CITATION: Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 3470
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20220621

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED	)	*Jeremy Dacks, Shawn Irving, Marc Wasserman* and *Michael De Lellis*, for the Applicants, the Just Energy Group
	)	
– and –	)	Allyson Smith, U.S. Counsel to the Just Energy Group
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSALE ENERGY CORPORATION, JUST ENERGY FINANCE CANDA ULC,	)	*Ryan Jacobs, Alan Merskey, Jane Dietrich* and John M. Picone, Canadian Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders
HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC.,	)	*David Botter, Sarah Schultz* and *Abid Quereshi*, US Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders
8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY	)	*Heather Meredith, James Gage and Natasha Rambaran*, Canadian Counsel to the Agent and the Credit Facility Lenders
INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON	)	*Jeff Larry, Max Starnino* and *Danielle Glatt*, Counsel to US Counsel for Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC , HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLS, JUST ENERGY ADVANCED SOLUTIONS LLC,	)	*Steven Wittels* and *Susan Russell*, US Counsel for the Respondent Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; US Counsel for

FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. and JUST ENERGY (FINANCE) HUNGARY ZRT.	Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*
Applicants	*David Rosenfeld and James Harnum*, for Haidar Omarali in his capacity as Representative Plaintiff in *Omarali v. Just Energy*
– and –	*Howard Gorman, Ryan Manns and Aaron Stephenson*, for Shell Energy North American (Canada) Inc. and Shell Energy North America (US)
MORGAN STANLEY CAPITAL GROUP INC.	*Mike Weinczok*, for Computershare Trust Company of Canada
Respondents	*Jessica MacKinnon*, for Macquarie Energy LLC and Macquarie Energy Canada Ltd.
	Bevan Brooksbank, for Chubb Insurance Co of Canada
	Jason Wadden, for Dundon Advisers LLC
	Pat Corney, for the Ontario Energy Board
	Virginia Gauthier, for NextEra Energy Marketing, LLC
	Harvey Chaiton, for Pariveda Solutions, Inc.
	Alexandra McCawley, for FortisBC Energy Inc.
	Chris Burr, for Energy Earth, LLC
	Robert Thornton, Rebecca Kennedy, Rachel Nicholson and *Puya Fesharaki*, for FTI Consulting Canada Inc., as Monitor

) *John F. Higgins* and *Emily Nasir*, U.S.
) Counsel to FTI Consulting Canada Inc., as
) Monitor
)
) **HEARD:** June 7, 2022

ENDORSEMENT

MCEWEN J.

[1] This Endorsement deals with the motion brought by the Applicants seeking an Authorization Order and Meetings Order.

[2] As a result of the time sensitivity of this matter, I released a brief endorsement on June 10, 2022 setting out my orders with reasons to follow (the "June 10 Endorsement"). I have attached the June 10 Endorsement as Schedule "A" and I am now providing those reasons.

[3] Also, given the ongoing time sensitivity, I am releasing these reasons by way of a somewhat abbreviated endorsement. I do not propose to deal with each and every argument raised by the parties but rather focus on the primary submissions.

[4] It is also not possible to address all of the dozens of cases that were referred to by the parties at the motion. I will focus on the most relevant case law.

[5] In conducting the analysis below I have sought to advance and achieve the remedial purpose of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") in keeping with the caselaw, particularly the caselaw that has emerged from the Supreme Court of Canada.

[6] In this regard, I have specifically had regard to the guidance set out in the following two Supreme Court of Canada cases.

[7] In *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (*Century Services*) at para. 70, the court described a CCAA court's mandate:

> The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for

> successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[8] More recently, the court in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 205 set out the importance of finding constructive solutions:

> First, it is important to remember that the purpose of CCAA proceedings is not to disadvantage creditors but rather to try to provide a constructive solution for all stakeholders when a company has become insolvent.

BRIEF OVERVIEW

[9] The Applicants obtained relief under the CCAA by way of Initial Order dated March 9, 2021.

[10] A number of Orders have followed. I have been managing this matter for the last six months.

[11] Generally, the proposed Authorization Order seeks approval for the Plan Support Agreement, the Backstop Commitment Letter and the issuance of the Backstop Commitment Fee Shares; approval of the termination fee and the termination fee charge; sealing unredacted versions of the Plan Support Agreement and Backstop Commitment Letter; amending the Claims Procedure Order to allow the U.S. Bankruptcy Court to adjudicate certain claims; extending the stay period to August 19, 2022 and approving the fees of the Monitor and its counsel.

