SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF TERREBONNE

No.: 700-11-022385-241

DATE: November 17, 2025

BY THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

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

THE LION ELECTRIC COMPANY

-and-

LION ELECTRIC FINANCE CANADA INC.

-and-

LION ELECTRIC VEHICLE FINANCE CANADA INC.

-and-

LION ELECTRIC HOLDING USA INC.

-and-

NORTHERN GENESIS ACQUISITION CORP.

-and-

THE LION ELECTRIC CO. USA INC.

-and-

LION ELECTRIC MANUFACTURING USA INC.

-and-

LION ELECTRIC FINANCE USA INC.

Debtors/Applicants

-and-

JP1736

DELOITTE RESTRUCTURING INC.

Monitor

-and-

ADAM B. MULHALL
-and-
RAYMOND CHABOT GRANT THORNTON S.E.N.C.R.L.
-and-
FINANCIÈRE BANQUE NATIONALE INC.
B. RILEY SECURITIES, INC.
BARCLAYS CAPITAL CANADA INC.
BMO NESBITT BURNS INC.
VALEURS MOBILIÈRES DESJARDINS INC.
ROTH CANADA INC.
VALEURS MOBILIÈRES BANQUE LAURENTIENNE INC.
RAYMOND JAMES LTÉE
-and-
The NEW YORK PLAINTIFF[1]
-and-
The DELAWARE PLAINTIFFS[2]

Objecting Parties

-and-

MARC BÉDARD et al.

Impleaded Parties/Respondents

JUDGMENT
ON
APPLICATION FOR THE ISSUANCE OF AN APPROVAL AND REVERSE VESTING ORDER (SEQ. 55) AND APPROVAL OF PARAGRAPHS 61 AND 62 OF THE RECTIFIED APPROVAL AND REVERSE VESTING ORDER DATED JUNE 6, 2025
(Sections 9, 10, 11, 11.02(2), 11.03 and 36 of the C*ompanies' Creditors Arrangement Act*)[3]

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[1] As defined hereafter.

[2] *Ibid*.

[3] *Les juges de la Cour supérieure doivent soumettre leurs projets de jugement au Service de traduction, mais en raison de contraintes techniques et opérationnelles, une traduction du présent jugement ne peut être jointe immédiatement et sans délai conformément à l'article 10 de la Charte de la langue française. La traduction a été demandée le 14 novembre 2025. Vu le délai annoncé pour sa livraison et considérant les enjeux d'affaires importants propres à la présente affaire soulevant des enjeux d'insolvabilité, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite entraînerait un retard préjudiciable à l'intérêt public tout en causant un inconvénient sérieux aux parties au présent litige qui ont droit à la finalité. La Traduction suivra.*

OVERVIEW

[1] Pursuant to an agreement between the parties, the *Approval and Reverse Vesting Order* rendered by this Court on May 22, 2025,[4] included at paragraphs 61 and 62 directors and officers releases (the "**D&O Release**") which contained a carve-out of the "Class Action Claims"[5] (the "**Carve-out**"), involving:

- Adam B. Mulhall (the "**Mulhall Class Action Plaintiff**" or "**Mr. Mulhall**") in his capacity as a former shareholder of Lion Electric as plaintiff in the *Mulhall v. Bédard et al.* class action bearing court no. 500-06-001366-257[6] (the "**Mulhall Class Action**");
- Alex Bouchard-A, as lead plaintiff (the "**New York Plaintiff**") in the securities class action *Jaar v. Northern Genesis Acquisition Corp. et al.*, case number 24-cv-02155, in the U.S. District Court, Southern District of New York (the "**New York Action**"); and
- Ahuva Shachter, Michael Smith, Douglas Neujahr, and Denish Bhavsar (the "**Delaware Plaintiffs**" and, collectively with the New York Plaintiff, the "**U.S. Plaintiffs**") who have asserted claims in the action captioned *Shachter et al. v. Robertson et al.*, in case C.A. No. 2023-1112-MTZ in the Court of Chancery of the State of Delaware (the "**Delaware Action**", and, together with the New York Action, the "**U.S. Actions**" or "**U.S. Claims**")[7].

[2] Prior to the presentation of the Debtors' *Application for the issuance of an approval and reverse vesting order* dated May 15, 2025 (the "**RVO Application**"), Mr. Mulhall and the Mulhall Class Action Co-defendants[8] had filed Notices of objection contesting the Lion Group's attempt to obtain the D&O Release in favour of all their present and former directors and officers, which would be opposable to them (the "**Proposed D&O Release**").

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[4] Rectified on June 6, 2025 (2025 QCCS 1806) (the "**RVO**").

[5] "**Class Action Claims**" is defined at paragraph 61 of the RVO.

[6] On May 5, 2025, the Court issued the following Order (2025 QCCS 1883):

[8] **ORDERS** that the Stay of Proceedings ordered by this Court in the context of the CCAA Proceedings in respect of the Debtors' Directors and Officers is temporarily lifted, for the sole purpose of allowing, *nunc pro tunc,* the Petitioner, Adam B. Mulhall, to file the Authorization Application, Exhibit **R-4**, as of February 21, 2025, against, *inter alia*, the Directors and Officers named as respondents in the Authorization Application, and further **ORDERS** that the Stay of Proceedings shall thereafter be immediately reinstated following the *nunc pro tunc* relief granted herein, such that any and all actions and Proceedings (as defined in the Initial Order) as against the Directors and Officers, including in relation to the Authorization Application, shall not continue and shall remain subject to the Stay of Proceedings so long as such Stay of Proceedings remains in effect*;*

[7] The Mulhall Class Action Plaintiff together with the U.S. Plaintiffs are referred to collectively as the "**Class Action Plaintiffs**".

[8] As defined hereafter.

[3] Also voicing their objections to the Proposed D&O Release were the following defendants to the Mulhall Class Action, other than the 14 co-defendants being former and present directors and officers[9] that stood to benefit from the Proposed D&O Release:

- National Bank Financial Inc., B. Riley Securities Inc., Barclays Capital Canada Inc., BMO Nesbitt Burns Inc., Desjardins Securities Inc., Laurentian Bank Securities Inc., Raymond James Ltd. and Roth Canada Inc., in their capacity as former underwriters of Lion Electric (collectively, the "**Underwriters**"); and

- Raymond Chabot Grant Thornton, S.E.N.C.R.L., in its capacity as former auditor of Lion Electric (the "**Auditors**", together with the Underwriters, the "**Mulhall Class Action Co-defendants**").

[4] At that time, as a result of the objections raised by Mr. Mulhall, the Mulhall Class Action Co-defendants[10] and the U.S. Plaintiffs (collectively the "**Objections**") and in order to avoid any delay in the Court's approval of the Transactions contemplated in the RVO Application and in the closing thereof, the Lion Group[11] agreed to postpone the dispute on the Objections. It was resolved to include the following *caveat* with respect to the Proposed D&O Release to be included as part of the RVO to be rendered by the Court (the "**D&O Release *Caveat***"):

> [61] […] the determination of whether the foregoing release or any other release should be ordered in respect of the Class Action Claims will be adjudicated by this Court at a subsequent hearing […].
>
> [62] such claim shall be a released Claim (except for the Class Action Claims, until the court's final decision as to whether or not they should be released, pursuant to paragraph [61] of this Order) […].

[5] The Lion Group is now seeking as part of a re-rectified RVO an order from this Court dismissing the Objections[12] of the Class Action Plaintiffs together with the Underwriters and the Auditors (collectively the "**Class Action Parties**") while confirming the Proposed D&O Release requested initially without the Carve-out and the D&O Release Caveat (the "**Full D&O Release**"). In other words, henceforth, the Full D&O Release would also be opposable to the Class Action Parties and protect the Mulhall D&Os among others.

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[9] Marc Bédard, Richard Coulombe, Yannick Poulin, Nicolas Brunet, Brian Pern, Pierre Larochelle, Latasha Akoma, Sheila Colleen Bair, Ann L. Payne, Dane L. Parker, Pierre-Olivier Perras, Michel Ringuet, Lorenzo Roccia and Pierre Wilkie, are all current or former officers and directors of any or all of the Debtors (the "**Mulhall D&Os**").

[10] Henceforth, the Mulhall Class Action Plaintiff together with the Mulhall Class Action Co-defendants shall be referred to collectively as the "**Mulhall Action Parties**".

[11] The Lion Group refers to The Lion Electric Company ("**Lion Electric**"), Lion Electric Finance Canada Inc., Lion Electric Vehicle Finance Canada Inc., Lion Electric Holding USA Inc., Northern Genesis Acquisition Corp., The Lion Electric Co. USA Inc., Lion Electric Manufacturing USA Inc. and Lion Electric Finance USA Inc. (collectively, the "**Lion Group**" or the "**Applicants**")

[12] As defined hereafter.

[6] Pursuant to paragraph 1(c) of the RVO Application, the Applicants announced as follows the *Releases* they were seeking to form part of the RVO:

> 1(c) Releases. The release (the "**Releases**") of all present and future claims and liabilities against the Lion Group's present and former directors and officers (the "**D&Os**") for which they may be liable for any act, omission or representations in their capacity as D&Os of the Applicants, with the exception of claims for fraud or willful misconduct, claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA and claims that are covered by any insurance policy of the Lion Group (only to the extent of any such available insurance);

[7] However, notwithstanding the foregoing announcement, the proposed draft Approval and Reverse Vesting Order submitted to the Court's appreciation by the Applicants contained a far broader wording aiming to cover, to all intents and purposes, everything under the sun and more.

[8] Prior to the RVO having been issued by this Court, the overly broad proposed wording sought by the Lion Group was somewhat curtailed on May 20, 2025, with the Objections filed by the Class Action Parties who opposed the Lion Group's request to include a third-party release of all D&Os upon the closing of the Transactions[13] contemplated in the Subscription Agreement[14] that was to be approved by the Court with the proposed draft RVO.

[9] The grounds of the Objections are essentially the following:

> (a) the Full D&O Release is not rationally connected to the purpose of the Lion Group's restructuring;
>
> (b) the Full D&O Release is not fair or reasonable, and is overly broad;
>
> (c) the restructuring can and has succeeded without the Full D&O Release;
>
> (d) the Full D&O Release does not benefit any of the Debtors or their creditors, generally;
>
> (e) the Full D&O Release is contrary, *inter alia*, to sections 5.1(2) and (3) *CCAA*;
>
> (f) the creditors or other interested parties do not have sufficient knowledge as to the existence, nature, and effect of the Full D&O Release.

[10] Counsel for the Applicants argued that all present and former D&Os—and even deemed D&Os—should be released mainly on the basis of:

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[13] As defined hereafter.
[14] *Ibid*.

- their continued contribution and support to the Applicants' restructuring efforts, both prior to and/or after the commencement of the *CCAA* proceedings;

- the Full D&O Release sought is in line with other releases that are routinely granted in numerous *CCAA* proceedings, and have become common place;

- the Monitor's recommendation that the relief sought in the RVO Application (including the Full D&O Release) should be recognized and accepted by the Court;

- The Class Action Parties being to all intents and purposes, equity holders (as opposed to creditors) do not have the legal standing to oppose the Full D&O Release; and

- The Class Action Parties cannot rely on the provisions of section 5.1(2) *CCAA* that only apply to creditors (as opposed to equity holders) for post-filing claims against the directors only.

[11] The principal issues to be determined by this Court, as more fully addressed hereafter, are as follows:

(a) Is it fair and reasonable to grant the Full D&O Release sought by the Applicants without the Carve-out despite the Objections of the Class Action Parties?

(b) Did the Applicants meet the *Nexus Test* involving the Lydian Factors?

(c) Should the Class Action Parties[15]—representing shareholders of Lion Electric be considered and treated as equity holders - as opposed to creditors of the Debtors—thus precluding them from asserting their Objections to the Full D&O Release? Can they validly rely upon the provisions of sections 5.1(2) and (3) *CCAA* to maintain the Carve-out?

[12] For the reasons that follow, the Court is of the view that the Objections of Mr. Mulhall, the Mulhall Action Co-defendants and of the U.S. Plaintiffs should prevail and that the Carve-out found at paragraph 61 of the RVO should remain after removing the D&O Release *Caveat* in paragraphs 61 and 62 of the RVO.

1. <u>THE CONTEXT</u>

1.1 **The Lion Group's restructuring**

[13] In 2023 and 2024, the Lion Group conducted a formal strategic review process to explore, review and evaluate a broad range of strategic alternatives focused on ensuring its financial liquidity, which strategic alternatives included possible debt or equity financing, asset sales, workforce reductions or other restructuring measures (the "**Pre-Filing Strategic Process**").

[15] Representing shareholders of Lion Electric save for the Underwriters and the Auditors.

[14] As part of the Pre-Filing Strategic Process, the Lion Group implemented a series of cost reduction measures, as well as liquidity enhancement measures, while it sought to identify opportunities that would allow it to raise financing in order to continue to meet its ongoing obligations and to operate in the normal course.

[15] In this context, on July 7, 2024, the Lion Group engaged National Bank Financial ("**NBF**") as its financial advisor in an effort to pursue, on a confidential basis, a solicitation process (the "**NBF Pre-Filing Solicitation Process**") with a view to securing one or more transaction(s) that would allow the strengthening of the Lion Group's financial position. Although the NBF Pre-filing Solicitation Process raised interest, no satisfactory offer was received by the Lion Group in the context thereof.

[16] On December 17, 2024, as the Lion Group's principal loan obligations came to maturity, the Lion Group determined that it would be in its best interest and that of its creditors and other stakeholders to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "***CCAA***" or the "**Act**") with a view to pursuing a public sale and investment solicitation process (the "**SISP**") with the assistance, once again, of NBF, but this time under the supervision of the Superior Court of Québec (Commercial Division) and its appointed monitor, Deloitte Restructuring Inc. (the "**Monitor**").

[17] At that time, the Lion Group reported outstanding indebtedness (as at September 30, 2024) in the amount of US$499,765,196, on a consolidated basis, with a secured indebtedness of approximately US$216,076,804.17.

[18] In order to fund the costs associated with the CCAA Proceedings and the SISP, the Lion Group entered into an Interim Financing Term Sheet (as amended, the "**DIP Term Sheet**") with the National Bank of Canada, Fédération des Caisses Desjardins du Québec and Bank of Montreal (the "**Interim Lenders**") pursuant to which the Lion Group was given access to interim financing of up to US$17,000,000 (the "**Interim Financing**"). The DIP Term Sheet and a corresponding super-priority DIP charge in an amount of US$20,400,000 were approved by the Court as part of the CCAA Proceedings.

[19] Following the January 7, 2025, launch of the SISP, after multiple challenges encountered during the SISP, including on April 30, 2025, when the Québec government announced that it would ultimately *not* be providing any further funding or investment and that it would not be in a position to provide any certainty with respect to the continuity of the PETS[16] subsidies[17], the Lion Group, against all odds, was finally able to conclude a Subscription Agreement (the "**Subscription Agreement**") which, if approved by the Court, was to allow the preservation of a portion of the Lion Group's business operations as a going concern, and, ultimately, the preservation of certain jobs in Québec.

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[16] PETS: Programme d'électrification du transport scolaire.

[17] The transaction involving the Québec government financial support that was to be submitted to the Court's approval had to be abandoned.

[20] On May 22, 2025, the Court issued the RVO approving the Subscription Agreement and the transactions contemplated thereunder (the "**Transactions**") which was rectified on June 6, 2025, to enable its recognition in concurrent proceedings in the United States of America.

[21] At the hearing on the RVO Application, the Court was informed that the Interim Lenders, which are the Applicants' principal secured creditors, were consulted throughout the SISP and supported the Court's approval of the Subscription Agreement and the implementation of the Transactions.

[22] All in all, the restructuring process turned out to be very disappointing with the unexpected withdrawal of the financial support of the Québec government on April 30, 2025, which would have ensured a far greater portion of the Lion Group's business operations continuing as a going concern. Ultimately, the realization proceeds were insufficient to even cover in full the Interim Financing; therefore, all amounts that were due to creditors ranking behind the Interim Lenders, including the beneficiaries of the KERP Charge, the Financial Advisor Charge and the Directors' and Officers' Indemnification and Charge could not be satisfied[18].

[23] Needless to say, under that scenario, the secured creditors were to lose significantly, with the unsecured creditors not expecting any distribution whatsoever.

[24] Other than the Objections of the Class Action Parties, no one else opposed the Court issuing the RVO with the Proposed D&O Release, hence the addition of the Carve-out.

1.2 **The Mulhall Class Action**

[25] As previously mentioned, the Mulhall Class Action involves 14 defending Mulhall D&Os[19] as well as the Underwriters and the Auditors. None of the Debtors are parties of the Mulhall Class Action.

[26] The Court, having partially lifted the Stay of proceedings[20] to enable formal filing of the Application to authorize the Mulhall Class Action (the "**Mulhall Application**"), it is not up to this Court to analyze and consider its merits to determine whether the Objections filed by the Mulhall Action Parties are serious for the purposes hereof.

[27] On a *prima facie* basis, the Mulhall Application raises several serious and reasonably well-supported allegations of the Mulhall D&Os' misconduct, whether rooted

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[18] The Fifth Report of the Monitor dated May 15, 2025, par. 62.

[19] The evidence adduced at the hearing did not enable the Court to identify which of the 14 defendants were the present directors or officers of the Lion Group.

[20] Paragraph 20 of the Second Amended and Restated Initial Order of February 14, 2025 ("**ARIO**") (2025 QCCS 585); also *supra*, note 5.

in gross negligence and/or fraud[21]. Specifically, by way of firsthand statements from former Lion Electric employees, all of whom are apparently corroborated, Mr. Mulhall essentially alleged that:

- The Mulhall D&Os knew or deliberately avoided knowing that Lion Electric's production capacity was unrealistic, which translated into unachievable projections[22];
- The Mulhall D&Os knew or deliberately avoided knowing that Lion Electric's sale pipeline was significantly artificially inflated[23];
- The Mulhall D&Os knew or deliberately avoided knowing that fake customers were advertised to the investing public[24];
- The Mulhall D&Os knew or deliberately avoided knowing that Lion Electric's fleet was plagued with such extensive issues that key customers either ceased doing business with the Company or decreased their orders[25].

[28] Acting on behalf of the Mulhall Class Action proposed group, Mr. Mulhall is seeking damages from the Mulhall D&Os as well as from the Underwriters and Auditors on a solidary basis.

[29] Should the Court confirm the Full D&O Release sought by the Applicants, Mr. Mulhall would no longer be able to proceed against the Mulhall D&Os, leaving his recourse against the Underwriters and the Auditors.

[30] Under such a turn of events, the Underwriters and Auditors would be precluded from exercising any recursory or subrogatory recourses against any of the Mulhall D&Os once released by this Court. This explains why the Underwriters and Auditors are contesting the Court granting the Full D&O Release, which would result in their being the sole defendants to the Mulhall Class Action without any means to exercise recursory or subrogatory recourses against any of the Mulhall D&Os, if necessary.

1.3 **The New York Action and the New York Plaintiff**

[31] The New York Plaintiff is the lead plaintiff in the New York Action, asserting claims against the following defendants: Northern Genesis Acquisition Corp. ("**Northern Genesis**"), Ian Robertson, Paul Dalglish, Michael Hoffman, Ken Manget, Brad Sparkes, Robert Schaefer, (legacy) Lion Electric Company, Marc Bédard (former and current CEO), and Nicolas Brunet (former CFO)[26] (collectively the "**New York Defendants**").

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[21] Mulhall Application, par. 73 to 111.
[22] *Ibid.*, par. 92-94.
[23] *Ibid.*, par. 99-105.
[24] *Ibid.*, par. 110.
[25] *Ibid.*, par. 73-90.
[26] **US-1**.

[32] The New York Action alleges that, based in material part on grossly inflated forecasts for production and sales, Lion Electric secured a business combination with Applicant, Northern Genesis, a "blank check company"—i.e., a special purpose vehicle used essentially to effect capital stock exchanges and allow securities of Lion Electric to be publicly traded.

[33] The New York Action alleges that, as Lion Electric failed to meet false sales forecasts on which investors based their decision to support the business combination and to exchange their shares in Northern Genesis into shares of Lion Electric pursuant to the terms of the applicable business combination agreement, the price of Lion Electric's stock fell far below the prices that Northern Genesis shareholders had paid before the transaction and the value of the Lion Electric stock that the transaction used for its exchange ratio, creating the loss alleged for those shareholders.

[34] The New York Action is based on, and alleges, *inter alia*, violations of the *Securities Exchange Act of 1934*, a federal law of the United States of America which, among other things, established the Securities and Exchange Commission and regulates the secondary market for securities[27].

