



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: April 24, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: EARTH BORING CO. LTD. et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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Other:

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ENDORSEMENT OF JUSTICE STEELE:

- [1] This is the comeback hearing further to my Initial Order, dated April 17, 2025. The applicants seek an ARIO that:
- a. Extends the stay period to July 4, 2025;
 - b. Increases the Administration Charge from \$300,000 to \$600,000;
 - c. Authorizes the Applicants to increase the amounts that may be borrowed by them under the DIP Term Sheet from \$2.2 million to \$5.5 million and a corresponding increase to the DIP Lender's Charge; and
 - d. Increases the Directors' Charge from \$200,000 to \$400,000.
- [2] BDC, which is the first mortgagee on two properties raised two potential issues from BDC's perspective:
- a. BDC indicated that, depending on several factors, it may return to request that the two properties are not subject to these CCAA proceedings and seek instead a

receivership. The applicants stated that they would object if BDC subsequently made this request.

- b. BDC stated that, while it does not object to the Administration Charge priming its charge, its position is that the Directors' Charge should not. The applicants disagree. This objection has been put over to **May 5, 2025 at 9:30 a.m. (15 minutes)** to give the parties the opportunity to discuss. The ARIO is being issued without prejudice to BDC's right to challenge the priority of the Directors' Charge vis-à-vis BDC's mortgage security, which is specifically reserved and preserved.

- [3] Aviva, which has issued bonds on certain of the Applicants' Projects, totaling approximately \$150 million, has requested monitoring, access, and reporting. Aviva further requests an explanation of how para. 14 of the LRO will operate, as it may impact Aviva's reporting request. The parties indicated that this matter is under discussion.
- [4] The applicant seeks to extend the stay to July 4, 2025. No one opposes the stay extension. Under section 11.02(2) of the CCAA, the court may extend the stay period "on any terms that it may impose." The court must be satisfied that circumstances exist that make the order appropriate, and that the applicant has acted, and is acting, in good faith and with due diligence: section 11.02(3) of the CCAA. The applicants have acted and are continuing to act in good faith and with due diligence in these proceedings. Since the Initial Order was granted, the applicants have engaged with stakeholder groups, including suppliers, their employees, and Aviva, and are in the process of evaluating the profitability of various Projects. I am satisfied that the extension of the stay period is necessary and appropriate in the circumstances. It will allow the applicants to implement their operational and financial restructuring and come back before the court to approve a SISP.
- [5] The applicants seek an increase to both the Administration Charge and the Directors' Charge. No one opposes the increases to these charges (other than, as noted above, the potential priority issue with BDC related to the Directors' Charge). Notice has been provided. Under section 11.52 of the CCAA the Court has the jurisdiction to order an Administration Charge. The factors that the Court may consider are set out at para. 58 of my reasons for granting the Initial Order, released on April 22, 2025 (the "Reasons"). The applicants seek an increase to the Administration Charge to cover the professional costs during the stay extension period. Similarly, the court is authorized to grant a directors' charge under section 11.51 of the CCAA. As set out at para. 64 of my Reasons the court must be satisfied of the factors set out in *Jaguar Mining Inc. (Re)*. The proposed Directors' Charge is based on 3 weeks of admin. salary payroll and 2 weeks of union payroll.
- [6] I am satisfied that the proposed increases to the Administration Charge and Directors' Charge should be granted.

- [7] The applicants also seek an increase in the DIP facility and corresponding DIP Charge from \$2.2 million to \$5.5 million. The cash flow statement filed by the applicants supports their position that the increased funds are required. Under 11.2(1) of the CCAA the Court has the authority to grant the requested charge. Section 11.2(4) of the CCAA sets out the factors for the court to consider.
- [8] I am satisfied that the proposed increase to the DIP facility and corresponding DIP Charge should be granted.
- [9] Order attached.

A handwritten signature in blue ink, appearing to be "J. L. L.", is located in the lower right quadrant of the page.