



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00741419-00CL

DATE: May 28, 2025

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TITLE OF PROCEEDING: Earthquake Boring Co. Ltd. et al. v. Town of Lincoln et al.

BEFORE: JUSTICE P. CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] Earth Boring Co. Limited ("EBCL"), Yarbridge Holdings Inc. ("Yarbridge"), Trolan Investments Ltd. ("Trolan"), and Yarfield Services Limited ("Yarfield", together with EBCL, Yarbridge and Trolan, the "Applicants") bring this motion for a third amended and restated initial order (the "TARIO") and an order approving a sale investment solicitation process ("SISP Approval Order").
- [2] The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the "Business").
- [3] In the last year, the Applicants experienced an acute liquidity crisis precipitated by changes to guidelines in government funding, unforeseeable cost increases on one of the Applicants' largest projects, delays in project tendering and the shouldering of the upfront costs of certain insurance claims.
- [4] On April 17, 2025, the Applicants sought and obtained an initial order (as amended from time to time, the "Initial Order") under the *Companies Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Court"). Pursuant to the Initial Order, the Court appointed BDO Canada Limited as monitor in these proceedings (the "Monitor"), appointed Steinberg Advisory as chief restructuring officer (the "CRO"), approved a debtor-in-possession term sheet from the Bank of Montreal (the "DIP Lender") providing for a financing facility in the amount of \$5.5 million, and granted certain priority charges including a charge as security for the payment of professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicants (the "Administration Charge").
- [5] The purpose of these CCAA proceedings is to undertake a comprehensive operational and financial restructuring of the Business. As part of the restructuring plan, the Applicants, in consultation with the Monitor, the CRO, and the DIP Lender, have developed a sale and investment solicitation process ("SISP") to broadly

canvass the market for a potential sale or investment transaction that would benefit the Applicants' creditors and stakeholders.

- [6] The Applicants' seek the following relief from the Court, including:
- a. a SISP Approval Order that, among other things:
 - i. approves the SISP;
 - ii. approves the appointment of PricewaterhouseCoopers Corporate Finance Inc. as sales advisor (in such capacity, the "Sales Advisor") to assist the Monitor and the Applicants in the implementation of the SISP; and
 - iii. grants the Sales Advisor a charge (the "Sales Advisor Charge"), in the maximum amount of \$350,000, as security for the amounts owed to the Sales Advisor pursuant to the terms of the engagement letter for the Sales Advisor (the "Sales Advisor Engagement"); and
 - b. the TARIO that, among other things:
 - i. extends the stay of proceedings (the "Stay Period") up to and including August 15, 2025; and
 - ii. amends the Administration Charge to include the CRO and the Sales Advisor as persons benefiting from such charge and increases the amount of the Administration Charge to include the monthly work fee of the Sales Advisor.

[7] The facts with respect to this motion are set out in the Affidavit of Eugene Woodbridge, sworn May 23, 2025 (the "Third Woodbridge Affidavit"). A more detailed background of these CCAA proceedings is set out in the Affidavits of Eugene Woodbridge sworn April 16, 2025 and April 23, 2025.

The SISP

[8] The Applicants developed the SISP in consultation with the Monitor, the CRO and the DIP Lender. The SISP was designed to widely expose the Applicants' Business and property to the market and to provide a structured process for interested parties to assess the opportunity, perform due diligence, and submit offers for a sale or investment transaction. The SISP is structured as a two-phase sale process to be administered by the Sales Advisor with the assistance of the Monitor over approximately seven weeks.

[9] Phase I of the SISP calls for non-binding letters of intent ("LOIs") that, subject to meeting specific criteria, will constitute Qualified Phase I Bids. Phase II of the SISP calls for binding offers in the form of a sale or investment proposal. The binding

offers are required to meet certain specified criteria in order to be considered a "Phase II Qualified Bid".

- [10] The Sales Advisor and the Monitor, in consultation with the DIP Lender, will review and assess the Phase II Qualified Bids to determine which bid is in the best interests of the Applicants' stakeholders (the "Successful Bid") in accordance with the criteria set out in the SISP.
- [11] In the event that any shareholder or director of the Applicants (each an "Insider") submits a bid in the SISP, the Sales Advisor and the Monitor shall not share any information with the Insider with respect to the SISP, and shall not be required to consult with the Applicants. This will preserve the integrity and fairness of the bidding process.
- [12] Upon the selection of a Successful Bid, the SISP contemplates that:
- a. on the earliest possible date after the selection of the Successful Bid, the Applicants shall apply to the Court for one or more orders approving such Successful Bid; and
 - b. the parties will close the transaction contemplated in the Successful Bid by the Target Closing Date, being August 11, 2025.
- [13] I am satisfied that the seven week timeline for the SISP is sufficient in light of the fact that the Applicants had previously commenced an out of court sale process in December 2024 that generated significant interest in the Business and yielded more than 90 executed non-disclosure agreements from both strategic and financial parties (the "Sale Process").

The TARIO

- [14] The relief in the proposed TARIO is principally sought to ensure there is sufficient time and funding to administer the SISP. The Applicants seek to amend the Initial Order to: (i) extend the Stay Period up to and including August 15, 2025, in line with the Target Closing Date of the SISP and the cash flow projections; (ii) expand and amend the Administration Charge to increase the charge and add the Sales Advisor and the CRO as a beneficiary of the charge; and (iii) refer to the priority charge in favour of the Sales Advisor, to rank below all other charges granted by this Court, other than the Lien Charge (as defined in the Initial Order).

Should the SISP be Approved by the Court?