[12] Pursuant to the June 10 Endorsement, I approved the uncontested portions of the proposed Authorization Order.

[13] Generally, the proposed Meetings Order seeks acceptance of the filing of the Applicants' Plan of Compromise and Arrangement dated May 26, 2022. The terms of the proposed Meetings Order also, amongst other things, seek a meeting date of August 2, 2022 and related relief concerning the establishment of two classes of creditors as well as rules and procedures for the voting mechanisms at the meeting.

[14] Again, in the June 10 Endorsement, I approved the uncontested portions of the draft Meetings Order.

[15] In considering the disputed portions of the proposed Orders, I am mindful of the fact that, generally, the threshold for granting a Meetings Order is rather low and that a heavy burden should not be imposed upon the debtor company: *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (CA) at para. 90. I have kept this in mind in fashioning the remedies. I am, however, of the view that the procedure followed at the meeting must be conducted in a fashion so that the result is not unjustly predetermined. Some of the positions taken by the Applicants required modification prior to the meeting being conducted; otherwise, a constructive solution cannot be achieved for all stakeholders and the Plan will ultimately fail at the sanction hearing.

Similarly, as will be seen below, I have found that some of the positions taken by certain stakeholders are also unduly partisan. I therefore made the orders contained in the June 10 Endorsement.

THE ISSUES IN DISPUTE

[16] These issues in dispute largely concern the Applicants[1] and litigants who had commenced actions against the Applicants as follows:

(i) Two uncertified U.S. class actions which advance claims on behalf of hundreds of thousands of the Applicants' U.S. customers for alleged losses arising from the Applicants' alleged wrongful energy pricing contracts: *Donin v. Just Energy Group Inc. et al.* and *Jordet v. Just Energy Solutions Inc.* (together the "U.S. Class Actions").

(ii) The certified Ontario class action with Mr. Haidar Omarali as the representative plaintiff (the "Omarali Class Action") in which 7,723 allegedly misclassified sales agents of Just Energy, who were designated as independent contractors, seek entitlements as employees pursuant to the *Employment Standards Act, 2000*.

(iii) Four actions brought in Texas by approximately 250 claimants pursuing claims for alleged loss of business, personal injury and/or property damage (the "Mass Tort Claims") in four different actions arising out of a winter storm in 2021.[2] Unlike the class action claims, all of these claims are brought by individual claimants. The claims are based on Texan law.

(collectively the "Litigation Claimants")

[17] The issues in dispute are as follows:

(i) The number of votes the Litigation Claimants should be afforded at the meeting.

(ii) The valuation of the Litigation Claimants' actions for the purposes of voting.

(iii) Whether the Term Loan Lenders should be placed into their own class of unsecured creditors.

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[1] The Applicants' submissions are supported by the Planned Sponsor/DIP Lenders and the Credit Facility Lenders. For ease of reference, however, I will refer to the submissions as being advanced on behalf of the Applicants.

[2] There were originally 364 Mass Tort Claims, but in oral submissions, counsel conceded that the best estimate is 252 claimants.

(iv) The appropriateness of the Applicants' proposal that differential consideration be offered to unsecured creditors in the Plan which would have New Common Shares provided to the Term Loan Lenders and cash consideration being provided to the General Unsecured Creditor Class.

[18] The Monitor supports the relief sought by the Applicants with respect to the disputed issues.

[19] I will deal with each of the disputed issues in turn.

(i) The number of votes the Litigation Claimants should be afforded at the meeting

[20] The Applicants seek to provide a single vote to each of the two U.S. Class Actions, one vote to the Omarali Class Action and four votes to the Mass Tort Claims since, as noted, four separate actions have been brought.

[21] The Litigation Claimants submit that they ought to be allowed one vote for each member of the class, or in the case of the Mass Tort Claims, one vote per plaintiff. This would have the U.S. Class Actions possessing at least 400,000 votes and likely many more. The Omarali Class Action would possess 7,723 votes and, in total, the Mass Tort Claims would possess approximately 250 votes.

[22] As noted in the June 10 Endorsement, I accept the submissions of the Applicants that only one vote ought to be afforded per action which would have the U.S. Class Actions have a total of two votes, the Omarali Class Action have one vote and the Mass Tort Claims have four votes.

