
8. *Laurentian University of Sudbury*, 2021 ONSC 3885
9. *Canwest Global Communications Corp*, 2011 ONSC 2215
10. *Re Target Canada Co*, 2015 ONSC 7574

CITATION: Re TOYS “R” US (CANADA) LTD., 2018 ONSC 609
COURT FILE NO.: CV-17-00582960-00CL
DATE: 20180125

**ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TOYS “R” US (CANADA) LTD. TOYS “R” US (CANADA) LTEE

BEFORE: F.L. Myers J.

COUNSEL: *Brian F. Empey and Bradley Wiffen*, counsel for the applicant
Jane Dietrich, counsel for Grant Thornton Limited, the Monitor
Linc Rogers, counsel for JPMorgan Chase Bank, NA, DIP Agent
Jesse Mighton, counsel for Crayola Canada
Linda Galessiere, counsel for various landlords
Timothy R. Dunn, counsel for CentreCorp Management Services Limited
Adam Slavens and Jonathan Silver, counsel for LEGO
Sean Zweig, counsel for the Unsecured Creditors Committee of Toys “R” Us Inc.
and other debtors in Chapter 11 proceedings before the United States Bankruptcy
Court for the Eastern District of Virginia

HEARD: January 25, 2018

ENDORSEMENT

[1] Toys “R” Us (Canada) Ltd. Toys “R” Us (Canada) Ltee asks the court to extend the time that it remains under protection of the CCAA while it attempts to restructure. It also asks the court to approve a draft claims procedure by which the outstanding claims of its creditors can be recognized and quantified.

[2] No significant stakeholder opposed the relief sought and I have granted it accordingly.

[3] I am satisfied that the applicant is acting in good faith and with due diligence in pursuit of its restructuring process to date. These are the findings required for it to be entitled to an extension of time under the statute. The applicant’s financial results through the holidays exceeded conservative forecasts. It reports that it has sufficient liquidity to operate in the normal course throughout the proposed extended period without drawing upon its extraordinary financing. The extension of time will allow the applicant to advance a going concern

restructuring process here and in coordination with its affiliates in the US. The Monitor supports the request. Accordingly the request for an extension of the proceedings is granted.

[4] The outcome of a successful restructuring process usually involves the applicant proposing a plan of compromise or arrangement to its creditors. The creditors have the opportunity to vote on whether they agree to the terms of the plan proposed. To approve a plan, the CCAA requires a vote of more than 50% of the creditors in number who hold collectively more than two-thirds of the claims measured by dollar value.

[5] In many cases, instead of a plan, the applicant proposes a value-maximizing liquidating transaction. After a liquidation, there will likely be distributions to creditors of the proceeds of liquidation in cash or other property *pari passu* by rank.

[6] In either case, whether a plan or a liquidating transaction is proposed, it is necessary to determine the precise number of creditors and the precise amount of their respective claims, so that the creditors can vote and/or receive distributions accordingly.

[7] In a bankruptcy governed by the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3, creditors are required to prove their claims individually by delivering to the trustee in bankruptcy sworn proof of claim forms that are accompanied by supporting invoices and other relevant documentation. The CCAA, by contrast, does not set out a specific procedure for creditor claims to be proven and counted.

[8] Claims procedure orders are routinely granted under the court's general powers under ss. 11 and 12 of the CCAA. Claims procedure orders are designed to create processes under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation. Claims procedures usually involve establishing a method to communicate to potential creditors that there is a process by which they must prove their claims by a specific date. The procedure usually includes an opportunity for the debtor or its representative to review and, if appropriate, contest claims made by creditors. If claims are not agreed upon and cannot be settled by negotiation, then the claims procedure orders may go on to establish an adjudication mechanism in court or, typically in Ontario, by arbitration that is then subject to an appeal to the court. Claims procedure orders will usually also establish a "claims bar date" by which claims must be submitted by creditors. Late claims may not be allowed as it can be necessary to establish a cut off to give accurate numbers for voting and distribution purposes.

[9] The claims processes in bankruptcy do not necessarily fit well in a CCAA proceeding. It is very unusual for a large corporation to go bankrupt and require proof of claims to be delivered by every single creditor under the BIA statutory claims process. Creditors of large companies can number in the thousands. It can be very time consuming and therefore very expensive for each of thousands of creditors to submit proof of claims and for the debtor or the Monitor to review, track, and deal with each claim individually. Managing claims processes for a large business can therefore be a very substantial undertaking that is often occurring behind the scenes throughout CCAA processes.

[10] Yet, experience shows that the vast majority of claims are usually dealt with consensually. At any given time, most large businesses have readily ascertainable payables outstanding that are carefully tracked electronically by the applicant's financial managers. Requiring each creditor to prove the state of its outstanding claims by submitting invoices then is often just a make work project that provides no real incremental value beyond the information available by just looking at a listing of outstanding trade payables on the debtor's financial systems.

[11] Toys "R" Us has submitted a draft form of claims procedure that addresses the unnecessary cost of requiring its thousands of trade creditors to prove their claims individually. It proposes to list creditor claims from the company's books and records and to provide each known creditor with a simple claim statement that sets out the amount of its claim that is already recognized by the company. If a creditor agrees with the amount that the company says it owes, the creditor need do nothing and the scheduled or listed claim will become the final proven claim at the claims bar date.

[12] The draft claims procedure allows creditors who disagree with the amounts set out in their claims statements to file notices of dispute with the Monitor by the claims bar date to engage an individualized review process.

[13] This negative option scheduled claim process will eliminate the need for filing proofs of claim and supporting evidence in the vast majority of cases. It also ensures that known claims are not lost in procedural uncertainty which always causes a certain percentage of creditors to fail to file their claims on a timely basis.

[14] This is certainly not the first case to use a negative option scheduled claims process like the one proposed here. Creative scheduled claims procedures, like this one, that streamline claims processes, make it easier for all known creditor claims to be recognized and counted, and save significant time and money, are encouraged. Each case must be responsive to its own facts and circumstances. What works in one case may be wholly inapt in another. But in all cases it is appropriate to make efforts to increase efficiency, affordability, and certainty as was done here. The overriding concern of the court is to ensure that any claims procedure process is both fair and reasonable. The negative option scheduled claim process proposed in this case meets both touchstones.

[15] Finally, the proposed minor amendment to the cross-border protocol has already been adopted by the US court. The change proposed is not opposed and it is reasonable to keep the terms of both orders consistent.

[16] Order signed accordingly.

F.L. Myers J.

Date: January 25, 2017

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 15TH

JUSTICE KOEHNEN

)

DAY OF SEPTEMBER, 2021

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY
COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY
FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST
MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747
CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE
SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY
ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY
ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY
MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY
TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP.,
JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON
ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY
GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC,
JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY
LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST
ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST
ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY
(FINANCE) HUNGARY ZRT.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, establishing a claims procedure for the identification and quantification of certain claims against (i) the Applicants and the partnerships listed in Schedule “A” hereto (the “**JE Partnerships**”, and collectively with the Applicants, the “**Just Energy Entities**”) and (ii) the current and former



directors and officers of the Just Energy Entities, was heard this day by video conference at Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Michael Carter sworn September 8, 2021 including the exhibits thereto, the Third Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”) dated September 8, 2021, and on hearing the submissions of respective counsel for the Just Energy Entities, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Justine Erickson sworn September 8, 2021 and the Affidavit of Service of Anne-Marie Runca affirmed September 9, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order in these proceedings dated March 9, 2021, as amended and restated on March 19, 2021 and as further amended and restated on May 26, 2021, and as may be further amended, restated, supplemented and/or modified from time to time (the “**Initial Order**”).

3. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

(a) “**Assessments**” means current or future claims of Her Majesty the Queen in Right

of Canada or of any province or territory or municipality or any other taxation authority in any Canadian or non-Canadian jurisdiction, including, without limitation, amounts which may arise or have arisen under any current or future notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority (including, for the avoidance of doubt, from any taxation authority in the United States);

- (b) “**Bar Date**” means the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable pursuant to the terms of this Order;
- (c) “**Business Day**” means, except as otherwise specified herein, a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (d) “**CBCA Arrangement**” means the arrangement under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, set out in that certain amended and restated plan of arrangement dated September 2, 2020, which arrangement was approved by a final order of the Ontario Superior Court of Justice (Commercial List) on September 2, 2020 following an application by Just Energy Group Inc. and 12175592 Canada Inc.;
- (e) “**CCAA Proceedings**” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-21-00658423-00CL;
- (f) “**Characterization**” means, for the purposes of this Order, solely whether the Claim is a secured or unsecured Claim, Pre-Filing Claim, Restructuring Period

Claim or D&O Claim and, for greater certainty, shall not include any determination of the relative priority of any secured Claim pursuant to the Intercreditor Agreement or otherwise;

(g) **“Claim”** means:

- (i) any right or claim of any Person against any of the Just Energy Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Just Energy Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or claim with respect to any Assessment, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Just Energy Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any Equity Claim, any claim brought by any proposed or confirmed

representative plaintiff on behalf of a class in a class action, and any claim against any of the Just Energy Entities for indemnification by any Director or Officer in respect of a Pre-Filing D&O Claim (each, a “**Pre-Filing Claim**”, and collectively, the “**Pre-Filing Claims**”);

- (ii) any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral, and including any right or claim with respect to any Assessment (each, a “**Restructuring Period Claim**”, and collectively, the “**Restructuring Period Claims**”);
- (iii) any right or claim of any Person against one or more of the Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments, any claim brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action, and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any

matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a **“Pre-Filing D&O Claim”**, and collectively, the **“Pre-Filing D&O Claims”**); and

- (iv) any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a **“Restructuring Period D&O Claim”**, collectively, the **“Restructuring Period D&O Claims”**);

provided, however, that in any case **“Claim”** shall not include an Excluded Claim or any right or claim of any Person that was previously released, barred, estopped, stayed and/or enjoined pursuant to the CBCA Arrangement, but for greater

certainty, shall include any Claim arising through subrogation against any Just Energy Entity or any Director or Officer;

- (h) **“Claimant”** means (a) a Person asserting a Pre-Filing Claim or a Restructuring Period Claim against any Just Energy Entity, or (b) a Person asserting a D&O Claim against any of the Directors or Officers;
- (i) **“Claims Agent”** means Omni Agent Solutions, as claims and noticing agent for the Just Energy Entities;
- (j) **“Claims Agent’s Website”** means <https://omniagentsolutions.com/justenergyclaims;>
- (k) **“Claims Bar Date”** means, in respect of a Pre-Filing Claim or Pre-Filing D&O Claim, 5:00 p.m. on November 1, 2021;
- (l) **“Claims Officer”** means the individual(s) designated by the Court pursuant to paragraph 42 of this Order;
- (m) **“Claims Process”** means the procedures outlined in this Order in connection with the assertion of Claims against the Just Energy Entities and/or the Directors and Officers;
- (n) **“Commodity Agreement”** means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master

power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement;

- (o) **“Commodity Supplier”** means any counterparty to a Commodity Agreement;
- (p) **“Consultation Parties”** means: (a) the DIP Lenders and their affiliates holding secured Claims against any of the Just Energy Entities, (b) the CA Agent and the CA Lenders, and (c) Shell Energy North America (Canada) Inc. and Shell Energy North America (US), L.P., and their respective counsel and financial advisors;
- (q) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (r) **“Credit Agreement”** means the ninth amended and restated credit agreement dated as of September 28, 2020 among Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as borrowers, National Bank of Canada, as administrative agent, and the Credit Facility Lenders, as lenders, as may be further supplemented, amended or restated from time to time;
- (s) **“Credit Facility Lenders”** means the syndicate of lenders party to the Credit Agreement from time to time, which includes the Canadian Imperial Bank of Commerce, National Bank of Canada, HSBC Bank Canada, JPMorgan Chase and its affiliates, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A.;
- (t) **“D&O Claim”** means any Pre-Filing D&O Claim or Restructuring Period D&O Claim, and **“D&O Claims”** means, collectively, the Pre-Filing D&O Claims and the Restructuring Period D&O Claims;

- (u) **“D&O Claim Instruction Letter”** means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “I” hereto;
- (v) **“D&O Proof of Claim”** means the proof of claim to be filed by Claimants in connection with any D&O Claim, substantially in the form attached as Schedule “J” hereto, which shall include all available supporting documentation in respect of such D&O Claim;
- (w) **“Director”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Just Energy Entities, in such capacity;
- (x) **“Employee”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a current or former employee of any of the Just Energy Entities whether on a full-time, part-time or temporary basis, other than a Director or Officer, including any individuals on disability leave, parental leave or other absence;
- (y) **“Equity Claim”** has the meaning set forth in section 2(1) of the CCAA;
- (z) **“Excluded Claim”** means any:
 - (i) Claim that may be asserted by any beneficiary of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge, the Cash Management Charge and any other charges granted by the Court in the CCAA Proceedings, with respect to such charges;

- (ii) Claim that may be asserted by any federal or provincial energy regulators, provincial regulators of consumer sales that have authority with respect to energy sales, U.S. municipal, state, federal or other foreign energy regulatory bodies or agencies, local energy transmission and distribution companies, or regional transmission organizations or independent system operators (but excluding, for the avoidance of doubt, any Claim by any taxation authority);
- (iii) Specified Equity Class Action Claim;
- (iv) Intercompany Claim; and
- (v) Claim that may be asserted by any of the Just Energy Entities against any Directors and/or Officers;

and for greater certainty, shall include any Excluded Claim arising through subrogation;

- (aa) “**Filing Date**” means March 9, 2021;
- (bb) “**General Claims Package**” means the document package to be disseminated by the Monitor or the Claims Agent in accordance with the terms of this Order, which shall consist of a Proof of Claim form, a Proof of Claim Instruction Letter, a D&O Proof of Claim form, a D&O Claim Instruction Letter, and such other materials as the Just Energy Entities, in consultation with the Monitor, may consider appropriate;

- (cc) “**Indenture**” means the trust indenture dated as of September 28, 2020 between Just Energy Group Inc. and Computershare Trust Company of Canada, as trustee, providing for the issue of a 7% unsecured subordinated note due September 27, 2026, as may be supplemented, amended or restated from time to time;
- (dd) “**Intercompany Claim**” means any Claim that may be asserted against any of the Just Energy Entities by or on behalf of any of the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities;
- (ee) “**Intercreditor Agreement**” means the Sixth Amended and Restated Intercreditor Agreement between Canadian Imperial Bank of Commerce, as collateral agent and Agent for itself as agent and the Lenders (as defined therein); Shell Energy North America (Canada) Inc.; Shell Energy North America (US), L.P.; Shell Trading Risk Management, LLC; BP Canada Energy Group ULC; BP Canada Energy Marketing Corp.; BP Energy Company; Exelon Generation Company, LLC; Bruce Power L.P.; Societe Generale; EDF Trading North America, LLC; National Bank of Canada; Nextera Energy Power Marketing, LLC; Macquarie Bank Limited; Macquarie Energy Canada Ltd.; Macquarie Energy LLC; and each other person identified as an Other Commodity Supplier (as defined therein) from time to time party thereto, and Just Energy Ontario L.P. and Just Energy (U.S.) Corp., as Borrowers (as defined therein) and each of the Guarantors (as defined therein) from time to time party thereto, as amended, dated as of September 1, 2015 (as may be further amended, restated, supplemented or otherwise modified from time to time);
- (ff) “**Meeting**” means any meeting of the creditors of the Just Energy Entities called for the purpose of considering and voting in respect of a Plan;

- (gg) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/justenergy/>;
- (hh) “**Negative Notice Claim**” means a Pre-Filing Claim and/or Restructuring Period Claim, as applicable, that is set out in a Statement of Negative Notice Claim prepared by the Just Energy Entities, in consultation with the Monitor, which Claim shall be: (i) valued in accordance with the Just Energy Entities’ and the Monitor’s assessment of the Claim, based on the books and records of the Just Energy Entities and any negotiations with such Negative Notice Claimants, and (ii) deemed to be accepted in the amount and Characterization set out therein unless otherwise disputed by a Negative Notice Claimant in accordance with the procedures outlined herein, and which, for greater certainty, shall include the following Claims:
- (i) the aggregate Claims of the Credit Facility Lenders under the Credit Agreement, which Claims shall be addressed to and resolved by the National Bank of Canada, as administrative agent under the Credit Agreement, on behalf of the Credit Facility Lenders;
 - (ii) the aggregate Claims of the Term Loan Lenders under the Term Loan Agreement, which Claims shall be addressed to and resolved by Computershare Trust Company of Canada, as administrative agent under the Term Loan Agreement, on behalf of the Term Loan Lenders;
 - (iii) the aggregate Claims of the Noteholders under the Indenture, which Claims shall be addressed to and resolved by Computershare Trust Company of Canada, as trustee under the Indenture, on behalf of the Noteholders;

- (iv) Claims of Commodity Suppliers under Commodity Agreements that have not been terminated as of the date of this Order (provided, for greater certainty, that all Claims of Commodity Suppliers under terminated Commodity Agreements must be submitted through a Proof of Claim in accordance with the procedures outlined herein);
- (v) Claims of Employees who were employed as at the Filing Date in respect of the termination of such Employees' employment, including for termination and severance pay, where applicable, which termination and severance Claim shall be calculated based on the greatest of: (i) such Employee's contractual entitlements, if any, (ii) any entitlements under an applicable corporate policy or consistent with past practice prior to the Filing Date, or (iii) any entitlements in accordance with applicable employment standards legislation;
- (vi) Claims of any other Persons to whom the Just Energy Entities, in consultation with the Monitor, determine to send a Negative Notice Claim based on the books and records of the Just Energy Entities;
- (ii) **"Negative Notice Claimant"** means any Person to whom a Statement of Negative Notice Claim is addressed and delivered by the Monitor or the Claims Agent in accordance with the procedures outlined herein;
- (jj) **"Negative Notice Claims Package"** means the document package to be disseminated by the Monitor or the Claims Agent to all Negative Notice Claimants in accordance with the terms of this Order, which shall consist of the Negative

Notice Claimant's Statement of Negative Notice Claim, a Notice of Dispute of Claim form, and such other materials as the Just Energy Entities, in consultation with the Monitor, may consider appropriate;

- (kk) **"Noteholders"** means the holders of subordinated notes issued by Just Energy Group Inc. pursuant to the Indenture;
- (ll) **"Notice of Dispute of Claim"** means the notice, substantially in the form attached as Schedule "H" hereto, which may be submitted or delivered to the Claims Agent or the Monitor by a Negative Notice Claimant disputing a Statement of Negative Notice Claim, with reasons for its dispute;
- (mm) **"Notice of Dispute of Revision or Disallowance"** means the notice, substantially in the form attached as Schedule "F" hereto, which may be delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance received by such Claimant;
- (nn) **"Notice of Revision or Disallowance"** means the notice, substantially in the form attached as Schedule "E" hereto, which may be prepared by the Just Energy Entities, in consultation with the Monitor, and delivered by the Monitor to a Claimant revising or disallowing, in part or in whole, a Claim submitted by such Claimant in a Proof of Claim or D&O Proof of Claim;
- (oo) **"Notice to Claimants"** means the notice for publication by the Monitor as described in paragraph 17 herein, substantially in the form attached as Schedule "B" hereto;

- (pp) “**Officer**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Just Energy Entities, in such capacity;
- (qq) “**Order**” means this Claims Procedure Order;
- (rr) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), joint venture, unincorporated organization, governmental unit, body or agency or any instrumentality thereof, Canadian or non-Canadian regulatory body or agency or any instrumentality thereof, or any other entity;
- (ss) “**Plan**” means any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Just Energy Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof;
- (tt) “**Proof of Claim**” means the proof of claim to be submitted or delivered to the Claims Agent or the Monitor by a Claimant in respect of any Pre-Filing Claim and/or Restructuring Period Claim for which such Claimant has not received a Statement of Negative Notice Claim, substantially in the form attached as Schedule “D” hereto, which shall include all available supporting documentation in respect of such Claim;
- (uu) “**Proof of Claim Instruction Letter**” means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “C” hereto;

- (vv) **“Restructuring Period Claims Bar Date”** means, in respect of a Restructuring Period Claim or Restructuring Period D&O Claim, the later of (i) 30 days after the date on which the Monitor or Claims Agent sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim and (ii) the Claims Bar Date;
- (ww) **“Specified Equity Class Action Claim”** means: (i) Civil Action 20-590 *Thaddeus White, et al. v. Just Energy Group Inc., et al.*; (ii) *Gilchrist v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-627174-00CP) commenced on September 11, 2019; (iii) *Saha v. Just Energy Group Inc., et al.* (Ontario Superior Court of Justice, Court File No. CV-19-630737-00CP); and (iv) any claim for contribution or indemnity in respect of or related to those claims listed in (i) to (iii) above;
- (xx) **“Statement of Negative Notice Claim”** means the respective statements to be prepared by the Just Energy Entities, in consultation with the Monitor, and disseminated by the Claims Agent or the Monitor to each Negative Notice Claimant in accordance with the terms of this Order, each of which shall state the amount of such Negative Notice Claimant’s Negative Notice Claim and shall include a description of any security in respect of such Negative Notice Claim, and which statements shall be substantially in the form attached as Schedule “G” hereto;
- (yy) **“Term Loan Agreement”** means the unsecured amended and restated loan agreement dated as of September 28, 2020 between Computershare Trust Company of Canada, as administrative agent, the Term Loan Lenders, as lenders, and Just

Energy Group Inc., as borrower, as may be supplemented, modified, amended or restated from time to time; and

(zz) “**Term Loan Lenders**” means Sagard Credit Partners, LP and each other person from time to time party to the Term Loan Agreement as a lender.

4. **THIS COURT ORDERS** that, except where otherwise specified herein, all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the solicitation by the Just Energy Entities, the Monitor and the Claims Agent of Proofs of Claim and D&O Proofs of Claim, the delivery by the Monitor or the Claims Agent of Statements of Negative Notice Claim, and the filing by any Claimant of any Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Order.

7. **THIS COURT ORDERS** that the Monitor, in consultation with the Just Energy Entities, and if applicable, the relevant Directors and Officers, are hereby authorized to use reasonable

discretion as to the adequacy of compliance with respect to the manner or content in which any forms submitted or delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor, in consultation with the Just Energy Entities, and if applicable, the relevant Directors and Officers, are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain Claims may be contingent in nature and therefore may not contain particulars of such Claims that are not yet known as at the time they are filed.

8. **THIS COURT ORDERS** that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

9. **THIS COURT ORDERS** that any Persons that have: (i) issued surety bonds or other credit insurance to any counterparties of the Just Energy Entities, and/or (ii) drawn on any letters of credit or cash collateral issued or provided by any of the Just Energy Entities in their favour to satisfy counterparty claims as a result of any non-payment by any of the Just Energy Entities, shall fully cooperate with the Just Energy Entities and the Monitor by providing information to assist in the assessment of the quantum and validity of Claims.

MONITOR'S ROLE

10. **THIS COURT ORDERS** that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor shall assist the Just Energy Entities in connection with the administration of the Claims Process set out herein, including the determination and resolution of Claims, if

applicable, and is hereby authorized, directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. **THIS COURT ORDERS** that, in carrying out the terms of this Order, the Monitor: (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Just Energy Entities and any information provided by any of the Just Energy Entities, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order from the Just Energy Entities or any of their affiliated companies, partnerships, or other corporate entities, including making such inquiries and obtaining such records and information as it deems appropriate in connection with the Claims Process.

CLAIMS AGENT'S ROLE

12. **THIS COURT ORDERS** that the Claims Agent shall assist the Just Energy Entities and the Monitor in connection with the administration of the Claims Process as set out herein, and is hereby authorized, directed and empowered to take such actions and fulfill such roles as are authorized by this Order or incidental thereto.

13. **THIS COURT ORDERS** that, in carrying out the terms of this Order, the Claims Agent: (i) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (ii) shall be entitled to rely on

the books and records of the Just Energy Entities and any information provided by any of the Just Energy Entities, all without independent investigation; (iii) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (iv) may seek such assistance and take such direction as may be reasonably required to carry out its duties and obligations pursuant to this Order from the Just Energy Entities or the Monitor.

NOTICE TO CLAIMANTS

14. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on the tenth (10th) Business Day following the date of this Order, the Monitor or the Claims Agent shall cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant at its last known municipal or e-mail address as recorded in the Just Energy Entities' books and records. The Monitor and the Just Energy Entities shall specify in the Statement of Negative Notice Claim included in the Negative Notice Claims Package the Negative Notice Claimant's Negative Notice Claim.

15. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on the tenth (10th) Business Day following the date of this Order, the Monitor or the Claims Agent shall cause a General Claims Package to be sent to: (i) each Person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Just Energy Entities and the Monitor), (ii) any Person who has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim, and (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim based on the books and records of the Just Energy Entities that is not captured in any Statement of Negative Notice Claim.

16. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants (or a condensed version thereof, as the Monitor, in consultation with the Just Energy Entities, may deem appropriate) to be published once in *The Globe and Mail* (National Edition), the *Wall Street Journal*, the *Houston Chronicle* and the *Dallas Morning News* as soon as practicable after the date of this Order.

17. **THIS COURT ORDERS** that, as soon as practicable after the date of this Order: (i) the Monitor shall cause the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to be posted to the Monitor's Website, (ii) the Claims Agent shall cause the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to be posted to the Claims Agent's Website, and (iii) the Claims Agent shall open the online claims submission portals on the Claims Agent's Website to enable the electronic submission of Proofs of Claim, D&O Proofs of Claim and Notices of Dispute of Claim by Claimants.

18. **THIS COURT ORDERS** that to the extent any Claimant requests documents or information relating to the Claims Process prior to the Claims Bar Date or the applicable Restructuring Period Claims Bar Date, or if the Just Energy Entities and the Monitor become aware of any further Claims after the mailings contemplated in paragraphs 14 and 15, the Claims Agent or the Monitor shall forthwith send such Claimant a General Claims Package or Negative Notice Claims Package, as appropriate, shall direct such Claimant to the documents posted on the Claims Agent's Website or the Monitor's Website, or shall otherwise respond to the request for documents or information as the Just Energy Entities, in consultation with the Monitor, may consider appropriate in the circumstances.

19. **THIS COURT ORDERS** that any notices of disclaimer or resiliation delivered after the date of this Order to potential Claimants in connection with any action taken by the Just Energy

Entities to restructure, disclaim, resiliate, terminate or breach any contract, lease or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a Negative Notice Claims Package or General Claims Package, as appropriate.

20. **THIS COURT ORDERS** that the Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Statement of Negative Notice Claim, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance, Notice of Dispute of Revision or Disallowance, and Notice of Dispute of Claim are hereby approved. Notwithstanding the foregoing, the Just Energy Entities, in consultation with the Monitor, may, from time to time, make minor non-substantive changes to the forms as they may consider necessary or desirable.

21. **THIS COURT ORDERS** that the sending of the Negative Notice Claims Package and the General Claims Package to the applicable Persons as described above, the publication of the Notice to Claimants, each in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order, Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

CLAIMS PROCEDURE FOR NEGATIVE NOTICE CLAIMS

(A) Negative Notice Claims

22. **THIS COURT ORDERS** that if a Negative Notice Claimant wishes to dispute the amount or Characterization of its Negative Notice Claim as set out in the relevant Statement of Negative Notice Claim, the Negative Notice Claimant shall deliver to the Claims Agent or the Monitor a

Notice of Dispute of Claim which must be received by the Claims Agent or the Monitor by no later than the applicable Bar Date. A Notice of Dispute of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. Such Negative Notice Claimant shall specify therein the details of the dispute with respect to its Claim.

23. **THIS COURT ORDERS** that if a Negative Notice Claimant does not deliver to the Claims Agent or the Monitor a completed Notice of Dispute of Claim such that it is received by the Claims Agent or the Monitor by the applicable Bar Date, disputing its Claims as set out in the Statement of Negative Notice Claim, then (a) such Negative Notice Claimant shall be deemed to have accepted the amount and Characterization of the Negative Notice Claimant's Claims as set out in the Statement of Negative Notice Claim, and (b) any and all of the Negative Notice Claimant's rights to dispute the Claims as determined in the Statement of Negative Notice Claim or to otherwise assert or pursue the Claims set out in the Statement of Negative Notice Claim other than as they are determined in such Statement of Negative Notice Claim shall be forever extinguished and barred without further act or notification. For greater certainty, nothing in this paragraph affects any separate and distinct Claims of a Negative Notice Claimant that are not captured in whole or in part in a Statement of Negative Notice Claim (and are separately asserted in a Proof of Claim or D&O Proof of Claim submitted in accordance with this Order).

(B) Adjudication and Resolution of Negative Notice Claims

24. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, shall review and record all Notices of Dispute of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and Characterization of any or all Claims against the

Just Energy Entities or any of them, the Just Energy Entities, in consultation with the Monitor, shall review and finally determine the amount and Characterization of all such Claims for which a Notice of Dispute of Claim has been received on or before the applicable Bar Date in accordance with the relevant adjudication and resolution process set out in this Order.

25. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 24, if the Just Energy Entities, in consultation with the Monitor, disagree with the Claim as set out in the Notice of Dispute of Claim, the Just Energy Entities and the Monitor shall attempt to resolve such dispute and settle the purported Claim with the Negative Notice Claimant. In the event that a dispute is not settled within a time period or in a manner satisfactory to the Just Energy Entities, in consultation with the Monitor, the Just Energy Entities shall, at their election, refer the dispute raised in the Notice of Dispute of Claim to a Claims Officer or the Court for adjudication, and the Monitor shall send written notice of such referral to the Negative Notice Claimant.

CLAIMS PROCEDURE FOR ALL OTHER CLAIMS

(A) Pre-Filing Claims and Pre-Filing D&O Claims

26. **THIS COURT ORDERS** that any Claimant that intends to assert a Pre-Filing Claim that is not captured in a Statement of Negative Notice Claim or a Pre-Filing D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Claims Agent or the Monitor on or before the Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed with the Claims Agent or the Monitor by every Claimant in respect of every Pre-Filing Claim that is not captured in a Statement of Negative Notice Claim and every Pre-Filing D&O Claim, regardless of whether

or not a legal proceeding in respect of such Pre-Filing Claim or Pre-Filing D&O Claim has been previously commenced.

