

YOU COURT FILE NO.: 2401-15969  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's Stamp

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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File No.: 57100-4

**Attention: Jeffrey Oliver/Danielle Marechal**

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## I. INTRODUCTION

### A. Overview

1. This bench brief is submitted on behalf of the Monitor in support of its application (the “**Application**”) for an order (the “**Order**”) pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), seeking the following, among other things:
  - (a) an extension of the Stay Period up to and including March 7, 2025 (the “**Stay Extension**”); and
  - (b) the approval of the conduct and activities of the Monitor as set out in the Pre-filing Report of the Monitor dated November 13, 2024 (the “**Pre-filing Report**”), the First Report of the Monitor dated November 20, 2024 (the “**First Report**”), the First Supplement to the First Report of the Monitor dated November 21, 2024 (the “**First Supplement to the First Report**”), the Second Supplement to the First Report of the Monitor dated November 25, 2024 (the “**Second Supplement to the First Report**”), the Second Report of the Monitor dated November 28, 2024 (the “**Second Report**”), the Third Report of the Monitor dated December 13, 2024 (the “**Third Report**”) and the First Supplement to the Third Report of the Monitor dated December 17, 2024 (the “**First Supplement to the Third Report**”).
2. This bench brief will also address the Monitor’s submissions that:
  - (a) A proceeding of some form (whether a CCAA or receivership) is necessary in the circumstances. If the Stay Extension is not granted, or the Initial Order is set aside, stayed or varied, the Monitor is supportive of the alternative relief requested by of the Applicant Investors in their application in support of the Initial Order to appoint a receiver over the Debtor Companies and Affiliate Entities pursuant to section 13(2) of the *Judicature Act*<sup>1</sup>; and
  - (b) This Honourable Court has jurisdiction over the Debtor Companies pursuant to the CCAA, including without limitation Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC (the “**US Debtor Companies**”).
3. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Third Report, the Amended and Restated Initial Order dated November 25, 2024 (the “**ARIO**”), or the Brief of the Applicant Investors, filed on November 12, 2024 (the “**Applicant Investors’ Brief**”).

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<sup>1</sup> [Judicature Act, RSA 2000, c J-2](#) at s 13(2).

**B. Procedural History**

4. 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 CCAA and providing enhanced powers to the Monitor.
5. On November 18, 2024, the Monitor filed an application returnable on November 21, 2024 (the "**Comeback Application**") seeking an amended and restated initial order.
6. 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**").
7. Justice Simard presided over the comeback hearing on November 21, 2024 (the "**Comeback Hearing**") and reserved his decision on the relief sought in the Comeback Application and the Debtor Companies' Application until November 25, 2024.
8. On November 25, 2024, Justice Simard granted the ARIO and gave an oral decision pursuant to which Justice Simard found<sup>2</sup>:
  - (a) the Court of King's Bench of Alberta (the "**Court**") has jurisdiction over all of the Debtor Companies, including the LLCs;<sup>3</sup>
  - (b) the Applicant Investors had standing to bring the application for the Initial Order;<sup>4</sup>
  - (c) all of the Debtor Companies are affiliated, and their businesses are inextricably intertwined with respect to the Angus Manor, Fossil Creek and Windridge projects;<sup>5</sup>
  - (d) the respondents are insolvent;<sup>6</sup>
  - (e) the Court had insufficient evidence to determine whether the Stay Period should be extended beyond December 18, 2024 and granted a stay extension to December 18, 2024 to allow the Debtor Companies and Affiliate Entities time to provide the Monitor with the necessary information to create a comprehensive report for the Court so that there is a proper record upon which to decide whether a continuation of the Stay Period beyond December 18, 2024 is appropriate;<sup>7</sup> and

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<sup>2</sup> Transcript of Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta, November 25, 2024, before the Honourable Justice C Simard ["**November 25 Transcripts**"].

<sup>3</sup> November 25 Transcripts at 8-4-15; *Angus A2A GP Inc (Re)*, 2024 ABKB 769 at para 5.

<sup>4</sup> November 25 Transcripts at 9-5-6.

<sup>5</sup> November 25 Transcripts at 9-21-22.

<sup>6</sup> November 25 Transcripts at 10-21-22.

<sup>7</sup> November 25 Transcripts at 12-20-21, 12-29-30, 12-32-36.

(f) all matters not decided are adjourned to December 18, 2024;<sup>8</sup>

(the “**Oral Reasons**”).

9. Pursuant to the ARIO, the Court directed that the Debtor Companies provide to the Monitor by 4:00 p.m. December 6, 2024 (the “**Information Deadline**”), the Requested Information (as defined in the ARIO).
10. The Debtor Companies failed or refused to provide the majority of the Requested Information by the Information Deadline, in contravention of the ARIO. However, the Debtor Companies have continued to provide portions of the Requested Information since the Information Deadline, including critical documents that were provided to the Monitor up to and after December 13, 2024.<sup>9</sup>
11. On December 13, 2024, the US Debtor Companies retained Bennett Jones LLP as counsel, which resulted in the Honourable Justice Simard recusing himself from hearing any further applications in these CCAA proceedings. The Stay of Proceedings was extended to December 20, 2024, to allow the interested parties time to appear before a different Justice.
12. On December 20, 2024, certain relief sought in the Comeback Application and the entirety of the Debtor Companies’ Application were adjourned to January 16 and 17, 2025, by consent of the parties, to allow Monitor’s Counsel, Canadian Representative Counsel and Offshore Representative Counsel the opportunity to cross-examine Allan Lind (“**Mr. Lind**”) and Grayson Ambrose (“**Mr. Ambrose**”) on their affidavits. For that purpose, the Stay Period was extended up to and including January 17, 2025.