[23] I begin my analysis with respect to the dispute between the Applicants and the Litigation Claimants as to whether the Litigation Claimants are creditors and entitled to vote at all.

[24] The Applicants submit that the Litigation Claimants are not creditors and that by affording them one vote per action, the Applicants are effecting a very reasonable compromise. The Applicants submit that the Litigation Claimants constitute unsecured, highly speculative, unproven contentious claims. As such, the Litigation Claimants cannot be considered to be creditors.

[25] I disagree.

[26] I prefer the argument of the Litigation Claimants that when one does a purposeful analysis of the provisions of the CCAA and the *Bankruptcy and Insolvency Act*, RSC., 1985, c. B-3 (the "BIA"), the Litigation Claimants are, in law, creditors.

[27] The CCAA does not contain a definition of "creditor". Section 2(1), however, of the CCAA does provide for a definition of "claim" which means, "any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*".

[28] The BIA defines a claim to include, "any claim or liability provable in proceedings under this *Act* by a creditor." A "creditor" is defined as, "a person having a claim provable as a claim under this *Act*."

[29] In my view, therefore, a harmonious reading of the provisions of the CCAA and BIA supports the notion that the Litigation Claimants are creditors since they possess a claim that is provable as a claim, as I will outline further below.

[30] This conclusion is supported by the Supreme Court of Canada decisions in *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67 at paras. 22, 26, 27, 34, 35 and 38; *9354-9186 Quebec inc. v. Callidus Corp.*, 2020 SCC 10 at paras. 58 and 65. The Applicants' submissions in this regard were not supported by case law.

[31] I am therefore of the view that the Litigation Claimants are entitled to vote at the meeting.

[32] The question, therefore, that remains is whether they should be entitled to one vote per lawsuit, as submitted by the Applicants, or whether each member of the Class Actions and each Litigant in the Mass Tort Claims ought to be afforded a vote.

[33] The Mass Tort Claims submit that it would be particularly unfair to them to be limited to one vote since the plaintiffs in those four actions are not "class plaintiffs" but rather they each possess their own individual claim. The Litigation Claimants further submit that I do not have jurisdiction to restrict the voting as proposed by the Applicants. They submit that each member of the class/plaintiff is a creditor in their own right with a provable claim. They cite a number of cases in which a number of individuals were provided with a vote.[3]

[34] As noted, the Litigation Claimants submit that they should be entitled to possess in excess of 400,000 votes with the Omarali Class Action submitting it should be entitled to 7,723 votes and the Mass Tort Claims being entitled to approximately 250 votes.

[35] The Applicants submit that it would be grossly disproportionate to allow the Litigation Claimants the number of votes they seek given the fact that their claims remain unsecured, speculative and unproven. They point to the fact that, based on numerosity, this would allow the Litigation Claimants to override the wishes of secured creditors and Term Loan Lenders who have over $1 billion of funded debt, not to mention the interests of the employees, suppliers and other stakeholders – all of whom have strong interests in ensuring that the Applicants' restructuring succeeds.

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[3] *Cline Mining Corporation (Re), 2014 ONSC 6998; Arrangement relative à Bloom Lake, 2018 QCCS 1657; New Home Warranty of British Columbia Inc., (Bankruptcy of), 1999 CanLII 6751 (BC SC);* Amended and Restated Meeting Order dated October 27, 2020 at paras. 17, 18 and 24 Court File No. CV-17-11846-00XL (*Sears*).

[36] I prefer the submissions of the Applicants in this regard subject to the caveat, as set out in the June 10 Endorsement, that a process must be undertaken to determine the validity and value of the Litigation Claimants' claims.[4]

[37] First, I do not accept the Litigation Claimants' argument that I lack jurisdiction to provide for such a vote. In my view, based on the aforementioned Supreme Court of Canada guidance in *Century Services* and *Sun Indalex* I have authority to make such an order as it advances the policy objectives underlying the CCAA and, coupled with a proper valuation, strives to treat the Litigation Claimants fairly as between them and the other stakeholders, particularly unsecured creditors.

[38] Similarly, I reject the Omarali Class Action argument that I cannot make such an order as it runs contrary to the provisions of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "CPA"). They submit that Mr. Omarali represents the class, and he does not and cannot subsume the class members' claims or rights. While I do not necessarily quarrel with this submission insofar as the CPA is concerned, the CPA is a provincial, procedural statute. This matter is proceeding pursuant to the provisions of the CCAA. While the provisions of the CPA may be instructive, they do not override my discretion derived from the CCAA in coming to the aforementioned decision.