27. **THIS COURT ORDERS** that any Claimant (other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in a Statement of Negative Notice Claim) that does not file a Proof of Claim or D&O Proof of Claim, as applicable, in accordance with paragraph 26 so that such Proof of Claim or D&O Proof of Claim is actually received by the Claims Agent or the Monitor on or before the Claims Bar Date, or such later date as the Monitor, in consultation with the Just Energy Entities, may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s) against the Just Energy Entities and all such Pre-Filing Claims or Pre-Filing D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings with respect to such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s); and
- (d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s).

(B) Restructuring Period Claims

28. **THIS COURT ORDERS** that, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim or Restructuring Period D&O Claim after the mailings

contemplated in paragraphs 14 and 15 are completed, the Monitor, in consultation with the Just Energy Entities, shall send a Negative Notice Claims Package or General Claims Package, as appropriate, to the Claimant in respect of such Restructuring Period Claim or Restructuring Period D&O Claim in the manner provided for herein.

29. **THIS COURT ORDERS** that any Claimant that intends to assert a Restructuring Period Claim that is not captured in a Statement of Negative Notice Claim or a Restructuring Period D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Claims Agent through the online portal on the Claims Agent's Website or otherwise delivered to the Claims Agent or the Monitor in accordance with paragraph 51 hereto. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed with the Claims Agent or the Monitor by every Claimant in respect of every Restructuring Period Claim that is not captured in a Statement of Negative Notice Claim and every Restructuring Period D&O Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or Restructuring Period D&O Claim has been previously commenced.

30. **THIS COURT ORDERS** that any Claimant (other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in a Statement of Negative Notice Claim) that intends to assert a Restructuring Period Claim or Restructuring Period D&O Claim, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, in accordance with paragraph 29 so that such Proof of Claim or D&O Proof of Claim is actually received by the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor, in consultation with the Just Energy Entities, may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s) and all such Restructuring Period Claims or Restructuring Period D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings with respect to such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s); and
- (d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s).

(C) Adjudication and Resolution of Claims

31. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, shall review and record all Proofs of Claim and D&O Proofs of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and Characterization of any or all Claims against the Just Energy Entities (or any of them) or their directors and/or officers, the Just Energy Entities, in consultation with the Monitor, shall review and finally determine the amount and Characterization of all such Claims asserted in any Proof of Claim or D&O Proof of Claim received on or before the applicable Bar Date in accordance with the adjudication and resolution process set out in this Order.

32. **THIS COURT ORDERS** that the Monitor shall make reasonable efforts to promptly deliver a copy of any D&O Proofs of Claim, Notices of Revision or Disallowance with respect to any D&O Claim, and Notices of Dispute of Revision or Disallowance with respect to any D&O Claim, to the applicable Directors and Officers named therein.

33. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31: (i) the Just Energy Entities, in consultation with the Monitor, shall accept, revise or reject each Claim set out in each Proof of Claim, and (ii) with respect to a D&O Claim set out in a D&O Proof of Claim, the Just Energy Entities, in consultation with the Monitor and the applicable Directors and Officers named in respect of such D&O Claim, shall accept, revise or reject such D&O Claim, provided that the Just Energy Entities shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of the Court.

34. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities, in consultation with the Monitor, agree with the amount and Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with paragraphs 26 or 29 herein and intend to accept the Claim in accordance with paragraph 33, the Monitor or the Claims Agent shall notify such Claimant of the acceptance of its Claim by the Just Energy Entities.

35. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities, in consultation with the Monitor, disagree with the amount or Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with paragraphs 26 or 29 herein, the Just Energy Entities shall, in consultation with the Monitor and any applicable Directors or Officers, attempt to resolve such dispute and settle the purported Claim with the Claimant.

36. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 31, if the Just Energy Entities and the Monitor intend to revise or reject a Claim that has been filed in accordance with paragraphs 26 or 29 herein, the Monitor shall notify the applicable Claimant that its Claim has been revised or rejected, and the reasons therefor, by sending a Notice of Revision or Disallowance.

37. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 36 above shall deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor, in consultation with the Just Energy Entities, in writing.

38. **THIS COURT ORDERS** that, where a Claimant who receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 37 above, then such Claimant's Claim shall be deemed to be as determined in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

39. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a Claim, the Just Energy Entities, in consultation with the Monitor and any applicable Directors or Officers, shall attempt to resolve such dispute and settle the purported Claim with the Claimant, and in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Just Energy

Entities, in consultation with the Monitor and any applicable Directors or Officers, the Just Energy Entities shall, at their election, refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication, and the Monitor shall send written notice of such referral to the Claimant.

40. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the Just Energy Entities, in consultation with the Monitor and any applicable Directors or Officers, may, at their election, refer any Claim to a Claims Officer or the Court for adjudication at any time, and the Monitor shall send written notice of such referral to the applicable parties.

41. **THIS COURT ORDERS** that the Just Energy Entities, in consultation with the Monitor, may consult with, and/or provide reporting to, any of the Consultation Parties in the review, adjudication and/or resolution of any Claims subject to this Claims Process (other than any Claims subject to the Intercreditor Agreement). Further, the Just Energy Entities shall give seven (7) days' prior written notice to the Consultation Parties of the details of any proposed settlement or allowance of any Claim subject to this Claims Process (other than any Claim subject to the Intercreditor Agreement) in an amount exceeding \$5 million, and any Consultation Party may seek the direction of the Court regarding any such proposed resolution of the Claim.

CLAIMS OFFICER

42. **THIS COURT ORDERS** that Mr. Edward Sellers, and such other Persons as may be appointed by the Court from time to time on a motion by the Just Energy Entities or the Monitor, be and are hereby appointed as the Claims Officers for the Claims Process.

43. **THIS COURT ORDERS** that the decision as to whether a disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the discretion of the Just Energy Entities, in consultation with the Monitor.

44. **THIS COURT ORDERS** that, where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine the validity and amount of such disputed Claim in accordance with this Order and, to the extent necessary, may determine whether any Claim or part thereof constitutes an Excluded Claim, and shall provide written reasons. Where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. The Claims Officer shall have the discretion to mediate any dispute that is referred to such Claims Officer at its election. The Claims Officer shall also have the discretion to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid.

45. **THIS COURT ORDERS** that the Monitor, the Claimant, the applicable Just Energy Entity and/or, in respect of any D&O Claim, the relevant Directors or Officers, or any other stakeholder (if applicable) may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the amount and Characterization of a Claimant's Claim or any other matter determined by the Claims Officer in accordance with paragraph 44, appeal such determination to the Court by filing a notice of appeal, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

46. **THIS COURT ORDERS** that, if no party appeals any determination of any Claims Officer within the time set out in paragraph 45 above, the decision of the Claims Officer in determining the amount and Characterization of the Claimant's Claim or any other matter

determined by the Claims Officer in accordance with paragraph 44 shall be final and binding upon the applicable Just Energy Entity, the applicable Directors and Officers in respect of any D&O Claim, the Monitor, the Claimant and any other applicable stakeholder and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

NOTICE TO TRANSFEREES

47. **THIS COURT ORDERS** that from the date of this Order until seven (7) days prior to the date fixed by the Court for the first distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, to the extent required, leave is hereby granted to permit a Claimant to provide to the Claims Agent or the Monitor notice of assignment or transfer of a Claim to any third party.

48. **THIS COURT ORDERS** that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns its Claim to another Person, none of the Monitor, the Claims Agent nor any of the Just Energy Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Claims Agent or the Monitor and acknowledged by the Just Energy Entities or the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of such Claim and the Just Energy Entities, the Claims Agent and the Monitor shall thereafter only be required to deal with such transferee or assignee and not the original Claimant. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken or not taken in respect of such Claim in accordance with this Order prior to receipt by the Claims Agent or the Monitor and

acknowledgement by the Just Energy Entities or the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Just Energy Entities and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim shall not be entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Just Energy Entities or the applicable Directors and Officers.

49. **THIS COURT ORDERS** that no transfer or assignment shall be effective for voting purposes at any Meeting unless sufficient notice and evidence of such transfer or assignment has been received by the Claims Agent or the Monitor no later than 5:00 p.m. on the date that is seven (7) days prior to the date fixed by the Court for any Meeting, failing which the original Claimant shall have all applicable rights as the “Claimant” with respect to such Claim as if no transfer or assignment of the Claim had occurred.

SERVICE AND NOTICE

50. **THIS COURT ORDERS** that the Just Energy Entities, the Claims Agent and the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Negative Notice Claims Package, the General Claims Package, and any letters, notices or other documents, to the appropriate Claimants or any other interested Persons by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, shown on the books and records of the Just Energy Entities or, where applicable, as set out in such Claimant’s Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within

Ontario or within California, as applicable, the fifth Business Day after mailing within Canada (other than within Ontario) or within the United States (other than within California), as applicable, and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day; provided in each case that where such service or delivery is effected by the Claims Agent, the applicable “Business Day” shall be a day on which banks are generally open for business in Los Angeles, California, and the references as to time shall mean local time in Los Angeles, California.

51. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Claimant to the Claims Agent or the Monitor under this Order shall, unless otherwise specified in this Order, be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if: (i) submitted to the Claims Agent through the online portal on the Claims Agent’s Website, where applicable in accordance with this Order, or (ii) delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If to the Monitor:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If to the Claims Agent:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

Any such notice or communication delivered by a Claimant shall be deemed received: (i) if submitted to the Claims Agent on the Claims Agent's Website, as of the time it is submitted, or (ii) if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, upon actual receipt by the Claims Agent or the Monitor thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day; provided that, where such notice or communication is delivered to the Claims Agent in accordance with (ii) above, the applicable "Business Day" shall be a day on which banks are generally open for business in Los Angeles, California, and the references as to time shall mean local time in Los Angeles, California.

52. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not be effective, and all notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order, in each case unless otherwise determined by the Monitor, in its reasonable discretion and in consultation with the Just Energy Entities.

MISCELLANEOUS

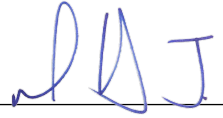
53. **THIS COURT ORDERS** that the Just Energy Entities or the Monitor may from time to time apply to this Court to extend the time for any action which the Just Energy Entities, the Claims Agent or the Monitor are required to take if reasonably required to carry out their respective duties and obligations pursuant to this Order and for advice and directions concerning the discharge of

their respective powers and duties under this Order or the interpretation or application of this Order.

54. **THIS COURT ORDERS** that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Just Energy Entities' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Just Energy Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, the Just Energy Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Just Energy Entity or Director or Officer, as applicable.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Texas, or in any other foreign jurisdiction, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents, including the Claims Agent, in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby

respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to be 'DAJ', is positioned above a horizontal line.

SCHEDULE “A”

JE Partnerships

Partnerships:

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

SCHEDULE “B”

NOTICE TO CLAIMANTS OF THE JUST ENERGY ENTITIES

RE: NOTICE OF CLAIMS PROCESS FOR JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT. (COLLECTIVELY, THE “APPLICANTS”) PURSUANT TO THE *COMPANIES’ CREDITORS ARRANGEMENT ACT* (THE “CCAA”)

PLEASE TAKE NOTICE that on ●, 2021, the Ontario Superior Court of Justice (Commercial List) issued an order (the “**Claims Procedure Order**”) in the CCAA proceedings of the Applicants, requiring that all Persons who assert a Claim (capitalized terms used in this notice and not otherwise defined have the meaning ascribed to them in the Claims Procedure Order) against the Just Energy Entities¹, whether unliquidated, contingent or otherwise, other than any Negative Notice Claimant in respect of its Negative Notice Claim as set out in any Statement of Negative Notice Claim, and all Persons who assert a claim against the Directors and/or Officers of any of the Just Energy Entities (as defined in the Claims Procedure Order, a “**D&O Claim**”), **must file a Proof of Claim (with respect to Claims against any of the Just Energy Entities) or D&O Proof of Claim (with respect to D&O Claims) with Omni Agent Solutions, as claims and noticing agent of the Just Energy Entities (the “Claims Agent”), or FTI Consulting Canada Inc., as Court-appointed monitor of the Just Energy Entities (in such capacity and not in its personal or corporate capacity, the “Monitor”) on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the “Claims Bar Date”), or in the case of a Restructuring Period Claim or**

¹ The “**Just Energy Entities**” are the Applicants and Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Restructuring Period D&O Claim, on or before the applicable Restructuring Period Claims Bar Date.

Pursuant to the Claims Procedure Order, Negative Notice Claims Packages will be sent to all Negative Notice Claimants on or before September 29, 2021, which Negative Notice Claims Packages will contain a Statement of Negative Notice Claim that specifies each Negative Notice Claimant's Negative Notice Claim as valued by the Just Energy Entities, in consultation with the Monitor, based on the books and records of the Just Energy Entities.

The Claims Agent or the Monitor will also send or cause to be sent, on or before September 29, 2021, a General Claims Package (that will include the form of Proof of Claim and D&O Proof of Claim) to: (i) each Person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Just Energy Entities and the Monitor), (ii) any Person who has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim, and (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim based on the books and records of the Just Energy Entities that is not captured in any Statement of Negative Notice Claim.

Claimants may also obtain the Claims Procedure Order, a General Claims Package or further information or documentation regarding the Claims Process from the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy/>, the Claims Agent's website at <https://omniagentsolutions.com/justenergyclaims>, or by contacting the Monitor at 1-844-669-6340 or claims.justenergy@fticonsulting.com or the Claims Agent at 1-866-680-8161 (US & Canada) or 1-818-574-3196 (International).

The Claims Bar Date is 5:00 p.m. (Toronto time) on November 1, 2021. Proofs of Claim in respect of Pre-Filing Claims (i.e., Claims against one or more of the Just Energy Entities arising prior to March 9, 2021) and Pre-Filing D&O Claims must be completed and filed with the Claims Agent or the Monitor on or before the Claims Bar Date.

The Restructuring Period Claims Bar Date is 5:00 pm (Toronto time) on the date that is the later of (i) 30 days after the date on which the Claims Agent or the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim, and (ii) the Claims Bar Date. Proofs of Claim and D&O Proofs of Claim in respect of Restructuring Period Claims and Restructuring Period D&O Claims must be completed and filed with the Claims Agent or the Monitor on or before the Restructuring Period Claims Bar Date.

It is your responsibility to ensure that the Claims Agent or the Monitor receives your Proof of Claim or D&O Proof of Claim by the applicable Bar Date if you wish to assert any Claim that is not captured in a Negative Notice Claim. CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

If you have received a Statement of Negative Notice Claim, your Claim will be deemed to be accepted at the amount specified therein, and you do not need to take any further steps with respect to such Claim unless you disagree with the amount specified therein. If you wish to dispute your Claim as specified in your Statement of Negative Notice Claim, you must file a Notice of Dispute of Claim with the Claims Agent or the Monitor on or before the applicable Bar Date.

It is your responsibility to ensure that the Claims Agent or the Monitor receives your Notice of Dispute of Claim by the applicable Bar Date if you wish to dispute the Claim as listed in your Statement of Negative Notice Claim.

Claimants are strongly encouraged to complete and submit their Proof of Claim, D&O Proof of Claim or Notice of Dispute of Claim, as applicable, on the Claims Agent's online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Proofs of Claim, D&O Proof of Claim or Notice of Dispute of Claim, as applicable, must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

DATED this ● day of ●, 2021.

SCHEDULE “C”

PROOF OF CLAIM INSTRUCTION LETTER

This instruction letter has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the Just Energy Entities¹. If you have any additional questions regarding completion of the Proof of Claim, please consult the Claims Agent’s website at <https://omniagentsolutions.com/justenergyclaims> or contact the Claims Agent or the Monitor, whose respective contact information is set out below.

If you have received a Statement of Negative Notice Claim, your Claim will be deemed to be accepted at the amount specified therein, and you do not need to take any further steps with respect to such Claim unless you disagree with the amount specified therein. A Proof of Claim package is intended only to be used by Claimants who wish to assert a Claim that is not captured in a Statement of Negative Notice Claim.

Additional copies of the Proof of Claim may be found at the Claims Agent’s website set out above or the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/>.

Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on ●, 2021 (the “**Claims Procedure Order**”), the terms of the Claims Procedure Order will govern. Capitalized terms used in this Proof of Claim Instruction Letter and not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

SECTION 1 – DEBTOR(S)

1. The full name of each Just Energy Entity against which the Claim is asserted must be listed (see footnote 1 for complete list of Just Energy Entities), including the full name of any Just Energy Entity that provided a guarantee in respect of the Claim. If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

SECTION 2A – ORIGINAL CLAIMANT

2. A separate Proof of Claim must be filed by each legal entity or person asserting a Claim against the Just Energy Entities, or any of them.
3. The Claimant shall include any and all Claims that it asserts against the Just Energy Entities, or any of them, in a single Proof of Claim filed, except for Claims described in any Statement of Negative Notice Claim sent to such Claimant by the Claims Agent or the Monitor. **Claims included in a Proof of Claim that are already captured in such Claimant's Statement of Negative Notice Claim will not be accepted by the Just Energy Entities.** Any Claimant who wishes to dispute any Claim set out in a Statement of Negative Notice Claim shall file a Notice of Dispute of Claim in respect of such Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
6. If the Claim has been assigned or transferred to another party, Section 2B must also be completed.
7. Unless the Claim is validly assigned or transferred, all future correspondence, notices, etc., regarding the Claim will be directed to the address and contact indicated in this section.

SECTION 2B – ASSIGNEE, IF APPLICABLE

8. If the Claimant has assigned or otherwise transferred its Claim, then Section 2B must be completed, and all documents evidencing such assignment or transfer must be attached.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Just Energy Entities, in consultation with the Monitor, are satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc., regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT AND TYPE OF CLAIM

12. If the Claim is a Pre-Filing Claim within the meaning of the Claims Procedure Order, then indicate the amount each Just Energy Entity was and still is indebted to the Claimant in the Amount of Claim column, including interest, if applicable, up to and including March 9, 2021.
13. If the Claim is a Restructuring Period Claim within the meaning of the Claims Procedure Order, then indicate the Claim amount each Just Energy Entity was and still is indebted to the Claimant in the space reserved for Restructuring Period Claims (which is below the space reserved for Pre-Filing Claims).

For reference, a “**Restructuring Period Claim**” means any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral, and including any right or claim with respect to any Assessment.

14. If there are insufficient lines to record each Claim amount, attach a separate schedule indicating the required information.

Currency

15. The amount of the Claim must be provided in the currency in which it arose.
16. Indicate the appropriate currency in the Currency column.
17. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

Security

18. Check this box ONLY if the Claim recorded on that line is a secured claim. If it is, indicate the value which you ascribe to the assets charged by your security in the adjacent column.
19. If the Claim is secured and/or guaranteed by any other Just Energy Entity, on a separate schedule provide full particulars of the security and/or guarantee, including the date on which the security and/or guarantee was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the relevant documents evidencing the security and/or guarantee.

SECTION 4 - DOCUMENTATION

20. Attach to the Proof of Claim form all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.
21. If the Claimant is a Commodity Supplier within the meaning of the Claims Procedure Order and is submitting a Claim in respect of any marked-to-market amounts that may have crystallized and become owing under any Commodity Agreement with any Just Energy Entity, the Claimant must attach a separate schedule indicating the appropriate calculations of such crystallized marked-to-market Claim(s).

For reference, a “**Commodity Agreement**” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or

financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement, and a “**Commodity Supplier**” means any counterparty to a Commodity Agreement.

SECTION 5 - CERTIFICATION

22. The person signing the Proof of Claim should:
- (a) be the Claimant or an authorized representative of the Claimant;
 - (b) have knowledge of all the circumstances connected with this Claim;
 - (c) assert the Claim against Debtor(s) as set out in the Proof of Claim and certify all available supporting documentation is attached; and
 - (d) if an individual is submitting the Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, have a witness to its certification.
23. By signing and submitting the Proof of Claim, the Claimant is asserting the Claim against each Just Energy Entity named as a “Debtor” in the Proof of Claim.

SECTION 6 - FILING OF CLAIM AND APPLICABLE DEADLINES

24. If your Claim is a Pre-Filing Claim within the meaning of the Claims Procedure Order (excluding any Negative Notice Claim that is a Pre-Filing Claim), the Proof of Claim MUST be received by the Claims Agent or the Monitor on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the “Claims Bar Date”).
25. If your Claim is a Restructuring Period Claim within the meaning of the Claims Procedure Order (excluding any Negative Notice Claim that is a Restructuring Period Claim), the Proof of Claim MUST be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the date (the “Restructuring Period Claims Bar Date”) that is the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date.
26. Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Proofs of Claim must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or
elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such Claims.

SCHEDULE "D"

PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE JUST ENERGY ENTITIES¹

Note: Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent's online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

1. Name of Just Energy Entity or Entities (the "Debtor(s)") the Claim is being made against²:

Debtor(s): _____

2A. Original Claimant (the "Claimant")

Legal Name of Claimant:	_____	Name of Contact	_____
Address	_____	Title	_____
	_____	Phone #	_____
	_____	Fax #	_____
City	_____	Prov /State	_____
	_____	Email	_____
Postal/Zip Code	_____		

2B. Assignee, if claim has been assigned

Legal Name of Assignee:	_____	Name of Contact	_____
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¹ The "**Just Energy Entities**" are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

² List the name(s) of any Just Energy Entity(ies) that have guaranteed the Claim. If the Claim has been guaranteed by any Just Energy Entity, provide all documentation evidencing such guarantee.

Address	Title
_____	_____
_____	Phone # _____
_____	Fax # _____
City _____	Prov _____
_____ /State _____	Email _____
Postal/Zip Code _____	

3. Amount and Type of Claim

The Debtor was and still is indebted to the Claimant as follows:

Pre-Filing Claims

Debtor Name:	Currency:	Amount of <u>Pre-Filing</u> Claim (including interest up to and including March 9, 2021) ³ :	Whether Claim is Secured:	Value of Security Held, if any ⁴ :
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

Restructuring Period Claims

Debtor Name:	Currency:	Amount of <u>Restructuring</u> <u>Period</u> Claim:	Whether Claim is Secured:	Value of Security Held, if any:
			Yes ☐ No ☐	
			Yes ☐ No ☐	
			Yes ☐ No ☐	

³ Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

⁴ If the Claim is secured, on a separate schedule provide full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security and the basis for such valuation and attach a copy of the security documents evidencing the security.

4. Documentation⁵

Provide all particulars of the Claim and all available supporting documentation, including any calculation of the amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable, the name of any guarantor(s) which has guaranteed the Claim and a copy of such guarantee documentation, the amount of invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this Proof of Claim form must be true, accurate and complete. Filing a false Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: _____	Witness ⁶ : _____ (signature)
Name: _____	_____ (print)
Title: _____	
Dated at _____ this _____ day of _____, 2021.	

6. Filing of Claim and Applicable Deadlines

For Pre-Filing Claims (excluding Negative Notice Claims that are Pre-Filing Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the “**Claims Bar Date**”).

For Restructuring Period Claims (excluding Negative Notice Claims that are Restructuring Period Claims), this Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the

⁵ If the Claimant is a Commodity Supplier submitting a Claim in respect of any crystallized marked-to-market amounts that the Claimant believes are owing by any Just Energy Entity under any Commodity Agreement, the Claimant must indicate the appropriate calculations of such crystallized marked-to-market Claim(s).

⁶ Witnesses are required if an individual is submitting this Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).

In each case, Claimants are strongly encouraged to complete and submit their Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent’s online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your Claims (except for any Claim outlined in any Statement of Negative Notice Claim that may have been addressed to you) being forever barred and you will be prevented from making or enforcing such Claims against the Just Energy Entities. In addition, unless you have separately received a Statement of Negative Notice Claim from the Claims Agent or the Monitor in respect of any other Claim, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities’ CCAA proceedings with respect to any such Claims.

SCHEDULE “E”

NOTICE OF REVISION OR DISALLOWANCE

For Persons who have asserted Claims against the Just Energy Entities¹ and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

TO: [INSERT NAME AND ADDRESS OF CLAIMANT] (the “Claimant”)

RE: Claim Reference Number: _____

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/>.

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that the Just Energy Entities, in consultation with the Monitor, have reviewed your Proof of Claim or D&O Proof of Claim and have revised or disallowed all or part of your purported Claim set out therein. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be as follows:

Type of Claim	Applicable Debtor(s)	Amount as submitted		Amount allowed by the Just Energy Entities	
		Original Currency		Amount allowed as secured:	Amount allowed as unsecured:
A. Pre-Filing Claim			\$	\$	\$
B. Restructuring Period Claim			\$	\$	\$

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

C. Pre-Filing D&O Claim			\$	\$	\$
D. Restructuring Period D&O Claim			\$	\$	\$
E. Total Claim			\$	\$	\$

Reasons for Revision or Disallowance:

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor (by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Revision or Disallowance in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

If you agree with this Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy>.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this ● day of ●, 2021.

FTI CONSULTING CANADA INC., solely in its
capacity as Court-appointed Monitor of the Just Energy Entities,
and not in its personal or corporate capacity

Per: _____

SCHEDULE “F”

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against the Just Energy Entities¹ and/or D&O Claims against the Directors and/or Officers of the Just Energy Entities

Capitalized terms used but not defined in this Notice of Revision or Disallowance shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy>.

1. **Particulars of Claimant:**

Claims Reference Number: _____

Full Legal Name of Claimant (include trade name, if different)

(the “**Claimant**”)

Full Mailing Address of the Claimant:

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

2. **Particulars of original Claimant from whom you acquired the Claim or D&O Claim (if applicable):**

Have you acquired this Claim by assignment?

Yes: ☐

No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. **Dispute of Revision or Disallowance of Claim:**

The Claimant hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance dated _____, and asserts a Claim as follows:

Type of Claim	Applicable Debtor(s)	Amount allowed by the Just Energy Entities		Amount claimed by Claimant	
		Amount allowed as secured:	Amount allowed as unsecured:	Secured:	Unsecured:
A. Pre-Filing Claim		\$	\$	\$	\$
B. Restructuring Period Claim		\$	\$	\$	\$
C. Pre-Filing D&O Claim		\$	\$	\$	\$
D. Restructuring Period D&O Claim		\$	\$	\$	\$
E. Total Claim		\$	\$	\$	\$

(Insert particulars of your Claim per the Notice of Revision or Disallowance, and the value of your Claim as asserted by you).

4. Reasons for Dispute:

Provide full particulars of why you dispute the Just Energy Entities' revision or disallowance of your Claim as set out in the Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by the affected Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Revision or Disallowance in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Revision or Disallowance must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: _____	Witness: _____
Name: _____	(signature)
Title: _____	(print)
Dated at _____ this _____ day of _____, 2021.	

This Notice of Dispute of Revision or Disallowance MUST be submitted to the Monitor at the below address **by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after this Notice of Revision or Disallowance is deemed to have been received by you** (in accordance with paragraph 50 of the Claims Procedure Order, a copy of which can be found on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy>).

Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

SCHEDULE “G”

STATEMENT OF NEGATIVE NOTICE CLAIM

●, 2021

[Name]

[Address]

Dear ●:

Re: Negative Notice Claims in the CCAA Proceedings of the Just Energy Entities¹ (Court File: CV-21-00658423-00CL)

Amount of Negative Notice Claim against [the applicable Just Energy Entity(ies)] has been assessed as a [secured/unsecured] [pre-filing/restructuring period] claim in the amount of [C/US]\$●

As you know, the Applicants filed for and were granted creditor protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”), pursuant to an order (as amended and restated, the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**CCAA Proceedings**”). Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as monitor of the Just Energy Entities to, among other things, oversee the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the “**Monitor**”). A copy of the Initial Order and other information relating to the CCAA Proceedings has been posted to <http://cfcanada.fticonsulting.com/justenergy> (the “**Monitor’s Website**”).

The purpose of this Statement of Negative Notice Claim is to inform you about your claim in the claims process approved by the Court on ●, 2021 (the “**Claims Process**”). The Claims Process governs the process for the identification and quantification of certain claims against the Just Energy Entities and their directors and officers in the CCAA Proceedings. All terms used but not defined in this Statement of Negative Notice Claim shall have the meanings ascribed thereto in the Claims Procedure Order of the Court dated ●, 2021 (the “**Claims Procedure Order**”). In the event of any inconsistency between the terms of this Statement of Negative Notice Claim and the terms of the Claims Procedure Order, the terms of the Claims Procedure Order will govern.

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Claims Process

Under the Claims Procedure Order, Omni Agent Solutions, as claims and noticing agent of the Just Energy Entities (the “**Claims Agent**”) or the Monitor is required to send a notice prepared by the Just Energy Entities, in consultation with the Monitor, to each Negative Notice Claimant outlining the quantum of their Negative Notice Claim that the Just Energy Entities, in consultation with the Monitor, are prepared to allow in the Claims Process (“**Statement of Negative Notice Claim**”).

This Statement of Negative Notice Claim contains the full amount of your Negative Notice Claim against the applicable Just Energy Entity(ies) that the Just Energy Entities, in consultation with the Monitor, will allow as an accepted Claim in the Claims Process, which Negative Notice Claim has been valued based on the books and records of the Just Energy Entities and any negotiations that the Just Energy Entities and/or the Monitor have had with you regarding the amounts owed by the applicable Just Energy Entity(ies) to you.

Your total Claim has been assessed by the Just Energy Entities, in consultation with the Monitor, as follows:

Your Negative Notice Claim has been assessed as a [secured/unsecured] [pre-filing/restructuring period] claim in the amount of [C/US]\$● against [the applicable Just Energy Entity(ies)]. Details of your claim, including any security granted in respect thereof, are set out in the attached schedule.

If you agree with the Just Energy Entities’ assessment of your Claim, you need not take any further action.

IF YOU WISH TO DISPUTE THE ASSESSMENT OF YOUR CLAIM, YOU MUST TAKE THE STEPS OUTLINED BELOW.

