CITATION: Re Earth Boring Co. Ltd., 2025 ONSC 2422
COURT FILE NO.: CV-25-741419-00CL
DATE: 20250422

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

BEFORE: Justice Jana Steele

COUNSEL: *Brendan Bissell and Caitlin Fell* for the Applicants

Clifton P. Prophet and Heather Fisher for the Proposed Monitor

Steven Graff and Adrienne Ho for the Bank of Montreal

Sam Babe and Richard Yehia for Aviva Insurance Company of Canada

HEARD: April 17, 2025

ENDORSEMENT

[1] The applicants, Earth Boring Co. Limited ("EBCL"), Yarbridge Holdings Inc. ("Yarbridge"), Trolan Investments Ltd. ("Trolan"), and Yarfield Services Limited ("Yarfield"), seek an initial order under the *Companies' Creditors Arrangement Act* ("CCAA") and a lien regularization order.

[2] The Applicants seek the initial order to give them the breathing space they need, as well as interim financing to address immediate liquidity concerns, among other things.

[3] The Initial Order seeks conventional relief sought at an initial CCAA hearing. In addition, the Applicants seek an initial stay against calls on performance bonds but only as applicable to EBCL's projects that are expected to continue (the "Continuing EBCL Projects").

[4] Given that EBCL's Business is subject to the *Construction Act*, the Applicants also seek a lien regularization order (the "LRO") in respect of Continuing EBCL Projects to prevent a deterioration in their position and cash flow.

[5] The Proposed Monitor, BDO Canada Limited ("BDO" or the "Proposed Monitor"), and the Bank of Montreal, the DIP Lender and EBCL's senior secured lender, support the Applicants' application.

[6] Aviva Insurance Company of Canada ("Aviva") does not oppose the application for the Initial Order and LRO.

[7] I granted the initial order and lien regularization order on April 17, 2025, with reasons to follow. These are my reasons.

Background

[8] The Applicants are affiliated companies incorporated in Ontario.

[9] EBCL is the operating entity. Yarbridge and Trolan are holding companies for certain real estate. Yarfield was previously the Applicants' management company but has not been operative since January 2025.

[10] The Applicants are a trenchless construction service provider in Ontario, engaged in the business of trenchless construction services, which includes microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the "Business"). The Applicants are only one of four companies that provide trenchless construction services in Ontario.

[11] The Business is complex and highly specialized.

[12] The Applicants have operated this specialized infrastructure business for over 78 years. However, over the past year they have faced unprecedented financial and operational challenges. These challenges have been caused by numerous factors, including changes to guidelines in government funding, unforeseeable cost increases at one of the applicants' largest infrastructure projects, the shouldering of the upfront costs of certain insurance claims, and the significant impact of tariffs on the construction industry generally.

[13] The Applicants currently employ 71 union employees, 11 agency employees, and 17 full-time managerial employees.

[14] The Applicants are also supported by specialized suppliers including equipment rental, concrete, piping, and fuel suppliers.

[15] The Applicants are currently working on more than 12 medium-to-large scale underground construction infrastructure projects with a total contract value of about $32 million. There are also an additional 17 projects that the Applicants have been awarded but have not yet commenced.

[16] The consolidated value of the Applicants' liabilities exceed the value of their assets by about $3 million.

[17] The Applicants are now experiencing an acute liquidity crisis. By April 7, 2025 the Applicants available liquidity was just over $1million, which was insufficient to sustain the Applicants ongoing obligations including payroll.

[18] EBCL, Yarfield, and Pennbridge Holdings are parties to a Master Surety Agreement with Aviva pursuant to which Aviva has agreed to provide EBCL with bonding for its projects.

[19] Some of the current construction projects have bonds issued by Aviva (the "Bonded Projects"). There are eight Bonded Projects, four of which are Continuing EBCL Projects.

[20] On April 15, 2025, EBCL filed a Notice of Intention to File a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). However, the Applicants have determined that it is necessary to seek relief under the CCAA to further their goal of continuing the Business as a going concern and maximizing value for their stakeholders.

