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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 19<sup>th</sup> day of December, 2024  
before The Honourable Justice P. R. Jeffrey

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## I. INTRODUCTION

1. On March 28, 2024, following a protracted dispute with the Alberta Energy Regulator following a demand for security in March 2023, an order directing the suspension of AlphaBow's assets in June 2023 and a direction in September 2023 that the Orphan Well Association assume reasonable care and measures over AlphaBow's sites, AlphaBow filed a Notice of Intention to make a Proposal.

2. 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 "**AIRO**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").<sup>1</sup> The Initial Order appointed KSV Restructuring Inc., as the Monitor in these CCAA proceedings, and the ARIIO granted a stay of proceedings up to and including July 31, 2024 (the "**Stay Period**"). The Stay Period has been extended on multiple occasions and currently expires on December 31, 2024.

3. On April 26, 2024, this Court also granted an order approving a sales and investment solicitation process in respect of (the "**SISP**"), and appointed Sayer Energy Advisors as the sales advisor tasked with administering the SISP (the "**Sales Advisor**").

4. The SISP has resulted in AlphaBow finding purchasers for all of its oil and gas assets. The largest transaction involves a corporate sale of AlphaBow's shares which will result in the existing equity interests of AlphaBow being redeemed for nominal consideration; all of the numerated Transferred Liabilities and Transferred Assets (as defined in the subscription agreement) being transferred from AlphaBow to the AlphaBow Residual Trust; and the purchaser, 2628071 Alberta Ltd. acquiring all of the newly issued shares of AlphaBow, such that at the conclusion of the transaction it will be the sole shareholder of AlphaBow (the "**Corporate Transaction**").

5. The purpose of this application is to seek approval of various Asset Sales and Corporate Transactions and to provide a stay extension to enable the transactions to close.

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

6. In this application, the Applicant seeks orders:
  - (a) abridging the time for service of notice of this Application and the supporting materials, if necessary, and deeming service thereof to be good and sufficient;
  - (b) approving certain Asset Sales and the Corporate Transaction;
  - (c) extending the stay of proceedings originally imposed by AIRO, from December 31, 2024, to February 14, 2025 (the “**Stay Extension**”); and
  - (d) sealing the confidential purchase prices of the Asset Sales and the details of the unwind provision in the Signalta Non-Operated Asset Purchase Agreement.
  
7. All capitalized terms used but not defined in this Brief have the meaning given to them in the Seventh Affidavit of Ben Li sworn and filed on December 9, 2024 (the “**Seventh Li Affidavit**”).

## **II. STATEMENT OF FACTS**

8. The facts supporting this proceeding are set out in the Seventh Li Affidavit. Any defined terms not defined herein have the definition ascribed to them in the Seventh Li Affidavit.

## **III. ISSUES**

9. The issues to be considered on this application are whether:
  - (a) the transactions should be approved;
  - (b) the RVO should be granted;
  - (c) the Stay Extension should be granted; and
  - (d) the Sealing Order should be granted;
  
10. For the reasons set out in this Bench Brief, the Applicant respectfully submits that the approval of the transactions, the granting of the RVO and the granting of the Stay Extension is fair, reasonable and appropriate in the circumstances and in the best interests of AlphaBow's

creditors and stakeholders. Further, the proposed sealing order is appropriate in accordance with the common law test.

#### IV. ANALYSIS

##### A. The Transactions and Subscription Agreement Should be Approved

11. The Court possesses express statutory authority to authorize a sale or disposition of a company's assets under section 36 of the CCAA.<sup>2</sup>

12. Subsection 36(3) of the CCAA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale or disposition of assets:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the Monitor approved the process leading to the proposed sale or disposition;
- (c) whether the Monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted in the process;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account the market value of the assets.<sup>3</sup>

13. The following factors were developed by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp* and continue to be relevant in the determination of whether to approve a sale.<sup>4</sup> The *Soundair* factors are as follows:

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<sup>2</sup> CCAA, s 36.