Disagreement with Assessment:

If you disagree with the assessment of your Negative Notice Claim set out in this Statement of Negative Notice Claim, you must complete and return to the Claims Agent or the Monitor a completed Notice of Dispute of Claim asserting a Claim in a different amount supported by appropriate documentation. A blank Notice of Dispute of Claim form is enclosed. The Notice of Dispute of Claim with supporting documentation disputing the within assessment of your Claim **must be received by the Claims Agent or the Monitor no later than 5:00 p.m. (Toronto time) on November 1, 2021 (the “Claims Bar Date”), or in the case of a Restructuring Period Claim, no later than 5:00 p.m. (Toronto time) on the later of (i) the date that is 30 days after the date on which this Negative Notice Claims Package was sent by the Claims Agent or the Monitor, and (ii) the Claims Bar Date (the “Restructuring Period Claims Bar Date”).**

If no such Notice of Dispute of Claim is received by the Claims Agent or the Monitor by the applicable Bar Date, the amount of your Claim will be, subject to further order of the Court, conclusively deemed to be as shown in this Statement of Negative Notice Claim.

The Notice of Dispute of Claim may be completed and submitted on the Claims Agent's online claims submission portal, which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Notices of Dispute of Claim must be delivered to the Claims Agent or the Monitor by registered mail, personal delivery, courier, facsimile transmission or email (in PDF format) at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Important Deadlines:

If you do not file a Notice of Dispute of Claim by the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, you will have no further right to dispute your Claim, which shall be allowed in the amount and Characterization set out herein, and you will be barred from filing any such dispute in the future.

This Statement of Negative Notice Claim does not affect any Claim other than the Negative Notice Claim referred to herein. This Statement of Negative Notice Claim should include all Claims (as defined in the Claims Procedure Order) that you may have in accordance with the books and records of the Just Energy Entities, unless expressly stated otherwise. If you believe this Statement of Negative Notice Claim does not contain the entirety of your Negative Notice Claim, you must include your whole Claim in the Notice of Dispute of Claim.

If you believe you may have any Claims against any of the Just Energy Entities or any of their Directors and/or Officers that are not captured in whole or in part by this Statement of Negative Notice Claim, then you must submit a Proof of Claim or D&O Proof of Claim in respect of such Claims by the applicable Bar Date. Copies of the Proof of Claim and D&O Proof of Claim forms may be found at the Claims Agent's Website or the Monitor's Website. **Claims against the Just Energy Entities (that are not Negative Notice Claims) and D&O Claims which are not received by the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, will be barred and extinguished forever.**

More Information:

If you have questions regarding the foregoing, you may contact the Monitor at 1-844-669-6340 or claims.justenergy@fticonsulting.com or the Claims Agent at 1-866-680-8161 (US & Canada) or 1-818-574-3196 (International) or <https://omniagentsolutions.com/justenergyclaims>.

Yours truly,

SCHEDULE “H”

NOTICE OF DISPUTE OF CLAIM

For Negative Notice Claims against the Just Energy Entities¹

Capitalized terms used but not defined in this Notice of Dispute of Claim shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Just Energy Entities dated ●, 2021 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy>.

1. Particulars of Claimant:

Claims Reference Number: _____

Full Legal Name of Claimant (include trade name, if applicable)

(the “**Claimant**”)

Full Mailing Address of the Claimant:

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

Other Contact Information of the Claimant:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

2. **Particulars of original Negative Notice Claimant from whom you acquired the Claim (if applicable):**

Have you acquired this Claim from a Negative Notice Claimant by assignment?

Yes: ☐

No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Negative Notice Claimant: _____

3. **Dispute of Negative Notice Claim:**

The Claimant hereby disagrees with the value of its Negative Notice Claim as set out in the Statement of Negative Notice Claim dated _____ and asserts a Claim as follows:

Claim	Applicable Debtor(s)	Currency	Amount Allowed per Statement of Negative Notice Claim:	Amount claimed by Claimant:
Total Claim			\$	\$

(Insert particulars of your Claim as per the Statement of Negative Notice Claim, and the value of your Claim(s) as asserted by you)

4. **Reasons for Dispute:**

Please describe the reasons and basis for your dispute of the amount or Characterization of your Claim as set out in your Statement of Negative Notice Claim. You may attach a separate schedule if more space is required. Provide all applicable documentation supporting your dispute, including any calculation of the amount, description of transaction(s) or agreement(s), name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed, as well as a description of the security, if any, granted by any Just Energy Entity to the Claimant and estimated value of such security. The particulars provided must support the value of the Claim as stated by you in item 3, above.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant submits this Notice of Dispute of Claim in respect of the Claim referenced above.
4. All available documentation in support of the Claimant's dispute is attached.

All information submitted in this Notice of Dispute of Claim must be true, accurate and complete. Filing false information relating to your Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: _____ Name: _____ Title: _____	Witness ² : _____ (signature)
	_____ (print)
Dated at _____ this _____ day of _____, 2021.	

² Witnesses are required if an individual is submitting this Notice of Dispute of Claim by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

This Notice of Dispute of Claim MUST be received by the Claims Agent or the Monitor no later than 5:00 p.m. (Toronto time) on November 1, 2021 (the “Claims Bar Date”), or in the case of a Restructuring Period Claim, no later than 5:00 p.m. (Toronto time) on the later of (i) the date that is 30 days after the date on which the Negative Notice Claims Package was sent by the Claims Agent or the Monitor, and (ii) the Claims Bar Date (the “Restructuring Period Claims Bar Date”).

This Notice of Dispute of Claim may be completed and submitted on the Claims Agent’s online claims submission portal, which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, Notices of Dispute of Claim must be delivered to the Claims Agent or the Monitor by registered mail, personal delivery, courier, facsimile transmission or email (in PDF format) at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent’s online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

IF A NOTICE OF DISPUTE OF CLAIM IS NOT RECEIVED BY THE CLAIMS AGENT OR THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CLAIM AS SET OUT IN THE STATEMENT OF NEGATIVE NOTICE CLAIM WILL BE BINDING ON YOU AND YOU WILL HAVE NO FURTHER RIGHT TO DISPUTE SUCH CLAIM.

SCHEDULE “I”

CLAIMANT’S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF THE JUST ENERGY ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for claims against the Directors and/or Officers of the Just Energy Entities. If you have any additional questions regarding completion of the Proof of Claim, please consult the Claims Agent’s website at <https://omniagentsolutions.com/justenergyclaims> or contact the Claims Agent or the Monitor, whose respective contact information is set out below.

The D&O Proof of Claim form is ONLY for Claimants asserting a claim against any Directors and/or Officers of the Just Energy Entities, and NOT for claims against the Just Energy Entities themselves. For claims against the Just Energy Entities that are not covered in any Statement of Negative Notice Claim, please use the form titled “Proof of Claim Form for Claims Against the Just Energy Entities”, which is available on the Claims Agent’s website or the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy>.

Additional copies of the D&O Proof of Claim form may be found at the Claims Agent’s website or the Monitor’s website.

Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on ●, 2021 (the “**Claims Procedure Order**”), the terms of the Claims Procedure Order will govern. Capitalized terms used in this D&O Proof of Claim Instruction Letter and not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

SECTION 1 – DEBTOR(S)

1. The full name and position of all the Directors or Officers (present and former) of the Just Energy Entities against whom the D&O Claim is asserted must be listed (see footnote 1 for

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

a complete list of the Just Energy Entities). If there are insufficient lines to record each such name, attach a separate schedule indicating the required information.

SECTION 2A. – ORIGINAL CLAIMANT

2. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the Just Energy Entities' Directors or Officers.
3. The Claimant shall include any and all D&O Claims that it asserts against the Just Energy Entities' Directors or Officers in a single D&O Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
6. If the D&O Claim has been assigned or transferred to another party, Section 2B, described below, must also be completed.
7. Unless the D&O Claim is validly assigned or transferred, all future correspondence, notices, etc., regarding the D&O Claim will be directed to the address and contact indicated in this section.

SECTION 2B. – ASSIGNEE, IF APPLICABLE

8. If the Claimant has assigned or otherwise transferred its claim, then Section 2B must be completed, and all documents evidencing such assignment or transfer must be attached.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Just Energy Entities, in consultation with the Monitor, are satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc., regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 – AMOUNT AND TYPE OF D&O CLAIM

12. If the D&O Claim is a Pre-Filing D&O Claim within the meaning of the Claims Procedure Order, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for Pre-Filing D&O Claims in the Amount of Claim column, including interest, if applicable, up to and including March 9, 2021.²
13. If the D&O Claim is a Restructuring Period D&O Claim within the meaning of the Claims Procedure Order, then indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the space reserved for Restructuring Period D&O

² Interest accruing from the Filing Date (March 9, 2021) shall not be included in any Claim.

Claims (which is below the space reserved for Pre-Filing D&O Claims) in the Amount of Claim column.

14. If there are insufficient lines to record each D&O Claim amount, attach a separate schedule indicating the required information.

Currency

15. The amount of the D&O Claim must be provided in the currency in which it arose.
16. Indicate the appropriate currency in the Currency column.
17. If the D&O Claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

SECTION 4 – DOCUMENTATION

18. Attach to the D&O Proof of Claim form all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

SECTION 5 – CERTIFICATION

19. The person signing the D&O Proof of Claim should:
 - (a) be the Claimant or an authorized representative of the Claimant;
 - (b) have knowledge of all of the circumstances connected with this claim;
 - (c) assert the claim against the Debtor(s) as set out in the D&O Proof of Claim and certify all available supporting documentation is attached; and
 - (d) if an individual is submitting the D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, have a witness to its certification.
20. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Debtor(s) specified therein.

SECTION 6 – FILING OF D&O CLAIM AND APPLICABLE DEADLINES

21. If your D&O Claim is a Pre-Filing D&O Claim within the meaning of the Claims Procedure Order, the D&O Proof of Claim MUST be received by the Claims Agent or the Monitor on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the “Claims Bar Date”).
22. If your D&O Claim is a Restructuring Period D&O Claim within the meaning of the Claims Procedure Order, the D&O Proof of Claim MUST be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the date (the “Restructuring

Period Claims Bar Date”) that is the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date.

23. Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Monitor or the Claims Agent by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent’s online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities’ CCAA proceedings with respect to any such D&O Claims.

SCHEDULE “J”

D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF THE JUST ENERGY ENTITIES¹

This form is to be used only by Claimants asserting a Claim against any Directors and/or Officers of the Just Energy Entities and NOT for Claims against the Just Energy Entities themselves. For Claims against the Just Energy Entities that are not captured in any Statement of Negative Notice Claim, please use the form titled “Proof of Claim Form for Claims Against the Just Energy Entities”, which is available on the Claims Agent’s website at <https://omniagentsolutions.com/justenergyclaims> or the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy>.

Note: Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>.

1. Name(s) and Position(s) of Officer(s) and/or Director(s) (the “Debtor(s)”) the Claim is being made against:

Debtor(s): _____

2A. Original Claimant (the “Claimant”)

Legal Name of Claimant:	_____	Name of Contact	_____
Address	_____	Title	_____
	_____	Phone #	_____
	_____	Fax #	_____
City	_____	Prov /State	_____
	_____	Email	_____
Postal/Zip Code	_____		

¹ The “**Just Energy Entities**” are Just Energy Group Inc., Just Energy Corp., Ontario Energy Commodities Inc., Universal Energy Corporation, Just Energy Finance Canada ULC, Hudson Energy Canada Corp., Just Management Corp., Just Energy Finance Holding Inc., 11929747 Canada Inc., 12175592 Canada Inc., JE Services Holdco I Inc., JE Services Holdco II Inc., 8704104 Canada Inc., Just Energy Advanced Solutions Corp., Just Energy (U.S.) Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Massachusetts Corp., Just Energy New York Corp., Just Energy Texas I Corp., Just Energy, LLC, Just Energy Pennsylvania Corp., Just Energy Michigan Corp., Just Energy Solutions Inc., Hudson Energy Services LLC, Hudson Energy Corp., Interactive Energy Group LLC, Hudson Parent Holdings LLC, Drag Marketing LLC, Just Energy Advanced Solutions LLC, Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Tara Energy, LLC, Just Energy Marketing Corp., Just Energy Connecticut Corp., Just Energy Limited, Just Solar Holdings Corp., Just Energy (Finance) Hungary Zrt., Just Energy Ontario L.P., Just Energy Manitoba L.P., Just Energy (B.C.) Limited Partnership, Just Energy Québec L.P., Just Energy Trading L.P., Just Energy Alberta L.P., Just Green L.P., Just Energy Prairies L.P., JEBPO Services LLP, and Just Energy Texas LP.

2B. Assignee, if claim has been assigned

Legal Name of Assignee:	_____	Name of Contact	_____
Address	_____	Title	_____
_____	_____	Phone #	_____
_____	_____	Fax #	_____
City	_____	Prov /State	_____
Postal/Zip Code	_____	Email	_____

3. Amount and Type of D&O Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officer(s)		Currency		Amount of Pre- Filing D&O Claim <i>(including interest, if applicable, up to and including March 9, 2021)</i>	Amount of Restructuring Period D&O Claim

4. Documentation

Provide all particulars of the D&O Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s), and the legal basis for the D&O Claim against the specific Directors or Officers at issue.

5. Certification

I hereby certify that:

1. I am the Claimant or an authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. All available documentation in support of this Claim is attached.

All information submitted in this D&O Proof of Claim form must be true, accurate and complete. Filing a false D&O Proof of Claim may result in your Claim being disallowed in whole or in part and may result in further penalties.

Signature: _____	Witness ² : _____ (signature)
Name: _____	_____ (print)
Title: _____	

Dated at _____ this _____ day of _____, 2021.

6. Filing of Claims and Applicable Deadlines

For Pre-Filing D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on November 1, 2021 (the “**Claims Bar Date**”).

For Restructuring Period D&O Claims, this D&O Proof of Claim must be returned to and received by the Claims Agent or the Monitor by 5:00 p.m. (Toronto Time) on the later of (i) the date that is 30 days after the date on which the Claims Agent or the Monitor sends a General Claims Package with respect to a Restructuring Period D&O Claim and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).

In each case, Claimants are strongly encouraged to complete and submit their D&O Proof of Claim on the Claims Agent’s online claims submission portal which can be found at <https://omniagentsolutions.com/justenergyclaims>. If not submitted at the online portal, D&O Proofs of Claim must be delivered to the Claims Agent or the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at one of the applicable addresses below:

² Witnesses are required if an individual is submitting this D&O Proof of Claim form by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email.

If located in Canada:

FTI Consulting Canada Inc.,
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON, M5K 1G8

Attention: Just Energy Claims Process
Email: claims.justenergy@fticonsulting.com
Fax: 416.649.8101

If located in the United States or
elsewhere:

Just Energy Claims Processing
c/o Omni Agent Solutions
5955 De Soto Ave., Suite 100
Woodland Hills, CA 91367

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Claims Agent or the Monitor: (i) if submitted on the Claims Agent's online portal, at the time such document is submitted, or (ii) upon actual receipt thereof by the Claims Agent or the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Failure to file your D&O Proof of Claim so that it is actually received by the Claims Agent or the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, WILL result in your D&O Claims being forever barred and you will be prevented from making or enforcing such D&O Claims against the Directors and Officers of the Just Energy Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Just Energy Entities' CCAA proceedings with respect to any such D&O Claims.

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

Court File No: CV-21-00658423-
00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al
(collectively, the “**Applicants**”)

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

OSLER, HOSKIN & HARCOURT, LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)
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Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

SUPREME COURT OF NOVA SCOTIA
Citation: ScoZinc Ltd. (Re), 2009 NSSC 136

Date: 20090403
Docket: Hfx No.305549
Registry: Halifax

IN THE MATTER OF: *The Companies' Creditors Arrangement Act*,
R.S.C. 1985, c.C-36, as amended

AND IN THE MATTER OF: A Plan of Compromise or Arrangement of ScoZinc
Ltd.

Applicant

Judge: The Honourable Justice Duncan R. Beveridge

Heard: April 3, 2009 in Halifax, Nova Scotia

**Written Reasons of
Oral Decision:** April 28, 2009

Counsel: John G. Stringer, Q.C., and Mr. Ben R. Durnford, for the
applicant
Robert MacKeigan, Q.C., for Grant Thornton

By the Court:

[1] On December 22, 2008 ScoZinc Ltd. was granted protection by way of a stay of proceedings of all claims against it pursuant to s.11 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36. The stay has been extended from time to time. Grant Thornton was appointed as the Monitor of the business and financial affairs of ScoZinc pursuant to s.11.7 of the CCAA.

[2] The determination of creditors' claims was set by a Claims Procedure Order. This order set dates for the submission of claims to the Monitor, and for the Monitor to assess the claims. The Monitor brought a motion seeking directions from the court on whether it has the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the Monitor to complete its assessment of claims.

[3] The motion was heard on April 3, 2009. At the conclusion of the hearing of the motion I concluded that the Monitor did have the necessary authority. I granted the requested order with reasons to follow. These are my reasons.

BACKGROUND

[4] The procedure for the identification and quantification of claims was established pursuant to my order of February 18, 2009. Any persons asserting a claim was to deliver to the Monitor a Proof of Claim by 5:00 p.m. on March 16, 2009, including a statement of account setting out the full details of the claim. Any claimant that did not deliver a Proof of Claim by the claims bar date, subject to the Monitor's agreement or as the court may otherwise order, would have its claim forever extinguished and barred from making any claim against ScoZinc.

[5] The Monitor was directed to review all Proofs of Claim filed on or before March 16, 2009 and to accept, revise or disallow the claims. Any revision or disallowance was to be communicated by Notice of Revision or Disallowance, no later than March 27, 2009. If a creditor disagreed with the assessment of the Monitor, it could dispute the assessment before a Claims Officer and ultimately to a judge of the Supreme Court.

[6] The three claims that have triggered the Monitor's motion for directions were submitted by Acadian Mining Corporation, Royal Roads Corp., and Komatsu International (Canada) Inc.

[7] ScoZinc is 100% owned by Acadian Mining Corp. These two corporations share office space, managerial staff, and have common officers and directors. Acadian Mining is a substantial shareholder in Royal Roads and also have some common officers and directors.

[8] Originally Royal Roads asserted a claim as a secured creditor on the basis of a first charge security held by it on ScoZinc's assets for a loan in the amount of approximately \$2.3 million. Acadian Mining also claimed to be a secured creditor due to a second charge on ScoZinc's assets securing approximately \$23.5 million of debt. Both Royal Roads and Acadian Mining have released their security. Each company submitted Proofs of Claim dated March 4, 2009 as unsecured creditors.

[9] Royal Roads claim was for \$579,964.62. The claim by Acadian Mining was for \$23,761,270.20. John Rawding, Financial Officer for Acadian Mining and ScoZinc, prepared the Proofs of Claim for both Royal Roads and Acadian Mining. It appears from the affidavit and materials submitted, and the Monitor's fifth report dated March 31, 2009 that there were errors in each of the Proofs of Claim.

[10] Mr. Rawding incorrectly attributed \$1,720,035.38 as debt by Acadian Mining to Royal Roads when it should have been debt owed by ScoZinc to Royal Roads. In addition, during year end audit procedures for Royal Roads, Acadian Mining and ScoZinc, other erroneous entries were discovered. The total claim that should have been advanced by Royal Roads was \$2,772,734.19.

[11] The appropriate claim that should have been submitted by Acadian Mining was \$22,041,234.82, a reduction of \$1,720,035.38. Both Royal Roads and Acadian Mining submitted revised Proofs of Claim on March 25, 2009 with supporting documentation.

[12] The third claim is by Komatsu. Its initial Proof of Claim was dated March 16, 2009 for both secured and unsecured claims of \$4,245,663.78. The initial claim did not include a secured claim for the equipment that had been returned to Komatsu, nor include a claim for equipment that was still being used by ScoZinc. A revised Proof of Claim was filed by Komatsu on March 26, 2009.

[13] The Monitor, sets out in its fifth report dated March 31, 2009, that after reviewing the relevant books and records, the errors in the Proofs of Claim by Royal Roads, Acadian Mining and Komatsu were due to inadvertence. For all of these claims it issued a Notice of Revision or Disallowance on March 27, 2009, allowing the claims as revised “if it is determined by the court that the Monitor has the power to do so”.

[14] The request for directions and the circumstances pose the following issue:

ISSUE

[15] Does the Monitor have the authority to allow the revision of a claim by increasing it based on evidence submitted by a claimant within the time period set for the monitor to carry out its assessment of claims?

ANALYSIS

[16] The jurisdiction of the Monitor stems from the jurisdiction of the court granted to it by the *CCAA*. Whenever an order is made under s.11 of the *CCAA* the court is required to appoint a monitor. Section 11.7 of the *CCAA* provides:

11.7 (1) When an order is made in respect of a company by the court under section 11, the court shall at the same time appoint a person, in this section and in section 11.8 referred to as "the monitor", to monitor the business and financial affairs of the company while the order remains in effect.

(2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.

(3) The monitor shall

(a) for the purposes of monitoring the company's business and financial affairs, have access to and examine the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company to the extent necessary to adequately assess the company's business and financial affairs;

(b) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,

(i) forthwith after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,

(ii) at least seven days before any meeting of creditors under section 4 or 5, or

(iii) at such other times as the court may order;

(c) advise the creditors of the filing of the report referred to in paragraph (b) in any notice of a meeting of creditors referred to in section 4 or 5; and

(d) carry out such other functions in relation to the company as the court may direct.

...

[17] It appears that the purpose of the *CCAA* is to grant to an insolvent company protection from its creditors in order to permit it a reasonable opportunity to restructure its affairs in order to reach a compromise or arrangement between the company and its creditors. The court has the power to order a meeting of the creditors or class of creditors for them to consider a compromise or arrangement proposed by the debtor company (s. 4, 5). Where a majority of the creditors representing two thirds value of the creditors or class of creditors agree to a compromise or arrangement, the court may sanction it and thereafter such compromise or arrangement is binding on all creditors, or class of creditors (s. 6).

[18] Section 12 of the *Act* defines a claim to mean “any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*.” However, as noted by McElcheran in *Commercial Insolvency in Canada* (LexisNexis Canada Inc., Markham, Ontario, 2005 at p. 279-80) the *CCAA* does not set out a process for identification or determination of claims; instead, the Court creates a claims process by court order.

[19] The only guidance provided by the CCAA is that in the event of a disagreement the amount of a claim shall be determined by the court on summary application by the company or by the creditor. Section 12(2) of the Act provides:

Determination of amount of claim

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

[20] The only parties who appeared on this motion were the Monitor, ScoZinc and Komatsu. No specific submissions were requested nor made by the parties with respect to the nature of the court's jurisdiction to determine the mechanism and time lines to classify and quantify claims against the debtor company.

[21] Under the *Bankruptcy and Insolvency Act* the Trustee is the designated gatekeeper who first determines whether a Proof of Claim submitted by a creditor is valid. The trustee may admit the claim or disallow it in whole or in part (s.135(2) *BIA*). A creditor who is dissatisfied with a decision by the trustee may appeal to a judge of the Bankruptcy Court.

[22] In contrast, the *CCAA* does not set out the procedure beyond the language in s.12. The language only accomplishes two things. The first is that the debtor company can agree on the amount of a secured or unsecured claim; and secondly, if there is a disagreement, then on application of either the company or the creditor, the amount shall be determined by the court on “summary application”.

[23] The practice has arisen for the court to create by order a claims process that is both flexible and expeditious. The Monitor identifies, by review of the debtor’s records, all potential claimants and sends to them a claim package. To ensure that all creditors come forward and participate on a timely basis, there is a provision in the claims process order requiring creditors to file their claims by a fixed date. If they do not, subject to further relief provided by the claims process order, or by the court, the creditor’s claim is barred.

[24] If the Monitor disagrees with the claim, and the disagreement cannot be resolved, then a claimant can present its case to a claims officer who is usually given the power to adjudicate disputed claims, with the right of appeal to a judge of the court overseeing the *CCAA* proceedings.

[25] The establishment of a claims process utilizing the monitor and or a claims officer by court order appears to be a well accepted practice (See for example *Federal Gypsum Co., (Re)* 2007 NSSC 384; *Olympia & York Developments Ltd. (Re)* (1993), 17 C.B.R. (3d) 1 (Ont. S.C.J.); *Air Canada, (Re)* (2004) 2 C.B.R. (5th) 23 (Ont.S.C.J.); *Triton Tubular Components v. Steelcase Inc.*, [2005] O.J. No. 3926 (Ont.S.C.J.); *Muscletech Research & Development Inc.,(Re)*, [2006] O.J. No. 4087 (Ont.S.C.J.); *Pine Valley Mining Corp., (Re)* 2008 BCSC 356; *Blue Range Resource Corp., Re* 2000 ABCA 285; *Carlen Transport Inc. v. Juniper Lumber Co. (Monitor of)* (2001), 21 C.B.R. (4th) 222 (N.B.Q.B.).)

[26] I could find no reported case that doubt the authority of the court to create a claims process. Kenneth Kraft in his article “The *CCAA* and the Claims Bar Process”, (2000), 13 Commercial Insolvency Reporter 6, endorsed the utilization

of a claims process on the basis of reliance on the court's inherent jurisdiction, provided the process adhered to the specific mandates of the CCAA. In unrelated contexts, caution has been expressed with respect to reliance on the inherent jurisdiction of the superior court as the basis for dealing with the myriad issues that can arise under the CCAA (See: *Clear Creek Contracting v. Skeena Cellulose Inc.*, (2003), 43 C.B.R. (4th) 187 (B.C.C.A.) and *Stelco Inc.(Re)*, [2005] O.J. No. 1171 (CA.)).

[27] Sir J.H. Jacob, Q.C. in his seminal article "The Inherent Jurisdiction of the Court", (1970) Current Legal Problems 23, concluded that it has been clear law from the earliest times that superior courts of justice, as part of their inherent jurisdiction, have the power to control their own proceedings and process. He wrote:

Under its inherent jurisdiction, the court has power to control and regulate its process and proceedings, and it exercises this power in a great variety of circumstances and by many different methods. Some of the instances of the exercise of this power have been of far-reaching importance, others have dealt with matters of detail or have been of transient value. Some have involved the exercise of administrative powers, others of judicial powers. Some have been turned into rules of law, others by long usage or custom may have acquired the force of law, and still others remain mere rules of practice. The exercise of this power has been pervasive throughout the whole legal machinery and has been extended to all stages of proceedings, pre-trial, trial and post-trial. Indeed, it is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process, for these limits are coincident with the needs of the court to fulfil its judicial functions in the administration of justice.

p. 32-33

[28] The CCAA gives no specific guidance to the court on how to determine the existence, nature, validity or extent of a claim against a debtor company. As noted earlier, the only reference is in s. 12 of the Act that if there is a dispute as to the amount of a claim, then the amount shall be determined by the court "on summary application". In *Re Freeman Estate*, [1922] N.S.J. No. 15, [1923] 1 D.L.R. 378 (en banc) the court considered the words "on summary application" as they appeared in the *Probate Act* R.S.N.S. 1900 c.158. Harris C.J. wrote:

[17] The words "summary application" do not mean without notice, but simply imply that the proceedings before the Court are not to be conducted in the ordinary way, but in a concise way.

[18] The Oxford Dictionary p. 140 gives as one of the meanings of "summary" dispensing with needless details or formalities-- done with despatch.

[19] In the case of the Western &c R. Co. v. Atlanta (1901), 113 Ga. 537, the meaning of the words "summary proceeding" is discussed at some length and the Court held at pp. 543-544:--

"In a summary manner does not at all mean that they may be abated without notice or hearing, but simply that it may be done without a trial in the ordinary forms prescribed by law for a regular judicial procedure."

[20] I cite this not because it is a binding authority, but because its reasoning commends itself to my judgment and I adopt it.

[29] In my opinion, whatever process may be appropriate and necessary to adjudicate disputed claims that ultimately end up before a judge of the superior court, the determination by the court that claims must initially be identified and assessed by the Monitor, and heard first by a Claims Officer, is a valid exercise of the court's inherent jurisdiction.

[30] The CCAA gives to the court the express and implied jurisdiction to do a variety of things. They need not all be enumerated. The court is required to appoint a monitor (s.11.7). Once appointed, the monitor is required to monitor the company's business and financial affairs. The *Act* mandates that the monitor have access to and examine the company's property including all records. The monitor must file a report with the court on the state of the company's business and financial affairs and contain prescribed information. In addition, the monitor shall carry out such other functions in relation to the company as the court may direct (s.11.7(3)(d)).

[31] In these circumstances, it is not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the *BIA*. The Claims Procedure Order of February 18, 2009 accomplishes this.

POWER OF THE MONITOR

[32] The Monitor was required by the Order to publish a notice to claimants in the newspaper regarding the claims procedure. It was also required to send a claims package to known potential claimants identified by the Monitor through its review of the books and records of ScoZinc. The claims bar date was set as March 16, 2009, or such later date as may be ordered by the court.

[33] The duties of the Monitor, once a claim was received by it, were set out in paragraphs 9 and 10 of the Claims Procedure Order. They provide as follows:

9. Upon receipt of a Proof of Claim:

- a. The Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and the execution of a Proof of Claim. A Claim which is accepted by the Monitor shall constitute a Proven Claim;
- b. the Monitor and ScoZinc may attempt to consensually resolve the classification and amount of any Claim with the claimant prior to accepting, revising or disallowing such Claim; and

...

10. The Monitor shall review all Proofs of Claim filed on or before the Claims Bar Date. The Monitor shall accept, revise or disallow such Proofs of Claim as contemplated herein. The Monitor shall send a Notice of Revision or Disallowance and the form of Notice of Dispute to the Claimant as soon as the Claim has been revised or disallowed but in any event no later than 11:59 p.m. (Halifax time) on March 27, 2009 or such later date as the Court may order. Where the Monitor does not send a Notice of Revision or Disallowance by the aforementioned date to a Claimant who has submitted a Proof of Claim, the Monitor shall be deemed to have accepted such Claim.

[34] Any person who wished to dispute a Notice of Revision or Disallowance was required to file a notice to the monitor and to the Claims Officer no later than April 6, 2009. The Claims Officer was designated to be Richard Cregan, Q.C., serving in his personal capacity and not as Registrar in Bankruptcy. Subject to the direction of the court, the Claims Officer was given the power to determine how evidence would be brought before him and any other procedural matters that may arise with respect to the claim. A claimant or the Monitor may appeal the Claims Officer's decision to the court.

