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CALGARY

APPLICANTS

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

AND IN THE MATTER OF ALPHABOW  
ENERGY LTD.

DOCUMENT

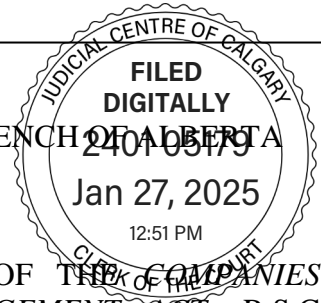
BRIEF OF ARGUMENT OF ALPHABOW  
ENERGY LTD.

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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Commercial List Chambers Application  
Scheduled for the 4<sup>th</sup> day of February, 2025  
before The Honourable Justice Burns



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## I. INTRODUCTION

1. On April 26, 2024, the court granted AlphaBow Energy Ltd. (“**AlphaBow**”) an Initial order (the “**Initial Order**”) and an Amended and Restated Initial Order (the “**ARIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), which provided for a stay of proceedings.<sup>1</sup> The stay afforded under the CCAA is a key component of the restructuring process as it provides necessary breathing room and a single proceeding model to enable the restructuring of a debtor in the best interests of its stakeholders.

2. Contrary to the stay of proceedings, Kikino Metis Settlement (“**Kikino**”) has sought and the Metis Settlement Appeal Tribunal (the “**Appeal Tribunal**”) is considering convening a hearing for the purpose of determining surface lease arrears and issuance of an order for payment pursuant to section 121 of the *Metis Settlements Act*, RSA 2000, c M-14 (the “**Kikino Appeal**”).<sup>2</sup>

3. Kikino is clearly a creditor captured by the stay of proceedings. If permitted to advance its claim, it will require the expenditure of limited resources by AlphaBow and if successful will result in a post-filing claim, by the President of Treasury Board and Minister of Finance which could impact the closing of the corporate transaction.

4. Under section 121 of the *Metis Settlements Act*, where a mineral lease holder or operator fails to pay amounts under a surface lease, the Appeal Tribunal may direct the President of Treasury Board and Minister of Finance to pay out of the General Revenue Fund the amount of money found to be owing, which constitutes a debt owing by the existing mineral lease holder or operator to the Crown.

5. Similarly, the Appeal Tribunal is also captured by the stay of proceedings. While section 11.1 of the CCAA exempts certain regulatory actions from the stay of proceedings, the enforcement of a payment is clearly captured by the stay.<sup>3</sup>

6. The Kikino Appeal should continue to be stayed as against AlphaBow and its Property. The purpose of the stay is to allow AlphaBow to focus on restructuring, which it has diligently been pursuing since the Initial Order and ARIO was granted. Kikino should be required to wait

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<sup>1</sup> *Companies’ Creditors Arrangement Act*, [RSC 1985 c C-36](#), as amended [CCAA].

<sup>2</sup> *Metis Settlements Act*, [RSA 2000, c M-14](#) [MSA].

<sup>3</sup> CCAA, s. 11.2.

with AlphaBow's other creditors for the conclusion of these proceedings, which provided all of the transactions close, will result in purchasers assuming all of AlphaBow's assets.

7. In this application, the Applicant seeks orders:
  - (a) extending the stay of proceedings originally imposed by ARIO, from February 14, 2025, up to and including May 9, 2025 (the "**Stay Extension**"); and
  - (b) declaring that Kikino and the Appeal Tribunal are stayed from advancing the Kikino Appeal (the "**Declaration**").
8. All capitalized terms used but not defined in this Brief have the meaning given to them in the Eighth Affidavit of Ben Li sworn and filed on January 27, 2025 (the "**Eighth Li Affidavit**").

## II. STATEMENT OF FACTS

### A. The Kikino Appeal

9. On December 11, 2020, the Kikino applied to the Appeal Tribunal regarding the recovery of lease rentals from 112 surface leases with AlphaBow pursuant to section 121 of the MSA.
10. On December 11, 2020, Kikino applied to the Appeal Tribunal regarding the recovery of lease rentals from 112 surface leases with AlphaBow.
11. On July 5, 2024, the Appeal Tribunal adjourned the hearing between Kikino and AlphaBow as a result of the stay of proceedings ordered in the ARIO.
12. On December 12, 2024, Kikino wrote to the Appeal Tribunal requesting that it reconvene for the hearing of the Kikino Appeal.
13. On January 16, 2025, the Appeal Tribunal wrote to AlphaBow, attaching Kikino's December 12, 2024 letter, providing notice of the recommencement of the Kikino Appeal hearing for the first week of February 2025.

14. On January 20, 2025, AlphaBow wrote to the Appeal Tribunal indicating its position that the commencement of the hearing is contrary to the Stay of Proceedings ordered in the ARIO.

