



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-26-03382861-0032/

DATE: June 12, 2026

BK-26-03382853-0032

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matters of the Notices of Intention to Make a Proposal of Field Aviation Company Inc. and Field Aviation East Ltd.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] Field Aviation Canada Inc. (“**Field Canada**”) and Field Aviation East Ltd. (“**Field East**” and together with Field Canada, the “**Field Entities**”) seek two orders. The relief sought is not opposed and defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Field Entities filed for use on this motion.
- [2] First, an order (the “**DIP Approval and Extension Order**”), is sought which:
- (a) extends the time for Field Entities to file a proposal pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and the corresponding statutory stay of proceedings, by 45 days, up to and including August 19, 2026 (the “**Stay Extension**”)
 - (b) administratively consolidates the NOI Proceedings of Field Canada and Field East;
 - (c) authorizes Field Canada to continue to utilize its central cash management system or to replace it with another substantially similar cash management system;
 - (d) approves (i) the DIP Term Sheet dated June 5, 2026 (the “**DIP Term Sheet**”) between Field Canada, as borrower, Field East, ASES, LLC (“**ASES**”) and Field Aerospace, Inc. (“**Field Parent**”) as guarantors, Wells Fargo Capital Finance Corporation Canada (“**Wells Capital**” and in such capacity, the “**DIP Lender**”), as interim lender and Wells Fargo Bank, National Association (“**Wells Bank**”,

and together with Wells Capital, “**Wells**”) as agent; and (ii) the sixth amendment and forbearance agreement dated June 5, 2026 between Field Canada and ASSES, as co-borrowers, Field Parent, as guarantor, and Wells, as lender (the “**Sixth Amendment and Forbearance**”);

- (e) approves the Draken Accommodation Agreement and Data Transfer Agreement
- (f) approves the engagement of Riveron Management Services, LLC as Field Canada’s chief restructuring officer (the “**CRO**”);
- (g) approves Field Canada’s key employee retention plan (the “**KERP**”), providing for retention bonuses in favour of certain key personnel;
- (h) grants the Administration Charge, DIP Lender’s Charge, Directors’ Charge, and KERP Charge; and
- (i) grants a limited sealing order in respect of certain employee information.

[3] Second, an order (the “**SISP Order**”) is sought which:

- (a) approves and authorizes the Proposal Trustee, with the assistance of the Field Entities and CRO, to implement and conduct the proposed sale and investment solicitation process (the “**SISP**”);
- (b) approves a binding stalking horse asset purchase agreement dated June 5, 2026 (the “**Stalking Horse Agreement**”) between the Field Entities, as sellers, and De Havilland Aircraft of Canada Limited and PAL Aerospace Ltd., (together, the “**Stalking Horse Bidders**”) as purchasers, solely for the purpose of serving as the Stalking Horse Bid (as defined in the SISP) under the SISP; and
- (c) approves the Break Fee and Expense Reimbursement Fee payable to the Stalking Horse Bidders pursuant to the terms of the Stalking Horse Agreement and grants an associated charge (the “**Transaction Charge**”) in favour of the Stalking Horse Bidders.

[4] Counsel for Bombardier Inc. appeared today and advised that Bombardier has a litigation claim against the Field Entities of at least \$38 million. Although Bombardier has concerns with the process leading up to the selection of the Stalking Horse Agreement and the relatively short nature of the SISP, Bombardier is not opposing the relief sought today.

[5] Counsel for UK Research and Innovation (“**UKRI**”) also made submissions today. UKRI’s position is that one of the aircraft located at the Field Entities’ premises is in fact owned by UKRI and steps are being taken to transfer ownership to UKRI. Counsel for the Field Entities agreed with this, and counsel for Wells indicated that if there are concerns with respect to ownership of that aircraft, counsel will return to Court to address it.

