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COURT	COURT OF QUEEN'S BENCH OF ALBERTA	CLERK OF THE COURT **FILED** JUN 14 2019 JUDICIAL CENTRE OF CALGARY
JUDICIAL CENTRE	CALGARY	
APPLICANT	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 CONNACHER OIL AND GAS LIMITED	
DOCUMENT	BENCH BRIEF OF THE APPLICANT (2019 Plan Sanction Application)	
HEARING	June 20, 2019	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Bankers Hall West 888-3rd Street SW Suite 3810 Calgary, Alberta T2P 5C5 Attn: Ryan Jacobs/Joseph Bellissimo/Natalie E. Levine Tel: 403-351-2920 Fax: 403-648-1151 rjacobs@casselsbrock.com jbellissimo@casselsbrock.com nlevine@casselsbrock.com	

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I. PART ONE - INTRODUCTION

1. This Bench Brief is submitted on behalf of Connacher Oil and Gas Limited ("**Connacher**") in support of Connacher's Application (2019 Plan Sanction Order) returnable on June 20, 2019 (the "**Application**").[1]

2. On the Application, Connacher seeks an order in the form attached as Schedule "A" to the Application (the "**2019 Plan Sanction Order**"), *inter alia*:

   (a) declaring that the 2019 Creditors' Meetings held on June 19, 2019 were duly convened and held, all in accordance with the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36 (the "**CCAA**") and the 2019 Creditors' Meetings Order;

   (b) sanctioning and approving Connacher's Plan of Compromise and Arrangement dated May 6, 2019 (as may be further amended from time to time pursuant to the terms thereof, the "**2019 CCAA Plan**") and granting the ancillary relief requested in the 2019 Plan Sanction Order;

   (c) authorizing Connacher to make a payment in the amount of $3,995,775.75 to the Municipality on or prior to June 30, 2019, and upon such payment being made, relieving Connacher and the Monitor from their obligations pursuant to Section 3.5(c) of the 2019 CCAA Plan with respect to the establishment, segregation and distribution of the Municipal Tax Fund; and

   (d) extending the CCAA stay of proceedings until the earlier of: (i) the filing of the Monitor's Certificate confirming the implementation of the 2019 CCAA Plan, and (ii) September 30, 2019.

3. The Monitor, the First Lien Agent, and the Consenting First Lien Lenders support the Application.

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[1] Terms used but not defined herein shall have the meanings ascribed to such terms in the Affidavit of Jeff Beeston sworn on June 10, 2019, filed (the "**Beeston Affidavit**") or the 2019 CCAA Plan.

II. PART TWO - OVERVIEW

4. At an unopposed application heard on May 16, 2019, Connacher sought, and this Honourable Court granted: (i) the Amended and Restated Support Agreement Approval Order, and (ii) the 2019 Creditors' Meetings Order.

Beeston Affidavit at para 4

5. Pursuant to the Amended and Restated Support Agreement, Connacher, the Consenting First Lien Lenders and the First Lien Agent agreed to pursue a credit bid of a portion of the first lien obligations through the implementation of the 2019 CCAA Plan.

Beeston Affidavit at para 5

6. The 2019 Creditors' Meetings are scheduled to be held on June 19, 2019. If the 2019 CCAA Plan is approved by the Required Majorities in accordance with the 2019 Creditors' Meetings Order, Connacher intends to seek the 2019 Plan Sanction Order on June 20, 2019.

Beeston Affidavit at para 8

7. In the event that that the Required Majorities do not approve the 2019 CCAA Plan at the 2019 Creditors' Meetings, or upon the occurrence of another CCAA Plan Termination Event (as defined in the Amended and Restated Support Agreement), Connacher and the Consenting First Lien Lenders will instead proceed to complete a credit bid asset purchase transaction (the "**Credit Bid Transaction**") in accordance with the terms of the Credit Bid Term Sheet attached to the Amended and Restated Support Agreement, subject to approval by this Court.

Beeston Affidavit at para 9

8. As described in detail below, the sanction of the 2019 CCAA Plan is the culmination of an over three-year long CCAA process which has resulted in a going concern restructuring for the benefit of Connacher's stakeholders. Under the 2019 CCAA Plan, the General Creditor Class will receive substantially the same treatment that they voted unanimously to receive under Connacher's Amended and Restated Plan of

Compromise and Arrangement dated August 13, 2018 (the "**2018 CCAA Plan**"), which received Court sanction on October 4, 2018 but was ultimately not implemented.