15. On January 23, 2025, AlphaBow received a letter from the Appeal Tribunal indicating that it would convene to determine whether to commence the hearing and sought availability of the parties, including AlphaBow.

16. At no time has Kikino or the Appeal Tribunal applied to lift the stay of proceedings which was granted by the ARIO and extended on multiple occasions.

**B. Kikino's Involvement in the Claims Process**

17. On October 21, 2024, Kikino submitted a proof of claim against AlphaBow to the Monitor pursuant to the claims process order granted by the Court on September 20, 2024 (the "**Claims Process Order**"), claiming payment for surface rent. On December 6, 2024, Kikino submitted an amended proof of claim to the Monitor.

18. The Monitor is currently adjudicating submitted claims with the assistance of AlphaBow.

19. All other facts supporting this proceeding are set out in the Eighth Li Affidavit. Any defined terms not defined herein have the definition ascribed to them in the Eighth Li Affidavit.

**III. ISSUES**

20. The issues to be considered on this application are whether:

- (a) the Stay Extension should be granted; and
- (b) is Kikino and the Appeals Tribunal stayed from advancing the hearing for payment of surface lease arrears.

21. For the reasons set out in this Bench Brief, the Applicant respectfully submits that the granting of the Declaration and Stay Extension is fair, reasonable and appropriate in the circumstances and in the best interests of AlphaBow's creditors and stakeholders.

#### IV. ANALYSIS

##### A. The Stay Extension Should be Granted

22. AlphaBow seeks a Stay Extension up to and including, May 9, 2025, during which time it anticipates closing of the remaining SAVO Transactions and the Corporate Transaction and working with the Monitor to conclude the Claims Process.

23. Section 11.02(2) of the CCAA provides that a Court may extend a stay of proceedings for any period necessary, so long as the Court is satisfied that: (1) circumstances exist that make the order appropriate; and (2) the applicant has acted, and is acting, in good faith and with due diligence.<sup>4</sup>

24. AlphaBow has acted, and continues to act, in good faith and with due diligence, since the date of the ARIO in pursuing restructuring options in an effort to maximize value for its stakeholders, including the addressing of its environmental obligation, the details of which are set out in the Affidavits of Ben Li and Reports of the Monitor.

25. The Stay Extension is necessary and appropriate in the circumstances as it will allow AlphaBow to close the remaining transactions and complete the CCAA process. Without the benefit of an ongoing stay of proceedings, there could be an immediate and significant erosion of value to the detriment of all stakeholders.

26. Further, the Monitor is continuing its administration of the Claims Process, which will continue beyond the current stay period.

27. No creditors will suffer material prejudice as a result of the Stay Extension.

##### B. The Declaration Staying the Advancement of the Kikino Appeal should be Granted

28. The Court possesses express statutory authority to make an order prohibiting the commencement of any action, suit or proceeding against a company.<sup>5</sup>

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<sup>4</sup> CCAA s 11.01(2).

<sup>5</sup> CCAA s 11.01(2).

i. Kikino is Subject to the Stay Against AlphaBow and its Property

29. The recovery of lease rentals from 112 surface leases which Kikino asserts it is owed in the Kikino Appeal relates to monetary obligations in existence as of or prior to the Filing Date.

30. A stay of proceedings is at the core of a CCAA proceeding, allowing the debtor to hold its creditors at bay while it makes a proposal to its creditors to restructure its debt.<sup>6</sup> The stay of proceedings is a central tool designed to ensure that the *status quo* among creditors is preserved during restructuring efforts.<sup>7</sup> It also prevents “maneuvers for positioning” among creditors and prevents one creditor from getting a “leg up” on others.<sup>8</sup> The Court's jurisdiction in enforcing a stay extends to both preserving the *status quo* and facilitating a restructuring.<sup>9</sup>

31. The stay of proceedings currently in effect extends to AlphaBow and its property in accordance with section 11.02 of the CCAA and the ARIO.<sup>10</sup>

32. Under the stay, no creditor has any rights or remedies against AlphaBow or its Property. Creditors are not permitted to commence or continue proceedings.

33. While Kikino asserts that it is seeking payment from the Crown as opposed to AlphaBow, the effect of the relief sought is to advance proceedings, specifically a hearing to determine amounts owed by AlphaBow and the result if successful, is a post-filing claim against AlphaBow in favour of the Crown.

34. Section 121(3) of the *Metis Settlement Act* states:

If the President of Treasury Board and Minister of Finance pays money to a person under this section, the amount paid constitutes a debt owing by the existing mineral lease holder or the operator to the Crown in right of Alberta.