[35] Incidentally, this Court had already dealt with and rendered orders involving the *Securities Exchange Act of 1934* in the present instance, as appears namely from paragraphs 74 and 75 of the *Amended and Restated Initial Order* rendered on February 14, 2025 (the "**ARIO**")[28]:

> [74] **ORDERS** that any decision by the Debtors to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, state, provincial or other law respecting securities or capital markets in Canada or in the United States, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Québec) and comparable statutes enacted by other provinces of Canada, *Securities Act 1933* (United States) and the *Securities Exchange Act of 1934* (United States) and comparable statutes enacted by individual states of the United States, the rules and regulations of the *Autorité des marchés financiers* (Québec) and other Canadian securities regulatory authorities, and the U.S. Securities and Exchange Commission, the TSX Company Manual, the NYSE Listed Company Manual and any other rules, regulations and policies of the Toronto Stock Exchange (TSX) and the New York Stock Exchange (NYSE) (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Debtors failing to make any Securities Filings required by the Securities Provisions.

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[27] **US-2**.
[28] 2025 QCCS 585.

> [75] **ORDERS** that none of the Directors, Officers, employees, and other representatives of the Debtors nor the Monitory and its directors, officers, employees and representatives shall have any personal liability for any failure by the Debtors to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have against the Directors, Officers, employees and other representatives of the Debtors of a nature described in section 11.1 (2) of the CCAA as a consequence of such failure by the Debtors. For greater certainty, nothing in this order is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the "**Regulators**") in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law. Further, nothing in this Order shall constitute or be construed as an admission by the Regulators that the Court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Provisions.

[36] On August 28, 2025, by letter from Ms. Leah Heifetz-Li of the Rosen Law Firm, the New York Plaintiff, through his American attorneys, advised the Applicants, the Monitor, and the Service List (as defined in the ARIO) of his objection to the Proposed D&O Release[29]. A formal Notice of Objection was filed by Canadian counsel on September 3, 2025, which was modified on September 9, 2025.

1.4 **The Delaware Action and the Delaware Plaintiffs**

[37] The Delaware Action reveals that the Delaware Plaintiffs are former public stockholders of Northern Genesis, which is a Delaware corporation.

[38] As previously mentioned, the Delaware Action also alleges that Northern Genesis was a publicly traded special purpose acquisition company.

[39] The Delaware Action mentions that pursuant to an investment agreement, the Delaware Plaintiffs had a right to redeem their Northern Genesis shares and receive a refund of their original investment (US$10 per share) if Northern Genesis were to enter into a merger agreement.

[40] The Delaware Action alleges that certain former directors of Northern Genesis were financially incentivized to push a merger through even if it was a bad deal for Northern Genesis' public stockholders. These directors, along with the "sponsor" of Northern Genesis, invested over US$8.8 million in Northern Genesis in exchange for "Private Placement Warrants" and "Founders Shares".

[41] These Founders Shares, unlike the public shares, did not have any redemption rights and thus would be worth nothing if a merger did not happen.

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[29] **US-3**.

[42] Therefore, to preserve the value of their Founders Shares and Private Placement Warrants, these former directors of Northern Genesis worked hard to convince the corporation's public stockholders to support the eventual merger and to forego their redemption rights by publishing a proxy that made material misrepresentations and omitted key information that was necessary for Northern Genesis' public stockholders to make an informed decision on the merger.

[43] In reliance on the alleged misleading proxy, Northern Genesis stockholders voted in favour of the merger.

[44] On May 6, 2021, Northern Genesis completed a business combination with Lion Electric, after which Northern Genesis became a wholly owned subsidiary of Lion Electric.

[45] Following this business combination, the Delaware Plaintiffs' shares were converted into Lion Electric shares and the Delaware Plaintiffs are now Lion Electric stockholders.

[46] As a result, virtually all, including the Delaware Plaintiffs, were holding a stock worth US$1.37 per share as of March 8, 2024 (the last trading day before the Delaware Action was filed), instead of having redeemed and getting back their original US$10 investment. In short, Northern Genesis stockholders that continued to hold their Northern Genesis (and now Lion Electric) shares claim to have suffered massive damages.

[47] The Delaware Plaintiffs asserted claims against certain former directors of Northern Genesis as well as Lion Electric and Messrs. Marc Bédard and Nicolas Brunet (collectively the "**Delaware Defendants**," and together with the New York Defendants, the "**U.S. Defendants**") in the Delaware Action pending in the United States before the Court of Chancery of the State of Delaware.

[48] In the Delaware Action, the Delaware Plaintiffs allege that the Northern Genesis directors breached their fiduciary duties by making materially false statements and misleading statements that the Delaware Plaintiffs relied on in determining whether to exchange their Northern Genesis shares for Lion Electric shares[30].

[49] The Lion Electric Defendants,[31] who were responsible for preparing and providing the proxy Lion Electric projections, had legal and contractual obligations to ensure that the proxy did not "*include any untrue statement of a material fact or omit to state any material fact*," as set forth in Article 7.02 of the Merger Agreement[32].

[50] In the end, the proxy relied upon by the Delaware Plaintiffs was false and misleading and contained material omissions about Lion Electric.

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[30] **US-4**.
[31] Lion Electric, Marc Bédard (former and current CEO) and Nicolas Brunet (former CFO).
[32] Verified Class Action Complaint (**S-4**), par. 79.

[51] On August 27, 2025, by letter from Ms. Christine M. Mackintosh of the law firm Grant & Eisenhofer P. A., the Delaware Plaintiffs advised the Applicants, the Monitor, and the Service List of their objection to the Proposed D&O Release. A formal Notice of Objection was filed by Canadian counsel on September 3, 2025, and subsequently modified on September 9, 2025.

2. QUESTIONS AT ISSUE

[52] The issues to be determined by this Court, as addressed hereafter, are as follows:

- Should this Court grant the Full D&O Release in favour of the Released Parties?
- Did the Applicants meet the *Nexus Test*[33] with the use of the *Lydian Factors*[34]?
- Being a component of the RVO, does the Full D&O Release meet the requirements of section 36 *CCAA*?
- Are the Class Action Parties acting as holders of equity claims thus precluding them from objecting to the Full D&O Release sought by the Applicants?
- Is the Full D&O Release subject to the exception of section 5.1(2) *CCAA*?
- What about the Insured Claim exception?

3. ANALYSIS

3.1 The Applicable Principles

[53] It is important to bear in mind that even though the RVO was already issued and the Transactions contemplated therein completed, this case is nevertheless linked to the Debtors' RVO Application.

[54] Section 36 *CCAA* provides that a debtor company may not sell or otherwise dispose of its assets outside the ordinary course of business unless authorized to do so by a court. Section 36(3) *CCAA* sets out a non-exhaustive list of the factors the Court may consider in determining whether to approve a sale, including:

> 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;

[33] As defined hereafter.
[34] As defined hereafter.

> 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;
>
> d) the extent to which the creditors were consulted;
>
> 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 their market value.

[55] On May 22, 2025, save and except for the opposition of the Attorney General of Canada regarding the intentions of the Debtors to incorporate in the proposed RVO provisions dealing with the WEPPA[35] as well as the Objections related to the proposed D&O Release, the Court was satisfied that the criteria of section 36 *CCAA* had been met and, consequently, approved the Transactions—with the Carve-out (and the *Caveat*) and after carving out as well any reference to the WEPPA—that were successfully completed shortly thereafter on May 23, 2025[36].

[56] In assessing the effects of the proposed Transactions on stakeholders, the Court had to "l*ook at the creditors as a whole* (i.e., generally) *and to the objecting creditor*s *(specifically) and see if rights were compromised in an attempt to balance interests (and have the pain of the compromise equitably shared) as opposed to a confiscation of rights*."[37]

[57] The general position voiced by the Class Action Parties was that it was not equitable for restructuring proceedings to change the relationship among creditors in ways that do not directly involve the Debtors. The *CCAA* is intended to facilitate compromises between insolvent companies and their creditors; it is not intended to alter the relationship among the creditors themselves[38].

[58] The Court shares that view.

[59] Although the Court found that the RVO with the Carve-out provision met at the time the requirements of s. 36 *CCAA*, the Court nevertheless finds that, for the reasons that follow, the RVO with the Full D&O Release fails to respect the provisions of s. 36(3)(e):

> 36(3) In deciding whether to grant the authorization, the court is to consider, among other things,

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[35] *Wage Earner Protection Program Act*, S.C. 2005, c. 47 ("**WEPPA**").
[36] As evidenced with the Certificate of the Monitor filed on May 23, 2025 (Seq. 59).
[37] *Skeena Cellulose Inc. v. Clear Creek Contracting Ltd. (Skeena)*, 2003 BCCA 344, par. 59.
[38] *Stelco Inc., Re (Stelco)*, 2005 CanLII 41379 (ON SC), par. 7.

> […]
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; […]

[60] Of greater importance, while third-party releases have become common in *CCAA* sale transactions[39], they are not and should not be granted as of right. As Immer J. cautioned in *Xebec*, "*it is not sufficient to simply acknowledge that it is common practice in CCAA proceedings to grant releases. A more principled approach is required*"[40].

[61] The Court also shares that view.

[62] The Court must scrutinize the proposed Full D&O Release in light of the criteria set out recently in *Blackrock*[41] (drawing from the Ontario decisions in *Lydian*[42] and *Harte Golde*[43]). The goal is to determine, at a minimum, whether the third-party releases are "*reasonably connected to the proposed restructuring*.[44]"

[63] Relying on *Blackrock*, the Court is to consider the following Lydian Factors:

> a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
>
> b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
>
> c) whether the plan could succeed without the releases;
>
> d) whether the parties being released were contributing to the plan; and
>
> e) whether the release benefited the Applicants as well as the creditors generally.[45]
>
> [the "**Lydian Factors**"]

[64] Earlier in *Metcalfe*[46], the Court of Appeal of Ontario presented criterion d) under a somewhat more precise light, namely that *the parties* [the D&Os] *who are to have claims against them released are contributing in a tangible and realistic way to the Plan*:

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[39] *Re Nelson Education Ltd.*, 2015 ONSC 5557, par. 48-49; *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.) (Former XBC)*, 2023 QCCS 4975, par. 88.
[40] *FormerXBC*, *supra*, note 39, par. 67.
[41] *Arrangement relatif à Blackrock Metals Inc. (Blackrock)*, 2022 QCCS 2828, par. 130.
[42] *Lydian International Limited (Re) (Lydian)*, 2020 ONSC 4006.
[43] *Harte Gold Corp. (Re) (Harte Gold)*, 2022 ONSC 653.
[44] *Metcalfe & Mansfield Alternative Investments II Corp., (Re) (Metcalfe)*, 2008 ONCA 587, par. 43; *Société industrielle de décolletage et d'outillage (SIDO) ltée (Arrangement relatif à)*, 2010 QCCA 403, par. 37, *Lydian, supra,* note 42*,* par. 53 ; *Delta 9 Cannabis Inc. (Re)*, (*Delta*), 2025 ABKB 52.
[45] *Blackrock, supra,* note 41*,* par. 130.
[46] *Metcalfe, supra,* note 44, par. 71.

> [71] In the course of his reasons, the application judge made the following findings, all of which are amply supported on the record: (a) The parties to be released are necessary and essential to the restructuring of the debtor; (b) the claims to be released are rationally related to the purpose of the Plan and necessary for it; (c) the Plan cannot succeed without the releases; (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan; and (e) the Plan will benefit not only the debtor companies but creditor Noteholders generally.
>
> [Emphasis added]

[65] Therefore, third-party releases *must be justified as part of the compromise or arrangement between the debtors and its creditors*:

> [70] The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan. **This nexus exists here**, in my view.[47]
>
> [Emphasis added]

[66] The exercise of applying the Lydian Factors to a given situation is known as the *Nexus Test*[48]*,* where the main objective is to determine the connexity between the third-party releases sought and the outcome of the *CCAA* compromise or arrangement. With the passing years, the discretion was broadened to cover "liquidating CCAAs[49]".

[67] The determination of the level of connexity between a proposed release and the outcome of the arrangement or compromise is even more relevant when the release aims to quash litigation between third parties:

> Having said that, CCAA proceedings are often not the correct venue to settle outstanding litigation. Where third-party releases have the effect of quashing litigation, practitioners must consider whether the releases being sought are essential to a debtor's restructuring, the merits of the potential claims that are being released and the position of affected parties.[50]

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[47] *Metcalfe, supra,* note 44, par. 70.
[48] L. Morin et A. Mojtahedi, Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act, 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544, page 4/40; *Metcalfe*, *supra*, note 44, par. 70.
[49] *9354-9186 Québec inc. v. Callidus Capital Corp.* (*Callidus*), 2020 SCC 10.
[50] C. J. Hunter et V. A. Allen, Please Release Me: The Evolution of Releases in Restructuring Proceedings, 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13553, page 14/32.

[68] All the Lydian Factors need not to be met in any given case, as they are not cumulative. Some factors may assume greater weight in one case than another.[51]

[69] The Court believes that third-party releases should be granted in exchange for a meaningful contribution to the restructuring process of the debtor.[52]

[70] Although *Metcalfe* was dealing with a plan of arrangement incorporating third-party releases—therefore hinged on the vote of the creditors—evidence of a meaningful contribution is even more important in the context of RVOs, where creditors are not called upon to vote on a plan of arrangement, as they can only voice their objections at the hearing on an application to issue an RVO.

[71] Be that as it may, in all circumstances, a debtor seeking third-party releases bears the burden of establishing that said third-party releases meet the *Nexus Test* and, more particularly, that they are justified in the context of the restructuring.[53]

[72] In the presence of the Objections filed by the Class Action Parties, the Court must also consider the quality of the claims they wish to maintain with the Carve-out:

> [29] In this case, I would add an additional factor to these factors, the quality of the claims the Objectors wish to maintain. While this may already be implicit in some of the considerations set out in *Lydian*, it warrants separate identification on the facts of the case before me.[54]

[73] While the Court does not have to make an exhaustive assessment of the merits of the Class Action Plaintiffs' claims against the defending D&Os in the three Class Actions, said claims must nevertheless appear serious and founded on a *prima facie* basis. Therefore, the more serious and well founded the Class Action Parties' claims appear on a *prima facie* basis, the more the Court will be inclined to carve out those claims from the Full D&O Release. Conversely, if those claims appear fragile or speculative at best, the probabilities that the Court should approve the Full D&O Release without the Carve-out will increase:

> [30] The Objectors argue vigorously that this is not the stage to assess the strength of any potential action against proposed defendants or the size of damage claims available against them. I agree. At the same time, however, the court should not

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[51] *Re Green Relief Inc. (Green Relief)*, 2020 ONSC 6837, par. 28.

[52] *Metcalfe, supra,* note 44, par. 32:

[32] According to Mr. Crawford's affidavit, the releases are part of the Plan "because certain key participants, whose participation is vital to the restructuring, have made comprehensive releases a condition for their participation".

[53] *Royal Bank of Canada v. Chesswood Group Ltd. et al.* (*Chesswood*), 2025 ONSC 1577, par. 57; *Re: Canwest Global Communications Corp.* (*Canwest*), 2010 ONSC 4209 (CanLII), par. 28-29; *Blackrock, supra,* note 38, par. 129.

[54] *Green Relief, supra,* note 51, par. 29; *Delta, supra,* note 44, par. 31; L. Morin et A. Mojtahedi, Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act, 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544, page 4/40.

> entirely ignore the nature of the proposed claim. If the court is being asked to release claims, it is helpful to know what is being released. The court's impression of the nature of the claim is a relevant factor to consider when determining whether releases should be granted. I do not think it would be advisable to lay down a precise definition of the quality of claim required to determine whether releases should or should not be granted nor would I described [sic] this as a threshold test to grant or deny the release. It is more of a directional or qualitative factor to consider in deciding whether to grant a release rather than a precise legal test. The stronger a claim appears, the less likely a court may be to grant a release. The thinner and more speculative a claim, the more likely a court may be to grant a release.[55]
>
> [Emphasis added]

[74] All in all, third-party releases are the exception, not the rule. Where not necessary to the restructuring, they should not be approved *blindly and systematically*[56]*,* especially on the basis that in the past, several judges granted third-party releases in similar CCAA proceedings.[57]

[75] With all due respect, referring to or relying on previous precedents is not sufficient nor necessarily binding on the application judge.

[76] Each application to issue third-party releases—especially in the context of RVOs—must be assessed and considered in light of the relevant facts specific to the case at hand, not upon mere allegations.

[77] After all, the goal is to determine, at a minimum, whether the releases are "*reasonably connected to the proposed restructuring*."[58] In other words, the Court must assess the role and the importance of the third-party releases in the proposed transaction to be approved via an RVO, and question whether the proposed releases are sufficiently connected to the restructuring objectives of the debtor.

[78] The Court shares the views of authors Luc Morin (now at the Superior Court) and Arad Mojtahedi, concerning third-party releases benefiting D&Os:

> To those who suggest that releases in favour of D&O are akin to a reward for them simply abiding by their fiduciary care and maintenance duties, we would point to the *CCAA* court's wide discretion in granting such releases. Releases ought to be linked to a substantive contribution to the successful restructuring of the debtor company from the D&O that goes beyond their typical exercise of fiduciary care

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[55] *Green Relief*, *supra*, note 51, par. 30.
[56] *Blackrock, supra,* note 41 par. 129.
[57] *Allen-Vanguard Corporation (Re)* ("*Allen-Vanguard*"), 2011 ONSC 5017, par. 60-61; *Canwest*, *supra*, note 53, par. 29.
[58] *Metcalfe, supra,* note 44, par. 43; *Société industrielle de décolletage et d'outillage (SIDO) ltée (Arrangement relatif à)*, 2010 QCCA 403, par. 37 ; *Lydian, supra,* note 42*,* par. 53; *Delta, supra,* note 44*,* par. 116-124.

> and maintenance duties. Directors and officers are also usually uniquely positioned to assist a successful restructuring.
>
> In the end, not all D&O are created equal: depending on their contribution to the successful restructuring of the business, some D&O could benefit from a third-party release, while others might not. **Mere respect for their fiduciary care and standard duties should not be sufficient for D&O to obtain a court-issued third-party release**. For that kind of contribution, D&O, who by the very nature of their functions have access to privileged information allowing them to appropriately gauge their risk and protect themselves *ab initio*, should rely on their D&O insurance policy. It is our view **that court-issued releases should serve as an incentive to D&O to go beyond the exercise of their fiduciary care and maintenance duties, ultimately to the benefit of all stakeholders involved. As with all third-party releases, those in favour of D&O must be rationally connected to the purpose of the restructuring and provided in exchange for a meaningful contribution toward its achievement**.[59]
>
> [Emphasis added]

3.2 **Paragraphs 61 and 62 of the RVO**

[79] For a better understanding, it is relevant and useful to reproduce *in extenso* paragraphs 61 and 62 of the RVO that deal with the D&O Release, the *Released Parties*, the *Released Claims*, the *Class Action Claims* and the *Insured Claim*:

> [61] **ORDERS** that effective upon the issuance of the Monitor's Certificate, all present and former directors and officers of the Debtors, as well as all Persons deemed to be a present or former director or officer of the Debtors as a result of its management or supervision of the management of the business and affairs of the Debtors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity, whether based in statute or otherwise and whether based in whole or in part on any act or omission, obligation, transaction, offer, investment proposal, dealing or any declaration under the Business Corporations Act (Québec), or on any other occurrence existing or taking place prior to the commencement of the CCAA Proceedings or the issuance of the Monitor's Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Debtors or their assets, business or affairs,

[59] MORIN, LUC and ARAD MOJTAHEDI, "Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act," 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544, p. 15.

or prior dealings with the Debtors, wherever or however conducted or governed, the administration and/or management of the Debtors and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties and are not vested nor transferred to Excluded Cos or to any other entity and are extinguished, provided, however, that nothing in this paragraph shall waive, discharge, release, cancel or bar (i) (A) any claim against the Released Parties arising from fraud or willful misconduct, nor any claim against the Released Parties that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (B) any Insured Claim (as defined below), and (ii) the Class Action Claims (as defined below), provided that the determination of whether the foregoing release or any other release should be ordered in respect of the Class Action Claims will be adjudicated by this Court at a subsequent hearing. For purposes of this paragraph, the "**Class Action Claims**" mean any claims (including the right of any person to bring recursory claims, claims for contribution and indemnity, subrogated claims, or other third party claims) against the Released Parties arising from (i) the verified amended class action complaint dated March 11, 2024 filed by Ahuva Schachter, Michael Smith, Douglas Neujahr, Samhita Gera, and Denish Bhavsar against Ian Robertson, Ken Manget, Christopher Jarratt, Michael Hoffman, Paul Dalglish, Brad Sparkes, Robert Schaefer, Mark Bedard, Nicolas Brunet, and The Lion Electric Company before the Court of Chancery of the State of Delaware in matter C.A. No. 2023-1112-MTZ, (ii) the amended class action complaint for violation of the federal securities laws dated August 27, 2024 filed by Jacques Jaar against Northern Genesis Acquisition Corp., Ian Robertson, Paul Dalglish, Michael Hoffman, Ken Manget, Brad Sparkes, Robert Schaefer, The Lion Electric Company, Marc Bedard, and Nicolas Brunet before United States District Court Southern District of New York in matter 1:24-cv-02155-JLR), and (iii) the motion for the authorization to institute a class action claim and for leave to institute an action in damages pursuant to the *Securities Act* (Québec) instituted by Adam B. Mulhall (as the plaintiff representative on behalf of the envisioned class to be covered) and filed with the Superior Court of Québec, District of Montréal (Class Action Division) bearing court number 500-06-001366-257, dated February 21, 2025.

