

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EARTH BORING CO. LIMITED,
YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD.
AND YARFIELD SERVICES LIMITED**

**FACTUM OF THE APPLICANTS
(SISP APPROVAL ORDER AND TARIO)**

May 26, 2025

RECONSTRUCT LLP
80 Richmond Street West
Suite 1700
Toronto, ON M5H 2A4

Caitlin Fell LSO No. 60091H
Tel: 416.613.8282
Email: cfell@reconllp.com

Jessica Wuthmann LSO No. 72442W
Tel: 416.613.8288
Email: jwuthmann@reconllp.com

Gabrielle Schachter LSO No. 80244T
Tel: 416.613.4881
Email: gschachter@reconllp.com

Fax: 416.613.8290

Lawyers for the Applicants

TO: THE SERVICE LIST

TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – FACTS	3
A. Background	3
B. The SISP	4
C. The TARIO	6
PART III – ISSUES	6
PART IV – LAW & ARGUMENT	7
A. The SISP Should be Approved by the Court.....	7
B. The Sales Advisor Engagement Should be Approved.....	10
C. The Sales Advisor Charge Should be Granted	10
D. The Court Should Extend the Stay Period	12
E. The Administration Charge Should be Amended and Expanded	12
F. The Monitor’s Fees and Activities Should be Approved	13
PART V – RELIEF REQUESTED	14
SCHEDULE "A"	16
Schedule "B"	17

PART I – OVERVIEW

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**”).¹

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.²

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

¹ Affidavit of Eugene Woodbridge sworn May 23, 2025, at [para 4](#) (“**Third Woodbridge Affidavit**”), Motion Record of the Applicants dated May 23, 2025 at Tab 2 (“**Motion Record**”).

² Third Woodbridge Affidavit at [para 6](#).

disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, , and counsel to the Applicants (the “**Administration Charge**”).³

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.⁴

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

³ Third Woodbridge Affidavit at [para 8](#).

⁴ Third Woodbridge Affidavit at [para 35](#).

- (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 from \$600,000 to \$750,000 to include the monthly work fee of the Sales Advisor.

PART II – FACTS

A. Background

7. The facts with respect to this motion are summarized below but are more fully 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, 2025.⁵

8. These CCAA proceedings were initiated to allow the Applicants the breathing room and stability to undertake a financial and operational restructuring. In particular, the Applicants, with the assistance of the Monitor and CRO, have worked and continue to work in good faith and with due diligence to right-size the Applicants finances and streamline the operational structure of the Business.⁶ These efforts will be complimented by undertaking a SISF, if so approved, to be administered by the Sales Advisor, PricewaterhouseCoopers Corporate Finance Inc., with the assistance of the Monitor.

⁵ Third Woodbridge Affidavit, Motion Record Tab 2 at [Exhibits “C”](#) and [“D”](#).

⁶ Third Woodbridge Affidavit at [para 13](#).

B. The SISP

9. The Applicants developed the SISP in consultation with the Monitor, the CRO and the DIP Lender. Capitalized terms used but not otherwise defined in this section have the meanings given to them in the SISP.

10. 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.⁷

11. 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.⁸

12. 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".⁹

13. 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.¹⁰

14. 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

⁷ Third Woodbridge Affidavit at [paras 36-37](#).

⁸ Third Woodbridge Affidavit at [para 36](#).

⁹ Third Woodbridge Affidavit at [para 39](#).

¹⁰ Third Woodbridge Affidavit at [para 40](#).

with the Insider with respect to the SISP, and shall not be required to consult with the Applicants.¹¹ This will preserve the integrity and fairness of the bidding process.

15. A summary of the key dates pursuant to the proposed SISP are as follows:¹²

Milestone	Deadline
Commence solicitation of interest from parties	As soon as practical following the date of the SISP Approval Order.
Phase I Bid Deadline for LOIs	June 20, 2025
Phase II: Commencement of Due Diligence for Selected Bidders	June 23, 2025
Deadline for Binding Offers	July 18, 2025
Selection of Successful Bid (assuming no auction)	July 21, 2025
Definitive Transaction Document	July 25, 2025
Approval Motion	Subject to availability of the Court
“Target Closing Date” Deadline	August 11, 2025

16. Upon the selection of a Successful Bid, the SISP contemplates that:¹³

- (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

¹¹ Third Woodbridge Affidavit at [para 38](#).

