SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-065381-259

DATE: October 8, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, C. C-36 ("CCAA"), AS AMENDED, OF:

7037163 CANADA INC.
Debtor/Applicant
-and-
VARENNES CELLULOSIC ETHANOL LP
CCAA Party
-and-
STORMFISHER HYDROGEN LTD.
Impleaded Party
-and-
ERNST & YOUNG INC.
Monitor
-and-
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (QUÉBEC)
-and-
THE REGISTRAR OF THE ONTARIO PERSONAL PROPERTY REGISTRY
-and-
THE REGISTRAR OF THE LAND REGISTER FOR THE REGISTRATION DIVISION OF VERCHÈRES
Impleaded Parties
ENERKEM INC.
-and-
BLACK & MCDONALD LIMITED

-and-
GROUPE PROMEC INC.
Opposing Parties

JUDGMENT
(Amended Application for the Issuance of an Approval and Reverse Vesting Order, an Extension of the Stay of Proceedings, an Administrative Reserve Order, an *Ordonnance d'Annulation et de Radiation* and an Increase to the Monitor's Power and Other Relief)

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[1] The applicant, 7037163 Canada Inc. (the "**General Partner**" or the "**Applicant**"), acting for and on behalf of the limited partnership Varennes Cellulosic Ethanol LP ("**VCE**" or the "**Partnership**" and, collectively with the General Partner, the "**CCAA Parties**" or the "**VCE Entities**"), has filed an application (the "**Application**") seeking the following:

1.1. The authorization for the CCAA Parties to execute the purchase agreement dated September 24, 2025 (the "**Purchase Agreement**") with StormFisher Hydrogen Ltd. (the "**Purchaser**"), and to enter into the transactions contemplated therein (the "**Transactions**").

1.2. The transfer and vesting of all Excluded Liabilities including all Excluded Employees and Excluded Contracts (as these terms are defined in the Purchase Agreement) in 9550-1714 Québec inc. ("**ResidualCo1**"), and the transfer and vesting of all Excluded Assets[1] in 9550-1870 Québec inc. ("**ResidualCo 2**" and, collectively with ResidualCo 1, the "**ResidualCos**"), and the release of the CCAA Parties from any and all obligations in relation to the Excluded Assets, the Excluded Contracts, the Excluded Employees and the Excluded Liabilities;

1.3. The release of all present and future claims and liabilities (the "**Releases**") against the present and former directors and officers of the General Partner and the ResidualCos (the "**D&Os**") as well as the present employees and secondees of the General Partner and VCE (the "**Secondees**"), for which they may be liable for any act, omission or representations in their capacity as D&Os of the General Partner, with the exception of claims for fraud or wilful misconduct and claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA, or in their capacity as employees or secondees of the CCAA Parties;

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[1] Capitalized terms not defined herein have the meaning ascribed to them in the Purchase Agreement or the Approval and Reverse Vesting Order.

1.4. An extension of the Stay Period until March 31, 2026;

1.5. The sealing of the non-redacted copy of the Purchase Agreement (Exhibit-2A);

1.6. An expansion of the powers of the Monitor upon closing the Transactions;

1.7. The issuance of an administrative reserve order (the "**Administrative Reserve Order**"), in order to provide for the setting aside of certain amounts required for the administrative expenses of the ResidualCos and the professional fees incurred moving forward, as well as to set aside escrowed funds in respect of Conceptum Logistics (USA), LLC ("**Conceptum**") and Tetra Tech QE Inc. ("**Tetra Tech**") and Livingston International Inc. ("**Livingston**") that are not to be addressed nor affected by the Transactions;

1.8. The approval of an *Ordonnance d'annulation et de radiation*, in order to ensure the discharge of certain security interest in the province of Québec; and

1.9. Upon issuance of the Monitor's Certificate, authorization for the CCAA Parties or the Purchaser to take all necessary steps to discharge any and all encumbrances registered against the Retained Assets, the Purchased Shares, the Promissory Notes, and the Partnership Units, including by filing financing change statements in the Ontario Personal Property Registry (as such terms are defined in the Approval and Reverse Vesting Order).

PROCEDURAL CONTEXT

[2] Prior to the CCAA Proceedings, the CCAA Parties were engaged in the preparation for the launch of activities consisting in the production and selling of biofuel products to be generated from non-recyclable waste streams and forest biomass residue, and more particularly the production of bio-methanol (the "**Project**"). The Project's total cost was estimated at $1.49 billion.

[3] On March 11, 2025, the Honourable Martin Castonguay, J.S.C. issued an initial order pursuant to the CCAA (the "**Initial Order**"), which:

3.1. Declared that the Applicant is a "debtor company" to which the CCAA applies and that VCE shall benefit from the protection and authorizations provided for in the Initial Order;

3.2. Stayed proceedings in respect of the Applicant to be extended to the Partnership, their respective Property and their respective D&Os, for an initial period until March 20, 2025, followed by a "deemed extension" until

March 25, 2025 (the "**Stay of Proceedings**") subsequently extended to March 31, 2025;

3.3. Appointed Ernst & Young Inc. ("**EY**") as the Monitor of the CCAA Parties during the proceedings (the "**CCAA Proceedings**");

3.4. Established a super-priority charge against the Property in an initial amount of $1,000,000 (the "**Administration Charge**") to secure the CCAA Parties' obligations towards their legal advisors, EY as Monitor, the Monitor's legal advisors and the Secured Lenders' legal counsel, (collectively, the "**Professionals**"), for work performed and to be performed in connection with the CCAA Proceedings;

3.5. Approved a Key Employee Retention Plan ("**KERP**") providing various retention incentives to be paid to certain key employees and executives considered to be essential to the success of the CCAA Proceedings, and the establishment of a super-priority charge against the Property in an amount of $1,675,000 (the "**KERP Charge**"); and

3.6. Issued a sealing order in respect of certain confidential exhibits.

[4] On March 31, 2025, Justice Castonguay issued an Amended and Restated Initial Order (the "**ARIO**"), which:

4.1. Extended the Stay of Proceedings until May 30, 2025;

4.2. Appointed Barclays Capital Canada Inc. as financial advisor to the Applicant (the "**Financial Advisor**"), and the established a super-priority charge against the Property in favour of the Financial Advisor (the "**Financial Advisor Charge**") to secure certain of the CCAA Parties' obligations towards the Financial Advisor;

4.3. Increased the Administration Charge to $1,400,000 for work performed and to be performed by the Professionals in connection with the CCAA Proceedings; and

4.4. Approved an interim financing term sheet (the "**Interim Financing Term Sheet**") between the CCAA Parties and 9429-8130 Québec Inc., a wholly-owned subsidiary of Investissement Québec, and the Canada Infrastructure Bank (the "**Secured Lenders**" and, in their role as interim lender, the "**Interim Lenders**"), and authorization for the CCAA Parties to borrow from the Interim Lenders thereunder a maximum principal amount of $33,000,000 (the "**Interim Facility**"), to be secured by a super-priority charge against the Property in an amount of $39,600,000;

[5] On the same day, Justice Castonguay issued a Sale and Investment Solicitation Process Order (the "**SISP Order**"), which authorized the Monitor, in consultation with the CCAA Parties and the Secured Lenders, and with the assistance of the Financial Advisor to conduct and implement a Sale and Investment Solicitation Process (the "**SISP**").