[62] **ORDERS** that, notwithstanding anything to the contrary contained in paragraph [61] of this Order or elsewhere, any Released Claims that are covered by any insurance policy of the Debtors and only to the extent of any such available insurance (each, an "**Insured Claim**"), shall not be waived, discharged, released, cancelled or barred by this Order, and any Person having an Insured Claim shall be entitled to recovery in respect of such Insured Claim but solely from, and to the extent of, the proceeds of the applicable insurance policies available in respect of such claim, and Persons with Insured Claims shall have no right to, and shall not, directly or indirectly, seek any recovery in respect thereof from the Debtors or the Released Parties, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. For greater clarity, (i) if no insurance is available to cover a Released Claim, such claim shall be a Released Claim (except for the Class Action Claims, until the court's final decision as to whether or not they should be released, pursuant to paragraph [61] of this Order), and (ii) any claims that may be subject to recovery under any

> insurance policies shall be deemed not to be vested nor transferred to the Excluded Cos. or to any other entity.
>
> [Emphasis added]

[80] The Court cannot ignore the breadth of the definition of the *Released Parties* that unusually purports to apply to *persons deemed to be a present or former director or officer of the Debtors as a result of its management or supervision of the management of the business and affairs of the Debtors*. Needless to say, the net cast by the Debtors is purposely very wide, yet vague, to cover additional persons who are not directors or officers but that may be "*deemed to be*."

[81] Expect hours of litigation in view to determine exactly who is really "*deemed to be*".

[82] We are far from the *puny* definition of "*Releases*" offered at paragraph 1c) of the RVO Application[60].

[83] It is obvious that the proposed definition of "*Released Claims*" if approved by the Court, would cover the claims of the Class Action Plaintiffs against the D&Os defending such actions. This definition also aims to protect the D&Os against any recursory or subrogatory claims by the Underwriters or the Auditors.

[84] With the advent of RVOs that are becoming increasingly popular to dispose of shares and/or to realize assets of a debtor company without having to resort to the vote of their creditors in the context of a formal compromise or arrangement, debtors (and creditors at times) are increasingly pushing the envelope, as evidenced by the overly broad and unusual definition of *Released Parties*. It is up to the judge called upon to approve an RVO to be particularly vigilant, as the true intentions of the debtor company who took the time to prepare the overly broad and purposely vague definition are not always obvious to the stakeholders, whose rights and recourses may be compromised as a result thereof, especially since applications to approve an RVO are often filed on a somewhat urgent basis to close the deal with a short lead time afforded to the creditors. Moreover, under such circumstances that are becoming increasingly popular, several of the exhibits invoked in support of the application are filed under seal and not disclosed to the creditors and stakeholders.

3.3 **THE POSITION OF THE PARTIES**

[85] The Mulhall Class Action Plaintiff and the U.S. Plaintiffs essentially voiced the same arguments given that they all intend to pursue their respective actions, rights and recourses against the D&Os called upon to defend the three Class Actions.

[86] In their view, the Debtors are seeking to permanently remove the Carve-out from the Full D&O Release, thereby effectively unfairly compromising their interests as

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[60] See paragraph 6 above.

"defrauded" shareholders while insulating the very individuals responsible for the Debtors' demise.

3.3.1 The Mulhall Class Action

[87] The fourteen Mulhall D&Os together with the Underwriters and the Auditors are named as defendants in the Mulhall Application of February 21, 2025[61].

[88] The Mulhall Application asserts claims against the Mulhall D&Os, the Underwriters, and the Auditors, on a solidary basis.

[89] Incidentally, the Applicants never disclosed the identity and the current standing of the *Released Parties*—including the "*deemed*" directors and officers—that stand to benefit from their Full D&O Release.

[90] First and foremost, Mr. Mulhall as well as the Underwriters and Auditors, argued that the Applicants failed to prove and convince that the participation of the Mulhall D&Os was essential to the envisioned restructuring via the Transactions that were approved with the RVO.

[91] As Plaintiff, Mr. Mulhall's arguments can be summarized as follows:

- The Mulhall Class Action asserts causes of action under the *Securities Act*[62] (the "***Securities Act***") and article 1457 of the *Civil Code of Québec*, (the "***CCQ***") based on alleged misrepresentations to shareholders;

- the Mulhall Class Action does not name any of the Applicants/Debtors as defendants;

- The Mulhall Class Action rests upon the alleged misconduct of the Mulhall D&Os—and of the Underwriters and Auditors—rooted in their gross negligence and/or fraud as for more than three years, investors were allegedly misled into believing that the Lion Electric vehicles were high-performing and that its production capacity matched its expanding sales pipeline; nothing was further from the truth, as Lion Electric consistently fell significantly short of its maximum production capacity[63] and inflated its sales pipeline by recording artificial sales, thereby boosting reported figures by approximately 94%;

- One of the principal tenets of insolvency law is to encourage entrepreneurial risk-taking by providing a fresh start for honest but unfortunate debtors whose business ventures did not pan out; it is not meant to allow debtors—or third parties—to "defraud" shareholders and then be absolved through the reorganization process;

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[61] Bearing court file no. 500-06-001366-257.
[62] CQLR c V-1.1.
[63] Apparently 63% short.

- There is no practical reason to grant the Full D&O Release sought by the Debtors;

- In addition to the lack of any pragmatic reason to grant the Full D&O Release, there is no equitable reason to do so;

- In fact, the RVO was approved and successfully completed—and 9543-1799 Québec Inc. (i.e., ResidualCo) was constituted—all without the third-party Full D&O Release presently sought by the Debtors;

- While financiers may be willing to overlook past misconduct, "defrauded" shareholders should not be made to subsidize the Debtors' reorganization by surrendering their rights against the non-debtor Mulhall D&Os; in other words, this Court should not permit accountability to be swept aside under the guise of supposed expedience and convenience.[64]

3.3.2 The Underwriters

[92] Pursuant to certain Underwriting Agreements[65], the Underwriters acted as agents, bookrunners, and underwriters in connection with two distributions of Lion Electric's shares in 2022[66].

[93] The Underwriters are essentially blamed for having certified two prospectuses containing misrepresentations allegedly made by Lion Electric and the Mulhall D&Os—which they deny. While the Mulhall Class Action Plaintiff asserts a statutory cause of action against the Underwriters, the faults alleged in the Mulhall Application relate mainly to the statements, representations, and communications issued by Lion Electric and the conduct of the Mulhall D&Os.

[94] Pursuant to the Underwriting Agreements[67], the Underwriters are entitled to claim indemnity from Lion Electric in connection with the Mulhall Class Action (the "**Contractual Indemnity**"). Even if the Underwriters also hold potential indemnity claims against Lion Electric, counsel for the Underwriters advised the Court that their clients were not relying on this category of claims for the purpose of their present objections, the whole without prejudice to their ability to assert such claims in the future. Therefore, for the purposes hereof, the Underwriters do not depend on their Contractual Indemnity against Lion Electric.

[95] In any event, the Court is only called upon to rule on the Full D&O Release with or without the Carve-out - found at paragraphs 61 and 62 of the RVO dealing with the *Released Parties* as opposed to the Debtors.

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[64] Mulhall's Petitioner/Objecting Party's Plan of Argument, par. 1-7.
[65] **U-2**.
[66] Underwriters' Notice of Objection, par. 4.
[67] **U-2**.

[96] To the extent the Underwriters may be found liable under the statutory scheme or under the *CCQ*, they also hold potential recursory claims against any of the Mulhall D&Os.

[97] The Full D&O Release currently drafted and sought by the Applicants purports to release all such claims and potential claims of the Underwriters,[68] while forcing them to defend the Mulhall Class Action—alone with the Auditors—in the absence of the Mulhall D&Os while denying them any recursory recourses against the latter.

[98] The Underwriters argued that the Full D&O Release sought by the Debtors should not be approved for the following reasons:

- The wording of the Full D&O Release is extremely broad, purporting to cover all manner of claims against an evenly broad yet vague definition of current and former D&Os, irrespective of each D&O's potential role in the CCAA process; moreover, the Applicants decided that the claims against any of the D&Os would not even be vested in ResidualCos, but entirely extinguished;

- The Full D&O Release is contrary to the provisions of s. 5.1(2)(b) *CCAA,* which prevents such type of release in favour of the directors under the present circumstances; while the Superior Court has recently permitted directors' releases under s. 5.1(2)(b) *CCAA* in *Nemaska*[69] and *Taiga*[70], these cases do not properly reflect the text, intent, or objectives of the *CCAA*; on proper reading, s. 5.1(2)(b) *CCAA* prohibits directors' releases for pre-filing conduct based on alleged securities misrepresentations;

- Even if D&O releases are permissible under the *CCAA*—depending on the prevailing circumstances—it should not be permitted in the present case; the Full D&O Release sought by the Applicants does not meet the *Nexus Test* to satisfy the Lydian Factors regarding third-party releases; in fact, the Full D&O Release sought by the Applicants threatens to extinguish the Underwriters'—and the Auditors'—recursory or indemnity claims against the Mulhall D&Os without any connection whatsoever with the restructuring objectives of the present CCAA proceedings; the Full D&O Release was never and is still not necessary to achieve the Applicants' restructuring objectives; indeed, the Applicants were able to finalize and close the Transactions contemplated in the RVO without the Full D&O Release being approved without the Carve-out;

- Finally, the *CCAA* should not be used to rearrange relationships between non-debtor stakeholders unless the restructuring really requires it; in the present case,

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[68] Underwriters' Outline of argument opposing Applicants' Application for Approval and Vesting Order, par. 4.

[69] *Arrangement relatif à NMX Residual Assets Inc. (Nemaska)*, 2025 QCCS 1205 (Leave to appeal referred to a panel of the Court, 500-09-700374-259 (2025 QCCA 680); leave to appeal deemed unnecessary, as it is a *de Plano* appeal (2025 QCCA 1365)).

[70] *Lacerte c. Bruneau (Taiga)*, 2025 QCCS 1853.

> the Full D&O Release aims to compromise the Underwriters' recursory claims against the Mulhall D&Os and expose the Underwriters to greater risks in the Mulhall Class Action; by contrast, the Mulhall Class Action Plaintiff would retain remedies against the Underwriters—and the Auditors—for the alleged faults of the Mulhall D&Os; it is fundamentally unfair and inequitable to reshape the litigation landscape between third parties in such a manner without a pressing restructuring objective.[71]

[99] Counsel for the Underwriters pointed out that the Mulhall Class Action is not a theoretical future claim; it was filed after the Second Amended and Restated Initial Order was issued on February 14, 2025, with the permission of this Court. Therefore, the parties and the Court have all the information they need to craft a solution which ensures that the interaction between the Full D&O Release, the Mulhall Class Action, and the Underwriters' recursory and subrogatory claims is fair and knowable in advance. Such a solution needs not to—and does not—interfere with the Applicants' restructuring, which has now been completed successfully.

[100] The Underwriters proposed that the appropriate D&O Release should be maintained with the Carve-out of the Class Action Claims in its entirety. This would permit the Mulhall Class Action to proceed and permit the Underwriters to assert all their recourses in respect of the same. At the very least, the D&O Release should specify that the releases do not affect the ability of the Underwriters to claim contribution from the Mulhall D&Os in the Mulhall Class Action.

[101] Should the Court not uphold the Underwriters' proposed course of action described above, in the alternative, the Court should declare that any future recovery in the Mulhall Class Action (should it proceed past authorization) be limited only to the portion of the damages potentially attributable to the liability of the Underwriters—as opposed to the solidary condemnation sought by Mr. Mulhall—as will be eventually determined by the Court on the merits.

3.3.3 The Auditors

[102] While the Underwriters are blamed for having assisted Lion Electric and the Mulhall D&Os with the two distributions of Lion Electric's shares in 2022 without having verified the veracity and completeness of the information found in the prospectuses, the Auditors' liability stems from their role in certifying financial and accounting documents—allegedly containing false misleading and fraudulent misrepresentations—without respecting the applicable professional standards of diligence of auditors.

[103] The Auditors argued without any admissions whatsoever that, for the purposes hereof, the allegations of the Mulhall Class Action relating to the Mulhall D&Os had to be

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[71] Underwriters' Outline of argument opposing Applicants' Application for Approval and Vesting Order, par. 6-8.

held to be true and that, *prima facie,* said allegations appeared sufficiently serious to warrant the Carve-out that should also benefit the Auditors.

[104] As to the other arguments justifying maintaining the Carve-out in place, counsel for the Auditors essentially echoed the other Class Action Parties' submissions. Therefore, it will not be necessary to reiterate the same herein.

3.3.4 The Court's assessment of the Mulhall Class Action

[105] Without expressing any opinion on the merits of the Mulhall Class Action pursuant to the Mulhall Application, the Court shares the view of counsel for the Auditors that, taken as to be true on a *prima facie* basis, the allegations made in the Mulhall Application with respect to the Mulhall D&Os are serious enough to warrant the Court's finding that, *prima facie*, the Mulhall Application does not appear to be frivolous*,* far from it.

[106] Removing the Carve-out provisions as proposed by counsel for the Applicants would yield unfair and inequitable results whereby, on the one hand, Mr. Mulhall and the group of shareholders that he purports to represent would be deprived of their rights and recourses against the Mulhall D&Os personally and, on the other hand, the Underwriters and the Auditors would end up having to defend alone the Mulhall Class Action essentially based on the conduct—or the alleged misconduct—of the Mulhall D&Os without any further recursory, subrogatory or indemnity recourses against them.

3.3.5 The New York Action and the Delaware Action

[107] Without neglecting the seriousness of their arguments put forward at the hearing, counsels for the U.S. Plaintiffs essentially reiterated, *mutatis mutandis*, the grounds of objection and contestation argued by the Mulhall Class Parties relating to the Mulhall Class Action, to the extent that they did not constitute any waiver or renunciation of the U.S. Plaintiffs' rights and recourses.

[108] In particular, the U.S. Plaintiffs concurred with the notion—as denounced by the other Class Action parties but which this Court is currently incited to adopt by the Applicants—that this Court should not mechanically apply precedents of specious applicability, and resort to "*path dependency*" where prior decisions "*are cited as principled authority without revisiting their underlying reasons*."[72]

[109] The present restructuring, which ended, in essence and most unfortunately, as nothing more than a hasty liquidation process culminating in a realization qualified as "*famélique*" by counsel for the Interim Lenders, harbours none of the attributes of a

[72] M Peihani, "Rethinking the Case for Reverse Vesting Orders" in Canadian Insolvency Law (August 19, 2025), U B C Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=5397828 or http://dx.doi.org/10.2139/ssrn.5397828, page 20-21 [*Peihani*].

successful rehabilitation that would warrant the exceptional relief sought at this stage with respect to the Full D&O Release.

[110] Counsel for the U.S. Plaintiffs also pointed out that there is a glaring need for the Court to, at best, remain mindful of and committed to the restrictions set out in the *CCAA*[73] and, ought to, in any event, refrain from granting relief that it is manifestly not "*appropriate in the circumstances*"[74] which circumstances are wholly distinguishable from the precedents relied upon by the Applicants.

[111] Counsel added that, the cornerstone teaching of the Supreme Court's decision in *Callidus*[75] is that the *CCAA* (and the BIA) must not be invoked in furtherance of improper or unnecessary purposes—that the Court's discretion under the *CCAA* "*advances the basic fairness that 'permeates Canadian insolvency law and practice*'", which fairness is breached "*when only some face the risks, while others actually benefit from the situation*."[76] In other words, "*Callidus ultimately affirms that the legitimacy of the process depends not just on what courts can do, but on how insolvency tools are deployed and for what purpose*."[77]

3.3.5.1 The Court's assessment of the New York Action

[112] As previously mentioned, according to the *Amended Class Action Complaint for Violation of the Federal Securities Laws* dated August 27, 2024[78], the New York Plaintiff is the lead plaintiff in the New York Action, asserting claims against the New York Defendants, including *inter alia*, the Debtors Northern Genesis and Lion Electric as well as Marc Bedard (CEO and founder of Lion Electric), and Nicolas Brunet (CFO of Lion Electric).

[113] The New York Action alleges that, based in material part on grossly inflated forecasts for production and sales, Applicant Lion Electric secured a business combination with Applicant, Northern Genesis, a "blank check company"—i.e., a special purpose vehicle used essentially to effect capital stock exchanges and allow securities of Lion Electric to be publicly traded.

[114] As per the New York Action, as Lion Electric failed to meet their false sales forecasts on which investors based their decision to support the business combination and to exchange their shares in Northern Genesis into shares of Lion Electric pursuant to the terms of the applicable business combination agreement, the price of Lion Electric's stock fell far below the prices that Northern Genesis shareholders had paid before the

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[73] Section 11 *CCAA*.
[74] *Ibid*.
[75] *Callidus, supra*, note 49.
[76] *Callidus, supra,* note 49*,* par. 75 citing Janis P. Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law" page 27.
[77] *Peihani*, *supra*, note 72, page 8.
[78] **US-1**.

transaction and the value of the Lion Electric stock that the transaction used for its exchange ratio, creating the loss alleged for those shareholders.

[115] The New York Action is based on, and alleges, *inter alia*, violations of the *Securities Exchange Act of 1934*[79], a federal law of the United States of America which, among other things, established the Securities and Exchange Commission and regulates the secondary market for securities[80]. The New York Action does not rest on Canadian statutes and legislation.

[116] On August 28, 2025, the New York Plaintiff, through his American attorneys, advised the Applicants, the Monitor, and the Service List (as defined in the ARIO) of his objections to the Full D&O Release[81].

[117] The Court finds that the allegations of the *Amended Class Action Complaint for Violation of the Federal Securities Laws (Jury Trial Demanded)* dated August 27, 2024[82], taken to be true are, *prima facie,* sufficiently serious to be considered by the Court for the purposes hereof.

3.3.5.2 The Court's assessment of the Delaware Action

[118] Pursuant to the *Verified Amended Class Action Complaint* dated March 11, 2024[83], the Delaware Plaintiffs alleged that:

- the Delaware Plaintiffs are former public stockholders of Debtor Northern Genesis, which is a Delaware corporation that was a publicly traded special purpose acquisition company;

- pursuant to an investment agreement, the Delaware Plaintiffs had a right to redeem their Northern Genesis shares and receive a refund of their original investment (US$10 per share) if Northern Genesis were to enter into a merger agreement;

- certain former directors of Northern Genesis were financially incentivized to push a merger through even if it was a bad deal for Northern Genesis' public stockholders. These directors, along with the "sponsor" of Northern Genesis, invested over US$8.8 million in Northern Genesis in exchange for "Private Placement Warrants" and "Founders Shares[84]";

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[79] **US-2**.
[80] *Ibid*.
[81] **US-3**.
[82] **US-1**.
[83] **US-4**.
[84] The Founders are Defendants Robertson, Dalglish, Hoffman, Manget, Sparkes, and Schaefer. The Founders Shares—unlike the public shares—did not have any redemption rights and thus would be worth *nothing* if a deal did not close. To preserve the value of their Founders Shares and Private

- these Founders Shares, unlike the public shares, did not have any redemption rights and thus would be worth nothing if a merger did not happen;

- therefore, to preserve the value of their Founders Shares and Private Placement Warrants, these former directors of Northern Genesis worked hard to convince the corporation's public stockholders to support the eventual merger and to forego their redemption rights by publishing a proxy that made material misrepresentations and omitted key information that was necessary for Northern Genesis' public stockholders to make an informed decision on the merger;

- in reliance on this misleading proxy, Northern Genesis stockholders voted in favour of the merger;

- on May 6, 2021, Northern Genesis completed a business combination with Lion Electric, after which Northern Genesis became a wholly owned subsidiary of Lion Electric;

- following this business combination, the Delaware Plaintiffs' shares were converted into Lion Electric shares and the Delaware Plaintiffs are now Lion Electric stockholders;

- as a result, virtually all, including the Delaware Plaintiffs, are now holding a stock worth US$1.37 per share as of March 8, 2024 (the last trading day before the Delaware Action was filed), instead of having redeemed and getting back their original US$10 investment; in short, Northern Genesis stockholders that continued to hold their Northern Genesis (and now Lion Electric) shares have suffered massive damages;

- the Northern Genesis directors were aided and abetted by Defendants Lion Electric, Marc Bédard[85] and Nicolas Brunet[86], who breached their fiduciary duties by making materially false statements and misleading statements that the Delaware Plaintiffs relied on in determining whether to exchange their Northern Genesis shares for Lion Electric shares;

- the Lion Electric Defendants[87] had legal and contractual obligations to ensure that the proxy statement to secure stockholder approval did not include any untrue statement of a material fact or omit to state any material fact.