## **II. FACTS**

### **A. Background**

13. The Monitor adopts and relies on the facts set out in detail in the Applicant Investors’ Brief filed November 12, 2021.
14. Further factual background information supporting the relief sought may be found in the Pre-Filing Report, First Report, First Supplement to the First Report, the Second Supplement to the First Report, the Second Report, the Third Report and the First Supplement to the Third Report.

### **B. Debtor Companies’ Failure to Comply with ARIO**

15. Pursuant to the ARIO, the Debtor Companies were required to provide the Monitor with the Requested Information by the Information Deadline.<sup>10</sup>

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<sup>8</sup> November 25 Transcripts at 13-19-21.

<sup>9</sup> Third Report of the Monitor dated December 13, 2024 [“**Third Report**”] at paras 25 to 26.

<sup>10</sup> Amended and Restated Initial Order filed December 3, 2024 [“**ARIO**”] at para 75.

16. As further particularized in the Third Report, the Debtor Companies failed to provide much of the Requested Information by the Information Deadline, including, without limitation:
  - (a) the Corporate Records;
  - (b) the Investor Records with respect to the Offshore Investors;
  - (c) all title documents for the Texas Lands (as defined in the Third Report);
  - (d) all documentation related to the valuation and marketing of the Texas Lands; and
  - (e) the whereabouts of the sales proceeds from the Fossil Creek Sale and the Water District Sale (each as defined in the Third Report).<sup>11</sup>
17. 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 Requested Information related to the Offshore Investors.
18. Additionally, counsel to the US Debtor Companies have objected to any undertakings from Management to produce information with respect to the whereabouts of sales proceeds from the Fossil Creek Sale and the Water District Sale.<sup>12</sup>
19. The Debtor Companies' continued refusal to provide Investor Records with respect to the Offshore Investors has prevented the Monitor and Offshore Representative Counsel from meaningfully communicating with Investors to ascertain their position on their investment and these proceedings, resulting in increased costs and inefficiencies.
20. In addition to the increased costs and inconvenience posed by the late delivery and the non-delivery of the Requested Information, the position taken by the Debtor Companies in the United States on the information requested is not reflective of efforts of a party who wishes to demonstrate in good faith a genuine willingness to co-operate with the process and to attempt to convince the Court or their investors that they are appropriate stewards for the investments. Moreover, the Monitor notes that notwithstanding assertions by the Debtor Companies that the Monitor's request for the Investor Records with respect to the Offshore Investors is "extremely problematic" under Singaporean privacy laws, the Affidavit of Grayson Ambrose sworn November 21, 2024 includes 640 pages of proxies, some of which include directions to pay and Offshore Investor addresses and the Debtor Companies have not led any evidence with respect to the privacy laws of Singapore.
21. On January 7, 2024, Monitor's Counsel, Canadian Representative Counsel and Offshore representative Counsel completed cross-examination of Mr. Lind and Mr. Ambrose. Mr. Lind and

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<sup>11</sup> Third Report at paras 21 to 29.

<sup>12</sup> Lind Transcript 36-1-20.

Mr. Ambrose are each a director of the various Debtor Companies as further particularized in the Edwards Affidavit.

22. Upon questioning, Mr. Ambrose and Mr. Lind each advised that they have either never attended a meeting of the board of directors or cannot recollect attending a meeting of the board of directors of the corporations for which they act as directors.<sup>13</sup>

### III. ISSUES

23. The Monitor submits that the principal issues to be determined by this Honourable Court are whether:
- (a) the Stay Extension should be approved;
  - (b) the Monitor's Reports and activities should be approved; and
  - (c) the Initial Order should be stayed, set aside or otherwise vacated.

### IV. LAW & ANALYSIS

#### A. The Stay Extension Should be Approved

24. The Stay of Proceedings granted in these CCAA Proceedings will expire on January 17, 2025. The Monitor requests that the Stay of Proceedings be extended to the earlier of: (i) the termination of these CCAA Proceedings; or (ii) March 7, 2025.
25. Pursuant to section 11.02(2)(a) 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.<sup>14</sup> The length of an extension is dependent on the facts of each case.<sup>15</sup> The Court has discretion to extend the Stay of Proceedings if circumstances exist that make the extension appropriate and the Debtor Companies have acted, and are acting, in good faith and with due diligence.<sup>16</sup>
26. In his Oral Reasons, Justice Simard indicated that there was no question that the Monitor (as the applicant at the Comeback Hearing) was acting in good faith and that the real issue with the extension of the Stay of Proceedings was whether permitting the CCAA proceedings to continue is appropriate in the circumstances.<sup>17</sup>

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<sup>13</sup> Transcript of the Questioning of Allan Lind, January 7, 2025, at 15-22-24, 16-10-15, 19-12-16, 23-2-4, 24-16-18, [**Lind Transcript**]; Transcript of Questioning of Grayson Ambrose, January 7, 2025, at 19-21-25 – 20-1-14, 20-22-25 – 21-1-15, 21-16-21, 23-14-16, 26-18-20 [**Ambrose Transcript**].