¹² Third Woodbridge Affidavit at [para 42](#).

¹³ Third Woodbridge Affidavit at [para 59](#).

the Target Closing Date, being August 11, 2025.

17. 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**”).¹⁴ Unfortunately, in the midst of the Sale Process and due diligence being done by the interested parties, the Applicants’ cash flow continued to decrease such that the protection of the CCAA became necessary.¹⁵

C. The TARIO

18. The relief in the proposed TARIO is principally sought to ensure there is sufficient time and funding to administer the SISP. Namely, 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).¹⁶

PART III – ISSUES

19. The issues to be determined by this Honourable Court are whether to:

- (a) approve the SISP and the Sales Advisor Engagement;

¹⁴ Third Woodbridge Affidavit at [paras 31-34](#).

¹⁵ Third Woodbridge Affidavit at [para 35](#).

¹⁶ Third Woodbridge Affidavit at [para 3\(b\)](#).

- (b) grant a priority charge in favour of the Sales Advisor;
- (c) extend the Stay Period up to and including August 15, 2025; and
- (d) grant the amendments and expansion of the Administration Charge; and
- (e) approve the fees and activities of the Monitor and its counsel

PART IV – LAW & ARGUMENT

A. The SISF Should be Approved by the Court

20. The remedial nature of the CCAA confers broad powers to the Court to facilitate restructurings, including the power to approve a sale and investment solicitation process in relation to a CCAA debtor and its business and assets, prior to or in the absence of a plan of compromise and arrangement.¹⁷

21. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sales process that have since been regularly applied:

- (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

¹⁷ *Nortel Networks Corporation (Re)*, 2009 ONSC 39492 (CanLII) at [paras 47-48](#) [*Nortel*]; *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA] at [ss 11](#) and [36](#).

(d) is there a better viable alternative?¹⁸

22. The *Nortel* criteria for approving a sales process should also be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under Section 36 of the CCAA.¹⁹ However, it is well established that section 36 of the CCAA directly applies only in the context of the approval of a sale, not of a sales process.²⁰

23. In light of the above, this Court is entitled to consider whether the proposed SISP is likely to satisfy the requirement that the process be fair and that the best price will be obtained, whether the Monitor supports the SISP, as well as the extent to which creditors were consulted and other relevant factors.²¹

24. In other CCAA cases, courts have also been guided by the following factors:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²²

25. In consideration of the above criteria, the Court should approve the SISP because:

¹⁸ *Nortel*, at [para 49](#). See also *Fresh City Farms and Mama Earth Organics Inc. (Re)*, 2024 ONSC 2016 (CanLII) at [para 29](#) [**Fresh City**]; *Hudson's Bay Company (Re)*, 2025 ONSC 1897 (CanLII) at [para 48](#) [**Hudson's Bay**].

¹⁹ *Brainhunter Inc. (Re)*, 2009 ONSC 72333 (CanLII) at [para 16](#) [**Brainhunter**].

²⁰ *Ibid* at [para 17](#).

²¹ CCAA at s [36](#).

²² *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 (CanLII) at [paras 20-21](#) [**Walter**]; *CCM Master Qualified Fund v. bluetip Power Technologies*, 2012 ONSC 1750 (CanLII) at [para 6](#) [**CCM Master**].

- (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.²³
- (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;²⁴
- (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;²⁵
- (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;²⁶
- (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;²⁷
- (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

²³ Third Woodbridge Affidavit at [paras 26](#) and [58](#).

²⁴ Third Woodbridge Affidavit at [paras 37, 48, and 49](#).

²⁵ Third Woodbridge Affidavit at [para 35](#).

²⁶ Third Woodbridge Affidavit at [paras 31-35](#) and [43](#).

