

**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 **CARILLION CANAADA HOLDINGS INC.,
CARILLION CANADA INC., CARILLION CANADA FINANCE
CORP., CARILLION CONSTRUCTION INC., CARILLION
PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC.,
CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC.,
OUTLAND CAMPS INC., OUTLAND RESOURCES INC.,
ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS
PAINTING & SANDBLASTING LTD., PLOWE POWER
SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED**

(each an "**Applicant**", and collectively, the "**Applicants**")

**MOTION RECORD
(Re: KERP Extension & Amendment Order)
(Returnable October 4, 2018)**

September 26, 2018

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**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 **CARILLION CANADA HOLDINGS INC.,
CARILLION CANADA INC., CARILLION CANADA FINANCE
CORP., CARILLION CONSTRUCTION INC., CARILLION
PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC.,
CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC.,
OUTLAND CAMPS INC., OUTLAND RESOURCES INC.,
ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS
PAINTING & SANDBLASTING LTD., PLOWE POWER
SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED**
(each an “**Applicant**”, and collectively, the “**Applicants**”)

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TAB 1

Court File No. CV-18-590812-00CL

**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

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PAINTING & SANDBLASTING LTD., PLOWE POWER
SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED** (each an "**Applicant**", and collectively, the "**Applicants**")

NOTICE OF MOTION
(Returnable October 4, 2018)
(Re: KERP Extension and Amendment Order)

The Applicants will make a motion to the Honourable Mr. Justice Hainey presiding over the Commercial List on October 4, 2018, at 10:00 a.m. (EST), or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally.

THIS MOTION IS FOR:

1. An order substantially in the form of the draft order located at Tab 3 of the Applicants' Motion Record (the "**KERP Extension and Amendment Order**"), among other things:

- (a) approving an extension of the key employee retention plan ("**KERP**") approved by this Court pursuant to the KERP Order of February 23, 2018 (the "**KERP**")

Order") and amended pursuant to the KERP Amendment Order of March 14, 2018 (the "**KERP Amendment Order**") with respect to certain of the Applicants' Key Employees listed in the Confidential Exhibit "A" to the Buttery Affidavit (the "**Remaining Carillion Key Employees**");

- (b) increasing the total amount of the Incentive Bonuses payable under the KERP (including the Additional Incentive Bonuses, as defined below) by \$100,000;
- (c) authorizing and directing the Applicants to pay a further incentive bonus (the "**Additional Incentive Bonuses**") to each of the Remaining Carillion Key Employees, which, together with the Initial Incentive Bonuses (as defined below) payable under the KERP, shall be in an aggregate amount of no more than \$850,000 (a \$100,000 increase);
- (d) increasing the amount currently secured by the KERP Charge (as defined below) from \$750,000 to \$850,000;
- (e) approving a key employee retention plan (the "**Rokstad KERP**") for certain employees (the "**Rokstad Key Employees**") of the Rokstad Applicants (as defined below) in an amount not to exceed \$50,000;
- (f) authorizing and directing the Rokstad Applicants to enter into the Rokstad KERP and pay an incentive bonus (the "**Rokstad Incentive Bonuses**") to each of the Rokstad Key Employees;
- (g) creating a charge over the property of the Rokstad Applicants for claims under the Rokstad KERP (the "**Rokstad KERP Charge**"); and
- (h) granting such further and other relief as the Applicants may advise and this Court deems just and appropriate in the circumstances.

THE GROUNDS FOR THIS MOTION ARE:

Background

2. Capitalized terms not otherwise defined in this Notice of Motion have the meanings ascribed to them in the Affidavit of Simon Buttery sworn in this proceeding on September 26, 2018 (the “**Buttery Affidavit**”).

3. The Applicants are under protection of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”).

4. The majority of the Applicants were granted protection under the CCAA pursuant to the Initial Order of The Honourable Mr. Justice Hailey on January 25, 2018 (as amended, the “**Initial Order**”).