<sup>3</sup> CCAA, supra at s 36.

<sup>4</sup> *Royal Bank of Canada v Soundair Corp*, [1991 CanLII 2727 \(ONCA\)](#) [*Soundair*]

- (a) whether the Court-appointed officer has made sufficient efforts to get the best price and has not acted improvidently;
- (b) the interest of all parties;
- (c) the efficacy and integrity of the process undertaken to obtain the offer; and
- (d) whether the process involved unfairness.<sup>5</sup>

14. In *Re Sanjel Corp*, Romaine, J citing Gason J in *Re AbitibiBowater, Inc*, noted that a court should give due consideration to two further factors:

- (a) the business judgment rule, in that a court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the Monitor in the context of an asset sale where the marketing and sales process was fair, reasonable, transparent and efficient; and
- (b) the weight to be given to the recommendation of the Monitor.<sup>6</sup>

15. The transactions satisfy the requirements of s. 36(3) of the CCAA, as follows:

- (a) **Whether the process leading to the proposed sale or disposition was reasonable in the circumstances:** the SISP was approved by this Honourable Court, and carried out by the Sales Advisor, in consultation with the Applicant and under the supervision of the Monitor.<sup>7</sup> The SISP was commercially reasonable and provided for a two-phase sales process where the Sales Advisor provided interested parties with access to due diligence and information related to the assets.<sup>8</sup> The assets were actively marketed through the Court approved SISP, and the purchasers submitted the highest and best offers for the purchased assets prior to the Phase 2 Bid Deadline;<sup>9</sup>

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<sup>5</sup> *Soundair, supra* at para 16; *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 332, at paras 29, 40, 49, 53, 60, 63; *Veris Gold Corp*, 2015 BCSC 1204 [*Veris Gold*], at paras. 24-25.

<sup>6</sup> *Re Sanjel Corp*, [2016 ABQB 257](#) at para 57[*Sanjel*], citing *Re AbitibiBowater, Inc*, 2010 QCCS 1742 at paras 70-72.

<sup>7</sup> Affidavit of Ben Li, sworn December 9, 2024 [*Li Affidavit*].

<sup>8</sup> *Li Affidavit* at para 14.

<sup>9</sup> *Li Affidavit* at para 14.

- (b) **Whether the Monitor approved the process leading to the proposed sale or disposition:** The Monitor supported the approval of the SISP, was consulted extensively in connection with and during the implementation of the SISP, and has consistently supported the Applicant's efforts to advance the Corporate Transaction, as well as the Asset Sales which similarly resulted from the SISP.<sup>10</sup>
  - (c) **Whether the Monitor filed with the court a report stating that, in their opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy:** the Monitor intends to file its Sixth Report setting out its opinion;
  - (d) **The extent to which the creditors were consulted:** the Monitor and AlphaBow consulted creditors and the effects of the transactions on the creditors and other interested parties were considered;<sup>11</sup>
  - (e) **The effects of the proposed sale or disposition on the creditors and other interested parties:** The effects of the completion of the transactions are beneficial. They will ensure that all environmental liabilities are assumed, assumption of certain obligations and the maximization of value to the estate; and
  - (f) **Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value:** The transactions result from the Court approved SISP, which tested the broader market, and represent the highest and best transaction value for the assets having regard for both the purchase price and assumption of liabilities.<sup>12</sup>
16. The transactions meets all of the criteria set out in *Soundair*. Specifically:
- (a) **Whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently:** As discussed in the context of s. 36

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<sup>10</sup> Li Affidavit at para 14.

<sup>11</sup> Li Affidavit at para 14.