[35] The Monitor suggests that the power given to it under paragraph 9(a) and 10 is sufficient to permit it to accept the revised Proofs of Claim filed after the claim's bar date of March 16, 2009, but before its assessment date of March 27, 2009.

[36] Reliance is also placed on the decision of the Alberta Court of Appeal in *Blue Range Resource Corp.* 2000 ABCA 285. As noted by the Monitor, the decision in *Blue Range* did not directly deal with the issue on which the Monitor here seeks directions. In *Blue Range*, the claims procedure established by the court set the claims bar date of June 15, 1999. Claims of creditors not proven in accordance with the procedures set out were deemed to be forever barred. Some creditors filed their Notice of Claim after the claims bar date. The monitor disallowed their claims. There were a second group of creditors who filed their Notice of Claim prior to the applicable claims bar date, but then sought to amend their claims after the claims bar date had passed. The monitor also disallowed these claims as late. What is not clear from the reported decisions is whether this second group of creditors requested amendments of their claims during the time period granted to the Monitor to carry out its assessment.

[37] The chambers judge allowed the late and amended claims to be filed. Enron Capital Corp. and the creditor's committee sought leave to appeal that decision. Leave to appeal was granted on January 14, 2000 with respect to the following question:

What criteria in the circumstances of these cases should the Court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?

Re Blue Range Resources Corp., 2000 ABCA 16

[38] Wittmann J.A. delivered the judgment of the court. He noted that all counsel conceded that the court had the authority to allow the late filing of claims and that the appeal was really a matter of what criteria the court should use in exercising that power. Accordingly, a Claims Procedure Order that contains a claims bar date should not purport to forever bar a claim without a saving provision. Wittmann J.A. set out the test for determining when a late claim may be included to be as follows:

[26] Therefore, the appropriate criteria to apply to the late claimants is as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. I will deal with the conduct of each of the respondents in turn below and then turn to a discussion of potential prejudice suffered by the appellants.

2000 ABCA 285

[39] The appellants claimed that they would be prejudiced if the late claims were allowed because if they had known the late claims would be allowed they would have voted differently. This assertion was rejected by the chambers judge. With respect to what is meant by prejudiced, Wittmann J.A. wrote:

40 In a CCAA context, as in a BIA context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is

not prejudice relevant to this criterion. Re-organization under the CCAA involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share can not be characterized as prejudice: *Re Cohen* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in 312630 British Columbia Ltd. It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

[40] In considering how the Monitor should carry out its duties and responsibilities under the Claims Procedure Order it is important to note that the Monitor is an officer of the court and is obliged to ensure that the interests of the stakeholders are considered including all creditors, the company and its shareholders (See *Laidlaw Inc Re* (2002), 34 C.B.R. (4th) 72 (Ont. S.C.J.).

[41] In a different context Turnbull J.A. in *Siscoe & Savoie v. Royal Bank* (1994), 29 C.B.R. (3rd) 1 commented that the monitor is an agent of the court and as a result is responsible and accountable to the court, owing a fiduciary duty to all of the parties (para. 28).

[42] In my opinion, para. 9(a) is not of assistance in determining the authority of the Monitor to revise upward a claim filed after the claim's bar date but before the assessment date. Paragraph 9(a) authorizes the Monitor to use reasonable discretion as to the adequacy of compliance as to **the manner** to which Proofs of Claim are completed and executed. If it satisfied that the claim has been adequately proven it may waive strict compliance with the requirements of the order as to **completion** and the **execution** of a Proof of Claim.

[43] Paragraph 10 of the Claims Procedure Order mandates the Monitor shall review all Proofs of Claim filed on or before the claims bar date. It shall "accept, revise or disallow such Proofs of Claim as contemplated herein". While normally a monitor's revision would be to reduce a Proof of Claim, there is in fact nothing in the Claims Procedure Order that so restricts the Monitor's authority. It is obviously contemplated by para. 10 that the monitor is to carry out some assessment of the claims that are submitted.

[44] In my view, the Proofs of Claim that are filed act both as a form of pleading and an opportunity for the claimant to provide supporting documents to evidence its claim. In the case before me, the creditors discovered that the claims they had submitted were inaccurate and further evidence was tendered to the Monitor to demonstrate. The Monitor, after reviewing the evidence, accepted the validity of the claims.

[45] Courts in a general way are engaged in dispensing justice. They do so by setting up and applying procedural rules to ensure that litigants are afforded a fair hearing. The resolution of disputes through the litigation process, including the ultimate hearing, is fundamentally a truth-seeking process to determine the facts and to apply the law to those facts. Can it be any different where the process is not in the court but under its supervision pursuant to a claims process under the CCAA?

[46] To suggest that the monitor does not have the authority to receive evidence and submissions and to consider them is to say that it does not have any real authority to carry out its court appointed role to assess the claims that have been submitted. The notion that the monitor cannot look at documentary evidence on its own initiative or at the instance of a claimant, and even consider submissions, is to deny it any real power to consider and make a preliminary determination of the merits of a claim.

[47] The Claims Procedure Order contains a number of provisions that anticipate the exchange of information between the Monitor, the company and a creditor. Paragraph 9(b) authorizes the Monitor and ScoZinc to attempt to consensually resolve the classification and the amount of any claim with a claimant prior to accepting, revising or disallowing such claim. Paragraph 17 of the Claims Procedure Order directs that the Monitor shall at all times be authorized to enter into negotiations with claimants and settle any claim on such terms as the Monitor may consider appropriate.

[48] In my opinion, it does not matter that revised claims were submitted after the claims bar date. In essence, the Monitor simply acted to revise the Proofs of Claim already submitted to conform with the evidence elicited by the Monitor, or submitted to it. The Monitor had the necessary authority to revise the claims, either as to classification or amount.

[49] If a claimant seeks to revise or amend its claim after the assessment date set out in the Claims Procedure Order, different considerations may come into play. The appropriate procedure will depend on the provisions of the Claims Procedure Order. In addition, the court, as the ultimate arbiter of disputed claims under s. 12 of the *CCAA*, should always be viewed as having the jurisdiction to permit appropriate revision of claims.

Beveridge, J.

CITATION: U.S. Steel Canada Inc. (Re), 2017 ONSC 1967
COURT FILE NO.: CV-14-10695-00CL
DATE: 20170419

SUPERIOR COURT OF JUSTICE - ONTARIO

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO U.S. STEEL CANADA INC.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *Heather Meredith and Sharon Kour*, for the Applicant, U.S. Steel Canada Inc.

Robert Staley and Kevin J. Zych, for the Monitor, Ernst & Young Inc.

Gale Rubenstein and Melaney Wagner, for the Superintendent of Financial Institutions and the Province of Ontario

Lily Harmer, for the United Steelworkers International Union and the United Steelworkers International Union, Local 8782

Sharon L.C. White, for the United Steelworkers International Union, Local 1005

James Harnum, Representative Counsel for the non-unionized active employees and retirees

Michael Barrack, Mitch Grossell and Leanne Williams, for United States Steel Corporation

Michael Kovacevic, for the City of Hamilton

Lou Brzezinski, for Robert and Sharon Milbourne

Patrick Riesterer, for Brookfield Capital Partners Ltd.

Mario Forte, for Bedrock Industries Canada LLC and Bedrock Industries L.P.

Vlad Calina, for USSCF, the Plan Advisor

HEARD: March 15, 2017

ENDORSEMENT

[1] The applicant, U.S. Steel Canada Inc. (“USSC”), sought a number of orders in respect of a proposed plan of arrangement and compromise (the “Plan”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”). The Plan contemplates the acquisition of substantially all of USSC’s operating business and assets on a going-concern basis by Bedrock Industries Canada LLC (“Bedrock”) through the acquisition of all of USSC’s outstanding shares. At the conclusion of the hearing of the motions, I advised the parties that the motions were granted for written reasons to follow. This Endorsement sets out the reasons for such relief.

[2] As a preliminary matter, it should be noted that the motions were supported by Her Majesty the Queen in Right of the Province of Ontario (“Ontario”) and the United States Steel Corporation (“USS”) and were not opposed by Representative Counsel for the current and former non-unionized employees of USSC or by the United Steelworkers International Union (the “USW”), USW Local 8782 or USW Local 1005. In addition, in its thirty-seventh report, dated March 13, 2017 (the “Monitor’s Report”), the Monitor recommended approval of each of the motions for the reasons set out therein. Such level of support constituted an important consideration in the Court’s approval of each of the motions, in addition to the specific considerations set out below.

The Supplementary Claims Process Order

[3] USSC seeks approval of an order providing for a process to identify and determine claims not previously determined pursuant to the order dated November 13, 2014 (the “General Claims Process Order”). The General Claims Process Order excluded claims of current and former employees respecting outstanding wages, salaries and benefits, claims relating to USSC’s retirement plans, claims relating to non-pension post-employment benefits (“OPEB”s), and claims against the directors and officers of USSC.

[4] The purpose of the order sought is to crystallize the pool of claims that will be affected under the Plan. The proposed supplementary claims process would pertain to a subset of the creditors whose claims were excluded from the General Claims Process Order, being: (1) current and former non-unionized employees with pension claims, OPEB claims and supplemental pension claims; (2) former non-unionized employees with claims pertaining to the termination of their employment; (3) persons with claims against the directors and officers of USSC; and (4) persons who filed a claim after December 22, 2014 but before March 1, 2017.

[5] The Court has the authority under s. 11 of the CCAA to make orders it considers appropriate in the circumstances, subject to restrictions set out in the CCAA. It is not disputed that such authority includes the authority to approve a process to solicit and determine claims against a debtor company and its directors and officers.

[6] In this case, the claims process sought is necessary for the approval and implementation of the Plan, both for voting purposes and in order to determine the universe of claims subject to the releases contemplated by the Plan. There is no suggestion from the stakeholders appearing on this motion that the proposed claims process is not fair to the potential claimants in terms of notice or process. The timeline provided for the determination of the relevant claims is also expedient in as much as it is consistent with the timing of the proposed meetings of creditors dealt with below. In this regard, the Monitor has advised in the Monitor’s Report that it believes

the proposed claims process provides sufficient and timely notification to allow creditors to submit proofs of claim or dispute notices, as applicable, prior to the claims bar date under the proposed order, being April 20, 2017, particularly in view of the fact that non-unionized employees and retirees will not need to file individual proofs of claim in most circumstances. Further, the Monitor will have a supervisory role to ensure that claimants are dealt with reasonably and fairly. In respect of the late-filed claims in item (4) above, the Monitor does not believe their inclusion in the claims process will materially prejudice the other creditors in view of the *de minimus* amount of these claims and the current status of the Plan.

[7] Based on the foregoing, including the support for the motion and the absence of any objections thereto as set out above, I am satisfied that the proposed supplementary claims process order should be approved.

The Meetings Order

[8] USSC seeks an order accepting the filing of the Plan; authorizing USSC to convene creditors meetings to vote on the Plan; approving the classification of creditors as set out in the Plan for the purposes of the meetings and voting on the Plan; approving the distribution of the notice of meeting and materials pertaining to the Plan; approving the procedures to be followed at the meetings; and setting May 9, 2017 as the date for the hearing of USSC's motion for an order of the Court sanctioning the Plan.

[9] The Plan is the outcome of an initial sales and restructuring/recapitalization process and a subsequent sale and investment solicitation process. These activities have been addressed fully in other endorsements of the Court, and are summarized in the affidavit of the chief restructuring officer of USSC, William Aziz, sworn March 10, 2017, and therefore need not be repeated here.

[10] There are two classes of "affected creditors" pursuant to the Plan:

- (1) General unsecured creditors, which for this purpose do not include Ontario and USS, who would receive a cash distribution in respect of their claims which would be released, discharged and barred; and
- (2) Creditors having claims for non-unionized pension benefits and OPEBs, which would be replaced by new non-unionized pension benefits and OPEBs, with these creditors' existing claims to be released, discharged and barred.

[11] USSC proposes that the meetings of these two classes of creditors be held on April 27, 2017.

[12] In determining whether the Court should approve the filing of the Plan under paragraph 3 of the initial order in these proceedings under the CCAA (the "Initial Order") and order the convening of a meeting of creditors to vote upon the Plan, the Court must be satisfied that the Plan is not doomed to failure. This standard is amply satisfied in the present circumstances, given the level of support for the motion and the absence of any objections as described above. The Court is not to determine the fairness and reasonableness of the Plan at this stage, such issues being reserved for the sanction hearing after the creditors meetings.

[13] Section 22 of the CCAA requires approval by the Court of the division of creditors into the classes contemplated by the Plan. The two classes of creditors contemplated by the Plan have been described above. For clarity, the Plan leaves the treatment of the claims of other creditors to be addressed pursuant to contractual arrangements to be negotiated between those creditors and USSC.

[14] I am satisfied that the creditors in each of the classes contemplated have the necessary commonality of interest required by s. 22(2) of the CCAA. The creditors in class (1) will receive a cash distribution in respect of their claims. The creditors in class (2) will not receive a cash distribution but will instead receive replacement benefits. Accordingly, the two classes of creditors receive different treatment under the Plan while each of the creditors within each class is an unsecured creditor who receives similar treatment under the Plan and would have similar remedies if the Plan is not accepted. I note as well that the Monitor supports the proposed classification of creditors as being appropriate based on the fact that the two classes have different interests and are treated differently under the Plan.

[15] Further, I am satisfied that it is appropriate that Representative Counsel act as the deemed proxy for the administrator for the non-unionized pension plans and for the current and former non-unionized employees having OPEB claims, given the active involvement of Representative Counsel in these proceedings to date on behalf of, and the commonality of interest of, the current and former non-unionized employees. I note as well that a procedure exists for individuals who have opted to represent themselves, and for individuals who have been represented by Representative Counsel but who choose to participate directly at the creditors meetings, to appoint an alternative proxy or to attend and vote in person at the creditors meetings.

[16] The other terms of the proposed meetings order regarding the notice of the meetings, the conduct of the meetings, and voting at the meetings do not otherwise raise any substantive issues of fairness and reasonableness.

[17] Based on the foregoing, the proposed meetings order is approved.

Amendment of the Plan Support Agreement

[18] USSC also seeks an order authorizing USSC to enter into:

- (1) An agreement (the "PSA Amending Agreement") amending the "CCAA Acquisition and Plan Sponsor Agreement" dated December 9, 2016 between USSC, Bedrock and Bedrock Industries L.P. (the "PSA"); and
- (2) An agreement (the "Support Amending Agreement") amending the "Support Agreement" made December 9, 2016 between USSC and Ontario.

[19] The Court has the authority under ss. 11 and 11.02(2) to approve a debtor company entering into an agreement to facilitate a restructuring. The Court has previously authorized the PSA and the Support Agreement pursuant to such powers.

[20] The PSA Amending Agreement and the Support Amending Agreement, among other things, amend the timetable for various milestones to reflect the timetable contemplated by the meetings order. They also amend the existing agreements to reflect the term sheets as finalized to date respecting various aspects of the Plan arrangements.

[21] I am satisfied that the PSA Amending Agreement and the Support Amending Agreement should be approved as necessary for, and as furthering the purposes of, the proposed restructuring of USSC pursuant to the Plan.

Extension of the Stay Period

[22] Lastly, USSC seeks an order extending the stay of proceedings under the Initial Order in these proceedings to May 31, 2017.

[23] Section 11.02(2) of the CCAA gives the Court the discretion to extend the stay of proceedings if the requirements of s. 11.02(3) are satisfied.

[24] In this case, USSC has established that it has acted, and is acting, in good faith and with due diligence to implement a plan of restructuring and compromise. The proposed stay extension provides USSC with the time required to allow the creditors to vote on the Plan at the creditors meetings and, if approved, to seek the Court's approval at the sanction hearing. It also grants USSC sufficient time to negotiate the necessary agreements and to finalize the necessary arrangements that are conditions to implementation of the Plan. The Monitor advises in the Monitor's Report that the revised cash flow forecast of USSC contemplates that USSC will have sufficient liquidity to continue to operate throughout the proposed stay extension period.

[25] Accordingly, I am satisfied that it is appropriate to approve the extension of the stay of proceedings under the Initial Order to May 31, 2017.

Wilton-Siegel, J.

Date: April 19, 2017

CITATION: Timminco Limited (Re), 2014 ONSC 3393
COURT FILE NO.: CV-12-9539-00CL
DATE: 2014-07-07

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TIMMINCO LIMITED AND BÉCANCOUR SILICON
INC.

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Jane Dietrich* and *Kate Stigler*, for the Board of Directors, except John Walsh

Kenneth D. Kraft, for Chubb Insurance Company of Canada

James C. Orr, for St. Clair Pennyfeather, Plaintiff in the Class Action

Maria Konyukhova, for Timminco Entities

Robert Staley, for John Walsh

Linc Rogers, for the Monitor

HEARD: July 22, 2013

SUPPLEMENTARY WRITTEN SUBMISSIONS RECEIVED MARCH 2014

ENDORSEMENT

Introduction

[1] On May 14, 2009, Kim Orr Barristers PC, counsel to the representative plaintiff Mr. St. Clair Pennyfeather ("Plaintiff's Counsel"), initiated the proposed class action (the "Class Action"), which names as defendants Timminco Limited ("Timminco"), a third party, Photon Consulting LLC, and certain of the directors and officers of Timminco, (the "Directors").

[2] The Class Action focusses on alleged public misrepresentations that Timminco possessed a proprietary metallurgical process that provided a significant cost advantage in manufacturing solar grade silicon for use in manufacturing solar cells.

[3] Mr. Pennyfeather alleges that the representations were first made in March 2008, after which the shares of Timminco gained rapidly in value to more than \$18 per share by June 5,

2008. Subsequently, Mr. Pennyfeather alleges that as Timminco began to acknowledge problems with the alleged proprietary process, the share price fell to the point where the equity was described as “penny stock” prior to its delisting in January 2012.

[4] In the initial order, granted January 3, 2012 in the *Companies’ Creditors Arrangement Act.*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) proceedings, Timminco sought and obtained stays of all proceedings including the Class Action as against Timminco and the Directors (the “Initial Order”).

[5] Timminco also obtained a Claims Procedure Order on June 15, 2012 (the “CPO”). Among other things, the CPO established a claims-bar date of July 23, 2012 for claims against the Directors. Mr. Pennyfeather did not file a proof of claim by this date.

[6] No CCAA plan has been put forward by Timminco and there is no intention to advance a CCAA plan.

[7] Mr. Pennyfeather moves to lift the stay to allow the Class Action to be dealt with on the merits against all named defendants and, if necessary, for an order amending the CPO to exclude the Class Action from the CPO or to allow the filing of a proof of claim relating to those claims.

[8] The Class Action seeks to access insurance moneys and potentially the assets of Directors.

[9] The respondents on this motion, (the Directors named in the Class Action), contend that the failure to file a claim under the CPO bars any claim against officers and directors or insurance proceeds.

[10] Neither Timminco nor the Monitor take any position on this motion.

[11] For the reasons that follow, the motion of Mr. Pennyfeather is granted and the stay is lifted so as to permit Mr. Pennyfeather to proceed with the Class Action.

The Stay and CPO

[12] The Initial Order contains the relevant stay provision (as extended in subsequent orders):

24. This Court Orders that during the Stay Period... no Proceeding may be commenced or continued against any former, current or future directors or officers of the Timminco Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Timminco Entities whereby the directors or officers are alleged under any law to be liable in their capacities as directors or officers for the payment or performance of such obligations, **until a compromise or arrangement in respect of the Timminco Entities, if one is filed, is sanctioned by this court or is refused by the creditors of the Timminco Entities or this Court.**

[emphasis added]

[13] In May and June 2012, The Court approved sales transactions comprising substantially all of the Timminco Entities' assets. In their June 7, 2012 Motion, the Timminco Entities sought an extension of the Stay Period to "give the Timminco Entities sufficient time to, among other things, close the transactions relating to the Successful Bid and carry out the Claims Procedure". The Timminco Entities sought court approval of a proposed claims procedure to "identify claims which may be entitled to distributions of potential proceeds of the ... transactions..." The Timminco entities took the position that the Claims Procedure was "a fair and reasonable method of determining the potential distribution rights of creditors of the Timminco Entities".

[14] The mechanics of the CPO are as follows. Paragraph 2(h) of the CPO defines the Claims Bar Date as 5:00 p.m. on July 23, 2012. "D&O Claims" are defined in para. 2(f)(iii):

Any existing or future right or claim of any person against one or more of the directors and/or officers of the Timminco Entity which arose or arises as a result of such directors or officers position, supervision, management or involvement as a director or officer of a Timminco Entity, whether such right, or the circumstances giving rise to it arose before or after the Initial Order up to and including this Claims Procedure whether enforceable in any civil, administrative, or criminal proceeding (each a "D&O Claim") (and collectively the "D&O Claims"), including any right:

- a. relating to any of the categories of obligations described in paragraph 9 of the Initial Order, whether accrued or falling due before or after the Initial Order, in respect of which a director or officer may be liable in his or her capacity as such;
- b. in respect of which a director or officer may be liable in his or her capacity as such concerning employee entitlements to wages or other debts for services rendered to the Timminco Entities or any one of them or for vacation pay, pension contributions, benefits or other amounts related to employment or pension plan rights or benefits or for taxes owing by the Timminco Entities or amounts which were required by law to be withheld by the Timminco Entities;
- c. in respect of which a director or officer may be liable in his or her capacity as such as a result of any act, omission or breach of duty; or
- d. that is or is related to a penalty, fine or claim for damages or costs.

Provided however that in any case "Claim" shall not include an Excluded Claim.

[15] The CPO appears to bar a person who fails to file a D&O Claim by the Claims Bar Date from asserting or enforcing the claim:

19. This Court orders that any Person who does not file a proof of a D&O Claim in accordance with this order by the claims-bar date **or such other later date as may be**

ordered by the Court, shall be forever barred from asserting or enforcing such D&O Claim against the directors and officers and the directors and officers shall not have any liability whatsoever in respect of such D&O Claim and such D&O Claim shall be extinguished without any further act or notification. [emphasis added]

Mr. Pennyfeather's Position

[16] Mr. Pennyfeather advances a number of arguments. Most significantly, he argues that it is not fair and reasonable to allow the defendants to bar and extinguish the Class Actions claims through the use of an interim and procedural court order. He submits that the respondents attempt to use the CCAA in a tactical and technical fashion to achieve a result unrelated to any legitimate aspect of either a restructuring or orderly liquidation. The operation of the fair and reasonable standard under the CCAA calls for the exercise of the Court's discretion to lift the stay and, if necessary, amend the CPO to either exclude the Class Action claims or permit submissions of a class proof of claim.

[17] In support of this argument, Mr. Pennyfeather adds that there is no evidence that any of the Directors who are defendants in the class action contributed anything to the CCAA process, and that the targeted insurance proceeds are not available to other creditors. Thus, he submits, a bar against pursuing these funds benefits only the insurance companies who are not stakeholders in the restructuring or liquidation.

[18] Mr. Pennyfeather advances a number of additional arguments. Because I am persuaded by this first submission, it is not necessary to discuss the additional arguments in great detail. However, I will give a brief summary of these additional arguments below.

[19] First, Mr. Pennyfeather submits, since the stay was ordered, he has attempted to have the stay lifted as it relates to the Class Action.

[20] Second, Mr. Pennyfeather submits that the CPO did not permit the filing of representative claims, unlike, for example, claims processed in *Labourers' Pension Fund of Canada and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078, 100 C.B.R. (5th) 30. Representative claims are generally not permitted under the CCAA and the solicitors for the representative plaintiff do not act for class members prior to certification (see: *Muscletech Research and Development Inc. (Re)* (2006), 25 C.B.R. (5th) 218 (Ont. S.C.)). Therefore, Mr. Pennyfeather submits that the omission in the order obtained by the Timminco entities, of the type of provision contained in the *Sino-Forest* Claims Order, precluded the action that they now assert should have been taken.

[21] Third, Mr. Pennyfeather responds to the significant argument made by the responding parties that the CPO bars the claim. He submits that the Class Action, which alleges, *inter alia*, misrepresentations and breaches of the *Securities Act*, R.S.O. 1990, c. S.5, is unaffected by the CPO. There are several reasons for this. First, the CPO excludes claims that cannot be compromised as a result of the provisions of s. 5.1(2) of the CCAA. Alternatively, even if Mr. Pennyfeather and other class members are not creditors pursuant to section 5.1(2), he submits that Parliament has clearly intended to exclude claims for misrepresentation by directors

regardless of who brought them. In addition, insofar as the Class Action seeks to recover insurance proceeds, the CPO did not, according to Mr. Pennyfeather, affect that claim.

[22] In summary, Mr. Pennyfeather's most significant argument is that the CCAA process should not be used in a tactical manner to achieve a result collateral to the proper purposes of the legislation. The rights of putative class members should be determined on the merits of the Class Action, which are considerable given the evidence. Further, the lifting of the stay is fair and reasonable in all of the circumstances.

Directors' Position

[23] Counsel to directors and officers named in the proposed class action, other than Mr. Walsh (the "Defendant Directors") submit there are three issues to be considered on the motion: (a) should the CPO be amended to grant Mr. Pennyfeather the authority to file a claim on behalf of the class members in the D&O Claims Procedure? (b) if Mr. Pennyfeather is granted the authority to file a claim on behalf of the class members, should the claims-bar date be extended to allow him the opportunity to file a late claim against the Defendant Directors? and (c) if Mr. Pennyfeather is permitted to file a late claim against the Defendant Directors, should the D&O stay be lifted to allow the proposed class action to proceed against the Defendant Directors?

[24] The Defendant Directors take the position that: (a) Mr. Pennyfeather does not have the requisite authority and/or right to file a claim on behalf of the class action members and the CPO and should not be amended to permit such; (b) if Mr. Pennyfeather is granted the authority to file a claim on behalf of the class members, the claims-bar date should not be extended to allow Mr. Pennyfeather to file a late claim; and (c) if Mr. Pennyfeather is permitted to file a late claim, the D&O stay should not be lifted to allow the proposed class action to proceed against the Defendant Directors.

[25] The Defendant Directors counter Mr. Pennyfeather's arguments with a number of points. They take the position that while they were holding office, they assisted with every aspect of the CCAA process, including (i) the sales process through which the Timminco Entities sold substantially all of their assets and obtained recoveries for the benefit of their creditors; and (ii) the establishment of the claims procedure, resigning only after the claims-bar date passed.

[26] The Defendant Directors also submit that Mr. Pennyfeather has been aware of, and participated in, the CCAA proceedings since the weeks following the granting of the Initial Order. They submit that at no time prior to this motion did Mr. Pennyfeather take any position on the claims procedures established to seek the authority to file a claim on behalf of the class members. They submit that, at this point, Mr. Pennyfeather is asking the court to exercise its discretion to (i) amend the CPO to grant him the authority to file a claim on behalf of the class members; (ii) extend the claims-bar date to allow him to file such claim; and (iii) lift the stay of proceedings. They submit that Mr. Pennyfeather asks this discretion be exercised to allow him to pursue a claim against the Defendant Directors which remains uncertified, is in part statute barred, and lacks merit.

[27] Counsel to the Defendant Directors submits that the D&O Claims Procedure was initiated for the purpose of determining, with finality, the claims against the directors and officers. They submit that the D&O Claims Procedure has at no time been contingent on, tied to, or dependent on the filing of a Plan of Arrangement by the Timminco Entities.

[28] Simply put, the Defendant Directors submit that the CPO sets a claims-bar date of July 23, 2012 for claims against Directors and Mr. Pennyfeather did not file any Proof of Claim against the Defendant Directors by the claims-bar date. Accordingly, they submit that the claims against the Defendant Directors contemplated by the Class Action are currently barred and extinguished by the CPO.

[29] The arguments put forward by Mr. Walsh are similar.

[30] Counsel to Mr. Walsh attempts to draw similarities between this case and *Sino-Forest*. Counsel submits this is a case where Mr. Pennyfeather intentionally refused to file a Proof of Claim in support of a securities misrepresentation claim against Timminco and its directors and officers.

[31] They further submit that Mr. Pennyfeather is asking for the Court to exercise its discretion in his favour to lift the stay of proceedings, in order to allow him to pursue a proceeding which has been largely, if not entirely neutered by the Court of Appeal (leave to appeal to the Supreme Court of Canada dismissed). They point out that just like in *Sino-Forest*, to lift the stay would be an exercise in futility where the Court commented that “there is no right to opt out of any CCAA process...by virtue of deciding, on their own volition, not to participate in the CCAA process”, the objectors relinquished their right to file a claim and take steps, in a timely way, to assert their rights to vote in the CCAA proceeding.

[32] Counsel to Mr. Walsh also takes the position that Mr. Pennyfeather’s only argument is a strained effort to avoid the plain language of the CPO in an effort to say that his claim is an “excluded claim” and therefore a Proof of Claim was never required. Even if Mr. Pennyfeather was right, counsel to Mr. Walsh submits that Mr. Pennyfeather still would have been required to file a Proof of Claim, failing which his claim would have been barred. Under the CPO, proofs of such claims were still called for, even if they were not to be adjudicated.

[33] They note that Mr. Pennyfeather was aware of the CCAA proceeding and the Initial Order. As early as January 17, 2012, counsel to Mr. Pennyfeather contacted counsel for Timminco, asking for consent to lift the Stay.

[34] Counsel contends that the “excluded claim” language that Mr. Pennyfeather relies on is not found in the definition of D&O Claim. Under the terms of the CPO, the language is a carve-out from the larger definition of “claim”, not the subset definition of D&O Claim. As a result, counsel submits that proofs of claim are still required for D&O Claims, regardless of whether they are excluded claims. In that way, the universe of D&O Claims would be known, even if excluded claims would ultimately not be part of a plan.

[35] Mr. Walsh also takes the position that Mr. Pennyfeather made an intentional decision not to file a claim. Mr. Walsh emphasizes that Mr. Pennyfeather had full notice of the motion for the CPO and chose not to oppose or appear on the motion. Further, at no time did Mr. Pennyfeather request the Monitor apply to court for directions with respect to the terms of the CPO.

[36] Mr. Walsh submits he is prejudiced by the continuation of the Class Action and he wants to get on with his life but is unable to do so while the claim is extant.