[6] Further orders were subsequently issued effectively:

6.1. Extending the Stay of Proceedings to October 3, 2025;

6.2. Increasing the Interim Financing and the Interim Lender's Charge.

[7] On September 24, 2025, Applicants served a first Application for the Issuance of an Approval and Reverse Vesting Order, an Extension of the Stay of Proceedings, and an Administrative Reserve Order, an *Ordonnance d'annulation et de radiation* and an Increase to the Monitor's Powers and Other Relief (the "**Initial RVO Application**") on the Service List.

[8] Following the service of the Initial RVO Application, certain parties objected to the relief sought in the Initial RVO Application and sought a postponement of the hearing.

[9] On September 29, 2025, the Honourable Justice Céline Legendre, J.C.S. heard the Initial RVO Application, as well as the testimony of the Monitor as to the limited financial resources of the CCAA Parties and the requirement to close the Transactions before October 10, 2025.

[10] Justice Legendre postponed the hearing to October 8, 2025 to be heard by the undersigned and extended the Stay of Proceedings to today.

ANALYSIS

1. Approval of the Reverse Vesting Order

[11] Applicants ask that the Court approve the "Successful Bid" that resulted from the SISP.

[12] This Successful Bid is the culmination of several months of efforts by the CCAA Parties and the Financial Advisor.

1.1 Solicitation Efforts

[13] Prior to the commencement of the CCAA Proceedings, the CCAA Parties had already commenced a solicitation process seeking to identify opportunities to allow them to raise financing to continue to meet their ongoing obligations and continue their operations in the normal course.

[14] On July 11, 2024, Barclays was engaged as financial advisor to the CCAA Parties to solicit a private placement of equity or of debt securities to finance the activities of the CCAA Parties (the "**Pre-Filing Process**").

[15] The Pre-Filing Process contemplated finding a financing partner willing to not only refinance the cost overruns of the Project, but also to buy out Proman Services Canada Inc. ("**Proman**")'s equity commitment.

[16] The process was eventually broadened to include direct competitors of Proman and to contemplate fresh investments by way of a private placement.

[17] Despite the efforts, no satisfactory offer was received by the CCAA Parties.

[18] The feedback received from the market indicated that potential investors foresaw several hurdles in continuing the Project in its current form, including:

18.1. the fact that the Project remained under construction and had already experienced cost overruns;

18.2. the early stage of the technology on which the Project was based and the risks associated therewith; and

18.3. the terms and conditions of the offtake agreement entered with Proman in connection with the bio-methanol to be produced.

[19] On March 10, 2025, the CCAA Parties commenced the CCAA Proceedings to obtain the necessary breathing room to stabilize their business operations and ultimately pursue a court-supervised robust sale and investment solicitation process.

[20] On March 31, 2025, this Court approved the SISP and SISP Procedures authorizing the Monitor, in consultation with the CCAA Parties and the Secured Lenders, to conduct the SISP. Barclays was retained to assist as Financial Advisor.

[21] The SISP was designed to provide for a fair, efficient and transparent process to allow for a proper canvassing of the market. The SISP was also designed to be broad and flexible providing the CCAA Parties with the latitude to pursue both asset and share transactions (including through a reverse vesting structure).

[22] The SISP Procedures provided a timeline with milestones extending over a four-month period with the objective of maximizing the value of the CCAA Parties' assets and ensure the pursuit, if possible, of the Project as a going concern.

[23] It essentially consisted of two phases:

23.1. In phase 1, potential bidders were required to submit a non-binding letter of intent ("**LOI**"), by no later than May 28, 2025 (the "**Phase 1 Bid**

Deadline"), which outlined the nature of the proposed transaction, key terms, financial capability and any due diligence requirements as part of the second phase; and

23.2. Following the Phase 1 Bid Deadline, potential bidders having submitted satisfactory LOIs would be invited to submit Binding Offers by no later than July 9, 2025 (the "**Phase 2 Bid Deadline**"), which Binding Offers must include definitive transaction documents, proof of funding and regulatory approvals.

[24] 71 potentially interested parties were contacted by the Financial Advisor and received a letter providing an overview of the CCAA Parties' Project and describing the sale process and the opportunity. Thirteen of them executed a non-disclosure agreement and were granted access to the confidential information memorandum and the virtual data room.

[25] The Phase 1 Bid deadline was extended to June 2, 2025.

[26] Four non-binding LOIs were submitted by interested parties to the Financial Advisor and the Monitor.

[27] Following careful assessment and review of the bids, the Monitor, in consultation with the CCAA Parties, the Financial Advisor, the Secured Creditors and their respective counsel, determined that the four non-binding LOIs complied with the conditions set out in the SISP Procedures and therefore constituted Phase 1 Qualified Bids.

[28] On June 11, 2025, the Financial Advisor notified the four Phase 1 Qualified Bidders that they were invited to proceed to Phase 2 of the SISP.

[29] The Phase 2 Qualified Bidders pursued their due diligence efforts with a view of submitting a binding bid for a transaction.

[30] As part of such due diligence, the Phase 2 Qualified Bidders were given access to further confidential information regarding the CCAA Parties and the Project and were given the opportunity to participate in management meetings and discussions with the CCAA Parties and their management team, under the supervision of the Monitor and the Financial Advisor.

[31] Given the discussions, the deadline to submit a Phase 2 Qualified Bid was ultimately extended to August 7, 2025.

[32] On August 7, 2025, the Monitor and the Financial Advisor received only one Binding Offer, namely the offer submitted by the Purchaser.

[33] After receiving the above Binding Offer, the Monitor consulted with the CCAA Parties, the Financial Advisor and the Interim Lenders, carefully reviewed and assessed the offer and sought clarification with respect to its terms.

[34] On August 21, 2025, the Monitor designated the Binding Offer submitted by the Purchaser as a "Phase 2 Qualified Bid".

[35] As a result of the analysis and discussions, the Purchaser's bid was designated as the "Successful Bid" for the following reasons:

35.1. the value of the consideration offered by the Purchaser was the highest received in the circumstances and was higher than the realization value of the CCAA Parties' assets in a liquidation scenario;

35.2. the terms of the Purchaser's bid were the most favourable in the circumstances and enabled a continuation of the Project in one form or another; and

35.3. the Monitor had no reason to believe that the Purchaser would not be able to complete and close the Transactions.

[36] The Purchase Agreement was ultimately finalized and executed on September 24, 2025.

1.2 **Summary of the Purchase Agreement and Transactions**

1.2.1 Project Realignment

[37] The CCAA Parties have been informed that the Purchaser intends to continue the Project, albeit in a significantly modified form.

[38] The original Project has two main components: a biofuel plant based on a technology developed by Enerkem Inc. ("**Enerkem**") and an electrolyser plant (together the "**Plants**").

[39] The Biofuel Plant is 75% completed. The Electrolyser Plant is 45% completed. Of the original $1.5 billion for the Project, approximately $950 million has been spent.

[40] The Purchaser intends to repurpose the existing facility to produce e-methanol using green hydrogen and captured CO_2 from nearby industrial sources. This approach preserves the goal of low-carbon methanol production while resolving the financial challenges caused by uncommitted offtake and reliance on high-risk, first-of-kind gasification technology, and makes full use of the site's strategic location and infrastructure. It does not propose to use the Enerkem technology.