<sup>12</sup> Li Affidavit at para 14.

of the CCAA, the SISP was thorough, efficacious, and appropriately canvassed the market;

- (b) **The interests of all parties:** The approval of the transactions is the best available option for the Applicant's creditors and stakeholders. The only available alternative provides a significantly worse outcome for all stakeholders: namely, the transfer of assets to the Orphan Well Association and loss of tax pools which will help offset some of the liabilities being assumed;
- (c) **The efficacy and integrity of the process by which offers were obtained:** The SISP was approved by this Honourable Court, and has been carried out in accordance with its terms. The Monitor supported the SISP and no other party has alleged any defect in the efficacy or integrity of the SISP as actually conducted; and,
- (d) **Whether there has been any unfairness in the sales process:** There have been no allegations, from any party, asserting any sort of unfairness in the SISP.

17. For the above noted reasons, the Applicant submits that the proposed transactions and subscription agreement should be approved.

#### **B. The Reverse Vesting Order Should Be Granted**

18. Sections 11 and 36 of the CCAA confers the courts with jurisdiction to approve a transaction through an RVO.<sup>13</sup>

19. On an application to approve an RVO transaction, the relevant question before the courts is whether the relief sought is appropriate in the given circumstances and whether stakeholders are treated reasonably and fairly to the extent they can be in such circumstances.<sup>14</sup>

20. In *Re Acerus Pharmaceuticals Corporation*, the Court granted an RVO observing that the insolvent company operated in a heavily regulated sector, where its licenses were essential to the capability of the business.<sup>15</sup> The Court noted that difficulties in transferring the insolvent

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<sup>13</sup> CCAA, *supra* ss 11, 36; *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at para 24-37 [*Harte Gold*]. *Quest University Canada (Re)*, [2020 BCSC 1883](#) at paras 40, 157 [*Quest*]; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) [*Just Energy*] at para 29.

<sup>14</sup> *Just Energy, supra* at para 34.

<sup>15</sup> *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#) at para 13 [*Acerus*].



company's licenses to a purchaser, preserving its tax attributes, and assumption of unsecured liabilities associated with retained contracts, were important factors in granting the RVO.<sup>16</sup>

21. This Honourable Court has recently granted two RVOs involving oil and gas companies, the Razor Energy Corp., Blade Energy Services Corp., Razor Royalties Limited Partnership and Razor Holdings GP Corp.<sup>17</sup>, and Long Run Exploration Ltd.<sup>18</sup> CCAA proceedings.

22. In determining whether an RVO is appropriate in the given circumstances, the courts are to consider the *Soundair* principles detailed above, as well as the salient factors outlined by the Ontario Superior Court in *Harte Gold*, specific to the context of an RVO transaction, which include:<sup>19</sup>

- (a) Why is the RVO necessary?
- (b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
- (c) Is any stakeholder worse off under the RVO structure than they would be under any other viable alternative?
- (d) Does the consideration being paid for the debtor's business reflect the importance and value of the licenses, permits and any other intangible assets being preserved under the RVO structure?

i. The RVO is Necessary in the Present Case

23. AlphaBow operates in the oil and gas industry in Alberta, which is highly regulated. A transaction by way of an asset sale, would require the Purchaser to proceed through the Alberta Energy Regulator's (the "AER") license transfer approval process, given the number of assets to be assumed, deficiencies in AlphaBow's records, there is a risk that if the transaction were to proceed by asset sale that some of the assets and other applicable interests could be missed.

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<sup>16</sup> *Acerus*, *supra* at paras 16 and 21.

<sup>17</sup> FTI Consulting - [Razor Energy Corp., Blade Energy Services Corp., Razor Royalties Limited Partnership, and Razor Holdings GP Corp. CCAA Page.](#)

<sup>18</sup> FTI Consulting - [Long Run Exploration Ltd. CCAA Page.](#)

<sup>19</sup> *Harte Gold* at para 38.

24. The RVO will allow for the preservation of AlphaBow's permits and licenses and expedite the time required to get the assets up and running since being shut in.