Placement Warrants, the NGA Director Defendants worked hard to convince NGA's public stockholders to support the Merger and to forego their redemption rights by publishing a proxy that made material misrepresentations and omitted key information that was necessary for NGA's public stockholders to make an informed decision on the Merger. —U.S. Plaintiffs Notice of Objection, par 20-23.

[85] Lion Electric CEO and founder.

[86] Lion Electric Executive Vice-President and CFO.

[87] Lion Electric, Marc Bédard as CEO and founder and Nicolas Brunet as Executive Vice-President and CFO are collectively referred to as the "**Lion Electric Defendants**".

[119] On August 27, 2025, the Delaware Plaintiffs, through their American attorneys, advised the Applicants, the Monitor, and the Service List of their objection to the Full D&O Release[88].

[120] The Delaware Class Action is essentially similar to the New York Action, with almost the same Defendants, including the three Lion Electric Defendants and similar causes of action.

[121] The Court reaches the same conclusion for the Delaware Action than the one expressed at paragraph 117 above concerning the *prima facie* seriousness of the New York Action.

[122] Applying the test of *Green Relief*[89], the Court is satisfied with the quality of the claims the U.S. Plaintiffs wish to maintain with the Carve-out.

[123] In conclusion and without expressing any opinion whatsoever on their merits and chances of success, the Mulhall Class Action and the U.S. Actions offer on a *prima facie* basis, serious arguments vis-à-vis their respective defendants and more particularly, the defendants falling in the overbroad definition of *Released Parties,* namely *all present and former directors and officers of the Debtors, as well as all Persons deemed to be a present or former director or officer of the Debtors as a result of its management or supervision of the management of the business and affairs of the Debtors.*

[124] Moreover, the U.S. Defendants—in both U.S. Actions—are not being sued for liabilities they face under provincial, federal or territorial statutes; they are not being sued for any liability *qua* director under these statutes; they did not resign in the vicinity of insolvency; and there is no relation whatsoever between the U.S. Claims, the Full D&O Release sought, and the restructuring of the Lion Group.

3.3.6 The Applicants

[125] As at September 30, 2024, the Lion Group had reported outstanding indebtedness in the amount of US$499,765,196, on a consolidated basis, with a secured indebtedness of approximately US$216,076,804.17[90].

[126] Counsel for the Applicants placed significant emphasis on the pre-filing and post-filing restructuring efforts of their clients, whom they refer to as the Lion Group. These efforts sought to raise much-needed capital to maintain their operations. It ultimately culminated with very disappointing results, as the Interim Lenders were not even able to recover their entire Interim Financing, also leaving in a lurch the parties benefiting from the KERP Charge, the Financial Advisor Charge and the Directors' and Officers' Indemnification and Charge who will not receive any money or be able to rely on the

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[88] **US-5**.
[89] *Green Relief*, *supra*, note 51, par. 29-30.
[90] Applicants' SMOA (Application of the D&O Release to Class Action Claims), par. 5-6.

same. Even the secured creditors incurred significant losses without forgetting the unsecured creditors who are entitled to nothing.

[127] As a matter of interest, at paragraph 11(a) of Applicants' Supplemental Memorandum of Arguments of September 1, 2025 (the "**SMOA**"), while identifying all the parties to the Mulhall Class Action, counsel referred tersely to the Mulhall D&Os as follows:

> 11 (a) certain of the Lion Group's (former) directors and officers;

[128] The Court draws from the foregoing that certain of the Mulhall D&Os are *former* directors and officers of the Lion Group and that with the use of the words "*certain of the*", they only represent a portion of the unidentified D&Os or "*deemed D&Os*" forming part of the Applicants' definition of *Released Parties* in the RVO.

[129] The Applicants' SMOA also contains several comments and allegations that are tantamount to a form of defence to the merits of the Mulhall Application. Again, it is not up to this Court to ponder the merits of the Mulhall Class Action or of the Mulhall Application. In any event, the Court already found on a *prima facie* basis that the Mulhall Application contemplates a serious recourse against the Mulhall D&Os, *inter alia*.

[130] As a preliminary comment, counsel for the Applicants pointed out that only the Mulhall Action Parties filed their Objections properly, alluding to the failure of the U.S. Plaintiffs to properly notify their own objections to the Full D&O Release[91].

[131] Despite having been duly advised of the Lion Group's RVO Application seeking the approval of their proposed D&O Release and advised of the hearing of September 3, 2025, Applicants' counsel argued that no party other than Mulhall Action Parties had properly notified their grounds of opposition to the proposed D&O Release, thus disqualifying the U.S. Plaintiffs' Objections.

[132] With all due respect, the Court disagrees.

[133] Despite the filing of their formal Notice of Objection on September 3, 2025, only a few days before the hearing, the Court found that the U.S. Plaintiffs, via their respective U.S. counsel, clearly voiced their objections prior to the RVO being issued. In fact, the U.S. Actions were specifically included at the outset and are clearly covered by the Carve-out.

[134] As previously mentioned, on August 27, 2025, the Delaware Plaintiffs, through their U.S. counsels, advised the Applicants, the Monitor, and the Service List of their objections to the proposed D&O Release[92]. On August 28, 2025, the New York Plaintiff,

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[91] Footnote 9 (page 8) of the Applicants' SMOA.
[92] **US-5**.

through his U.S. counsels, advised the Applicants, the Monitor, and the Service List of his objections to the proposed D&O Release[93].

[135] Therefore, it is wrong for the Applicants to write in their SMOA on September 1, 2025, that "*no party other than Mr. Mulhall and the Mulhall Action Co-defendants has informed undersigned counsel of any objection to the D&O Release, or to its application to the 'Class Action Claims'* (as defined below), *despite having received a formal request from the Lion Group for the D&O Release and notice of the September 3, 2025, hearing*."

[136] The Court finds that the U.S. Plaintiffs validly notified their Objections to the Court, the Debtors, the Monitor and to the Service List in due course and in a timely manner. They also appointed Québec counsel to represent them and argue on their behalf at the present hearing.

[137] Moreover, if the U.S. Plaintiffs' Objections were never properly introduced in the Court record, how can one explain that the U.S. Actions were specifically included in the Carve-out from the outset, i.e., at the same time as the Mulhall Class Action, the whole with the consent of the Applicants' counsel?

[138] The Applicants cannot subsequently claim surprise or foul play.

[139] As to the reasons justifying the Court's approval of the Full D&O Release (without the Carve-out), counsel's arguments can be categorized as follows:

1- As a general principle, the Court's broad powers enable granting third party releases, especially in favour of D&Os

2- The *Nexus Test* was successfully met with the Lydian Factors considered in relation to the Full D&O Release:

> (A) The Full D&O Release is rationally connected to the purpose of the Lion Group's restructuring;
>
> (B) The D&Os have contributed to the Lion Group's restructuring efforts;
>
> (C) The Full D&O Release is fair, reasonable and not overly broad with respect to:
>
> - the identity of the Released Parties
> - the scope of the Released Claims
> - the exceptions of sections 5.1(2) and 5.1(3) *CCAA*
> - the channelling of claims to the insurance proceeds with the Insured Claim exception
>
> (D) The Lion Group's restructuring could not have succeeded without the Full D&O Release;

[93] **US-3**.

(E) The Full D&O Release benefits the Lion Group as well as its creditors generally; and

(F) All creditors and contractual counterparties have sufficient knowledge of the nature and effect of the Full D&O Release.

3- The Mulhall Action Parties—and the U.S. Plaintiffs—are not entitled to object to the Full D&O Release sought by the Applicants, as they are not legally qualified to oppose the same:

(A) The claims or potential claims of the Mulhall Action Parties—and of the U.S. Parties—are *equity claims* as opposed to creditors' claims;

(B) The Class Action Parties—including the U.S. Plaintiffs—do not have the required juridical interest to oppose the Full D&O Release;

(C) The Class Action Parties cannot rely on the exception of section 5.1(2) *CCAA* to oppose the Full D&O Release; and

(D) The Class Action Parties cannot rely on section 5.1(3) *CCAA* to oppose the Full D&O Release.

[140] The following exceptions to the *Released Claims* found in the Full D&O Release offer sufficient protection for rights and recourses against the *Released Parties* from all present and future claims and liabilities for which they may be liable for any act, omission or representations in their capacity as D&Os—or "*deemed* D&Os"—of the Applicants without the necessity of keeping the Carve-out, namely

(i) Any claims for fraud or willful misconduct;

(ii) Any claims that are not permitted to be released pursuant to section 5.1(2) *CCAA*; and

(iii) Any claims that are covered by any insurance policy of the Lion Group (only to the extent of any such available insurance).[94]

4. **DISCUSSION**

[141] As a preliminary comment, the Court reiterates and insists upon the fact that D&Os or third-party releases in *CCAA* proceedings are not the norm, they are the exception[95]. They cannot be requested or sought systematically, but only in exceptional

[94] RVO Application, par. 85.
[95] *Allen-Vanguard*, *supra*, note 57, par. 60-61.

circumstances[96]. Thus, third-party releases "*must be justified as part of the compromise or arrangement between the debtors and its creditors*."[97]

[142] In the absence of a compromise or of an arrangement to be submitted to the vote of the creditors, the Court should be more stringent on the evidence required to release third parties, especially when the scope of the proposed releases is challenged, as is the case herein.

[143] In *Proposition de Brunswick Health Group Inc*., Immer J. appropriately cited Professor Sarra as follows:

> [57] Professor Sarra proposes this extensive list of considerations to be examined:
>
> […]
>
> Is the court satisfied that any requested releases in favour of the debtor's directors, officers and third parties under the RVO do not inappropriately shield them from claims and meet the tests articulated by the courts? **Is the court satisfied that the RVO approach is not being used to achieve third-party releases without creditors being asked to vote on the issue**?[98]
>
> [Emphasis added]

[144] The onus to justify the issuance of third-party releases rests upon the party who seeks such a special relief, with probative evidence supporting, *inter alia*, a meaningful contribution to the restructuring process of the debtor[99] by each of the third parties in question. A third party who did not offer a meaningful contribution cannot benefit from the releases simply on account of their association with others who actually offered such a meaningful contribution. The probative evidence necessarily involves the identification of each person who is called upon to benefit from the proposed release and proof of the meaningful role they each played in the restructuring process.

[145] In the words of authors Luc Morin (now a Superior Court Justice) and Arad Mojtahedi, "*not all D&O are created equal: depending on their contribution to the successful restructuring of the business, some D&O could benefit from a third-party release, while others might not*."[100]

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[96] *Canwest*, *supra*, note 53, par. 29; *Blackrock*, *supra*, note 41, par.129.
[97] *Metcalfe*, *supra*, note 44, par. 70.
[98] *Proposition de Brunswick Health Group Inc.* (*Brunswick Health*), 2023 QCCS 4643, par. 57.
[99] *Ibid*., par 32.
[100] MORIN, LUC and ARAD MOJTAHEDI, "Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act," 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544, p. 15.

[146] A cautious and measured approach is warranted given the risk of depriving a stakeholder of a valid recourse by broadening the scope of a release to third-party D&Os who otherwise should be held accountable for their conduct before the Courts.

[147] This explains why the Courts are increasingly reluctant to grand overbroad releases in favour of third-party D&Os without proceeding beforehand, *inter alia*, to a structured analysis guided by well-established principles (i.e., the Lydian Factors) to ascertain that the releases to be granted as the case may be, are limited to what is strictly required in the specific context of each case (i.e., the *Nexus Test*).[101]

[148] However, the "*meaningful contribution*" is not necessarily dependent on a positive outcome of the restructuring process, as triggering CCAA proceedings does not always ensure a successful outcome. Third parties who have nevertheless contributed meaningfully to the restructuring efforts should not necessarily be discounted upon an unexpected negative or adverse outcome.

[149] With all due respect, as further discussed hereafter, the Applicants failed to satisfy this essential condition—a *meaningful contribution*—among others, preferring to maintain purposely an opaque shroud on the identity of all the persons (the *Released Parties*) standing to benefit of their proposed Full D&O Release let alone introducing into evidence their respective *meaningful contribution*.

4.1 The Court's broad powers to grant releases in favour of Directors and Officers

[150] According to the Applicants, the *Released Claims* covered by the proposed Full D&O Release are rationally connected to their restructuring and to the present CCAA proceedings, particularly as:

> (a) the *Released Parties* have been, and some of them will continue to remain instrumental to the implementation of the Revised Transactions and, more generally, to the Applicants' ongoing restructuring efforts;
>
> (b) the Full D&O Release will ultimately have the effect of diminishing claims against the *Released Parties*, which, in turn, will diminish any indemnification claims by the *Released Parties* against the Applicants that are secured by the *Directors' and Officers' Indemnification and Charge*[102], which ultimately benefits the Applicants and their stakeholders;[103]
>
> (c) each of the *Released Parties* has participated, contributed and/or supported the Applicants' restructuring efforts, both prior to and/or after the

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[101] *Tacora Resources Inc. (Re) (Tacora)*, 2024 ONSC 4436, par. 10-11; *Chesswood*, *supra*, note 53, par, 55.
[102] As defined in paragraph 43 of the ARIO (2025 QCCS 585).
[103] *Ibid*., par. 86.

> commencement of the CCAA Proceedings, without any remuneration for several of them[104].

[151] The Court respectfully disagrees.

[152] The *CCAA* does not contain any provision authorizing explicitly the granting of third-party releases with the exception found at s. 5.1(2) *CCAA* dealing with directors only (not officers) in the context of an arrangement or a compromise. Rather, it does not prevent submitting to the vote of creditors in the context of a compromise or an arrangement releases in favour of directors for certain pre-filing claims more fully described in s. 5.1 *CCAA*.

[153] However, s. 11[105] *CCAA,* which grants broad discretion to the Courts, was interpreted to enable judges to grant third-party releases–subject to the s.5.1(2) exception - provided that the latter be justified in light of the facts and the circumstances specific to each case and that such releases be necessary to the successful completion of the arrangement or compromise.

[154] Moreover, as previously mentioned, in cases where objections or oppositions have been raised against the proposed third-party releases, the judge must also assess whether the objectors' claims are legitimate and appear sufficiently serious and well founded on a *prima facie* basis[106].

[155] The Court has already determined that the claims of the U.S. Plaintiffs and of the Mulhall Class Action Plaintiff are *prima facie* legitimate and serious and that it is not up to this Court to determine the outcome of these cases on their respective merits. The role of this Court is to determine whether the allegations of the three Class Actions are sufficiently serious to warrant maintaining their main argument that the Carve-out should be maintained[107].

[156] Releases with broad wording aiming to encompass every possible situation other than *willful misconduct and gross negligence* are excessive and should be avoided:

> [30] The full releases sought in conclusions 5 and 8 of the Motion quoted hereinabove and granted in other instances by other members of the judiciary are, in the opinion of the undersigned, and with great respect, excessive.

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[104] *Ibid*., par 87.

[105] **11.** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[106] *Green Relief*, *supra*, note 51, par. 29-30; *Delta*, *supra*, note 44, par. 31.

[107] *Arrangement relatif à 9424-9356 Québec inc.* (*Québécor*), 2021 QCCS 5319, par. 65 (leaves to appeal dismissed by the Court of Appeal (2022 QCCA 549) and the Supreme Court of Canada (2023 CanLII 57194 (C.S.C.)).

> […]
>
> [32] The terms of the releases now sought in conclusions 5 and 8 above essentially discharge all liability (except for gross negligence and willful misconduct) which would include liability arising in factual circumstances in the course of the administration not put before the Court regarding parties not necessarily before the Court. **This appears to the undersigned as the antithesis of the judicial process**.
>
> [33] **Not only is the process unfair and unjust to anyone who might have a claim, but it seems excessive given the existing protection**. […][108]
>
> [Emphasis added]

[157] Even if the comments of Schrager J. in *Aveos* involved a release in favour of the Monitor and of the Chief Restructuring Officer, the same reasoning applies to D&Os.

[158] Given the seriousness and the severity of the allegations in the three Class Actions on a *prima facie* basis, full hearings on the merits should be held in those three Class Actions[109] to shed light on the actual conduct—or misconduct—of the D&Os defending therein[110].

[159] Even if they deny liability at this juncture, the Underwriters and Auditors as the Mulhall Class Action Co-defendants rightfully argued that the allegations of the Mulhall Application raised serious allegations specific to the Mulhall D&Os.

[160] These allegations, as serious as they may be, must be considered nevertheless, by the judge, who will hear the Mulhall Application seeking the authorization to proceed with the Mulhall Class Action. At this early juncture, to prevent holding such a hearing by issuing the proposed Full D&O Release without the Carve-out sought by the Applicants would yield an unjust and unfair outcome by shielding the Mulhall D&Os from the judicial scrutiny of their actions and conduct.

4.2 The Full D&O Release with the *Released Claims* in favour of the *Released Parties* is not rationally connected to the purpose of the restructuring nor necessary for it

[161] Contrary to the Applicants' contention, the claims to be released, i.e., the Class Action Claims, are not rationally related to the purpose of the Debtors' restructuring plan.[111]

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[108] *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)* (*Aveos*), 2013 QCCS 5924.

[109] If the Mulhall Application is authorized.

[110] *Québécor*, *supra*, note 107, par. 69, 79-80 and 88; *Arrangement relatif à DavidsTea inc.* (*Davids Tea*), 2023 QCCS 1141, par 22-25.

[111] Debtors' MOL, par 92-93.

[162] The Applicants themselves—as well as the Monitor—acknowledged that the proposed Full D&O Release was not a condition precedent for the RVO and was not necessary to conclude the Transactions contemplated in the RVO. This condition was determined and is exacted solely by the Applicants, not for the benefit of the purchasers but for the sole benefit of all their D&Os whoever they may be. The Applicants argued that the "*D&Os cannot be denied their request for a release once the Applicants' restructuring has essentially been completed on the basis that such restructuring (or the Transactions contemplated thereunder) can succeed without the D&O Releases being granted*"[112]. The Applicants—not the D&Os—also argued that this would encourage future D&Os to take a more aggressive approach, and "*compel future D&Os to require that such a condition be included in the transaction documents*."[113]

[163] In effect, the Applicants argued that if third-party releases are denied when or if they are deemed not necessary, there is a significant risk that D&Os will engage in tactical brinkmanship to manufacture necessity in the future. Counsel for the Underwriters invited the Court, rightfully so, to approach this counterfactual argument with great caution.

[164] Section 18.6 (1)[114] *CCAA* stipulates that any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings. The obligation of acting in good faith also rests upon the D&Os—and the Applicants seeking to act on their behalf—especially if they intend to seek the benefits of third-party releases.

[165] In any event, contrary to *Green Relief*[115], *Harte Gold*[116], and *Tacora Resources*[117], the Full D&O Release will not have the effect of diminishing indemnification claims by the *Released Parties* against the "*Directors' and Officers' Indemnification and Charge*"[118], thereby resulting in a larger pool of cash available to satisfy creditor claims.

[166] The realization proceeds were not even sufficient to satisfy, in its entirety, the $17M Interim Financing, let alone the subsequent priority charges and claims.

[167] Moreover, the *Directors' and Officers' Indemnification and Charge* totalling US$1.9M[119] specifically applies to "*claims relating to any obligations or liabilities […] which have accrued by reason of or in relation to their respective capacities as directors or officers of the Debtors* <u>*after the Effective Time*</u>," i.e., December 18, 2024[120].

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[112] Applicants' SMOA, par. 61 and 66.
[113] Applicants' SMOA, par. 59.
[114] **18.6 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
[115] *Green Relief*, *supra*, note 51, par. 51.
[116] *Harte Gold*, *supra*, note 43, par. 81 and 85.
[117] *Tacora, supra,* note 101, par. 25(e).
[118] Detailed in the ARIO (2025 QCCS 585), par. 42-44.
[119] Reduced from US$2.5M initially.
[120] Section 11.51(1) *CCAA* stipulates expressly that such a charge secures the *obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act*.