Analysis

Are the Applicants entitled to seek protection under the CCAA and be granted protection including a stay of proceedings?

[21] As noted above, the Applicants seek to continue under the CCAA the NOI proceeding under the BIA that the Applicants started on April 15, 2025. The Court has jurisdiction to permit the Applicants to do so under section 11.6 of the CCAA. I am satisfied that the factors relevant to the decision as to whether to approve the continuation of the proceedings under the CCAA have been satisfied:

a. The debtor has not filed a proposal under the BIA;

b. The proposed continuation is consistent with the purposes of the CCAA; and

c. The debtor has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA.

Clothing for Modern Times Ltd., 2011 ONSC 7522, at para. 9, *In the Matter of the Body Shop Canada Limited*, 2024 ONSC 3882 at para. 10; *Comstock Canada Limited (Re)*, 2013 ONSC 4756, at paras. 36-45.

[22] In the instant case, the NOI under the BIA was filed two days before the CCAA application came before the court. There has not been a proposal filed under the BIA.

[23] The proposed continuation under the CCAA is consistent with the purposes of the CCAA, as set out by the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)*,

2010 SCC 60, at paras. 15, 69, 70 and 77. The Applicants have the goal of continuing the Business as a going concern and maximizing value for their stakeholders. They need breathing space to attempt to reorganize their financial affairs. The Applicants want to continue working on their construction projects, without disruption. Any serious disruption to the Applicants' ability to provide the services will delay and likely imperil the viability of the various ongoing construction projects.

[24] The Applicants have provided the Court with the information that would otherwise be filed on an initial CCAA application, including the cash flow forecast, copies of financial statements, and a report showing that the Proposed Monitor (which was also the Proposal Trustee) is of the view that the cash flow analysis is reasonable, and it supports the conversion request.

[25] The Applicants are "debtor companies" as that term is defined under the CCAA. A "debtor company" is defined in section 2 of the CCAA as a company that is insolvent within the meaning of the BIA, which provides that a person is insolvent if it is unable to meet its obligations as they generally become due, has ceased paying current obligations in the ordinary course of business, or whose aggregate property is not at fair valuation sufficient to enable payment of all its obligations due and accruing due. The applicants are insolvent within the meaning of the BIA. The aggregate value of the applicants' assets is not sufficient to pay the applicants' liabilities.

[26] For the CCAA to apply in respect of a "debtor company" or "affiliated company" the total claims against the debtor or affiliate must be greater than $5 million. Where there is an affiliated group, as in the instant case, companies that are part of the group are not required to individually satisfy the definition of insolvency if the group, taken as a whole, is insolvent, and if it is appropriate that all the companies in the group be included as part of the restructuring and CCAA orders: *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299, at paras. 25-30. In this case, the Applicants' debts are well in excess of $5 million. As of December 31, 2024, the Applicants owe approximately $49 million to their secured creditors.

[27] I am also satisfied that this court is the appropriate place for the application to be made. Under section 9(1) of the CCAA, an application may be made where the debtor company has its "head office or chief place of business." The Applicants' registered head office is in Mississauga, and most of their operations are in Ontario.

[28] Under section 11.001 of the CCAA, on an initial application the relief sought is limited to "relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period." The Applicants state that they have worked closely with the Proposed Monitor to determine the necessary relief for the initial stay period, including the size of the proposed charges, among other things. I am satisfied that the relief sought at the initial application is limited to what was reasonably necessary.

[29] Section 11.02 of the CCAA gives the court the authority to grant an Initial Order staying all proceedings in respect of a debtor company for a period of not more than 10 days if the applicant satisfies the court that circumstances exist that make the order appropriate.

[30] As noted by the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at para. 60, the granting of a stay of proceedings allows the debtor company to maintain the *status quo* while the debtor addresses liquidity issues, consults with stakeholders, and develops a restructuring plan with a view to continuing operations for the benefit of all stakeholders. The Supreme Court noted that the court must be aware of the "various interests at stake in the reorganization", which may include employees, directors, shareholders, and other parties doing business with the debtor company.