25. An RVO is the only mechanism available to preserve tax attributes that may be available to AlphaBow, which cannot be transferred to the Purchaser under a traditional asset purchase. The RVO structure allows for the preservation of tax attributes to increase the value of the estate. Several decisions, including *Just Energy*, and *Acerus*, have noted that preservation of tax attributes favors approval of an RVO mechanism.

ii. The RVO Produces a Favorable Economic Result

26. In *Acerus, Just Energy, Re Rambler Metals and Mining Limited*<sup>20</sup> and *CannaPiece Group Inc v Marzilli*,<sup>21</sup> the respective courts granted RVOs and noted that the RVO mechanism provided more benefits to the insolvent party's stakeholders than the alternative of an asset sale under a bankruptcy.<sup>22</sup> The proposed transaction assured a going concern outcome as a result of the RVO.<sup>23</sup>

27. In *Rambler Metals*, the Court held that the RVO produced an economic result at least as favourable as any other viable alternative. The Court reasoned, *inter alia*, that the additional cost to implement and approve an alternative transaction would affect the time that it would take to restart operations.<sup>24</sup>

28. The granting of the RVO is a material condition of the Corporate Transaction and therefore vital to the closing of the transaction.<sup>25</sup> There are no other viable alternatives that would produce a more favourable result than the RVO, given the size and complexity of the Transaction.<sup>26</sup>

29. In absence of the RVO, there would be a significant delay in transferring AlphaBow's permits and licenses to the Purchaser. Further there would be less certainty for the AER and other stakeholders that all of AlphaBow's environmental obligations will be assumed.

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<sup>20</sup> *Rambler Metals and Mining Limited, Re CCAA*, [2023 NLSC 134](#) [*Rambler Metals*].

<sup>21</sup> *CannaPiece Group Inc v Marzilli*, [2023 ONSC 3291](#) [*CannaPiece*].

<sup>22</sup> *Acerus*, *supra* at para 26; *Just Energy*, *supra* at para 52; *Rambler Metals*, *supra* at para 67-68 (as there is no guarantee that the AER would approve an alternative); *Arrangement relatif à Blacrock Metals Inc.*, [2022 QCCS 2828](#) para 109; *CannaPiece*, *supra* at para 19.

<sup>23</sup> *Acerus*, *supra* at para 18.

<sup>24</sup> *Rambler Metals*, *supra* at para 67.

<sup>25</sup> Li Affidavit at para 29.

<sup>26</sup> Li Affidavit at para 29.

iii. No Stakeholders are Worse Off Under the RVO

30. None of the AlphaBow's stakeholders are worse off if the Transaction is completed through an RVO.

31. In *Acerus*, *Just Energy* and *Blackrock*, the respective courts observed that while RVO transactions often result in claims of unsecured creditors being transferred to a residual trust, resulting in no recovery for those creditors, it is not the fault of the RVO process.<sup>27</sup> Rather, the respective courts found it to be a result of the value of the debtor's assets and business.<sup>28</sup> As such, unsecured creditors are treated no differently than if the transaction proceeded through an alternative mechanism, such as an asset purchase. The Court in *Acerus* makes this clear:

Under the proposed transactions, the applicants, some of the unsecured creditors and all of the existing shareholders will have no recovery. However, the evidence makes it clear that these stakeholders would not realize any recovery in any other available restructuring alternative either (i.e., under either of the unsuccessful bids or in a bankruptcy/liquidation).<sup>29</sup>

32. At this point in time it is unclear what funds if any will be available for distribution through the Residual Trust. While certain of AlphaBow's unsecured creditors' claims will be transferred to a Residual Trust, those creditors would not have received any distribution from any other form of transaction, whether by an asset purchase structure or through a liquidation in receivership or bankruptcy. As such, and as was the case in *Acerus*, *Just Energy*, and *Blackrock*, AlphaBow's subordinate creditors are not prejudiced or worse off by the Corporate Transaction proceeding through an RVO, as those subordinate creditors would not be in a better position through an alternative transaction structure.