<sup>14</sup> [Companies Creditors Arrangement Act, RSC 1985, c C-36](#) [**"CCAA"**], s 11.02(2)(a).

<sup>15</sup> [Tepper Holdings Inc., Re, 2011 NBQB 311](#) at para 54.

<sup>16</sup> [CCAA](#), s 11.02(3).

<sup>17</sup> November 25 Transcripts at 10-34-37.

(i) **Extending the Stay of Proceedings is Appropriate in the Circumstances**

27. 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) continue to investigate title, ownership and historical transactions impacting Angus Manor, Fossil Creek, and Windridge;
  - (b) continue to investigate the whereabouts of the sale proceeds from the Fossil Creek Sale and the Water District Sale;
  - (c) take steps necessary to secure the sale proceeds from the Fossil Creek Sale and the Water District Sale;
  - (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, determining whether additional Debtor Companies should be added to these CCAA Proceedings;
  - (e) with the support of Representative Counsel, determine a strategy for the monetization of the Property;<sup>18</sup> and
  - (f) develop a plan for the liquidation or reorganization of the business and assets of the Debtor Companies and Affiliated Entities to maximize recovery for all stakeholders;
- (the “**Stay Activities**”).
28. 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.<sup>19</sup>
29. The Monitor submits that 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 and the Monitor is necessary to perform important investigative and other functions in furtherance of the purposes of the CCAA.
30. Additionally, the nature of the Property and investment structure supports the continuation of a formal proceeding and stay, whether under the CCAA or otherwise.

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<sup>18</sup> Third Report at para 19(a).

<sup>19</sup> [Re Canada North Group Inc., 2017 ABQB 508](#), [“**Canada North Group**”] at para 34.



**(ii) The Stay Extension Furthers the Remedial Purposes of the CCAA**

31. Canada's insolvency statutes (including the CCAA) pursue a range of remedial objectives, including:<sup>20</sup>
- (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.
32. Although the CCAA has historically involved the restructuring and the reorganization of the pre-filing debtor company, the CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress and enhancement of the credit system generally.<sup>21</sup>
33. In his Oral Decision, Justice Simard cautioned that the continuation of the Stay of Proceedings may not be appropriate if the purpose of the proceedings is not to further the fundamental purposes of the CCAA and stated that the authority for that proposition is *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp.*<sup>22</sup> Justice Simard also noted that the *Cliffs Over Maple Bay* decision should be read with caution as it was decided before the 2009 amendments to the CCAA.<sup>23</sup>
34. In *Cliffs Over Maple Bay*, the British Columbia Court of Appeal (the "**BCCA**") noted that "the ability of the court to grant or continue a stay under s. 11 is not a free standing remedy that the court may grant whenever an insolvent company wishes to undertake a "restructuring" (...) [r]ather, s. 11 is ancillary to the fundamental purpose of the CCAA, and a stay of proceedings freezing the rights of creditors should only be granted in furtherance of the CCAA's fundamental purpose."<sup>24</sup> The BCCA went on to state that the fundamental purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business<sup>25</sup> and that "a [Stay of Proceedings] should not be

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<sup>20</sup> [9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10](#) ["**Callidus**"] at para 40.

<sup>21</sup> [Callidus](#) at paras 41-42.

<sup>22</sup> [Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp, 2008 BCCA 327](#) ["**Cliffs Over Maple Bay**"].

<sup>23</sup> November 25 Transcripts at 7-4-8

<sup>24</sup> [Cliffs Over Maple Bay](#) at para 26.

<sup>25</sup> [Cliffs Over Maple Bay](#) at para 29.

granted or continued if the debtor company does not intend to propose a compromise or arrangement to its creditors.”<sup>26</sup>

35. While it may be true that a stay of proceedings should only be granted in furtherance of the CCAA’s purpose, the Monitor submits that the statement by the BCCA in *Cliffs Over Maple Bay* that the fundamental purpose of the CCAA is limited to facilitating the making of a compromise or arrangement is outdated and does not take into account other fundamental purposes of the CCAA that have been recognized by courts across Canada since the decision in *Cliffs Over Maple Bay*.
36. For example, in *Callidus*, the Supreme Court of Canada acknowledged that while the CCAA generally prioritizes “avoiding the social and economic losses resulting from liquidation of an insolvent company”<sup>27</sup>, in pursuit of the underlying objectives of the CCAA, “proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor’s assets under the auspices of the [CCAA] itself.”<sup>28</sup> Moreover, in *Port Capital Development (EV) Inc v 1296371 BC Ltd*, the BCCA notes that “[the BCCA’s] focus in [*Cliffs Over*] *Maple Bay* on the purpose stated in the long title of the [CCAA]...may now be outdated.”<sup>29</sup>
37. 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.<sup>30</sup>
38. The Monitor has serious concerns about Management’s ability or willingness to: (i) organize the Debtor Companies’ affairs in a manner that maximizes recovery; (ii) ensure fair and equitable treatment of the claims against the Debtor Companies; and (iii) fulfill its fiduciary responsibility to the Investors and impartially resolve the Debtor Companies’ insolvency, as a result of, among other things, Management’s failure to:
- (a) comply with basic requirements to keep and maintain accurate books and records;<sup>31</sup>
  - (b) comply with basic reporting requirements to which the Investors are entitled;<sup>32</sup>

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<sup>26</sup> [Cliffs Over Maple Bay](#) at para 31.