[31] The Applicants state that they require the protection of a stay of proceedings to maintain the *status quo*, preserve the value of their business, and effect an operational restructuring.

[32] I am satisfied that it is appropriate to grant the initial stay.

Should the Stay extend to Pennbridge Holdings?

[33] The Applicants seek to extend the stay over the non-applicant entity, Pennbridge Holdings.

[34] The Court has the authority to extend the stay to non-applicant entities under s. 11 and 11.02(1) of the CCAA.

[35] The Court in *JTI Macdonald Corp., Re*, 2019 ONSC 1625, at para. 15, set out the following factors for the court to consider in deciding whether to extend a stay of proceedings to non-applicant third parties:

a. The business and operations of the third party was significantly intertwined and integrated with those of the debtor company;

b. Extending the stay to the third party would help maintain stability and value during the CCAA process;

c. Not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure, potentially jeopardizing the success of the restructuring and the continuance of the debtor company;

d. If the debtor company is prevented from concluding a successful restructuring with its creditors, the economic harm would be far-reaching and significant;

e. Failure of the restructuring would be event more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the third party stay;

f. If the restructuring proceedings are successful, the debtor company will continue to operate for the benefit of all of its stakeholders, and its stakeholders will retain all of its remedies in the event of future breaches by the debtor company or breaches that are not related to the released claims; and

g. The balance of convenience favours extending the stay to the third party.

[36] In *Laurentian University of Sudbury*, 2021 ONSC 659, at para. 40, Chief Justice Morawetz noted that "where the business operations of a group of entities are inextricably intertwined, such as where there are agreements among the entities, guarantees provided by certain entities in the group in respect of the obligations of other entities in the group or shared cash management systems, courts have found it necessary and appropriate to extend a stay in respect of non-applicant parties." In *Laurentian* the applicant had provided a guarantee in respect of a non-applicant party's credit facility. The Court was satisfied that it was appropriate to extend the stay to the non-applicant party.

[37] In *MPX International Corporation*, 2022 ONSC 4348, at para. 52, Chief Justice Morawetz noted factors that courts have considered in extending the initial stay to non-applicant parties. These factors have included "whether the subsidiaries of the CCAA applicants had guaranteed the applicants' secured loans; whether the non-applicants were deeply integrated into the applicants' business operations; and whether the claims against the non-applicants are derivative of the primary liability of the applicants."

[38] In the instant case, Pennbridge has contractual liability to Aviva under the Master Surety Agreement. As noted by the Applicants, potential actions by Aviva against Pennbridge, as the indirect owner of the Applicants, could cause instability and result in costs detrimental to the planned restructuring.

[39] I am satisfied that the factors set out in *JTI-Macdonald* weigh in favour of extending the stay of proceedings to Pennbridge.

Should the stay extend to the Performance Bonds for the Continuing EBCL Projects?

[40] The Applicants ask the Court to grant a stay of any call on a Performance Bond on the Continuing EBCL Projects, except with the written consent of the Monitor, or with leave of the Court. The Applicants are not aware of any default under any of the Performance Bonds at this time.

[41] Under section 11 of the CCAA, the Court has broad discretion to make any order appropriate in the circumstances. The Court's discretion is governed by the test set out in *Century Services*, at para. 70, which considers whether granting the requested relief will "further the efforts to achieve the remedial purpose of the CCAA" and "avoid the economic and social losses resulting from liquidation of an insolvent company."

[42] The Court's broad discretion has included temporary stays of third-party rights. For example, in the recent case of *Re Hudson's Bay Company*, 2025 ONSC 1530, at para. 65, Osborne J. granted a stay in the initial order applicable to co-tenants. He noted, at para. 65, that extending the stay of proceedings to the co-tenants prevents a "run on the bank." The concern was that other co-tenants in locations where Hudson's Bay operates may seek to terminate their leases.

