

YOU COURT FILE NO.: 2401-15969

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.

APPLICANT **ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor of ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.

DOCUMENT **BENCH BRIEF OF THE MONITOR**

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I. OVERVIEW

1. On November 14, 2024, on application by an ad hoc group of Canadian investors in various real estate and land investment projects (the "**Applicant Investors**"), this Honourable Court granted an initial order (the "**Initial Order**") providing protection to the Debtor Companies (as defined in the Initial Order) under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") and granting the following relief, among other things:
 - (a) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as monitor of the Debtor Companies (in such capacity, the "**Monitor**") with certain enhanced powers;
 - (b) appointing Fasken Martineau DuMoulin LLP as representative counsel for the Canadian investors (in such capacity, the "**Canadian Representative Counsel**");
 - (c) appointing Norton Rose Fulbright Canada LLP as representative counsel for the investors outside of Canada (in such capacity, the "**Foreign Representative Counsel**", and together with Canadian Representative Counsel, "**Representative Counsel**");
 - (d) authorizing the Debtor Companies, with the enhanced oversight and control of the Monitor, to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof and to continue to carry on business in a manner consistent with the preservation of their businesses;
 - (e) granting a stay of proceedings (the "**Stay of Proceedings**"), for an initial period up to and including November 24, 2024 (the "**Stay Period**") for the Debtor Companies, the Property, the Business, and the Affiliate Entities (as defined below);
 - (f) declaring that the Angus A2A Limited Partnership, Angus Manor Park A2A Limited Partnership, Fossil Creek A2A Trust, Hills of Windridge A2A Trust, Fossil Creek A2A Limited Partnership and Hills of Windridge A2A LP (collectively, the "**Affiliate Entities**") shall have the same benefit and the same protections and authorizations provided to the Debtor Companies in the Initial Order and all the property and business of the Affiliate Entities shall be deemed to be the Property and Business (each as defined in the Initial Order of the Debtor Companies);
 - (g) authorizing the Monitor to take whatever steps necessary with the Alberta, Federal and Ontario corporate registries to reinstate certain struck Debtor Companies and Affiliate Entities;
 - (h) authorizing the Debtor Companies to enter into an interim financing agreement with Pillar Capital Corp. ("**Pillar**" or the "**Interim Lender**") and to borrow from Pillar the initial principal

amount of \$500,000 with the ability in the future to borrow up to \$2,000,000 (the "**Interim Financing**");

- (i) granting the following charges over the Property in the following relative priorities:
 - (i) First – a charge in favour of the Monitor, its Assistants, Monitors Counsel and Representative Counsel (the "**Administration Charge**") to a maximum amount of \$250,000; and
 - (ii) Second – a charge in favour of Pillar in respect of the Interim Financing to a maximum amount of \$500,000 (the "**Interim Lender's Charge**");

(collectively, the "**Charges**"); and
 - (j) authorizing the Monitor to act as "Foreign Representative", in order to apply for a Temporary Restraining Order in the United States and subsequently apply to commence ancillary insolvency proceedings under Chapter 15 of Title 11 of the US Bankruptcy Code in the US Bankruptcy Court for the Northern District of Texas.
2. On November 18, 2024, the Monitor filed an application returnable on November 21, 2024 (the "**Comeback Application**") seeking an amended and restated initial order.
 3. On November 21, 2024, counsel to the Debtor Companies served an application returnable November 21, 2024, seeking, among other things, an order setting aside the Initial Order, or in the alternative, staying the Initial Order and adjourning the Comeback Application (the "**Debtor Companies' Application**").
 4. On November 21, 2024, this Honourable Court:
 - (a) granted an order extending the Stay Period to November 26, 2024; and
 - (b) reserved its decision on both the relief sought by the Monitor at the Comeback Application and the relief sought by the Respondent Application until November 25, 2024.
 5. On November 25, 2024, the Court granted an amended and restated initial order (the "**ARIO**") which provided for, among other things:
 - (a) an extension of the Stay Period up to and including December 18, 2024, for a limited scope;
 - (b) a direction to the Monitor to provide a limited purpose report by 4:00 p.m. on November 28, 2024, to the Court to address the expenditures and accruals to date, and a revised cashflow statement listing all proposed expenditures until December 18, 2024, broken down as between service providers (the "**Second Report**");