[39] I am also of the view that the caselaw referred to by the Litigation Claimants in para. 33 above is distinguishable. In this regard I prefer the submissions of the Applicants, which are set out in para. 20 of their Reply Factum in which they set out that the claimants in those actions had proven claims that were less speculative than the claims being pursued by the Litigation Claimants. The circumstances in this matter are unique given the multitude and nature of the Litigation Claimants. In my view, the preferrable path is to afford the Litigation Claimants one vote per action and determine the validity and value of their claims.

[40] In the circumstances of this CCAA proceeding it would be unfair and create an unfortunate precedent if individuals in class proceedings were able to collectively use their votes to swamp the unsecured class on numerosity grounds and defeat a plan in a situation where they have yet to have a proven claim.

[41] I appreciate the Mass Tort Claims are in a different position. However, given the unproven nature of their claims and in an attempt to achieve a fair overall treatment of all of the Litigation Claimants and other stakeholders, they, too, should be subject to one vote per action.

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[4] As can be seen in the June 10 Endorsement, I also allowed for the valuation of the claim of the creditor, Pariveda Solutions, Inc. who attended at the motion and sought a similar valuation since its approximate U.S. $46 million claim had been assessed at $1.

(ii) The valuation of the Litigation Claimants' actions for the purposes of voting

[42] In addition to restricting the Litigation Claimants to one vote, the Applicants also submit that since the Litigation Claimants' causes of action are highly speculative and unproven, they should be restricted to $1 per vote. The Applicants submit that this treatment is consistent with similar treatment of unresolved contingent claims in other plans approved by this Court. They rely upon the rationale set out in the Notices of Disallowance that have been delivered. They also submit that it would be impossible to try to place any type of value on the Litigation Claimants' claims given the short period of time before the meeting, which is to take place on August 2, 2022. They further argue that any attempt to attribute a real value to the Litigation Claimant's claims would be wholly arbitrary, as there is insufficient information before this Court to attribute even an estimated value. The Applicants' position would limit the Litigation Claimants to 7 votes with a total value of $7.

[43] The Litigation Claimants, not surprisingly, disagree. They generally submit that there must be some genuine attempt to value their claims, otherwise they would have no meaningful participation at the meeting. By way of example, they point out that the de minimis claims (35 in total) that are valued at less than $10 per claim, would be afforded more weight than their own. The Litigation Claimants further submit that the CCAA confirms a broad and flexible authority upon this Court to allow for whatever reasonable valuation can be undertaken to protect the integrity of the process. The valuation of claims in a restructuring process is necessary and fundamental to the democratic underpinnings of the CCAA statute.

[44] I agree with the Litigation Claimants that their claims cannot be considered to be essentially worthless based on the record before me.

[45] By way of example, the uncertified U.S. Class Actions allege that the Applicants targeted consumers and businesses hoping to save on supply energy costs. The U.S. Class Actions submit that the Applicants lured customers with a teaser or fixed price for a limited time period. It was initially below competitors' rates and, after the initial period elapsed, the Applicants exploited the consumers by increasing energy costs. The Applicants have moved unsuccessfully to dismiss the U.S. Class Actions, which have been reduced in scope but continue on. Without commenting in any meaningful way on the legitimacy of the U.S. Class Actions, the Applicants have settled other lawsuits generally of the same nature. The U.S. Class Actions are also of a nature that has been certified in the past: see, for example, *In re U.S. Food Service Inc. Pricing Litig.*, 729 F. 3d at 127.

[46] The Omarali Class Action, in Ontario, has been certified. As noted, the action involves allegations that sales agents were misclassified as independent contractors. Shortly after the Omarali Class Action was certified, Just Energy reclassified its sales agents from independent contractors to employees. The Omarali Class Action was ready for trial and a trial date had been set at the time the Applicants obtained relief under the CCAA.

[47] While the Mass Tort Claims are at an early stage and have yet to be proven, they are the typical type of claims that one could expect in the circumstances of the weather event and largely involve claims for loss of business, personal injury and property damage.

[48] I have already accepted that the Litigation Claimants are entitled to vote at the meeting. As per the June 10 Endorsement, I am also satisfied that a summary proceeding ought to be conducted on an expedited basis as soon as reasonably possible to determine the validity and value of the Litigation Claimants.