[43] The Applicants submit that an initial stay of calls on the Performance Bonds for the Continuing EBCL Projects is necessary for the same reasons as in a co-tenancy stay. The Applicants require the requisite breathing room to communicate with project owners and counterparties in order to facilitate the completion of the Continuing EBCL Projects, which is critical for any restructuring of the Applicants and the Business.

[44] The Applicants are concerned that without this protection, the counterparties on the Performance Bonds may take steps to call the bonds, which would initially trigger an obligation on Aviva to act. The Applicants submit that this action could and likely would interfere with the Applicants' ability to operate under the contract in question. Further, the Applicants state that any additional costs that Aviva might incur in exercising the range of options open to them in that scenario could and likely would interfere with the further flow of project funds to the Applicant.

[45] The stay on the Performance Bonds is supported by the Proposed Monitor. I also note that Aviva's non-objection to the initial order was premised on the relief as a "complete package." I have determined that it is appropriate to grant this initial order. As with all initial relief, if there are objections by others, these can be addressed at the comeback hearing next week.

Should the Proposed Monitor be appointed?

[46] Under section 11.7 of the CCAA, the court is required to appoint a monitor when the initial order is made. The Applicants seek the appointment of BDO as Monitor in this proceeding. BDO satisfies the requirements for, and restrictions on, who may act as a monitor set out in section 11.7(2) of the CCAA. BDO is a trustee within the meaning of section 2(1) of the BIA and is not the auditor or accountant of any of the Applicants or subject to any of the other restrictions in section 11.7(2) of the CCAA.

[47] I am satisfied that BDO can be appointed as the Monitor.

Should the DIP Term Sheet and DIP Lender's Charge and Initial Advance be approved?

[48] The Applicants seek approval of the DIP term sheet and the granting of the DIP Lender's Charge. The proposed DIP Lender's Charge ranks behind the Administration Charge and BDC's mortgage on two specific properties, but in priority to all other encumbrances.

[49] The Applicants seek the advancement of up to $2.2 million under the facility in the initial period. The Applicants indicated that at the comeback hearing they will be requesting an increase to the DIP facility and DIP Lender's Charge.

[50] Section 11.2(1) of the CCAA gives the Court the authority to grant the requested charge. It provides:

> On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring

> that all or part of the company's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

[51] Under section 11.2(5) of the CCAA, the Court may not make an order under 11.2(1) at the initial application unless the Court is "satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period." What is considered to be "reasonably necessary" depends on the facts of the case: *8440522 Canada Inc., Re,* 2013 ONSC 6167, at para. 30.

[52] Section 11.2(4) of the CCAA sets out the following factors for the Court to consider in determining whether a proposed DIP lender's charge is appropriate:

a. The period during which the company is expected to be subject to CCAA proceedings;

b. How the company's business and financial affairs are to be managed during the proceedings;

c. Whether the company's management has the confidence of its major creditors;

d. Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

e. The nature and value of the company's property;

f. Whether any creditor would be materially prejudiced as a result of the security or charge; and

g. The monitor's report, if any.

[53] The Applicants submit that the Court should approve the DIP facility and DIP Lender's Charge for the following reasons:

a. the Cash Flow Forecast demonstrates that interim financing is urgently required to provide the Applicants with the required liquidity for continued operations in the ordinary course. Ordinary course operations will preserve the value and going concern operations of the Applicants' Business, which is in the best interests of the Applicants and their stakeholders;

b. the Applicants are not able to obtain interim financing without a charge given that the DIP Facility requires the DIP Lender's Charge;

c. the DIP Lender is EBCL's primary secured creditor, BMO;

d. the Applicants' business will be managed in the normal course by its management with the oversight of the Proposed Monitor;

e. in accordance with subsection 11.2(1) of the CCAA, notice has been given to the registered secured creditors to be primed by the DIP Lender's Charge;

f. in accordance with subsection 11.2(5) of the CCAA, the quantum of the Initial Advance under the DIP Facility and the DIP Lender's Charge in the Initial Order is limited to what is strictly necessary for the continued operations of the Applicants until the comeback hearing;

g. the proposed DIP Lender's Charge does not secure any pre-filing obligations of the Applicants; and

h. the Proposed Monitor supports this relief and believes the economic terms of the DIP Facility are reasonable in the circumstances.