5. Rokstad Power GP Inc. (“**Rokstad Power**”), 0891115 B.C. Ltd. (“**089**”), Golden Ears Painting & Sandblasting Ltd. (“**Golden Ears**”), Plowe Power Systems Ltd. (“**Plowe**”) and Carillion General Partner (B.C.) Limited (“**Carillion GP (B.C.)**”) were added as CCAA Applicants in these proceedings on June 13, 2018. Two limited partnerships, RPC Limited Partnership and CCI (B.C.) Limited Partnership (together with Rokstad Power, 089, Golden Ears., Plowe Power, and Carillion GP (B.C.), the “**Rokstad Applicants**”) were also granted the full benefit of the protections provided to the Applicants under the Initial Order and deemed subject to the same restrictions as the Applicants under the Initial Order.

The Existing KERP

6. On February 23, 2018, pursuant to the terms of the KERP Order, the Court authorized and directed certain of the Applicants to pay a lump sum incentive bonus (the “**Initial Incentive Bonuses**”) to certain key employees of the Carillion Canada Group (the “**Key Employees**”) to incentivize them to continue their employment with the Applicants as they attempted to

restructure their affairs in the context of these proceedings. A charge was granted over the Applicants' property (the "**KERP Charge**") to secure the Applicants' obligations under the KERP.

7. Pursuant to the KERP Order, the aggregate amount of the Initial Incentive Bonuses and the amount secured by the KERP Charge was to be no more than \$750,000.

8. Further information on the KERP and the KERP Charge can be found in the Affidavit of John MacCuish sworn February 20, 2018, and the Affidavit of Keith Hamilton sworn March 9, 2018.

9. All obligations in respect of the Initial Incentive Bonuses as approved by the KERP Order and the KERP Amendment Order will be earned as of September 30, 2018. As described below, it is the Applicants' view that the Remaining Carillion Key Employees continue to be essential to the Applicants' restructuring efforts and require further incentive to remain in their employment with the Applicants.

10. The Applicants are also of the view that the Rokstad Key Employees are essential to the continued restructuring of the Rokstad Applicants, including their ability to generate maximum recovery for their creditors, and require an incentive to remain in their employment with the Rokstad Applicants.

The Need for an Extension of the KERP

11. While the Applicants have made significant progress in their restructuring efforts, there is a continued need for the employment of the Remaining Carillion Key Employees to undertake the next steps in these CCAA proceedings, including completing the claims process. At the commencement of these CCAA proceedings, the Carillion Canada Group employed approximately 7,500 people. There are now approximately 20 full-time employees remaining. The Applicants require the extension of the KERP and the payment of the Additional Incentive

Bonuses to the Remaining Carillion Key Employees to ensure that these key staff and their knowledge of the Applicants' business are retained through the end of the CCAA process.

12. Given the need to retain these Remaining Carillion Key Employees, the Applicants, in consultation with the Monitor, have determined it is in the best interest of the Applicants and their stakeholders that the Additional Incentive Bonuses are paid to the Remaining Carillion Key Employees.

13. In order to pay the Additional Incentive Bonuses to the Remaining Carillion Key Employees, the Applicants ask that the amount payable in Incentive Bonuses under the KERP and the amount of the KERP Charge be increased to an amount of no more than \$850,000. This is an increase of \$100,000 to the \$750,000 previously approved by the Court pursuant to the KERP Order.

14. The relief requested in the KERP Extension and Amendment Order is necessary to ensure that the KERP will continue to provide much-needed stability to the Applicants' business during the final stages of their restructuring. The amounts payable to the Remaining Carillion Key Employees are reasonable and appropriate in the circumstances.

The Need for the Rokstad KERP

15. The Applicants also seek an order approving the Rokstad KERP to incentivize the continued employment of the Rokstad Key Employees.

16. Several claims, receivables and choses in action of the Rokstad Applicants in respect of certain projects of the Carillion Canada Group (the "**Subject Claims**") were excluded from the transaction entered into between certain of the Rokstad Applicants and Rokstad Holdings Corporation in June 2018. The Subject Claims include a claim in favour of the Rokstad Applicants with respect to the Bipole III Transmission Project (the "**Bipole III Claim**").