35. Not only do such proceedings deviate from the status quo, but result in a duplication of resources as the CCAA Proceedings currently provide for a process for determining claims of

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<sup>6</sup> *Stelco Inc. (Re)* [2005] O.J. No. 1171 (ONCA) at para 36.

<sup>7</sup> *Canadian Airlines Corp. (Re)* [2000] A.J. No. 1692 (ABQB) at paras 17-19.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [2005] O.J. No. 4733 (C.A.) at para. 18.

<sup>10</sup> CCAA, s. 11.02.

creditors and further seeks to alter claims and the landscape from what was understood by purchasers at the time they advanced their bids.

36. It is further sought to be advanced before we know if any obligations to Kikino will be assumed and creates uncertainty as to how any orders of the Appeal Tribunal will be interpreted and applied given existing orders of this Court which seek to create certainty for purchasers in terms of the liabilities that are to be assumed.

ii. The Appeal Tribunal is Subject to the Stay of Proceedings

37. A central feature of the CCAA scheme is the single proceeding model, which requires creditors to advance their claims against a debtor in a single forum.<sup>11</sup> Kikino has advanced their claim in these proceedings pursuant to the Claims Process Order. Their claim is under review in accordance with a court approved process that was implemented to provide certainty for bidders to enable them to advance their bids.

38. In *PetroGlobe*, the Alberta Surface Rights Board determined that the stay of proceedings applied to an application pursuant to section 36 of the *Surface Rights Act*, a similar provision to section 121 of the MSA, and noted that it is only after a creditor's efforts to obtain recovery from the debtor have failed, that a direction to the Province to pay can be granted.<sup>12</sup> This is consistent with direction issued by the Alberta Government earlier in August of 2024.<sup>13</sup>

39. In addition to the policy reasons which support utilizing tax dollars as a last resort, section 11.1(2) CCAA only provides a limited exemption from the stay of proceedings for regulators:

11.1 (2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in

<sup>11</sup> *AbitibiBowater*, *supra* at para 21.

<sup>12</sup> *PetroGlobe Inc v Lemke*, 2015 ABSRB 740.

<sup>13</sup> <https://open.alberta.ca/dataset/7c049a3c-1bfe-4323-b2ce-67f7b4c9a16b/resource/1909c181-193d-475e-9342-f4de5c6d175d/download/agi-fao-language-of-insolvency-2024.pdf>



respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

40. The foregoing provision provides that not only are regulatory proceedings stayed in respect of the enforcement of a payment, but further that additional actions, suits or proceedings may be stayed if certain criteria are established. Parliament has therefore confirmed that the *CCAA* may be employed to place an appropriate check on regulatory actions.<sup>14</sup>

41. AlphaBow submits that the proposed hearing is captured by the stay. The Appeal Tribunal's proposed hearing is not a "proceeding" that is exempted from the stay of proceedings established by the *ARIO* or by subsection 11.1(2) of the *CCAA*. The intention of the hearing is to consider and issue an order that would require payment, enforcing obligations under surface leases. It is not an investigation of AlphaBow, but an enforcement of a monetary order against AlphaBow, which is stayed. Further, it will result in a new claim against AlphaBow on behalf of the Crown changing the status quo, require AlphaBow to divert resources, and result in uncertainty for the purchasers of AlphaBow's assets.

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<sup>14</sup> *AbitibiBowater, Re*, [2010 QCCS 1261](#) at para 157.

**V. CONCLUSION**

42. For all of the foregoing reasons, AlphaBow respectfully requests that its application be granted. The continuance of the stay of proceedings is critical to the continuation of this process and ensuring a fair outcome for all of AlphaBow's stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 24<sup>th</sup> day of January, 2025.

Estimated Time for  
Argument: 35 minutes

BENNETT JONES LLP

Per: Keely Cameron  
Keely Cameron  
Counsel for AlphaBow Energy Ltd.

## VI. TABLE OF AUTHORITIES

1. *Companies' Creditors Arrangement Act*, [RSC 1985 c C-36](#)
2. *Metis Settlements Act*, [RSA 2000, c M-14](#)
3. *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#)
4. *Newfoundland and Labrador v AbitibiBowater Inc.*, [2012 SCC 67](#)
5. *Stelco Inc. (Re)* [\[2005\] O.J. No. 1171](#) (C.A.)
6. *Canadian Airlines Corp. (Re)* [\[2000\] A.J. No. 1692](#) (ABQB)
7. *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*, [1990] B.C.J. No. 2384 (C.A.) at 4, cited in *Stelco Inc. (Re)*, [\[2005\] O.J. No. 4733](#) (C.A.)
8. *PetroGlobe Inc v Lemke*, [2015 ABSRB 740](#)
9. *AbitibiBowater, Re*, [2010 QCCS 1261](#)