[49] This is consistent with the guidance set out by the Supreme Court of Canada in *Century Services* and *Callidus* which provides that participants are to be treated advantageously and fairly as circumstances permit and that creditors should not be disadvantaged. To find otherwise would result in the Litigation Claimants having no meaningful role at the meeting, which would be entirely unfair.

[50] It ought to be undertaken prior to the Meetings Order; otherwise, a proper valuation would be largely meaningless as the Litigation Claimants would be restricted to one vote/$1 which would ensure that the Litigation Claimants had no meaningful voice at the meeting.

[51] While time is short, and the Applicants and Litigation Claimants blame each other for allowing this matter to have proceeded this far without any valuation or dispute resolution having taken place, the unfortunate reality is that this has not taken place and the proposal put forth by the Applicants is unacceptable. It must be remedied by way of a valuation, as best as it can be conducted in the circumstances.

[52] Such a valuation approach has been undertaken in other CCAA cases and is consistent with the principles set out in s. 11 and s. 20 of the CCAA: see *Air Canada, re* 2004 CanLII 6674 (ON SC) at para. 2; *AbitibiBowater inc. (Arrangement relative à)*, 2010 QCCS 1261 at para. 230.

[53] I appreciate, as noted, that the time is short and the proceedings must be conducted in an expedited fashion. I see no alternative, however, in an attempt to enact a process that is fair to all stakeholders including the Litigation Claimants.

[54] To do otherwise would result in an unfair disenfranchisement of the Litigation Claimants.

[55] Last, I acknowledge that my decision to order a valuation could appear contrary to my decision of February 23, 2022 where I declined the request of the U.S. Class Actions to adjudicate their claims prior to the determination of the Applicants' Plan. At the time of the making of that decision, however, I was influenced by the fact that the Applicants were concerned that such a process would distract it from the important negotiations it was carrying out with its lenders. Those negotiations are now completed. Further, and more significantly, is the fact at the time of that order the Applicants' Plan had not yet been offered to this Court, nor had the issue of the Meetings Order been addressed. They are now both before the court and, for the reasons noted, I believe a valuation is necessary.

(iii) Whether the Term Loan Lenders should be placed into their own class of unsecured creditors

[56] Here, the Litigation Claimants submit that the unsecured Term Loan Lenders should be placed in their own class as they have no commonality of interest with other unsecured creditors.

[57] The Applicants' Plan proposes that the Term Loan Lenders will receive their pro-rata share of 10% of the New Common Shares in the continuing Just Energy entity. The other unsecured creditors will receive limited consideration, established at $10 million, subject to erosion for amounts to be paid to Convenience Claims valued at no more than $1,500 and the Applicants' legal and financial advisor fees, amongst other deductions. The Litigation Claimants also point to the fact that the Term Loan Lenders are owned in the majority by the Pacific Investment Management Company LLC ("PIMCO"). PIMCO is the Plan Sponsor and DIP Lender.

[58] In this regard, the Litigation Claimants submit that it would be inappropriate to have a single class of unsecured creditors where the Term Loan Lenders stand to profit from a continuing legal relationship with the Applicants whereas the other unsecured creditors do not and share a relatively small, eroding pot. They point to a series of cases that have held that the foundation for commonality of interests is that classes must be structured to prevent injustice and enable members to consult with a view to their common interest.[5]

[59] The Applicants respond by submitting the only reason the Litigation Claimants wish to put the Term Loan Lenders in a separate class is to ensure a "no vote" in the class occupied by the Litigation Claimants.

[60] The Applicants submit that the real basis for classification is a commonality of legal interests the creditors have relative to the debtor. They do not have to have an identity of interests *vis-à-vis* each other in order to be placed into the same class. Creditors with different legal rights can therefore be included within the same class so long as their interests are not so materially dissimilar so that it is impossible for them to consult together with a view to voting in their common interest: *Re SemCanada Crude Company* 2009 ABQB 490 at para. 38; *Re Canadian Airlines Corp.*, 2000 ABQB 442 (CanLII) at para. 31, leave to appeal ref'd 2000 ABCA 149.