²⁷ Third Woodbridge Affidavit at [para 38](#).

section 36 of the CCAA are satisfied;²⁸

- (g) the SISP will cause minimal interruption to ongoing operations;²⁹ and
- (h) the Monitor, the CRO, and the DIP Lender are supportive of the proposed SISP.³⁰

B. The Sales Advisor Engagement Should be Approved

26. 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.³¹

27. In this case, the Applicants submit it is appropriate to approve the Sales Advisor Engagement given 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.³² 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.³³

C. The Sales Advisor Charge Should be Granted

28. The Applicants also seek approval of a corresponding Sales Advisor Charge over the property in the maximum amount of \$350,000 to secure the Sales Advisor's fees, which charge

²⁸ Third Woodbridge Affidavit at [para 59](#).

²⁹ Third Woodbridge Affidavit at [paras 13](#) and [35](#).

³⁰ Third Woodbridge Affidavit at [para 35](#).

³¹ CCAA, at [s 11](#). See also *2039882 Ontario Limited Ltd. (Re)*, [Endorsement of Conway J. dated February 6, 2024](#).

³² Third Woodbridge Affidavit at [para 26](#).

³³ Third Woodbridge Affidavit at [para 30](#).

will be subordinate to the other charges in the Initial Order except the Lien Charge.³⁴

29. This Court has exercised its discretion under section 11.52 of the CCAA to grant a priority charge over a debtor company's assets to secure a financial advisor's fees and expenses.³⁵ 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.³⁶

30. In light of the forgoing factors, 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. 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

³⁴ Third Woodbridge Affidavit at [para 29\(b\)](#).

³⁵ CCAA at [s 11.52](#).

³⁶ *Canwest Publishing Inc.*, 2010 ONSC 222 (CanLII), [paras 54-55](#) [**Canwest Publishing**]; see also *Just Energy Group Inc. (Re)*, 2021 ONSC 1793 (CanLII), [paras 113](#) and [126](#) [**Just Re Energy**]; *Bio Steel Sports Nutrition Inc. (Re)*, Amended and Restated Initial Order, CV-23-706033-00CL (21-September-2023) at [paras 33-36](#) (in which this Court orders the engagement of the financial advisor and a Transaction Fee Charge in the amount of US \$2,500,000) [**Bio Steel Sports**].

is supported by the Monitor.

D. The Court Should Extend the Stay Period

31. 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, 2025.³⁷

32. 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.³⁸ 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.³⁹

33. 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.⁴⁰ 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.

E. The Administration Charge Should be Amended and Expanded

34. Section 11.52 of the CCAA gives this Court jurisdiction to grant a priority charge for the

³⁷ Third Woodbridge Affidavit at [para 64](#).

³⁸ CCAA at [s 11.02\(2\)](#).

³⁹ *Ibid* at [s 11.02\(3\)](#).

⁴⁰ Third Woodbridge Affidavit at [para 13](#).

fees and expenses of financial, legal and other advisors or experts. 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.⁴¹

35. An administration charge is considered fair and reasonable where its quantum is not, on a balance, disproportionate to the complexity of the business and restructuring.⁴² In this case, the total Administration Charge of \$750,000 is reasonable and proportionate under the circumstances given the Cash Flow Forecast, as appended to the Monitor's Second Report.

36. The proposed increase and amendment to the Administration Charge is necessary under the circumstances. The Monitor, its counsel, the Applicants' counsel, the CRO and the Sales Advisor are essential to these CCAA proceedings.⁴³ The Monitor and the DIP Lender are supportive of the proposed amendments to the Administration Charge.⁴⁴

F. The Monitor's Fees and Activities Should be Approved

37. 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.

38. In *Re Target Canada Co.*, Chief Justice Morawetz held that "there are good policy and

⁴¹ *Canwest Publishing* at [para 54](#); see also *Springer Aerospace Holdings Limited*, 2022 ONSC 6581 (CanLII) at [paras 18-19](#) [**Springer**]; *Lydian International Ltd. (Re)*, 2020 ONSC 4006 (CanLII) at [paras 46-47](#) [**Lydian**]; *Hudson's Bay*, at [para 100](#).