Background

[6] Each of the Field Entities filed a Notice of Intention to Make a Proposal pursuant to the BIA (the “**NOI Proceedings**”) on June 5, 2026. AlixPartners Restructuring, Inc. is the proposal trustee in the NOI Proceedings and has, in support of the relief sought by the Field Entities filed its First Report to Court dated June 10, 2026 (the “**First Report**”).

- [7] Field Canada carries on business as an aerospace engineering and modification company that designs, integrates and certifies aircraft systems and structural modifications for government and commercial aircraft operators. Substantially all of Field Canada's physical operations take place at a 40,000 square foot hangar located next to Toronto Pearson Airport. Prior to the NOI Proceedings Field Canada employed approximately 132 employees. As noted below, the majority have been temporarily laid off but 45 employees remain active, certain of those are members of the IAM Union District 140.
- [8] Field East is a wholly-owned subsidiary of Field Canada with no employees or operations of its own. Field East's only material assets are certain Supplemental Type Certificates ("STCs"), which are regulatory approvals issued by Transport Canada Civil Aviation for changes to aircraft modification designs.
- [9] Both Field Entities are ultimately owned by Field Parent which, through a series of companies including ASSES also carries on business in the United States.
- [10] The Field Entities primary secured creditor, and proposed DIP Lender is Wells Capital. As a result of a series of liquidity challenges explained in the affidavit of John W. Mactaggart sworn June 6, 2026 (the "**Mactaggart Affidavit**"), the Field Entities were in default of various provisions of their Credit Agreement with, among others, Wells Capital as lender. Field Canada and ASSES are both borrowers under the Credit Agreement with joint and several liability and Field East (and other related entities) are guarantors. Approximately \$5 million US is currently owed under the Credit Agreement. Counsel to the Proposal Trustee has provided an opinion that, subject to the typical qualifications and assumptions, the security granted to Wells by the Field Entities in connection with the Credit Agreement is valid and enforceable.
- [11] There is only one other registered secured creditor (being in respect of a vehicle). The Field Entities also owe approximately \$10.3 million on an unsecured basis and are subject to a number of litigation claims, including that noted by Bombardier above.
- [12] On April 6, 2026, Wells Capital delivered a notice of default to Field Canada under the Credit Agreement and began conducting daily cash sweeps of Field Canada's accounts to lower its overadvance position. This prevented Field Canada from using collections from its accounts receivable to fund ordinary-course operating expenses, including payroll, supplier payments and other working capital requirements. Field Canada immediately froze its operations and temporarily laid off substantially all its employees. Field Canada and Wells Capital then began the process of negotiating a path forward.
- [13] Pursuant to an Overadvance Agreement dated April 16, 2026, Wells Bank, for itself and on behalf of Wells Capital, agreed to permit a temporary overadvance of up to US\$1.5 million to fund Field Canada's accrued payroll and certain professional costs. Wells Bank continued to fund Field Canada's limited operations pursuant to weekly budgets and cash flow reporting requirements while the parties continued negotiating longer-term arrangements. Among other conditions, the Overadvance Agreement required Field Canada to engage Riveron as CRO, who was retained on April 21, 2026.
- [14] The discussions resulted four significant elements which underpin the Field Entities proposed path forward.
- [15] First, the execution of the Sixth Amendment and Forbearance and DIP Term Sheet which are both dated June 5, 2026. Among other things, these agreements, subject to Court approval: (i) provide for a temporary forbearance from Wells Capital exercising enforcement remedies until after July 31, 2026, in

exchange for certain accommodations including enhanced reporting, strict compliance with the DIP Budget attached thereto, and certain commitment and exit fees payable; and (ii) establish a framework pursuant to which (a) Field Canada will be funded through a proposed revolving DIP Facility, providing Field Canada with the time and liquidity necessary to pursue the proposed SISP and complete the Draken Program; and (b) ASES will continue to be funded through the U.S. Facility provided in the Credit Agreement.