17. The Rokstad Applicants require the continued employment of the Rokstad Key Employees in order to successfully pursue the Bipole III Claim. The knowledge of these employees of both the Rokstad Applicants' business and of the specific details of the Bipole III Transmission Project is essential to the Rokstad Applicants' ability to pursue this claim. It would be to the detriment of the estate of the Rokstad Applicants, and the Applicants generally, if the Rokstad Applicants' ability to litigate the Bipole III Claim was negatively impacted by a loss of key personnel.

18. The total amount of the Rokstad Incentive Bonuses and the Rokstad KERP Charge to secure certain of the Rokstad Applicants' obligations under the Rokstad KERP shall be no more than \$50,000.

19. The relief requested in the proposed KERP Extension and Amendment Order is necessary to provide much-needed stability to the Rokstad Applicants' business while they pursue the Bipole III Claim and otherwise continue their restructuring efforts. The amounts payable to the Rokstad Key Employees under the Rokstad KERP are reasonable and appropriate in the circumstances.

Sealing Order

20. The Applicants also seek an order sealing the Confidential Exhibit "A" to the BATTERY Affidavit, which contains commercially sensitive information about the Remaining Carillion Key Employees and the Rokstad Key Employees. This information, if disclosed, would reveal personal and confidential information about the Remaining Carillion Key Employees and the Rokstad Key Employees to potential market competitors, which could negatively impact the ability of the Applicants to retain these employees and would likely frustrate their restructuring plans.

Authorities to be relied on

21. The Applicants expressly rely on:

- (a) the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, and, in particular, section 11 thereof;
- (b) the inherent and equitable jurisdiction of this Honourable Court;
- (c) Rules 1.04, 1.05, 1.08, 2.03, 3.02, 16, 16.04, 37 and 39 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and s. 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and
- (d) such further grounds as counsel may advise and this Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. the Affidavit of Simon Buttery, sworn September 26, 2018;
- 2. the Monitor's Fourteenth Report, to be filed;
- 3. the pleadings; and
- 4. such further and other materials and evidence as counsel may advise and this Court may permit.

September 26, 2018

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TO: SERVICE LIST

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

Court File No: CV-18-590812-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **CARILLION CANADA HOLDINGS INC., CARILLION CANADA INC., CARILLION CANADA FINANCE CORP., CARILLION CONSTRUCTION INC., CARILLION PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC., CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC., OUTLAND CAMPS INC., OUTLAND RESOURCES INC., ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS PAINTING & SANDBLASTING LTD., PLOWE POWER SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.) LIMITED**

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable October 4, 2018)
(KERP Extension and Amendment Order)**

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Lawyers for the Applicants

TAB 2

Court File No. CV-18-590812-00CL

**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 **CARILLION CANADA HOLDINGS INC.,
CARILLION CANADA INC., CARILLION CANADA FINANCE
CORP., CARILLION CONSTRUCTION INC., CARILLION
PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC.,
CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC.,
OUTLAND CAMPS INC., OUTLAND RESOURCES INC.,
ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS
PAINTING & SANDBLASTING LTD., PLOWE POWER
SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED** (each an "**Applicant**", and collectively, the "**Applicants**")

AFFIDAVIT OF SIMON BUTTERY

(SWORN September 26, 2018)

I, **SIMON BUTTERY**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY
THAT:**

1. I hold various positions with the Carillion Canada Group of companies, including: (i) President and CEO of Carillion Canada Inc. and Carillion Construction Inc.; and (ii) director of Carillion Canada Inc., Carillion Construction Inc., Carillion Canada Holdings Inc., Carillion Canada Finance Corp, Rokstad Power GP Inc. ("**Rokstad Power**"), Plowe Power Systems Ltd. ("**Plowe Power**"), and Carillion General Partner (B.C.) Limited ("**Carillion GP (B.C.)**"). As such, I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.

I. BACKGROUND

2. The Applicants are under the protection of the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").

3. The majority of the Applicants were granted protection under the CCAA pursuant to the Initial Order of The Honourable Mr. Justice Hainey on January 25, 2018 (as amended, the "**Initial Order**").