Beeston Affidavit at para 6

A. The 2019 CCAA Plan

9. The Court-approved Amended and Restated Support Agreement and the Plan Term Sheet attached thereto set out the framework for implementing the 2019 CCAA Plan, including establishing certain deadlines, conditions precedent and required approvals. Significantly, the Plan Term Sheet requires that Connacher obtain the 2019 Plan Sanction Order by June 20, 2019.

Beeston Affidavit at paras 23, 26

10. The 2019 CCAA Plan provides for two voting classes of creditors:

(a) the First Lien Lender Class, comprised of the First Lien Lenders; and

(b) the General Creditor Class, comprised of all other Affected Creditors, other than holders of certain priority claims and Equity Claims. The General Creditor Class includes holders of First Lien Deficiency Claims and holders of Second Lien Claims, which represent the unsecured portions of such claims. The amounts for the First Lien Claim and the Second Lien Claim include interest calculated through October 31, 2018, as was the case under the 2018 CCAA Plan.

Beeston Affidavit at para 29

11. Pursuant to the 2019 CCAA Plan, on or prior to the Effective Date, Connacher shall deliver to the Monitor from Connacher's Cash on Hand the aggregate amount necessary, as determined by the Monitor and Connacher, with the consent of the Majority Consenting First Lien Lenders, to establish the General Creditor Pool and to fully pay or satisfy the other amounts required to be paid, as described in the Beeston Affidavit.

Beeston Affidavit at para 30

12. Under the terms of the 2019 CCAA Plan, the Monitor is required to hold the Municipal Tax Fund in a separate trust account from the Plan Implementation Fund, and no distributions shall be made from the Municipal Tax Fund absent: (i) an agreement in writing as between the Municipality, Connacher, the Monitor and the Majority Consenting First Lien Lenders, or (ii) an order of the Court.

13. However, as set out in the Beeston Affidavit, with the consent of the Monitor and the Consenting First Lien Lenders, Connacher and the Municipality have agreed that the Municipality's Outstanding Municipal Tax Claim is equal to $3,995,775.75. In order to avoid the accrual of additional penalties that will increase the quantum of this claim, Connacher prefers to pay the Outstanding Municipal Tax Claim in full prior to June 30, 2019. Therefore, in the 2019 Plan Sanction Order sought on this Application, Connacher seeks authorization to pay the Outstanding Municipal Tax Claim in full on or prior to June 30, 2019, such that no amounts will be required to be held in the Municipal Tax Fund for the purpose of implementing the 2019 CCAA Plan.

Beeston Affidavit at para 30(j)

14. The General Creditor Pool will consist of $500,000 plus the amount necessary to satisfy all Convenience Class Claims, being all accepted and identified claims equal to or less than $2,000 and the claims of all General Creditors who make a Distribution Election to receive $2,000 in full and final satisfaction of their claim. Pursuant to the 2019 Creditors' Meetings Order, General Creditors have until 5:00 p.m. on June 17, 2019 to make a Distribution Election.

Beeston Affidavit at para 31

15. The amount and distribution terms of the General Creditor Pool are the same that existed in the 2018 CCAA Plan with the intention that the General Creditors will receive substantially the same treatment and recovery under the 2019 CCAA Plan that they would have received under the 2018 CCAA Plan which was approved by all creditors that voted and sanctioned by this Court.

Beeston Affidavit at para 34

16. Given that creditor claims will not be satisfied in full, existing shareholders and holders of Equity Claims shall not be entitled to receive any distributions under the 2019 CCAA Plan and all Equity Claims in Connacher shall be forever cancelled and extinguished on the Effective Date for no consideration.

