



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: AUGUST 14, 2025

NO. ON LIST: 5

TITLE OF PROCEEDING:

**EARTH BORING CO. LIMITED ET AL VS. THE TOWN OF LINCOLN, ET AL
ROYAL BANK OF CANADA – CREDITOR (BK) / BDO CANADA LIMITED (RECEIVER)**

BEFORE: Justice J. Dietrich

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] Earth Boring Co. Limited (“**EBCL**”), Yarbridge Holdings Inc., Trolan Investments Ltd., and Yarfield Services Limited (collectively, the “**Applicants**”) seek an Order (the “**Stay Extension Order**”) which:

- a. extends the stay of proceedings (the “**Stay Period**”) from August 15, 2025 up to and including September 12, 2025;
- b. extends certain of the deadlines in the sale and investment solicitation process (the “**SISP**”) attached as Schedule “A” to the SISP Approval Order dated May 28, 2025;
- c. approves the Third Report (“**Third Report**”) of BDO Canada Limited as Monitor and its activities set out therein; and
- d. approves the fees and disbursements of the Monitor and its counsel as set out in the Third Report.

[2] The relief requested by the Applicants is not opposed.

[3] Aviva Insurance Company of Canada (“**Aviva**”) has also filed a motion seeking an order, among other things: (a) compelling EBCL to disclose and deliver up to Aviva certain documents and information relating to certain bonded contracts; and (b) an order declaring that EBCL is required to allow Aviva and its consultants access to attend site visits at the premises at which EBCL is carrying out work under the bonded contracts.

[4] ECBL also seeks payments of certain amounts that is believe are owing to it by Aviva, however, no motion has brought yet for that relief.

[5] The parties are in discussions to resolve the Aviva related issues, but the matter is urgent because if the expected payment by Aviva next week is not received, the Applicants’ cash flow forecast shows liquidity issues by the end of the week.

[6] Accordingly, a hearing is scheduled to address the Aviva motion and the Applicant's motion (to be filed) for payment form Aviva for **two hours on Wednesday, August 20, 2025 at 11:30 am (virtual)**.

[7] Separately, I have scheduled a case conference for **Monday August 18, 2025 at 10:30 am for 30 minutes** to address the following:

- a. Counsel for C&M McNally notes that as referenced in the Monitor’s Third Report there is a payment next week of approximately \$678,000 expected to be received by the Applicants from the Region of Halton. The Monitor has advised that those funds expected to be used in the Applicants' cash flow. Counsel for C&M McNally takes the position those are statutory holdback funds under the *Construction Act* and should not be used by the Applicants in the general cash flow. Counsel to the Monitor does not agree the funds are holdback funds and it is not possible to consensually agree to reserve those funds as they are required by the Applicants' for liquidity under their cash flow forecast. If C&M McNally wishes to assert that the funds are to be kept separate and apart, a motion is required. That motion should be served in advance of the case conference, and a discussion regarding schedule of that motion can take place at the case conference;
- b. An update on the Aviva related matters scheduled to be heard on August 20, 2025; and
- c. Scheduling of a motion for early September for, among other things, a stay extension and potentially an approval and vesting order.

[8] Aide Memoirs of no more than 3 pages are to uploaded to Case Center for use at the case conference no later than Saturday, August 16, 2025.

[9] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Applicants.

Background

[10] 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.

[11] The Applicants sought and obtained an initial order (as amended from time to time, the “TARIO”) under the CCAA from this Court on April 17, 2025.

[12] On May 28, 2025, the Court granted the SISP Approval Order. The SISP is a two-phase sale and investment solicitation process to be administered by PricewaterhouseCoopers Corporate Finance Inc. as Sales Advisor (in such capacity, the “Sales Advisor”) with the assistance of the Monitor.