Law and Analysis

[37] For the purposes of this motion, I must decide whether the CPO bars Mr. Pennyfeather from proceeding with the Class Action and whether I should lift the stay of proceedings as it applies to the Class Action. For the reasons that follow, I conclude that the CPO should not serve as a bar to proceeding with the Class Action and that the stay should be lifted.

[38] As I explain below, the application of the claims bar order and lifting the stay are discretionary. This discretion should be exercised in light of the purposes of both claims-bar orders and stays under the CCAA. A claim bar order and a stay under the CCAA are intended to assist the debtor in the restructuring process, which may encompass asset realizations. At this point, Timminco's assets have been sold, distributions made to secured creditors, no CCAA plan has been put forward by Timminco, and there is no intention to advance a CCAA plan. It seems to me that neither the stay, nor the claims bar order continue to serve their functional purposes in these CCAA proceedings by barring the Class Action. In these circumstances, I fail to see why the stay and the claim bar order should be utilized to obstruct the plaintiff from proceeding with its Class Action.

The Purpose of Stay Orders and Claims-Bar Orders

[39] For the purposes of this motion, it is necessary to consider the objective of the CCAA stay order. The stay of proceedings restrains judicial and extra-judicial conduct that could impair the ability of the debtor company to continue in business and the debtor's ability to focus and concentrate its efforts on negotiating of a compromise or arrangement: *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 (Ont. S.C.).

[40] Sections 2, 12 and 19 of the CCAA provide the definition of a "Claim" for the purposes of the CCAA and also provide guidance as to how claims are to be determined. Section 12 of the CCAA states

12. The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

The use of the word "may" in s. 12 indicates that fixing deadlines, which includes granting a claims bar order, is discretionary. Additionally, as noted above the CPO provided at para. 19 that a D&O Claim could be filed on "such other later date as may be ordered by the Court".

[41] It is also necessary to return to first principles with respect to claims-bar orders. The CCAA is intended to facilitate a compromise or arrangement between a debtor company and its creditors and shareholders. For a debtor company engaged in restructuring under the CCAA, which may include a liquidation of its assets, it is of fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject. It is this desire for certainty that led to the development of the practice by which debtors apply to court for orders which establish a deadline for filing claims.

[42] Adherence to the claims-bar date becomes even more important when distributions are being made (in this case, to secured creditors), or when a plan is being presented to creditors and a creditors' meeting is called to consider the plan of compromise. These objectives are recognized by s. 12 of the CCAA, in particular the references to "voting" and "distribution".

[43] In such circumstances, stakeholders are entitled to know the implications of their actions. The claims-bar order can assist in this process. By establishing a claims-bar date, the debtor can determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them. If distributions are being made or a plan is presented to creditors and voted upon, stakeholders should be able to place a degree of reliance in the claims bar process.

[44] Stakeholders in this context can also include directors and officers, as it is not uncommon for debtor applicants to propose a plan under the CCAA that compromises certain claims against directors and officers. In this context, the provisions of s. 5.1 of the CCAA must be respected.

[45] In the case of Timminco, there have been distributions to secured creditors which are not the subject of challenge. The Class Action claim is subordinate in ranking to the claims of the secured creditors and has no impact on the distributions made to secured creditors. Further, there is no CCAA plan. There will be no compromise of claims against directors and officers. I accept that at the outset of the CCAA proceedings there may very well have been an intention on the part of the debtor to formulate a CCAA plan and further, that plan may have contemplated the compromise of certain claims against directors and officers. However, these plans did not come to fruition. What we are left with is to determine the consequence of failing to file a timely claim in these circumstances.

[46] In the circumstances of this case, i.e., in the absence of a plan, the purpose of the claims bar procedure is questionable. Specifically, in this case, should the claims bar procedure be used to determine the Class Action?

[47] In my view, it is not the function of the court on this motion to determine the merits of Mr. Pennyfeather's claim. Rather, it is to determine whether or not the claims-bar order operates as a bar to Mr. Pennyfeather being able to put forth a claim. It does not act as such a bar.

[48] It seems to me that CCAA proceedings should not be used, in these circumstances, as a tool to bar Mr. Pennyfeather from proceeding with the Class Action claim. In the absence of a CCAA proceeding, Mr. Pennyfeather would be in position to move forward with the Class Action in the usual course. On a principled basis, a claims bar order in a CCAA proceeding,

where there will be no CCAA plan, should not be used in such a way as to defeat the claim of Mr. Pennyfeather. The determination of the claim should be made on the merits in the proper forum. In these circumstances, where there is no CCAA plan, the CCAA proceeding is, in my view, not the proper forum.

[49] Similar considerations apply to the Stay Order. With no prospect of a compromise or arrangement, and with the sales process completed, there is no need to maintain the status quo to allow the debtor to focus and concentrate its efforts on negotiating a compromise or arrangement. In this regard, the fact that neither Timminco nor the Monitor take a position on this motion or argue prejudice is instructive.

Applicability of Established Tests

[50] The lifting of a stay is discretionary. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of (a) the balance of convenience; (b) the relative prejudice to the parties; and (c) where relevant, the merits of the proposed action: *Canwest Global Communications Corp., Re*, 2011 ONSC 2215, 75 C.B.R. (5th) 156, at para. 27.

[51] Counsel to Mr. Walsh submit that courts have historically considered the following factors in determining whether to exercise their discretion to consider claims after the claims-bar date: (a) was the delay caused by inadvertence and, if so, did the claimant act in good faith? (b) what is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay; (c) if relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing? and (d) if relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[52] These are factors that have been considered by the courts on numerous occasions (see, for example, *Sino-Forest; Re Sammi Atlas Inc.* (1998), 3 C.B.R. (4th) 171 (Ont. Gen. Div.), *Blue Range Resource Corp. (Re)*, 2000 ABCA 285, 193 D.L.R. (4th) 314, leave to appeal to S.C.C. refused, [2000] SCCA No. 648; *Canadian Red Cross Society (Re)* (2000), 48 C.B.R. (5th) 41 (Ont. S.C.); and *Ivorylane Corp. v. Country Style Realty Ltd.*, [2004] O.J. No. 2662 (S.C.)).

[53] However, it should be noted that all of these cases involved a CCAA Plan that was considered by creditors.

[54] In the present circumstances, it seems to me there is an additional factor to take into account: there is no CCAA Plan.

[55] I have noted above that certain delay can be attributed to the CCAA proceedings and the impact of *Green v. Canadian Imperial Bank of Commerce*, 2014 ONCA 90, at the Court of Appeal. That is not a full answer for the delay but a partial explanation.

[56] The prejudice experienced by a director not having a final resolution to the proposed Class Action has to be weighed as against the rights of the class action plaintiff to have this matter heard in court. To the extent that time constitutes a degree of prejudice to the defendants, it can be alleviated by requiring the parties to agree upon a timetable to have this matter addressed on a timely basis with case management.

[57] I have not addressed in great detail whether the CPO requires excluded claims to be filed. In my view, it is not necessary to embark on an analysis of this issue, nor have I embarked on a review of the merits. Rather, the principles of equity and fairness dictate that the class action plaintiff can move forward with the claim. The claim may face many hurdles. Some of these have been outlined in the factum submitted by counsel to Mr. Walsh. However, that does not necessarily mean that the class action plaintiff should be disentitled from proceeding.

[58] In the result, the motion of Mr. Pennyfeather is granted and the stay is lifted so as to permit Mr. Pennyfeather to proceed with the Class Action. The CPO is modified so as to allow Mr. Pennyfeather to file his claim.

Morawetz, R.S.J.

Date: July 7, 2014

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

JUSTICE DUNPHY

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WEDNESDAY, THE 10TH

DAY OF OCTOBER, 2018



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.

Applicants

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals Canada Inc. (together the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order approving a procedure for the solicitation of claims against the Applicants and the Directors and Officers of the Applicants was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adrian Adams sworn October 1, 2018 and the Exhibits attached thereto, the affidavit of Kathryn Esaw sworn October 10, 2018 and Exhibits attached thereto, and the report dated October 5, 2018 by Richter Advisory Group Inc., in its capacity as Court-appointed Monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants and the Monitor, Deerfield Private Design Fund III, L.P. and Deerfield Partners L.P. ("**Deerfield**"), Nuvo Pharmaceuticals Inc., and the Official Committee of the Unsecured Creditors, no one else appearing for any other person on the service list,

although duly served as appears from the affidavit of service of Nicholas Avis sworn October 2, 2018 and filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that, for the purposes of this Order (the "**Claims Procedure Order**"), in addition to the terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) "**Assessments**" means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of reassessment, notice of objection, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
- (b) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) "**CCAA Proceedings**" means the proceedings commenced by the Applicants in the Court under Court File No. CV-18-603054-00CL;
- (d) "**Chapter 11 Entities**" means Aralez Pharmaceuticals Management Inc.; Aralez Pharmaceuticals R&D Inc.; Aralez Pharmaceuticals U.S. Inc.; POZEN Inc.; Halton Laboratories LLC; Aralez Pharmaceuticals Holdings Limited; and Aralez Pharmaceuticals Trading DAC;
- (e) "**Claims**" means D&O Claims, Pre-filing Claims and Restructuring Claims, provided that "Claims" shall not include Excluded Claims;

- (f) "**Claimant**" means a Person asserting a Claim other than a D&O Claim;
- (g) "**Claims Bar Date**" means: (i) with respect to a Pre-filing Claim or a D&O Claim, 5:00 p.m. on November 29, 2018, in Toronto, Ontario; and (ii) with respect to a Restructuring Claim, the Restructuring Claims Bar Date;
- (h) "**Claims Package**" means the Instruction Letter, the Notice Letter, the Proof of Claim and any other documentation the Applicants, in consultation with the Monitor, may deem appropriate;
- (i) "**Claims Procedure**" means the procedures outlined in this Claims Procedure Order in connection with the assertion and determination of Claims against the Applicants or the Directors or Officers or any of them, as amended or supplemented by further order of the Court;
- (j) "**Court**" means the Ontario Superior Court of Justice (Commercial List) in the City of Toronto, in the Province of Ontario;
- (k) "**D&O Claim**" means any existing or future right or claim of any Person against one or more of the Directors and/or Officers of the Applicants which arose or arises as a result of such Director's or Officer's position, supervision, management or involvement as a Director or Officer of the Applicants, whether such right, or the circumstances giving rise to it arose before or after the Initial Order up to and including the date of this Claims Procedure Order and whether enforceable in any civil, administrative or criminal proceeding (each a "**D&O Claim**" and collectively the "**D&O Claims**"), including any right:
 - a. in respect of which a Director or Officer may be liable in his or her capacity as such concerning employee entitlements to wages or other debts for services rendered to the Applicants or any one of them or for vacation pay, pension contributions, benefits or other amounts related to employment or pension plan rights or benefits or for taxes owing by the Applicants or amounts which were required by law to be withheld by the Applicants;

- b. in respect of which a Director or Officer may be liable in his or her capacity as such as a result of any act, omission, or breach of a duty; or
 - c. that is or is related to a penalty, fine or claim for damages or costs;
- (l) **"D&O Claimant"** means a Person asserting a D&O Claim;
- (m) **"Directors"** means all current and former directors (or their estates) of the Applicants, in such capacity, and **"Director"** means any one of them;
- (n) **"Deerfield Facility Agreement"** means the secured loan agreement between, *inter alia*, API and Deerfield dated as of June 8, 2015 (as amended or amended and restated from time to time, including on December 7, 2015);
- (o) **"Equity Claim"** has the meaning set forth in Section 2(1) of the CCAA;
- (p) **"Excluded Claims"** means:
 - a. Claims secured by any of the Charges (as that term is defined in the Initial Order or any subsequent or amended orders of the Court); and
 - b. Pre-filing secured debt in favour of Deerfield owed by the Applicants;
- (q) **"Filing Date"** means August 10, 2018;
- (r) **"Initial Order"** means the Initial Order under the CCAA dated August 10, 2018, as amended, restated or varied from time to time;
- (s) **"Instruction Letter"** the means the document substantially in the form attached hereto as Schedule "A" regarding the information sheet supplied to Claimants to assist them in completing the Proof of Claim;
- (t) **"Known Creditors"** means with respect to the Applicants, or the Directors or Officers or any of them:

- a. any Person that the books and records of the Applicants disclose is owed monies by the Applicants as of the Filing Date, where such monies remain unpaid in full or in part as of the date hereof;
 - b. any Person who commenced a legal proceeding against the Applicants or one or more Directors or Officers in respect of a Claim, which legal proceeding was commenced and served prior to the Filing Date; and
 - c. any other Person of whom the Applicants have knowledge as at the date of this Claims Procedure Order as being owed monies by the Applicants and for whom the Applicants have a current address or other contact information;
- (u) "**Meeting**" means a meeting of the creditors of the Applicants called for the purpose of considering and voting in respect of a Plan;
- (v) "**Monitor's Website**" means the webpages operated by the Monitor for the purpose of these CCAA Proceedings, which can be found at <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>;
- (w) "**Notice Letter**" means the document substantially in the form attached hereto as Schedule "B" regarding notification of the Claims Bar Date and how to submit a Proof of Claim;
- (x) "**Officers**" means all current and former officers (or their estates) of the Applicants, in such capacity, and "**Officer**" means any one of them;
- (y) "**Person**" means any individual, partnership, limited partnership, joint venture, trust, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other corporate, executive, legislative, judicial, regulatory or administrative entity howsoever designated or constituted, including, without limitation, any present or former shareholder, supplier, customer, employee, agent, client, contractor, lender, lessor, landlord, sublandlord, tenant, sub-tenant, licensor, licensee, partner or advisor;

(z) "**Plan**" means a plan of compromise or arrangement or plan of reorganization filed by or in respect of the Applicants;

(aa) "**Pre-filing Claim**" means any right or claim of any Person against any of the Applicants, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind of any of the Applicants in existence on the Filing Date, whether or not such right or claim is reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, by surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessment and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts that existed prior to the Filing Date and any other claims that would have been claims provable in bankruptcy had such Applicants become bankrupt on the Filing Date, including for greater certainty any Equity Claim; any costs, damages, or other obligations arising from litigation or legal proceedings; any unpaid employee wages or salaries; any inter-company debts or obligations owing to affiliated entities; and any claim against the Applicants for indemnification by any Director or Officer in respect of a D&O Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)), in each case, where such monies remain unpaid as of the date hereof (each, a "**Pre-filing Claim**" and collectively, the "**Pre-filing Claims**");

(bb) "**Proof of Claim**" means a Proof of Claim form in substantially the form attached hereto as Schedule "C";

(cc) "**Restructuring Claim**" means any existing or future right or claim by any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicants to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicants on or after the Filing Date of any contract, lease or other agreement or arrangement

whether written or oral (each, a "**Restructuring Claim**", and collectively, the "**Restructuring Claims**"); and

(dd) "**Restructuring Claims Bar Date**" means, with respect to a Restructuring Claim, the later of (i) 5:00 p.m. in Toronto, Ontario, on the Claims Bar Date for Pre-filing Claims and D&O Claims (which, for greater certainty, is November 29, 2018) and (ii) the date that is 10 Business Days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order.

INTERPRETATION

3. **THIS COURT ORDERS** that all references to time herein shall be measured in the Eastern Time Zone, specifically the City of Toronto, Ontario, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation".

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular and any gender includes the other gender(s).

GENERAL

6. **THIS COURT ORDERS** that the Claims Procedure and the forms attached as schedules to the Claims Procedure Order are hereby approved and, if applicable, arrangements shall be made for French language translations of such forms. Notwithstanding the foregoing, the Monitor may, from time to time, make non-substantive changes to the forms as the Monitor, in its sole discretion, may consider necessary or desirable.

7. **THIS COURT ORDERS** that, notwithstanding anything else in this Claims Procedure Order, Persons asserting a Claim in respect of the Deerfield Facility Agreement are not required to file a Proof of Claim, pending further order of the Court.

8. **THIS COURT ORDERS** that the Applicants and the Monitor are hereby authorized to (a) use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of the Claims Procedure Order as to completion, execution and submission of such forms; and (b) request any such further documentation from a Claimant that the Applicants or Monitor may reasonably require in order to enable them to determine the validity and amount of a Claim; provided, however, that neither the Monitor nor the Applicants shall have any discretion to accept any Claim submitted subsequent to the Claims Bar Date.

9. **THIS COURT ORDERS** that all Claims shall be denominated in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date.

10. **THIS COURT ORDERS** that amounts claimed in Assessments whether issued before or after the Filing Date shall be subject to this Claims Procedure Order and there shall be no presumption of validity or deeming of the amount due in respect of amounts claimed in any Assessment.

11. **THIS COURT ORDERS** that copies of all forms delivered hereunder, as applicable, shall be provided to and maintained by the Monitor.

ROLE OF THE MONITOR

12. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall assist the Applicants in the administration of the Claims Procedure provided for herein and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Procedure Order.

13. **THIS COURT ORDERS** that the Monitor shall (a) have all protections afforded to it by the CCAA, this Claims Procedure Order, the Initial Order, any other Orders of the Court in these proceedings and other applicable law in connection with its activities in respect of this Claims Procedure Order, including the stay of proceedings in its favour provided

pursuant to the Initial Order; and (b) incur no liability or obligation as a result of carrying out the provisions of this Claims Procedure Order, other than in respect of gross negligence or wilful misconduct.

14. **THIS COURT ORDERS** that the Applicants, the Officers, the Directors and their respective employees, agents and representatives and any other Person given notice of this Claims Procedure Order shall fully cooperate with the Monitor in the exercise of its powers and the discharge of its duties and obligations under this Claims Procedure Order.

CLAIMS PROCEDURE

Notice to Claimants

15. **THIS COURT ORDERS** that:

- (a) the Monitor shall cause to be published, for at least one Business Day, on or before October 17, 2018, the Notice Letter in The Globe and Mail (National Edition);
- (b) the Monitor shall post a copy of this Claims Procedure Order, the Applicants' Motion Record in respect of this Claims Procedure Order and the Claims Package on the Monitor's Website as soon as practicable and no later than 5:00 pm on the first Business Day following the date of this Order;
- (c) the Monitor shall, within three Business Days of the date of this Order, send a Claims Package to each Known Creditor by regular prepaid mail, facsimile or email to the address of such Known Creditor as set out in the books and records of the Applicants and to any Claimant or D&O Claimant who requests these documents; and
- (d) with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation, termination or breach of any lease, contract, or other agreement or obligation, on or after the date of this Claims Procedure Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package no later than five Business Days following the date of the restructuring, disclaimer, resiliation, termination or breach of any lease, contract, or other agreement or obligation.

16. **THIS COURT ORDERS** that upon request by a Claimant for a Claims Package or documents or information relating to the Claims Procedure prior to the Claims Bar Date, as applicable, the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

Deadline for Submitting a Claim or a D&O Claim

17. **THIS COURT ORDERS** that any Person that wishes to assert a Pre-filing Claim or a D&O Claim must submit a Proof of Claim evidencing such claim, accompanied with all relevant supporting documentation in respect of such Claim, and deliver that Proof of Claim to the Monitor via means permitted by this Order, so that it is actually received by the Monitor by no later than the Claims Bar Date.

18. **THIS COURT ORDERS** that any Person that wishes to assert a Restructuring Claim must submit a Proof of Claim evidencing such claim, accompanied with all relevant supporting documentation in respect of such Claim, and deliver that Proof of Claim to the Monitor via means permitted by this Order, so that it is actually received by the Monitor by no later than the Restructuring Claims Bar Date.

19. **THIS COURT ORDERS** that any Person that does not file a Proof of Claim with respect to a Claim, other than a D&O Claim, in the manner required by this Claims Procedure Order such that it is actually received by the Monitor on or before the Claims Bar Date or such other date as may be ordered by the Court, as applicable:

- (a) shall not be entitled to attend or vote at a Meeting in respect of such Claim;
- (b) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise;
- (c) shall not be entitled to any further notice in the CCAA Proceedings (unless it has otherwise sought to be included on the service list); and

(d) shall be and is hereby forever barred from making or enforcing such Claim against the Applicants, or the Directors or Officers or any of them, and such Claim shall be and is hereby extinguished without any further act or notification.

For greater certainty, this paragraph shall not apply to Excluded Claims and the rights of any Person (including the Applicants) with respect to Excluded Claims are expressly reserved.

20. **THIS COURT ORDERS** that any Person who does not file a Proof of Claim with respect to a D&O Claim in accordance with this Order by the Claims Bar Date shall be forever barred from asserting or enforcing such D&O Claim against the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such D&O Claim and such D&O Claim shall be extinguished without any further act or notification.

TRANSFER OF CLAIMS

21. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicants shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the relevant Applicant and the Monitor in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Claimant" or "D&O Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to receipt and acknowledgment by the Applicants and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any right of set-off to which the Applicants may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Applicants.

22. **THIS COURT ORDERS** that if a Claimant or D&O Claimant or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Applicants and the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Claimant or D&O Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Claimant or D&O Claimant in accordance with the provisions of this Order.

23. **THIS COURT ORDERS** that the Applicants and the Monitor are not under any obligation to give any notice hereunder to any Person holding a security interest, lien or charge in, or a pledge or assignment by way of security in, a Claim.

SERVICE AND NOTICES

24. **THIS COURT ORDERS** that the Applicants and the Monitor may, unless otherwise specified by this Claims Procedure Order, serve and deliver or cause to be served and delivered any letters, notices or other documents to Claimants, D&O Claimants or any other interested Person by forwarding copies by ordinary mail, courier, personal delivery, facsimile or email to such Persons or their counsel (including counsel of record in any ongoing litigation) at the physical or electronic address, as applicable, last shown on the books and records of the Applicants or set out in such Claimant's Proof of Claim or D&O Claimant's Proof of Claim.

25. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Claimant or D&O Claimant to the Monitor under this Claims Procedure Order shall be delivered in writing in substantially the form, if any, provided for in this

Claims Procedure Order, shall be deemed to be received on the date that the Monitor actually receives such notice or communication, and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile or email addressed to:

Richter Advisory Group Inc., Court Appointed CCAA Monitor
of the Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals
Canada Inc.

Attention: Aralez CCAA Claims
181 Bay Street, 33rd Floor
Bay Wellington Tower
Toronto, ON M5J 2T3

Email: aralez@richter.ca
Phone: 1-877-676-4390
Fax: 1-877-676-4383

26. **THIS COURT ORDERS** that service and delivery by the Monitor or the Applicants of notices or communications contemplated in this Order shall be deemed to have been received: (a) if sent by ordinary mail, on the third Business Day after mailing within Canada, and the fifth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile or email by 5:00 p.m. on a Business Day, on such Business Day, or if delivered after 5:00 p.m. or on a day other than on a Business Day, on the following Business Day.

27. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile or email in accordance with this Claims Procedure Order.

28. **THIS COURT ORDERS** that in the event that this Claims Procedure Order is amended by further Order of the Court, the Monitor shall post such further Order on the

Monitor's Website and such posting shall constitute adequate notice to all Persons of such amended claims procedure.

29. **THIS COURT ORDERS** that the forms of notice to be provided in accordance with this Claims Procedure Order shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Claims Bar Date on all Persons who may be entitled to receive notice and who may assert a Claim and no other notice or service need be given or made and no other documents or material need be sent to or served upon any Person in respect of this Claims Procedure Order.

DETERMINATION OF CLAIMS AND RESTRUCTURING CLAIMS

30. **THIS COURT ORDERS** that the applicable procedures for reviewing and determining Claims shall be established by further Order of the Court. Notice of such procedures shall be provided to the service list in this CCAA proceeding and any Person who has filed a Proof of Claim against the Applicants in accordance with the Claims Procedure.

MISCELLANEOUS

31. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claim Procedure Order, the solicitation by the Monitor or the Applicants of Claims and the filing by any Claimant or D&O Claimant of any Claims shall not, for that reason only, grant any Person any standing in these proceedings.

32. **THIS COURT ORDERS** that, notwithstanding the terms of this Claims Procedure Order, the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Claims Procedure Order or for advice and directions concerning the discharge of their respective powers and duties under this Claims Procedure Order or the interpretation or application of this Claims Procedure Order.

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative

bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'J. D. 7', written over a horizontal line. A large, sweeping flourish extends from the end of the signature downwards and to the right.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 11 2018

PER / PAR:

A handwritten signature in blue ink, appearing to be 'mch', written over the 'PER / PAR:' label.

SCHEDULE "A"

**IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.**

***THIS INFORMATION SHEET IS SUPPLIED IN ORDER TO ASSIST YOU
IN COMPLETING THE PROOF OF CLAIM***

PARAGRAPH 1 OF THE PROOF OF CLAIM AND GENERAL COMMENTS

- ☐ The Claimant must state the full and complete legal name of the Claimant.
- ☐ The Claimant must give the complete address (including the postal code) where all notices and correspondence are to be forwarded. In addition, the Claimant and/or the authorized representative must indicate their telephone number, their facsimile and their e-mail address.
- ☐ The Claimant must advise as to whether or not the claim was acquired by assignment and, if so, provide full particulars/support evidencing assignment and provide the full legal name of the original creditor(s).

PARAGRAPH 2 OF THE PROOF OF CLAIM

- ☐ If the individual completing the Proof of Claim is not themselves the Claimant, they must state their position or title.

PARAGRAPHS 3, 4 AND 5 OF THE PROOF OF CLAIM

- ☐ A detailed, complete statement of account must be attached to the Proof of Claim. Provide all particulars of the Claim and supporting documents, including the amount and description of transaction(s) or agreements(s) giving rise to the Claim. The amount on the statement of account must correspond with the amount claimed on the Proof of Claim. The detailed statement of account must show the date, the invoice number and the amount of all invoices or charges, together with the date, the number and the amount of all credits or payments. A statement of account is not complete if it begins with an amount brought forward. If the Claim cannot be evidenced through a statement of account, the Claimant must provide a sworn affidavit providing all particulars of the Claim, together with all supporting documents.
- ☐ With respect to priority claims under section 136 of the *Bankruptcy and Insolvency Act* (Canada), please attach a detailed explanation supporting any priority claim.
- ☐ With respect to secured claims, please provide a detailed, complete statement of any particulars of the security, including the date on which the security was given and the value at which you assess the security and attach a copy of the security documents.
- ☐ If the Claim is in a foreign currency, it shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate for August 10, 2018: CDN\$1.3113/USD\$1.00.

PARAGRAPH 6 OF THE PROOF OF CLAIM

- ☐ The Proof of Claim must be received by the Monitor before 5:00 p.m. in Toronto, Ontario, on the Claims Bar Date. For Pre-filing Claims and all D&O Claims, the Claims Bar Date is November 29, 2018. For Restructuring Claims, the Claims Bar Date

is the Restructuring Claims Bar Date, that being the later of (i) 5:00 p.m. in Toronto, Ontario, on the Claims Bar Date for Pre-filing Claims and D&O Claims (which is November 29, 2018) and (ii) the date that is 10 Business Days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order.

- ☐ Completed forms must be delivered to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or email to the address below:

Richter Advisory Group Inc., Court Appointed CCAA Monitor
of the Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals
Canada Inc.

Attention: Aralez CCAA Claims
181 Bay Street, 33rd Floor
Bay Wellington Tower
Toronto, ON M5J 2T3

Email: aralez@richter.ca
Phone: 1-877-676-4390
Fax: 1-877-676-4383

- ☐ Claimants are responsible for proving receipt of documents by the Monitor.

PARAGRAPH 7 OF THE PROOF OF CLAIM

- ☐ The Proof of Claim must be signed by the Claimant or its duly authorized representative and must also be signed by a witness.

SCHEDULE "B"

NOTICE TO CLAIMANTS FOR THE CLAIMS PROCEDURE OF:

**Aralez Pharmaceuticals Inc. and
Aralez Pharmaceuticals Canada Inc.
(the "Applicants") and/or
its former and current Directors or Officers (the "Directors")**

RE: NOTICE OF CLAIMS PROCEDURE, CLAIMS BAR DATE and RESTRUCTURING CLAIMS BAR DATE

NOTICE IS HEREBY GIVEN that this notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) made October 10, 2018 (the "**Claims Procedure Order**"). All capitalized terms herein shall have the meanings given to them in the Claims Procedure Order. The Court has authorized the Court-appointed Monitor of the Applicants, Richter Advisory Group Inc. (the "**Monitor**"), to assist the Applicants in conducting a claims procedure (the "**Claims Procedure**") with respect to claims against the Applicants and the Directors in accordance with the terms of the Claims Procedure Order.

PLEASE TAKE NOTICE that the claims procedure applies only to the Claims described in the Claims Procedure Order. Reference should be made to the Claims Procedure Order for the complete definition of "**Pre-filing Claim**", "**D&O Claim**" and "**Restructuring Claim**". The Claims Procedure Order and related materials and forms may be accessed from the Monitor's website at <http://insolvency.richter.ca/A/Aralez-Pharmaceuticals>.

If you believe that you have a Claim against the Applicants or the D&O of the Applicants, you must file a Proof of Claim with the Monitor by completing the Proof of Claim form, a copy of which can be obtained from the Monitor's website or by contacting 1-877-676-4390 (phone), 1-877-676-4383 (fax) or aralez@richter.ca. All Claimants must submit their Claim to the Monitor (at the address noted below) by the Claims Bar Date, as defined below.

THE CLAIMS BAR DATE with respect to a Pre-filing Claim or a D&O Claim is 5:00 p.m. in Toronto, Ontario, on November 29, 2018. The Claims Bar Date with respect to a Restructuring Claim is the Restructuring Claims Bar Date.

THE RESTRUCTURING CLAIMS BAR DATE is the later of (i) 5:00 p.m. in Toronto, Ontario, on November 29, 2018 and (ii) the date that is 10 Business Days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order.

PROOFS OF CLAIM MUST BE COMPLETED AND RECEIVED BY THE MONITOR BY THE CLAIMS BAR DATE OR THE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.

HOLDERS OF CLAIMS who do not file a Proof of Claim with respect to a Claim by the Claims Bar Date will not be entitled to vote at any Meeting regarding a Plan or participate in any distribution under a Plan or otherwise in respect of such Claims.