[41] The proposed Transactions put forward by the Purchaser thus replaces the legacy biomass-gasification route with an electrolysis-plus-biogenic-CO_2 pathway. That change removes the first-of-kind technology risk, while leveraging firm clean-power access and proximate CO_2 emission sources (e.g., WM Ste-Sophie) already under indicative terms. This path preserves a potential future Canadian supply source of low-carbon methanol and is competitively preferable to retrenchment or liquidation.

[42] Unlike the original Project which relied on biomass gasification, the Purchaser's facility will produce e-methanol using clean hydrogen from Québec's renewable electricity and captured local CO_2. This Purchaser believes that this proven approach is simpler, cleaner, more reliable, and more resilient. It reuses part of the CCAA Parties' existing infrastructure and builds on the expertise of the local team.

[43] By sourcing CO_2 from emitters who currently treat it as waste, the revised Project promises to reduce regional emissions and to transform CO_2 from a liability into a valuable resource.

1.2.2 Key Terms and Conditions of the Proposed Transactions

[44] Following the hearing on September 29, 2025, certain amendments were made to the Purchase Agreement.

[45] The current material terms and conditions can be summarized as follows:

[46] The Proposed Transaction is structured as a reverse vesting transaction designed to preserve the viability of the Project, albeit in a modified form, and maintain essential regulatory approvals, tax credits and contractual relationships.

[47] Following closing of the Proposed Transaction contemplated in the Purchase Agreement, the Purchaser will own all issued and outstanding equity interest in the General Partner and all partnership units of VCE, free and clear of any Encumbrances other than Permitted Encumbrances. All other equity interests in the General Partner or VCE outstanding prior to Closing, along with any unrelated agreements, instruments or rights will be terminated and cancelled for no consideration upon issuance of the Monitor's Certificate.

[48] The Purchase Agreement includes several reorganization steps that are to take place prior to Closing.

[49] The Purchase Agreement provides for a Purchase Price payable at Closing, including the Deposit held by the Monitor, which shall be released from escrow and applied on account of the Purchase Price.

[50] The Purchase Price will be allocated as follows:

50.1. On the Closing Date, the Monitor shall retain the Administrative Expense

Amount of $750,000 from the Purchase Price for the payment of services performed by the Monitor, the ResidualCos and their respective legal counsel after the Closing Date in connection with the CCAA Proceeding, the administration of such proceeding to its conclusion, including any bankruptcy of the ResidualCos and services in respect of the administration of the Excluded Assets, Excluded Contracts, Excluded Liabilities and ResidualCos; and

50.2. On the Closing Date, the Monitor shall retain the CCAA Charge Amount from the balance of the Purchase Price after deduction of the Administrative Expense Amount and, after the Closing Date, the Monitor shall disburse the CCAA Charge Amount to the Persons benefitting from the CCAA Charges, or as otherwise directed by an Order of the Court.

[51] Considering the amount of the Purchase Price, it is not anticipated that the CCAA Charge Amount will be sufficient to satisfy the amounts owing in respect of all obligations secured by the CCAA Charges.

[52] In particular, the Interim Lender's Charge will not be repaid in full from the Purchase Price, and no amount will be paid pursuant to the Financial Advisor Charge.

[53] The VCE Entities will keep the Retained Assets, free and clear of any Encumbrances other than the Permitted Encumbrances, including but not limited to:

53.1. The Immovable Property, being the property located at 101 rue Vincent·Chornet, Varennes (Quebec);

53.2. The Plants;

53.3. All Retained Contracts listed in Part 2 of Schedule B of the Purchase Agreement;

53.4. All Authorizations;

53.5. The intellectual property rights of the VCE Entities (whether owned or licensed to them, but excluding IP Rights licensed to them under the Excluded Contracts or related to the Excluded Assets);

53.6. The Cash and Cash Equivalents.

[54] Retained Assets do not include Excluded Assets or Excluded Contracts.

[55] The VCE Entities will assume only the Retained Liabilities specifically listed in the Purchase Agreement which include but are not limited to: the specific obligations towards Retained Employees, Cure Costs and obligations in respect of Retained Assets or in connection with the performance of the Retained Contracts arising from any period

beginning on or after the Closing Time, and liabilities in connection with the Assumed CIB Interim Facility Deficiency up to a specific maximum amount (which includes the portion of the Initial Interim Facility advanced by CIB as well as the Additional Interim Facility), to the extent the Closing Date occurs on or prior to October 15, 2025, or such other date agreed to by the Parties by mutual consent and with the consent of CIB. In the event the Closing Date occurs after October 15, 2025, or such other date agreed to by the Parties, by mutual consent and with the consent of CIB, the Assumed CIB Interim Deficiency will not be subject to a maximum amount.

[56] All Excluded Liabilities, Excluded Contracts and Excluded Employees will be transferred to ResidualCo1.

56.1. Excluded Liabilities refer to all of the CCAA Parties' liabilities other than the Retained Liabilities.

56.2. Excluded Contracts refers to all Contracts of the VCE Entities, other than the Retained Contracts.

56.3. Excluded Employees shall be assigned to ResidualCo1 and shall be terminated following the assignment, such that the Excluded Employees will be deemed to have been employed solely by ResidualCo1. The Purchaser may designate Excluded Employees up to no later than two business days before closing.

[57] All Excluded Assets, being the Assets of the VCE Entities that are listed in Schedule C of the Purchase Agreement. will be transferred to ResidualCo2.

[58] Closing must occur on or before the Outside Date of October 10, 2025 or such other date agreed to by the Parties in writing, by mutual consent and with the consent of CIB, provided, further, that to the extent the Outside Date would be extended to a date later than November 10, 2025, the consent of both Interim Lenders shall be required in addition to the mutual consent of the Parties.

[59] The Proposed Transaction occurs on an "as is, where is basis".

[60] Recent amendments to the Purchase Agreement include:

60.1. Protective measures to reserve the rights of the parties relating to a litigation among the VCE Entities, the Purchaser, Gastier M.P. Inc. ("**Gastier**") and Rexel Canada Electrique Inc. ("**Nedco**") on the ownership of high voltage cables;

60.2. Protective measures to reserve the rights of the parties relating to a contract and a piece of equipment among the VCE Entities, the Purchaser and Siemens Energy Canada Limited ("**Siemens**");

60.3. Modifications to a condition in favour of the Purchaser relating to the high-voltage electrical works in the Electrolyser Plant necessary to the connection and initial energization of the plants to the Hydro-Quebec transmission network; (the "**Substation Work**");

60.4. The addition of contracts to the list of Retained Contracts;

60.5. A correction of the number of outstanding LP Units and GP Shares to reflect issuances since January 2023;

60.6. A retroactive modification to the construction site insurance and a tail for the D&Os; and

60.7. Management of cash at Closing.

1.3 **Legal principles**

[61] Section 36 allows the Court to authorize the sale of a debtor company's assets outside the ordinary course of business.

[62] Accordingly, it is generally accepted that the court can approve a plan comprised of a sale of assets during CCAA proceedings.

[63] Factors to be considered when deciding to do so include:

63.1. whether sufficient efforts to get the best price have been made and whether the parties acted providently;

63.2. the efficacy and integrity of the process followed;

63.3. the interests of the parties; and

63.4. whether any unfairness resulted from the process.[2]

[64] In evaluating these criteria, Courts have previously noted that the informed business judgement of a debtor and the opinion of the Monitor are entitled to deference in relation to a sale transaction.[3]

[65] Additional consideration is required when the proposed sale involves a reversed vesting order.