- (c) a direction to the Debtor Companies to provide to the Monitor by 4:00 p.m. December 6, 2024, the Requested Information (as defined in the ARIO);
- (d) a direction to the Monitor to provide a comprehensive report by 4:00 p.m. on December 13, 2024 to the Court to address, among other things (i.e. the Third Report):
 - (i) the respective rights and entitlements of each class of investors, including the investors' rights to approve property sales;
 - (ii) the ownership of the properties;
 - (iii) the value of the properties;
 - (iv) the marketing process that was conducted or is being conducted for the properties; and
 - (v) the investor approval process conducted for any sales, including how investors were notified of sales, what they were told, what opportunities they were given to approve sales, and how sales were approved, including by whom and under what authority.

(the "**Comprehensive Overview**")

- 6. On November 29, 2024, this Honourable Court granted an order increasing the authorized borrowings under the Interim Facility and the corresponding Interim Lender's Charge from \$500,000 to \$1,250,000 plus the amount of all interest, fees, and expenses in respect of the principal amount advanced with respect to the Interim Financing.
- 7. On December 16, 2024 the Monitor filed the Third Report of the Monitor containing the Comprehensive Overview (the "**Third Report**").
- 8. On December 20, 2024, the Honourable Justice Feasby granted an order under the CCAA, among other things:
 - (a) extending the Stay Period up to and including January 17, 2025, adjourning certain relief under the Comeback Application to January 17, 2025, at 10:00 a.m. MST, for a full day before the Honourable Justice Feasby (collectively, the "**January Hearing**");
 - (b) adjourning the Debtor Companies' Application in its entirety to the January Hearing;
 - (c) increasing the administration charge from \$250,000 to \$1,000,000;
 - (d) approving a litigation schedule with respect to the January Hearing; and

- (e) approving the fees and disbursements of the Monitor and Monitor's Counsel as set out in the Third Report.
9. On January 17, 2025, the Honourable Justice Feasby reserved his decision with respect to the Debtor Companies' Application and granted an order under the CCAA extending the Stay Period up to and including February 14, 2025 (the "**Stay Extension Order**").
10. On January 29, 2025, the Honourable Justice Feasby released his decision (the "**Decision**") and granted an order under the CCAA granting the following relief:
- (a) dismissing the Debtor Companies' Application; and
 - (b) directing the Monitor to, within 21 days of the Decision, provide this Court with a reasonable plan for gaining control of the Texas Lands and the proceeds of the Fossil Creek Sale and the Water District Sale (the "**Texas Plan**"). If the Texas Plan is not provided within 21 days and subsequently approved by this Court, then the CCAA Proceedings shall terminate as against Fossil Creek A2A Developments, LLC, Windridge A2A Developments, LLC, Fossil Creek A2A GP Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A Limited Partnership, Hills of Windridge A2A LP, Fossil Creek A2A Trust and Hills of Windridge A2A Trust (collectively, the "**Windridge and Fossil Creek Entities**") and the Initial Order and the ARIO shall be vacated as against the Windridge and Fossil Creek Entities.
- (the "**Dismissal Order**")
11. On February 19, 2025 the Monitor filed the Fourth Report of the Monitor outlining the Texas Plan (the "**Fourth Report**").
12. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the ARIO, the Dismissal Order or the Fourth Report.

II. INTRODUCTION

13. This bench brief is submitted on behalf of the Monitor in support of its application (the "**Application**") for:
- (a) an order (the "**Order**") pursuant to the CCAA, seeking the following, among other things:
 - (i) abridging the time for service and deeming service of the Application and supporting materials to be good and sufficient;
 - (ii) approving the Texas Plan (as further particularized in the Fourth Report);

- (iii) extending the Stay Period up to and including April 30, 2025 (the “**Stay Extension**”);
- (iv) amending the ARIO and granting an increase in the aggregate amount of the Administration Charge to a maximum amount of \$2,500,000; and
- (v) approving the professional fees and disbursements of the Monitor and the Monitor’s Counsel for the period up to January 31, 2025.

III. FACTS

A. Background

- 14. The Monitor adopts and relies on the facts set out in detail in the Affidavit of Michael Edwards filed November 12, 2021 (the “**Edwards Affidavit**”).
- 15. Further factual background information supporting the relief sought may be found in the Third Report and the Fourth Report.