⁴² *Canwest Global Communications Corp. (Re)*, 2009 ONSC 55114 (CanLII) at [para 40](#); *Springer* at [para 19](#).

⁴³ Third Woodbridge Affidavit at [para 66](#).

⁴⁴ Third Woodbridge Affidavit at [para 67](#).

practical reasons to approve of [a] Monitor's activities and providing a level of protection for [a] Monitor during the CCAA process".⁴⁵ Having regard to the policy described in *Target*, the Applicants request that this Court approve the conduct of the Monitor and its counsel because they 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.⁴⁶

39. With respect to approving the fees of the Monitor and its counsel, the Court of Appeal for Ontario has set guiding principles for this Court to consider. Namely, whether the fees 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.⁴⁷ The Applicants submit that they are.

PART V – RELIEF REQUESTED

40. The Applicants therefore request the TARIO substantially in the form of the draft attached as Tab 3 to the Motion Record and the SISP Approval Order substantially in the form of the draft attached as Tab 4 to the Motion Record be granted.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



⁴⁵ *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII) at [para 22](#) [*Target Canada*].

⁴⁶ Third Woodbridge Affidavit at para 13.

⁴⁷ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [paras 33 and 45](#) [*Diemer*]; *Fresh City* at [para 47](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th DAY OF MAY, 2025

/s RECON

RECONSTRUCT LLP

Lawyers for the Applicants

SCHEDULE "A"**List of Authorities**

1. [*Nortel Networks Corporation \(Re\)*, 2009 ONSC 39492 \(CanLII\)](#)
2. [*Fresh City Farms and Mama Earth Organics Inc. \(Re\)*, 2024 ONSC 2016 \(CanLII\)](#)
3. [*Hudson's Bay Company \(Re\)*, 2025 ONSC 1530 \(CanLII\)](#)
4. [*Brainhunter Inc. \(Re\)*, 2009 ONSC CanLII 72333](#)
5. [*Walter Energy Canada Holdings, Inc. \(Re\)*, 2016 BCSC 107 \(CanLII\)](#)
6. [*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 \(CanLII\)](#)
7. [*In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited*, 2024 ONSC 5541 \(CanLII\)](#)
8. [*Canwest Publishing Inc.*, 2010 ONSC 222 \(CanLII\)](#)
9. [*Re Just Energy Corp.*, 2021 ONSC 1793 \(CanLII\)](#)
10. [*Bio Steels Sports Nutrition Inc. \(Re\)*, Amended and Restated Initial Order, CV-23-706033-00CL \(September 21, 2023\)](#)
11. [*Target Canada Co. \(Re\)*, 2015 ONSC 7574 \(CanLII\)](#)
12. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 \(CanLII\)](#)
13. [*Springer Aerospace Holdings Limited*, 2022 ONSC 6581 \(CanLII\)](#)
14. [*Lydian International Limited \(Re\)*, 2019 ONSC 7473 \(CanLII\)](#)
15. [*Canwest Global Communications Corp. \(Re\)*, 2009 ONSC 55114 \(CanLII\) \[Pepall J.\]](#)

SCHEDULE "B"**Statutory Authorities****[Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended](#)****General power of court**

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02(3) The court shall not make the order unless

- (a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Factors to be considered

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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

Court File No. CV-25-00741419-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF EARTH BORING CO. LIMITED ET AL.

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

Proceedings commenced at *Toronto*

**FACTUM OF THE APPLICANTS
(SISP APPROVAL AND TARIO)**

RECONSTRUCT LLP

80 Richmond Street West
Suite 1700
Toronto, ON M5H 1T1

Caitlin Fell LSO No. 60091H
cfell@reconllp.com
Tel: 416.613.8282

Jessica Wuthmann LSO No. 72442W
jwuthmann@reconllp.com
Tel: 416.613.8288

Gabrielle Schachter LSO No. 80244T
gschachter@reconllp.com
Tel: 416.613.4881

Lawyers for the Applicants