Beeston Affidavit at para 35

17. The 2019 CCAA Plan and the proposed 2019 Plan Sanction Order contain broad releases in favour of the Released Parties. The releases are intended to protect the Released Parties from claims any Affected Creditor or other Person may bring in connection with acts taking place on or prior to the Effective Time relating to or otherwise in connection with Connacher's business and operations, property and assets, the Affected Claims, the 2019 CCAA Plan, the Amended and Restated Support Agreement, the Equity Claims and the Existing Shares, contracts disclaimed in the CCAA proceedings, the recapitalization and any restructuring transaction in respect of which the Released Parties had any role, liabilities of the Directors and Officers including Claims that may be made against the Directors or Officers where by law such Directors or Officers may be liable in such capacities, or any Claim that has been barred or extinguished by the Claims Procedure Order or the Supplemental Claims Procedure Order, and at the Effective Time Connacher is deemed to release and forever discharge every other Released Party from such claims, other than as set forth in the 2019 CCAA Plan.

Beeston Affidavit at paras 39-40

18. As described in greater detail in the Beeston Affidavit, the Released Parties have made significant contributions to Connacher's restructuring. The Monitor has reviewed the releases in the 2019 CCAA Plan and supports their approval. The releases are an important part of the 2019 CCAA Plan and are fair and equitable in the circumstances.

Beeston Affidavit at paras 41, 48, 51

Amended 21st Report of the Monitor dated May 15, 2019 (the "**21st Report**") at paras 62, 66

19. The 2019 CCAA Plan also requires that the 2019 Plan Sanction Order provide that any Claims which have been preserved in accordance with the Claims Procedure Order or the Supplemental Claims Procedure Order against Directors that cannot be compromised due to the provisions of Section 5.1(2) of the CCAA will be limited in recovery to the proceeds of any Directors' insurance policies. No such claims have been identified pursuant to the Claims Procedure Order or the Supplemental Claims Procedure Order.

Beeston Affidavit at paras 49-50

21st Report at para 63

20. The stay of proceedings originally granted pursuant to the Initial Order has been extended several times, including most recently on March 15, 2019, when the Honourable Mr. Justice Yamauchi granted an Order extending the stay of proceedings through and including June 28, 2019 (the "**Stay Period**").

Beeston Affidavit at para 11

21. If the relief sought on Connacher's Application is granted, Connacher will require an extension of the Stay Period to implement the 2019 CCAA Plan.

Beeston Affidavit at para 56

22. On this Application, Connacher seeks an extension of the Stay Period until the earlier of: (i) September 30, 2019, and (ii) filing of the Monitor's Certificate confirming the implementation of the 2019 CCAA Plan. The requested extension of the Stay Period will provide some flexibility in case any extensions of time to implement the 2019 CCAA Plan are required.

Beeston Affidavit at para 58

III. PART THREE - ISSUES

23. The key issues on this Application are as follows:

(a) Has the test for sanction of the 2019 CCAA Plan under the CCAA been met?

(b) Are the releases contemplated by the 2019 CCAA Plan appropriate?

(c) Is it appropriate to allow Connacher to make the requested payment to the Municipality?

(d) Is it appropriate to grant an extension of the CCAA stay of proceedings in the circumstances?

IV. PART FOUR - LAW AND ARGUMENT

A. The Test for Sanction of the 2019 CCAA Plan has been Satisfied

24. Section 6(1) of the CCAA provides that the Court has discretion to sanction a plan if it has achieved the requisite “double majority” vote at the meetings of creditors held under sections 4 and 5 of the CCAA.

> *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (the “**CCAA**”) at ss. 4, 5, 6(1) [TAB 1]

25. In *Re Canadian Airlines Corp.,* Madam Justice Paperny (as she then was) noted that “courts have emphasized that perfection is not required” in evaluating a plan for sanction. Rather, if the plan provides a compromise that is reasonable and viable, and is a better option than the other alternatives available, courts can take a “big picture” perspective. The criteria that Connacher must satisfy when seeking a sanction of the 2019 CCAA Plan are well established:

> (1) there must be strict compliance with all statutory requirements;
>
> (2) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
>
> (3) the plan must be fair and reasonable.