<sup>27</sup> [Callidus](#) at para 41.

<sup>28</sup> [Callidus](#) at para 42.

<sup>29</sup> [Port Capital Development \(EV\) Inc v 1296371 BC Ltd, 2021 BCCA 382](#) at para 69.

<sup>30</sup> [Callidus](#) at para 40.

<sup>31</sup> Ambrose Transcript at 30-9-24, 41-2-10, 72-23-25 – 73-1-10, 76-2-21; Lind Transcript 53-17-19, 54-3-10, 55-4-18, 71-7-10.

<sup>32</sup> Third Report at paras 61, 87, 94, 127, 137 and 146

- (c) maintain corporate registrations of key Debtor Companies; and<sup>33</sup>
- (d) provide the Monitor with a full and accurate account of the sources and uses of funds of the Debtor Companies notwithstanding an order of this Honourable Court.<sup>34</sup>

39. A continuation of the Stay of Proceedings (in combination with the Monitor's enhanced powers granted under the ARIO) will allow the Monitor to continue its investigation and administration of the Debtor Companies' assets in a way that will efficiently resolve the Debtor Companies' affairs and ensure that recoveries are maximized and the claims against the Debtor Companies are treated fairly and equitably, and in a transparent fashion, all of which are in furtherance of the CCAA's objectives.

**(iii) The Monitor is Necessary to Perform an Important Investigative Function**

40. The Monitor also submits that the Stay Extension should be granted because the Monitor is necessary to, among other things, complete a full investigation of the affairs of the Debtor Companies. The investigative function of the Monitor is particularly important considering the Debtor Companies' failure to provide portions of the Requested Information by the Information Deadline, whether intentionally or due to Management's lack of access to the Requested Information.

41. The Stay Extension will provide the Monitor with additional time to investigate and properly review the corporate and financial records of the Debtor Companies, take the steps necessary to secure the sale proceeds of the Fossil Creek Sale and the water District Sale and to safeguard the Property for the benefit of all Investors and stakeholders, all of which are necessary to ensure that recoveries are maximized and claims against the Debtor Companies are administered fairly and equitably. In the absence of the Monitor, or other court officer, the Investors will be left in a vulnerable position and the Monitor has concerns that their claims will not be treated fairly by Management.

42. The CCAA is remedial legislation, and Canadian courts have held it should be given a broad and liberal interpretation. The CCAA provides the Court with the flexibility to make any order that it considers appropriate in the given circumstances, so long as the requested relief is not expressly prohibited by the CCAA.<sup>35</sup>

43. Additionally, Courts have repeatedly recognized the important role that investigations have played under the CCAA<sup>36</sup> and one of the duties and functions of the Monitor listed under section 23(1)(c) of the CCAA is to "make, or cause to be made, any appraisal or investigation the monitor considers

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<sup>33</sup> Affidavit of Michael Edwards sworn November 12, 2024, [**"Edwards Affidavit"**] at paragraphs 20, 30 and 35.

<sup>34</sup> Third Report at paras 89 and 167.

<sup>35</sup> [\*Callidus\*](#) at paras 40 to 42.

<sup>36</sup> [\*Aquino v. Aquino, 2021 ONSC 7797\*](#) at para 17; [\*Essar Steel Algoma Inc. et al. v. Essar Global Fund Limited et al., 2017 ONCA 1014\*](#) at paras 106 to 107; [\*Aquino v. Bondfield, 2024 SCC 31\*](#) at paras 11 to 12.

necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings".<sup>37</sup>

44. To date, the Monitor's investigations have revealed several notable irregularities in the operation and management of the Debtor Companies and the Affiliated Entities including, without limitation:
- (a) the proposed sale of the Angus Manor project by way of a vendor take back mortgage (the "**Angus VTB**"), which includes high fees (including administration fees in the exact amount of the interest that would be earned under the Angus VTB), and will erode any chance of recovery for Investors prior to 2029. This, together with the broad powers afforded to Management and Management's lack of transparency, creates an unacceptable level of risk for the Investors;<sup>38</sup>
  - (b) a historical example of a vendor take back ("**VTB**") mortgage utilized by entities connected with the controlling minds the Debtor Companies resulted in the Investors recovering nothing.<sup>39</sup> The Debtor Companies did not tender any evidence in response to these concerns raised by the Monitor with respect to the VTB structure;<sup>40</sup>
  - (c) the inconsistency and inadequacy of financial records provided by the Debtor Companies to the Monitor evidencing poor record keeping and diligence on behalf of Management and demonstrating that there is no realistic prospect that management will be able to comply with *Income Tax Act* or other requirements in its distributions to Investors if the Property is monetized;<sup>41</sup>
  - (d) atypical actions taken by the Debtor Companies in the Fossil Creek Sale such as off-market success bonuses being paid to counsel;<sup>42</sup>
  - (e) the co-mingling of funds through intercompany transfers that appear to lack any justifiable reason;<sup>43</sup>
  - (f) the apparent lack of funds to comply with the most basic obligations to provide financial statements and to maintain corporate registrations;<sup>44</sup>

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<sup>37</sup> [CCAA](#), s 23(1)(c).