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[2] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), 4 O.R. (3d) 1 (C.A.); *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, para. 34.

[3] *Target Canada Co. (Re)*, 2015 ONSC 1487, at para. 18; AbitibiBowater, Inc (Re), *supra*, note 2, at paras. 70-72 (Tab 9).

[66] Professor Sarra has summarised the RVO process as follows:

> The result of an RVO is to expunge the existing corporate structure of the debtor company of anything the purchaser does not want. The newco is added to the insolvency proceeding and continues in that process while the debtor company exits the insolvency proceeding with broad liability releases; then the newco is liquidated or placed in bankruptcy to be liquidated. The transaction takes place outside of a negotiated and court-approved plan of arrangement or compromise. The RVO structure was crafted to allow those businesses to continue through the debtor company, since it was that corporate vehicle who owned the valuable "assets" that could be not transferred.[4]

[67] Professor Sarra notes that RVOs significantly deviate from the usual CCAA framework as they bypass provisions of insolvency legislation aimed at giving both secured and unsecured creditors a meaningful voice/vote in the proceedings. As such, it is sometimes stated that RVO structures should remain the exception and not the rule.[5]

[68] Nonetheless, it is now recognised that courts have jurisdiction to approve RVOs under the various insolvency legislations and that such orders may be appropriate to allow businesses to continue through the debtor company when the debtor company owns valuable assets that cannot be transferred.[6] Examples include:

68.1. Debtors that operate in highly regulated environments where existing permits, licenses or other rights are complicated to reassign.

68.2. Debtors who are parties to key agreements that would be difficult or impossible to assign to a purchaser; or

68.3. Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order.[7]

[69] In assessing whether to approve a reverse vesting order the court must examine:

69.1. why the RVO is necessary;

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4 Janis SARRA, "Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 431.

5 *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246, para. 32; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, para. 96.

6 *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 5, paras. 87, 93-94; *Harte Gold Corp. (Re)*, 2022 ONSC 653, paras. 36-37; *Quest University Canada (Re)*, 2020 BCSC 1883, paras. 127-128 and 157-158.

7 *Arrangement relating to MedXL*, 2024 QCCS 4269, para 33; *VBI Vaccines Inc v. Ernst & Young Inc. et al.*, 2024 ONSC 6604, para. 13; *Proposition de Brunswick Health Group Inc.*, 2023 QCCS 4643, para. 39.2 and 60-69; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, paras. 13-14 and 21; *Harte Gold Corp. (Re)*, *supra*, note 6, paras. 58, 66-69, 70-71 and 73-76; *Arrangement relatif à Blackrock Metals Inc.*, supra, note 5, paras. 86 and 114-116; *Quest University Canada (Re)*, supra, note 6, para. 136.

69.2. whether the RVO structure produces an economic result at least as favourable as any other viable alternative;

69.3. whether any stakeholder is worse off under the RVO structure than they would have been under any other viable alternative; and

69.4. whether the consideration reflects the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure.[8]

1.4 **Objections**

[70] On October 2, 2025, written contestations were filed by the following parties:

70.1. Enerkem;

70.2. Black & McDonald Limited (« **B&M** ») and Groupe Promec inc. (“**Promec**”); and

[71] Other objections from Siemens and Gastier have now been resolved.

1.4.1 Enerkem

[72] Enerkem’s concern relates to the Purchaser’s use of certain technology and equipment governed by a Technology License Agreement (“**TLA**”) and IP Protection Protocol (the “**Protocol**”) with VCE.

[73] Under the Purchase Agreement, the TLA and Protocol are listed as Excluded Contracts to be vested in ResidualCo1, whereas the underlying equipment and technology would be treated as a Retained Asset. Enerkem’s concern is that the practical effect of the Transaction would allow the Purchaser to acquire movable property incorporating Enerkem’s IP without the documents and commitments of the Parties under the CCAA and thus would be entitled to continue operating Enerkem equipment without assuming the related obligation to protect Enerkem’s intellectual property (“**Enerkem’s IP**”) (the “**Enerkem Objection**”).

[74] While the Purchaser has stated that it does not intend to use the bulk of the Enerkem technology, certain components that are part of the Retained Assets have some of this technology imbedded.

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[8] *Royal Bank of Canada v. Chesswood Group Ltd. et al.*, 2025 ONSC 1577, para. 22; *Arrangement relatif à Blackrock Metals Inc., supra*, note 5, para. 95; *Harte Gold Corp. (Re), supra*, note 6, para. 38; *Clearbeach and Forbes*, 2021 ONSC 5564, para. 25; *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, para. 50 (leave to appeal dismissed, 2020 QCCA 1488; leave to appeal to SCC dismissed, 2021 CanLII 34999).

[75] According to Enerkem, this Court does not have the power or discretion to sell property belonging to a third party[9] (which would be the practical effect of the sought-after vesting order). Enerkem adds that the Transaction would put it in a vulnerable position since it has itself just completed its restructuring under the CCAA and that protection of Enerkem's IP is essential to its restructuring.

[76] Finally, Enerkem sates that the Purchaser has already indicated that it intends to respect Enerkem's IP. As such, it submits that there is no negative impact in recording this commitment in the sought order.

[77] Unless this is done, Enerkem is of the view that one of the criteria for approving a reverse vesting order is not satisfied in that it would be "worse off under the RVO structure than they would have been under any other viable alternative."

[78] The Applicants submit that the Enerkem Objection can be fully addressed through the flexibility built into the Purchase Agreement, and no prejudice to Enerkem has yet materialized.

[79] They add that Enerkem's restructuring in July 2025 also occurred by way of a reverse vesting order. Faced with that uncertainty, the Purchaser was unsure if Enerkem's technology would be necessary or appropriate for use in the new venture and reserved its own flexibility to exclude or retain those assets and agreements as it assumes VCE's business.

[80] According to the Applicants, the final designation of the TLA, Protocol, and associated technology remains to be determined and should be addressed only once the situation has crystallized.

[81] The Purchaser is of the view that the relief sought by Enerkem—which is effectively a declaratory judgment binding future negotiations—is neither necessary nor appropriate at this juncture.

[82] The Court agrees with Enerkem that the matter should not be left to the discretion of the Purchaser.

[83] The Court asked the parties to agree on an undertaking that could protect the rights of the parties while allowing the Transaction to proceed.

[84] This has been done. The undertaking will be noted in today's procès-verbal.

1.4.2 B&M and Promec

[85] B&M acted as the first general contractor for the Project.

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9 8640025 Canada Inc. (Re), 2017 BCCA 303, para. 48, 54 and 58.

[86] At the filing date, B&M was owed over $29 million.

[87] Promec provided industrial construction services to VCE and the General Partner during construction of the Plants. At the time of the Initial Order, it was owed over $13 million.

[88] Promec acted first as a subcontractor to B&M and then took over as general contractor.

[89] Promec alleges that it is now owed $15,185,143, broken down as follows:

89.1. $10,765,502 as general contractor for VCE; and

89.2. $4,419,642 as subcontractor for Black & McDonald.

[90] B&M and Promec object to the discharges sought in favor of the current and former D&Os as well as certain key employees of the shareholders (Suncor and Shell) who were assigned to the Project (the "**Secondees**"). Such Secondees were paid by the shareholders, and their salary was invoiced to VCE.