B. Debtor Companies’ Failure to Comply with AIRO

- 16. Pursuant to the ARIO, the Debtor Companies were required to provide the Monitor with the Requested Information by 4:00 p.m. on Friday, December 6, 2024 (the “**Information Deadline**”).¹
- 17. As further particularized in the Third Report, the Debtor Companies and Affiliate Entities failed to provide much of the Requested Information by the Information Deadline, including, without limitation:
 - (a) the Corporate Records;
 - (b) the Investor Records (as defined in the ARIO) with respect to the Offshore Investors;
 - (c) all title documents for the Texas Land; and
 - (d) all documentation related to the valuation and marketing of the Texas Lands.
- 18. On December 12, 2024, Monitor’s Counsel received a letter from the Debtor Companies’ counsel advising that the Debtor Companies do not intend to provide, among other things, any the Investor Records for the Offshore Investors.

C. Debtor Companies’ Appeals

- 19. On December 16, 2024, counsel to Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC (the “**US LLCs**”) and counsel to Angus A2A GP Inc., Angus Manor Park A2A

¹ Amended and Restated Initial Order filed December 3, 2024 [“**ARIO**”] at para 75.

GP Inc., Angus Manor Park A2A Capital Corp., Angus Manor Park A2A Developments Inc., Hills of Windridge A2A GP Inc., Fossil Creek A2A GP Inc., A2A Developments Inc., Serene Country Homes (Canada) Inc., and A2A Capital Services Canada Inc. (together the "**Canadian Respondents**") each served an application returnable December 20, 2024, seeking an order to extend the time to appeal the Initial Order (the "**Appeal Time Extension Application**"). On December 16, 2024 counsel to the US LLCs and the Canadian Respondents also each served applications for permission to appeal the Initial Order and the ARIO.

20. On December 23, 2024, the Court provided Reasons for Decision (the "**December Reasons**"), which dismissed the Appeal Time Extension Application. Following the December Reasons, counsel to the Canadian Respondent's confirmed their withdrawal of their application for leave to appeal the Initial Order.
21. On January 13, 2025, counsel to the US LLCs filed an application for permission to appeal the December Reasons.
22. On February 13, 2025 counsel for the Canadian Respondents wrote to the Monitor's Counsel, Canadian Rep Counsel and Offshore Rep Counsel requesting consent for Angus GP, Angus Manor Developments, Angus Manor Capital and Angus Manor GP (the "**Angus Manor Entities**") to withdraw their application for permission to appeal the ARIO and advised that the Angus Manor Entities would not seek leave to appeal the Decision or be the subject of any further appeals. Upon request for further clarification counsel to the Canadian Respondents advised the Monitor that A2A Developments Inc., Serene Country Homes (Canada) Inc., and A2A Capital Services Canada Inc. (the "**A2A Corporate Entities**") also sought to withdraw their application for permission to appeal the ARIO and would not seek leave to appeal the Decision or be the subject of any further appeals.
23. On February 14, 2025 Monitor's Counsel wrote to counsel for the Canadian Debtors confirming the Monitor's consent to a no-cost withdrawal of the Angus Manor Entities and the A2A Corporate Entities application for permission to appeal the ARIO.
24. On February 19, 2024 counsel to the US LLCs and counsel to the Hills of Windridge A2A GP Inc. and Fossil Creek A2A GP Inc. each filed applications for permission to appeal the Dismissal Order.
25. The following applications for permission to appeal are scheduled to be heard on March 6, 2025:
 - (a) US LLCs' application for permission to appeal the December Reasons (File No. 2501-0019AC);
 - (b) US LLCs' application for permission to appeal the Initial Order (File No. 2401-0353AC);
 - (c) US LLCs' application for permission to appeal the ARIO (File No. 2401-0352AC);

- (d) Canadian Debtors' application for permission to appeal the ARIO (File No. 2401-0350AC);
- (e) US LLCs application for permission to appeal the Dismissal Order (File No. 2501-0350AC); and
- (f) Hills of Windridge A2A GP Inc. and Fossil Creek A2A GP Inc.'s application for permission to appeal the Dismissal Order (File No. 2501-0353AC).