4. On June 13, 2018, Rokstad Power, 0891115 BC Ltd. ("**089**"), Golden Ears Painting & Sandblasting Ltd. ("**Golden Ears**"), Plowe Power, and Carillion GP (B.C.) were added as CCAA Applicants in these proceedings pursuant to an Addition of Applicants Order. Two limited partnerships, RPC Limited Partnership and CCI (B.C.) Limited Partnership (together with Rokstad Power, 089, Golden Ears., Plowe Power, and Carillion GP (B.C.)), the "**Rokstad Applicants**") were also granted the full benefit of the protections provided to the Applicants under the Initial Order and deemed subject to the same restrictions as the Applicants under the Initial Order.

5. All dollar figures referred to herein are in Canadian currency.

II. THE EXISTING KERP

6. On February 23, 2018, this Court granted an order (the "**KERP Order**") approving, among other things, a key employee retention plan ("**KERP**") for certain of the Applicants' employees (the "**Key Employees**"). The KERP Order authorized and directed certain of the Applicants to pay a lump sum incentive bonus to each of the Key Employees (the "**Initial Incentive Bonuses**") to incentivize them to continue their employment with the Applicants as they attempted to restructure their affairs in the context of these proceedings. A charge was

granted over the Applicants' property (being the property of the CCAA Applicants as of the date of the KERP Order) (the "**KERP Charge**") to secure the Applicants' obligations under the KERP.

7. Pursuant to the KERP Order, the aggregate amount of the Initial Incentive Bonuses and the amount secured by the KERP Charge was to be no more than \$750,000. Payments under the KERP Order were to be made in two tranches, with the last tranche paid on September 30, 2018.

8. On March 14, 2018, this Court granted an order (the "**KERP Amendment Order**") amending the KERP Order to remove certain Key Employees and include an additional employee in the KERP, following the resignation of several of the Key Employees. The KERP Amendment Order also granted the Applicants the ability to alter the Key Employees and the amount of their Initial Incentive Bonuses with the Monitor's consent and without further order of the Court, provided that the aggregate amount payable in Initial Incentive Bonuses under the KERP and the amount of the KERP Charge would not exceed \$750,000.

9. Further information on the KERP and the KERP Charge can be found in the Affidavit of John MacCuish dated February 20, 2018 (the "**MacCuish Affidavit**") and the Affidavit of Keith Hamilton dated March 9, 2018 (the "**Hamilton Affidavit**"), which were sworn in support of the KERP Order and the KERP Amendment Order, respectively.

10. All obligations in respect of the Initial Incentive Bonuses as approved by the KERP Order and the KERP Amendment Order will be earned as of September 30, 2018. As described in further detail below, it is the Applicants' view that certain of the Applicants' Key Employees (the "**Remaining Carillion Key Employees**") continue to be essential to the Applicants' restructuring efforts and require further incentive to remain in their employment with the Applicants.

11. The Applicants are also of the view that certain employees of the Rokstad Applicants (the “**Rokstad Key Employees**”) are essential to the continued restructuring of the Rokstad Applicants, including their ability to generate maximum recovery for their creditors, and require an incentive to remain in their employment with the Rokstad Applicants.

12. This Affidavit is made in support of the Applicants’ motion for an Order (the “**KERP Extension and Amendment Order**”), among other things:

- (a) approving the extension of the KERP with respect of the Remaining Carillion Key Employees;
- (b) increasing the total amount of the Incentive Bonuses (as defined below) payable under the KERP by \$100,000;
- (c) authorizing and directing the Applicants to pay a further incentive bonus (the “**Additional Incentive Bonuses**”, together with the Initial Incentive Bonuses, the “**Incentive Bonuses**”) to each of the Remaining Carillion Key Employees, which, together with the Initial Incentive Bonuses, shall be in an aggregate amount of no more than \$850,000 (a \$100,000 increase);
- (d) increasing the amount currently secured by the KERP Charge from \$750,000 to \$850,000;
- (e) approving a key employee retention plan (the “**Rokstad KERP**”) for the Rokstad Key Employees in an amount not to exceed \$50,000;
- (f) authorizing and directing the Rokstad Applicants to enter into the Rokstad KERP and pay an incentive bonus (the “**Rokstad Incentive Bonuses**”) to each of the Rokstad Key Employees; and

- (g) creating a charge over the property of the Rokstad Applicants for claims under the Rokstad KERP (the “**Rokstad KERP Charge**”).