[13] The Sales Advisor is currently implementing the SISP, with the support of the Applicants and the Monitor, in accordance with the terms of the SISP Approval Order. Over the course of the SISP, the Monitor determined that extending the SISP deadlines was necessary and appropriate to maintain a competitive and effective process aimed at generating multiple offers. Specifically, the Monitor: extended the Phase I Bid Deadline and subsequent SISP deadlines by seven days (to June 27, 2025) and further extended the Phase II Bid Deadline and subsequent SISP deadlines by slightly over two weeks (for a cumulative extension of slightly over three weeks).

[14] On the Phase II Bid Deadline under the Amended SISP Deadlines, the Sales Advisor received Phase II Qualified Bid(s). Pursuant to section 49 of the SISP Procedures, the Sales Advisor and Monitor, in consultation with the DIP Lender and the Business Development Bank of Canada, are reviewing and assessing the Phase II Qualified Bid(s) to determine whether a bid will be accepted as the Successful Bid.

[15] The DIP Lender has confirmed that, subject to further order of the Court, the DIP Facility maturity has been extended to correspond with the requested extension to the Stay Period.

Issues

[16] On the Applicants' motion, the issues before the Court are whether

- a. certain deadlines in the SISP should be extended;
- b. the Stay Period should be extended from August 15, 2025, up to and including September 12, 2025; and
- c. whether the Third Report and the activities of the Monitor as well as the fees of the Monitor and its counsel set out therein should be approved.

Analysis

[17] Under section 12 of the SISP Procedures, any extension of the SISP deadlines exceeding two weeks requires Court approval. As such, the Applicants seek an order retroactively approving the extension of the Phase II Bid Deadline and the subsequent milestone (the “Amended SISP Deadlines”) and further extending the deadlines at the decision of the Monitor in certain circumstances.

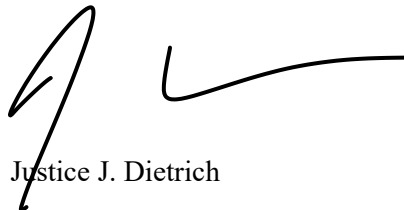
[18] Extensions to a court-approved SISP are within the Court’s discretionary powers under s. 11 of the CCAA: see *Canwest Publishing Inc., Re*, 2010 ONSC 2870 at para 15. The Applicants and the Monitor have also continued to act diligently throughout the SISP. Authorizing the Monitor, in consultation with the Sales Advisor, to extend the Amended SISP Deadlines as requested will facilitate a fair and flexible process and help achieve the best possible outcome for stakeholders. In the circumstances, the requested amendment to the SISP is approved.

[19] The Applicants seek an extension of the Stay Period up to and including September 12, 2025. 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.

[20] The evidence is that the Applicants have acted and continue to act in good faith and with due diligence. The requested extension of the Stay Period will enable the Applicants to implement their operational restructuring, complete the administration of the SISP, return to Court for approval of a transaction, and close a transaction. The Cash Flow Statement demonstrates that the Applicants have sufficient liquidity to operate through the Proposed Stay Period. Accordingly, I am satisfied that the requested extension is appropriate in the circumstances. The requested extension is subject to further Order of the Court.

[21] The Applicants seek approval of the Third Report, and the activities of the Monitor set out therein. There are good policy and practical reasons to grant the approval of a monitor's reported activities see *Target Canada Co (Re)*, 2015 ONSC 1487, at paras 2, 22-23. The evidence is that the Monitor has carried out its duties in a reasonable and efficient manner, consistent with its powers as set out in the CCAA and in the interests of the Applicants' stakeholders generally. There are no objections to the Third Report and accordingly it is approved. The draft order provides that only the Monitor may rely on such approval.

[22] The Applicants also seek approval of the fees and disbursements of the Monitor and its legal counsel as set out in the Third Report. This Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature is the overriding principle of reasonableness, with the predominant consideration in such assessment being the overall value contributed by the Monitor and its counsel see *Nortel Networks Inc*, 2022 ONSC 6680 at para 10. In considering these guiding principles, the fees of the Monitor and its counsel are appropriate and are approved.

A handwritten signature in black ink, consisting of a stylized, cursive 'J' followed by a horizontal line that curves upwards at the end.

August 14, 2025

Justice J. Dietrich