The Monitor can be contacted at the following address to request relevant documents or for any other notices or enquiries with respect to the Claims Procedure:

Richter Advisory Group Inc., Court Appointed CCAA Monitor
of the Aralez Pharmaceuticals Inc. and Aralez Pharmaceuticals
Canada Inc.

Attention: Aralez CCAA Claims
181 Bay Street, 33rd Floor
Bay Wellington Tower
Toronto, ON M5J 2T3

Email: aralez@richter.ca

Phone: 1-877-676-4390

Fax: 1-877-676-4383

DATED at Toronto, Ontario this 10th day of October, 2018.

SCHEDULE "C"

Court File No. CV-18-603054-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF
ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.
(the "Applicants")**

PROOF OF CLAIM

**Please read carefully the Claims Procedure Order and the schedules appended to the
Claims Procedure Order prior to completing this form.**

1. PARTICULARS OF THE CLAIMANT:

- A.** Full Legal Name of Claimant _____

(the "Claimant")
- B.** Full Mailing Address of the Claimant _____

- C.** Telephone Number _____
- D.** Email Address _____
- E.** Fax Number _____
- F.** Name of the Authorized Representative of the Claimant _____

- G.** Email address of the Authorized Representative _____

H. Have you acquired this claim by assignment? Yes: ☐ No: ☐

If yes, please attach documents evidencing assignment and provide the full legal name of the original creditor(s):

2. DECLARATION:

I,

(name of Claimant or Authorized Representative of the Claimant)

☐ am the Claimant of Aralez Pharmaceuticals Inc. and/or Aralez Pharmaceuticals Canada Inc.;

☐ have a claim against one or more Directors/Officers:

(please specify the individual Directors/Officers)

☐ am

of

(indicate the title or function)

(name of Claimant)

which is a Claimant of Aralez Pharmaceuticals Inc. and/or Aralez Pharmaceuticals Canada Inc.;

☐ have knowledge of all the circumstances connected with the Claim described herein.

3. PROOF OF CLAIM:

The Applicant(s) and/or the Directors/Officers of the Applicants were and still are indebted to the Claimant as follows:

(A restructuring claim against the Applicants means any existing or future right or claim by any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicants to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicants on or after the Filing Date (namely August 10, 2018) of any contract, lease or other agreement or arrangement whether written or oral.)

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada daily average exchange rate for August 10, 2018: CDN\$1.3113/USD\$1.00.)

i. **PRE-FILING CLAIM AGAINST THE APPLICANTS**

- a. ARALEZ PHARMACEUTICALS INC. CA \$ _____
b. ARALEZ PHARMACEUTICALS CANADA INC. CA \$ _____

ii. **RESTRUCTURING CLAIM AGAINST THE APPLICANTS:**

- a. ARALEZ PHARMACEUTICALS INC. CA \$ _____
b. ARALEZ PHARMACEUTICALS CANADA INC. CA \$ _____

iii. **DIRECTOR/OFFICER CLAIM AGAINST THE DIRECTORS/OFFICERS OF THE APPLICANTS:**

- a. ARALEZ PHARMACEUTICALS INC. CA \$ _____
b. ARALEZ PHARMACEUTICALS CANADA INC. CA \$ _____

iv. **TOTAL CLAIM (sum of (i), (ii) and (iii)):**

- a. ARALEZ PHARMACEUTICALS INC. CA \$ _____
b. ARALEZ PHARMACEUTICALS CANADA INC. CA \$ _____

4. **NATURE OF CLAIM:**

Applicant (circle as applicable):

Aralez Pharmaceuticals Inc. / Aralez Pharmaceuticals Canada Inc.

- (a) **UNSECURED CLAIM** in the amount of CA\$ _____ / _____.
In respect of this debt, I do not hold any security and:

- (i) ☐ Regarding the amount of CA\$ _____ / _____, I do not claim a right to priority.
- (ii) ☐ Regarding the amount of CA\$ _____ / _____, I claim a right to a priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or would claim such a priority if this Proof of Claim were being filed in accordance with the BIA.

Please attach a detailed explanation supporting any priority claim.

- (b) **SECURED CLAIM** in the amount of CA\$ _____ / _____.
In respect of this debt, I hold security valued at CA\$ _____ / _____, particulars of which are attached to this Proof of Claim form.

Please provide a detailed, complete statement of any particulars of the security, including the date on which the security was given and the value at which you assess the security and attach a copy of the security documents.

5. PARTICULARS OF CLAIM

The particulars of the undersigned's total Claim (including Pre-filing Claims, Restructuring Claims and D&O Claims) are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. If a Claim cannot be evidenced through a statement of account, the Claimant must provide a sworn affidavit attesting to the particulars of the Claim, together with all supporting documents. If a claim is made against any Directors or Officers, specify the applicable Directors or Officers and the legal basis for the Claim against them.)

6. FILING OF CLAIM

This Proof of Claim must be received by the Monitor on or before the Claims Bar Date. With respect to Pre-filing Claims and D&O Claims, the Claims Bar Date means 5:00 p.m. in Toronto, Ontario, on November 29, 2018. With respect to Restructuring Claims, the Claims Bar Date means the later of (i) 5:00 p.m. in Toronto, Ontario, on November 29, 2018 and (ii) the date that is 10 Business Days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order.

Failure to file your Proof of Claim as directed by the Claims Bar Date will result in your Claim being extinguished and barred and in you being prevented from making or enforcing a Claim against the Applicants or Director/Officer, as applicable.

All future correspondence will be directed to the email designated in the contact details unless you specifically request that hardcopies be provided.

☐ I require hardcopy correspondence.

DATED at _____ this ____ day of _____, 201__.

(Signature of Witness)

(Signature of Claimant or its
authorized representative)

(Please print name)

(Please print name)

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

Court File No: CV-18-603054-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF ARALEZ PHARMACEUTICALS INC. AND
ARALEZ PHARMACEUTICALS CANADA INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Kathryn Esaw LSO#: 58264F
Tel: (416) 869-6820
Email: kesaw@stikeman.com

Lawyers for the Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

JUSTICE MORAWETZ)

470
FRI
~~THURS~~SDAY, THE 15TH
DAY OF JUNE, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

(the "Applicants")

ORDER
(Claims Procedure)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (collectively, the "Timminco Entities") for an order approving a procedure for the solicitation, determination and resolution of claims against the Timminco Entities and the Directors and Officers of the Timminco Entities, in accordance with the terms of the Claims Procedure (as these terms are defined below), was heard June 14, 2012 at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Peter A.M. Kalins sworn June 7, 2012 and the Eleventh Report of FTI Consulting Canada Inc. in its capacity as the monitor of the Timminco Entities (the "Monitor"), and on hearing the submissions of counsel to the Timminco Entities, the Monitor, the Directors and Officers, Mercer Canada, the

Administrator of the Haley Pension Plan, BSI Non-Union Employee Pension Committee, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that, for purposes of this Order establishing a claims procedure for the Timminco Entities and their Directors and Officers (the “**Claims Procedure Order**”), in addition to terms defined elsewhere herein, the following terms shall have the following meanings:
 - (a) “**9:30 Appointment**” means a chambers appointment with a Justice of the Court which may be scheduled for 9:30 a.m. on any day on which the Court is sitting;
 - (b) “**Assessments**” means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
 - (c) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
 - (d) “**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
 - (e) “**CCAA Proceedings**” means the proceedings commenced by the Timminco Entities in the Court under Court File No. CV-12-9539-00CL;

(f) **"Claim"** means:

- (i) any right or claim of any Person against one or more of the Timminco Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Timminco Entities in existence prior to the Filing Date, and any accrued interest thereon and costs payable in respect thereof to the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts which existed prior to the Filing Date, and includes any claims that would have been claims provable in bankruptcy had the applicable Timminco Entity become bankrupt on the Filing Date (each, a **"Pre-filing Claim"**, and collectively, the **"Pre-filing Claims"**);
- (ii) any existing or future right or claim of any Person against one or more of the Timminco Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by one or more of the Timminco Entities to such Person arising on or after the Filing Date as a result of any disclaimer, rescission, termination or breach on or after the Filing Date of any contract, lease, permit, authorization or other agreement whether written or oral and whether such disclaimer, rescission, termination or breach took place or takes place before or after the date of this Claims Procedure Order, including any accrued interest thereon and costs payable in respect thereof to the date of such disclaimer, rescission, termination or breach, to the extent provided for in the contract, lease, permit, authorization or other agreement each, a **"Restructuring Claim"**, and collectively, the **"Restructuring Claims"**); and
- (iii) any existing or future right or claim of any Person against one or more of the Directors and/or Officers of a Timminco Entity which arose or arises as a result of such Director's or Officer's position, supervision, management or involvement as a Director or Officer of a Timminco Entity, whether such right, or the

circumstances giving rise to it arose before or after the Initial Order up to and including the date of this Claims Procedure Order and whether enforceable in any civil, administrative or criminal proceeding (each a “**D&O Claim**”, and collectively the “**D&O Claims**”), including any right:

- A. relating to any of the categories of obligations described in paragraph 9 of the Initial Order, whether accrued or falling due before or after the Initial Order, in respect of which a Director or Officer may be liable in his or her capacity as such;
- B. in respect of which a Director or Officer may be liable in his or her capacity as such concerning employee entitlements to wages or other debts for services rendered to the Timminco Entities or any one of them or for vacation pay, pension contributions, benefits or other amounts related to employment or pension plan rights or benefits or for taxes owing by the Timminco Entities or amounts which were required by law to be withheld by the Timminco Entities;
- C. in respect of which a Director or Officer may be liable in his or her capacity as such as a result of any act, omission, or breach of a duty; or
- D. that is or is related to a penalty, fine or claim for damages or costs;

provided however that in any case “**Claim**” shall not include an Excluded Claim;

- (g) “**Claimant**” means a Person asserting a Claim other than a D&O Claim;
- (h) “**Claims Bar Date**” means 5:00 p.m. (Toronto Time) on July 23, 2012;
- (i) “**Claims Officer**” means any individual designated by the Monitor or the Court pursuant to paragraph 34 of this Claims Procedure Order;
- (j) “**Claims Procedure**” means the procedures outlined in this Order, including the Schedules;
- (k) “**Claims Procedure Order**” means this Order;
- (l) “**Court**” means the Ontario Superior Court of Justice (Commercial List) in the City of Toronto, in the Province of Ontario;

- (m) **"D&O Claim"** has the meaning ascribed to that term in paragraph 2(f)(iii) of this Claims Procedure Order;
- (n) **"D&O Claimant"** means a Person asserting a D&O Claim;
- (o) **"D&O Counsel"** means Fraser Milner Casgrain LLP in its capacity as independent counsel to the Directors and Officers;
- (p) **"D&O Dispute Package"** means with respect to any D&O Claim, a copy of all information submitted via the FTI Claims Site or otherwise provided to, or delivered by, the Monitor in accordance with this Order with respect to the applicable D&O Claim;
- (q) **"Directors"** means the directors and former directors of each of the Timminco Entities and **"Director"** means any one of them;
- (r) **"Dispute Package"** means with respect to any Claim means with respect to any Claim, a copy of all information submitted via the FTI Claims Site or otherwise provided to, or delivered by, the Monitor in accordance with this Order with respect to the applicable Claim;
- (s) **"Excluded Claim"** means (i) claims secured by any of the "Charges", as defined in the Initial Order, provided that Excluded Claims shall not include D&O Claims, (ii) Claims secured by the KERP Charge, as defined in the Order of Justice Morawetz dated January 16, 2012, (iii) claims secured by the DIP Lender's Charge, as defined in the Order of Justice Morawetz dated February 7, 2012, (iv) any claim against a Director that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA; and (v) the secured claims of IQ;
- (t) **"Filing Date"** means January 3, 2012 as of 12:01 am EST;
- (u) **"FTI Claims Site"** means <https://cmsi.ftitools.com/timminco>;
- (v) **"Information Submission Form"** means a form substantially in accordance with the form attached hereto as Schedule "3";
- (w) **"Initial Order"** means the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012, as extended and amended from time to time;
- (x) **"Known Creditor"** means a Person who the Timminco Entities received actual notice may have a Claim against either of the Timminco Entities or that the books and records of the Timminco Entities show as owed an amount as at the Filing Date and/or an amount arising subsequent to the Filing Date that constitutes damages as a result of the

disclaimer, resiliation, termination or breach on or after the Filing Date of any contract, lease, permit, authorization or other agreement whether written or oral;

- (y) **"Monitor"** means FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Timminco Entities;
- (z) **"Monitor's Website"** means
<http://cfcanada.fticonsulting.com/timminco>;
- (aa) **"Notice of Claims Procedure and Claims Bar Date"** means the notice for publication, substantially in the form attached as Schedule "1";
- (bb) **"Notice of Restructuring Claims Bar Date"** means the notice for publication, substantially in the form attached as Schedule "2";
- (cc) **"Officers"** means the officers and former officers of each of the Timminco Entities and **"Officer"** means any one of them;
- (dd) **"Orders"** means any and all orders issued by the Court, including the Initial Order;
- (ee) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or similar entity, howsoever designated or constituted;
- (ff) **"Pre-filing Claim"** has the meaning ascribed to that term in paragraph 2(f)(i);
- (gg) **"Proven Claim"** means the amount of a Claim and its classification as a secured Claim or an unsecured Claim, as finally determined in accordance with this Claims Procedure;
- (hh) **"Restructuring Claim"** has the meaning ascribed to that term in paragraph 2(f)(ii) of this Claims Procedure Order; and
- (ii) **"Restructuring Claims Bar Date"** means 5:00 p.m. on a date to be determined by the Timminco Entities, in consultation with the Monitor;
- (jj) **"Supporting Documentation Submission Form"** means a form substantially in accordance with the form attached hereto as Schedule "4".

INTERPRETATION

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any references to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day, unless otherwise indicated herein.
4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.
5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that the Monitor, in consultation with the Timminco Entities, is hereby authorized to (a) use reasonable discretion as to the adequacy of compliance with respect to the manner in which the fields of the FTI Claims Site or any forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Claims Procedure Order as to the completion and execution of such data fields and forms, and (b) request such further documentation from a Claimant or D&O Claimant that the Timminco Entities and the Monitor may reasonably require in order to enable them to determine the validity of a Claim. Notwithstanding anything contained herein, neither the Monitor nor the Timminco Entities shall have any discretion to accept any Claim submitted subsequent to the Claims Bar Date or the Restructuring Claims Bar Date.
7. **THIS COURT ORDERS** that any Claims denominated in a foreign currency shall be converted to Canadian dollars for the purposes of this Claims

Procedure on the basis of the average Bank of Canada Canadian dollar noon exchange rate at the close of business on the Filing Date.

8. **THIS COURT ORDERS** that interest and penalties that would otherwise accrue after the Filing Date shall not be included in any unsecured Claim. Amounts claimed in Assessments whether issued before or after the Filing Date shall be subject to this Claims Procedure Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

MONITOR'S ROLE

9. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Orders, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Procedure Order.
10. The Monitor, in carrying out the terms of the Claims Procedure Order, shall have all of the protections given it by the CCAA and the Initial Order or as an officer of this Court, including the stay of proceedings in its favour, shall incur no liability or obligation as a result of the carrying out of its obligations under this Claims Procedure Order, shall be entitled to rely on the books and records of the Timminco Entities, and any information provided by the Timminco Entities or a Claimant, and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records, or information.

CLAIMS PROCEDURE

Notice of Claims Bar Date – Pre-filing Claims and D&O Claims

11. **THIS COURT ORDERS** that:
 - (a) The Monitor shall cause the Notice of Claims Procedure and Claims Bar Date to be placed in each of the Globe and Mail (national edition), the

National Post (national edition) and *La Presse* as soon as practicable after the date of this order; and

- (b) The Monitor shall cause the Notice of Claims Procedure and Claims Bar Date to be posted on the Monitor's Website as soon as practicable after the date of this Order and cause it to remain posted thereon until its discharge as Monitor of the Timminco Entities.

Notice of Restructuring Claims Bar Date - Restructuring Claims

12. THIS COURT ORDERS that:

- (a) The Monitor shall cause the Notice of Restructuring Claims Bar Date to be placed in each of the Globe and Mail (national edition), the National Post (national edition) and *La Presse* at least 28 days before the Restructuring Claims Bar Date; and
- (b) The Monitor shall cause the Notice of Restructuring Claims Bar Date to be posted on the Monitor's Website at least 28 days before the Restructuring Claims Bar Date and cause it to remain posted thereon until its discharge as Monitor of the Timminco Entities.

13. THIS COURT ORDERS that each of the Timminco Entities shall provide a list of Known Creditors to the Monitor by no later than 5:00 pm on the first Business Day following the date of this Order.

14. THIS COURT ORDERS that the Monitor shall as soon as practicable after the date of this Order and receipt of the list of Known Creditors from the Timminco Entities send a Notice of Claims Procedure and Claims Bar Date and a copy of this Claims Procedure Order to each Known Creditor by regular prepaid mail or electronic mail to the address of such Known Creditor as set out in the books and records of the Timminco Entities and to any Claimant or D&O Claimant who requests these documents.

15. THIS COURT ORDERS that the Timminco Entities shall not disclaim, resiliate, terminate or breach any contract, lease, permit, authorization or other agreement, whether written or oral, after the Notice of Restructuring Claims

Bar Date has been published in the manner set out in paragraph 12 of this Order.

Deadline for Submitting a Claim or a D&O Claim

16. **THIS COURT ORDERS** that any Person that wishes to assert a Pre-filing Claim or a D&O Claim must submit proof of such Claim, together with all relevant supporting documentation in respect of such Claim, via the FTI Claims Site or as otherwise permitted by this Order, on or before the Claims Bar Date.
17. **THIS COURT ORDERS** that any Person that wishes to assert a Restructuring Claim must file proof of such Claim, together with all relevant supporting documentation in respect of such Claim, via the FTI Claims Site or as otherwise permitted by this Order, on or before the Restructuring Claims Bar Date.
18. **THIS COURT ORDERS** that any Person who does not file proof of a Claim in accordance with this Order with the Monitor by the Claims Bar Date or such other date as may be ordered by the Court, or the Restructuring Claims Bar Date or such other date as may be ordered by the Court, as applicable, shall be forever barred from asserting or enforcing such Claim against the Timminco Entities and the Timminco Entities shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Timminco Entities.
19. **THIS COURT ORDERS** that any Person who does not file a proof of a D&O Claim in accordance with this Order by the Claims Bar Date or such other later date as may be ordered by the Court shall be forever barred from asserting or enforcing such D&O Claim against the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of

such D&O Claim and such D&O Claim shall be extinguished without any further act or notification.

ADJUDICATION OF CLAIMS

Adjudication of Pre-filing Claims and Restructuring Claims

20. **THIS COURT ORDERS** that the Monitor, with the assistance of the Timminco Entities, shall review the information filed by each Claimant with respect to a Pre-filing Claim or a Restructuring Claim that is received by the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, and may accept, revise or disallow such Pre-filing Claim or Restructuring Claim. At any time, the Timminco Entities or the Monitor may request additional information from the Claimant with respect to any Pre-filing Claim or Restructuring Claim.
21. **THIS COURT ORDERS** that the Monitor, with the assistance of the Timminco Entities, may attempt to consensually resolve the classification and amount of any Pre-filing Claim or Restructuring Claim with the Claimant prior to accepting, revising or disallowing such Pre-filing Claim or Restructuring Claim.
22. **THIS COURT ORDERS** that if the Monitor, with the assistance of the Timminco Entities, determines to revise or disallow a Pre-filing Claim or Restructuring Claim, the Monitor shall notify the Claimant of the revision or disallowance via email through the FTI Claims Site or as otherwise provided in this Order.
23. **THIS COURT ORDERS** that if a Claimant disputes the classification or amount of its Pre-filing Claim or Restructuring Claim as set forth by the Monitor via the FTI Claims Site or as otherwise provided by this Order, then such Claimant may dispute such revision or disallowance via the FTI Claims

Site or as otherwise provided in this Order, so that it is received by no later than 5:00 p.m. (Toronto time) on the date which is fourteen days after the date of the notification of such revision or disallowance or such later date as the Court may order.

24. **THIS COURT ORDERS** that any Claimant who fails to dispute a revision or disallowance by the deadline and in the manner set forth in paragraph 23 shall be deemed to accept the classification and amount of its Pre-filing Claim or Restructuring Claim as set out in the revision or disallowance and the Pre-filing Claim or Restructuring Claim as set out in the revision or disallowance shall constitute a Proven Claim.
25. **THIS COURT ORDERS** that if a Claimant disputes a revision or disallowance of its Pre-filing Claim or Restructuring Claim, the Monitor, in consultation with the Timminco Entities, may:
 - (a) attempt to consensually resolve the classification and the amount of the Pre-filing Claim or the Restructuring Claim with the Claimant;
 - (b) deliver a Dispute Package to the Claims Officer; and/or
 - (c) schedule a 9:30 Appointment with the Court for the purpose of scheduling a motion to resolve the Pre-filing Claim or Restructuring Claim and at such motion the Claimant shall be deemed to be the applicant and the Timminco Entities shall be deemed to be the respondent. The Monitor may participate in such proceedings as it deems appropriate, which may include providing information regarding the disallowance or revision of the Pre-filing Claim or the Restructuring Claim to the parties and the Court.
26. **THIS COURT ORDERS THAT**, notwithstanding anything contained herein, in respect of any Pre-filing Claim or Restructuring Claim filed by or on behalf of one of the Timminco Entities as against the other, or by any other affiliate or party related to either of the Timminco Entities, including, without limitation, Quebec Silicon Limited Partnership, Quebec Silicon General Partner Inc., AMG Advanced Metallurgical Group N.V. and all of its subsidiaries (the

“Related Party Claims”), following the adjudication of all Related Party Claims in accordance with paragraphs 20-23 and 25(a) of this Claims Procedure Order, the Monitor shall prepare a report reporting on the adjudication of the Related Party Claims and the results of the adjudication process (the **“Related Party Claims Report”**). The Monitor shall serve the Related Party Claims Report on the service list and post it on the Monitor’s Website. Any party who intends to object to any conclusions of the Monitor as set out in the Related Party Claims Report shall, within 14 days of the date of service of the Related Party Claims Report (the **“Objection Date”**), deliver to the Monitor a letter setting out in detail the grounds for its objection. If no Objection is delivered to the Monitor by the Objection Date, the Monitor shall complete the adjudication of the Related Party Claims in accordance with paragraphs 25(b) and (c) and 35-40 of this Claims Procedure Order and the result of that process shall be final and binding subject to any appeal rights of any party asserting or defending the relevant Related Party Claim and no other party may object to, appeal or participate in the adjudication process of the Related Party Claims. If an Objection is delivered to the Monitor by the Objection Date, the Monitor shall schedule a 9:30 Appointment as soon as practicable thereafter for the purposes of seeking further directions from the Court in respect of the process for the further adjudication of the Related Party Claims and Objections.

27. **THIS COURT ORDERS THAT**, notwithstanding any other provision hereof, with respect to any Pre-filing or Restructuring Claim arising from a cause of action for which the applicable Timminco Entity is fully insured, the Monitor, with the consent of the Timminco Entities, may agree with the applicable insurer that such Pre-filing or Restructuring Claim shall be adjudicated by way of an alternative process and not adjudicated in accordance with the procedure set out in this Order. In such case, the Timminco Entities shall

notify the Claimant of the decision to exclude the adjudication of the Claim from the procedure set out in this Order.

Adjudication of D&O Claims

28. **THIS COURT ORDERS** that the Monitor, in consultation with the Timminco Entities and the D&O Counsel, shall review the information filed by each D&O Claimant with respect to each D&O Claim that is received by the Claims Bar Date and, with the consent of the applicable Directors or Officers, may accept, revise or disallow the D&O Claim. At any time, the Timminco Entities, the Monitor or the D&O Counsel may request additional information from the D&O Claimant with respect to any D&O Claim.
29. **THIS COURT ORDERS** that the Monitor, with the consent of the applicable Directors or Officers and in consultation with the Timminco Entities, may attempt to consensually resolve the classification and amount of any D&O Claim with the D&O Claimant prior to the Timminco Entities accepting, revising or disallowing such D&O Claim.
30. **THIS COURT ORDERS** that if the Monitor, with the consent of the applicable Directors or Officers and in consultation with the Timminco Entities, determines to revise or disallow a D&O Claim, the Monitor shall notify the D&O Claimant of the revision or disallowance via email through the FTI Claims Site or as otherwise provided in this Order.
31. **THIS COURT ORDERS** that if a D&O Claimant disputes the classification or amount of its D&O Claim as set forth by the Monitor via the FTI Claims Site or as otherwise provided by this Order, then such Claimant may dispute such revision or disallowance via the FTI Claims Site or as otherwise provided in this Order, so that it is received by no later than 5:00 p.m. (Toronto time) on the day which is fourteen days after the date of notification of such revision or disallowance or such later date as the Court may order.

32. **THIS COURT ORDERS** that any D&O Claimant who fails to dispute a revision or disallowance by the deadline and in the manner set forth in paragraph 31 shall be deemed to accept the classification and amount of its D&O Claim as set out in the revision or disallowance and the D&O Claim as set out in the revision or disallowance shall constitute a Proven Claim.
33. **THIS COURT ORDERS** that if a D&O Claimant disputes a revision or disallowance of its D&O Claim, the Monitor, in consultation with the Timminco Entities and with the consent of the applicable Directors or Officers, may:
- (a) attempt to consensually resolve the classification and the amount of the Claim with the D&O Claimant;
 - (b) deliver a D&O Dispute Package to the Claims Officer; and/or
 - (c) schedule a 9:30 Appointment with the Court for the purpose of scheduling a motion to resolve the D&O Claim and at such motion the D&O Claimant shall be deemed to be the applicant and the applicable Directors or Officers shall be deemed to be the respondent. The Monitor may participate in such proceedings as it deems appropriate, which may include providing information regarding the disallowance or revision of the D&O Claim to the parties and the Court.
34. **THIS COURT ORDERS THAT**, notwithstanding any other provision hereof, the Monitor may agree with all of the relevant Directors and Officers that a D&O Claim shall be adjudicated by way of an alternative process and not adjudicated in accordance with the procedure set out in this Order. In such case, the Monitor shall notify the D&O Claimant of the decision to exclude the adjudication of the D&O Claim from the procedure set out in this Order.

CLAIMS OFFICERS

35. **THIS COURT ORDERS** that the Monitor, with the consent of the Timminco Entities and D&O Counsel, where applicable, or the Court may appoint Claims Officers for the purposes of the Claims Procedure described herein.

36. **THIS COURT ORDERS** that if a Claim is referred to a Claims Officer for resolution, the Claims Officer shall determine the validity, amount and classification of disputed Claims in accordance with this Claims Procedure Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.
37. **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, the Monitor may at any time, in consultation with the Timminco Entities, refer a Claim to a Claims Officer or to the Court for resolution, where in the Monitor's view such a referral is preferable or necessary for the resolution of the Claim, provided that in respect of a D&O Claim, the Monitor shall also obtain the consent to such referral from the relevant Directors or Officers.
38. **THIS COURT ORDERS** that upon receipt of a Dispute Package or a D&O Dispute Package or referral for resolution pursuant to paragraph 37 hereof, the Claims Officer shall schedule and conduct a hearing to determine the validity, amount and/or classification of the Claim and shall as soon as practicable thereafter notify the Timminco Entities, the Monitor, the D&O Counsel where applicable, and the Claimant or the D&O Claimant of his or her determination.
39. **THIS COURT ORDERS** that the Timminco Entities, the Monitor, the Claimant, or, in the case of a D&O Claim, the D&O Claimant, or any relevant Directors or Officers, may appeal the Claims Officer's determination to this Court within ten days of the date on which notification is deemed to have been received of the Claims Officer's determination of such Claim by serving

upon the Timminco Entities, the Monitor, the Claimant or, in the case of a D&O Claim, the D&O Claimant, or any relevant Directors or Officers, as applicable, and filing with this Court a notice of motion returnable on a date to be fixed by this Court. If an appeal is not filed within such ten day period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding and shall be a Proven Claim or Proven D&O Claim, as applicable.

40. **THIS COURT ORDERS** that the Timminco Entities shall pay the reasonable professional fees and disbursements of each Claims Officer in connection with such appointment as Claims Officer on presentation and acceptance of invoices from time to time. Each Claims Officer shall be entitled to a reasonable retainer against his or her fees and disbursements which shall be paid by the Timminco Entities upon request. Any dispute as to fees and disbursements shall be resolved by the Court.

SET-OFF

41. **THIS COURT ORDERS** that the Timminco Entities may set off (whether by way of legal, equitable or contractual set-off) against the Claims of any Claimant, any claims of any nature whatsoever that any of the Timminco Entities may have against such Claimant arising prior to the Filing Date, provided that it satisfies the requirements for legal, equitable or contractual set-off as may be determined by the Court if there is any dispute between the Timminco Entities and the applicable Claimant, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Timminco Entities of any such claim that the Timminco Entities may have against such Claimant.
42. **THIS COURT ORDERS** that the Timminco Entities may set off (whether by way of legal, equitable or contractual set-off) against payments or other

distributions to be made to any Claimant, any claims of any nature whatsoever that any of the Timminco Entities may have against such Claimant arising after the Filing Date, provided that it satisfies the requirements for legal, equitable or contractual set-off as may be determined by the Court if there is any dispute between the Timminco Entities and the applicable Claimant, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Timminco Entities of any such claim that the Timminco Entities may have against such Claimant.

NOTICE OF TRANSFEREES

43. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Timminco Entities shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the relevant Timminco Entity and the Monitor in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Claimant" or "D&O Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to receipt and acknowledgment by the Timminco Entity and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any right of set-off to which the Timminco Entities may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Timminco Entities.

44. **THIS COURT ORDERS** that if a Claimant or D&O Claimant or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Timminco Entities and the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Claimant or D&O Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Claimant or D&O Claimant in accordance with the provisions of this Order.
45. **THIS COURT ORDERS** that the Timminco Entities and the Monitor are not under any obligation to give notice to any Person holding a security interest, lien or charge in, or a pledge or assignment by way of security in, a Claim, as applicable in respect of any Claim.