33. The Corporate Transaction involves a significant number of AlphaBow's assets and ensures that all of AlphaBow's environmental liabilities will be assumed.<sup>30</sup> AlphaBow's operations are currently in the care of the OWA and it is a benefit to all stakeholders to have them be assumed by other parties.

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<sup>27</sup> *Acerus*, supra at para 26; *Just Energy*, supra at para 5; *Blackrock*, supra at para 109.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Acerus*, supra at para 18.

<sup>30</sup> Li Affidavit at para 5.

iv. The Consideration Being Paid Reflects the Value of AlphaBow's Assets and Business

34. The consideration of the Corporate Transaction reflects the value of AlphaBow's assets and business, including AlphaBow's licenses and permits which were extensively marketed by the Sales Advisor in consultation with AlphaBow and the Monitor in accordance with the court-approved SISP. The bid received for the Corporate Transaction represents the highest and best price that could be achieved for AlphaBow's business and assets when considering the amount of liabilities being assumed.

35. The *Harte Gold* factors have been extensively considered and applied by Canadian courts, and the decision sheds light on important considerations regarding the approval of RVO transactions in insolvency proceedings. For the reasons provided, the Applicant submits that each of the *Harte Gold* factors is satisfied and favours granting the RVO.

C. The Releases in the RVO Should be Granted

36. The RVO provides that the Monitor and its legal counsel, the Purchaser, AlphaBow and its current and former directors, officers, employees, contractors, executive team, agents, representatives, and all of their respective advisors including financial advisors and legal counsel (collectively, the "**Released Parties**") are to be released from the Released Claims.

37. The claims proposed to be released pursuant to the RVO include any claims arising out of AlphaBow's business, assets, operations and affairs during the pendency of these CCAA proceedings, or the implementation of the Transaction, but excludes any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or any obligations of the Released Parties under or in connection with the Transaction or the Subscription Agreement (the "**Released Claims**").<sup>31</sup>

38. The authority to grant third-party releases, notwithstanding those available to directors pursuant to section 5.1 of the CCAA, is not codified in the CCAA. As such, the authority for courts to grant third-party releases is rooted in section 11 of the CCAA, which gives the courts the authority to make any order that it considers appropriate in the circumstances.<sup>32</sup>

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<sup>31</sup> CCAA s 5.1(2).

<sup>32</sup> CCAA s 11.

39. The use of releases in favour of directors, officers, and other advisors to a debtor company participating in CCAA proceedings is common. On several occasions the courts have approved such releases even in the absence of a proposal to creditors in both contested and uncontested proceedings, and in the context of RVO transactions. In *Re Lydian International Limited* the Ontario Superior Court outlined the factors to be considered when granting releases. These factors have been reiterated in *Tacora Resource Inc. (Re)* as follows:

- (a) whether the parties to be released from claims were necessary and essential to the restructuring efforts of the debtor;
- (b) whether the claims to be released were rationally connected to the purpose of the plan of arrangement and necessary for it;
- (c) whether the plan of arrangement could succeed without the releases;
- (d) whether the parties being released contributed to the plan of arrangement; and
- (e) whether the release benefits the debtors as well as creditors more broadly.<sup>33</sup>

i. The Released Parties Were Necessary and Essential to the Restructuring

40. In *Tacora*, the Court approved the third-party releases sought and applied the *Lydian* factors.<sup>34</sup> The Court found that the released parties played a role in some or all of the pre-filing process, solicitation process, sale process, CCAA proceedings, and negotiation of the subscription agreement and the contemplated transaction, which provided a going concern solution for the debtor's business.<sup>35</sup> The Court also noted that the released parties will also be involved in the implementation of the transaction.<sup>36</sup>

41. Similarly, the Released Parties have been necessary and essential to these CCAA proceedings including through conducting the SISP and negotiating and implementing the

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<sup>33</sup> *Tacora Resource Inc. (Re)*, [2024 ONSC 4436](#) at para 18 [*Tacora*], citing to *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para 54 [*Lydian*].