[54] The Applicants are urgently in need of financing to continue operations. BMO, their primary secured lender, is prepared to provide the DIP financing as long as it is subject to the charge. The Proposed Monitor is of the view that the DIP facility terms are reasonable. The required notice has been given to the registered secured creditors that will be primed by the charge. In the circumstances, I am satisfied that the DIP facility and the DIP Lender's Charge should be approved.

Should the Administration Charge be granted?

[55] The Applicants seek an Administration Charge of up to $300,000 for the initial stay period to secure the professional fees and disbursements. At the comeback hearing, the Applicants will seek an increase to the Administration Charge to a maximum of $600,000.

[56] The Applicants propose that the Administration Charge would be first ranking, followed by the second ranking DIP Lender's Charge, and third ranking Directors' Charge.

[57] This Court has commented that for a CCAA restructuring to succeed, it is essential "to order a super-priority in respect of charges securing professional fees and disbursements:" *US Steel Canada Inc. (Re)*, 2014 ONSC 6145, at paras. 20 and 22.

[58] Section 11.52 of the CCAA gives the Court jurisdiction to grant the Administration Charge. In *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54, the Court

identified the following non-exhaustive factors that the Court may consider when granting an administration charge:

a. The size and complexity of the business being restructured;

b. The proposed role of the beneficiaries of the charge;

c. Whether there is 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.

[59] As noted by Penny J. in *Springer Aerospace Holdings Limited*, 2022 ONSC 6581, at para. 19: "While estimating the quantum of an administration charge is "an inexact exercise", the quantum of the administration charge sought is commensurate with the complexity of the Applicants' business and anticipated restructuring."

[60] The Applicants submit that the total Administration Charge is reasonable and proportionate under the circumstances given the Applicants' Cash Flow Forecast for the initial stay of proceedings.

[61] The Administration Charge is intended to cover fees of the Proposed Monitor, its counsel, the Applicants' counsel, and the CRO, all of whom are essential to these CCAA proceedings. I am satisfied that it is appropriate for the Court to grant the initial administration charge sought of $300,000.

Should the Directors' Charge be Granted?

[62] The Applicants seek a Directors' Charge of up to $200,000 to secure the Applicants' indemnity of their directors and officers.

[63] Under section 11.51 of the CCAA, the Court is authorized to grant a directors' charge in the amount that the Court considers appropriate, provided notice is given to the secured creditors that are likely to be affected by the charge. The Applicants have given notice to the secured creditors that are likely to be affected by the charge. The senior lender, BMO, was present at the hearing. The Applicants advised that notice had been provided to the other secured creditors.

[64] For the court to grant a directors' charge, the court must be satisfied that the following factors, set out in *Jaguar Mining Inc. (Re)*, 2014 ONSC 494, at para. 45, are satisfied:

a. Notice has been given to the secured creditors likely to be affected by the charge;

b. The amount is appropriate;

c. The applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

d. The charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

[65] The Applicants do not have director and officer liability insurance and it would be challenging, if not impossible, to obtain insurance coverage during these CCAA proceedings at a reasonable cost. The evidence of Eugene Woodbridge, the CEO of EBCL, and a director of each of the Applicants, is that his continued involvement in this proceeding as a director and officer is conditional upon the granting of the Directors' Charge.

[66] The continued participation of directors, management and employees is critical to the Applicants' ability to successfully restructure. This is particularly so given the specialized nature of the Applicants' industry.

[67] The initial quantum of the Directors' Charge sought is equivalent to approximately two weeks of the Applicants' payroll, inclusive of source deductions. The Proposed Monitor is of the view that the Directors' Charge is required and is reasonable in the circumstances.

[68] I am satisfied that the Proposed Directors' Charge is of a reasonable amount and is necessary and appropriate in the circumstances.