[168] The three Class Actions relate to the conduct of the defending D&Os *before* the Effective Time. Therefore, therefore, the defending D&Os could not even rely on the said Charge for indemnification purposes.

[169] While the Court recognizes the policy objective behind incentivizing directors and officers to participate in the restructuring efforts in exchange for a liability release,[121] a release *rationally connected to the purpose of the restructuring or necessary for it* must logically relate and be limited to those very same efforts. A release that would go beyond those efforts is necessarily no longer rationally connected or related to the restructuring and should not be approved.

[170] With all due respect, it is unrealistic to contemplate and misleading to argue that the Full D&O Release without the Carve-out will benefit the restructuring efforts and the mass of creditors by preventing any potential indemnity claim of the D&Os against the "*Directors' and Officers' Indemnification and Charge*," which evidences that the Applicants are grasping at straws to prevent, at all costs, the Class Action Parties from exercising their rights and recourses against the defending D&Os to the three Class Actions.

[171] The rational connection factor is particularly important when the proposed release contributes directly to one of the main objectives of the *CCAA,* namely, to maximize the realization proceeds for the benefit of the creditors[122], which is unfortunately not the case herein.

[172] In the present instance, the D&O Release—be it the Full D&O Release or otherwise—is not rationally connected to the Applicants' proposed restructuring. Yet, the Applicants continue to seek the Full D&O Release months after the Transactions contemplated in the RVO have been finalized successfully. If the Full D&O Release had been an essential and necessary component to the Transactions contemplated in the RVO, those Transactions would have not been completed until the present judgment.

[173] Put simply, the Full D&O Release has always been a "want" by the Applicants seeking to act on behalf of their unidentified *Released Parties* rather than an essential "need."

[174] The Applicants' main position boils down to the argument that D&O releases in the context of RVOs are customary, and that, in the present instance, the D&Os have "earned" their release as *Released Parties*.

[175] Unfortunately for the Applicants—and the defending D&Os to the three Class Actions—that is not the proper test.

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[121] Applicants' MOL, par. 95-96.

[122] *Arrangement relatif à Xebec Adsorption Inc.* (*Xebec*), 2023 QCCS 268, par. 5(e); *Acerus Pharmaceuticals Corporation (Re)* (*Acerus*), 2023 ONSC 3314, par. 38.

[176] In order to impair the rights and recourses of the Class Actions Plaintiffs as well as those of the Auditors and Underwriters seeking potential contribution and indemnity against the defending Mulhall D&Os, the Applicants had to demonstrate that the Full D&O Release was necessary if not essential to the positive outcome of the proposed restructuring, and that the D&Os demonstrated a strong and meaningful commitment to the result that was achieved.

[177] They have not. If some or all of the D&Os meeting the definition of *Released Parties* made a meaningful contribution to the restructuring outcome, credible evidence was not presented.

[178] Even worse, the Applicants never even attempted to identify precisely the proposed *Released Parties,* including the "*deemed*" directors and officers falling under that definition, preferring to adopt purposely a totally vague approach despite the reproaches made at the hearing by the counsel for the Class Action Parties.

4.3 Were the parties to be released from claims (i.e., the Released Parties) necessary and essential to the restructuring of the Debtors?

[179] The Court must answer that question in the negative.

[180] Again, other than the absence of any attempts to identify the *Released Parties*, there was limited and clearly insufficient evidence of the D&Os actual and meaningful involvement in the Applicants' restructuring process other than vague general allegations.

[181] In the present instance, there was minimal admissible evidence adduced of the directors' contributions to the Debtors' restructuring. None of the directors have sworn affidavits, and the statements put forward by the Applicants and the Monitor were tantamount to bare assertions with no material facts.

[182] All in all, the Applicants have not put forward enough relevant information to justify the exceptionally broad—and vague—Full D&O Release they now seek on behalf of their unidentified D&Os.

[183] Surprisingly, they were clearly reluctant to provide further evidence in that regard despite complaints of counsels for the Class Action Parties to that effect, with the support of relevant jurisprudence pointing to the need to do so.

[184] Reflecting the tone of the Monitor's Fifth Report of May 15, 2025 (the "**Report**"), with respect to the proposed Full D&O Release, during his cross-examination, the Monitor's representative carefully avoided expressly identifying any of the D&Os forming part of the proposed *Released Parties*. Asked if he knew their names, the witness responded that he had been provided with a list by the Applicants without sharing the same with anyone, including the Court under the pretext that he doubted that the list

represented in an exhaustive manner all the D&Os that would benefit from the Full D&O Release.

[185] Moreover, in the Report, the Monitor's recommendation to the Court with respect to the Full D&O Release was terse at best and quite telling:

> 114. (ii) The D&O Release is in line with other releases previously granted in favour of directors and officers of companies subject to CCAA proceedings;

[186] The Applicants—and the Monitor—could not ignore the importance and the relevance of the information sought by the Class Action Parties' counsel with respect to the identity of the D&Os to be released and their respective contributing involvement in the context of the restructuring process.

[187] The prevailing strategy was, obviously, to prioritize vagueness in order to ensure all D&Os and "*deemed*" D&Os would be released by relying—if not over-relying—on inapplicable precedents given the special set of facts and circumstances of the case at hand.

[188] The following comments of authors Morin and Mojtahedi could not reflect in a better manner the Court's opinion on the notion of *meaningful contribution* of D&Os seeking to benefit from releases in the context of *CCAA* restructurings:

> Mere respect for their fiduciary care and standard duties should not be sufficient for D&O to obtain a court-issued third-party release. For that kind of contribution, D&O, who by the very nature of their functions have access to privileged information allowing them to appropriately gauge their risk and protect themselves *ab initio*, should rely on their D&O insurance policy. It is our view that **court-issued releases should serve as an incentive to D&O to go beyond the exercise of their fiduciary care and maintenance duties**, **ultimately to the benefit of all stakeholders involved**. As with all third-party releases, **those in favour of D&O must be rationally connected to the purpose of the restructuring and provided in exchange for a meaningful contribution toward its achievement**.[123]
>
> [Emphasis added]

[189] Relying mainly of allegedly similar precedents was neither sufficient nor compelling to influence the Court's decision.

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[123] MORIN, LUC and ARAD MOJTAHEDI, "Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act," 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544, p. 15; see also: *Hy Bloom inc. c. Banque Nationale du Canada*, 2010 QCCS 737, par. 73.

[190] With all due respect, the Applicants' strategy failed completely for lack of relevant and necessary evidence to convince the Court that the Carve-Out should be removed from the D&O Release, on the contrary.

4.4 Have the D&Os to be released contributed to the plan?

[191] In their SMOA, the arguments of counsel for the Applicants can be summarized as follows:

> 55. The D&Os's collective actions and efforts both prior to and after the commencement of the CCAA Proceedings ultimately led to the execution of the Subscription Agreement and to the implementation of the Transactions, which allowed for the continuity of the Applicants' core business operations in Québec.
>
> 56. The D&Os have clearly contributed time, energy and resources to achieve this outcome. The D&Os efforts certainly go beyond that, which is expected of directors and officers.
>
> [Emphasis added]

[192] The Court does not doubt for an instant that some of the D&Os to form part of the *Released Parties* may have contributed to the restructuring efforts despite the dismal results. Unfortunately, the evidence as to who exactly contributed what, in a meaningful manner, was absent, seemingly on purpose.

[193] *Qui trop étreint, mal embrasse.* Grasp all, lose all.

[194] As previously mentioned, the Applicants did not put forward enough information to justify the exceptionally broad release they seek on behalf of their D&Os and "***deemed***" D&Os.

[195] In the Court's opinion, the Applicants were rooting, first and foremost, on vagueness, which was permeable throughout their evidence. This vagueness was also reflected in their overly broad definition of *Released Parties,* with their novel notion of "*deemed*" D&Os, the latter being a perfect recipe for hours of unnecessary litigation.

4.5 The Full D&O Release does not benefit the Applicants and, in fact, harms the stakeholders generally

[196] The Full D&O Release threatens substantial prejudice to the three Class Actions Plaintiffs as well as the Underwriters and Auditors, with very limited benefit to the Applicants, if any.

[197] Moreover, the Full D&O Release does not benefit the creditors generally, as it purports to reduce, without justification, the actions for recovery of creditors (i.e., the Class Action

Parties who have suffered losses and damages because of the Applicants' insolvency) against third parties, namely the defending D&Os as opposed to none of the Applicants.

[198] In a context where not even the secured creditors, including the Interim Lenders, will be paid in full,[124] there is no logical reason to deprive creditors of their claims against third parties—and not against the Applicants and their assets—which could, hopefully, increase the minimal recovery they could achieve as a result of this mitigated restructuring.

[199] The Court believes that the present goal of the Applicants with the Full D&O Release is to rearrange the litigation landscape vis-à-vis third parties in a manner that is unconnected to the Debtors' restructuring objectives.

4.6 Could the plan (i.e., the restructuring herein via a RVO) succeed without the Full D&O Release?

[200] The restructuring may be said to have notionally "succeeded" in that a going-concern sale of the Applicants' remaining business was achieved, albeit only by dint of a Subscription Agreement entered into with an extant holder of the 2023 Non-Convertible Debentures (represented by Groupe Mach Inc., the principal shareholder of the purchaser), which held, *inter alia*, a first-ranking security interest in the Innovation Center and equipment in the Battery Plant,[125] aided by an investment by the provincial government therein.

[201] Be that as it may, it is manifest that the restructuring "succeeded" without any consideration for the existence, nature, scope or court approval of the Full D&O Release with or without the Carve-out.

4.7 Creditors or other interested parties do not have sufficient knowledge as to the existence, nature and effect of the Full D&O Release

[202] The Applicants filed for protection under the *CCAA* in December 2024. Less than a year later on May 15, 2025—with a Notice of presentation for May 16, 2025[126]—they were seeking—on an urgent basis—the approval of the Transactions with, *inter alia*, overbroad releases of virtually all claims against their present and former directors and officers—and even their "*deemed*" directors and officers—without providing for sufficient opportunity and notice to the creditors—which included a broad constituency of public shareholders—to assess their possible recourses, protect their rights, and take appropriate legal action.

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[124] Testimony of Jean-François Nadon given on May 21, 2025, Exhibit **R-6**, page 68.
[125] First Report of the Monitor to the Court, December 17, 2024, page 9.
[126] Due to the oppositions voiced at the hearing of May 16, 2025, the same was continued to May 21 and 22, ending with the Carve-out.

[203] Notice of the Application *per se* is not at issue here; what was unwarranted was for the Applicants to ask the Court to issue releases and injunctions against the legitimate prosecution of judicial rights in a context where this Court was asked to grant relief on an urgent basis, while creditors sat on the sidelines, the whole by virtue of the promise that the Applicants would emerge with a successful restructuring.

[204] The Applicants were given the opportunity—under their own timelines and conditions—to restructure. However, the Court is still in the dark as to the precise contours of the releases it is being asked to grant with such a broad yet vague definition of the *Released Parties*.

[205] Here, the Applicants were seeking the exceptional remedy of a pre-emptive third-party release without giving the Class Action Parties, in particular, even the minimal benefit of qualifying their eligibility for such a broad release. The Court understands that the Carve-out was added by necessity as a result of the Objections raised by the Class Action Parties prior to the presentation of the RVO Application.

[206] As Koehnen J. found in *Green Relief*:

> […] If the court is being asked to release claims, it is helpful to know what is being released. […][127]

[207] Especially since the Applicants are stressing the importance and usefulness of the beneficial exception of "*any claims for fraud or willful misconduct*", this Court would add:

> And who exactly stands to be released from what in that regard?

[208] On the one hand, the Applicants led the Court to believe that the Class Action Parties should be satisfied with the "*any claims for fraud or willful misconduct*" exception already found in the Full D&O Release. Yet, on the other hand, they argued that the same Class Action Parties could not avail themselves of that exception due to their status as equity holders.

4.8 **The other arguments of the Applicants**

[209] Besides arguing that the Mulhall Action Parties did not meet the *Nexus Test* with the use of the Lydian Factors, the Applicants also claimed that neither Mr. Mulhall nor the Mulhall Action Co-defendants were entitled or legally qualified to oppose the Full D&O Release with the following arguments:

A- The Claims or Potential Claims of the Mulhall Class Action Parties were *Equity Claims*

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[127] *Green Relief*, *supra*, note 48, par. 30.

B- The Class Action Claimants[128] as holders of *Equity Claims* do not have the required juridical interest to oppose the Full D&O Release

C- The Class Action Claimants cannot rely on Section 5.1(2) *CCAA* to Oppose the Full D&O Release

D- The Class Action Claimants Cannot Rely on Section 5.1(3) *CCAA* to Oppose the Full D&O Release

[210] While not recognizing the legitimacy of the Objections voiced by the U.S. Plaintiffs, the Applicants pointed out that their submissions regarding the Mulhall Class Action Parties nevertheless applied equally to the U.S. Plaintiffs and that the proposed Full D&O Release should apply to all three Class Action Claims. Therefore, henceforth, unless specifically mentioned, all references to the Mulhall Class Action Parties shall equally apply to the U.S. Plaintiffs insofar as the Applicants are concerned.

[211] The Applicants' first two arguments should be dealt with together.

4.8.1 The Claims or Potential Claims of the Mulhall Action Parties are *Equity Claims*

4.8.2 The Class Action Claimants as holders of *Equity Claims* do not have the required juridical interest to oppose the D&O Release

[212] As a first step to the analysis as to whether or not the Mulhall Action Parties are legally entitled to oppose the Full D&O Release, the Applicants argued that it was important to proceed with a qualification of their respective claims or potential claims, in accordance with the relevant provisions of the *CCAA*, as it is well recognized in insolvency proceedings that the qualification of certain claims will afford different treatment to their holders.

[213] For instance, it is well recognized that holders of *equity claims* will not be entitled to vote on a proposal or on a plan or receive any payment from a debtor company in the context of insolvency proceedings, so long all of their secured and unsecured creditors have been paid in full, based on sections 6(8) and 22.1 *CCAA*, and on the applicable jurisprudence.

[128] Even if they initially considered that the U.S. Plaintiffs were disqualified for having failed to notify their Objections in due course, the Applicants suddenly seemed to broaden their approach with the use of the *Class Action Claimants,* which would represent collectively the Mulhall Action Parties together with the U.S. Plaintiffs. The Court understands that the expression *Class Action Claimants* used by the Applicants' counsel in their SMOA also means *Class Action Parties* used in the present judgment.

[214] The nature of debt and equity investments is fundamentally different, such that their treatment is equally fundamentally different in the context of insolvency proceedings[129].

[215] However, it is important to consider the context applicable to the case at hand.

[216] In what appears to be a last-ditch effort to persuade the Court to abrogate the Mulhall Class Action Plaintiff and putative class members' rights to sue the Mulhall D&Os—without forgetting the U.S. Plaintiffs—the Applicants argued that they are all first and foremost aggrieved shareholders who should be considered and treated as equity claim holders. As such, Class Action Parties are essentially trying to "*circumvent the provisions of the CCAA*" and obtain "*special treatment*" as opposed to the other creditors of the Debtors[130].

[217] But what "*special treatment*" will they enjoy?

[218] With all due respect, this argument misconstrues the actual position of the Class Action Parties.

[219] Contrary to the Applicants' contentions, the "*aggrieved shareholders*" are not seeking to preserve their right to "*pursue the D&Os personally for acts or omissions of the Applicants [i.e., the Debtors]*".[131] Rather, the "*aggrieved shareholders*" seek to preserve their right to pursue ***direct*** and ***independent*** claims against ***non-****Debtors*, i.e., the defending D&Os to the Class Actions, for violations of their own obligations under the *Securities Act* and the *CCQ* or under U.S. legislation. Because the shareholders' claims are brought against *non-Debtors*, in forums distinct from the present CCAA proceedings, it cannot credibly be said that they are attempting to obtain a "*special treatment*" vis-à-vis the Debtors and their creditors.

[220] This is even more obvious given that none of the unsecured creditors and existing shareholders will recover any money from the proceeds of the Transactions authorized by the RVO. Even the *Directors' and Officers' Indemnification and Charge* in the amount of US$1.9M[132] is worthless given the absence of any funding available.

[221] The Applicants' position with respect to the alleged lack of juridical interest of the Class Action Claimants—including the U.S. Plaintiffs—does not resist scrutiny.

[222] The Court shares the view of the Underwriters' counsel that even equity claimants have legal standing to oppose transactions under the *CCAA* depending on the circumstances.

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[129] *Sino-Forest Corporation (Re)* (*Sino-Forest*), 2012 ONSC 4377, par. 23-24.
[130] Applicants' MOL, par. 137 and 167; Applicants' SMOA, par 81.
[131] Applicants' MOL, par. 167.
[132] Reduced in the ARIO from US$2.5M.

[223] A close look at the circumstances is warranted if not crucial.

[224] There is no rule or principle in insolvency law that equity claimants are barred from objecting to a transaction that directly affects their interests like in the present instance. Section 6(8)[133] *CCAA* simply provides that non-equity claims must be paid before equity claims. The *CCAA* does not empower the Applicants to compromise the legitimate legal interests of third parties merely because their financial claims against them as Debtors would be characterized as equity claims. While shareholders are pushed to the bottom rung in terms of financial recovery, they are nevertheless stakeholders who maintain a basic entitlement to protect their critical interests, especially when their rights are challenged or placed at risk like in the present instance.

[225] The Court is particularly mindful that the claims asserted by the Class Action Parties—who are all third parties vis-à-vis the Applicants—cannot be discarded as equity claims because they are not claims against the Applicants or their assets. In particular, the Underwriters who are also third parties vis-à-vis the Applicants wish to preserve their recursory or subrogatory claims against the D&Os, who are also third parties vis-à-vis the Applicants.

[226] The Court understands that the Underwriters are not presently asserting a claim—be it provable or equity—to the assets of the Applicants' estates nor are the U.S. Plaintiffs. In any event, on a purely practical basis, any such recourse against the Debtors who, by the way, still benefit from the Stay of proceedings[134] would be totally futile in the absence of any assets or moneys to recover. Again, even the beneficiaries of the *Directors' and Officers' Indemnification and Charge* cannot realistically rely on the same to get any relief whatsoever from the Debtors.

[227] Nowhere does the *CCAA* or the *Bankruptcy and Insolvency Act* refer to *"equity claims"* as between two third parties to the debtor. In any event, such an approach would not fit within the scheme of Canadian insolvency legislation and policy.

[228] As Farley J. observed in *Stelco*, the *CCAA* deals with arrangements between a company and its creditors: "*There is no mention of this extending by statute to encompass a change of relationship among the creditors vis-à-vis the creditors themselves and not directly involving the company*."[135]

[229] The Court also shares the view of the Underwriters that there is no basis in the statutory scheme to discard, dismiss, or subordinate claims between third parties on the basis that they are equity claims vis-à-vis an insolvent company. Equity claims against a debtor are compromised in CCAA proceedings to prevent shareholders from depleting

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[133] **6 (8)** No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

[134] Paragraph 18 of the ARIO (2025 QCCS 585).

[135] *Stelco, supra,* note 38, par. 7.

the assets available to creditors.[136] Shareholders cannot expect to maintain a financial interest in a company where creditors are not being paid in full.[137] Equity claims are therefore subordinated to keep shareholders away from the negotiating table while the claims of other creditors are being sorted out.[138]

[230] The subordination of equity claims is only appropriate to the extent that the equity claim is a financial claim made against the assets of the debtor. It should not serve to bar legitimate stakeholders from raising objections to their treatment under the *CCAA* plan or the like.

[231] With all due respect, the Applicants are unreasonable and push the envelope too far when they argue that the Class Action Parties are equity claimants that have no juridical interest in the present proceedings. Following this logic, a *CCAA* debtor could obtain wide-ranging forms of relief against shareholders or other stakeholders, who would be precluded from raising their legitimate concerns against third parties.

[232] All in all, the three Class Actions against the defending D&Os do not threaten to deplete the assets available to creditors of the Debtors as alluded to by their counsel. The Class Action Parties never sought a seat at the negotiating table, nor did they attempt to disrupt the underlying RVO Transactions. Indeed, the RVO Transactions have already been negotiated, signed, approved, and closed. The restructuring has essentially been completed. A modification to the scope of the D&O Release by maintaining the Carve-out will not affect the commercial result of the RVO Transactions. The Class Action Parties merely seek to maintain the *status quo* in the present non-Debtor litigations between third parties and ensure that the RVO—in its final approved form—will not needlessly extinguish their potential claims against the defending D&Os forming part of the *Released Parties*.