[91] On September 12, 2025, Promec served notice on the D&Os regarding acts and representations that constitute misconduct that led Promec to settle with VCE and continue performing the work as general contractor as of January 6, 2025.[10]

[92] It alleges that these acts and representations constitute misconduct that predates the filing of the CCAA Proceedings.

[93] Other creditors made representations to the effect that if the releases are modified they should be modified for the benefit of all creditors and not only B&M and Promec.

[94] The scope of the releases (and thus the B&M and Promec objections) will be dealt with below in the section about releases.

1.5 Discussion

[95] The Court believes that the criteria for the approval of the RVO have been met.

[96] All parties on the Service List, all secured creditors and holders of registered legal hypothecs as well as the contractual counterparties of the Retained Contracts and other stakeholders received service of the RVO Application and proposed orders.

[97] The Secured Lenders and major stakeholders were consulted throughout the SISP and support the approval of the proposed Transaction.

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[10] Exhibit PRO-3.

[98] The Monitor believes that the extent of creditor consultation and notice provided in the context of the SISP was appropriate.

[99] The Court agrees.

[100] The SISP, when combined with the Barclays Pre-Filing Process, resulted in a broad, fulsome and fair canvassing of the market by way of a transparent court-supervised process, which was conducted by the Monitor, with the assistance of the CCAA Parties and the Financial Advisor, with efficacy and integrity, during which the interests of all parties were considered. Extensions to SISP timelines were granted when the Monitor deemed it necessary to maximize value.

[101] The aggregate consideration provided for under the Purchase Agreement is fair and reasonable in the circumstances and is the best and only outcome of the SISP.

[102] The efforts to obtain the best possible result for the benefit of the stakeholders have been extensive.

[103] As for the RVO structure, VCE's business is complex and heavily regulated, depending on multiple overlapping government authorizations, regulatory approvals, highly technical contractual arrangements, government contracts and licenses many of which are non-transferable or subject to risky and lengthy assignment processes.

[104] Many licenses, permits, certifications and regulatory approvals are listed in paragraph 69 of the Application. It is not necessary to list them here.

[105] Furthermore, the Monitor explains that agreements with Hydro-Quebec to secure electrical supply, which are essential to the Project, cannot be assigned to the Purchaser under a traditional vesting structure. In addition, the megawatts and energy allocated to the Project are granted solely to the VCE Entities as personal rights. Accordingly, if the Purchaser were to acquire the VCE Entities' assets, including the Project, through a traditional vesting structure, Hydro-Quebec would require to re-tender the megawatts and energy allocations, and there is no assurance that the Purchaser could secure them.

[106] The reverse vesting structure also allows the CCAA Parties' to retain benefits and tax attributes, including the Clean Fuels Fund federal program administered by Natural Resources Canada (the "**Clean Fuel Funds Program**") and Clean Hydrogen Investment Tax Credit (the "**ITC**"). The expected benefits and tax credits under the Clean Fuel Funds Program and the ITC, are essential to the economic viability of the Project. The reverse vesting structure increases the likelihood of maintaining these benefits for expenses incurred prior to the CCAA Proceedings.

[107] Absent the Clean Fuel Funds Program and the ITC, the Project could lose a non-negligeable source of revenue for the Project and without which the economics of the Project would be compromised.

[108] Thus, an RVO structure is essential to preserving the Project as a going concern while maximizing value for stakeholders and maintaining critical operational continuity.

[109] A traditional asset sale would risk jeopardizing these essential elements and the viability of the Project moving forward.

[110] The proposed structure has been amended to reflect discussions with certain objectors.

[111] While it is true that Enerkem and other stakeholders may theoretically be more affected by a reverse vesting structure as opposed to a traditional vesting structure, the Court still believes that the proposed Transactions are in the best interest of stakeholders as a whole.

[112] The proposed Transactions will likely yield no distribution to any secured creditors (including any holders of legal hypothecs of construction), other than some of the beneficiaries of certain CCAA Charges (with certain of the CCAA Charges, including the Interim Lenders' Charge, which will not be reimbursed in full, and the Financial Advisor Charge, pursuant to which no amount will be paid).

[113] Nonetheless, the Monitor is of the view that the Proposed Transaction is advantageous for the following reasons:

113.1. It allows for a continuation of the Project (albeit in a modified form) in Quebec, with the economic and social benefits that derive therefrom. Certain of the CCAA Parties' suppliers and subcontractors will thus benefit from the continuation of their business relationship with the CCAA Parties.;

113.2. It represents the only Qualified Bid received following a robust and comprehensive SISP;

113.3. An orderly liquidation process is unlikely to provide better recovery for any creditors as the estimated proceeds from liquidation would not exceed the amount of the CCAA Charges;

113.4. The Proposed Transaction provides for the continued employment of employees; and

113.5. The Proposed Transaction provides for a beneficial impact on the environment and the Quebec economy with respect to decarbonization efforts and provides for a potential future Canadian supply source of low-carbon methanol.

[114] The Monitor has considered whether the proposed Transaction would be more beneficial to the CCAA Parties' creditors generally than a sale or disposition of assets under an orderly liquidation process.

[115] The Monitor conducted a thorough liquidation value analysis of the CCAA Parties' assets (filed under seal but available to the relevant parties). It compares the transaction proceeds under the proposed Transaction with the estimated net realization value of the CCAA Parties' assets in an orderly liquidation process conducted under the CCAA.

[116] The values attributed to the CCAA Parties' equipment, land and buildings in a liquidation scenario are based on formal appraisals conducted by Ernst & Young experts in the fields of real estate appraisals and equipment liquidation values.

[117] Given the nature of the CCAA Parties' assets and the limited interest in the SISP, the Monitor is of the view that an orderly liquidation of the assets is unlikely to yield a better outcome for the CCAA Parties' creditors.

[118] In any event, neither the proposed Transaction (after payment of the Administrative Expense Amount and the CCAA Charges), nor an orderly liquidation would result in any residual amounts available for distribution to the secured creditors, the construction lien holders or the unsecured creditors.

[119] As such, aside for the Interim Lender who will only be partially reimbursed, there is no prospect for recovery for any of the CCAA Parties' other creditors, whether secured or unsecured, including those parties who have published legal hypothecs on the assets of the CCAA Parties, and this, regardless of the structure employed.

[120] In any event, no one has stepped forward to fund an eventual liquidation or another alternative process.

[121] Finally, a liquidation process presents important drawbacks, including:

121.1. Putting an end to the CCAA Parties' operations, being the Project, and their relationship with suppliers, which would prejudice such stakeholders;

121.2. A loss of employment for all remaining employees, thereby resulting in a negative socio-economic impact for such individuals;

121.3. Causing additional delays, uncertainty and costs in the realization of the CCAA Parties' assets and potentially impair their realizable value, which would be detrimental not only to the CCAA Parties but also the mass of creditors;

121.4. Preventing the realization of an industrial project designed to repurpose the existing biorefinery facility in order to produce e-methanol using green

> hydrogen and captured carbon dioxide from nearby industrial sources, which approach preserves the goal of low-carbon methanol production and the beneficial environmental effects deriving therefrom.