> *Re Canadian Airlines Corp,* 2000 ABQB 442 (“***Canadian Airlines***”) at paras 60, 178-179, leave to appeal denied 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to SCC refused July 13, 2001 [TAB 2]
>
> *Lutheran Church – Canada, Re*, 2016 ABQB 419 (“***Lutheran Church***”) at para 114 [TAB 3]

26. As set out below, Connacher has satisfied the required elements and this Court should exercise its discretion to sanction the 2019 CCAA Plan.

i. Compliance with all Statutory Requirements

27. Under the first branch of the test for sanctioning a CCAA plan, the Court typically considers whether:

> (a) the applicant comes within the definition of a "debtor company" under section 2 of the CCAA;
>
> (b) the applicant ... [has] total claims within the meaning of section 12 of the CCAA in excess of $5,000,000;
>
> (c) the notice calling the meeting was sent in accordance with the order of the court;
>
> (d) the creditors were properly classified;
>
> (e) the meetings of creditors were properly constituted;
>
> (f) the voting was properly carried out; and
>
> (g) the plan was approved by the requisite double majority or majorities.
>
> *Canadian Airlines* at paras 62-63 [TAB 2]

28. In addition, the Court must determine if the plan complies with the limitations set out in section 6 of the CCAA. Specifically, subsections 6(3), 6(5) and 6(6) of the CCAA provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning Crown claims, employee claims, and pension claims.

29. With the exception of the requirements for properly carrying out the creditors' meetings and obtaining requisite creditor approval (which Connacher expects to satisfy on June 19, 2019), all of the statutory requirements have already been satisfied.

30. In granting the Initial Order, this Court determined that Connacher was a company to which the CCAA applies. The classification of creditors was approved pursuant to the 2019 Creditors' Meetings Order. The Monitor and the Solicitation and Information Agent have followed the procedures set out in the 2019 Creditors' Meetings Order for notifying Affected Creditors of the 2019 Creditors' Meetings, providing each class of Affected Creditors with the required meeting materials, and soliciting proxies and voting instructions, as applicable.

2019 Creditors Meetings Order at para 17

Beeston Affidavit at para 55 (d)

31. As required by sections 6(3) and 6(5) of the CCAA, the 2019 CCAA Plan proposes to pay Employee Priority Claims and Crown Priority Claims in full. As Connacher does not maintain a registered pension plan, section 6(6) is not applicable.

CCAA at s. 6(3), 6(5), 6(6) [TAB 1]

Beeston Affidavit at para 30 (h), (i)

32. The 2019 Plan Sanction Order will also serve as the basis for reliance on the exemption provided by Section 3(a)(10) of the *United States Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that Act. Section 3(a)(10) of the *United States Securities Act of 1933* exempts from registration the distribution of a security that is issued in exchange for outstanding securities and/or claims where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange have the right to appear, by a court or by a governmental authority expressly authorized by law to grant such approval. Accordingly, the 2019 Plan Sanction Order will, if granted, constitute a basis for the exemption from the registration requirements of the *United States Securities Act of 1933* with respect to the New Shares issued under the 2019 CCAA Plan.

Securities Act of 1933, 15 U.S.C. 2A, at section 3(a)(10) [TAB 4]

Beeston Affidavit at para 54

33. Canadian courts, including this Honourable Court, have granted final orders in a number of reorganizations under the CCAA in which the applicant intended to rely on the order as the basis for exemption from prospectus requirements under applicable securities laws.

> In the Matter of a Plan of Opti Canada Inc. and Opti Technology Inc., Order (Sanction Hearing and Stay Extension) of the Honourable Chief Justice N.C. Wittmann, dated September 7, 2011, Court File No. 1101-09476 (Court of Queen's Bench of Alberta), at paragraph 8 (c) [TAB 5]

> In the Matter of a Plan of Compromise or Arrangement of Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited, Order (Plan Sanction) of the Honourable Mr. Justice Hainey dated March 27, 2018, Court File No. CV-17-589016-00CL at recital 1 ("***Banro Plan Sanction Order***") [TAB 6]

ii. No Unauthorized Steps Taken by the Applicant

34. In making a determination as to whether anything has been done – or is purported to have been done – that is not authorized by the CCAA, the Court should rely on the parties, the stakeholders and the reports of the Monitor.

> *Canadian Airlines* at para 64 [TAB 2]

35. The 2019 CCAA Plan proposes to effect a recapitalization of Connacher through, among other means, a credit bid of the obligations owing to the First Lien Lenders under the First Lien Credit Agreement in exchange for new senior secured debt and all of Connacher's equity. The Monitor has confirmed that based on its review of the security held by the First Lien Agent on behalf of the First Lien Lenders, the First Lien Agent's security is valid, enforceable and would rank in priority to any subsequently appointed trustee in bankruptcy.