(the "**Appeal Applications**")

D. Frozen Sale Proceeds

- 26. As further particularized in the Fourth Report, the Debtor Companies caused the Fossil Creek Sale and the Water District Sale to be completed in 2024.²
- 27. Upon questioning, Management advised that the proceeds of the Fossil Creek Sale and the Water District Sale were being held in bank accounts with JPMorgan Chase Bank, N.A. (d/b/a "**Chase Bank**") in the State of Texas.³
- 28. On January 27, 2025, US conflicts counsel to the Monitor sent a letter to Chase Bank requesting that Chase Bank freeze all withdrawals and transfers from any and all accounts held by Chase Bank and owned by either of the US LLCs or their affiliated partnerships, Hills of Windridge LP and Trails of Fossil Creek Properties LP.
- 29. On February 4, 2025, Chase Bank wrote to the Monitor's US conflicts counsel to advise that Chase Bank has placed a hold on three specific accounts held at Chase Bank and had been frozen. The total value of the amounts held in all three accounts is USD \$2,796,460.80 (the "**Frozen Sale Proceeds**").

IV. ISSUES

- 30. The Monitor submits that the principal issues to be determined by this Honourable Court are whether:
 - (a) the Texas Plan should be approved;
 - (b) the Stay Extension should be approved;
 - (c) the ARIO should be amended;
 - (d) the Administration Charge should be increased to \$2,500,000; and

² Fourth Report of the Monitor dated February 19, 2025 ["**Fourth Report**"] at paras 39 and 49.

³ Transcript of the Questioning of Allan Lind, January 7, 2025, at 35-23-25 – 36-1-4 and 46-12-23.

(e) the Professional Fees should be approved.

V. LAW & ANALYSIS

A. The Texas Plan Should be Approved

31. Pursuant to the Decision, this Court held that:

[88] Though I have confirmed that the CCAA proceedings are appropriate, the evidence is clear that the Windridge lands, the proceeds of the small parcel of the Windridge lands sold to TRWD, and the proceeds of the sale of the Fossil Creek lands remain outside the reach of the CCAA. If those lands and proceeds cannot be brought under the control of the Monitor through the Chapter 15 proceedings or otherwise, then the CCAA proceedings are destined to fail in respect of the Windridge and Fossil Creek entities, including the US LLCs. The Monitor shall have 21 days from the date of these Reasons to provide a plan for gaining control of the Windridge lands and the proceeds of the sales of the Windridge lands and Fossil Creek lands to the Court. If a reasonable plan is not provided to the Court within 21 days, then the CCAA proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs. [Emphasis added]⁴

32. In compliance with the Decision that Monitor prepared the Fourth Report which outlines the Texas Plan to:

- (a) gain control of the Texas Lands and the proceeds of the Fossil Creek Sale and the Water District Sale (the “**Texas Assets**”); and
- (b) safeguard recovery of the Texas Assets for the benefit of the stakeholders.

33. The key element of the Texas Plan involves the Monitor, on behalf of Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC, initiating a voluntary chapter 11 case (the “**Chapter 11 Case**”) in US Bankruptcy Court for the purpose of initiating an adversary proceeding and seeking judgment that Fossil Creek and Windridge are recoverable by the US LLCs as avoidable fraudulent transfers under 11 U.S.C. §§ 544 and 548 and related declaratory relief under 28 U.S.C. § 220.

34. Pursuant to paragraph 84 of the ARIO, the Monitor is authorized to act as the foreign representative in respect of the CCAA Proceedings for the purpose of having the CCAA Proceedings recognized and approved outside the jurisdiction of Canada, including for the purpose of initiating the Chapter 11 Case.

35. As further particularized in the Fourth Report, due in part to the actions of the Debtor Companies, and the structure of the investments made in Fossil Creek and Windridge, the Monitor has been unable to sufficiently ascertain the person or persons who holds title to Fossil Creek and

⁴ [Angus A2A GP Inc \(Re\), 2025 ABKB 51](#) [“**Angus A2A**”] at para 88.

Windridge.⁵ Additionally, the Monitor has discovered evidence of a history of fraudulent conveyances to insiders perpetrated by Management with respect to the Texas Assets.⁶