- [16] Pursuant to the DIP Term Sheet, Wells Capital has agreed to provide Field Canada with a revolving interim financing facility up to the maximum amount of US\$2.5 million, subject to Availability (as defined in the DIP Term Sheet, and including a permitted Overadvance under the Credit Agreement of US\$4.3 million in the aggregate) (the “**DIP Facility**”). The DIP Facility will fund Field Canada’s payroll obligations, professional costs and other working capital requirements during these NOI Proceedings, allowing the Field Entities to carry out the SISP and pursue a sale transaction for the benefit of all stakeholders. Pursuant to the DIP Term Sheet, post-filing receipts will first be applied to repay the Canadian Revolving Loans, secondly to the repayment of the US Revolving Loans and lastly to the DIP Facility.
- [17] Second, on June 5, 2026, Field Canada and Wells Bank entered into an Accommodation Agreement with FR Aviation Limited, trading as Draken Europe (“**Draken**”) (the “**Draken Accommodation Agreement**”), pursuant to which Draken has agreed to fund the operating costs and disbursements of Field Canada (including shared services payable to ASES) in order to enable Field Canada to complete its modification of Draken’s aircraft pursuant to the Draken Contract (the “**Draken Program**”), along with completion bonuses payable to those key personnel that have been recalled to work on the Draken Program. On the same date, the parties entered into a data transfer agreement (the “**Data Transfer Agreement**”) pursuant to which Draken will pay to Field Canada US\$800,000 for the transfer of certain intellectual property including data, designs and drawings, currently held by Field Canada related solely to the Draken Program.
- [18] The Draken Accommodation Agreement will provide the funding necessary for Field Canada to complete a significant program for its only remaining active customer, maximizing the value of the Draken Program while ensuring the employment of program-specific personnel. Although, as noted above, there is a project underway for another customer, UKRI, discussions remain ongoing in respect of that project and work has currently been halted.
- [19] Third, the Field Entities have, with the Proposal Trustee developed the proposed SISP, which includes, as a baseline, the Stalking Horse Agreement which provides an aggregate US\$6.5 million purchase price for the relevant assets. This provides a baseline floor against which any other Qualified Bid will be compared. It also contemplates a Break Fee and Expense Reimbursement Fees payable to the Stalking Horse Bidders, in certain circumstances, in the aggregate amount of US\$260,000 (the “**Bid Protections**”).
- [20] The relevant SISP Milestones (which contemplating a single-phase 30-day period for prospective purchasers to submit bids) are:
- (a) Distribution of Teaser Letter to potentially interested parties, preparation of non-disclosure agreement and virtual data room to begin no later than on June 12, 2026;
 - (b) Deadline to submit Bids of July 13, 2026 at 5:00 p.m.;
 - (c) Auction (if necessary) on July 15, 2026;

- (d) Selection of Successful Bid by July 16, 2026, or in the case of no Auction July 14, 2026;
- (e) Court Approval of Successful Bid to occur as soon as practicable and subject to Court availability, by July 24, 2026; and
- (f) Outside Date of July 31, 2026.

[21] The SISP provides the Proposal Trustee the ability to extend the dates in certain circumstances.

[22] To constitute a Qualified Bid in the SISP, that bid must provide for consideration of at least approximately CAD\$9.7 million, comprising the purchase price under the Stalking Horse Bid, plus the Bid Protections, plus a minimum overbid of \$300,000.

[23] Fourth, the Field Entities have developed the KERP in consultation with the Proposal Trustee. The proposed KERP would provide four beneficiaries (the “**KERP Beneficiaries**”) with a retention bonus equal to 25% of their respective salary, which only becomes payable if the beneficiary is actively employed with Field Canada on the date a successful sale transaction closes. The amount payable to the KERP Beneficiaries is proposed to be secured by a corresponding KERP Charge. The KERP Charge would rank behind all other Charges and all secured indebtedness owing to Wells Capital under the Credit Agreement. The KERP is separate and apart from the Completion Bonuses that will become payable under the Draken Accommodation Agreement and relate to different personnel.