- [15] In *Nortel Networks Corporation (Re)*, 2009 ONSC 39492, at para. 49, the Court identified several factors to be considered in determining whether to approve a sales process:
- a. is a sale warranted at this time?

- b. will the sale be of benefit to the whole "economic community"?
- c. do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?; and
- d. is there a better viable alternative?

[16] Having regard to these criteria, I am satisfied that the SISP should be approved because:

- a. the SISP is designed to solicit the highest value available for the property and Business, with the result that any value that is garnered from a sale transaction will benefit the Applicants' stakeholders.
- b. the SISP will canvass the market for a variety of potential transaction structures, including a going concern sale of all, substantially all or one or more components of the property and Business of the Applicants, as well as investment in the Business;
- c. the SISP was developed by the Applicants in consultation with the Monitor, the CRO and the DIP Lender, who is also the Applicants' senior secured creditor;
- d. the Applicants and the Monitor believe that the milestones of the proposed SISP will provide sufficient time to canvass the market in a fair and transparent manner. While the milestones are condensed, the Applicants have previously run a thorough Sale Process. The SISP is intended to extend that Sale Process with the benefit of being able to offer a vesting order to clean up the balance sheet and remove unwanted liabilities;
- e. to ensure the integrity and fairness of the SISP, the Monitor and Sales Advisor shall not be required to consult with the Applicants if an Insider submits a bid;
- f. any Successful Bids will be subject to Court approval at which time the Court can review the execution and implementation of the SISP to ensure the factors of section 36 of the CCAA are satisfied;
- g. the SISP will cause minimal interruption to ongoing operations; and
- h. the Monitor, the CRO, and the DIP Lender are supportive of the proposed SISP.

Should the Sales Advisor Engagement be Approved?

[17] The approval of a Sales Advisor is within the inherent jurisdiction of the Court and has previously been granted under s. 11 of the CCAA.

[18] I am satisfied that it is appropriate to approve the Sales Advisor Engagement. I accept that the experience and expertise of the Sales Advisor will be beneficial to the Applicants and their stakeholders in respect of maximizing value from the SISP. In addition, the Applicants, the Monitor, and the CRO have reviewed the terms of the Sales Advisor Engagement, including the proposed fees and disbursements, and have found them to be fair and reasonable under the circumstances.

Should the Sales Advisor Charge be Granted?

[19] The Applicants also seek approval of a corresponding Sales Advisor Charge over the property to secure the Sale Advisor's fees, which charge will be subordinate to the other charges in the Initial Order except the Lien Charge.

[20] The factors the courts assess when deciding whether to grant such a charge are the same as those considered when granting an administration charge, namely: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the Monitor; and (vii) the incentives created by the charge.

[21] Having regard to these factors, I am satisfied that the Sales Advisor Charge is necessary and reasonable in the circumstances. In particular, the Sales Advisor Charge is a requirement of the engagement of the Sales Advisor, who is engaged to maximize value for the Business for the benefit of all stakeholders. The Sales Advisor has a distinct role from the other restructuring professional as it will be conducting the SISP. I accept that the Sales Advisor's fees are commercially reasonable for the size of the potential transaction and the extensive work the Sales Advisor will undertake during the SISP. The Sales Advisor Charge will be subordinate to the present Court-ordered charges in the Initial Order, except for the Lien Charge, and all secured creditors have been given notice of the request for the Sales Advisor Charge. The necessity and quantum of the Sales Advisor Charge is supported by the Monitor.

Should the Court Extend the Stay Period?

[22] The Applicants, with the support of the Monitor and the DIP Lender, seek an extension of the Stay Period up to and including August 15, 2025.

[23] This Court has jurisdiction pursuant to section 11.02(2) of the CCAA to grant an extension of the stay of proceedings for any period of time that the Court considers necessary on any terms that it may impose. Section 11.02(3) of the CCAA provides that the Court shall not make an order extending the stay unless it is satisfied that: (a) circumstances exist that make the order appropriate; and (b) the debtor company has acted and is acting in good faith and with due diligence.

[24] I am satisfied that the Applicants have acted and continue to act in good faith and with due diligence, as demonstrated by the steps taken to advance the restructuring and right-size the Business to date. I accept that, in the circumstances, it is both necessary and appropriate to extend the Stay Period to enable the Applicants to continue the restructuring efforts with the assistance of the CRO and the Monitor and to allow the Sales Advisor and the Monitor to administer the SISP.

Should the Administration Charge be Amended and Expanded?

[25] Section 11.52 of the CCAA gives this Court jurisdiction to grant a priority charge for the fees and expenses of financial, legal and other advisors or experts.

[26] Courts have considered the following non-exhaustive factors in determining whether an administration charge is appropriate: (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.

[27] The Monitor and the DIP Lender are supportive of the proposed amendments to the Administration Charge.

[28] I accept that the total Administration Charge is reasonable and proportionate under the circumstances given the Cash Flow Forecast, as appended to the Monitor's Second Report. I am satisfied that the proposed increase and amendment to the Administration Charge is necessary under the circumstances.

Should the Monitor's Fees and Activities be Approved?

[29] The Applicants seek Court approval of the fees and activities of the Monitor and its counsel as set out in the Second Report of the Monitor.

[30] I am satisfied that the Monitor and its counsel have acted with diligence and in good faith in respect of their obligations and duties in the CCAA proceeding and have made substantial contributions in the proceedings to date, including assisting the Applicants in their efforts to stabilize their operations.

[31] I am satisfied that the fees of the Monitor and its counsel are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the complexity of the Applicants' Business and the CCAA proceedings.

Disposition

[32] Orders to issue in forms of Orders signed by me today.