<sup>38</sup> Third Report at para 73 and 75 to 76.

<sup>39</sup> Third Report at paras 175 to 178.

<sup>40</sup> Third Report at paras 181 to 187.

<sup>41</sup> Lind Transcript 67-4-25 – 71-1-10; Ambrose Transcript, at 72-4-22; Affidavit of Grayson Ambrose sworn January 3, 2025 [**Third Ambrose Affidavit**]; Affidavit of Allan Lind sworn December 31, 2024 and filed by Miles Davison at para 11 [**Third Lind Affidavit**].

<sup>42</sup> Third Report at para 103.

<sup>43</sup> Affidavit of Grayson Ambrose sworn December 13, 2024 at para 60 [**Second Ambrose Affidavit**]; Ambrose Transcripts at 50-19-25 – 51-1-12; Third Report at para 174.

<sup>44</sup> Second Ambrose Affidavit at para 18; Third Lind Affidavit at paras 6 to 9; Ambrose Transcript at 29-2-9

- (g) the apparent lack of corporate governance of any kind and the continued operation of certain of the Debtor Companies and Affiliate Entities that were struck from the corporate registries;<sup>45</sup>
  - (h) the apparent lack of any succession planning that would allow Mr. Lind or Mr. Ambrose or any other director of the Debtor Companies to deal with the Property or otherwise direct the Debtor Companies in the absence of Dirk Foo;<sup>46</sup> and
  - (i) Management's failure to properly produce documentary evidence with respect to key assertions contained in the Affidavit of Grayson Ambrose sworn December 13, 2024 and the Affidavit of Allan Lind sworn December 13, 2024, including any evidence with respect to the anticipated recovery for Investors or plan for the monetization of the Property.
45. The Stay Extension will enable the Monitor to oversee and facilitate the completion of the Stay Activities, which will further the objectives of the CCAA.
- (iv) The Nature of the Property and Investment Structure Supports the Stay Extension or the Continuation of an Alternate Proceeding**
46. The Angus Manor, Fossil Creek and Windridge projects each involve lands which have been divided into thousands of undivided fractional interests ("UFIs").<sup>47</sup>
47. The exact number of UFIs which make up each project and the exact number of UFI holders remains a matter to be determined as the Monitor is still awaiting the delivery of proper Investor Records and Management has been unable to definitively confirm such information.<sup>48</sup>
48. In light of the fractional nature of the interests in the Property held by the Debtor Companies and the fact that Mr. Lind and Mr. Ambrose each raised during cross-examination doubts that the UFI interests of the Investors were properly recorded, standard real property enforcement options are not viable in the circumstances and a proceeding of some type (whether a CCAA or receivership) is necessary in order to realize on the Property and ensure the fair and equitable administration of claims against the Debtor Companies and Affiliated Entities.
49. In *Re Shire International Real Estate Investments Ltd* <sup>49</sup> an initial order was granted in respect of 21 companies involved in the land acquisition business, whose business was to purchase property by way of mortgage and private investors. In *Shire*, there were approximately 2800 private

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<sup>45</sup> Ambrose Transcripts 13-24-24, 15-1-3, 16-6-12, 20-3-10, 21-8-21, 22-10-21, 23-14-19, 26-18-20, 27-13-16, 29-2-5; Lind Transcripts at 15-22-25 – 16-1-6, 16-10-18, 23-2-20, 24-16-28.

<sup>46</sup> Ambrose Transcripts at 16-3-20, 17-14-16, 18-11-16, 92-13-18, 93-17-23; Lind Transcripts at 16-19-21, 17-17-25, 18-18-24, 20-7-12, 21-5-17, 49-9-25 – 50-1-2, 51-20-25, 52-1-5, 52-4-16, 58-3-7, 75-10-16, 82-6-15, 84-3-7.

<sup>47</sup> Third Report at paras 39, 84 and 122.

<sup>48</sup> Lind Transcript 67-4-25 – 71-1-10; Ambrose Transcript, at 72-4-22.

<sup>49</sup> [\*Re Shire International Real Estate Investments Ltd\*, 2010 ABQB 84](#) [*"Shire"*].

investors involved. The Court in *Shire* noted that “[h]aving regard to the objectives of the CCAA, the large number of unsecured investors is (...) an appropriate consideration in granting CCAA protection.”<sup>50</sup> Although the stay of proceedings was not extended in *Shire*, since the continuation of the CCAA proceedings was putting the interest of the secured creditors at risk (which concern is not applicable in this case), the decision in *Shire* indicates that a large number of unsecured investors can be a consideration in granting insolvency protection.