Issues

[24] The issues to be decided by the Court are whether to:

- (a) approve the DIP Term Sheet and Sixth Amendment and Forbearance and the DIP Lender's Charge;
- (b) approve the retention of the CRO;
- (c) approve the Draken Accommodation Agreement and Data Transfer Agreement
- (d) approve the KERP and grant the KERP Charge;
- (e) grant the Administration Charge, and Directors’ Charge;
- (f) approve the SISP and Stalking Horse Agreement for use in connection therewith including the Transaction Charge; and
- (g) administratively consolidate the NOI Proceedings of Field Canada and Field East;
- (h) grant the requested Stay Extension
- (i) seal certain employee related information.

Analysis

[25] The Court has jurisdiction to approve the DIP Term Sheet and grant the DIP Lender’s Charge under s. 50.6(1) of the BIA. Section 50.6(3) of the BIA further provides the Court with the authority to order that the DIP Lender’s Charge rank in priority over the claim of any secured creditor of the Field Entities.

- [26] Section 50.6(5) of the BIA sets out criteria the Court may consider when determining whether to approve the DIP Term Sheet and DIP Lender's Charge, including: (a) the period during which the debtor is expected to be subject to the proposal proceedings; (b) how the debtor's business and financial affairs are to be managed during the proceedings; (c) whether the debtor's management has the confidence of its major creditors; (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor; (e) the nature and value of the debtor's property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) whether the Proposal Trustee supports the DIP Lender's Charge.
- [27] I am satisfied that in considering these factors the DIP Term Sheet and DIP Lender's Charge should be approved. Wells, the Field Entities primary secured creditors, supports management's efforts to restructure the affairs of the Field Entities on the terms set out therein. Without the DIP Facility, the Field Entities would not have sufficient liquidity to operate and would immediately cease all operations and restructuring efforts and would be unable to conduct the proposed SISP. The Field Entities' business and financial affairs will be closely monitored by the Proposal Trustee, CRO and Wells. The Proposal Trustee supports the DIP Term Sheet and the DIP Lender's Charge. No secured lenders are being primed by the DIP Lender's Charge. I recognize that post filing receipts are going to first to repay pre-filing secured obligations in what has been referred to as a 'creeping rollup'. The DIP Lender's Charge does not, however, secure any obligation that existed prior to the granting of the Initial Order. Further, the Proposal Trustee has received a security opinion, as noted above, confirming the validity of the pre-filing security. Such 'creeping roll ups' have been permitted in other similar proceedings: see *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at paras 56-57. The Sixth Amendment and Forbearance Agreement is closely related to the DIP Term Sheet and is also approved.
- [28] The agreements with Wells require the continued appointment of the CRO. This Court in other NOI proceedings has approved the appointment of a CRO: see for example *Re Nanopay Corporation*, 2023 ONSC 4061 at para 10. When considering whether to approve CRO appointments in other insolvency proceedings, this Court has considered the following factors: (i) whether the appointment of the CRO would be beneficial to the restructuring; (ii) whether the proposed engagement terms for the CRO are reasonable in the circumstances; (iii) the experience and qualifications of the proposed CRO; and (iv) whether the court officer supports the CRO appointment: see *Re Earth Boring Co Ltd*, 2025 ONSC 2422 at para 71. I am satisfied that in considering these factors, approving the appointing of the CRO in the present circumstances is appropriate.
- [29] With respect to the Draken Accommodation Agreement, this Court has approved comparable accommodation agreements where necessary to maximize the value of the debtor's assets, the proposal trustee supports the agreement, and no creditor would be prejudiced: see Endorsement of Justice Wilton-Siegel dated November 17, 2023, *Re Bad Boy Furniture Warehouse Limited*, Court File No. BK-23-03008133-0031 at para 2. I am satisfied that is also the case here and the agreement should be approved.
- [30] The related Data Transfer Agreement (which is required under the Draken Accommodation Agreement) contemplates Draken agreeing to pay Field Canada US\$800,000 for the transfer of certain intellectual property including data, designs and drawings currently held by Field Canada related to the modification of Draken's C-604 aircraft. Section 65.13(4) of the BIA sets forth a non-exhaustive list of factors for the Court to consider in determining whether to approve a sale of a debtor's assets outside the ordinary course of business, which includes, among other things, (i) whether the process is reasonable in the circumstances, (ii) whether the proposal trustee approves the process, (iii) whether the proposal trustee filed a report stating that in their opinion the sale is more beneficial than a sale under bankruptcy, and (iv)