[61] I prefer the submissions of the Applicants in this regard. The motivations of creditors to approve or disapprove of the Plan are largely irrelevant to classification and the interests that are primarily to be considered are the interests of the creditor in relation to the debtor company. Two unsecured creditors differently motivated due to their own economic interests and anticipated recoveries does not justify placing them in separate classes. To do so would run contrary to the general reluctance in the caselaw to fragment cases.

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[5] For example, *Woodwards' Ltd.*, re 1993 CanLII 870 (BC SC); *San Francisco Gifts Limited v. Oxford Properties Group Inc.*, 2004 ABCA 386

[62] Last, in coming to this conclusion I am mindful of the Litigation Claimants' submissions that the differences between their interests and the Term Loan Lenders' interests preclude reasonable consultation. I agree with Koehnen J., however, in his decision in *Re Sherritt International Corporation*, 2020 ONSC 5822 (CanLII) at para. 43 wherein he stated, generally, that differences of opinion do not lead to a conclusion that it is impossible to consult. There may be significant differences, but this does not justify fragmentation, particularly where the bulk of the caselaw warns against it.[6]

(iv) The appropriateness of the Applicants' proposal that differential consideration be offered to unsecured creditors in the Plan which would have New Common Shares provided to the Term Loan Lenders and cash consideration being provided to the General Unsecured Creditor Class

[63] In the June 10 Endorsement I requested additional submissions. I have received them and an additional endorsement will soon follow.

CONCLUSION

[64] Both the Applicants and the Litigation Claimants put forth proposals that unduly favoured their own interests. The orders that I have made in the June 10 Endorsement have sought to address these inequities. I have sought to establish a process where the Applicants and the stakeholders are treated as evenly and fairly as the current circumstances permit and in accordance with the policy objectives underlying the CCAA. I have sought, in my orders, to provide a constructive solution with respect to the differences concerning the Applicants and the Litigation Claimants.

DISPOSITION

[65] For the reasons above, I made the orders contained in my June 10, 2022 Endorsement.

[66] Insofar as the Sealing Order is concerned, I note that I was satisfied that the criteria set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 and *Sherman Estate v. Donovan,* 2021 SCC 25 were met as the information the Applicants seek to seal concerns discreet financial details of the Plan which constitutes an important commercial and public interest in the circumstances of this CCAA proceeding. The Plan allows for interested third parties to complete due diligence and submit a competing proposal. Accordingly, court openness poses a serious risk to this important commercial and public interest. I can see no other way to prevent the identified risk other than redacting the sensitive financial information. Last, as a matter of proportionality, the benefits of redacting this information

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[6] For example, *Canadian Airlines*, at para. 22; *Sears*, at para.16

outweigh the negative effects in the circumstances of this case. This Order is subject to further orders of this court.

[67] If necessary, other incidental issues raised at the motion can be dealt with at a case conference.

McEwen, J.

Released: June 21, 2022

SCHEDULE "A"

CITATION: Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 3487
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20220610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED	*Jeremy Dacks, Shawn Irving, Marc Wasserman* and *Michael De Lellis*, for the Applicants, the Just Energy Group
– and –	Allyson Smith, U.S. Counsel to the Just Energy Group
IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSALE ENERGY CORPORATION, JUST ENERGY FINANCE CANDA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON	*Ryan Jacobs, Alan Merskey, Jane Dietrich* and John M. Picone, Canadian Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders *David Botter, Sarah Schultz* and *Abid Quereshi*, US Counsel to LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC, and OC II LVS XIV LP in their capacity as the DIP Lenders *Heather Meredith, James Gage and Natasha Rambaran*, Canadian Counsel to the Agent and the Credit Facility Lenders *Jeff Larry, Max Starnino* and *Danielle Glatt*, Counsel to US Counsel for Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; Counsel to US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*