[233] In other words, the Applicants are conflating, if not, confusing the factual background applicable herein. The Class Actions Plaintiffs, as shareholders of Lion Electric, are not attempting to assert their shareholders' rights and recourses against the realization proceeds of the Debtors' assets—or against their remaining assets, if any—under the *CCAA*. On the contrary, they are once again only attempting to preserve their distinct rights and recourses in damages against non-Debtors, i.e., former and current defending D&Os of the Lion Group. Moreover, the Mulhall Class Action is not even directed at any of the Debtors.

[234] With respect to the U.S. Claims, although Lion Electric and Northern Genesis are among the defendants in the New York Action and only Lion Electric has to defend in the Delaware Action, the U.S. Plaintiffs are not seeking the lift of the Stay against those specific Debtors. Moreover, the present D&O Release with the Carve-out—which is at the

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[136] *Sino-Forest Corporation (Re (Sino-Forest)*, 2012 ONCA 816.
[137] *Ibid.,* par. 30.
[138] *U.S. Steel (Re)*, (*U.S. Steel*) 2016 ONCA 662, par. 96.

centre of the present debate—does not purport to affect directly or prejudice the rights of the Debtors or their assets.

[235] The U.S. Plaintiffs like the Mulhall Class Action Parties are simply attempting to protect their distinct personal recourses against the U.S. Defendants under U.S. Statutes, which have nothing to do with the Transactions approved by the RVO.

[236] The U.S. Plaintiffs were compelled to intervene to ensure that the final wording of the Full D&O Release—especially in light of the overly broad definition of the *Released Parties*—will not serve ultimately to bar them from proceeding against all the U.S. Defendants other than Northern Genesis and Lion Electric. The overly broad and vague definition of the *Released Parties* with *deemed* directors and officers could be used to thwart the U.S. Actions.

[237] Strangely, counsel for the Applicants never attempted to alleviate the legitimate concerns of the U.S. Plaintiffs in that regard, preferring to invoke their lack of legal standing due to their alleged failure to file proper Objections in due course, like Mr. Mulhall, the Underwriters and the Auditors did. In any event, the Court has already dealt with and discarded this irrelevant issue. Moreover, the Applicants agreed to include the U.S. Actions in the Carve-out at the time.

[238] That being said, the U.S. Plaintiffs are well justified to be concerned and preoccupied with the overly broad and clearly vague scope of the Full D&O Release and its potential adverse impact on the U.S. Actions should it be approved without the Carve-out.

[239] As previously mentioned, the Applicants wrongly argued that the various claims or potential claims against the D&Os threaten the Applicants' assets because the D&Os will seek indemnity from the Applicants. At paragraphs 46 and 63 of their SMOA, the Applicants erroneously claim that, to all intents and purposes, the D&O Release with the Carve-out is expected to diminish, in turn, any indemnification claims which the D&Os could have against the Applicants, but for the D&O Release. Put simply, the Applicants argued that if the D&Os are protected from suit with the Full D&O Release, they will not seek indemnity from the Applicants and more assets will be available to the estates of the Debtors.

[240] The Court already determined that such an assertion was wrong and misleading.

[241] The Debtors and their creditors do not stand to suffer any prejudice whatsoever should D&Os decide to seek indemnity from the Debtors' assets, as there is nothing to collect or distribute.

[242] Moreover, any indemnity claim, which the D&Os called to defend the Class Actions may seek to bring against the Applicants would be an *equity claim*. Indeed, where an individual is sued by a shareholder who subsequently asserts a contractual indemnity claim against the debtor company, the indemnity claim resulting from the shareholder's

claim is indeed an *equity claim* vis-à-vis the debtor company.[139] Thus, it is wrong for the Applicants to argue—on behalf of the unidentified D&Os forming part of the *Released Parties*—that their eventual indemnity claims could deplete the assets of the Debtors' estates to the prejudice of the other creditors. Then and only then, their indemnity claims against the Applicants' assets would constitute *equity claims* which, in any event, would be subordinated.

[243] In conclusion, regardless of the equity claim argument, on the practical basis, any indemnity claim that could be eventually filed by D&Os against the Debtors would be futile, as firstly, the *Directors' and Officers' Indemnification and Charge*—which would not cover such a claim to start with—is completely unfunded failing which their equity claim would rank after the unsecured creditors who are not expected to receive any money from the Transactions approved with the RVO. Moreover, the aforesaid Charge does not even secure pre-filing claims against D&Os.

[244] The Court finds that the Class Action Parties have the juridical standing to voice their Objections to the Full D&O Release.

4.8.3 The Class Action Claimants cannot rely on section 5.1(2) *CCAA* to oppose the Full D&O Release

[245] In their *Petitioner/Objecting Party's Plan of Argument*, counsel for Mr. Mulhall argued that, in an attempt to muddy the waters, the Applicants focused on the exception provided by subsection 5.1(2) *CCAA* ("**s. 5.1 (2)**"). In short, the Applicants' position is that the Class Action Parties cannot rely upon the exception of s. 5.1(2) to oppose the Full D&O Release.[140]

[246] The Applicants admitted that "at first glance," the release language appears "broad,"[141] but argued that, upon further scrutiny, its scope is actually narrow. With all due respect, this contention could not be further from reality. Should the Court grant the Full D&O Release requested by the Applicants, the Full D&O Release would have the effect of shielding the D&Os from liability and prosecution for misrepresentations which occurred years before the Debtors were in the vicinity of insolvency and/or being insolvent, thereby eradicating the only recourse available to aggrieved shareholders.

[247] The Applicants' insistence and surprising emphasis on this particular argument betrayed their unsuccessful attempt to isolate the s. 5.1 (2) exception, as the only mean available to the Class Action Parties to validly and effectively oppose the Full D&O Release. This strategy was undoubtedly dictated by precedents submitted by their counsel where the s. 5.1(2) exception was, to all intents and purposes, the only one

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[139] *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd. (Innovation)*, 2011 ONSC 5018, par. 52-61, (leave to appeal denied 2012 ONCA 10).
[140] Applicants' MOL, par. 125-135 and 140-161.
[141] Applicants' MOL, par. 104 and SMOA, par. 57.

considered in those cases. Unfortunately, the cited cases are of no assistance to the Applicants, as it will be discussed further hereafter.

[248] Counsel for Mr. Mulhall pointed out that such an argument was misguided. Indeed, having failed to meet their burden of proof to justify the inclusion of a non-essential, publicly offensive, third-party Full D&O Release, the Applicants are attempting to pigeonhole the present debate to the applicability and scope of the exception under s. 5.1(2), thereby effectively attempting to reverse the burden of proof onto the Class Action Parties.

[249] The Court shares the point of view of Mr. Mulhall's counsel.

[250] Be that as it may, the Applicants contended that the Class Action Parties were not able to invoke the provisions of s. 5.1(2) in support of their Objections to the Full D&O Release on the grounds that as equity holders, they were not "creditors" within the purview of section 5.1(2) and that their Class Actions are based on pre-filing equity claims contrary to the findings in *Allen-Vanguard*[142] cited with approbation in the recent decisions of *Nemaska*[143] and *Taiga*[144].

[251] The Court, having already determined that the Class Action Parties have the legal standing to assert their Objections, the question at issue is whether s. 5.1(2) actually prohibits the release of directors (and *deemed* directors) called upon to defend the Mulhall Class Action and the U.S. Actions based on the facts and causes of action—with allegations of misrepresentations made by directors and wrongful or oppressive conduct on their part against the Class Action Plaintiffs—invoked in great detail in each of the three Class Action proceedings.

[252] In the present instance, none of the Class Action Parties are restricted to the exception of section 5.1(2) CCAA. It bears pointing out that the s. 5.1(2) exception is not the only mean available to the Class Action Parties to justify maintaining the Carve-out provisions, but one of three exceptions expressly provided in the D&O Release—the others being for (i) claims arising from fraud and/or willful misconduct nor any claim against the *Released Parties* that is not permitted to be released pursuant to section 5.1(2) of the *CCAA*, (ii) Insured Claims[145], and more importantly, (iii) Class Action Claims[146] (linked to the Carve-out).

[253] The foregoing eliminates one of the most important hurdles that negatively impacted the jurisprudential precedents relied upon by the Applicants with respect to the s. 5.1(2) exception, since, to all intents and purposes, none of the cited cases contained

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[142] *Allen-Vanguard*, *supra*, note 57.
[143] *Nemaska, supra,* note 69.
[144] *Taiga, supra,* note 70.
[145] As defined in the D&O Release.
[146] *Ibid*.

exceptions other the s. 5.1(2), including, *inter alia*, a class action carve-out similar to the one agreed upon by the parties herein.[147]

[254] But there is more.

[255] In support of their position on the s. 5.1(2) exception, counsel for the Applicants notably directed the Court to three alleged key decisions in their view, namely *Allen-Vanguard*[148], *Nemaska*[149] and *Taiga*[150]. However, the alleged key factual elements of those cases are highly distinguishable from the case at bar and, respectfully, are of no assistance to the Applicants.

[256] This being said, although the Court respectfully disagrees with the position put forward by the Applicants regarding their interpretation of the s. 5.1(2) exception that the latter would only apply to contractual creditors (as opposed to shareholders holding equity claims) for their claims against directors based on their post-filing misrepresentations or wrongful or oppressive conduct, the Court does not intend to and will not rely on the s. 5.1(2) exception to dismiss the Application of the Debtors and maintain the Carve-out in the RVO.

[257] However, given the emphasis placed by the Applicants with respect to the s. 5.1(2) exception not being useful to maintain the Carve-out herein, it is opportune to delve more fully into this issue to explain the inapplicability of those precedents to the case at bar.

[258] In *Allen-Vanguard*, a transaction containing a third-party release was approved and sanctioned by the Campbell J. of the Ontario Superior Court of Justice by way of a sanction order.[151] The *only* exception provided in that release was for "*any claim of the kind referred to in s. 5.1(2) CCAA*."[152] Importantly, in *Allen-Vanguard*, the third-party release was part of the plan of arrangement submitted to the creditors who voted favourably (100%), hence the sanction order issued subsequently by the Court[153]. Moreover, the class action plaintiffs who had not initiated their recourse by then had not opposed the issuance of the sanction order.[154]

[259] Unlike the present matter, in *Allen-Vanguard*, it was only *after* the sanction order was rendered that the class action plaintiffs sought an order confirming that the claims arising from their class actions (there were two) were not released because they fell within the ambit of the *only* exception provided in the third-party release, i.e., s. 5.1(2). This factual background is wholly distinguishable from the case at hand.

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[147] Applicants' MOL, footnotes 28 and 36 and Applicants' SMOA, footnote 36.
[148] *Allen-Vanguard, supra,* note 57
[149] *Nemaska, supra,* note 69.
[150] *Taiga, supra,* note 70.
[151] *Allen-Vanguard*, *supra*, note 57, par. 3.
[152] *Ibid*, par. 27.
[153] *Ibid*, par. 7.
[154] *Ibid*, par. 62.

[260] Moreover, in *Allen-Vanguard*, failure to sanction the transaction with the third-party release entailed the liquidation of the company. The third-party release was also an integral part of the transaction to be approved, it could not be carved out without placing the transaction and the company in jeopardy. The judge also noted that the directors were integral to the Plan's success. Finally, no one opposed the issuance of the sanction order.

[261] In the present instance, the U.S. Plaintiffs initiated their legal proceedings prior to the present *CCAA* proceedings, on March 11, 2024,[155] for the Delaware Action and on August 27, 2024,[156] for the New York Action.

[262] With respect to the Mulhall Class Action, as previously mentioned, prior to the RVO, the Court temporarily lifted the Stay to enable the proper filing of the Mulhall Application[157].

[263] The Class Action Parties all opposed to the Full D&O Release prior to the RVO; hence the agreed upon Carve-out to allow the immediate completion of the Transactions contemplated in the RVO without ruling immediately on the removal of the Carve-out.

[264] As a matter of fact, in *Allen-Vanguard*, the judge pointed out that *perhaps the better practice would have been to advise the Court of the issue and "carve" it out of the Plan,* which is exactly what the Class Actions Parties did herein:

> [59] The Sanction Order in this case by its terms provided the release of the claims now sought to be pursued. By the terms of the Sanction Order, the only reasonable expectation of stakeholders would be that, unless specifically authorized by the Order, any claim against directors would be barred. Potential claims against directors were not assigned to class plaintiffs nor was direction sought by any party about the effect of s. 5.1 prior to the issuance of the Order. Given the issue now before the Court and the disagreement of the parties, **perhaps the better practice would have been to advise the Court of the issue and "carve" it out of the Plan**.[158]
>
> [Emphasis added]

[265] Finally, *Allen-Vanguard* was rendered more than 20 years ago and the judge acknowledged that there was no precedent for the interpretive exercise he lent himself to when trying to decipher the meaning and scope of section 5.1 *CCAA*[159]; he did not have the benefit of the useful framework imposed by the Supreme Court in *Callidus*[160] and *Groupe SM*[161], nor did he resort to parliamentary debates.

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[155] **S-4**.
[156] **S-1**.
[157] 2025 QCCS 1883.
[158] *Allen-Vanguard*, *supra*, note 57, par. 59.
[159] *Ibid*., par. 77.
[160] *Callidus, supra,* note 49.
[161] *Montréal (City) v. Deloitte Restructuring Inc.* (*Groupe SM), 20*21 SCC 53.

[266] The relief sought before the judge was not only supported by a majority of stakeholders who found it warranted, but the judge also noted that there was clear evidence that the directors had an integral role in the success of the plan that was approved by all.

[267] In the present instance, (i) there was no formal support from a majority of stakeholders[162]—no stakeholders were present at the hearing to voice any support—(2) there was no plan to vote on; (3) there was no compelling evidence of any meaningful contribution by any of the unidentified *Released Parties* to a non-existing plan or to the restructuring efforts; and (4) the Court was being asked to essentially use its discretion to replace the democratic rights of creditors and express a "vote" in their stead. All of this, in a context where the only evidence, indeed *all* of the evidence of the stakeholders' position on the relief sought, was, in fact, one of vehement opposition rather than support.

[268] All in all, in *Allen-Vanguard*, the judge was not asked to go as far as this Court is being asked to venture, in that the releases sought at the time were only in favour of directors.

[269] Despite recent cases suggesting the opposite, counsel for the Underwriters submitted that, in the context of an arrangement or a compromise, the proper statutory interpretation of 5.1(2)(b) also prohibits the release of claims against directors for securities misrepresentation made prior to the Initial Order. In other words, the exception could cover pre-filing claims of shareholders as creditors vis-à-vis directors being non-debtor third party as opposed to being restricted to post-filing contractual creditor claims to the exclusion of shareholders' claims. In their view, the recent cases holding otherwise cited and relied upon by the Applicants were wrongly decided, at least insofar as they may be of assistance to the Applicants' arguments herein.

[270] Simply stated, contrary to the assertions of the Applicants' counsel with respect to the Class Action Parties, the exception found in s. 5.1(2)(b) could extend to shareholders' claims against directors, especially in the context of directors' misrepresentations or oppressive conduct made pre-filing. The arguments made in that regard were compelling.

[271] In any event, assuming that s. 5.1(2) exception was not available to the Class Action Parties—which is not necessarily the case—the Full D&O Release, which nevertheless requires this Court's approval, can be granted or denied under other provisions of the actual D&O Release and of the *CCAA*. Therefore, whether the exception of s. 5.1(2) applies or not to the case at bar is not relevant, as the Court disposes of other avenues to deal with the Full D&O Release.

[272] Be that as it may, a close reading of sections 5.1(1) and 5.1(2) *CCAA* is nevertheless in order:

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[162] Since no vote took place on a plan of arrangement.

> **5.1 (1)** A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.[163]
>
> **(2)** A provision for the compromise of claims against directors may not include claims that (a) relate to contractual rights of one or more creditors; or
>
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.[164]
>
> [Emphasis added]

[273] S. 5.1(2) constitutes an exception to s. 5.1(1), which provides that a compromise or an arrangement may include *claims against directors* of the debtor company that arose before the *CCAA* filing and that relate to statutory obligations of the company for which the directors (not the officers) may be held liable.

[274] Any reference in s. 5.1(2)(b) to *claims against directors* who may not be released should be read in conjunction with s. 5.1(1), which refers to pre-filing claims in a very specific context.

[275] The issue in the present instance is whether the allegations of statutory securities misrepresentations found in the Mulhall Application and in the U.S. Actions constitute *prima facie* "*allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors*" pursuant to s. 5.1(2)(b). In order to apply s. 5.1(2)(b), the Court must consider the words of the Act read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[165]

[276] In fact, what was contemplated by Parliament when enacting s. 5.1 *CCAA* in 1997?

[277] The Debates of the House of Commons and of the Senate clearly, repeatedly and unequivocally demonstrate that the intent of the legislator when enacting s. 5.1 *CCAA* was to obviate the directors' "*incentive to resign from the boards of the companies they serve at times of financial instability or impending insolvency*" by "*include*[ing] *provisions*

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[163] **5.1 (1)** La transaction ou l'arrangement visant une compagnie débitrice peut comporter, au profit de ses créanciers, des dispositions relativement à une transaction sur les réclamations contre ses administrateurs qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de celle-ci dont ils peuvent être, ès qualités, responsables en droit.

[164] **5.1 (2)** La transaction ne peut toutefois viser des réclamations portant sur des droits contractuels d'un ou de plusieurs créanciers ou fondées sur la fausse représentation ou la conduite injustifiée ou abusive des administrateurs.

[165] *Rizzo & Rizzo Shoes Ltd. (Re)*, (*Rizzo*) 1998 CanLII 837 (SCC), par. 21.

for compromising claims against directors relating to obligations which are imposed on them by statute."[166]

[278] This legislation was partially in response to the issues raised at the time with the company Canadian Airlines*,* as Parliament sought to eliminate the risk that "*the director can resign before insolvency, thereby avoiding liabilities that a director of a bankrupt company faces under various federal, provincial and territorial statutes*."[167]

[279] With respect to the U.S. Defendants, they are not being sued for liabilities they face under provincial, federal or territorial statutes; they are not being sued for any liability *qua* director under these statutes; they did not resign in the vicinity of insolvency or as a result of the insolvency proceedings; and there is no relation whatsoever between the U.S. Claims, the Full D&O Release sought, and the Lion Group restructuring.

[280] Clearly, the alternatively broad and then restrictive interpretation of s. 5.1 *CCAA* as a whole proposed by the Applicants, even if superficially premised on *Allen-Vanguard*, is contrary to the clear intent of the legislator. To the extent that s. 5.1 *CCAA* is within the purview of that which this Court should be examining in the first place—which is not the case—the precedents cited by the Applicants are of no relevance here.

[281] Be that as it may, the Court finds that, *prima facie*, the allegations of securities misrepresentation made in the Mulhall Application and in the U.S. Actions are inherently *allegations of misrepresentations* within the meaning of s. 5.1(2) b).

[282] However, recent case law on s. 5.1(2)(b)—*Nemaska* and *Taiga*—has generally held that there is no prohibition on releases of such claims because shareholders are not "creditors" within the meaning of the *CCAA*, and that s. 5.1(2) only applies to post-filing misrepresentations by directors to "creditors" only.[168] A misrepresentation by directors to shareholders would, therefore, not be a misrepresentation made by directors to creditors falling under the s. 5.1(2)(b) exception, be it pre-filing or post-filing misrepresentations.

[283] The Court respectfully begs to differ of opinion on that interpretation for the following reasons.

[284] It is necessary to consider the French-language version of the *CCAA*. Unlike the English-language version, the French-language version of s. 5.1(2) is not divided into subsections 5.1(2)(a) and (b) and does not use the phrase "*misrepresentations made by directors to creditors*." It merely states [*réclamations*] *fondées sur la fausse représentation ou la conduite injustifiée ou abusive des administrateurs*.

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[166] Debates of the Senate, Official Report, 2nd Session, 35th Parliament, vol 136, no 70 (February 12, 1997), p 1516.

[167] Debates of the Senate, Official Report, 2nd Session, 35th Parliament, vol 136, no 69 (February 11, 1997), p 1494.

[168] *Nemaska, supra,* note 69, par. 56, 65-66; *Taiga, supra,* note 70, par. 110-115.

[285] In French, the word "*misrepresentations*" is not qualified or constrained by the words "*to creditors*."

[286] With no disrespect intended, the Court is of the view that even in English, s. 5.1(2)(b) is not intended to create such a restrictive category. The provision carves out claims that are based on allegations of misrepresentation "*made by directors to creditors or of wrongful or oppressive conduct by directors*." The category of "*wrongful or oppressive conduct by directors*" is broad and is not constrained to wrongful or oppressive conduct by directors "*toward creditors*" as opposed to shareholders. In fact, although not exclusively, generally, most oppression remedy recourses are brought to Court by minority shareholders claiming to be the victims of oppression due to the wrongful or oppressive conduct of director(s), which may include misrepresentations.

