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Insolvency Law

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FRASER MILNER CASGRAIN LLP

THE “HARDSHIP FUND” IN CCAA PROCEEDINGS

In *Re EarthFirst Canada Inc.*, Justice Romaine had to consider establishing a “hardship fund” that would be used to allow EarthFirst Canada Inc. (“EarthFirst”) to pay pre-filing obligations owing to certain suppliers and contractors operating in a remote community where EarthFirst is developing a wind farm project.

EarthFirst is a publicly traded developer of renewable wind energy in Canada and is operating under the protection of an Initial Order granted under the CCAA. EarthFirst has several projects under development, in particular, a project located at Dokie Ridge in northeast British Columbia. The Dokie Ridge development involved a number of suppliers and contractors whose viability was considerably dependent on this development. Some suppliers and creditors faced immediate financial difficulties, including the inability to fund payroll and purchase critical supplies to continue operations. EarthFirst noted that while a CCAA stay of proceedings affected many creditors, the proposed recipients of the hardship fund in this isolated community are particularly vulnerable and at risk. If some relief was not readily available to these suppliers and contractors, these local operations potentially faced bankruptcy.

EarthFirst proposed the establishment of a fund of \$1,500,000.00 to be dispersed in payment of some of its pre-filing claims of suppliers and contractors who were in significant financial difficulty. The proposal was supported by the Monitor.

Justice Romaine was satisfied that the payment of these case specific pre-filing debts in a limited amount was fair and reasonable in the circumstances and in accordance with the purpose and objectives of the CCAA. In her decision, Justice Romaine considered the Monitor’s observation that the payments are likely necessary in order to preserve the opportunity to complete the Dokie Project and the option of continuing its development for the benefit of all creditors.

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