

COURT FILE NUMBER 2401-03404

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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF CANADIAN OVERSEAS PETROLEUM  
LIMITED AND THOSE ENTITIES LISTED IN SCHEDULE  
"A"

DOCUMENT: **BENCH BRIEF OF THE APPLICANTS**

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**APPLICATION BEFORE THE HONOURABLE JUSTICE SIMARD JULY 19, 2024  
AT 3:00 PM ON THE COMMERCIAL LIST**

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## PART I - INTRODUCTION

1. On March 8, 2024, Canadian Overseas Petroleum Limited, (“**COPL**”), together with the other applicants listed in Schedule “A” (collectively, the “**Applicants**”), were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of the Court (the “**Initial Order**”). The stay of proceedings granted in the Initial Order (the “**Stay of Proceedings**”) was extended to Shoreline Canoverseas Petroleum Development Corporation Limited (“**Shorecan**”) and Essar Exploration and Production Limited, Nigeria (“**Essar Nigeria**” and, together with ShoreCan, the “**Non-Filing Affiliates**”).

2. On March 19, 2024, the Court approved a sale and investment solicitation process (the “**SISP**”, as approved by the “**SISP Order**”) whereby all or substantially all of the assets of the Applicants would be marketed as part of a sales process, which included a stalking horse bid (the “**Stalking Horse Bid**”). Following the completion of the SISP, the Stalking Horse Bid was determined to be the Successful Bid, and the Applicants brought a motion (the “**AVO Motion**”) seeking approval of the proposed approval and vesting order (the “**AVO**”), and authorization for the Applicants to execute the transactions contemplated therein (collectively, the “**Transaction**”).

3. The AVO Motion was opposed by BP Energy Company (“**BP**”) on a number of grounds, each of which was rejected by the Court, which granted the AVO. BP subsequently sought leave to appeal the AVO, which was rejected. BP also objected to an application to recognize the AVO (the “**Chapter 15 AVO Recognition Order**”) before the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) as part of ongoing proceedings under chapter 15 of Title 11 of the U.S. Bankruptcy Code (the “**Chapter 15 Case**”), which caused the closing date of the Transaction to be postponed pending the outcome of the Chapter 15 AVO Recognition Order. On

July 1, 2024, the Stalking Horse Purchaser and BP settled BP's objection and on July 3, 2024, the U.S. Court granted the Chapter 15 AVO Recognition Order.

4. As part of the settlement agreement, BP has brought a desk application seeking an order amending the AVO (the "**Amending Order**") in accordance with the terms of the settlement agreement. As the Amending Order has not yet been granted, an extension to the Stay of Proceedings until August 2, 2024 is required in order to provide the Applicants the time and breathing space needed to successfully close and implement the Transaction.

## PART II - FACTS

5. The facts are more fully set out in the Seventh Affidavit of Peter Kravitz.<sup>1</sup>

### A. CCAA Proceedings

6. On March 8, 2024, this Court granted the Initial Order, *inter alia*, (i) declaring the Applicants are companies to which the CCAA applies; (ii) appointing KSV Restructuring Inc. as Monitor of the Applicants in these proceedings (the "**Monitor**"); (iii) granting the Stay of Proceedings in respect of the Applicants up to and including March 18, 2024; (iv) extending the Stay of Proceedings to the Non-Filing Affiliates; (v) authorizing the Applicants to obtain and borrow under a senior secured, super priority loan (the "**DIP Loan**"), with borrowings not to exceed \$1.5 million and, to the extent drawn either in whole or in part, a corresponding charge in favour of the DIP Lender (the "**DIP Lenders' Charge**"); and (vi) granting various other customary charges.<sup>2</sup>

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<sup>1</sup> Affidavit of Peter Kravitz affirmed July 12, 2024 [Seventh Kravitz Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Seventh Kravitz Affidavit.

<sup>2</sup> Seventh Kravitz Affidavit at para. 4.