III. THE NEED FOR AN EXTENSION OF THE KERP

13. As set out in the MacCuish Affidavit and the Hamilton Affidavit, the Applicants have experienced a significant loss of employees since the commencement of these CCAA proceedings. The nature of the Carillion Canada Group’s business, particularly the integrated nature of its operations and complex financial processes required to run the group’s many projects, means that the continuity of employees and institutional knowledge is of great importance.

14. While the Applicants have made significant progress in their restructuring efforts, there is a continued need for the employment of the Remaining Carillion Key Employees to undertake the next steps in these CCAA proceedings, including completing the claims process. At the commencement of these CCAA proceedings, the Carillion Canada Group employed approximately 7,500 employees. There are now approximately 20 full-time employees remaining. The Applicants require the extension of the KERP and the payment of the Additional Incentive Bonuses to the Remaining Carillion Key Employees to ensure that these key staff and their knowledge of the Applicants’ business are retained through the end of the CCAA process.

15. I am concerned that if the changes requested to the KERP as set out herein are not made, the Applicants will suffer from further resignations of critical personnel. I believe that any further losses of key employees will have a significant and detrimental effect on the Applicants’ continued restructuring efforts and ability to close out these CCAA proceedings.

16. Given the need to retain these Remaining Carillion Key Employees, the Applicants, in consultation with the Monitor, have determined it is in the best interest of the Applicants and

their stakeholders that the Additional Incentive Bonuses are paid to the Remaining Carillion Key Employees.

17. There are five Remaining Carillion Key Employees. The names of these Remaining Carillion Key Employees and the amounts of their Additional Incentive Bonuses, among other things, are set out in confidential **Exhibit "A"** to this Affidavit (the "**Confidential Exhibit "A"**").

18. The Incentive Bonuses payable to the Remaining Carillion Key Employees pursuant to the KERP Extension and Amendment Order will be payable upon termination of the CCAA proceedings for all Applicants or at such an earlier date as approved by the Monitor in writing. The payment of these Additional Incentive Bonuses will only be made if the Remaining Carillion Key Employees have fulfilled their employment obligations and not voluntarily resigned or been terminated for cause on the date the Additional Incentive Bonus is payable.

19. The amount of each Additional Incentive Bonus was determined by taking into consideration factors such as the employee's base salary, their role within the Carillion Canada Group, the ability of others to perform their job functions, the ability to replace these employees without a loss of continuity, the risk the employee may resign, and their importance to the Applicants' overall restructuring efforts.

20. In order to pay the Additional Incentive Bonuses to the Remaining Carillion Key Employees, the Applicants ask that the amount payable in Incentive Bonuses under the KERP and the amount of the KERP Charge be increased to an amount of no more than \$850,000. This is an increase of \$100,000 to the \$750,000 previously approved by the Court pursuant to the KERP Order.

21. As it is possible that other changes to the KERP will need to be made should any of the Remaining Carillion Key Employees resign, the Applicants also ask this Court for an order

allowing them to replace any of the Remaining Carillion Key Employees who leave the Applicants' employment or to increase the individual Additional Incentive Bonuses payable to the Remaining Carillion Key Employees without approval of this Court, provided that Monitor's consent is obtained and the amount payable in Incentive Bonuses under the KERP and the amount secured by the KERP Charge do not exceed \$850,000.

22. The Applicants are of the view that the relief requested in the proposed KERP Extension and Amendment Order is necessary to ensure that the KERP will continue to provide much-needed stability to the Applicants' business during the final stages of their restructuring. The Applicants believe the amounts payable to the Remaining Carillion Key Employees are reasonable and appropriate in the circumstances.

IV. THE NEED FOR THE ROKSTAD KERP

23. The Applicants also seek an order approving the Rokstad KERP to incentivize the continued employment of the Rokstad Key Employees.