the extent to which the creditors were consulted. In this case, I am satisfied the sale is appropriate, even though there was no formal marketing process in respect of the data subject to the Data Transfer Agreement. The sale is arms length. The specified intellectual property thereunder only has value to Draken as it consists of data, designs, and drawings currently held by Field Canada that relate specifically to the modification of Draken's C-604 aircraft. Rather than expending further resources on soliciting an open-market sale that would be unlikely to yield any value, the Data Transfer Agreement will provide recoveries for Field Canada and its stakeholders and is supported by Wells and the Proposal Trustee.

- [31] The Field Entities are seeking approval of the KERP which was developed in consultation with the Proposal Trustee. I am also satisfied that the proposed KERP should be approved. The proposed terms are set out above. Approval of a KERP is discretionary, but similar retention plans have been approved by this Court where the proposed participants are important for the stability of the business, difficult to replace and have extensive or specialized knowledge of the business of the debtor: see *Re The Body Shop Canada Limited*, Court File No. BK-24-03050418-0031 at paras 23-25 [**Body Shop**]. Similarly, the KERP Charge is also appropriate. The four KERP Beneficiaries are responsible for functions indispensable to closing an eventual sale transaction, including supporting diligence, facilitating asset and records transfers, maintaining IT infrastructure, continuing financial reporting and cash management, all with limited staff support. Considering the NOI Proceedings and limited liquidity, the prospect of finding timely, suitable replacements for any of the KERP Beneficiaries is remote. Further, the Proposal Trustee supports the KERP and KERP Charge and believes that both are reasonable and appropriate in the circumstances
- [32] The Field Entities seek approval of an Administration Charge in the amount of \$300,000 to secure the fees of the Proposal Trustee, counsel to the Proposal Trustee, counsel to the Field Entities and the CRO. Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's Property to secure professional fees. Administration charges are routinely granted in insolvency proceedings where: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business: see *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 at para 11-15. The quantum of the proposed Administration Charge is reasonable in the circumstances and not opposed by any person. The proposed Administration Charge is appropriate in the circumstances is approved.
- [33] The Field Entities also seek approval of a Director's Charge in the amount of \$725,000. The Court has authority to grant the Directors' Charge under section 64.1 of the BIA and may order that this charge rank in priority over the claim of any secured creditor of the Field Entities. I am satisfied that the Director's Charge is appropriate here, given that the continued involvement of the remaining directors and officers, who provide highly specialized skillsets, is critical to a successful SISP or any proposal under the BIA and the directors have indicated they are not prepared to continue to serve unless protected by the Directors' Charge. Further, the Proposal Trustee supports the proposed Directors' Charge and is satisfied, based on the estimates provided in the First Report of potential liabilities, that the amount of such charge is appropriate.
- [34] In deciding whether to grant a SISP Order, the Court is to consider the factors which a court will take into account when considering the approval of a proposed sale: see *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6 [**CCM Master v blutip**]. In an NOI proceeding this includes the factors set out in s. 65.13 of the BIA (see above). As well, as set out in *Danier Leather Inc (Re)*, 2016 ONSC 1044 at para 22-24, when approving a sales process involving a stalking horse

agreement, the Court has considered the following four factors: Is a sale transaction warranted at this time? Will the sale benefit the whole “economic community”? Do any of the debtors’ creditors have a bona fide objection to a sale of the business? Is there a better viable alternative?