**SUBMISSION OF INFORMATION AND SUPPORTING DOCUMENTATION
BY PAPER COPY**

46. **THIS COURT ORDERS** that any Claimant or D&O Claimant that is unwilling or unable to submit a Claim, information or dispute a notice of revision or disallowance via the FTI Claims Site may instead submit such information by paper copy to the Monitor using the Information Submission Form.

47. **THIS COURT ORDERS** that that the Monitor is authorized to input to the FTI Claims Site the information submitted using the Information Submission Form and that the Monitor shall have no liability for the information submitted other than as a result of gross negligence or wilful misconduct.
48. **THIS COURT ORDERS** that any Claimant or D&O Claimant that is unwilling or unable to submit supporting documentation via the FTI Claims Site may instead submit such supporting documentation by paper copy to the Monitor using the Supporting Documentation Submission Form.
49. **THIS COURT ORDERS** that the Monitor is authorized to upload to the FTI Claims Site the supporting documentation submitted using the Supporting Documentation Submission Form and that the Monitor shall have no liability for the information submitted other than as a result of gross negligence or wilful misconduct.
50. **THIS COURT ORDERS** that the Monitor is authorized to deliver any notification hereunder by paper copy.

SERVICE AND NOTICES

51. **THIS COURT ORDERS** any notice, notification or communication required to be delivered by the Monitor pursuant to this Order may be delivered via the FTI Claims Site or may be delivered by facsimile, email or electronic transmission, personal delivery, courier or prepaid mail to the address or number contained in the books and records of the Timminco Entities or as included in the information submitted by a Claimant in respect of its Claim.
52. **THIS COURT ORDERS** that any notice, notification, dispute, or communication required to be delivered by a Claimant pursuant to the terms of this Order must be delivered via the FTI Claims Site unless otherwise provided in this Order at paragraphs 46-50 above.

53. **THIS COURT ORDERS** that any paper copy of any notice, notification or communication required to be provided or delivered to the Monitor under this Claims Procedure Order will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc.
In its capacity as Monitor of Timminco Limited and Bécancour Silicon Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Toni Vanderlaan
Telephone: (416) 649-8125
Facsimile: (416) 649-8101
Email: timminco@fticonsulting.com

54. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Claims Procedure Order.
55. **THIS COURT ORDERS** that any notice delivered to a Claimant or D&O Claimant via email through the FTI Claims Site or by facsimile transmission shall be deemed to have been received by such Claimant or D&O Claimant on the date and at the time that it was sent, as evidenced by the time and date stamp on the email, if sent prior to 5:00 p.m. (local time) on a Business Day, or

if sent after 5:00 p.m. on a Business Day or on a non-Business Day, on the next following Business Day.

56. **THIS COURT ORDERS** that any notice delivered to a Claimant or D&O Claimant by mail, personal delivery or courier shall be deemed to have been received by such Claimant or D&O Claimant on the third Business Day after the notice was mailed, personally delivered or couriered.
57. **THIS COURT ORDERS** that in the event that this Claims Procedure Order is amended by further Order of the Court, the Timminco Entities or the Monitor may post such further Order on the Monitor's website and send an email to the service list created in the CCAA Proceedings and any Known Creditors affected by such amendment and such posting and mailing shall constitute adequate notice to Claimants and D&O Claimants of such amended claims procedure.

MISCELLANEOUS

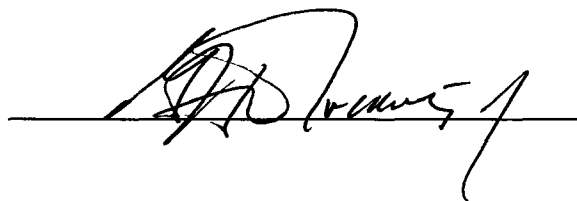
58. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claim Procedure Order, the solicitation by the Monitor or the Timminco Entities of Claims and the filing by any Claimant or D&O Claimant of any Claims shall not, for that reason only, grant any person any standing in these proceedings.
59. **THIS COURT ORDERS** that the forms of notice to be provided in accordance with this Claims Procedure Order shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Claims Bar Date and the Restructuring Claims Bar Date on all Persons who may be entitled to receive notice and who may assert a Claim and no other notice or service need be given or made and no other documents or material need be sent to or served upon any Person in respect of this Claims Procedure Order.

60. **THIS COURT ORDERS** that notwithstanding the terms of this Claims Procedure Order, the Monitor and the Timminco Entities may apply to this Court from time to time for directions from this Court with respect to the Claims Procedure Order, or for such further Order or Orders as either of them may consider necessary or desirable to amend, supplement or clarify the terms of this Claims Procedure Order.
61. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial regulatory body of the United States and the states or other subdivisions of the United States and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Claims Procedure Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



JUN 15 2012



Schedule "1"

NOTICE OF CLAIMS PROCEDURE AND CLAIMS BAR DATE

**IN RESPECT OF CLAIMS AGAINST
TIMMINCO LIMITED AND BÉCANCOURT SILICON INC.**

(collectively, the "Applicants")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C.1985, c. C-36, as amended

**NOTICE OF CLAIMS PROCEDURE AND CLAIMS BAR DATE FOR THE
APPLICANTS PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT
ACT (THE "CCAA")**

PLEASE TAKE NOTICE that this notice is being published pursuant to an order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice Commercial List dated June 15, 2012 (the "Claims Procedure Order").

Any person who believes that it has a Claim against an Applicant should go to the FTI Claims Site <https://cmsi.ftitools.com/timminco> to create a user account and submit their Claim online. A Claim is defined as a Prefiling Claim, a D&O Claim or a Restructuring Claim but does not include Excluded Claims. An Excluded Claim includes, among other things, the claim of any Person which is secured by a Charge, claim determined to be unaffected as arising from a cause of action for which the applicable Applicant is fully insured and any D&O Claim determined to be unaffected by the Claims Procedure Order. Please see the Claims Procedure Order for a detailed definition of Claims and Excluded Claims.

Creditors who are unable or unwilling to use the FTI Claims Site may request an **Information Submission Form** and a **Supporting Documentation Submission Form** from the Monitor by contacting (416) 649-8125 or timminco@fticonsulting.com. All creditors must submit their Claim to the Applicants c/o FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Applicants via the FTI Claims Site or the Information Submission Form by no later than by 5:00 p.m. (Eastern

Standard Time) on **July 23, 2012** or such other date as ordered by the Court (the "Claims Bar Date").

CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

Creditors will find a link to the FTI Claims Site and a copy of the Information Submission Form and the Supporting Documentation Submission Form on the Monitor's Website at <http://cfcanada.fticonsulting.com/timminco> or they may contact the Applicants, c/o FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Applicants (**Attention: Toni Vanderlaan**, Telephone: (416) 649-8125 to obtain the Information Submission Form and the Supporting Documentation Submission Form.

Creditors should file their Claim with the Monitor using the FTI Claims Site. The Information Submission Form and Supporting Documentation Submission Form may be submitted by mail, fax, email, courier or hand delivery. Creditors must ensure that the Claim is actually received by the Claims Bar Date at the address below.

Address of Monitor:

TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.
c/o FTI Consulting Canada,
79 Wellington St. W.
Suite 2010 Post Office Box 104
Toronto, Ontario M5K 1G8

Attention: Ms Toni Vanderlaan

Telephone: (416) 649 8125
Facsimile: (416) 649-8101
E-mail: timminco@fticonsulting.com

Dated at Toronto this [xx]th day of June, 2012.

Schedule "2"

NOTICE OF RESTRUCTURING CLAIMS BAR DATE

**IN RESPECT OF CLAIMS AGAINST
TIMMINCO LIMITED AND BÉCANCOURT SILICON INC.**

(collectively, the "Applicants")

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,

R.S.C.1985, c. C-36, as amended

**NOTICE OF RESTRUCTURING CLAIMS BAR DATE FOR THE APPLICANTS
PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (THE
"CCAA")**

PLEASE TAKE NOTICE that this notice is being published pursuant to an order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice Commercial List dated June 15, 2012 (the "Claims Procedure Order").

Any person who believes that it has a Restructuring Claim against an Applicant should go to the FTI Claims Site <https://cmsi.ftitools.com/timminco> to create a user account and submit their Claim online.

Creditors who are unable or unwilling to use the FTI Claims Site may request an **Information Submission Form and a Supporting Documentation Submission Form** from the Monitor by contacting (416) 649-8125 or timminco@fticonsulting.com. All creditors must submit their Restructuring Claim to the Applicants c/o FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Applicants via the FTI Claims Site or the Information Submission Form by no later than by ●, 2012 or such other date as ordered by the Court (the "Restructuring Claims Bar Date").

RESTRUCTURING CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

Creditors will find a link to the FTI Claims Site and a copy of the Information Submission Form and the Supporting Documentation Submission Form on the Monitor's Website at <http://cfcanada.fticonsulting.com/timminco> or they may contact the Applicants, c/o FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Applicants (**Attention: Toni Vanderlaan**, Telephone: (416) 649-8125 to obtain the Information Submission Form and the Supporting Documentation Submission Form.

Creditors should file their Restructuring Claim with the Monitor using the FTI Claims Site. The Information Submission Form and Supporting Documentation Submission Form may be submitted by mail, fax, email, courier or hand delivery. Creditors must ensure that the Claim is actually received by the Restructuring Claims Bar Date at the address below.

Address of Monitor:

TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.
c/o FTI Consulting Canada,
79 Wellington St. W.
Suite 2010 Post Office Box 104
Toronto, Ontario M5K 1G8

Attention: Ms Toni Vanderlaan

Telephone: (416) 649-8125
Facsimile: (416) 649-8101
E-mail: timminco@fticonsulting.com

Dated at Toronto this [xx]th day of June, 2012.

Schedule "3"

Information Submission Form

Add Contact

Name

Attention

Address 1

Address 2

City

State/Province

ZIP/Postal Code

Country

Phone

Fax

Email

Type

Notice

☐ Assignee ☐ Lawyer ☐ CC only ☐ Claimant

☐ None ☐ Notice only ☐ Primary contact

Add Contact

Name

Attention

Address 1

Address 2

City

State/Province

ZIP/Postal Code

Country

Phone

Fax

Email

Type

Notice

☐ Assignee ☐ Lawyer ☐ CC only ☐ Claimant

☐ None ☐ Notice only ☐ Primary contact

Add Claim

Claim Amount

Currency

Debtor Company Name

Claim Type

Classification

Category 1

Category 2

☐ Prefiling ☐ Restructuring ☐ D&O Claim

☐ Secured ☐ Unsecured

☐ Guarantee

☐ Deficiency ☐ Pension ☐ Trade ☐ Landlord

Security Type

☐ Security Agreement ☐ Statutory Lien

Comments - Please add any comments that may assist us in reviewing your claim.

Add Claim

Claim Amount

Currency

Debtor Company Name

Claim Type

☐ Prefiling ☐ Restructuring ☐ D&O Claim

Classification

☐ Secured ☐ Unsecured

Category 1

☐ Guarantee

Category 2

☐ Deficiency ☐ Pension ☐ Trade ☐ Landlord

Security Type

☐ Security Agreement ☐ Statutory Lien

Comments - Please add any comments that may assist us in reviewing your claim.

Future correspondence

All future correspondence will be directed to the email designated in the contact details unless you specifically request that hardcopies be provided.

☐ Hardcopy of correspondence required

Acknowledgement

Signature

Date

Notice of Dispute

Original Claim Amount

Revised Claim per

Monitor

Revised Claim per

Claimant

Currency

Debtor Company Name

Claim Type

☐ Prefiling ☐ Restructuring ☐ D&O Claim

Classification

☐ Secured ☐ Unsecured

Category 1

☐ Guarantee

Category 2

☐ Deficiency ☐ Pension ☐ Trade ☐ Landlord

Security Type

☐ Security Agreement ☐ Statutory Lien

Reason for Dispute - Please add any comments that may assist us in reviewing your claim.

Notice of Dispute

Original Claim Amount

Revised Claim per

Monitor

Revised Claim per

Claimant

Currency

Debtor Company Name

Claim Type

☐ Prefiling ☐ Restructuring ☐ D&O Claim

Classification

☐ Secured ☐ Unsecured

Category 1

☐ Guarantee

Category 2

☐ Deficiency ☐ Pension ☐ Trade ☐ Landlord

Security Type

☐ Security Agreement ☐ Statutory Lien

Reason for Dispute - Please add any comments that may assist us in reviewing your claim.

Acknowledgement

Signature

Date

Schedule "4"

Supporting Documentation Submission Form

Contact Details

Name _____
Attention _____
Address 1 _____
Address 2 _____
City _____
State/Province _____
ZIP/Postal Code _____
Country _____
Phone _____
Fax _____
Email _____

Supporting Documentation

Please attach hard copies of your supporting documentation to this form.

Comments _____

Future correspondence

All future correspondence will be directed to the email designated in the contact details unless you specifically request that hardcopies be provided.

☐ Hardcopy of correspondence required

Acknowledgement

Signature _____
Date _____

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

Court File No: CV-12-9539-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West

199 Bay Street

Toronto, Canada M5L 1B9

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Tel: (416) 869-5236

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Tel: (416) 869-5230

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Tel: (416) 869-6820

Fax: (416) 947-0866

Lawyers for the Applicants

CITATION: Laurentian University of Sudbury, 2021 ONSC 3885
COURT FILE NO.: CV-21-00656040-00CL
DATE: 2021-05-31

SUPERIOR COURT OF JUSTICE - ONTARIO

**RE: IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LAURENTIAN UNIVERSITY OF
SUDBURY**

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor
Ernst & Young Inc

Vern W. DaRe, for the DIP Lender

Aryo Shalviri and Jules Monteyne, for the Royal Bank of Canada

Stuart Brotman and Dylan Chochla, for the Toronto Dominion Bank

George Benchetrit, for the Bank of Montreal

Peter J. Osborne, for the Board of Governors

Joseph Bellissimo and Natalie Levine, for Huntington University

Andrew Hatnay, Demetrios Yiokaris, for Thorneloe University

Alex MacFarlane and Lydia Wakulowsky, for Northern Ontario School of Medicine

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General
Association

Guneev Bhinder, for the Canada Foundation for Innovation

André Claude, for the University of Sudbury

Tracey Henry, for Laurentian University Staff Union (LUSU)

Charlie Sinclair, Counsel for Laurentian University Faculty Association (LUFA)

HEARD: May 28, 2021

ENDORSEMENT

[1] Laurentian University (“Laurentian” or the “Applicant”) brings this motion seeking the following two orders:

- (a) an Order appointing Mr. Louis (Lou) Pagnutti as Chief Redevelopment Officer (“CRO”) of Laurentian and approving the terms of his engagement; and
- (b) an Order approving the claims process proposed by the Applicant and the Monitor to identify the universe of potential claims that may exist against the Applicant, in order to allow the Applicant and the Monitor to address such claims in contemplation and formulation of a Plan of Compromise or Arrangement (the “Plan”).

[2] The Applicant also requests an amendment to para. 36 of the Amended and Restated Initial Order to increase the maximum amount of fees and disbursements of the Board of Governors’ (the “Board”) independent counsel (“Board Counsel”) that is permitted to be paid by the Applicant from \$250,000, plus HST, to a maximum amount of \$500,000, plus HST.

[3] The evidentiary basis for the requested relief is set out in the affidavit of Dr. Robert Haché, sworn May 21, 2021, and in the Fourth Report of the Monitor dated May 27, 2021.

Appointment of CRO

[4] The Applicant is of the view that the appointment of the CRO will minimize the disruption to the operations of the Applicant. The CRO will provide strategic guidance in assisting with the Applicant’s restructuring and will also support the Applicant’s senior leadership team, including the President and Vice-Chancellor.

[5] The Applicant is of the view that the CRO will provide a fresh perspective and assist the Applicant in moving to a financially sustainable and successful future.

[6] A proposed engagement letter indicates that the compensation to the CRO is at an hourly rate of \$650 per hour (up to a maximum of 80 hours each month). There is no additional “success fee” component to the CRO’s compensation.

[7] The Monitor has reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believes them to be fair and reasonable in the circumstances.

[8] The proposed appointment of the CRO is supported by the Laurentian University Faculty Association, Laurentian University Staff Union, the Board and the DIP Lender.

[9] The Monitor is also in support of the appointment of Mr. Pagnutti.

[10] The appointment of Mr. Pagnutti was opposed by University of Sudbury (“U Sudbury”). Counsel to U Sudbury indicated that there was a degree of disappointment that his client was not consulted with respect to the appointment of the CRO. He suggested that there should be further consultations and an opportunity provided to consider other individuals for the position, taking into account the bilingual and tricultural nature of Laurentian.

[11] I am not persuaded by the arguments put forth by U Sudbury. The Notice of Disclaimer with respect to U Sudbury is now final. In effect, U Sudbury is not part of the going forward plan of Laurentian. Consequently, the participation of U Sudbury in Phase 2 of the restructuring will be severely limited. The support for the appointment of Mr. Pagnutti is widespread and, in my view, this appointment should take effect as soon as possible.

[12] I am satisfied that the arrangements set out in the CRO Engagement Letter are fair and reasonable in the circumstances and an Order will issue appointing Mr. Pagnutti as CRO of Laurentian and approving the terms of his engagement.

Increase of Fees to Board Counsel

[13] The request to increase the maximum amount of fees and disbursements of Board Counsel is not opposed. I accept that Board Counsel has been busy throughout the CCAA proceeding to address and advise on issues relevant to the Board. As the proposed claims process commences, it is expected that the Board will continue to require the advice of Board Counsel, necessitating an increase of the fees incurred by Board Counsel.

[14] In my view, it is appropriate that para. 36 of the Amended and Restated Initial Order be amended to increase the maximum amount of fees and disbursements of Board Counsel that is permitted to be paid by the Applicant from \$250,000, plus HST, to a maximum amount of \$500,000.

Claims Process

[15] The Applicant seeks approval to undertake a process to identify, determine and resolve certain claims of its creditors (the “Claims Process”). The Claims Process will be conducted in order to identify and determine for voting and/or distribution purposes the potential universe of claims that may exist against Laurentian, to allow Laurentian to deal with such claims and formulate a Plan.

[16] The Applicant contends that the proposal is a fair, efficient, and reasonable process for the determination and resolution of all claims against the Applicant and its Directors and Officers.

[17] The Claims Process has been prepared by the Applicant, in consultation with the Monitor.

[18] The Monitor supports the proposed Claims Process Order.

[19] The DIP Lender, LUFA and LUSU are supportive of the Claims Process Order.

[20] In the Fourth Report, the Monitor states that the Applicant and the Monitor provided a draft of the Claims Process Order to the Toronto Dominion Bank, (“TD Bank”), Royal Bank of Canada and Bank of Montreal (collectively, the “Pre-filing Lenders”). The Pre-Filing Lenders are collectively owed in the range of \$130 million.

[21] The Monitor also reports that the Applicant and the Monitor have engaged in multiple discussions with the Pre-filing Lenders in respect of the Claims Process and that the Monitor has agreed to provide weekly updates to the Pre-filing Lenders with respect to claims received and the status of the Monitor’s review of claims.

[22] TD Bank has proposed an amendment to the Claims Process Order. TD Bank proposes that the Monitor shall consult with the Pre-filing Lenders and any other stakeholders as the Monitor deems appropriate (the “Consultation Parties”) with respect to each claim in excess of \$5 million which the Monitor proposes to accept and to provide the Consultation Parties with not less than 10 days’ prior written notice of the intent to accept such claim. Any Consultation Party who objects to the acceptance of such claim by the Monitor may then apply to the court within 10 days for a review of the proposed acceptance.

[23] The Monitor has noted a number of areas of concern with respect to the TD Bank proposal:

- (a) The proposed amendment will lead to confusion.
- (b) The proposal effectively removes the role of a Claims Officer for any claim over \$5 million. If any Consultation Party opposes the Monitor’s acceptance of a claim over \$5 million, the result is that the claim will be directly referred to the court for determination rather than a Claims Officer. The result will be increased litigation and increased cost versus the expeditious summary process that is typical in a CCAA claims process.
- (c) The proposal eliminates the ability of the Monitor to negotiate and settle claims in the ordinary course.
- (d) If the settlement of a claim is opposed and the Monitor’s assessment of the claim is required to be justified in court, the Monitor will either have to disclose its assessment of its strengths and weaknesses of the claim and the litigation risk associated with the claim or a cumbersome process will need to be developed where the Monitor can share its assessment with the court under seal.
- (e) The Monitor is not in a position to determine which stakeholders should be Consultation Parties.
- (f) In the event that a material number of claims over \$5 million are opposed by any one of the Consultation Parties, the process to obtain a determination

of such claims could result in significant delay to the resolution of such claims.

- (g) The above factors are likely to make the Claims Process more expensive and inefficient.

[24] TD Bank supports the making of a Claims Process Order at this time but submits that, in the circumstances, the process should contemplate disclosure and consultation by the Monitor with the Pre-filing Lenders.

[25] TD Bank submits that Laurentian and the Monitor have acknowledged that material claims will be submitted, some of which claims are unliquidated and/or contingent and may be subject to a bona fide dispute - both with respect to liability and quantum. The consensual resolution of such claims will bear directly on the likelihood of success of any Plan.

[26] TD Bank further submits that its proposed change is reasonable and appropriate in the circumstances and will create a fair and transparent process which furthers the remedial objectives of the CCAA. Further, this proposal does not give a consent or veto right to any creditor with respect to acceptance or compromise of any claim.

[27] Based upon information available to TD Bank at the time its factum was issued, the total quantum of claims is unknown but can reasonably be expected to include: (a) the claims of the Pre-filing Lenders; (b) claims of current and former employees; (c) claims of the federated universities arising from the termination and disclaimer of their agreements with Laurentian; (d) potential claims arising from the pension-related claim; and (e) claims of other creditors with pre-filing and restructuring claims.

[28] TD Bank anticipates many of these claims will be for significant amounts, will be complex, and will engage multiple legal and valuation issues. The acceptance or settlement of these claims will bear directly on the entitlements of the creditors under and in respect of any Plan.

[29] TD Bank submits that the transparency and consultation that it seeks to import into the Claims Process will enhance the likelihood of a viable Plan.

Analysis

[30] The broad remedial objectives of the CCAA are to facilitate a restructuring rather than a liquidation of assets. The objective of a restructuring will most likely be achieved where stakeholders are treated as advantageously and fairly as the circumstances permit (see *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379 at paras. 15-19, 56-66 and 70 (“*Century Services*”)).

[31] A claims process is an essential component of any plan and it is necessary and appropriate that the claims process furthers the remedial objective of the CCAA (*Timminco Limited, Re*, 2014 ONSC 3393 at para. 41).

[32] A claims process order must be carefully drafted so as to ensure that the process by which claims are determined is both fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims (*Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501 at para. 38 (“*Steels*”).

[33] TD Bank submits that its proposal is consistent with the entitlements of creditors under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”) to review proofs of claim filed by others and to seek an order from the court expunging or reducing a proof of claim accepted by a trustee. TD Bank points out that such entitlements are available to creditors under the BIA in both bankruptcy and commercial proposal proceedings and to the extent possible, aspects of insolvency law that are common to the BIA and CCAA should be harmonized. The examples provided by TD Bank are BIA, ss. 26, 37, 66, 126 and 135(5); see also *Century Services* at para. 24.

[34] TD Bank references the following cases as examples where the disclosure and involvement of certain parties has been incorporated into the claims process. These cases are *Crystallex International Corp., Re*, 2012 ONSC 6812; *Target Canada Co.* (11 June 2015), Toronto, CV-15-10832-00CL (Ont. S.C.) at para. 30; *Carillion Canada Holdings Inc.* (6 July 2018), Toronto, CV-18-590812-00CL (Ont. S.C.); and *Steels* at para. 13.

[35] TD Bank acknowledges there are no set rules in the CCAA which govern the Claims Process. I agree with this statement.

[36] The facts underlining each of the cases relied upon by TD Bank needs to be taken into account. *Crystallex* had been a bitterly fought proceeding extending nearly 10 years. *Target Canada* was a liquidation proceeding from the outset. *Carillion* was also a liquidating CCAA process, as was *Steels*. Suffice to say, there are considerable differences in how a supervising judge will approach a liquidating CCAA in contrast to a CCAA proceeding leading to an operational restructuring. For this reason, the cases referred to by TD Bank are of limited assistance.

[37] In an operational restructuring, it is necessary to consider the timelines. From the outset, Laurentian has proceeded on the basis that it intends to remain in operation. Laurentian has stressed that it is essential that these proceedings be completed as soon as possible. The proceedings cannot be completed without the Claims Process being finalized. I am concerned that the TD Bank proposals could delay the Claims Process from being completed on a timely basis.

[38] The proposal to establish Consultation Parties is problematic. Under the TD Bank proposal, the Pre-filing Lenders are involved in the consultation process as are such other stakeholders as the Monitor deems appropriate. The TD Bank proposal affects claims in excess of \$5 million. In the context of this proceeding, a \$5 million claim is a significant claim. I am hard-pressed to think of a situation where such a claimant would not be deemed an appropriate Consultation Party. I am given to understand that there might be in the range of 15 or so claims over \$5 million. If each claimant or a substantial majority of these claimants is deemed to be a Consultation Party, the sheer size of the group would impede its mandate and progress. The process will cease to be efficient and effective in resolving issues.

[39] I am mindful of the submission made by counsel to TD Bank that it is important to move quickly – but not to rush. This requires a balancing of competing interests, to ensure that the process remains fair to all.

[40] I have been persuaded that the Pre-filing Lenders should have some involvement in this process. However, the TD Bank proposal runs the risk of being convoluted and cumbersome to the extent that the Claims Process may not be completed on a timely basis. A middle ground must be found.

[41] The fact that there are no set rules to govern the claims process leads, in some cases, to a bespoke claims process. This situation calls for a bespoke process.

[42] Counsel to TD Bank made reference to the claim process in the BIA. One such provision, which was not referenced in argument, is set out in s. 30(1)(i) of the BIA:

Powers exercisable by a trustee with permission of inspectors

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

(i) compromise any claim made by or against the estate.

[43] This section has two components. The first relates to the involvement of inspectors. The role of an inspector in the BIA is defined in ss. 116-120. The second relates to the compromise of claims against the estate. The trustee may, with the permission of the inspectors, compromise such claims.

[44] It is also noteworthy to reference BIA s. 119(2):

Decisions of inspectors subject to review by court

119 (2) The decisions and actions of the inspectors are subject to review by the court at the instance of the trustee or any interested person and the court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution thereof or may refer any matter back to the inspectors for reconsideration.

[45] In my view, the concerns expressed by TD Bank can be addressed by incorporating certain provisions similar to those dealing with inspectors in the BIA and modifying same to address the circumstances of this case.

[46] An inspector can play a critical role. In *Re Bryant Isard & Co.* (1923), 4 C.B.R. 41 at para. 24 (Ont. S.C.), Fisher J. summed up the position of inspectors in these words: “Inspectors stand in a fiduciary relation to the general body of creditors and should perform their duties impartially and in the interests of the creditors who appoint them. They should see that the trustee acts in accordance with the *Bankruptcy Act*, and if it is brought to their notice he has not done so, they should discipline him and, if necessary, take steps to have him removed.”

[47] In these circumstances, I have concluded that the Claims Process procedure proposed by the Applicant should be modified so as to provide for the appointment of up to four “inspectors”. Two of the inspectors are to be representatives of the Pre-filing Lenders with the remaining two “inspectors” being drawn from the group of creditors who file claims in excess of \$5 million (a “Material Claim”). The selection of the inspectors is to be made by the Monitor, in consultation with the Applicant, the Pre-filing Lenders and the known creditors with Material Claims

[48] The Monitor shall inform the “Inspector Group” that they are to act in the best interests of all creditors and that they stand in a fiduciary relationship to all creditors and should perform their duties impartially.

[49] Compensation for the “Inspector Group” is to be calculated using the structure provided for in R. 135 of the Bankruptcy and Insolvency General Rules.

[50] The Claims Process provision is to be modified so as to provide that the Monitor shall consult with the “Inspector Group” in respect of the acceptance or settlement of Material Claims. The Monitor is authorized to compromise any Material Claim – provided it has received permission from three members of the “Inspector Group”.

[51] In the event that the Monitor does not receive authorization to compromise the material claim, the Monitor or any member of the “Inspector” group may apply to court within 10 days for review of the proposed acceptance.

[52] The foregoing process is intended to ensure that the concerns of the Pre-filing Lenders are addressed, without unduly paralyzing the Claims Process that has been put forth by the Applicant with the support of the Monitor.

[53] The Applicant and the Monitor are directed to modify the Claims Process Order to take into account these reasons. The modifications are solely to affect the assessment of Material Claims. The other aspects of the Claims Process proposed by the Applicant are approved. If more detailed directions are required, a case conference may be scheduled.

Chief Justice G.B. Morawetz

Date: May 31, 2021

CITATION: Canwest Global Communications Corp., 2011 ONSC 2215
COURT FILE NO.: CV-09-8396-00CL
DATE: 20110407

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP. AND OTHER APPLICANTS

COUNSEL: *Douglas J. Wray and Jesse B. Kugler*, counsel for the Applicant,
Communications, Energy and Paperworkers Union of Canada ("CEP")
David Byers and Maria Konyukhova, counsel for the Monitor

PEPALL J.

REASONS FOR DECISION

Introduction

[1] The Communications, Energy and Paperworkers Union of Canada ("CEP") requests an order lifting the stay of proceedings in respect of certain grievances and directing that they be adjudicated in accordance with the provisions of the applicable collective agreement. In the alternative, CEP requests an order amending the claims procedure order so as to permit the subject claim to be adjudicated in accordance with the provisions of the collective agreement.

