



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-21-00658423-00CL

DATE: April 4, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: JUST ENERGY GROUP INC. et al -v- MORGAN STANLEY CAPITAL GROUP INC. et al

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] Haidar Omarali, as representative plaintiff of the certified class in *Omarali v. Just Energy*, has brought a motion in this *CCAA* proceeding in which he seeks certain relief against three post-filing Directors & Officers liability insurers (the “Insurers”).
- [2] At a case conference on March 5, 2024, I had asked the parties to confer and propose a procedural path forward. A case conference was held today to address the procedure to be followed with respect to the motion by Mr. Omarali.
- [3] Each of Mr. Omarali and the Insurers filed an Aide Memoire for this case conference.
- [4] The Insurers propose that a hearing be scheduled for determination of what they say is a threshold coverage issue, that is, whether coverage under the policies is excluded by what is described as a “prior acts exclusion” in the policies (the two excess policies follow-form to the primary policy).
- [5] Mr. Omarali submits that the proper approach is to schedule a motion to determine whether the prior-acts exclusion applies and any questions of coverage that are necessary to determine whether this exclusion applies. Mr. Omarali submits that this approach will allow the Insurers to have the question of whether coverage is excluded determined without prejudging his motion, and will avoid the risk that any necessary coverage issues that are determined on the Insurers’ motion will be re-litigated if Mr. Omarali succeeds.
- [6] The Monitor supports the Insurers’ request that the question of whether coverage under the policies is excluded should be determined first.
- [7] I do not see a material difference between the two approaches. The Insurers have the onus of establishing that the exclusion to coverage applies. Mr. Omarali is entitled to oppose the Insurers’ position by relying on any policy provisions and other evidence that are relevant to determination of whether the exclusion applies.
- [8] I approve the scheduling of a motion to be brought by the Insurers to seek determination of whether the “prior acts exclusion” applies to exclude coverage under the policies for the loss claimed by Mr. Omarali as class representative. The precise wording of the relief to be sought by the Insurers will be in their Notice of Motion. I ask counsel for the Insurers to confer with counsel for Mr. Omarali in relation to the relief to be sought so that there is no misunderstanding.

[9] The motion to be brought by the Insurers is scheduled to be heard on September 9, 2024 at 10:00 a.m. for a full day. Counsel will confer and agree on a timetable for this motion. I ask that they provide it to me for approval.