24. As is described in detail in the Affidavit of Aaron Rokstad made June 12, 2018 (the "**Rokstad Affidavit**") and my Affidavit of June 12, 2018, in June of this year certain of the Rokstad Applicants entered into a transaction with Rokstad Holdings Corporation, a holding company and affiliate of Rokstad Power Corporation, for the sale of certain of the Rokstad Applicants' assets (the "**Rokstad Transaction**"). Several claims, receivables and choses in action of the Rokstad Applicants in respect of certain projects of the Carillion Canada Group (the "**Subject Claims**") were specifically excluded from the Rokstad Transaction. The Subject Claims include a claim in favour of the Rokstad Applicants with respect to the Bipole III Transmission Project (the "**Bipole III Claim**").

25. These Subject Claims and their treatment under the terms of the Rokstad Transaction are described in further detail in paragraphs 130-138 of the Rokstad Affidavit.

26. The Rokstad Applicants require the continued employment of the Rokstad Key Employees in order to successfully pursue the Bipole III Claim. The knowledge of these employees of both the Rokstad Applicants' business and of the specific details of the Bipole III Transmission Project is essential to the Rokstad Applicants' ability to pursue this claim. It would be to the detriment of the estate of the Rokstad Applicants, and the Applicants generally, if the Rokstad Applicants' ability to litigate the Bipole III Claim was negatively impacted by a loss of key personnel.

27. The Rokstad Incentive Bonuses for the Rokstad Key Employees will be payable upon final resolution of the Bipole III Claim or at such an earlier date as approved by the Monitor in writing. The payment of these Rokstad Incentive Bonuses will only be made if the Rokstad Key Employees have fulfilled their employment obligations and not voluntarily resigned or been terminated for cause on the date the Rokstad Incentive Bonus is payable.

28. The amount of each Rokstad Incentive Bonus was determined in a similar manner as is described in paragraph 19 above.

29. The total amount of the Rokstad Incentive Bonuses and the Rokstad KERP Charge to secure certain of the Rokstad Applicants' obligations under the Rokstad KERP shall be no more than \$50,000.

30. The names of the two Rokstad Key Employees who will participate in the Rokstad KERP pursuant to the KERP Extension and Amendment Order and the amounts of their Rokstad Incentive Bonuses, among other things, are set out in the Confidential Exhibit "A".

31. As it is possible that other changes to the Rokstad KERP will need to be made should either of the Rokstad Key Employees resign, the Applicants also ask this Court for an order allowing them to replace any of the Rokstad Key Employees who leave their employment with the Rokstad Applicants, or to increase the individual Rokstad Incentive Bonuses payable to the Rokstad Key Employees without approval of this Court, provided that Monitor's consent is obtained and the amount payable in Rokstad Incentive Bonuses and secured by the Rokstad KERP Charge does not exceed \$50,000.

32. The Applicants are of the view that the relief requested in the KERP Extension and Amendment Order is necessary to provide much-needed stability to the Rokstad Applicants' business while they pursue the Bipole III Claim and otherwise continue their restructuring efforts. The Applicants believe the amounts payable to the Rokstad Key Employees under the Rokstad KERP are reasonable and appropriate in the circumstances.

33. It is my understanding that the Monitor supports the relief requested in the KERP Extension and Amendment Order.

V. THE NEED FOR A SEALING ORDER

34. The Applicants are also seeking an order sealing the Confidential Exhibit "A", which contains commercially sensitive information about the Remaining Carillion Key Employees and the Rokstad Key Employees. If disclosed, it would reveal personal and confidential information about the Remaining Carillion Key Employees and the Rokstad Key Employees to potential market competitors, which could negatively impact the ability of the Applicants to retain these important staff and would likely frustrate their restructuring plans.