> 21st Report at para 42

36. Connacher respectfully submits that credit bidding by a first-ranking secured creditor is a permissible means to effect a transaction under the CCAA, including a transaction implemented through a plan of compromise and arrangement. Pursuant to the terms of the 2019 CCAA Plan, all claims that rank in priority to or *pari passu* with the First Lien Claim will be paid in full out of the Plan Implementation Fund.

> *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222, ("***Canwest Publishing***") at paras 21-23, and 40 [TAB 7]
>
> Beeston Affidavit at para 27

37. The Monitor has consulted with Connacher and the Consenting First Lien Lenders throughout the development of the 2019 CCAA Plan. In the 21st Report, the Monitor indicated its support for the 2019 CCAA Plan and stated that, in its view, the 2019 CCAA Plan was negotiated at arm's length, is in good faith and is commercially reasonable.

> 21st Report at para 90 (c)

38. No unauthorized steps have been taken or have been alleged to have been taken in the CCAA Proceeding and this Court has been kept apprised of the key issues facing Connacher throughout the CCAA Proceeding. Connacher has complied with the requirements of the CCAA and the orders of this Honourable Court granted throughout the CCAA Proceeding.

> Beeston Affidavit at para 55 (d)

iii. The Plan is Fair and Reasonable

39. Canadian courts have repeatedly emphasized that when considering whether a plan is fair and reasonable, the Court should consider the relative degrees of prejudice that would flow from granting or refusing to grant relief sought under the CCAA and whether the plan represents a reasonable and fair balancing of interests in light of the other commercial alternatives available. The meaning of "fairness" and "reasonableness" are "necessarily shaped by the unique circumstances of each case, within the context of the [CCAA]."

Canadian Airlines at paras 3, 94 [TAB 2]

40. Where creditors have signalled their support of a plan by a vote, the court will be reluctant to second-guess the business decisions made by the stakeholders as a body.

Canadian Airlines at para 97 [TAB 2]

Re AbitibiBowater Inc., 2010 QCCS 4450 ("***Re AbitibiBowater***") at para 34 [TAB 8]

41. In assessing whether a proposed plan is fair and reasonable, the Court will consider: (i) whether the claims were properly classified and whether the required majorities of approved the plan; (ii) what creditors would receive in bankruptcy or liquidation; (iii) alternatives available to the plan and bankruptcy; (iv) oppression of the rights of creditors; (v) unfairness to shareholders; and (vi) the public interest.

Re Canwest Global Communications Corp., 2010 ONSC 4209 ("***Canwest Global***") at para 21 [TAB 9]

Canadian Airlines at para 96 [TAB 2]

<u>Classification of Creditors and Approval</u>

42. Affected Creditors will vote as two classes on the basis of commonality of interest vis-à-vis Connacher. The classification of creditors was approved pursuant to the 2019 Creditors' Meetings Order.

2019 Creditors' Meetings Order at para 17

<u>Comparison to Bankruptcy and Best Available Alternative</u>

43. The 2019 CCAA Plan presented is the best available alternative for Connacher and its stakeholders in the circumstances. With the assistance of the Monitor, Connacher has run two thorough, Court-supervised sales processes to identify the best available transaction for the purchase of its business or assets. If the 2019 CCAA Plan is not consummated, Connacher has two potential options: (i) the Credit Bid Transaction, and (ii) a bankruptcy.

21st Report at para 78

44. As described in the 21st Report, Affected Creditors are expected to receive a greater recovery under the 2019 CCAA Plan than under the Credit Bid Transaction or a bankruptcy. More specifically, under the Credit Bid Transaction, General Creditors would receive no distribution. Because the value of Connacher's assets does not exceed the First Lien Claim, a bankruptcy would also result in no distribution to General Creditors.

> 21st Report at paras 77 - 79, 90 (a)

45. In light of the foregoing, Connacher submits that stakeholders will derive more benefit from the implementation of the 2019 CCAA Plan than from any other alternative and the 2019 CCAA Plan is the best available alternative in the circumstances.

> 21st Report at para 89

<u>No Oppression to Creditors</u>

46. A plan may be found to be fair and reasonable even if it does not provide for exactly equal recoveries for all creditors, as long as there is a sufficient rationale for any differences in recovery for particular creditors. Creditor treatment must be equitable; however, "equitable treatment is not necessarily equal treatment."