Background Facts

[2] On October 6, 2009, the CMI Entities obtained an initial order pursuant to the CCAA staying all proceedings and claims against them. Specifically, paragraphs 15 and 16 of that order stated:

**NO PROCEEDINGS AGAINST THE CMI ENTITIES
OR THE CMI PROPERTY**

15. **THIS COURT ORDERS** that until and including November 5, 2009, or such later date as this Court may order (the “Stay Period”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the CMI Entities, the Monitor or the CMI CRA or affecting the CMI Business or the CMI Property, except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI CRA), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CMI Entities or the CMI CRA or affecting the CMI Business or the CMI Property are hereby stayed and suspended pending further Order of this Court. In the case of the CMI CRA, no Proceeding shall be commenced against the CMI CRA or its directors and officers without prior leave of this Court on seven (7) days notice to Stonecrest Capital Inc.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the CMI Entities, the Monitor and/or the CMI CRA, or affecting the CMI Business or the CMI Property, are hereby stayed and suspended except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of rights and remedies affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of rights or remedies affecting the CMI CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the CMI Entities to carry on any business which the CMI entities are not lawfully entitled to carry on, (ii) exempt the CMI Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of claim for lien.

[3] On October 14, 2009, as part of the CCAA proceedings, I granted a claims procedure order which established a claims procedure for the identification and quantification of claims against the CMI Entities. In that order, “Claim” is defined as any right or claim of any Person against one or more of the CMI Entities in existence on the Filing Date¹ (a “Prefiling Claim”) and any right or claim of any Person against one or more of the CMI Entities arising out of the restructuring on or after the Filing Date (a “Restructuring Claim”). Claims arising prior to certain dates had to be asserted within the claims procedure failing which they were forever extinguished and barred. Pursuant to the claims procedure order, subject to the discretion of the Court, claims of any person against one or more of the CMI Entities were to be determined by a claims officer who would determine the validity and amount of the disputed claim in accordance with the claims procedure order. The Honourable Ed Saunders, The Honourable Jack Ground and The Honourable Coulter Osborne were appointed as claims officers. Other persons could also be appointed by court order or on consent of the CMI Entities and the Monitor. This order was unopposed. It was amended on November 30, 2009 and again the motion was unopposed. As at October 29, 2010, over 1,800 claims asserted against the CMI Entities had been finally resolved in accordance with and pursuant to the claims procedure order.

[4] On October 27, 2010, CEP was authorized to represent its current and former union members including pensioners employed or formerly employed by the CMI Entities to the extent, if any, that it was necessary to do so.

[5] On the date of the initial order, CEP had a number of outstanding grievances. CEP filed claims pursuant to the claims procedure order in respect of those grievances. The claim that is the subject matter of this motion is the only claim filed by CEP that has not been resolved and therefore is the only claim filed by CEP that requires adjudication. There is at least one other claim in Western Canada that may require adjudication.

¹ The Filing Date was October 6, 2009, the date of the initial order.

[6] John Bradley had been employed for 20 years by Global Television, a division of Canwest Television Limited Partnership (“CTLP”), one of the CMI Entities. Mr. Bradley is a member of CEP. On February 24, 2010, CTLP suspended Mr. Bradley for alleged misconduct. On March 8, 2010, CEP filed a grievance relating to his suspension under the applicable collective agreement. On March 25, 2010, CTLP terminated his employment. On March 26, 2010, CEP filed a grievance requesting full redress for Mr. Bradley’s termination. This would include reinstatement to his employment. On June 23, 2010 a restructuring period claim was filed with respect to the Bradley grievances on the following basis:

The Union has filed this claim in order to preserve its rights. Filing this claim is without prejudice to the Union’s ability to pursue all other remedies at its disposal to enforce its rights, including any other statutory remedies available. Notwithstanding that the Union has filed the present claim, the Union does not agree that this claim is subject to compromise pursuant [to the CCAA]². The Union reserves its right to make further submissions in this regard.

[7] In spite of the parties’ good faith attempts to resolve the Bradley grievances and the Bradley claim, no resolution was achieved.

[8] The Plan was sanctioned on July 28, 2010 and implemented on October 27, 2010. At that time, all of the operating assets of the CMI Entities were transferred to the Plan Sponsor and the CMI Entities ceased operations. The CTLP stay was also terminated. The stay with respect to the Remaining CMI Entities (as that term is defined in the Plan) was extended until May 5, 2011. Pursuant to an order dated September 27, 2010, following the Plan implementation date the Monitor shall be:

(a) empowered and authorized to exercise all of the rights and powers of the CMI Entities under the Claims Procedure Order, including, without limitation, revise, reject, accept,

² The words in brackets were omitted but presumably this was the intention.

settle and/or refer for adjudication Claims (as defined in the Claims Procedure Order) all without (i) seeking or obtaining the consent of the CMI Entities, the Chief Restructuring Advisor or any other person, and (ii) consulting with the Chief Restructuring Advisor in the CMI Entities; and

(b) take such further steps and seek such amendments to the Claims Procedure Order or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims.

[9] The Monitor has taken the position that if the Bradley matter is not resolved, the claim should be referred to a claims officer for determination. It is conceded that a claims officer would have no jurisdiction to reinstate Mr. Bradley to his employment.

[10] CEP now requests an order lifting the stay of proceedings in respect of the Bradley grievances and directing that they be adjudicated in accordance with the provisions of the collective agreement. In the alternative, CEP requests an order amending the claims procedure order so as to permit the Bradley claim to be adjudicated in accordance with the provisions of the collective agreement.

[11] For the purposes of this motion and as is obvious from the motion seeking to lift the stay, both CEP and the Monitor agree that the stay did catch the Bradley claim and that it is encompassed by the definition of claim found in the claims procedure order.

[12] Since the commencement of the CCAA proceedings, CEP has only sought to lift the stay in respect of one other claim, that being a claim relating to a grievance filed by CEP on behalf of Vicky Anderson. The CMI Entities consented to lifting the stay in respect of Ms. Anderson's claim because at the date of the initial order, there had already been eight days of hearing before an arbitrator, all evidence had already been called, and only one further date was scheduled for final argument. Ultimately, the arbitrator ordered that Ms. Anderson be reinstated but made no order for compensation.

[13] Pursuant to Article 12.3 of the applicable collective agreement, discharge grievances are to be heard by a single arbitrator. All other grievances are to be heard by a three person Board of

Arbitration unless the parties consent to submit the grievance to a single arbitrator. The single arbitrator is to be selected within 10 days of the notice of referral to arbitration from a list of 5 people drawn by lot. An award is to be given within 30 days of the conclusion of the hearing. The list of arbitrators was negotiated and included in the collective agreement. The arbitrator has the power to reinstate with or without compensation.

[14] The evidence before me suggests that adjudications of grievances under collective agreements are typically much more costly and time consuming than adjudications before a claims officer as the latter may determine claims in a summary manner and there is more control over scheduling. The Monitor takes the position that additional cost and delay would arise if the claims were adjudicated pursuant to the terms of the collective agreement rather than pursuant to the terms of the claims procedure order.

Issues

[15] Both parties agree that the following two issues are to be considered:

- (a) Should this court lift the stay of proceedings in respect of the Bradley grievances and direct that the Bradley grievances be adjudicated in accordance with the provisions of the collective agreement?
- (b) Should this court amend the claims procedure order so as to permit the Bradley claim to be adjudicated in accordance with the provisions of the collective agreement?

Positions of the Parties

[16] In brief, dealing firstly with the stay, CEP submits that the balance of convenience favours pursuit of the grievances through arbitration. CEP is seeking to compel the employer to comply with fundamental obligations that flow from the collective agreement. This includes the appointment of an arbitrator on consent who has jurisdiction to award reinstatement if he or she determines that there was no just cause to terminate Mr. Bradley's employment. Requiring that the claim and the grievances be adjudicated in a manner that is inconsistent with the collective

agreement would have the effect of depriving the grievor of some of the most fundamental rights under a collective agreement. Furthermore, permitting the grievances to proceed to arbitration would prejudice no one.

[17] Alternatively, CEP submits that the claims procedure order ought to be amended. It is in conflict with the terms of the collective agreement. Pursuant to section 33 of the *CCAA*, the collective agreement remains in force during the *CCAA* proceedings. The claims procedure order must comply with the express requirements of the *CCAA*. Lastly, orders issued under the *CCAA* should not infringe upon the right to engage in associational activities which are protected by the *Charter of Rights and Freedoms*.

[18] The Monitor opposes the relief requested. On the issue of the lifting of the stay, it submits that the *CCAA* is intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both. The stay of proceedings permits the *CCAA* to accomplish its legislative purpose and in particular enables continuance of the company seeking *CCAA* protection.

[19] The lifting of a stay is discretionary. Mr. Bradley is no more prejudiced than any other creditor and the claims procedure established under the order has been uniformly applied. The claims officer has the power to recognize Mr. Bradley's right to reinstatement and monetize that right. The efficacy of *CCAA* proceedings would be undermined if a debtor company was forced to participate in an arbitration outside the *CCAA* proceedings. This would place the resources of an insolvent *CCAA* debtor under strain. The Monitor submits that CEP has not satisfied the onus to demonstrate that the lifting of the stay is appropriate in this case.

[20] As for the second issue, the Monitor submits that the claims procedure order should not be amended. Courts regularly affect employee rights arising from collective agreements during *CCAA* proceedings and recent amendments to the *CCAA* do not change the existing case law in this regard. Furthermore, amending the claims procedure order would undermine the purpose of the *CCAA*. Lastly, relying on the Supreme Court of Canada's statements in *Health Services and*

*Support – Facilities Subsector Bargaining Assn. v. British Columbia*³, the claims procedure order does not interfere with freedom of association.

[21] Following argument, I requested additional brief written submissions on certain issues and in particular, to what employment Mr. Bradley would be reinstated if so ordered. I have now received those submissions from both parties.

Discussion

1. Stay of Proceedings

[22] The purpose of the CCAA has frequently been described but bears repetition. In *Lehndorff General Partner Limited*⁴, Farley J. stated:

The CCAA is intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both.

[23] The stay provisions in the CCAA are discretionary and very broad. Section 11.02 provides that:

(1) A court may, on an initial application in respect of the debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding Up and Restructuring Act;

³ [2007] S.C.J. No. 27.

⁴ (1993), 17 C.B.R. (3rd) 24 (Ont. Gen. Div.) at para. 6.

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an *Act* referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[24] As the Court of Appeal noted in *Nortel Networks Corp.*⁵, the discretion provided in section 11 is the engine that drives this broad and flexible statutory scheme. The stay of proceedings in section 11 should be broadly construed to accomplish the legislative purpose of the CCAA and in particular to enable continuance of the company seeking CCAA protection: *Lehndorff General Partner Limited*⁶.

[25] Section 11 provides an insolvent company with breathing room and by doing so, preserves the status quo to assist the company in its restructuring or arrangement and prevents any particular stakeholder from obtaining an advantage over other stakeholders during the

⁵ [2009] O.J. No. 4967 at para. 33.

⁶ *Supra*, note 4 at para. 10.

restructuring process. It is anticipated that one or more creditors may be prejudiced in favour of the collective whole. As stated in *Lendorff General Partner Limited* ⁷:

The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the CCAA because this effect is offset by the benefit to all creditors and to the company of facilitating a reorganization. The court's primary concerns under the CCAA must be for the debtor and all of the creditors.

[26] In *Canwest Global Communications Corp.* ⁸, I had occasion to address the issue of lifting a stay in a CCAA proceeding. I referred to situations in which a court had lifted a stay as described by Paperny J. (as she then was) in *Re Canadian Airlines Corp.* ⁹ and by Professor McLaren in his book, "*Canadian Commercial Reorganization: Preventing Bankruptcy*" ¹⁰. They included where:

- a) a plan is likely to fail;
- b) the applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor);
- c) the applicant shows necessity for payment;
- d) the applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;

⁷ *Ibid*, at para. 6.

⁸ (2009) O.J. 5379.

⁹ (2000) 19 C.B.R. (4th) 1.

¹⁰ (Aurora: Canada Law Book, looseleaf) at para. 3.3400.

- e) it is necessary to permit the applicant 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 insolvent debtor is no closer to a proposal than at the commencement of the stay period;
- g) there is a real risk that a creditor's loan will become unsecured during the stay period;
- h) it is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period;
- i) it is in the interests of justice to do so.

[27] The lifting of a stay is discretionary. As I wrote in *Canwest Global Communications Corp.*¹¹:

There are no statutory guidelines contained in the Act. According to Professor R.H. McLaren in his book "Canadian Commercial Reorganization: Preventing Bankruptcy", an opposing party faces a very heavy onus if it wishes to apply to the court for an order lifting the stay. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action: *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.* (2007), 33 C.B.R. (5th) 50 (Sask. C.A.) at para. 68. That decision also indicated that the judge should consider the good faith and due diligence of the debtor company.

[28] There appears to be no real issue that the grievances are caught by the stay of proceedings. In *Luscar Ltd. v. Smoky River Coal Limited*¹², the issue was whether a judge had

¹¹ *Supra*, note 8 at para. 32.

¹² [1999] A.J. No. 676.

the discretion under the *CCAA* to establish a procedure for resolving a dispute between parties who had previously agreed by contract to arbitrate their disputes. The question before the court was whether the dispute should be resolved as part of the supervised reorganization of the company under the *CCAA* or whether the court should stay the proceedings while the dispute was resolved by an arbitrator. The presiding judge was of the view that the dispute should be resolved as expeditiously as possible under the *CCAA* proceedings. The Alberta Court of Appeal upheld the decision stating:

The above jurisprudence persuades me that “proceedings” in section 11 includes the proposed arbitration under the B.C. *Arbitration Act*. The Appellants assert that arbitration is expeditious. That is often, but not always, the case. Arbitration awards can be appealed. Indeed, this is contemplated by section 15(5) of the *Rules*. Arbitration awards, moreover, can be subject to judicial review, further lengthening and complicating the decision making process. Thus, the efficacy of *CCAA* proceedings (many of which are time sensitive) could be seriously undermined if a debtor company was forced to participate in an extra-*CCAA* arbitration. For these reasons, having taken into account the nature and purpose of the *CCAA*, I conclude that, in appropriate cases, arbitration is a “proceeding” that can be stayed under section 11 of the *CCAA*.¹³

[29] I do recognize that the *Luscar* decision did not involve a collective agreement but an agreement to arbitrate. That said, the principles described also apply to an arbitration pursuant to the terms of a collective agreement.

[30] In considering balance of convenience, CEP’s primary concerns are that the claims procedure order does not accord with the rights and obligations contained in the collective agreement. Firstly, a claims officer is the adjudicator rather than an arbitrator chosen pursuant to the terms of the collective agreement and secondly, reinstatement is not an available remedy

¹³ *Ibid*, at para. 33.

before a claims officer. Thirdly, an arbitration imports rules of natural justice and procedural fairness whereas the claims procedure is summary in nature.

[31] The claims officers who were identified in the claims procedure order are all former respected and experienced judges who are well suited and capable of addressing the issues arising from the Bradley claim. Furthermore, had this been a real issue, CEP could have raised it earlier and identified another claims officer for inclusion in the claims procedure order. Indeed, an additional claims officer still could be appointed but no such request was ever advanced by CEP.

[32] Should the claims officer find that CTLP did not have just cause to terminate Mr. Bradley's employment, he can recognize Mr. Bradley's right to reinstatement by monetizing that right. This was done for a multitude of other claims in the CCAA proceedings including claims filed by CEP on behalf of other members. I note that Mr. Bradley would not be receiving treatment different from that of any other creditor participating in the claims process.

[33] The claims process is summary in nature for a reason. It reduces delay, streamlines the process, and reduces expense and in so doing promotes the objectives of CCAA. Indeed, if grievances were to customarily proceed to arbitration, potential exists to significantly undermine the CCAA proceedings. Arbitration of all claims arising from collective agreements would place the already stretched resources of insolvent CCAA debtors under significant additional strain and could divert resources away from the restructuring. It is my view that generally speaking, grievances should be adjudicated along with other claims pursuant to the provisions of a claims procedure order within the context of the CCAA proceedings.

[34] That said, it seems to me that this case is unique. While the claims procedure order and the meeting order of June 23, 2010 provide that all claims against CTLP and others arising prior to certain dates must be asserted within the claims procedure failing which they are forever extinguished and barred, the stay relating to CTPL was terminated on October 27, 2010. CTLP has emerged from CCAA protection and is currently operating in the normal course having changed its name to Shaw Television Limited Partnership ("STLP"). If the grievance relating to

Mr. Bradley's termination is successful, he could be reinstated to his employment at STLP. The position of CEP, Mr. Bradley and the Monitor is that reinstatement, if ordered, would be to STLP. Counsel for CEP advised the court that notice of the motion was given to STLP and that a representative was present in court for the argument of the motion although did not appear on the record. The Monitor has also confirmed that Shaw Communications Inc., the parent of STLP, was aware of the motion and its counsel has confirmed its understanding that any reinstatement of Mr. Bradley, if ordered, would be to STLP.

[35] As mentioned, Mr. Bradley was a 20 year employee. While I do not consider the identity of the arbitrator and the natural justice arguments of CEP to be persuasive, given the stage of the CCAA proceedings, the fact that the stay relating to CTLP has been lifted, and Mr. Bradley's employment tenure, I am persuaded that he ought to be given the opportunity to pursue his claim for reinstatement rather than being compelled to have that entitlement monetized by a claims officer if so ordered. Counsel for the Monitor has confirmed that the timing of the distributions would not appear to be affected by the outcome of this motion. No meaningful prejudice would ensue to any stakeholder. It seems to me that the balance of convenience and the interests of justice favour lifting the stay to permit the grievances to proceed through arbitration rather than before the claims procedure officer. Therefore, CEP's motion to lift the stay is granted and the Bradley grievances may be adjudicated in accordance with the terms of the collective agreement.

2. Amendment of the Claims Procedure Order

[36] In light of my decision on the stay, it is not strictly necessary to consider whether the claims procedure order should be amended as requested by CEP as alternative relief. As this issue was argued, however, I will address it.

[37] Section 33 of CCAA was added to the statute in September, 2009. The relevant subsections now provide:

33(1) If proceedings under this Act have been commenced in respect of a debtor company, any collective agreement that the company has entered into as the employer remains in

force, and may not be altered except as provided in this section or under the laws of the jurisdiction governing collective bargaining between the company and the bargaining agent.

33(8) For greater certainty, any collective agreement that the company and the bargaining agent have not agreed to revise remains in force, and the court shall not alter its terms.

[38] Justice Mongeon of the Québec Superior Court had occasion to address the effect of section 33 of the CCAA in *White Birch Paper Holding Company*¹⁴. He stated that the fact that a collective agreement remains in force under a CCAA proceeding does not have the effect of “excluding the entire collective labour relations process from the application of the CCAA.”¹⁵ He went on to write that:

It would be tantamount to paralyzing the employer with respect to reducing its costs by any means at all, and to providing the union with a veto with regard to the restructuring process.¹⁶

[39] In *Canwest Global Communications Corp.*¹⁷, I wrote that section 33 of the CCAA “maintains the terms and obligations contained in the collective agreement but does not alter priorities or status.”¹⁸ In that case when dealing with the issue of immediate payment of severance payments, I wrote:

There are certain provisions in the amendments that expressly mandate certain employee related payments. In those

¹⁴ 2010, Q.C.C.S. 2590.

¹⁵ *Ibid*, at para. 31.

¹⁶ *Ibid*, at para. 35.

¹⁷ [2010] O.J. No. 2544.

¹⁸ *Ibid*, at para. 32.

instances, section 6(5) dealing with a sanction of a plan and section 36 dealing with a sale outside the ordinary course of business being two such examples, Parliament specifically dealt with certain employee claims. If Parliament had intended to make such a significant amendment whereby severance and termination payments (and all other payments under a collective agreement) would take priority over secured creditors, it would have done so expressly.¹⁹

[40] I agree with the Monitor's position that if Parliament had intended to carve grievances out of the claims process, it would have done so expressly. To do so, however, would have undermined the purpose of the CCAA and in particular, the claims process which is designed to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner. It is hard to imagine that it was Parliament's intention that grievances under collective agreements be excluded from the reach of the stay provisions of section 11 of the CCAA or the ancillary claims process. In my view, such a result would seriously undermine the objectives of the *Act*.

[41] Furthermore, I note that over 1,800 claims have been processed and dealt with by way of the claims procedure order, many of them involving claims filed by CEP on behalf of its members. CEP was provided with notice of the motion wherein the claims procedure order and the claims officers were approved. CEP did not raise any objection to the claims procedure order, the claims officers or the inclusion of grievances in the claims procedure at the time that the order was granted. The claims procedure order was not an order made without notice and none of the prerequisites to variation of an order has been met. Had I not lifted the stay, I would not have amended the claims procedure order as requested by CEP.

[42] CEP's last argument is that the claims procedure order interferes with Mr. Bradley's freedoms under the Canadian *Charter of Rights and Freedoms*. In this regard I make the

¹⁹ *Ibid*, at para. 33.

following observations. Firstly, this argument was not advanced when the claims procedure order was granted. Secondly, CEP is not challenging the validity of any section of the CCAA. Thirdly, nothing in the statute or the claims procedure inhibits the ability to collectively bargain. In *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*²⁰, the Supreme Court of Canada stated:

We conclude that section 2(d) of the *Charter* protects the capacity of members of labour unions to engage, in association, in collective bargaining on fundamental workplace issues. This protection does not cover all aspects of “collective bargaining”, as that term is understood in the statutory labour relations regimes that are in place across the country. Nor does it ensure a particular outcome in a labour dispute or guarantee access to any particularly statutory regime. ...

In our view, it is entirely possible to protect the “procedure” known as collective bargaining without mandating constitutional protection for the fruits of that bargaining process.²¹

[43] In my view, nothing in the claims procedure or the CCAA impacts the procedure known as collective bargaining.

Conclusion

[44] Under the circumstances, the request to lift the stay as requested by CEP is granted. Had it been necessary to do so, I would have dismissed the alternative relief requested.

²⁰ *Supra*, note 3.

²¹ *Ibid*, at paras. 19 and 29.

Pepall J.

Released: April 7, 2011

CITATION: Canwest Global Communications Corp., 2011 ONSC 2215
COURT FILE NO.: CV-09-8396-00CL
DATE: 20110407

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP.
AND OTHER APPLICANTS

REASONS FOR DECISION

Pepall J.

Released: April 7, 2011

CITATION: Target Canada Co. (Re), 2015 ONSC 7574
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-12-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP. AND TARGET CANADA PROPERTY LLC.**

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *J. Swartz and Dina Milivojevic*, for the Target Corporation

Jeremy Dacks, for the Target Canada Entities

Susan Philpott, for the Employees

Richard Swan and S. Richard Orzy, for Rio Can Management Inc. and KingSett Capital Inc.

Jay Carfagnini and Alan Mark, for Alvarez & Marsal, Monitor

Jeff Carhart, for Ginsey Industries

Lauren Epstein, for the Trustee of the Employee Trust

Lou Brzezinski and Alexandra Teodescu, for Nintendo of Canada Limited, Universal Studios, Thyssenkrupp Elevator (Canada) Limited, United Cleaning Services, RPJ Consulting Inc., Blue Vista, Farmer Brothers, East End Project, Trans Source, E One Entertainment, Foxy Originals

Linda Galessiere, for Various Landlords

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Applicants (the “Monitor”) seeks approval of Monitor’s Reports 3-18, together with the Monitor’s activities set out in each of those Reports.

[2] Such a request is not unusual. A practice has developed in proceedings under the Companies’ Creditors Arrangement Act (“CCAA”) whereby the Monitor will routinely bring a

motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted.

[3] Such is not the case in this matter.

[4] The requested relief is opposed by Rio Can Management Inc. (“Rio Can”) and KingSett Capital Inc. (“KingSett”), two landlords of the Applicants (the “Target Canada Estates”). The position of these landlords was supported by Mr. Brzezinski on behalf of his client group and as agent for Mr. Solomon, who acts for ISSI Inc., as well as Ms. Galessiere, acting on behalf of another group of landlords.

[5] The essence of the opposition is that the request of the Monitor to obtain approval of its activities – particularly in these liquidation proceedings – is both premature and unnecessary and that providing such approval, in the absence of full and complete disclosure of all of the underlying facts, would be unfair to the creditors, especially if doing so might in future be asserted and relied upon by the Applicants, or any other party, seeking to limit or prejudice the rights of creditors or any steps they may wish to take.

[6] Further, the objecting parties submit that the requested relief is unnecessary, as the Monitor has the full protections provided to it in the Initial Order and subsequent orders, and under the CCAA.

[7] Alternatively, the objecting parties submit that if such approval is to be granted, it should be specifically limited by the following words:

“provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.”

[8] The CCAA mandates the appointment of a monitor to monitor the business and financial affairs of the company (section 11.7).

[9] The duties and functions of the monitor are set forth in Section 23(1). Section 23(2) provides a degree of protection to the monitor. The section reads as follows:

(2) Monitor not liable – if the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person’s reliance on the report.

[10] Paragraphs 1(b) to (d.1) primarily relate to review and reporting issues on specific business and financial affairs of the debtor.

[11] In addition, paragraph 51 of the Amended and Restated Order provides that:

... in addition to the rights, and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for great certainty in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part.

[12] The Monitor sets out a number of reasons why it believes that the requested relief is appropriate in these circumstances. Such approval

- (a) allows the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;
- (b) brings the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) provides certainty and finality to processes in the CCAA proceedings and activities undertaken (eg., asset sales), all parties having been given an opportunity to raise specific objections and concerns;
- (d) enables the court, tasked with supervising the CCAA process, to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor, not otherwise provided by the CCAA; and
- (f) protects creditors from the delay in distribution that would be caused by:
 - a. re-litigation of steps taken to date; and
 - b. potential indemnity claims by the monitor.

[13] Counsel to the Monitor also submits that the doctrine of issue estoppel applies (as do related doctrines of collateral attack and abuse of process) in respect of approval of the Monitor's activities as described in its reports. Counsel submits that given the functions that court approval serves, the availability of the doctrine (and related doctrines) is important to the CCAA process. Counsel submits that actions mandated and authorized by the court, and the activities taken by the Monitor to carry them out, are not interim measure that ought to remain open for second guessing or re-litigating down the road and there is a need for finality in a CCAA process for the benefit of all stakeholders.

[14] Prior to consideration of these arguments, it is helpful to review certain aspects of the doctrine of *res judicata* and its relationship to both issue estoppel and cause of action estoppel.

The issue was recently considered in *Forrest v. Vriend*, 2015 Carswell BC 2979, where Ehrcke J. stated:

25. “TD and Vriend point out that the doctrine of *res judicata* is not limited to issue estoppel, but includes cause of action estoppel as well. The distinction between these two related components of *res judicata* was concisely explained by Cromwell J.A., as he then was, in *Hoque v. Montreal Trust Co. of Canada* (1997), 162 N.S.R. (2d) 321 (C.A.) at para. 21:

21 *Res judicata* is mainly concerned with two principles. First, there is a principle that “... prevents the contradiction of that which was determined in the previous litigation, by prohibiting the relitigation of issues already actually addressed.”: see Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (1991) at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This “... prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it.”: *ibid* at 998. Cause of action estoppel is usually concerned with the application of this second principle because its operation bars all of the issues properly belonging to the earlier litigation.

...

30. It is salutary to keep in mind Mr. Justice Cromwell’s caution against an overly broad application of cause of action estoppel. In *Hoque* at paras. 25, 30 and 37, he wrote:

25. The appellants submit, relying on these and similar statements, that cause of action estoppel is broad in scope and inflexible in application. With respect, I think this overstates the true position. In my view, this very broad language which suggests an inflexible application of cause of action estoppel to all matters that “could” have been raised does not fully reflect the present law.

....

30. The submission that all claims that could have been dealt with in the main action are barred is not borne out by the Canadian cases. With respect to matter not actually raised and decided, the

test appears to me to be that the party should have raised the matter and, in deciding whether the party should have done so, a number of factors are considered.

...

37. Although many of these authorities cite with approval the broad language of *Henderson v. Henderson, supra*, to the effect that any matter which the parties had the opportunity to raise will be barred, I think, however, that this language is somewhat too wide. The better principle is that those issues which the parties had the opportunity to raise and, in all the circumstances, should have raised, will be barred. In determining whether the matter should have been raised, a court will consider whether proceeding constitutes a collateral attack on the earlier findings, whether it simply asserts a new legal conception of facts previously litigated, whether it relies on “new” evidence that could have been discovered in the earlier proceeding with reasonable diligence, whether the two proceedings relate to separate and distinct causes of action and whether, in all the circumstances, the second proceeding constitutes an abuse of process.

[15] In this case, I accept the submission of counsel to the Monitor to the effect that the Monitor plays an integral part in balancing and protecting the various interests in the CCAA environment.

[16] Further, in this particular case, the court has specifically mandated the Monitor to undertake a number of activities, including in connection with the sale of the debtors assets. The Monitor has also, in its various Reports, provided helpful commentary to the court and to Stakeholders on the progress of the CCAA proceedings.

[17] Turning to the issue as to whether these Reports should be approved, it is important to consider how Monitor’s Reports are in fact relied upon and used by the court in arriving at certain determinations.

[18] For example, if the issue before the court is to approve a sales process or to approve a sale of assets, certain findings of fact must be made before making a determination that the sale process or the sale of assets should be approved. Evidence is generally provided by way of affidavit from a representative of the applicant and supported by commentary from the monitor in its report. The approval issue is put squarely before the court and the court must, among other things conclude that the sales process or the sale of assets is, among other things, fair and reasonable in the circumstances.

[19] On motions of the type, where the evidence is considered and findings of fact are made, the resulting decision affects the rights of all stakeholders. This is recognized in the jurisprudence with the acknowledgment that *res judicata* and related doctrines apply to approval

of a Monitor's report in these circumstances. (See: *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, [2006] O.J. No. 1834 (SCJ Comm. List); *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, 2007 ONCA 145 and *Bank of America Canada v. Willann Investments Limited*, [1993] O.J. No. 3039 (SCJ Gen. Div.)).

[20] The foregoing must be contrasted with the current scenario, where the Monitor seeks a general approval of its Reports. The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.

[21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of *res judicata* and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.

[22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[25] Further, limiting the effect of the approval does not impact on prior court orders which have approved other aspects of these CCAA proceedings, including the sales process and asset sales.

[26] The Monitor's Reports 3-18 are approved, but the approval is limited by the inclusion of the wording provided by counsel to Rio Can and KingSett, referenced at paragraph [7].

Regional Senior Justice G.B. Morawetz

Date: December 11, 2015