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A Commissioner for taking Affidavits for Ontario Anyo Shalvini

SIMON BUTTERY

Court File No. CV-18-590812-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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PAINTING & SANDBLASTING LTD., PLOWE POWER
SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED**

(each an “**Applicant**”, and collectively, the “**Applicants**”)

CONFIDENTIAL EXHIBIT “A”

**TO THE AFFIDAVIT OF SIMON BUTTERY SWORN
SEPTEMBER 26, 2018**

TO BE KEPT CONFIDENTIAL BY THE COURT

**THE DOCUMENTS CONTAINED HEREIN ARE SUBJECT TO A PROTECTIVE
ORDER REQUEST AND ARE TO BE KEPT STRICTLY CONFIDENTIAL AND ARE
NOT TO BE DISCLOSED TO ANYONE EXCEPT THE JUDGE HEARING THE
MOTION.**

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 **CARILLION CANADA HOLDINGS INC., CARILLION CANADA INC., CARILLION CANADA FINANCE CORP., CARILLION CONSTRUCTION INC., CARILLION PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC., CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC., OUTLAND CAMPS INC., OUTLAND RESOURCES INC., ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS PAINTING & SANDBLASTING LTD., PLOWE POWER SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.) LIMITED**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
 Proceeding commenced at Toronto

AFFIDAVIT OF SIMON BUTTERY
(Sworn September 26th, 2018)

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Lawyers for the Applicants

TAB 3

Court File No. CV-18-590812-00CL

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

THE HONOURABLE MR)	THURSDAY, THE 4 th
)	
JUSTICE HAINEY)	DAY OF OCTOBER, 2018

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 **CARILLION CANADA HOLDINGS INC.,
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SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.)
LIMITED** (each an "**Applicant**", and collectively, the "**Applicants**")

KERP EXTENSION AND AMENDMENT ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, amending the KERP Order granted by this Court on February 23, 2018 and the KERP Amendment Order granted by this Court on March 14, 2018 (collectively, the "**KERP Orders**"), and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Simon Buttery sworn September 26, 2018 in support of the KERP Extension and Amendment Order (the "**Buttery Affidavit**"), and such further materials as counsel may advise, and on hearing submissions of counsel for the Applicants, counsel for the Monitor and counsel to those parties listed on the counsel list for today's

hearing, and no one appearing for any other interested person, although properly served as appears from the Affidavit of [●] sworn [●], 2018 (the “**Affidavit of Service**”).

Service

1. **THIS COURT ORDERS** that the filing and service of the Notice of Motion and Motion Record with respect to the relief sought in this KERP Extension and Amendment Order, including method and timing of notice, pursuant to the E-Service Protocol of the Commercial List, is hereby approved and validated and that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

Capitalized Terms

2. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Buttery Affidavit.

KERP Extended

3. **THIS COURT ORDERS** that the key employee retention plan (“**KERP**”) approved pursuant to the KERP Orders is hereby extended with respect to the Key Employees (the “**Remaining Carillion Key Employees**”) listed in **Confidential Exhibit “A”** to the Buttery Affidavit (the “**Confidential Exhibit “A”**”).

4. **THIS COURT ORDERS** that the Applicants are authorized and directed to pay a further lump sum payment (the “**Additional Incentive Bonuses**”) to each of the Remaining Carillion Key Employees in the amount set out in the Confidential Exhibit “A” on the date of the termination of these CCAA proceedings for all CCAA Applicants, or at such an earlier date as approved by the Monitor in writing.

5. **THIS COURT ORDERS** that the total amount of the Incentive Bonuses payable under the KERP (including the Additional Incentive Bonuses) is hereby increased by \$100,000 from CDN \$750,000 to CDN \$850,000.

6. **THIS COURT ORDERS** that payment of the Additional Incentive Bonuses under the KERP will only be made if, at the date that the payment of such Additional Incentive Bonus is due, as described in paragraph 4 above, the respective Remaining Carillion Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

7. **THIS COURT ORDERS** that the amount secured by the KERP Charge created by the KERP Orders shall be increased from CDN \$750,000 to CDN \$850,000.

8. **THIS COURT ORDERS** that for greater certainty, the KERP Charge will continue to apply as described in the KERP Orders and shall only constitute a charge on the Applicants' Property (as defined in the KERP Orders) of those Applicants which were party to these CCAA proceedings as of the date of the granting of the KERP Amendment Order on March 14, 2018.