50. From the Monitor’s perspective, there is no way to efficiently and transparently administer the Property and the claims against the Debtor Companies outside of a formal proceeding. As such, if the Stay Extension is not granted, or the Initial Order is set aside, stayed or varied, the Monitor is supportive of the alternative relief requested by of the Applicant Investors in their application in support of the Initial Order to appoint a receiver over the Debtor Companies and Affiliate Entities pursuant to section 13(2) of the *Judicature Act*.
51. Given the ongoing efforts of the Debtor Companies to market the Property, a stay of proceedings (whether pursuant to the CCAA or otherwise) is vital to ensuring that the Property is not disposed of in a fashion that would unfavourably prejudice the Investors and any other stakeholders of the Debtor Companies.
52. Additionally, the Monitor is concerned that if these CCAA Proceeding are terminated without the alternative appointment of a receiver, there is a real risk that the Monitor's efforts to preserve assets and proceeds for stakeholders will be thwarted by Management, who have demonstrated that they are either unwilling or incapable of undertaking their fiduciary responsibilities.

**B. The Monitor’s Reports and activities should be approved**

53. The Monitor submits that the Monitor’s conduct and activities as described in the Pre-Filing Report, the First Report, the First Supplement to the First Report, the Second Supplement to the First Report, the Second Report, the Third Report and the First Supplement to the Third Report (collectively, the “**Monitor’s Reports**”) should be approved.
54. As noted in *Target Canada Co. (Re)*,<sup>51</sup> “there are good policy and practical reasons for the court to approve of monitor’s reports and activities [...] during the CCAA process.”<sup>52</sup> The policy and practical reasons for approving the activities of the Monitor include that it:
  - (a) brings the court-officer’s activities before the court;
  - (b) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

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<sup>50</sup> *Shire* at para 9.

<sup>51</sup> *Target Canada Co (Re)*, 2015 ONSC 7574 [“*Target*”].

<sup>52</sup> *Target* at para 22.

- (c) enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners;
  - (d) provides protection for the court-officer; and
  - (e) protects the creditors from the delay in distribution that would be caused by re-litigation of steps taken to date, and potential indemnity claims by the court-officer.<sup>53</sup>
55. The Monitor has continued to act reasonably, in the interest of the estates' stakeholders, and in good faith in these CCAA Proceedings. All activities described in the Monitor's Reports were necessary and undertaken pursuant to the Monitor's duties and powers set out in the ARIO.
56. The Debtor Companies have requested a carve-out from the approval of the Monitor's conduct and activities as it relates to investigations the Monitor has undertaken with respect to entities and projects outside the scope of these CCAA Proceedings contained in the Third Report.<sup>54</sup> In his Oral Reasons, Justice Simard was careful not to be overly prescriptive of the contents of the Third Report.<sup>55</sup> The Monitor's investigations into the failed VTB sales of entities related to the Debtor Companies are relevant to, among other things, the marketing processes that were conducted or are being conducted for the Property and the risks faced by Investors in the Angus Manor project.
57. As such, the Monitor respectfully submits that the Debtor Companies' objection to the approval of the conduct and activities described in the Monitor's Reports is without merit. The Monitor's conduct and activities should be approved.

**C. The CCAA applies to the Debtor Companies**

58. As part of the Debtor Companies' Application, the Debtor Companies are requesting that this Honorable Court set aside or otherwise vacate the Initial Order.
59. As noted previously, while the Monitor is of the view the current circumstances urgently require court supervision in some form, the Monitor is not advocating one way or another for the continuation of the CCAA versus the appointment of a receiver. However, to the extent that this Court wishes to continue the CCAA Proceedings, the Monitor makes the following submissions with respect to the insolvency of the Debtor Companies and the jurisdiction of this Court over the US Debtor Companies (notwithstanding that the Monitor is of the view these issues were already decided by Justice Simard as part of the Oral Reasons).

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<sup>53</sup> [Target](#) at para 23.

<sup>54</sup> Letter of Position from Miles Davison LLP to Honourable Justice Feasby dated December 19, 2024 at page 2.

<sup>55</sup> November 25 Transcript at 13-1-17.



**(i) The Debtor Companies are Each Insolvent**

60. The CCAA applies in respect of a “debtor company or affiliated debtor companies” with outstanding claims against it of at least \$5,000,000.<sup>56</sup>
61. Under the CCAA “companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person”.<sup>57</sup> The definition for “affiliated companies” goes on to state that “two companies affiliated with the same company at the same time are deemed to be affiliated with each other.”<sup>58</sup>
62. The \$5,000,000 threshold prescribed in the CCAA is determined based on the cumulative amount of the claims against affiliated debtor companies as a group rather than requiring each individual entity to meet the threshold.<sup>59</sup>
63. Notwithstanding any claims by the Debtor Companies with respect to the quantum or validity of any other debt asserted by the Applicant Investors, the debt threshold under the CCAA is met with respect to the Debtor Companies on the basis of the Fraud Judgment (as defined in the Edwards Affidavit) alone which judgment is for the amount of USD \$3,844,256.50, or CAD \$5,539,958.04 based on a 1:1.44 conversion rate as of January 10, 2025.<sup>60</sup>
64. “Debtor company” under the CCAA is defined as a company that:
- (a) is bankrupt and insolvent;
  - (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts;
  - (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act; or
  - (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent.
65. This Honourable Court has already determined based on the evidence before the court at the Application returnable November 21, 2024 that the Debtor Companies are insolvent.
66. The Monitor submits that nothing in the evidence that has been led by the Debtor Companies since November 21, 2024 has illustrated that the Debtor Companies are solvent.