[122] These considerations are important. As the Supreme Court has stated in *Century Services Inc.*:[11]

> [60] Judicial decision making under the CCAA takes many forms. A court must first of all provide the conditions under which the debtor can attempt to reorganize. This can be achieved by staying enforcement actions by creditors to allow the debtor's business to continue, preserving the status quo while the debtor plans the compromise or arrangement to be presented to creditors, and supervising the process and advancing it to the point where it can be determined whether it will succeed. In doing so, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, shareholders, and even other parties doing business with the insolvent company. In addition, courts must recognize that on occasion the broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed.

[123] It is true that an RVO structure should not "be generally employed or approved in a CCAA restructuring to simply rid a debtor of a recalcitrant creditor who may seek to exert leverage through its vote on a plan while furthering its own interests" and that "a debtor should not seek an RVO structure simply to expedite their desired result without regard to the remedial objectives of the CCAA."[12], the Court is satisfied that this is not what is occurring here.

[124] It is also true that one of the criteria to be considered prior to approving an RVO is whether a creditor may be worse off. However, this criterion is not meant to provide a creditor with a veto on the approval of a restructuring plan.

[125] Ideally, creditors and other stakeholders would agree on the best course of action going forward. This is not always possible. In such cases, the Court must decide. Sometimes these decisions affect some parties more than others.

[126] The Court must weigh several factors, none of which are determinative.

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11 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 60. See also *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para. 41.

12 *Quest University Canada (Re)*, *supra*, note 6, para. 117.

[127] The Court notes for example that vesting orders have included ownership transfers of property free and clear of encumbrances, obligations or liabilities, including continuing property interests, in order to promote a global restructuring.[13]

[128] CCAA practice and successful rescue efforts often depend on the Court's ability to separate the debtors' assets from their liabilities in order to allow a going concern to emerge.

[129] All in all, the Court agrees with the Monitor that the Transactions contemplated under the Purchase Agreement represent the best available outcome for the CCAA Parties and their stakeholders in the circumstances, as they will allow for the preservation of the Project, in an albeit modified form, as a going concern, and the maintenance of the Project in its new conceptualization and form in Québec, as well as to provide for the most consideration for the benefit of the CCAA Parties and their stakeholders in comparison with a liquidation or other transactional structure.

2. **Releases**

[130] The CCAA Parties are also seeking the issuance of a release in favour of the present and former directors and officers of the General Partner and the ResidualCos, as well as employees and Secondees of the CCAA Parties (the "**Released Parties**"). The shareholders are not part of the Released Parties.

[131] The proposed release covers all present and future claims relating to their role in connection with the business, the assets and the restructuring of the CCAA Parties, except for claims of bad faith, gross negligence, willful or intentional misconduct or illegal acts (unless such individual believed in good faith that its conduct was legal).

[132] Section 5.1(1) of the CCAA states that a compromise or arrangement made in respect of a debtor company may include the compromise of claims against directors of the company that arose before the commencement of CCAA proceedings when the claims relate to obligations of the company for which the directors are by law liable in their capacity as directors.

[133] Section 5.1(2) of the CCAA states that a compromise of claims against directors may not include claims that: (a) relate to contractual rights of one or more creditors; or (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

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[13] *Arrangement relatif à Xebec Absorption Inc.*, 2023 QCCS 466, para. 76, citing *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, at para. 93. See also Quest University Canada (Re), *supra*, note 6,, at paras. 64-67.

[134] Compromise of claims against third parties other than D&Os is also allowed in the course of CCAA Proceedings. This being said, such releases should neither be automatic nor commonplace.[14]

[135] In determining whether the scope of proposed releases are appropriate, Courts have generally adopted the criteria set out in *Lydian*:[15]

135.1. Whether the claims to be released are rationally connected to the purpose of the plan;

135.2. Whether the plan can succeed without the releases;

135.3. Whether the parties being released contributed to the plan;

135.4. Whether the releases benefit the debtors as well as the creditors generally;

135.5. Whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and

135.6. Whether the releases are fair, reasonable and not overly broad.

[136] While the above criteria were established in the context of plans of arrangement, others have adopted them in RVOs or liquidating CCAAs.[16] This being said, in most cases where broad third-party releases were granted in the context of a plan, the most important consideration was that the third-party being released had financially contributed to the plan.[17]

[137] In others, it was the litigious relationship that existed between the founders of the company and the Court's assessment of the merits of that litigation that tilted the balance

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14 *Arrangement relatif à Blackrock Metals Inc.*, *supra*, note 5, para. 129; *Walter Energy Canada Holdings, Inc. (Re)*, 2018 BCSC 1135, para. 30; *Hy Bloom inc. v. Banque Nationale du Canada*, 2010 QCCS 737, para. 73; *Re: Canwest Global Communications Corp.*, 2010 ONSC 4209, paras. 28 and 29.

15 *Lydian International Limited (Re)*, 2020 ONSC 4006, para. 54. See *Royal Bank of Canada v. Chesswood Group Ltd. et al.*, *supra*, note 8, para. 55; *Arrangement relatif à Elna Medical Group Inc./ Groupe médical Elna Inc.*, 2025 QCCS 1329, par. 78; *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, 2023 QCCS 4975, paras. 64 to 67; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, paras. 128 and 129; *Re ENTREC Corporation*, 2020 ABQB 751; *Allen-Vanguard Corporation (Re)*, 2011 ONSC 5017, paras. 60 and 61; *Canwest Global Communications Corp.*, 2010 ONSC 4209, paras. 28 and 29; *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587 at paras. 70 and 71; Carole J HUNTER and Vanessa A ALLEN, "Please Release Me: The Evolution of Releases in Restructuring Proceedings", 2021 19th Annual Review of Insolvency Law, 2021 CanLIIDocs 13553.

16 *Harte Gold Corp. (Re)*, 2022 ONSC 653, para. 79; *Re Green Relief Inc*, 2020 ONSC 6837.

17 *Metcalfe & Mansfield Alternative Investments II Corp., (Re), supra,* note 15, para. 116; *Hy Bloom inc. v. Banque Nationale du Canada*, *supra*, note 14, para. 71. *Société industrielle de décolletage et d'outillage (SIDO) ltée (Arrangement relatif à)*, 2010 QCCA 403, para. 43; Muscletech Research and Development Inc., Re, 2006 CanLII 34344 (ON SC), para. 9.

in favour of a release.[18] In *Green relief* for example, the court believed that it was unlikely that a transacting party would want to become involved in an acrimonious situation that would entail being subjected to dubious legal proceedings. The court noted however that "If the court is being asked to release claims, it is helpful to know what is being released".[19]

[138] In the specific case of directors and officers, Justice Immer (then at the Superior Court) observed:

> "[70] Obviously, directors and officers need to be incentivized to support the CCAA process. For officers, this can partly be ensured by key employment retention programs (KERPs) secured by KERP charges for officers and by trailer liability insurance. The prospect of a release is an additional strong - if not essential - incentive for D&Os not to leave the ship and be fully invested in their work. Otherwise, they could simply resign.[20]

[139] Justice Campbell also stated: "There would be little if any incentive to directors to pursue restructuring if they were going to be so exposed."[21]

[140] However, the Court agrees with authors Luc Morin (now at the Superior Court) and Arad Mojtahedi, that, even for D&Os, broad releases should not be automatic:

> In the end, not all D&O are created equal: depending on their contribution to the successful restructuring of the business, some D&O could benefit from a third-party release, while others might not. Mere respect for their fiduciary care and standard duties should not be sufficient for D&O to obtain a court-issued third-party release. For that kind of contribution, D&O, who by the very nature of their functions have access to privileged information allowing them to appropriately gauge their risk and protect themselves ab initio, should rely on their D&O insurance policy. It is our view that court-issued releases should serve as an incentive to D&O to go beyond the exercise of their fiduciary care and maintenance duties, ultimately to the benefit of all stakeholders involved. As with all third-party releases, those in favour of D&O must be rationally connected to the purpose of the restructuring and provided in exchange for a meaningful contribution toward its achievement.[22]

[141] Promec alleges that the Releases do not satisfy the required criteria in that:

141.1. There is no rational connection between the claims covered by the Releases and the purpose of the restructuring.

141.2. The D&Os have not significantly contributed to the restructuring.

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18 *Delta 9 Cannabis Inc (Re)*, 2025 ABKB 52, para. 31.
19 *Re Green Relief Inc*, *supra*, note 16, para. 30.
20 *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, supra, note 15, para. 70.
21 *Allen-Vanguard Corporation (Re)*, 2011 ONSC 5017, para. 75;
22 Luc MORIN and Arad MOJTAHEDI, "Catch Me If You Can: Third Party Releases Under the Companies' Creditors Arrangement Act, 2021", CanLIIDocs 13544.

141.3. The Releases are not essential to the restructuring and do not benefit the creditors or stakeholders generally.

141.4. The Releases are excessive and prejudicial.

[142] The Court disagrees.

[143] The releases comply with the applicable criteria.

[144] The Released Parties have been instrumental in the CCAA Parties' restructuring efforts, both before and during the CCAA proceedings. The Released Parties have remained engaged and committed to the management and preservation of the Project before and throughout the restructuring process.

[145] The Court has had the benefit of hearing detailed testimony form Mr. Stéphane Demers, president of VCE and from the Monitor.

[146] Both have described the implication of the Released Parties (including the D&Os and the Secondees) in the important efforts of the VCE Entities before and after the filing of the CCAA Proceedings to secure funding, accelerate payments under the Clean Fuel Funds Program, maintain critical operations, contracts and authorisations to secure partners to continue the Project, share information with bidders in the context of the SISP and more.

[147] During the critical period between November 2024 up to and beyond the filing in March 2025, the board has had nearly weekly communications. The Secondees' involvement was even greater. According to Mr. Demers they devoted themselves body and soul ("*corps et âme*"), nights and weekends to the restructuring efforts.

[148] When the CCAA Proceedings were filed some critical components were on their way to the facility for incorporation in the Project.

[149] Discussions with Hydro-Quebec had to take place to secure connexion to the electrical grid. The commissioning of the Hydro-Quebec 230kV power line to be used by the Electrolyser facility was essential given that a failure to do so at such time would indefinitely delay the activation of such powerline and jeopardize the proposed Transaction.

[150] The Released Parties participated in numerous meetings and phone calls with the Monitor, the Financial Advisor, the Secured Lenders and potential acquirers during the SISP. They contributed to multiple initiatives to demobilize and preserve assets, reduce operating costs while driving critical investments to preserve and increase the value of the Project before and during the SISP. They discussed with contractors, subcontractors and suppliers to ensure continued supply of goods and services. Their continued involvement is also essential to the successful implementation of the proposed Transaction and to ensure an adequate transition with the Purchaser.

[151] The Court notes that many of the Releasees remained committed throughout the process notwithstanding that they were not able to benefit from the KERP. The board intervened to ensure that the Secondees remain in place to allow for continuation of operations.

[152] The releases are not an essential condition to the Transaction. In fact, the order incorporating the releases was segregated in order to avoid the releases impeding the Transaction. The parties have agreed that, as the release is not part of the Purchase Agreement, the Court has the discretion to modify it.

[153] This being said, the Monitor affirms that the cooperation of the Released Parties remains essential to guarantee a smooth transition for the benefit of the Purchaser and the success of the Transaction.

[154] reasons The Monitor has been made aware that certain employees and Secondees have been the subject of threats of legal actions from contractors and subcontractors seeking payment of pre-filing outstanding amounts, despite these employees and secondees not being contractually nor statutorily liable for such amounts.

[155] The Monitor is of the view that the proposed releases for the D&Os are reasonable, appropriately tailored and consistent with those granted in similar CCAA Proceedings. The Interim Lenders also support the releases.

[156] The Court agrees that releases should be granted. It also agrees that the releases should include all Released Parties including the Secondees.

[157] The involvement of the Released Parties goes way beyond what is the norm in CCAA parties. The Monitor indicated that in his vast experience in these matters he has rarely seen this level of commitment.

[158] This being said, the Court feels bound by the text of section 5.1(2). The section is unambiguous:

> 5.1 (2) A provision for the compromise of claims against directors may not include claims that:
>
> (a) relate to contractual rights of one or more creditors; or
>
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

[159] Indeed, while general releases for directors and officers have been approved, they usually include a carve-out of claims excluded under section 5.1(2).[23]

[160] The Applicants submit that a carve-out is already included.

[161] B&W and Promec argue that a carve-out is insufficient.

[162] They point to recent cases where, despite the general wording of section 5.1(2), courts have interpreted the exclusion to apply only to post-filing actions.[24] Thus, according to this interpretation, a release that includes a carve-out of claims "excepted by s. 5.1(2)" releases the D&Os of all claims regarding actions performed pre-filing as well as claims for post-filing actions "based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct".

[163] As the matter is currently before the Court of Appeal, the undersigned will decline to settle the debate.

[164] However, it will be made clear that it is not the intent of this court to release claims that cannot be released under section 5.1(2) of the CCAA.

[165] Thus, the proposed release order will be amended to add the following:

> Notwithstanding the generality of paragraphs [12] and [13], **ORDERS** that the above releases will be inapplicable to claims that:
>
> (a) relate to contractual rights of one or more creditors; or
>
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

[166] It will be up to another court to determine, hopefully once the Court of Appeal has provided guidance on this issue, to determine whether the Promec, B&W or other creditors' claims fall within this exception.

3. **Sealing Order**

[167] On September 25, 2025, the Monitor's fifth report (the "**Monitor's Fifth Report**") was circulated to the Service List and sent to the Court. The report contained an orderly liquidation value analysis (the "**Liquidation Analysis**") which was filed under seal to support the Monitor's position that the proposed Transaction would provide greater

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[23] *Re Green Relief Inc*, *supra*, note 16, para. 57; *Harte Gold Corp. (Re)*, *supra*, note 6, para. 83; *Arrangement relatif à Nemaska Lithium inc.*, 2020 QCCS 3218, para. 104. *Canadian Airlines Corp. (Re)*, 2000 ABQB 442 (leave refused to ABCA and to SCC), paras. 89 to 92.

[24] *Lacerte c. Bruneau*, 2025 QCCS 1853, para. 113; *Arrangement relatif à NMX Residual Assets Inc.*, 2025 QCCS 1205, para. 56; *Allen-Vanguard Corporation (Re)*, *supra*, note 21, para. 75;

benefit to the CCAA Parties' creditors generally than a sale or disposition of assets through an orderly liquidation process.

[168] Sealing of this information was considered essential to protect the integrity of the sale process, maintain the confidentiality of sensitive commercial information and safeguard the interests of all stakeholders.