- [35] The implementation of the SISP is the primary purpose of these NOI Proceedings. It is a condition of obtaining funding under the DIP Term Sheet. The SISP Milestones were developed based on the amount of funding under the DIP Facility and in consultation with Wells, the CRO and the Proposal Trustee. The timelines are short, however, they are consistent with other court-approved one phase SISP timelines (see for example: Order of Justice J Dietrich dated February 17, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031 at Schedule “A”, para 7; Order of Justice Cavanagh dated April 9, 2024, *Re Hemsana Inc*, Court File No. BK-24-03054351-0031 at Schedule “B”, para 3; Order of Justice Cavanagh dated August 26, 2024, *Re Wholly Veggie Inc*, Court File No. BK-24-03115669-0031 at Schedule “A”, para 11; Order of Justice Cavanagh dated October 28, 2022, *Re Flowr Corporation*, Court File No. CV-22-00688966-00CL at Schedule “A”, para 6; and Order of Justice Kimmel dated June 1, 2023, *Re Chalice Brands Ltd*, Court File No. CV-23-00699872-00CL at Schedule “A”, para 3.
- [36] The Stalking Horse Bid will establish a floor price for the SISP, thereby guaranteeing some recovery for the Field Entities’ stakeholders. At the same time, the SISP will subject the Field Entities to an open marketing process that permits higher and better offers to replace the Stalking Horse Bid. The SISP will also allow certain Field Canada employees to maintain their employment working on the Draken Program, while leaving open the possibility of a going concern transaction that preserves jobs moving forward. The Proposal Trustee, CRO and Wells support all aspects of the SISP. The Stalking Horse Agreement was negotiated at arm’s length between sophisticated parties. The two transactions contemplated under the Stalking Horse Agreement together have a purchase price that is expected to satisfy all indebtedness owing to Wells (including under the proposed DIP Facility).
- [37] The Transaction Charge contemplates security for the proposed Bid Protections in the aggregate amount of US\$260,000, representing 4% of the purchase price under the Stalking Horse Agreement. The evidence in the First Report is that these amounts are within the range of reasonableness for stalking horse agreements, including within NOI proceedings. Accordingly, I am satisfied the SISP should be approved including the Stalking Horse Agreement (and the Transaction Charge as part thereof) for use in the SISP. If the Stalking Horse Agreement is the successful bid, approval of the transactions contemplated thereby will be sought at the appropriate time.
- [38] The Court has the authority to extend the stay period for 45 days under s. 50.4(9) of the BIA where the Court is satisfied that: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.
- [39] I am satisfied that the stay extension should be granted. The Proposal Trustee supports the requested extension and is of the view that the Field Entities are acting in good faith and with due diligence - there is no evidence otherwise. This is the first extension request and is for 45 days following the expiry of the initial 30 day term. It is necessary in order to provide the Field Entities and the Proposal Trustee time to pursue the SISP in order to potentially identify options available for stakeholders. There is no evidence of any material prejudice to any creditor if the requested extension is granted. The cash flow forecast attached to the First Report shows sufficient liquidity.

[40] The limited sealing order sought applies to Confidential Exhibit “A” to the Mactaggart Affidavit, which contains the unredacted KERP showing personnel names and salaries, and Confidential Appendix “A” to the First Report, which contains the unredacted Draken Accommodation Agreement listing the employees working on the Draken Program and their respective salaries (together, the “**Confidential Documents**”). Both Confidential Documents contain commercially sensitive information relating to employees and their compensation. This Court regularly seals the details of key employee retention plans that reveal sensitive personal information which if disclosed, cause harm to individual employees and to the debtor: see *Body Shop* at para 27-30 and I am satisfied doing so satisfies the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38.

Disposition

[41] Orders to go in the form signed by me this day with immediate effect.

[42] A further motion has been booked in this matter for **90 minutes (virtual) on July 24, 2026 at 10:00 am.**



Date: Jun 12, 2026

Justice J. Dietrich