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<sup>56</sup> [CCAA](#), s 3(1).

<sup>57</sup> [CCAA](#), s 3(2)(a).

<sup>58</sup> [CCAA](#), s 3(2)(b).

<sup>59</sup> [CCAA](#), s 3(1).

<sup>60</sup> Bank of Canada, “Daily exchange rates: Lookup tool” (16 December 2024), [online](#).



67. None of the Debtor Companies have provided financial statements for the years ended December 31, 2023 and December 31, 2024. The Debtor Companies have indicated that, in at least some instances, failure to keep appropriate financial records was a consequence of lack of funds.<sup>61</sup>
68. The current evidence before the court indicates:
- (a) Angus A2A GP Inc. chose not to furnish audited financial statements to the unit holders of Angus A2A Limited Partnership, as required, to avoid incurring the expense required to provide audited financial statements;<sup>62</sup>
  - (b) Angus Manor Park A2A Developments Inc. owed \$2,883,544 to related parties as at December 10, 2018;<sup>63</sup>
  - (c) Windridge A2A Developments, LLC is jointly and severally indebted in the amount of \$5,548,357.75;
  - (d) Fossil Creek A2A Developments, LLC is jointly and severally indebted in the amount of \$5,548,357.75;
  - (e) Concept Planning Funds controlled by Angus Manor Park A2A Developments Inc., Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC for Angus Manor, Fossil Creek, and Windridge, respectively, have been depleted;<sup>64</sup>
  - (f) Angus Manor, Fossil Creek, and Windridge projects have each encountered self-described “financial challenges” resulting in an inability to pay accountants, maintain offices and keep proper records as required by contract and law;<sup>65</sup>
  - (g) Serene Country Homes (Canada) Inc. owed \$6,622,404 to related parties as at December 4, 2018<sup>66</sup>; and
  - (h) A2A Capital Services Canada Inc. owed \$1,807,209 to Serene Country Homes (Canada) Inc. as at December 4, 2018<sup>67</sup>.
69. In the absence of a definition for the term “insolvent” under the CCAA, courts have referred to the definition of “insolvent person” in subsection 2(1) of the *Bankruptcy and Insolvency Act* (as amended, the “BIA”).<sup>68</sup> The BIA defines “insolvent person” as a person:

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<sup>61</sup> Ambrose Transcript at 29-2-7.

<sup>62</sup> Second Ambrose Affidavit at para 18.

<sup>63</sup> Third Report at para 46.

<sup>64</sup> Second Ambrose Affidavit, at para 59; Ambrose Transcript at 41-19-24; Lind Transcript, at 63-18-20, 64-3-6.

<sup>65</sup> Third Lind Affidavit at paras 6-9; Lind Transcript at 55-8-18; Ambrose Transcript at 74-5-8.

<sup>66</sup> Third Report at para 155.

<sup>67</sup> Third Report at para 155.

<sup>68</sup> [\*Bankruptcy and Insolvency Act, R.S.C. c. B-3\*](#), as amended at s 2(1); [\*Re Just Energy Corp.\*, 2021 ONSC 1793](#) at para 49.

- (a) who is for any reason unable to meet his obligations as they generally become due;
  - (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or
  - (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.
70. The Debtor Companies' inability to meet their obligations as they generally become due is evidenced by their failure to meet even basic financial reporting obligations as a consequence of lack of funds on hand.
71. Moreover, in the context of the CCAA, courts have recognized that the definition of insolvency is broader than balance sheet insolvency. For example, the decision in *Re Stelco* provides that a company is also insolvent for purposes of the CCAA if there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured.<sup>69</sup>
72. It is clear, on the evidence before this Court, that the Debtor Companies are each insolvent with liabilities collectively in excess of \$5,000,000.
- (ii) The Court has jurisdiction over the US Debtor Companies**
73. This Honorable Court has already held that the US Debtor Companies are "proper respondents, because they are inextricably intertwined in the corporate and investment structure of the Windridge and Fossil Creek projects that were marketed to Canadian Investors in Canada through Alberta and Ontario corporations, limited partnerships, and trusts."<sup>70</sup>
74. This Court's decision is consistent with the decision of the Ontario Superior Court of Justice ("ONSC") in *Re Ghana Gold Corp*, in which the ONSC granted CCAA protection to a corporation incorporated pursuant to the laws of Ghana and having its place of business and assets located in Ghana because "it [was] critical to a restructuring that the entire group of applicants be included in the CCAA proceeding."<sup>71</sup>
75. Similarly, in *Re Guestlogix Inc.*, the court granted CCAA protection to a corporation incorporated pursuant to the laws of Ireland because, among other things, the Irish entity and the Canadian Applicant were "highly integrated entities"<sup>72</sup> Furthermore, in *Canada North Group*, the Court added

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<sup>69</sup> [Re Stelco Inc \(2004\), 48 CBRE \(4<sup>th</sup>\) 299](#), at paras 13 to 15.

<sup>70</sup> November 25 Transcript at 18-9-12.

<sup>71</sup> [Re Ghana Gold Corp, 2013 ONSC 3284](#) at para 56.