7. At the comeback hearing held on March 19, 2024, the Court granted the Amended and Restated Initial Order, *inter alia*, (i) extending the Stay of Proceedings until May 20, 2024; (ii) approving the agreement between the Applicants and Province Fiduciary Services (“**Province**”), pursuant to which Province acts as the Chief Restructuring Officer of the Applicants; (iii) ratifying and approving the agreement between the Applicants and Province, LLC, pursuant to which Province acts as financial advisor to the Applicants; (iv) authorizing the Applicants to enter into a restructuring support agreement (the “**RSA**”); and (v) increasing the maximum principal amount on which the Applicants could draw under the DIP Loan to \$11 million, with a corresponding increase to the amount secured by the DIP Lenders’ Charge.<sup>3</sup>

8. On the same day, this Court granted the SISP Order, *inter alia*: (i) authorizing and directing the Applicant to negotiate and finalize the Stalking Horse Purchase Agreement, substantially on the terms set out in the Restructuring Term Sheet attached to the RSA; and (ii) approving the SISP, including the Stalking Horse Bid, and authorizing the Applicants to implement the SISP.<sup>4</sup>

9. After no LOIs (as defined in the SISP) were received, the Applicants applied for the AVO, which would, among other things, approve the Stalking Horse Purchase Agreement and the Transaction. BP opposed the AVO on a number of grounds, all of which were rejected by Justice Yamauchi at the hearing of the AVO Motion on April 24, 2024. At that time, the Court granted the AVO and extended the Stay of Proceedings until and including June 7, 2024.<sup>5</sup>

10. On May 14, 2024, BP filed an application with the Alberta Court of Appeal, seeking permission to appeal the AVO (the “**BP Leave Application**”). This matter was heard before

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<sup>3</sup> Seventh Kravitz Affidavit at para. 5.

<sup>4</sup> Seventh Kravitz Affidavit at para. 6.

<sup>5</sup> Seventh Kravitz Affidavit at paras. 7-8.

Justice de Wit of the Alberta Court of Appeal on May 29, 2024, who issued a decision dismissing the BP Leave Application on June 4, 2024.<sup>6</sup>

11. On June 7, 2024, the Court extended the Stay of Proceedings to July 7, 2024. On July 4, 2024, the Court further extended the Stay of Proceedings to July 20, 2024.<sup>7</sup>

**B. Chapter 15 Proceedings**

12. On March 11, 2024, COPL, as Foreign Representative of the Applicants, commenced proceedings in the U.S. Court seeking the recognition of these CCAA proceedings under chapter 15 of Title 11 of the U.S. Bankruptcy Code (as defined above, the “**Chapter 15 Case**”). On March 12, 2024, the U.S. Court granted an Order granting provisional relief.<sup>8</sup>

13. On March 21, 2024, COPL, as Foreign Representative, filed a motion in the Chapter 15 Case seeking recognition and enforcement of the SISP Order by the U.S. Court. On April 8, 2024, the U.S. Court recognized these CCAA proceedings as a Foreign Main Proceeding, and recognized and enforced the SISP Order.<sup>9</sup>

14. On April 30, 2024, COPL, as Foreign Representative, filed a motion in the Chapter 15 Case seeking recognition and enforcement of the AVO by the U.S. Court, as well as the Declaration in support of same (as defined above, the “**Chapter 15 AVO Recognition Order**”). On May 15, 2024, BP filed an objection to this motion, which was consensually postponed pending the outcome of the BP Leave Application.<sup>10</sup>

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<sup>6</sup> Seventh Kravitz Affidavit at para. 9.

<sup>7</sup> Seventh Kravitz Affidavit at paras. 10-11.

<sup>8</sup> Seventh Kravitz Affidavit at paras. 12-13.

<sup>9</sup> Seventh Kravitz Affidavit at paras. 14-15.

<sup>10</sup> Seventh Kravitz Affidavit at paras. 16-18.