> *Lutheran Church*, at paras 142, 155-156 [TAB 3]
>
> *Canwest Global* at paras 22-24 [TAB 9]

47. While Convenience Class Creditors in the General Creditor Class, including General Creditors who make a Distribution Election, will receive $2,000 -- instead of their pro rata share of $500,000 -- this result is equitable in the circumstances, because:

    (a) all General Creditors were entitled to join the Convenience Class;

    (b) convenience classes have routinely been used in CCAA cases without necessitating a separate creditor class; and

    (c) the classification of Affected Creditors has been recommended by the Monitor and approved by the Court.

21st Report at paras 85, 90 (d)

Beeston Affidavit at para 31

2019 Creditors' Meetings Order at para 17, 47, 48

48. The 2019 CCAA Plan has been structured through consultation with the Monitor and various stakeholders, including the First Lien Agent and the Consenting First Lien Lenders. The pre-filing rights and priorities of the Affected Creditors are respected under the 2019 CCAA Plan and there is no oppression of any creditor rights, as the Affected Creditors will receive distributions under the 2019 CCAA Plan in accordance with their priority to Connacher's assets.

Beeston Affidavit at para 55(a)

<u>No Unfairness to Shareholders</u>

49. When evaluating the 2019 CCAA Plan's fairness and reasonableness to shareholders, the Court should consider the deficiencies that Affected Creditors will suffer on account of their Affected Claims.

CCAA at s. 6(8) [TAB 1]

50. As the market for Connacher's business did not produce a transaction that would repay Affected Creditors in full, the CCAA requires that the Existing Shares and equity interests be extinguished for no consideration.

<u>Public Interest</u>

51. Implementation of the 2019 CCAA Plan will allow Connacher's operations to continue as a going concern. Connacher's employees are unaffected by the 2019 CCAA Plan. Further, as Connacher's operations will continue in the ordinary course, Connacher's suppliers and customers benefit from the continued opportunities to transact.

Beeston Affidavit at para 55 (c)

52. Finally, as stated above, the 2019 CCAA Plan has been developed with the intention that General Creditors will receive substantially the same treatment and recovery under

the 2019 CCAA Plan that they would have received under the 2018 CCAA Plan which was approved by all creditors that voted and sanctioned by this Court.

Beeston Affidavit at para 55 (a)

53. For the foregoing reasons, Connacher submits that the 2019 CCAA Plan is fair and reasonable and meets the test for sanction under the CCAA.

B. The Releases are Fair and Reasonable

54. As detailed in the Beeston Affidavit, Article 10 of the 2019 CCAA Plan provides releases for the Released Parties.

55. Canadian courts have jurisdiction to sanction plans containing releases in favour of third parties if the release was negotiated in favour of a third party as part of the "compromise" or "arrangement" where the release reasonably relates to the proposed restructuring and is not overly broad. "[T]here must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan."

Re Metcalfe & Mansfield Alternative Investments II Corp., 2008 ONCA 587, ("***Metcalfe***") at paras 61, 70 [TAB 10]

Canwest Global at paras 28-30 [TAB 9]

56. In considering whether to approve releases in favour of third parties, the Court should take into account the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, the courts have considered the factors set out below.

Re Kitchener Frame Ltd., 2012 ONSC 234 at paras 80-82, [TAB 11]

Re Skylink Aviation, 2013 ONSC 2519 ("***Skylink***") at para 33 [TAB 12]

Metcalfe at para 71 [TAB 10]

(a) *Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor.* The Released Parties made significant contributions to Connacher's restructuring, and the releases sought are a critical part of the 2019 CCAA Plan as negotiated by Connacher, the First Lien Agent and Consenting First Lien Lenders, in consultation with the Monitor;

Beeston Affidavit at para 48

(b) *Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it*. The 2019 CCAA Plan would not have been possible without the inclusion of the releases, as the releases were a requirement for the support of the Consenting First Lien Lenders pursuant to the Plan Term Sheet attached to the Amended and Restated Support Agreement. The releases in favour of the Monitor, the First Lien Agent, the Second Lien Trustee and the Collateral Trustee are consistent with the types of releases granted to such administrative and supporting parties in other CCAA cases, and reflect the benefits these parties have given to the CCAA Proceeding;

Beeston Affidavit at paras 47 (a), (b), (c), (d)