36. Management asserts that the owner of the Texas Assets is Foo Tiang Meng Dirk Robert (a/k/a "**Dirk Foo**") in his capacity as the trustee of Hills of Windridge Trust and the Fossil Creek Trust. However, in addition to their failure to advance any definitive evidence with respect to title to Fossil Creek and Windridge, this Court has held that the Debtor Companies and Management have proven themselves "either incapable of or unwilling to undertake the fiduciary responsibilities to act as a 'Facilitator' or 'Trustee' in the realization and distribution process when A2A Group projects are monetized."⁷
37. The Monitor has been able to locate and freeze the Frozen Sale Proceeds. However, litigation in the United States with respect the Frozen Sale Proceeds is imminently required in order to continue to preserve the Frozen Sale Proceeds for the benefit of its rightful owners.
38. The Monitor submits that due to the unique circumstances of this case, the tools available in the Chapter 11 Case represent the best, and likely only efficient way of capturing the Windridge and Fossil Creek properties and the remaining sale proceeds of the Fossil Creek Sales and Water District Sale and ensuring that those assets are monetized for the benefit of all stakeholders in a manner which is fair and just.
39. The Monitor requests that this court approve the Texas Plan because the Texas Plan is reasonable and consistent with its powers under the ARIO.

B. The Stay Extension Should be Approved

40. The Stay of Proceedings granted in these CCAA Proceedings will expire on March 4, 2025. The Monitor requests that the Stay of Proceedings be extended to April 30, 2025.
41. Pursuant to section 11.02(2) of the CCAA, this Court has discretion to make an order extending the Stay of Proceedings granted in an initial order for any period that the court considers necessary.⁸ The length of an extension is dependent on the facts of each case.⁹ The Court has discretion to extend the stay of proceedings if the applicant satisfies the court that the extension is appropriate and that the Debtor Companies have acted, and are acting, in good faith and with due diligence.¹⁰

⁵ Fourth Report at para 73.

⁶ *Ibid* at paras 45 and 77.

⁷ [Angus A2A](#) at para 42.

⁸ [Companies Creditors Arrangement Act, RSC 1985, c C-36](#) ["CCAA"], s 11.02(2).

⁹ [Tepper Holdings Inc, Re, 2011 NBQB 311](#) at para 54.

¹⁰ [CCAA](#), s 11.02(3).

42. The criteria of whether circumstances exist that make the extension appropriate is assessed by reference to whether the requested extension advances the objectives of the CCAA.¹¹
43. On a proper application of the legislative and remedial purposes of the CCAA, it is appropriate to extend the Stay of Proceedings in the circumstances because the Stay Extension furthers the remedial purposes of the CCAA.
44. Canada's insolvency statutes (including the CCAA) pursue a range of remedial objectives, including:¹²
- (a) providing for timely, efficient and impartial resolution of a debtor's insolvency;
 - (b) preserving and maximizing the value of the debtor's assets;
 - (c) ensuring fair and equitable treatment of the claims against a debtor;
 - (d) protecting the public interest; and
 - (e) in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the debtor's business.
45. In the present circumstances the Monitor submits that the Stay Extension furthers the joint objectives of preserving and maximizing the value of the Debtor Companies' assets for all stakeholders and providing for a timely, efficient and impartial resolution of the Debtor Companies' insolvency, both of which have been recognized by Canadian courts as fundamental purposes of the CCAA.¹³
46. The circumstances surrounding the Debtor Companies and Affiliate Entities are complex, with thousands of stakeholders in multiple jurisdictions. The Stay Extension is necessary as it will afford the Monitor sufficient time to:
- (a) enact the Texas Plan as outlined in the Fourth Report to gain control of the Texas Lands and the proceeds of the Water District Sale and the Fossil Creek Sale;
 - (b) respond to the Appeal Applications;
 - (c) advance the sale and/or marketing of the Angus Manor project; and
 - (d) with the assistance of Offshore Rep Counsel, contact Offshore Investors to seek information relevant to these CCAA Proceedings, for the purpose, of among other things,

¹¹ [Re Canada North Group Inc, 2017 ABQB 508](#), ["**Canada North Group**"] at para 34.

¹² [9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10](#) ["**Callidus**"] at para 40.

¹³ [Ibid.](#)

determining whether additional Debtor Companies should be added to these CCAA Proceedings.

(the “**Stay Activities**”)

47. The Monitor submits that it is just and reasonable to grant the Stay Extension for the following reasons:
- (a) the Stay Extension is appropriate and advances the objectives of the CCAA;
 - (b) the Monitor on behalf of the Debtor Companies, has acted and continues to act in good faith and with due diligence, and in a manner consistent with the Monitor’s enhanced powers under the ARIO;
 - (c) assuming the Administration Charge is increased, there will be sufficient coverage to fund the Stay Extension; and
 - (d) no stakeholder will be materially prejudiced by an extension of the Stay and the requested extension is in the stakeholders’ best interests.
48. The Stay Extension will enable the Monitor to oversee and facilitate the completion of the Stay Activities. The Monitor submits that it is just and reasonable for this Court to exercise its discretion and order the Stay Extension in these proceedings.