[287] All in all, s. 5.1 and the s. 5.1(2) exception are intended to strike a balance: on the one hand, to protect directors who remain involved in the governance of a distressed business after the initial order and, on the other hand, to ensure that insolvency statutes do not become the refuge of unscrupulous directors seeking to escape the consequences of their actions.

[288] As the Court of Appeal for Ontario observed in *Dofasco*[169], it would be contrary to public policy to permit management to use insolvency to escape the consequences of their misrepresentations:

> [54] […] L. W. Houlden and C. H. Morawetz, the editors of *the 2000 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 1999) at p. 192, are of the view that the policy behind the provision is to encourage directors of an insolvent corporation to remain in office so that the affairs of the corporation can be reorganized. I can see no similar policy interest in barring an action against an officer of the company who, **prior to the insolvency**, has misrepresented the financial affairs of the corporation to its creditors. It may be necessary to permit the compromise of claims against the debtor corporation, otherwise it may not be possible to successfully reorganize the corporation. **The same considerations do not apply to individual officers**. Rather, it would seem to me that it would be contrary to good policy to immunize officers from the consequences of their negligent statements, which might otherwise be made in anticipation of being forgiven under a subsequent corporate proposal or arrangement.[170]
>
> [Emphasis added]

[289] While shareholders as equity claimants vis-à-vis a debtor company may not be entitled to recover from an insolvent estate in the same manner as other creditors, it would be contrary to public policy to permit unscrupulous directors to lure pre-filing prospective investors (i.e., shareholders and prospective shareholders) with misrepresentations only to obtain a release through the *CCAA*. This is captured in both the French-language

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[169] *NBD Bank, Canada v. Dofasco Inc.* (*Dofasco*), 1999 CanLII 3826 (ON CA).
[170] *Dofasco*, *supra*, note 169, par. 54.

version of s. 5.1(2), and the open-ended phrase "*or of wrongful or oppressive conduct by directors*" in English.

[290] Simply branding a claimant as a shareholder is not sufficient nor conclusive. It is crucial to determine what the release sought by the debtor is for or what claims the proposed release purports to cover. In the present instance, the claims of the Class Action Parties are mainly personal claims in damages against non-debtor third parties, namely certain current or former directors and officers (and *deemed* directors and officers) of the Lion Group. The Carve-out does not aim at any of the Debtors or their assets nor does it affect any of their rights and recourses. In fact, the Debtors still continue to benefit from the Stay of proceedings ordered earlier in their favour[171].

[291] Similarly, there is no basis in the text of the *CCAA* to conclude that s. 5.1(2) applies exclusively to post-filing claims. Nothing in the text of s. 5.1(2) establishes such a constraint. On the contrary, s. 5.1(2) establishes an exception to s. 5.1(1), which provides that a compromise or an arrangement "*may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act*…" [Emphasis added]. If s. 5.1(1) permits a release of pre-filing claims in a compromise or an arrangement in a specific and limited context, there is no reason to conclude that the s. 5.1(2) exception is necessarily limited to post-filing claims. While s. 5.1(1) is permissive and expressly permits the release of certain pre-filing claims, there is nothing in the text of the Act to suggest that the exception at s. 5.1(2)(b) only applies to post-filing claims.

[292] Counsel for the U.S. Plaintiffs also pointed out that, in their respectful opinion, the reasoning in *Allen-Vanguard* was flawed in that it was betrayed by one crucially problematic syllogism, seemingly endorsed by the Applicants.

[293] The Applicants contended that:

> … only "post-filing claims" of "creditors" against the "directors" of a debtor company cannot be released in accordance with Section 5.1(2) of the CCAA, as it would be inconsistent with the scheme of the CCAA to allow claims to proceed against the debtor company's directors for acts and omissions that they did in the name of the company, *prior* to the Initial Order.[172]

[294] Yes, s. 5.1(2) explicitly refers to "*claims*", but there is more.

[295] According to the Applicants themselves, the word "claim" in s. 5.1(2) corresponds to any indebtedness, liability or obligation of any kind that would be a provable "*claim*" within the meaning of section 2 of the *Bankruptcy and Insolvency Act*:

> 116. First, the term "*claim*" is defined in section 2 of the CCAA as follows:

[171] Paragraph 18 of the ARIO (2025 QCCS 585).
[172] Applicants' SMOA, par 91.

> "*any indebtedness, liability or obligation of any kind that would be a provable claim within the meaning of section 2 of the Bankruptcy and Insolvency Act*."
>
> 117. Second, the terms "*provable claim*," "*claim provable*" and "*claim provable in bankruptcy*" are defined as follows in section 2 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and such definition makes it clear that the only persons who may assert a "*provable claim*," a "*claim provable*" or "*claim provable in bankruptcy*" are "*creditors*" (as opposed to shareholders or other holders of equity claims):
>
> "*any claim or liability provable in proceedings under this Act by a creditor*"[173]
>
> [Emphasis added]

[296] While emphasizing that a provable claim can only be one asserted by the holder of a debt or a creditor holding a provable claim (as opposed to an equity holder or a person asserting an *equity claim*), the Applicants ignored that, by definition, a provable claim is not a post-filing claim, as it is established at "*the date of commencement of insolvency proceedings*."[174]

[297] Quite apart from the fact that in *Allen-Vanguard*, the judge found that, "*in most cases*" (not always), the obligations referred to in s. 5.1(2) will "*be a post-filing obligation*[175]," it is, with all due respect, incongruous to simultaneously contend that the notion of "*claims*" in s. 5.1(1) and s. 5.1(2) must be a provable claim for purposes of restrictively defining the nature of the claim depending on the identity of the person asserting it (i.e., a creditor or a shareholder), but not when it comes to adhering to its temporal features (pre-filing or post-filing).

[298] While the reasoning in *Allen-Vanguard* has become influential, it is nevertheless difficult to reconcile with the text of s. 5.1(2). In particular, there is no legislative basis for the judge's conclusion that "*in most cases*" a director's personal undertaking to a creditor "*is a post-filing obligation*." In fact, directors will rarely make post-filing contractual arrangements with creditors in a *CCAA* context with a monitor appointed and as such, the judge focused heavily on contractual personal interactions between directors and creditors post-filing.

[299] Respectfully, the requirement that directors' misrepresentations be based on a close and direct relationship with a creditor (and not with a shareholder or a prospective shareholder) has no legal basis or justification. These elements, although not present in the text of the *CCAA* provision and not justified in the *Allen-Vanguard*'s decision, have somehow persisted in the jurisprudence since 2011.

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[173] *Ibid*., par 116-117.
[174] *Groupe SM*, *supra,* note 161, par. 109.
[175] *Allen-Vanguard*, *supra*, note 57, par. 74.

[300] However, the judge further found that "*in this context*," s. 5.1(2) may yet still "*include a shareholder*.[176]" This further illustrates that the hazardous task assumed by the Applicants to rely on the interpretation proposed by *Allen-Vanguard* that was made at the time without the aid of applicable precedents and any tools of statutory interpretation.

[301] This only illustrates that the *ratio* in *Allen-Vanguard* is, at its core, not a useful precedent to rely upon in the present instance, at the very least.

[302] Finally, it should be noted that the very scope of the exceptions contemplated in s. 5.1(2) is at odds with the theory that they could only refer to post-filing claims. The notion that directors (or even officers) could likely engage in oppressive conduct or make misrepresentations post-filing in the context of a *CCAA* process—while admittedly not impossible—is so divorced from the realm of probability as to be not only incongruous, but it is also simply improbable that the legislator would purposely carve out an exception for such trifles: *de minimis non curat lex*.

[303] Respectfully, the Applicants' further reliance on the recent *Nemaska* and *Taiga* decisions who cited *Allen-Vanguard* with approbation to support their opinion that s. 5.1(2) only aims to cover post-filing claims of creditors as opposed to equity holders or shareholders, did not convince this Court of their merits for the purposes hereof.

[304] While in *Nemaska* and *Taiga,* the judges relied on and endorsed the reasoning of *Allen-Vanguard* insofar as the scope of s. 5.1(2) b) is restricted to post-filing claims of creditors against directors' misrepresentations to the exclusion of shareholders asserting equity claims, respectfully, the Court is not convinced that such a restrictive interpretation of the s. 5.1(2) exception is called for.

[305] In any event, first and foremost, the factual backdrops of these two recent decisions can be distinguished from the facts in the present case.

[306] In *Nemaska*[177], a RVO containing a third-party release was proposed and sanctioned on October 15, 2020.[178] The *only* exception provided in the third-party release was for "*any claim against the directors that is not permitted to be released pursuant to s. 5.1(2) of the CCAA*.

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[176] [74] What in my view is consistent with the decisions in the three cases mentioned and in the Québec case *Papiers Gaspésia* 2006 QCCS 1460 (CanLII) and with the interpretation of s. 5.1(2) is that the actions of the directors toward persons who may be regarded as creditors, **and may in this context include a shareholder**, are based on a direct relationship when a director takes on an obligation to make a payment that would otherwise be the obligation of the company and promises to do so or is obliged to do so by legislation. **In most cases this will be a post-filing obligation**. In other words, a promise by a director directly to a creditor stakeholder that is made following a CCAA Initial Order may attract liability to the director and should not be released. [Emphasis added]

[177] *Nemaska, supra,* note 69.

[178] *Nemaska, supra,* note 69, par. 2.

[307] The judge was called upon to consider a shareholder action (the "**Shenker Action**") against an insolvent mining company. The Shenker Action included various claims and causes of action, including a shareholder misrepresentation claim against D&Os. Relying upon the earlier approval of the RVO, the D&Os sought to enforce the release contained therein that would have extinguished the Shenker Action against them. Shenker opposed the D&Os claiming that their case fell within the s. 5.1(2) exception of the RVO.

[308] In *Nemaska*, the s. 5.1(2) exception was raised months after the transaction approved via a RVO was closed and after the Shenker Action was filed against the debtors' directors and officers therein[179]. The judge was then tasked with determining whether the claims arising from the Shenker Action (filed *after* the closing of the transaction) were barred by the D&O release, or whether they fell under the *only* exception provided therein, i.e., s. 5.1(2). It is for that reason that the *Nemaska* decision focused on the applicability of s. 5.1(2).

[309] The Court noted that in *Nemaska*, the judge reviewed the sanction order rendered five years prior by the supervising judge and: (i) emphasized that the latter considered the impact of a refusal to include a D&O release in the RVO, which was an essential component of the transaction contemplated at the time[180]; and (ii) highlighted that the supervising judge decided to leave the proposed release language as is "*pour diverses raisons propres à la situation en cause*."[181]

[310] No similar impact or reasons exist here.

[311] The judge also adopted the reasoning in *Allen-Vanguard, c*oncluding that s. 5.1(2) applied only to contractual creditors as opposed to equity holders, and generally applied to the directors' misrepresentations or oppressive conduct against creditors after the initial order (post-filing), not those before it (pre-filing)[182].

[312] However, in *Nemaska*, in issuing the RVO with the s.5.1(2) exception, the supervising judge stated that, in his view, this exception adequately protected shareholders vis-à-vis the D&Os:

> [106] Le Tribunal est d'avis que cette exception protège adéquatement les actionnaires à l'égard des administrateurs et dirigeants des Débitrices et il n'y a pas lieu d'élaborer davantage sur ce sujet.[183]

[313] Given the very particular circumstances of that case, the judge concluded that he was not bound by the supervising judge's comment, as it did not constitute *res judicata,*

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[179] *Nemaska*, *supra*, note 69, par. 9.
[180] *Nemaska*, *supra*, note 69, par. 36.
[181] *Nemaska*, *supra*, note 69, par. 83.
[182] *Nemaska*, *supra*, note 69, par. 56, 65-66.
[183] *Arrangement relatif à Nemaska Lithium inc*, 2020 QCCS 3218.

adding that using the word “shareholder” could not create a right that does not exist to start with[184].

[314] Be that as it may, it is important to point out that the judge was guided by several other facts more fully set out in his judgment that explained and justified his conclusion that Shenker did not benefit from the s. 5.1(2) exception found in the RVO.

[315] With all due respect for the opinion to the contrary, in *Nemaska,* the circumstances and facts considered by the judge are totally distinguishable from those in the present case.

[316] The Court is not in a position to accept the Applicants’ invitation to adopt the same reasoning, echoing the reasoning in *Allen-Vanguard* that s. 5.1(2)(b) is necessarily limited to claims of contractual creditors (and not shareholders) against directors for their post-filing misrepresentations or their post-filing wrongful or oppressive conduct.

[317] With all due respect, the Court does not believe that the scope of s. 5.1(2) exception should be interpreted in such a narrow and restrictive manner.

[318] The Court comes to the same conclusion with respect to the *Taiga* decision.

[319] In *Taiga*[185], the judge similarly adopted the reasoning in *Nemaska* and in *Allen-Vanguard*.

[320] In *Taiga*, a class action plaintiff sought to amend his application for authorization to name additional directors of Taiga Motors. The directors sought to enforce the terms of a previously court-approved release under the *CCAA*, which the plaintiffs resisted on the basis of the exception found at s. 5.1(2)[186]. The judge adopted the entirety of the analysis in *Nemaska,* echoing *Allen-Vanguard,* and upheld the D&O releases. The judge also considered the French and English versions of s. 5.1(2), concluding that read as a whole, they indicated that s. 5.1(2) covered only post-filing misrepresentations or representations made to creditors as opposed to equity holders. However, the different wording found in the French-language version was not openly addressed.

[321] With all due respect, considerable caution is required. The decision in *Allen-Vanguard*, upon which *Nemaska* and *Taiga* are based, appears to lack analytical depth, and appears to have been motivated in large part by the fact that the plaintiffs had failed to object in a timely manner to the proposed release and that all creditors had voted in favour of a plan that incorporated the sole s. 5.1(2) exception.

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[184] *Nemaska, supra,* note 69, par. 89-90.
[185] *Taiga, supra,* note 70.
[186] The release also excluded *fraud and willful misconduct,* which the judge found inapplicable in light of the lack of evidence.

[322] That is clearly not the case here. The Underwriters, along with the other affected parties to the Mulhall Application, and the U.S. Plaintiffs have strenuously objected to the Full D&O Releases throughout these proceedings, prompting the addition of the Carve-out at the opportune time.

[323] In the present instance, the RVO was sanctioned by the Court with the Carve-out in favour of the Class Action Claims subject to determining the legality and appropriateness of the Carve-out at a later date.

[324] Additionally, although the class action plaintiff in *Nemaska* raised allegations of wrongful and/or oppressive conduct, the judge concluded that these allegations were not substantiated and amounted to conjecture.

[325] In Taiga, the evidence did not satisfy the judge as well that the exceptions of *fraud* and *willful misconduct* of the D&Os had been met in a convincing manner.

[326] Again, this is not the case here, as appears from the Mulhall Application, Mr. Mulhall's allegations are *prima facie* serious and supported by significant probative evidence. The same finding applies to the U.S. Actions.

[327] Finally, none of the other additional cases cited by the Applicants are relevant to this Court's analysis, as their circumstances differ vastly from the case at hand, making them distinguishable and of no practical assistance herein, for instance:

> - In *Taiga Motors*,[187] Collier J. highlighted that "*in the Monitor's opinion, the requested releases form an important part of the RVO transaction, since Taiga's directors and officers may be called upon to assist with the future conduct of the business*"[188]; in the present instance, the Monitor did not opine that the D&O Release was "*an important part of the RVO*" (in fact, the Monitor provided evidence to the contrary) nor that all D&Os may be called upon to assist in the future conduct of Lion Electric's business;
>
> - In *FormerXBC*[189], the Court noted that it was "*difficult* […] *to see who could be harmed*" by the third-party release, since a settlement approved previously by the Court released the class action claims in consideration of a payment of $5M financed by Xebec's insurer[190];
>
> - In *Harte Gold*[191], the Court specifically emphasized that it was "*unaware of any outstanding director claims or liabilities against the directors and officers*" as a

[187] *Taiga Motors Corporation et Deloitte Restructuring Inc.*, (*Taiga Motors*) 2024 QCCS 4319.
[188] *Ibid*, *supra*, note 187, par. 25.
[189] *FormerXBC*, *supra*, note 39.
[190] *Ibid*., *supra*, note 39, par. 58-59.
[191] *Harte Gold*, *supra*, note 43, par. 83.

> result of which "*the Release is not expected to materially prejudice any stakeholders*," which is clearly not the case here[192];
>
> - In *Cirque du Soleil*[193], the Court held that at this stage, without a hearing on the merit of the defamation claims, it could only characterize the individual defendants' behaviour as unjustified or abusive "*ce qui permet de retenir l'exclusion prévue au paragraphe 5.1(2) de la LACC et passer à la prochaine étape, soit l'audition au mérite de la Réclamation en diffamation contre les 4 Individus-défendeurs*".[194]

[328] In conclusion, the Court is of the opinion that the Class Action Parties who are all objecting to the Full D&O Release are not, for the purposes hereof, presently asserting equity claims against any of the Debtors or against their assets. As previously mentioned, given the overly broad and yet vague definition of *Released Parties* and of *Released Claims* in the D&O Release, they were obliged to intervene to assert and protect as creditors against third-party non-Debtors, their personal and direct recourses in damages against them due to their alleged misrepresentations for which they may be found liable, not against the Debtors.

[329] Given the *prima facie* serious nature of the allegations of misrepresentations made against the defending D&Os in the three Class Actions, the Court believes that the Class Action Parties could reasonably rely on the s. 5.1(2)(b) exception to oppose the Full D&O Release insofar as the directors and former directors are concerned. However, in light of the conflicting interpretation of the s. 5.1(2)(b) exception and the fact that the *Nemaska* decision will be heard by the Court of Appeal[195], it is not necessary to rest the Court's judgment on that specific controversial exception.

[330] Hopefully, in *Nemaska*, the Court of Appeal will be in position to clarify the scope of the 5.1(2)(b) *CCAA* exception.

4.8.4 The Class Action Claimants Cannot Rely on Section 5.1(3) *CCAA* to Oppose the Full D&O Release

[331] Section 5.1(3) *CCAA* reads as follows:

> **5.1(3)** The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.[196]

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[192] *Ibid*.

[193] *Arrangement relatif à 9424-9356 Québec Inc.* (*Cirque du soleil*), 2021 QCCS 5319 (Leave to appeal dismissed, 2022 QCCA 549).

[194] *Cirque du soleil*, *supra*, note 193, par. 79.

[195] 2025 QCCA 1365.

[196] **5.1 (3)** Le tribunal peut déclarer qu'une réclamation contre les administrateurs ne peut faire l'objet d'une transaction s'il est convaincu qu'elle ne serait ni juste ni équitable dans les circonstances.

[332] S. 5.1(3) affirms the Court's residual discretion to deny third-party releases in favour of directors if a compromise of claims against directors would be unfair or unreasonable in the circumstances.

[333] Applicants' counsel argued that, as was the case in s. 5.1(2), the exception or limitation set out in s. 5.1(3) *clearly* referred to "*claims*" thereby excluding "*equity claims*" against "directors", as was previously discussed.

[334] Counsel also pointed out that in *Allen-Vanguard*, *Nemaska* and *Taiga*, none of the judges chose to deny the D&O releases sought on the basis that it would be unfair or unreasonable to grant such releases pursuant to s.5.1(3).

[335] The Court respectfully takes issue with this affirmation.

[336] Firstly, s. 5.1(3) does not contain any of the exceptions or limitations alluded to by the Applicants' counsel. Its provisions grant discretion to the Court if the compromise to be approved would not be fair and reasonable insofar as directors are concerned.

[337] Secondly, in *Nemaska*, the judge actually considered s. 5.1 (3) but concluded that while the discretion conferred upon the Court under that section allowed a potential injustice to be remedied by refusing to sanction a compromise if it was not fair and reasonable, the specific circumstances of his case did not warrant such an exercise of his discretion[197].

[338] Indeed, applied to the case at bar, s. 5.1(3) grants discretion to the Court to decide whether it would be fair and reasonable to approve a compromise involving directors via the Full D&O Release, thus impacting if not depriving the claims and potential claims of the Class Actions Parties against the defending directors.

[339] What is "*fair and reasonable*" must be assessed as part of the Court's analysis with the assistance of the Lydian Factors (the *Nexus Test*).

[340] The judicial discretion in applying s. 5.1(3) is very wide, permitting the Court to "*pick and choose among the directors and further that any individual claim may be segmented so that it may be partially exempted*."[198].