15. On June 12, 2024, the U.S. Court heard the motion for the Chapter 15 AVO Recognition Order. The U.S. Court reserved its judgment and encouraged the parties involved to reach a resolution with respect to BP's objection.<sup>11</sup>

16. On July 1, 2024, the Stalking Horse Purchaser and BP entered into a settlement agreement, pursuant to which BP would withdraw its objection to the Chapter 15 AVO Recognition Order subject to the terms and conditions of the settlement. On July 3, 2024, the U.S. Court granted the Chapter 15 AVO Recognition Order.<sup>12</sup>

17. As part of the settlement agreement, BP sent a letter to Justice Yamauchi seeking the Amending Order by way of desk application which will amend the AVO such that BP's liens and claims will be included in the defined term "Permitted Encumbrances" under the Stalking Horse Purchase Agreement. The purpose of this amendment is to exclude BP's interests from the scope of compromise under the AVO, given that BP has already agreed to a settlement and release of its liens and claims.<sup>13</sup> On July 12, 2024, the Court agreed to hear an application for the Amending Order on July 17, 2024.<sup>14</sup>

### **PART III - LAW AND ARGUMENT**

18. This Bench Brief addresses whether the Stay of Proceedings should be extended until August 2, 2024.

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<sup>11</sup> Seventh Kravitz Affidavit at para. 19.

<sup>12</sup> Seventh Kravitz Affidavit at paras. 20-21.

<sup>13</sup> Seventh Kravitz Affidavit at para. 21.

<sup>14</sup> Fifth Report of the Monitor dated July 15, 2024 at para. 1.2.8 [Fifth Report].

**A. The Stay of Proceedings Should be Extended**

19. Pursuant to section 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

20. The Stay of Proceedings currently expires on July 20, 2024. The Applicants are currently waiting for a determination with respect to the Amending Order, given the impact of the Amending Order may have on the Transaction's structure. The Applicants intend to close the Transaction as soon as possible following a determination being made with respect to the Amending Order.<sup>15</sup>

21. The Applicants therefore request that the Stay of Proceedings to be extended to August 2, 2024, for the following reasons:

- (a) the Applicants require the Stay of Proceedings to continue in order to maintain stability during these CCAA proceedings and provide the time needed to close the Transaction;<sup>16</sup>
- (b) the Applicants have acted in good faith and due diligence throughout these CCAA proceedings,<sup>17</sup>
- (c) the Monitor believes that the granting of the extension of the Stay of Proceedings will not materially prejudice any creditor of the Applicants;<sup>18</sup>

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<sup>15</sup> Seventh Kravitz Affidavit at paras. 21, 23.

<sup>16</sup> Seventh Kravitz Affidavit at para. 22.

<sup>17</sup> Fifth Report at para. 4.0.2(a).

<sup>18</sup> Fifth Report at para. 4.0.2(b).



- (d) as of the date of this Bench Brief, neither the Applicants nor the Monitor are aware of any party opposed to extending the Stay of Proceedings,<sup>19</sup> and
- (e) the cash flow forecast provided by the Monitor indicates that the Applicants are projected to have sufficient liquidity to fund their operations and the costs of these CCAA proceedings during the proposed extension of the Stay of Proceedings.<sup>20</sup>

22. The Monitor supports the proposed extension.<sup>21</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

23. For the foregoing reasons, the Applicants respectfully submit that the Court should grant the Stay Extension Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of July, 2024:



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Osler, Hoskin & Harcourt LLP  
Counsel for the Applicants

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<sup>19</sup> Fifth Report at para. 4.0.2(d).

<sup>20</sup> Fifth Report at paras. 3.0.2-3.0.3, 4.0.2(e).

<sup>21</sup> Fifth Report at para. 4.0.2.

## **SCHEDULE "A"**

1. Canadian Overseas Petroleum Limited
2. COPL Technical Services Limited
3. Canadian Overseas Petroleum (UK) Limited
4. Canadian Overseas Petroleum (Bermuda) Limited
5. Canadian Overseas Petroleum (Bermuda Holdings) Limited
6. Canadian Overseas Petroleum (Ontario) Limited
7. COPL America Holding Inc.
8. COPL America Inc.
9. Atomic Oil & Gas LLC
10. Southwestern Production Corp.
11. Pipeco LLC