<sup>34</sup> *Tacora*, *supra* at paras 25-26.

<sup>35</sup> *Ibid* at para 25.

<sup>36</sup> *Ibid*.

proposed Transaction.<sup>37</sup> Further, the Released Parties will be involved in the implementation of the Transaction by carrying out post-closing obligations.<sup>38</sup>

ii. The Claims to Be Released Are Rationally Connected to the Transaction and Necessary for the Transaction

42. In *Harte Gold*, the Court granted the proposed releases and noted that the claims released were rationally connected to the purpose of the restructuring because the releases helped maximize creditor recovery as it diminished claims against the released parties and, by extension, diminished indemnification claims against the Administration Charge and Directors' Charge.<sup>39</sup> This was also the case in *Tacora*.<sup>40</sup>

43. In the present case, the proposed RVO bars claims against the Monitor and its legal counsel, the Purchaser and AlphaBow relating to: (a) the transferred assets; (b) any and all Losses or Encumbrances other than the Retained Liabilities against or relating to AlphaBow, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time; and (c) the insolvency of AlphaBow prior to the Effective Time; (d) the commencement or existence of these CCAA proceedings; and (e) the completion of the Transaction.<sup>41</sup> All of the Released Parties are connected to the Transaction, in that they are all involved in the negotiation and performance of the Transaction. Closing of the Transaction is conditional upon the granting of the RVO, the form of which includes the releases of the Released Claims. The Monitor's view is that the proposed releases are reasonable.

iii. The Transaction Cannot Succeed Without the Releases

44. In *Tacora*, the releases were a condition of the subscription agreement, and the Court found it to be fair, reasonable and not unreasonably broad. Similarly, in *Harte Gold*, the Court noted that the releases will enhance the certainty and finality of the transaction and took notice that both the debtor and the purchaser stated the releases were an essential component to the transaction.

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<sup>37</sup> Li Affidavit at para 14.

<sup>38</sup> Li Affidavit at para 14.

<sup>39</sup> *Harte Gold*, supra at para 82.

<sup>40</sup> *Tacora*, supra at para 25.

<sup>41</sup> Form of RVO attached as Schedule "1" to the Application of AlphaBow filed on December 9, 2024, at para 17.

45. Similarly, the release of the Released Claims via the RVO are a condition of the Subscription Agreement.

iv. The Released Parties Contributed to the Restructuring

46. In *Harte Gold*, the Court found that the released parties contributed to the restructuring, both prior to and through the CCAA proceedings.<sup>42</sup> The Court reasoned:

The released parties made significant contributions to Harte Gold's restructuring, both prior to and throughout these CCAA Proceedings. Among other things, the extensive efforts of the directors and management of Harte Gold were instrumental in the conduct of the pre-filing strategic process, the SISP and the continued operations of Harte Gold during the CCAA proceedings.<sup>43</sup>

47. Here, the Released Parties all contributed to AlphaBow's restructuring through organizing and implementing the SISP and negotiating the Transaction. The releases of the claims noted above in favour of the Released Parties will assist in the closing of the Transaction and completion of the administration of the estate for which reserves or charges might otherwise be required.

**D. The Stay Extension Should be Granted**

48. AlphaBow seeks a Stay Extension up to and including February 14, 2025, during which time it anticipates closing of the Asset Sales and the Corporate Transaction, if approved, and working with the Monitor to conclude the Claims Process.

49. 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>44</sup>

50. AlphaBow has acted, and continues to act, in good faith and with due diligence, since the date of the AIRO in pursuing restructuring options in an effort to maximize value for its stakeholders. Specifically, AlphaBow has:

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<sup>42</sup> *Harte Gold*, *supra* at para 82.

<sup>43</sup> *Harte Gold*, *supra* at para 82.