[341] Unfortunately for the Applicants—and the directors and the *deemed* directors, they sought to be shielded from the three Class Actions—not only they failed the *Nexus Test* for the reasons more fully stated previously, but, more importantly, they also failed, if not, purposely refrained from identifying any of the D&Os (or the *deemed* D&Os) who would have actually participated in a meaningful manner to the restructuring efforts, if any.

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[197] *Nemaska, supra,* note 69, par. 72.
[198] *Re BlueStar Battery Systems International (BlueStar)*, 2000 CanLII 22678 (ON SC), par. 16.

[342] All in all, the Court is satisfied, if not strongly convinced that the facts and circumstances of the present case warrant and justify that the Court exercises its judicial discretion under s. 5.1(3). Therefore, the Court finds that it would be unfair and unreasonable to compromise the claims and potential claims of the Class Action Parties by approving the Full D&O Release without the Carve-out insofar as the directors and former directors of the Lion Group are concerned.

[343] Approving the Full D&O Release in order to rearrange the litigation landscape between non-debtor stakeholders (i.e., the Class Action Parties), while no pressing *CCAA* objective demands it would be unfair and unreasonable within the purview of s. 5.1(3) *CCAA*.

[344] Given the Court's determination that the Carve-out must remain based on the Court's judicial discretion conferred by s. 5.1(3) *CCAA*, it is not necessary to address the exception relating to "*any claims for fraud or willful misconduct*" found in the Full D&O Release.

[345] The Court has already determined that the numerous allegations found in the three Class Action proceedings concerning the alleged misrepresentations and maneuvers of the defending D&Os were serious *prima facie.* These allegations may possibly lead the trial judges to find on the merits fraudulent or willful misconduct and/or wrongful or oppressive conduct on the part of the defending D&Os or misrepresentations generating their liability.

[346] At this juncture, it is not necessary to conduct a detailed and exhaustive analysis of the allegations found in the three Class Action proceedings. *Prima facie*, the allegations are sufficiently serious to warrant granting the remedy sought by the Class Action Parties.

[347] While the Court's findings pursuant to s. 5.1(3) *CCAA* only apply to and concern the directors (and possibly the "deemed" directors) of the Lion Group, the overall compelling evidence leads the Court to exercise its judicial discretion under s. 11 *CCAA* with respect to the officers and "deemed" officers defined as *Released Parties* in the Full D&O Release. If removing the Carve-out from the D&O Release insofar as the directors (and "deemed" directors) are concerned would be unfair and unreasonable, the Court finds that it is only appropriate to reach the same conclusion with respect to the officers and "deemed" officers of the Lion Group whoever they may be.

[348] Therefore, the Carve-out must and shall, therefore, remain intact.

4.8.5 The Insured Claim exclusion

[349] The Applicants argued that without the Carve-out of the Class Action Claims—which should be removed by the Court—the other exclusions found in the Full D&O Release were sufficient to adequately protect the rights of the Class Action Parties, *inter alia*:

> (i) claims against the *Released Parties* arising out of fraud or willful misconduct or any claim against the *Released Parties* that are not permitted to be released pursuant to section 5.1(2) of the *CCAA* [199](the "**First Exclusion**"); or (iii) claims against the *Released Parties* that are covered by any insurance policy of the Lion Group (to the extent of any such available insurance) (the "**Insured Claim Exclusion**").

[350] As such, Applicants claimed that holders of claims against the *Released Parties* falling within those two exclusions would not be adversely affected by the Full D&O Release. Yet, the Applicants have insisted that the Class Action Parties could not avail themselves of the First Exclusion given their alleged status of equity claimants. In any event, reliance on the future adjudication of s. 5.1(2) *CCAA* exception invites uncertainty at best, especially with some case law ruling that this exclusion does not apply to shareholders and only covers post-filing claims.

[351] What about the Insured Claim Exclusion?

[352] For ease of reference, paragraph 62 of the RVO reads as follows:

> [62] **ORDERS** that, notwithstanding anything to the contrary contained in paragraph [61] of this Order or elsewhere, any Released Claims that are covered by any insurance policy of the Debtors and only to the extent of any such available insurance (each, an "**Insured Claim**"), shall not be waived, discharged, released, cancelled or barred by this Order, and any Person having an Insured Claim shall be entitled to recovery in respect of such Insured Claim but solely from, and to the extent of, the proceeds of the applicable insurance policies available in respect of such claim, and Persons with Insured Claims shall have no right to, and shall not, directly or indirectly, seek any recovery in respect thereof from the Debtors or the Released Parties, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. For greater clarity, (i) if no insurance is available to cover a Released Claim, such claim shall be a Released Claim (except for the Class Action Claims, until the court's final decision as to whether or not they should be released, pursuant to paragraph [61] of this Order), and (ii) any claims that may be subject to recovery under any insurance policies shall be deemed not to be vested nor transferred to the Excluded Cos. or to any other entity.

[353] The Applicants very briefly addressed as follows the Insured Claim Exclusion in their MOL, claiming that it purports to channel the claims to insurance proceeds to the benefit of claimants[200]:

> With respect to the exclusion of claims that are covered by insurance policies, the Applicants wish to highlight that such "channelling" of claims was made further to discussions with parties involved, including the Monitor, and as requested by certain counsels to the Class Action Claimants, there are multiple precedents

[199] This exclusion is found customarily in similar release orders.
[200] Applicants' MOL, par. 104 (d).

> where claims against D&Os were "channelled" to insurance proceeds, whether in the context of a *CCAA* plan of compromise or arrangement,[201] in a CBCA plan,[202] in an approval and vesting orders[203] or approval or in approval reverse vesting orders.[204]

[354] Just because the proposed release language was approved in the past by the Courts in other instances does not mean that it will or should necessarily be approved in every case that follows[205]. Whether third-party releases like the one sought herein have been approved in previous cases is irrelevant. It rather depends on whether the Debtors have met their burden in the present instance.

[355] Again, each case must be determined and assessed based on its own merits and its own set of circumstances.

[356] In any event, the evidence adduced at the hearing did not reveal the existence of an agreement between the parties regarding this particular exclusion, on the contrary.

[357] According to Mulhall's counsel, to the extent the D&O insurance policies covered by the Insurance Claim Exclusion—which are wasting policies—are eroded—a fact that has not been disclosed by the Applicants—they offer limited respite to aggrieved shareholders.[206]

[358] Moreover, the definition of *Insured Claim* (i.e., "*any Released Claims that are covered by any insurance policy of the Debtors*") is unclear and open to interpretation. As it stands, all *Released Claims* "*covered*" by an insurance policy are *Insured Claims*. But what constitutes a covered claim? Must the insurer confirm coverage? If denied, does the *Insured Claim* revert back to a released one? These questions remained unanswered.

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[201] *In the Matter of a Plan of Compromise or Arrangement of Guestlogix Inc. et al.*, Plan of Compromise and Arrangement dated July 29, 2016, Court File No. CV-16-11281-00 CL (ONSC), at para. 6.2; *In the Matter of a Plan of Compromise or Arrangement of Sino-Forest Corporation*, Plan of Compromise and Reorganization dated December 3, 2012, Court File No. CV-12-9667-00 CL, at section 7.2 (j); and *In the Matter of a Plan of Compromise or Arrangement of Skylink Aviation Inc.*, Plan of Compromise and Arrangement dated Aril 18, 2013, Court File No. 13-1003300-CL, at section 7.1(b).

[202] *In the Matter of a Proposed Arrangement of Concordia International Corp. et al.*, Amended Plan of Arrangement dated June 26, 2018, Court File No. CV-17-584836-00 CL, at section 7.4.

[203] *In the Matter of the Companies' Creditors Arrangement Act in Elevation Gold Mining Corporation et al.*, Approval and Vesting Order granted on December 17, 2024, Court File No. S-245121 (BCSC), at para. 14.

[204] *Green Relief Inc. (Re),* Approval and Vesting Order granted November 9, 2020 (ONSC), Court File No. CV-20-00639217-00 CL, at para. 24; *In the Matter of the Companies' Creditors Arrangement Act in Delta 9 Cannabis Inc.*, Approval and Reverse Vesting Order, Court File No. 2401-09688 (ABKB), at para. 29; *In the Matter of the Companies' Creditors Arrangement Act in Atlas Global Brands Inc.*, Approval and Reverse Vesting Order, Court File No. CV-24-00722386-00 CL (ONSC), at para. 33.

[205] *Tacora*, *supra*, note 101, par. 20.

[206] Mulhall Plan of Argument, par. 60. To date, the Debtors' counsel has not disclosed the extent to which the D&O insurance policies have been depleted, should it be the case.

[359] The proposed wording of paragraph 62, like the wording of paragraph 61 with respect to the *Released Parties*, *inter alia*, invites further litigation instead of preventing the same as much as possible. It certainly offers no certainty to the Class Action Parties.

[360] Considering the above, the Court finds that the Insured Claim Exclusion does not provide adequate protection to the Class Action Parties and, therefore, it does not justify the removal of the Carve-out from the Full D&O Release.

[361] For greater certainty, the Court shall specify that any of the limitations or restrictions found in paragraph 62 of the RVO with respect to any Insured Claim shall not apply to nor shall it be raised against the Class Action Claims of paragraph 61.

5. **CONCLUSION**

[362] The Court finds that it is appropriate, fair and reasonable to maintain the Carve-out in the RVO with the following modifications:

> [61] **ORDERS** that effective upon the issuance of the Monitor's Certificate, all present and former directors and officers of the Debtors, as well as all Persons deemed to be a present or former director or officer of the Debtors as a result of its management or supervision of the management of the business and affairs of the Debtors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity, whether based in statute or otherwise and whether based in whole or in part on any act or omission, obligation, transaction, offer, investment proposal, dealing or any declaration under the *Business Corporations Act* (Québec), or on any other occurrence existing or taking place prior to the commencement of the *CCAA* Proceedings or the issuance of the Monitor's Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Debtors or their assets, business or affairs, or prior dealings with the Debtors, wherever or however conducted or governed, the administration and/or management of the Debtors and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties and are not vested nor transferred to Excluded Cos or to any other entity and are extinguished, provided, however, that nothing in this paragraph shall waive, discharge, release, cancel or bar (i) (A) any claim against the Released Parties arising from fraud or willful misconduct, nor any claim against the Released Parties that is not permitted to be released pursuant to section 5.1(2) of the *CCAA*, or (B) any Insured Claim (as defined below), and (ii) the Class Action Claims (as defined below), ~~provided that the determination of~~

~~whether the foregoing release or any other release should be ordered in respect of the Class Action Claims will be adjudicated by this Court at a subsequent hearing~~. For purposes of this paragraph, the "**Class Action Claims**" mean any claims (including the right of any person to bring recursory claims, claims for contribution and indemnity, subrogated claims, or other third party claims) against the Released Parties arising from (i) the verified amended class action complaint dated March 11, 2024 filed by Ahuva Schachter, Michael Smith, Douglas Neujahr, Samhita Gera, and Denish Bhavsar against Ian Robertson, Ken Manget, Christopher Jarratt, Michael Hoffman, Paul Dalglish, Brad Sparkes, Robert Schaefer, Mark Bedard, Nicolas Brunet, and The Lion Electric Company before the Court of Chancery of the State of Delaware in matter C.A. No. 2023-1112-MTZ, (ii) the amended class action complaint for violation of the federal securities laws dated August 27, 2024 filed by Jacques Jaar against Northern Genesis Acquisition Corp., Ian Robertson, Paul Dalglish, Michael Hoffman, Ken Manget, Brad Sparkes, Robert Schaefer, The Lion Electric Company, Marc Bedard, and Nicolas Brunet before the United States District Court Southern District of New York in matter 1:24-cv-02155-JLR), and (iii) the motion for the authorization to institute a class action claim and for leave to institute an action in damages pursuant to the *Securities Act* (Québec) instituted by Adam B. Mulhall (as the plaintiff representative on behalf of the envisioned class to be covered) and filed with the Superior Court of Québec, District of Montréal (Class Action Division) bearing court number 500-06-001366-257, dated February 21, 2025.

[62] **ORDERS** that, notwithstanding anything to the contrary contained in paragraph [61] of this Order or elsewhere, any Released Claims that are covered by any insurance policy of the Debtors and only to the extent of any such available insurance (each, an "**Insured Claim**"), shall not be waived, discharged, released, cancelled or barred by this Order, and any Person having an Insured Claim shall be entitled to recovery in respect of such Insured Claim but solely from, and to the extent of, the proceeds of the applicable insurance policies available in respect of such claim, and Persons with Insured Claims shall have no right to, and shall not, directly or indirectly, seek any recovery in respect thereof from the Debtors or the Released Parties, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. For greater clarity, (i) if no insurance is available to cover a Released Claim, such claim shall be a Released Claim (except for the Class Action Claims~~, until the Court's final decision as to whether or not they should be released,~~ pursuant to paragraph [61] of this Order, <u>which shall not be adversely affected in any manner whatsoever by the limitations and restrictions found in this paragraph 62</u>, and (ii) any claims that may be subject to recovery under any insurance policies shall be deemed not to be vested nor transferred to the Excluded Cos. or to any other entity.

[363] It will also be necessary to harmonize paragraph 63 of the RVO which reads as follows:

[63] **ORDERS** and **DECLARES** that the commencement or prosecution, whether directly, indirectly, derivatively, or otherwise of any Released Claim against the D&Os or their respective successors and assigns is permanently enjoined and barred.

[364] It shall read as follows:

> [63] Subject to and without affecting in any manner whatsoever the Class Action Claims forming part of the exclusions found at paragraphs [61] and [62] above and the rights and recourses resulting therefrom, **ORDERS** and **DECLARES** that the commencement or prosecution, whether directly, indirectly, derivatively, or otherwise of any Released Claim against the D&Os or their respective successors and assigns is permanently enjoined and barred.

[365] With respect to the request to order the provisional execution of the present judgment notwithstanding any appeal and without the necessity to furnish any security thereon, the Court believes that in the present particular context, where the Full D&O Release has nothing to do with the restructuring that was, in any event, completed somewhat successfully, it is warranted to issue such an order, as the Class Action Parties stand to suffer greater prejudice should they continue to be prevented unnecessarily from exercising their rights and recourses against third parties who are not the Debtors herein.

[366] Finally, as to the judicial costs, given that under the present circumstances, the Debtors have no financial resources to satisfy the judicial costs that should normally be awarded to the various objectors, the Court shall order that each party assume their own judicial costs.

FOR THOSE REASONS, THE COURT:

[367] **DISMISSES** the Applicants' Application to release and discharge the Released Parties of the Class Action Claims (as these terms are defined in paragraph 61 of the *Rectified Approval and Reverse Vesting Order* rendered on June 6, 2025);

[368] **MAINTAINS** the *Notice of Objection by the Petitioner Adam B. Mulhall to Debtors' Application for the Issuance of an Approval and Reverse Vesting Order* dated May 20, 2025;

[369] **MAINTAINS** the *Amended Notice of Objection by the U.S. Plaintiffs* dated September 9, 2025;

[370] **MAINTAINS** the *Avis d'opposition de Raymond Chabot Grant Thornton* dated May 20, 2025;

[371] **MAINTAINS** the *Amended Notice of Objection of the Underwriters of Objection National Bank Financial Inc., B. Riley Securities Inc., Barclays Capital Canada Inc., BMO Nesbitt Burns Inc., Desjardins Securities Inc., Laurentian Bank Securities Inc., Raymond James Ltd., and Roth Canada Inc.* dated August 28, 2025;

[372] **DECLARES** and **ORDERS** that the D&O Release language be amended, *nunc pro tunc*, to remove the stricken portion below of paragraphs 61 and 62 of the Rectified

Approval and Reverse Vesting Order of June 6, 2025 and modify paragraphs [62] and [63] accordingly**:**

> [61] **ORDERS** that effective upon the issuance of the Monitor's Certificate, all present and former directors and officers of the Debtors, as well as all Persons deemed to be a present or former director or officer of the Debtors as a result of its management or supervision of the management of the business and affairs of the Debtors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity, whether based in statute or otherwise and whether based in whole or in part on any act or omission, obligation, transaction, offer, investment proposal, dealing or any declaration under the *Business Corporations Act* (Québec), or on any other occurrence existing or taking place prior to the commencement of the *CCAA* Proceedings or the issuance of the Monitor's Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions, in respect of the Debtors or their assets, business or affairs, or prior dealings with the Debtors, wherever or however conducted or governed, the administration and/or management of the Debtors and these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties and are not vested nor transferred to Excluded Cos or to any other entity and are extinguished, provided, however, that nothing in this paragraph shall waive, discharge, release, cancel or bar (i) (A) any claim against the Released Parties arising from fraud or willful misconduct, nor any claim against the Released Parties that is not permitted to be released pursuant to section 5.1(2) of the *CCAA*, or (B) any Insured Claim (as defined below), and (ii) the Class Action Claims (as defined below), […]. For purposes of this paragraph, the "**Class Action Claims**" mean any claims (including the right of any person to bring recursory claims, claims for contribution and indemnity, subrogated claims, or other third party claims) against the Released Parties arising from (i) the verified amended class action complaint dated March 11, 2024 filed by Ahuva Schachter, Michael Smith, Douglas Neujahr, Samhita Gera, and Denish Bhavsar against Ian Robertson, Ken Manget, Christopher Jarratt, Michael Hoffman, Paul Dalglish, Brad Sparkes, Robert Schaefer, Mark Bedard, Nicolas Brunet, and The Lion Electric Company before the Court of Chancery of the State of Delaware in matter C.A. No. 2023-1112-MTZ, (ii) the amended class action complaint for violation of the federal securities laws dated August 27, 2024 filed by Jacques Jaar against Northern Genesis Acquisition Corp., Ian Robertson, Paul Dalglish, Michael Hoffman, Ken Manget, Brad Sparkes, Robert Schaefer, The Lion Electric Company, Marc Bedard, and Nicolas Brunet before the United States District Court Southern District of New York in matter 1:24-cv-02155-JLR), and (iii) the motion for the authorization to institute a class action claim and for leave to institute an

> action in damages pursuant to the *Securities Act* (Québec) instituted by Adam B. Mulhall (as the plaintiff representative on behalf of the envisioned class to be covered) and filed with the Superior Court of Québec, District of Montréal (Class Action Division) bearing court number 500-06-001366-257, dated February 21, 2025.
>
> [62] **ORDERS** that, notwithstanding anything to the contrary contained in paragraph [61] of this Order or elsewhere, any Released Claims that are covered by any insurance policy of the Debtors and only to the extent of any such available insurance (each, an "**Insured Claim**"), shall not be waived, discharged, released, cancelled or barred by this Order, and any Person having an Insured Claim shall be entitled to recovery in respect of such Insured Claim but solely from, and to the extent of, the proceeds of the applicable insurance policies available in respect of such claim, and Persons with Insured Claims shall have no right to, and shall not, directly or indirectly, seek any recovery in respect thereof from the Debtors or the Released Parties, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable insurance policies. For greater clarity, (i) if no insurance is available to cover a Released Claim, such claim shall be a Released Claim (except for the Class Action Claims […] pursuant to paragraph [61] of this Order, <u>which shall not be adversely affected in any manner whatsoever by the limitations and restrictions found in this paragraph 62</u>, and (ii) any claims that may be subject to recovery under any insurance policies shall be deemed not to be vested nor transferred to the Excluded Cos. or to any other entity.
>
> [63] <u>Subject to and without affecting in any manner whatsoever, the Class Action Claims forming part of the exclusions found at paragraphs [61] and [62] above and the rights and recourses resulting therefrom,</u> **ORDERS** and **DECLARES** that the commencement or prosecution, whether directly, indirectly, derivatively, or otherwise of any Released Claim against the D&Os or their respective successors and assigns is permanently enjoined and barred.

[373] **ISSUES** a Re-Rectified Approval and Reverse Vesting Order, which contains paragraphs [61], [62] and [63], as reproduced above;

[374] **ORDERS** that the Stay of Proceedings in respect of the Debtors' Directors and Officers previously ordered by this Court in the context of the present CCAA Proceedings at paragraph 20 of the Second Amended and Restated Initial Order of February 14, 2025,[207] is hereby lifted for the sole purpose of allowing the Class Action Parties to proceed with their Class Action Claims against the Directors and Officers of the Debtors more fully named as respondents or as defendants in the three Class Action Claims more fully detailed in paragraph 370 above;

[375] **ORDERS** the provisional execution of the present judgment notwithstanding any appeal and without the necessity to furnish any security thereon;

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[207] 2025 QCCS 585.

[376] **THE WHOLE** with each party assuming their own legal costs.

Digitally signed by Michel A. Pinsonnault
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Hearing dates: September 3 and 10, 2025