[169] Following the receipt of the Monitor's Fifth Report, several creditors reached out to the Monitor's counsel and the VCE Entities' counsel in order to obtain a copy of the unredacted version of the Purchase Agreement. the Liquidation Analysis, the appraisals on which the Liquidation Analysis is based and the detail of the estimated professional fees and realization costs indicated in the Liquidation Analysis (the "**Confidential Information**").

[170] Counsel to the VCE Entities and the Monitor promptly provided the Confidential Information to the requesting parties upon receipt of a confidentiality undertaking.

[171] On September 28, 2025, Promec filed its opposition.

[172] The Monitor, the CCAA Parties and the Court received a series of emails in response to the Application for an RVO in which several creditors (primarily holders of construction hypothecs), requested a postponement of the initial RVO hearing to allow additional time to review the materials filed by the VCE Entities and the Monitor in support of the initial RVO Application.

[173] On the morning of the September 29, RVO hearing, the VCE Entities and the Monitor were informed that the Confidential Information had been leaked to the media. An article published in *La Presse* that same morning publicly disclosed the price of the transaction (albeit erroneously), as well as confidential information related to the Liquidation Analysis.

[174] The Monitor is rightly concerned by this leak. So is the Court.

[175] Strict confidentiality is essential to ensure a fair, orderly, and effective sale process.

[176] The Court grants the sealing order to the confidential annexes to the Monitor's report and for the unredacted version of the Purchase Agreement.

4. <u>The Stay Period</u>

[177] The current Stay Period expires on October 8, 2025. The CCAA Parties seek an extension of the Stay Period up to March 31, 2026.

[178] The extension is required to close the Proposed Transaction and to allow the Monitor sufficient time to bring the restructuring to completion and to assign the ResidualCos into bankruptcy.

[179] The Cash Flow Forecast indicates that the CCAA Parties should have sufficient liquidities to continue to meet their obligations up to March 31, 2026.

[180] Further to objections by B&M and Promec, it is now provided that the Stay extension regarding the D&Os will not extend beyond the issuance of the Monitor's Certificate.

[181] The extension is granted.

5. Proman Transfer Motion and Conceptum Dispute

[182] On May 29, 2025, the Applicant filed a Motion for the Transfer of the Arbitration Proceedings under the Present CCAA Proceedings (the "**Transfer Motion**") seeking to transfer the arbitration proceedings between Proman and VCE instituted as of January 27, 2025 (the "**Arbitration Proceedings**") under the jurisdiction of the Court.

[183] The Transfer Motion is scheduled to be heard by the Court on or around October 21, 2025 before the honourable Luc Morin, J.C.S.

[184] Since the last stay extension, counsel for both the CCAA Parties and Proman have worked together to complete the procedural steps that had been agreed upon in order to ready the motion Transfer Motion for a hearing.

[185] The CCAA Parties and the Monitor have also been working with Conceptum to complete the procedural steps to ready the Conceptum Application for a hearing.

[186] The CCAA Parties, the Monitor and Conceptum had agreed on a procedural timetable, which had to be suspended in light of the notification of the first version of an amended Conceptum Application on the eve of the examination of Conceptum's representative, which had been scheduled for September 12, 2025.

[187] On September 18, 2025, Conceptum notified an Amended Application by Conceptum Logistics (USA), LLC for the determination of a point of law and for an order to the Monitor for the payment of a sum of money held in escrow and for an order lifting the stay and ordering the CCAA Party (a) to remit to the creditor-applicant the amount of HST paid by the latter in relation to services rendered to the CCAA party by the creditor-applicant and (b) to pay the invoices for the late fees issued by the creditor applicant (the "Amended Conceptum Application").

[188] Following the notification of the Amended Conceptum Application, the CCAA Parties, the Monitor and Conceptum have been working towards establishing a new litigation timetable for the adjudication of Conceptum's claim.

6. Administrative Reserve Order

[189] The CCAA Parties seek approval of the Administrative Reserve Order to authorize the Monitor, on the Closing Date, to retain in trust in a segregated account in the name of the Monitor from the Cash and Cash Equivalents of the VCE Entities an amount equal to:

189.1. the Conceptum Escrowed Funds in order to satisfy, for and on behalf of the VCE Entities to the satisfaction of the Monitor, the potential payments and withholding obligations of the VCE Entities under the Conceptum Dispute;

189.2. the Tetra Tech/Livingston Escrowed Funds in order to satisfy, for and on behalf of the VCE Entities to the satisfaction of the Monitor, the potential payments and obligations of the VCE Entities under the Tetra Tech/Livingston Amending Agreement; and

189.3. the Control Panel Escrowed Funds in order to satisfy, for and on behalf of the VCE Entities to the satisfaction of the Monitor, the obligations relating to the reassembly of the control panel referred to in Section 11 of the Tetra Tech/Livingston Amending Agreement.

[190] While the Administrative Reserve Order is not a condition to closing of the proposed Transactions, the Monitor considers the Administrative Reserve Order to be necessary and appropriate in the circumstances and supports this request.

[191] Conceptum, Tetra Tech and Livingston support the request for the Administrative Reserve Order.

7. Ordonnance d'annulation et de radiation

[192] The CCAA Parties seek the approval of the *Ordonnance d'annulation et de radiation* in order to ensure that certain security to be discharged within the context of the Proposed Transaction with the Purchaser is done so in Quebec.

[193] This is required given that the Approval and Reverse Vesting Order is drafted in English.

[194] The Monitor supports this request.

8. Powers of the Monitor

[195] Applicants request that the Court provide the Monitor with additional powers as of the closing of the Proposed Transaction to ensure that all remaining steps in the CCAA Proceedings can be completed.

[196] These additional powers include:

196.1. Power to terminate employees or contractors of the ResidualCos;

196.2. Power to give any consent or approval on behalf of the ResidualCos;

196.3. Power to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate; and

196.4. Power to assign the ResidualCos into bankruptcy and act as Trustee thereto.

[197] These powers are necessary in the circumstances.

[198] Following the Proposed Transaction, the only remaining debtor companies under the CCAA proceedings shall be ResidualCo1 and ResidualCo2.

[199] In the absence of any remaining director, management or employees, such powers ensure that all required remaining steps in the CCAA proceedings can be completed.

[200] The additional powers will facilitate the orderly completion of the CCAA Proceedings.

CONCLUSION

[201] The Court is conscious that the proposed Transaction may be surprising and disappointing to some stakeholders.

[202] This being said, the Court agrees with the Monitor that the proposed Transaction is the best option available in the circumstances.

[203] The orders sought by the Applicants are granted.

FOR THESE REASONS, THE COURT:

[204] **SIGNS** the following orders submitted by the Applicants this day, October 8, 2025:

204.1. Approval And Reverse Vesting Order (Exhibit R-1);

204.2. Administrative Reserve Order (Exhibit R-3);

204.3. *Ordonnance d'annulation et de radiation* (Exhibit R-4);

204.4. Release Order (as modified by the present judgment) (Exhibit R-10)

[205] **THE WHOLE**, without costs.;

Martin Sheehan

Signature numérique de Martin Sheehan
Date : 2025.10.08 19:57:03 -04'00'

MARTIN F. SHEEHAN, J.S.C.

Me Joseph Reynaud
Me Darien Bahry
Stikeman Elliott LLP
Counsel for the Applicants

Me Marc-André Morin
Me Eliane Dupéré-Tremblay
Fasken Martineau LLP
Counsel for the Monitor

Hearing date: October 8, 2025