9. **THIS COURT ORDERS** that the Applicants shall, with the Monitor's consent and without further order of this Court, be authorized to:

- (a) remove from the KERP any Remaining Carillion Key Employees who voluntarily resign from their employment with the Applicants;
- (b) add new employees to the KERP; and
- (c) increase the individual Additional Incentive Bonuses payable to the Remaining Carillion Key Employees under the KERP,

provided that the aggregate amount payable in Incentive Bonuses under the KERP (for greater certainty, including the Additional Incentive Bonuses) and the amount of the KERP Charge shall not exceed CDN \$850,000.

Rokstad KERP Approved

10. **THIS COURT ORDERS** that the Rokstad KERP, as described in the Battered Affidavit, is hereby approved.

11. **THIS COURT ORDERS** that the Rokstad Applicants are hereby authorized and directed to enter into a KERP with those employees listed in the Confidential Exhibit "A" that are employed by the Rokstad Applicants (the "**Rokstad Key Employees**").

12. **THIS COURT ORDERS** that the Rokstad Applicants are hereby authorized and directed to pay a lump sum payment (the "**Rokstad Incentive Bonus**") to each of the Rokstad Key Employees in the amount set out in the Confidential Exhibit "A" on the date of the final resolution of the Bipole III Claim, or at such an earlier date as approved by the Monitor in writing.

13. **THIS COURT ORDERS** that payments to the Rokstad Key Employees under the Rokstad KERP will only be made if, at the date that the payment of such Rokstad Incentive Bonus is due, as described in paragraph 12 above, the respective Rokstad Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause.

14. **THIS COURT ORDERS** that the Applicants shall, with the Monitor's consent and without further order of this Court, be authorized to:

(a) remove from the Rokstad KERP any Rokstad Key Employees who voluntarily resign from their employment with the Rokstad Applicants;

(b) add new employees to the Rokstad KERP; and

(c) increase the individual Rokstad Incentive Bonuses payable to the Rokstad Key Employees under the KERP,

provided that the aggregate amount payable in Rokstad Incentive Bonuses under the Rokstad KERP and the amount of the Rokstad KERP Charge (as defined below) shall not exceed CDN \$50,000.

Rokstad KERP Charge Approved

15. **THIS COURT ORDERS** that the amounts payable to the Rokstad Key Employees pursuant to the Rokstad KERP are hereby secured by a charge (the “**Rokstad KERP Charge**”) on the Rokstad Applicants’ property in favour of the Rokstad Key Employees.

16. **THIS COURT ORDERS** that the Rokstad KERP Charge shall rank in priority to all claims against the Rokstad Applicants in favour of any person, other than (a) any persons who are beneficiaries of a Court-ordered charge granted by this Court in these CCAA proceedings; (b) any person who is a “secured creditor” as defined by the CCAA, (c) any person who has leased equipment to a Rokstad Applicant or (d) any statutory super-priority deemed trusts or liens for unpaid employee source deductions or pension obligations.

17. **THIS COURT ORDERS** that the aggregate amount secured by the Rokstad KERP Charge granted to secure the Rokstad Applicants’ obligations under the Rokstad KERP shall be in an amount of no more than CDN \$50,000.

Sealing Order

18. **THIS COURT ORDERS** that the Confidential Exhibit “A” be sealed, kept confidential, and not form part of the public record, and that the Confidential Exhibit “A” be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that

sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **CARILLION CANADA HOLDINGS INC., CARILLION CANADA INC., CARILLION CANADA FINANCE CORP., CARILLION CONSTRUCTION INC., CARILLION PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC., CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC., OUTLAND CAMPS INC., OUTLAND RESOURCES INC., ROKSTAD POWER GP INC., 0891115 BC LTD., GOLDEN EARS PAINTING & SANDBLASTING LTD., PLOWE POWER SYSTEMS LTD., AND CARILLION GENERAL PARTNER (B.C.) LIMITED**

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

Proceeding commenced at Toronto

KERP EXTENSION AND AMENDMENT ORDER

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

Court File No. CV-18-590812-00CL

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

Proceeding commenced at Toronto

**MOTION RECORD
(Re: KERP Extension & Amendment Order)
(Returnable October 4, 2018)**

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