ENERGY CORP., INTERACTIVE ENERGY GROUP LLC , HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLS, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. and JUST ENERGY (FINANCE) HUNGARY ZRT.	)	*Steven Wittels* and *Susan Russell*, US Counsel for the Respondent Fira Donin and Inna Golovan, in their capacity as proposed class representatives in *Donin et al. v. Just Energy Group Inc. et al.*; US Counsel for Trevor Jordet, in his capacity as proposed class representative in *Jordet v. Just Energy Solutions Inc.*
	)	*David Rosenfeld and James Harnum*, for Haidar Omarali in his capacity as Representative Plaintiff in *Omarali v. Just Energy*
Applicants	)	*Howard Gorman, Ryan Manns and Aaron Stephenson*, for Shell Energy North American (Canada) Inc. and Shell Energy North America (US)
– and –	)	
MORGAN STANLEY CAPITAL GROUP INC.	)	*Mike Weinczok*, for Computershare Trust Company of Canada
Respondents	)	
	)	*Jessica MacKinnon*, for Macquarie Energy LLC and Macquarie Energy Canada Ltd.
	)	*Bevan Brooksbank*, for Chubb Insurance Co of Canada
	)	*Jason Wadden*, for Dundon Advisers LLC
	)	*Pat Corney*, for the Ontario Energy Board
	)	*Virginia Gauthier*, for NextEra Energy Marketing, LLC
	)	*Harvey Chaiton*, for Pariveda Solutions, Inc.
	)	*Alexandra McCawley*, for FortisBC Energy Inc.
	)	*Chris Burr*, for Energy Earth, LLC
	)	

) *Robert Thornton, Rebecca Kennedy, Rachel*
) *Nicholson* and *Puya Fesharaki*, for FTI
) Consulting Canada Inc., as Monitor
)
) *John F. Higgins* and *Emily Nasir*, U.S.
) Counsel to FTI Consulting Canada Inc., as
) Monitor

) **HEARD:** June 7, 2022

ENDORSEMENT

MCEWEN J.

[68] I am providing this brief Endorsement, in advance of Reasons, given the time constraints concerning this matter and particularly the August 2, 2022 meeting date.

[69] With respect to the issues raised at the June 7, 2022 motion, I order as follows:

(i) Subject to the Orders that follow, the uncontested portions of the Support Agreement, the Backstop Commitment Letter, the issuance of the Backstop Commitment Letter and the issuance of the Backstop Commitment Fee Shares, Termination Fee and Charge, sealing order and fees are approved as per the draft order.

(ii) Subject to the Orders that follow, the uncontested portions of the draft Meetings Order shall go.

(iii) There shall be two classes of creditors for the purposes of considering and voting on the Plan: the Secured Creditor Class and the Unsecured Creditor Class.

(iv) For greater clarity, the Unsecured Creditors Class shall include the Term Loan Lenders, the two U.S. class actions, the Omarali class action and the Texas Power Interruption Claimants.

(v) The plaintiff class in each of the U.S. class actions and the Omarali class action will be entitled to one vote at the meeting. The Texas Power Interruption Claimants will be entitled to four votes (one per action).

(vi) Summary proceedings will be conducted on an expedited basis as soon as reasonably possible, in an effort to determine the validity and value of the claims

of the plaintiff class in the U.S. class actions, the Omarali class action, the Texas Power Interruption Claimants and Pariveda Solutions Inc.

(vii) The Monitor shall, forthwith, liaise with the relevant parties to determine a process to conduct the claim determinations and valuations. In this regard, the Monitor shall contact the Honourable Dennis O'Connor, the Claims Officer currently adjudicating claims submitted in the U.S. Class Actions to determine if he is prepared to provide assistance with respect to the valuations.

(viii) I will conduct a further hearing in the very near future to determine the process to be followed in determining and valuing the relevant claims and any matters arising out of the Claim Procedure Order made in this proceeding dated September 15, 2021.

(ix) The parties are further directed to provide me with supplementary submissions in writing – not to exceed 10 pages – within three business days with respect to a secondary issue relating to creditor classification. I have already determined that there shall be one class of unsecured creditors. The supplementary submissions should address the appropriateness of the terms of the proposed differential consideration being offered to unsecured creditors in the plan, which is contested and which I have not yet approved. Specifically, the submissions should address the rationale for providing New Common Shares to the unsecured Term Loan Lenders and cash consideration to the General Unsecured Creditor Class.

McEwen J.

Released: June 10, 2022

CITATION: Just Energy v. Morgan Stanley et. al., 2022 ONSC 3487
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20220610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

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

– and –

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSALE ENERGY CORPORATION, JUST ENERGY FINANCE CANDA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC , HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLS, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING

CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. and JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

ENDORSEMENT

McEwen J.

Released: June 10, 2022

CITATION: Just Energy v. Morgan Stanley et. al., 2022 ONSC 3470
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20220621

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

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

– and –

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSALE ENERGY CORPORATION, JUST ENERGY FINANCE CANDA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC , HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLS, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. and JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

ENDORSEMENT

Released: June 21, 2022 McEwen J.