(c) *Whether the plan could succeed without the releases*. The support of the Consenting First Lien Lenders is critical to the approval of the 2019 CCAA Plan by the Required Majorities of Affected Creditors at the Creditors' Meetings. Without such support, the 2019 CCAA Plan could not succeed and Connacher would be required to implement the Credit Bid Transaction, which would provide no recoveries for General Creditors;

Beeston Affidavit at paras 47 (a), (b)

(d) *Whether the parties being released were contributing to the plan*. The Released Parties made significant contributions to Connacher's restructuring. The extensive efforts of the Special Committee and Connacher's Directors and Officers facilitated the negotiation of the Amended and Restated Support Agreement and the 2019 CCAA Plan with the First Lien Agent, the Consenting First Lien Lenders and the Monitor. The First Lien Agent and Consenting First Lien Lenders have supported Connacher throughout the CCAA Proceeding, including by the provision by certain First Lien Lenders of interim financing, executing the original Support Agreement dated March 19, 2018, providing a stalking horse bid to create competitive tension in the SISP, and following the termination of the transactions with East River Oil and Gas Ltd., executing the Amended and Restated Support Agreement. Such actions enabled Connacher's CCAA Proceeding to advance to this point, where a viable, going-concern restructuring transaction could be presented to creditors;

Beeston Affidavit at paras 43, 44, 47

(e) *Whether the release benefitted the debtors as well as the creditors generally*. The actions of the Released Parties were critical to generating recoveries for the Affected Creditors under the 2019 CCAA Plan and to creating positive outcomes for stakeholders generally, including for Connacher's employees, who are unaffected under the 2019 CCAA Plan;

Beeston Affidavit at para 48

21st Report at para 62

(f) *Whether the creditors voting on the plan had knowledge of the nature and effect of the releases*. Full disclosure of the releases was made to Affected Creditors in the Affidavit of Merle Johnson sworn May 6, 2019, the Beeston Affidavit, the 21st Report, the Information Circular dated May 16, 2019 and in the 2019 CCAA Plan. The releases apply only to the extent permitted by law. The release in favour of the Directors and Officers is compliant with section 5.1(2) of the CCAA, which mandates certain exceptions to the compromise of claims against directors set out under section 5.1(1) of the CCAA. Moreover, the channelling of director and officer indemnification through insurance policies has been approved by this Court in the CCAA Plan Sanction Order granted on October 4, 2018 in connection with the approval of the 2018 CCAA Plan, by other CCAA courts, and is appropriate in the circumstances.

Affidavit of Merle Johnson sworn May 6, 2019 at paras 84 - 91

Beeston Affidavit at paras 40, 41, 49, 50

21st Report at paras 61 - 66

CCAA at ss. 5.1(1), 5.1(2) [TAB 1]

Banro Plan Sanction Order at para 25 [TAB 6]

57. For the foregoing reasons, Connacher respectfully submits that the releases are fair and reasonable in the circumstances and should be approved.

C. The Payment to the Municipality is Appropriate

58. When the 2019 CCAA Plan was developed and filed with the Court, Connacher and the Municipality had not yet resolved the quantum of the Outstanding Municipal Tax Claim. In order to ensure that the full amount of the Outstanding Municipal Tax Claim would be reserved pending a resolution, the 2019 CCAA Plan featured the mechanism of the Municipal Tax Fund, which was to be held by the Monitor separately from the balance of the Plan Implementation Fund with specific terms for when the funds held therein could be distributed, which included upon receipt of an order of the court.

2019 CCAA Plan, at section 3.5 (c)

59. However, now that the quantum of the Outstanding Municipal Tax Claim has been resolved, Connacher submits that the Municipal Tax Fund is no longer necessary. Further, if the Municipality does not receive payment by June 30, 2019, additional penalties will accrue that will increase the quantum of the Municipality's claim and divert additional funds away from Connacher's other creditors.

Beeston Affidavit at para 30(j)

60. In the circumstances, Connacher respectfully requests that this Court authorize Connacher to pay the amount of the Outstanding Municipal Tax Claim on or prior to June 30, 2019 and order that Connacher and the Monitor shall not be required to comply with their obligations in section 3.5(c) of the 2019 CCAA Plan with respect to the Municipal Tax Fund.