Should the CRO be appointed?

[69] The Applicants seek the appointment of Steinberg as the CRO.

[70] The appointment of a CRO is within the inherent jurisdiction of the Court and has previously been granted under s. 11 of the CCAA.

[71] In making such appointments, the courts have considered various factors, including whether the appointment of the CRO would be beneficial to the restructuring, whether the proposed engagement terms for the CRO are reasonable in the circumstances, the experience and qualifications of the proposed CRO, and whether the Monitor supports the appointment: *JTI-Macdonald*, at paras. 26-29; *Pride Holdings Group Inc.*, 2024 ONSC 1830, at paras. 44-45.

[72] The DIP Facility term sheet with BMO requires the engagement of a CRO.

[73] Steinberg's engagement agreement indicates that Steinberg will provide operational restructuring support and assist with negotiations with Aviva and other key stakeholders, among other things.

[74] The Applicants and the Monitor have reviewed the terms of the CRO engagement letter and have found them to be fair and reasonable under the circumstances. The Monitor is of the view that the appointment of the CRO will "facilitate an effective and value-maximizing restructuring process." The Applicants state that the experience and expertise of the proposed CRO will be beneficial to the Applicants and their stakeholders, including implementing an operational restructuring.

[75] I am satisfied that it is appropriate to approve the engagement of the CRO. Among other things, the appointment is supported by the proposed Monitor and required under the DIP facility term sheet.

Should the Court approve payment of certain pre-filing obligations with the approval of the Monitor?

[76] The Applicants are seeking authorization to pay, with the written approval of the Proposed Monitor, amounts owing to their suppliers for critical goods or services supplied to the Applicants prior to the filing date if, in the opinion of the Applicants and the Proposed Monitor, such payment is required to maintain the uninterrupted operation of the Business.

[77] The court has the jurisdiction to make such an order pursuant to its general jurisdiction under s. 11 of the CCAA.

[78] Courts have routinely granted orders allowing applicants in CCAA proceedings to pay pre-filing amounts to critical suppliers with the monitor's consent: *Cinram International Inc. (Re)*, 2012 ONSC 3767, at para. 23. As noted in *JTI Macdonald Corp., Re*, 2019 ONSC 1625, at para. 24, Courts should consider the following criteria in making this determination:

a. Whether the goods and services concerned are integral to the business,

b. The applicants' need for the uninterrupted supply of the goods or services,

c. The monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate,

d. The effect on the applicants' ongoing operations and ability to restructure if they were unable to make pre-filing payment to their critical suppliers.

[79] The Applicants rely on a small number of vendors that can supply some of the specific services that the Applicants require. Because of their cash flow issues, the Applicants have failed

to pay certain of their critical suppliers for services provided prior to the CCAA filing. As noted above, the Applicants cannot risk a disruption of their construction services. The Applicants are concerned that if these critical suppliers are not paid their pre-filing arrears, they may stop providing services. Accordingly, it may be necessary to pay-filing amounts owed to the critical suppliers to maintain their services.

[80] In the circumstances, I am satisfied that it is appropriate that the Applicants be entitled, but not required to pay, with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants before the date of the initial order, provided the payments are necessary to avoid disruption to the Applicants' business.

Should the Court grant the LRO for the Continuing EBCL Projects?

[81] The other order sought by the Applicants is the LRO. This order is sought to ensure that the cash flow of the Business continues uninterrupted without the impact of claims or registrations of liens, while also protecting the rights of lien claimants. The LRO sets out a court-supervised claims process that is administered by the Proposed Monitor. The rights of lien claimants to register a lien against the Continuing EBCL Projects are stayed, however, such rights are substituted with the ability to file a lien claim with the Proposed Monitor. Lien claimants also benefit from a Court-ordered Lien Charge consistent with the rights under the *Construction Act*.