<sup>44</sup> CCAA s 11.01(2).

- (a) worked diligently and in good faith with the Monitor and the Sales Advisor to advance the SISP, including negotiating agreements;
- (b) brought an application for a determination on the gross overriding royalty;
- (c) assisted with the claims process; and
- (d) engaged in discussions with stakeholders.

51. The Stay Extension is necessary and appropriate in the circumstances as it will allow AlphaBow to advance the selected offers to the point that court approval can be sought 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.

52. Further, the Monitor is continuing its administration of the Claims Process, which will continue beyond the current stay period. If the proposed Transactions are approved, closing of will also occur beyond the current stay period.

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

**E. The Proposed Sealing of the Purchase Prices is Appropriate and Necessary**

54. Pursuant to Part 6, Division 4, of the *Alberta Rules of Court*, AR 124/2010, this Court has the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.<sup>45</sup>

55. The test to determine whether a sealing order is appropriate is set out by the Supreme Court of Canada in *Sherman Estate v Donovan* as follows:

- (a) whether court openness poses a serious risk to an important public interest;
- (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

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<sup>45</sup> *Alberta Rules of Court*, Part 6, Division 4, [AR 124/2010](#).



(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>46</sup>

56. In *Sherman Estate*, the Supreme Court of Canada explicitly recognized that preserving confidential information that if otherwise disclosed could adversely harm a party's legitimate commercial interests, constituted an "important public interest" for the purposes of the above test.<sup>47</sup>

57. The rearticulated test for a sealing order from *Sherman Estate* has recently been applied in the insolvency context by Morawetz C.J. in the matter of *Bridging Finance*, where he directed that certain confidential and commercially sensitive documents appended to a receiver's report be sealed.<sup>48</sup>

58. AlphaBow respectfully requests that this Court seal the purchase prices of the transactions and the details of the unwind provision in the Signalta Non-Operated Asset Purchase Agreement, as contained in the confidential appendices to the Monitor's report. In the event that the transactions do not close, publication of the purchase prices would prejudice AlphaBow and the Monitor's ability to further market and sell the business and assets. Publication of the purchase price at this stage would impact the integrity of the sales process.

59. Temporarily sealing the purchase prices of the Transactions is the least restrictive method of preserving the confidentiality of this commercially sensitive information.

60. The salutary effects of sealing the purchase prices of the transactions, which protects the parties' commercial interests far outweighs the deleterious effects of restricting the accessibility of court proceedings. It is therefore reasonable and appropriate to grant the requested sealing order, sealing the purchase price of the Transactions.

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<sup>46</sup> *Sherman Estate v Donovan*, [2021 SCC 25](#) at paras 37-38 [*Sherman Estate*].

<sup>47</sup> *Sherman Estate supra* at para 41.

<sup>48</sup> *Ontario Securities Commission v Bridging Finance Inc.*, [2021 ONSC 4347](#) at paras 23-24 [*Bridging Finance*].

**V. CONCLUSION**

61. For all of the foregoing reasons, AlphaBow respectfully requests that its application be granted. The relief sought will substantially assist in advancing these proceedings in a manner that is most advantageous to the stakeholders of AlphaBow through enabling the assumption of all of its environmental liabilities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 9<sup>th</sup> day of December, 2024.

Estimated Time for  
Argument: 45 minutes

BENNETT JONES LLP

Per:



Keely Cameron/Sarah Aaron

Counsel for AlphaBow Energy Ltd.

## VI. TABLE OF AUTHORITIES

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4. *Quest University Canada., Re*, [2020 BCCA 364](#)
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11. *Arrangement relatif à Blacrock Metals Inc.*, [2022 QCCS 2828](#) para 109
12. *Tacora Resource Inc. (Re)*, [2024 ONSC 4436](#)
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14. *Alberta Rules of Court*, [Alta Reg 124/2010](#), s 6.28
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17. *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 4347](#)