

Another Ontario **CCAA** Order Stays Claims Against Performance Bonds

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On July 14, 2025, [we discussed Justice Steele's order](#) in the *Earth Boring et al.* CCAA proceeding which stayed claims against performance bonds. The concerns raised by the authors with this type of stay provision appearing in future CCAA orders have been proven to be well-founded.

On July 29, 2025, Justice Steele issued an Initial Order (the “**QM Initial Order**”) in another Ontario CCAA proceeding involving QM GP Inc. and Highpoint Environmental Services Inc.[\[1\]](#) which contains wording that mirrors the performance bond stay wording contained in the *Earth Boring et al.* Initial Order, and continued through to the Third Amended and Restated Initial Order (the “**Earth Boring Initial Order**”).[\[2\]](#) More specifically, paragraph 24 of the QM Initial Order provides that no person (including a named owner or obligee) holding a performance bond is entitled to enforce and/or call on the performance bond except with leave of the court or written consent of the debtor company and court-appointed monitor. The order goes further in that any and all existing performance bond claims are stayed and suspended pending further order of the Commercial List Court. The Application Record indicates there are 21 active bonded projects with Aviva issuing 6 performance bonds and Intact issuing the remaining 15 performance bonds.[\[3\]](#) In other words, the rights of 21 obligees are immediately and directly impacted by the QM Initial Order.

The surety in both CCAA proceedings was Aviva[\[4\]](#) and counsel for the applicants in both proceedings was Reconstruct LLP. As in the *Earth Boring* CCAA proceeding, a Lien Regularization Order was also issued on July 29 in the *QM GP Inc. and Highpoint Environmental Services Inc.* proceeding.

The evidence in the Application Record in the *QM GP Inc. and Highpoint Environmental Services Inc.* CCAA proceeding indicates the “requested stay is a precautionary measure to ensure operational stability and prevent disruptions that could adversely affect the Company’s business and stakeholders”. The evidence also indicates the Applicants are current in its obligations on those construction projects it has deemed to be profitable and will be continued during the CCAA process. The Application Record further states, without elaboration, that “...any disruption to the Continuing QM Projects would detrimentally impact the ongoing operations and funding of QM to the detriment of the Company and its stakeholders” and that “...the stay on Performance Bonds is intended to prevent precipitous enforcement steps and to facilitate discussions and proper arrangements with contractual counterparties, as necessary, to maintain the going concern nature of the Company and its operations.”[\[5\]](#)

As we commented in respect of the *Earth Boring* Initial Order, the debtor company is granted creditor-protection from claims by the sureties that may be obliged to respond to bond claims, so it is not clear why a stay on performance bond claims is necessary for the debtor company’s restructuring efforts. In addition, a stay of proceedings was sought, and granted, in respect of third-party indemnity obligations, including those non-debtor parties that have provided guarantees or indemnities to the sureties. As such, it is not clear why it was necessary to extend the stay to protect the sureties from bond claims.

The notion that the stay on performance bonds is “intended to facilitate discussions and proper arrangements with contractual

counterparties” appears to put the counterparties in a very different position than had been bargained for when agreeing to a bonded project. It may facilitate discussions and proper arrangements for the debtor company’s benefit, but query whether the cost is being borne by the appropriate stakeholders – the beneficiaries of the performance bonds, rather than the sureties, who contractually agreed to bond the projects.

The debtor company’s factum filed on the initial hearing does not provide any further insight into the basis for the broad stay on performance bonds. The general position advanced is that a call on the bonds before relevant stakeholders can discuss arrangements to continue relevant projects would be “unnecessarily disruptive where the intention is to complete the Continuing QM Projects with the benefit of the DIP Facility.”^[6] This provides some indication that the debtor company intends to pay certain outstanding claims through debtor-in-possession (“DIP”) financing, which would negate the need to call on a bond. However, it is not clear to these authors whether this is necessary when there is a stay of proceedings preventing a surety that may have paid out a bond claim from seeking recourse.

A comeback hearing is scheduled for 9:00 am on August 9, 2025. It remains to be seen whether any obligee will seek to amend or vary the stay of performance bond claims created by paragraph 24 of the QM Initial Order.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

^[1] In paragraphs 8 and 10 of the Affidavit of Agnieszka Barrett, sworn July 28, 2025, Application Record of QM GP Inc., QM is identified as “a national industry leader in environmental and industrial services over the past 40 years...with over 400 employees across the country...” “The Company’s clientele includes federal, provisional and municipal government agencies, Crown corporations, public utilities and public and private companies...”

^[2] In the matter of a plan of compromise or arrangement of *QM GP Inc. and Highpoint Environmental Services Inc.* Initial Order, dated July 29, 2025, Steele, J., Court File No. CV-25-00748510-00CL.

<https://www.alvarezandmarsal.com/sites/default/files/canada/Initial%20Order%20-%20QM%20GP%20Inc.%20et%20al%20-%2029-JUL-2025.pdf>

^[3] Exhibit “S” to the Affidavit of Agnieszka Barrett, sworn July 28, 2025

^[4] Aviva is noted as the Company’s original bonding surety, with Intact replacing Aviva in 2023 as the Company’s current surety. See paragraph 99 of the Affidavit of Agnieszka Barrett, sworn July 28, 2025

^[5] Paragraphs 167 – 170 of the Affidavit of Agnieszka Barrett, sworn July 28, 2025.

^[6] Factum of the Applicant, paragraph 64,

<https://www.alvarezandmarsal.com/sites/default/files/canada/Factum%20of%20the%20Applicants%20%28Initial%20Order%29%20-%20QM%20-%2028-JULY-2025.pdf>

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