[82] The proposed form of LRO provides for the following process:

a. Lien claims against Continuing EBCL Projects under the *Construction Act* will be stayed and any party wishing to assert lien rights against Continuing EBCL Projects must comply with the process under the LRO;

b. Lien claimants can preserve their rights under the *Construction Act* by providing a lien notice to the Proposed Monitor, which grants a Lien Charge (as defined in the LRO) equivalent to the lien rights provided for under the *Construction Act*;

c. Any lien that had been bonded-off prior to the granting of the LRO will also be deemed to have provided a lien notice to the Monitor;

d. Each Applicant, with the oversight of the Monitor, will be required to account for all funds received by them on account of a Continuing EBCL Project on a project-by-project basis to comply with the *Construction Act*;

e. Any funds received by the Applicants from a Continuing EBCL Project may only be paid in satisfaction of costs, fees and expenses arising in connection with such Continuing EBCL Project or other project-specific financing advanced in respect of such Continuing EBCL Project, subject to the priority charges in this proceeding;

f. Any person who is in possession of holdback funds will be restrained from paying, setting-off or encroaching upon the holdback funds, except in accordance with the LRO, which mirrors the treatment of holdback funds in the *Construction Act*; and

g. Discontinued EBCL Contracts for which the cash flow will not affect the Applicants' restructuring have been carved out of the LRO.

[83] Under s. 11 of the CCAA, the court has the authority to grant the proposed LRO.

[84] Osborne J. noted in *Mizrahi Development Group (The One) Inc. et al*, (endorsement of Osborne J. dated March 7, 2024), at para. 32, that a proposed lien regularization order is "in the nature of a claims procedure order." He further noted that these types of orders are regularly granted in similar proceedings. Osborne J. stated that "[t]he overarching objective is to establish a claims process that is efficient, flexible and fair." At para. 33 Osborne J. noted several other cases where a process for lien claimants has been established. He stated:

> In similar circumstances where the registration of liens against a development project has risked caused delays and disruption to the progress of construction or imperiling restructuring efforts, this Court has exercised its jurisdiction to establish a claims process for lien claimants similar to that proposed here: See for example, *Comstock Canada Ltd., et al* (7 August 2013), Ont. Sup. Ct. J [Commercial List] CV-13-10181-00CL (Lien Regularization Order); *FirstOnSite GP Inc.*, (21 April 2016), Ont. Sup. Ct. J [Commercial List] CV-16-11358-00CL (Amended and Restated Initial Order); *Carillion Canada Inc., et al* (14 March 2018), Ont. Sup. Ct. J [Commercial List] CV-18-590812-00CL (Lien Regularization Order, and subsequent Amended Lien Regularization Order dated May 23, 2019).

[85] The Applicants note that the court has exercised its jurisdiction to establish claims processes for lien claimants substantially similar to the LRO in similar cases where the registration of liens has risked causing delays and disruption to the progress of construction or restructuring efforts.

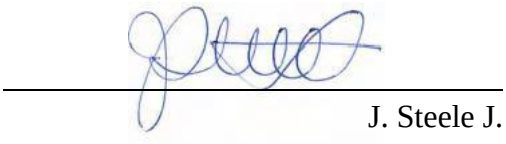
[86] I agree with the Applicants submission that the overarching principle governing the need for lien regularization in other cases where the court saw fit to establish a similar claims process for lien claimants also applies in this case. Any delay or disruption to amounts payable in respect of the Continuing EBCL Projects risks destabilizing the Applicants and their operations to the detriment of all stakeholders.

[87] The LRO process is designed to provide the same rights to lien claimants as they have had under the *Construction Act.* Because the rights granted to lien claimants under the LRO are substantively consistent with those provided under provincial legislation, the intent is that the lien claimants are not prejudiced by the Court making this order.

[88] I am satisfied that the LRO is necessary and appropriate in the circumstances.

[89] As noted above, the Initial Order and the LRO were released on April 17, 2025.

[90] The comeback hearing has been scheduled for Thursday April 24, 2025 at 9:30 A.M.



J. Steele J.

Released: April 22, 2025

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SUPERIOR COURT OF JUSTICE

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

ENDORSEMENT

J. Steele J.

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