<sup>72</sup> [Re Guestlogix Inc., 2016 ONSC 1348](#) at paras 7 to 9.

a party to the CCAA proceedings because said party was inextricably linked to the group of parties under CCAA protection.<sup>73</sup>

76. The business of the US Debtor Companies operates on a fully integrated basis with the other Debtor Companies to market and sell investment in the lands owned by the US Debtor Companies to Canadian Investors. The role of the US Debtor Companies in overseeing all aspects of the development of the Fossil Creek and Windridge property were critical to marketing and selling units of the Fossil Creek A2A Trust and Hills of Windridge A2A Trust to Canadian Investors.
77. Moreover, Fossil Creek A2A Developments, LLC and Windridge A2A Developments, LLC are each Facilitator's under the Deed of Covenant between Fossil Creek A2A Developments, LLC and Fossil Creek A2A Limited Partnership and the Deed of Covenant between Windridge A2A Developments, LLC and Hills of Windridge A2A LP, respectively, giving the US Debtor Companies the power to carry out agreements which require implementation on behalf of all co-owners of the Fossil Creek and Windridge lands, including the Canadian limited partnerships.<sup>74</sup>
78. Finally, and most crucially, the Debtor Companies have led evidence that Hills of Windridge A2A LP and Fossil Creek A2A Limited Partnership have granted to Windridge A2A Developments, LLC and Fossil Creek A2A Developments, LLC, respectively, a special power of attorney with respect to the Windridge and Fossil Creek lands.<sup>75</sup> As the undivided fractional interests in the Windridge and Fossil Creek lands make up substantially all of Hills of Windridge A2A LP's and Fossil Creek A2A Limited Partnership's assets, this Court declining to take jurisdiction over the US Debtor Companies would make it difficult or impossible for the Monitor to monetize the property of Hills of Windridge A2A GP Inc., Fossil Creek A2A GP Inc. and the affiliated limited partnerships.
79. The goals of the CCAA apply not only to individual companies but to interdependent corporate groups operating as a broader enterprise, particularly when the treatment of the corporate group as an integrated system will result in greater value. A Court may consider the corporate group's reorganization efforts as a whole.<sup>76</sup>
80. In the present circumstances, the US Debtor Companies are highly integrated in the business and their inclusion in these CCAA Proceedings will facilitate the completion of value-maximizing transactions for the benefit of stakeholders and allow the orderly wind up of such companies.

## **V. CONCLUSION**

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

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<sup>73</sup> [Canada North Group](#) at paras 73 to 74.

<sup>74</sup> Third report at para 96 and 138.

<sup>75</sup> Affidavit of Allan Lind sworn December 13, 2024, ["**Second Lind Affidavit**"] at Exhibit E, pages 288 to 291.

<sup>76</sup> [Smurfit-Stone Container Canada Inc. \(Re\)](#), 2009 CanLII 58586 (ON SC) at para 24.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of January 2025.

**Cassels Brock & Blackwell LLP**

Per: 

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Jeffrey Oliver

Counsel for the Monitor

## VI. LIST OF AUTHORITIES

### STATUTES

Tab	Authority
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- |    |   |
|----|---|
| 1. | <a href="#"><u>Judicature Act, RSA 2000, c J-2</u></a>                        |
| 2. | <a href="#"><u>Companies' Creditors Arrangement Act, RSC 1985, c C-36</u></a> |
| 3. | <a href="#"><u>Bankruptcy and Insolvency Act, R.S.C. c. B-3</u></a>           |

### JURISPRUDENCE

Tab	Authority
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- |     |   |
|-----|---|
| 4.  | <a href="#"><u>Tepper Holdings Inc. Re, 2011 NBQB 311</u></a>   |
| 5.  | <a href="#"><u>Re Canada North Group Inc, 2017 ABQB 508</u></a>   |
| 6.  | <a href="#"><u>9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10</u></a>                          |
| 7.  | <a href="#"><u>Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp, 2008 BCCA 327</u></a>        |
| 8.  | <a href="#"><u>Port Capital Development (EV) Inc v 1296371 BC Ltd, 2021 BCCA 382</u></a>                  |
| 9.  | <a href="#"><u>Aquino v. Aquino, 2021 ONSC 7797</u></a>   |
| 10. | <a href="#"><u>Essar Steel Algoma Inc. et al. v. Essar Global Fund Limited et al., 2017 ONCA 1014</u></a> |
| 11. | <a href="#"><u>Aquino v. Bondfield, 2024 SCC 31</u></a>   |
| 12. | <a href="#"><u>Re Shire International Real Estate Investments Ltd, 2010 ABQB 84</u></a>                   |
| 13. | <a href="#"><u>Target Canada Co (Re), 2015 ONSC 7574</u></a>  |
| 14. | <a href="#"><u>Re Just Energy Corp., 2021 ONSC 1793</u></a>   |
| 15. | <a href="#"><u>Re Stelco Inc (2004), 48 CBRE (4<sup>th</sup>) 299</u></a>                                 |
| 16. | <a href="#"><u>Re Ghana Gold Corp, 2013 ONSC 3284</u></a>   |
| 17. | <a href="#"><u>Re Guestlogix Inc., 2016 ONSC 1348</u></a>   |
| 18. | <a href="#"><u>Smurfit-Stone Container Canada Inc. (Re), 2009 CanLII 58586 (ON SC)</u></a>                |