C. The ARIO Should be Amended

49. The Monitor seeks to an amendment to paragraph 31 of the ARIO to remove any restrictions on the actions of Representative Counsel authorized pursuant to the ARIO.
50. Paragraph 31 of the ARIO provides that until and including the Continuation Date (as defined in the ARIO), Representative Counsel is directed to take only those actions absolutely necessary to carry out the terms of the ARIO.
51. The Continuation Date has now passed and this Court has definitively determined that these CCAA Proceedings are appropriate.¹⁴ Consequently, there no longer exists any circumstances which justify any restriction on Representative Counsel’s power authorized pursuant to the ARIO.
52. Representative Counsel supports the Monitor’s application to amend paragraph 31 of the ARIO.

¹⁴ [Angus A2A](#) at para 87.

D. The Administration Charge Should be Increased

53. The Initial Order established an Administration Charge in the amount of \$250,000. The initial amount of the Administration Charge was intended to provide security for the respective fees and disbursements of the beneficiaries of the Administration Charge, during the ten (10) day Initial Stay. The Administration Charge was subsequently increased to an aggregate maximum amount of \$1,000,000 on December 20, 2024.
54. In connection with this Application, on the basis of the projected cashflow of the Debtor Companies (as further particularized in the Fourth Report), the Monitor submits that this Honourable Court increase the total aggregate amount of the Administration Charge from \$1,000,000 to \$2,500,000.
55. This Honourable Court has jurisdiction to grant an increase to the Administration Charge pursuant to section 11.52 of the CCAA.¹⁵ In *Canwest Publishing*,¹⁶ the Court identified six non-exhaustive factors that the Court may consider when determining whether to grant an administrative charge:
- (a) the size and complexity of the business being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the Monitor.¹⁷
56. The Monitor submits that the requested increase to the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:
- (a) the Debtor Companies and Affiliate Entities consist of a large and intertwined group of companies and entities, formed under the laws of at least two Canadian provinces and the United States, which have invested in real property assets in both countries by attracting investment from investors globally. Consequently, these CCAA Proceedings require a high degree of involvement, expertise and advice from the beneficiaries of the Administration Charge (*i.e.* the Monitor, Monitor's Counsel and Assistants, and Representative Counsel);
 - (b) The Debtor Companies' complex corporate governance structures, in conjunction with the Debtor Companies' failure to comply with the terms of the ARIO and provide the Requested

¹⁵ [CCAA](#), s 11.52.

¹⁶ [Canwest Publishing Inc, 2010 ONSC 222](#).

¹⁷ [Ibid](#) at para 54.

Information, required the Monitor to extend additional resources in order to prepare the Third Report and the Fourth Report, each as ordered by this Court;

- (c) Management's efforts to conceal the Texas Assets from the Investors (as further particularized in the Fourth Report) have necessitated the commencement of the Chapter 11 Case in the United States;
 - (d) the numerous Appeal Applications and other opposition by the Debtor Companies' have impacted the Monitor's ability to carry out its Court appointed duties in a timely manner, increasing professional costs;
 - (e) all beneficiaries of the Administration Charge have contributed, and will continue to contribute, to the restructuring efforts of Debtor Companies and there is no unwarranted duplication of efforts; and
 - (f) the Monitor believes that the proposed increased quantum of the Administration Charge is fair and reasonable in light of the enhanced powers and responsibilities of the Monitor under the ARIO, and the professional expertise and knowledge required by the Monitor and other beneficiaries of the Administration Charge in order to successfully navigate these CCAA Proceedings and maximize value for the benefit of all stakeholders.
57. The proposed increase to the Administration Charge is appropriate and necessary in light of the Business, Property, the Monitor's duties, the duties of the Monitor's Counsel, the additional difficulties presented by the Debtor Companies refusal to cooperate with the Monitor, and the duties and necessity for Representative Counsel.
58. The increased Administration Charge is necessary to encourage the participation of the insolvency professionals associated with this matter, who are integral to the success of the proceeding.