D. It is Appropriate to Extend the CCAA Stay of Proceedings

61. Section 11.02(2) of the CCAA gives the Court discretion to grant or extend a stay of proceedings:

> (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.

62. Pursuant to section 11.02(3) of the CCAA, in order to exercise its discretion to extend the stay of proceedings, the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence during the CCAA proceedings.

CCAA at ss. 11.02 [TAB 1]

63. In *Re Canada North Group Inc.*, the Honourable Justice S.D. Hillier stated that the role of the Court on an application to extend the stay of proceedings is:

> to consider whether the applicant has established that the current circumstances support an extension as being appropriate and that the applicant has acted, and is acting, in good faith and with due diligence., as required under s. 11.02(3).

Re Canada North Group, 2017 ABQB 508 at para 33 [TAB 13]

64. Extensions of stays of proceedings are routinely granted in CCAA proceedings where the debtor company is making progress towards a restructuring.

65. The Stay Period is currently set to expire on June 28, 2019. Connacher is seeking an extension of the Stay Period until the earlier of: (i) the filing of the Monitor's Certificate confirming implementation of the 2019 CCAA Plan, and (ii) September 30, 2019.

Beeston Affidavit at paras 56, 58

66. Pursuant to the terms of the Amended and Restated Support Agreement and the Plan Term Sheet, the outside date to implement the 2019 CCAA Plan is July 31, 2019, or such other date as agreed by Connacher and the Majority Consenting First Lien

Lenders. The requested extension of the Stay Period will provide some flexibility in case any extensions of time to implement the 2019 CCAA Plan are required.

Beeston Affidavit at para 57, 58

67. Based on Connacher's current cash on hand and cash flow projections, including the cash flow projection filed with the Court in the Twenty-Second Report of the Monitor dated June 13, 2019, Connacher will have sufficient liquidity though the proposed extension of the Stay Period.

Beeston Affidavit at para 60

Twenty-Second Report of the Monitor dated June 13, 2019 ("**22nd Report**"), at para 49

68. Connacher has acted, and continues to act, in good faith and due diligence in these proceedings, including in implementing the terms of the 2019 Creditors' Meetings Order in preparation to hold the 2019 Creditors' Meetings and, if approved by the Affected Creditors, seek Court sanction of the 2019 CCAA Plan.

Beeston Affidavit at para 61

22nd Report at para 50

69. Connacher respectfully submits that the proposed extension of the Stay Period is necessary to implement the 2019 CCAA Plan and is in the best interests of Connacher and its stakeholders.

V. PART FIVE - CONCLUSION AND RELIEF SOUGHT

70. Connacher respectfully requests that this Honourable Court grant the requested relief substantially in the form of the 2019 Plan Sanction Order attached to the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of June, 2019.

CASSELS BROCK & BLACKWELL LLP

Per: "Cassels Brock & Blackwell"

Ryan Jacobs/ Joseph Bellissimo/
Natalie E. Levine
Solicitors for the Applicant

TABLE OF AUTHORITIES

Legislation

1. *Companies' Creditors Arrangement Act,* RSC 1985, c. C-36, sections 4, 5, 5.1, 6, 11.02.

2. *Securities Act of 1933,* 15 U.S.C.A. §77c.

Jurisprudence

3. *Re Canadian Airlines Corp*, 2000 ABQB 442.

4. *Lutheran Church – Canada, Re*, 2016 ABQB 419.

5. In the Matter of a Plan of Opti Canada Inc. and Opti Technology Inc., Order (Sanction Hearing and Stay Extension) of the Honourable Chief Justice N.C. Wittmann, dated September 7, 2011, Court File No. 1101-09476 (Court of Queen's Bench of Alberta).

6. In the Matter of a Plan of Compromise or Arrangement of Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited, *Order (Plan Sanction)* of the Honourable Mr. Justice Hainey dated March 27, 2018, Court File No. CV-17-589016-00CL.

7. *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222.

8. *AbitibiBowater Inc., Re*, 2010 QCCS 4450.

9. *Re Canwest Global Communications Corp.*, 2010 ONSC 4209.

10. *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587.

11. *Re Kitchener Frame Ltd.*, 2012 ONSC 234.

12. *Re Skylink Aviation*, 2013 ONSC 2519.

13. *Re Canada North Group*, 2017 ABQB 508.