E. The Professional Fees Should be Approved

59. The Monitor is seeking approval of the Professional Fees incurred by the Monitor and Monitor's Counsel as described in the First Supplement to the Monitor's Fourth Report dated February 24, 2025.
60. The AIRO provides that the Monitor and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges and that the Monitor and its counsel shall pass their accounts from time to time.¹⁸

¹⁸ ARIO at paras 47 – 48.

61. In determining whether to approve the fees and accounts of a court-appointed monitor, the Court shall focus on “whether the fees are fair and reasonable in all of the circumstances”¹⁹ ensuring the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.²⁰ In considering whether to approve fees and disbursement, the court has regard to the “overriding principle of reasonableness”²¹ assessing the following non-exhaustive factors in determining the reasonableness of the Monitor’s fees:
- (a) the nature, extent and value of the assets;
 - (b) the complications encountered;
 - (c) the degree of assistance provided by the debtor;
 - (d) the time spent;
 - (e) the monitor’s knowledge, experience and skill;
 - (f) the diligence and thoroughness displayed;
 - (g) the responsibilities assumed;
 - (h) the results of the monitor’s efforts; and
 - (i) the cost of comparable services when performed in a prudent and economical manner.²²
62. Similar factors have been considered when assessing the accounts of legal counsel to the court officer.²³
63. In the present circumstances that Monitor submits that the fees are fair and reasonable in light of, among other things;
- (a) the complication and delays encountered as a result of the lack of cooperation from Management;
 - (b) the Monitor’s enhanced powers under the ARIO;
 - (c) the Monitor’s duty to respond to the Appeal Applications; and
 - (d) the resources expended to develop the Texas Plan, as ordered by this Court.

¹⁹ [Winalta Inc. \(Re\), 2011 ABQB 399](#), [“*Winalta Inc.*”] at para 30.

²⁰ [Winalta Inc.](#), *ibid* at para 30; [Re Nortel Networks Corporation et al, 2017 ONSC 673](#) [“*Nortel 2017*”] at para 13.

²¹ [Nortel Networks Inc., 2022 ONSC 6680](#) [“*Nortel 2022*”] at para 10.

²² [Nortel 2017](#) at para 14; [Nortel 2022](#) at para 11.

²³ [Redcorp Ventures Ltd. \(Re\), 2016 BCSC 188](#) at para 33.

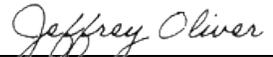
64. Approval of the Professional Fees are appropriate at this time because the Monitor, with the assistance of the Monitor's Counsel, has acted in good faith and with due diligence. The Professional Fees were properly incurred and reflect the Monitor's careful efforts to efficiently carry out its court-ordered duties and responsibilities. The hourly rates charged, and time spent by, the Monitor and its Counsel are consistent with comparable firms practicing in insolvency law in the Alberta and Texas markets.
65. The Monitor respectfully submits that its fees and disbursements, its Canadian counsel, Cassels, and that of its US counsel, Reed Smith, are fair and reasonable in the circumstances, and therefore, should be approved.

VI. CONCLUSION

66. Based on the foregoing, the Monitor requests that this Honourable Court grant the Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of February, 2025.

Cassels Brock & Blackwell LLP

Per: 

Jeffrey Oliver
Counsel for the Monitor

VII. LIST OF AUTHORITIES

STATUTES

Tab	Authority
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- | | |
|----|---|
| 1. | <u>Companies' Creditors Arrangement Act, RSC 1985, c C-36</u> |
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JURISPRUDENCE

Tab	Authority
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- | | |
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| 2. | <u>Angus A2A GP Inc (Re), 2025 ABKB 51</u> |
| 3. | <u>Tepper Holdings Inc, Re, 2011 NBQB 311</u> |
| 4. | <u>Re Canada North Group Inc, 2017 ABQB 508</u> |
| 5. | <u>9354-9186 Quebec inc v Callidus Capital Corp, 2020 SCC 10</u> |
| 6. | <u>Canwest Publishing Inc, 2010 ONSC 222</u> |
| 7. | <u>Winalta Inc. (Re), 2011 ABQB 399</u> |
| 8. | <u>Re Nortel Networks Corporation et al, 2017 ONSC 673</u> |
| 9. | <u>Nortel Networks Inc., 2022 ONSC 6680</u> |
| 10. | <u>Redcorp Ventures Ltd. (Re), 2016 BCSC 188</u> |