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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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File Number: 1252079

**APPLICATION BEFORE THE HONOURABLE JUSTICE HORNER JULY 4, 2024  
AT 12:00 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 and extended the Stay of Proceedings until June 7, 2024. 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 the Applicants now intend to close the Transaction as soon as is practicable.

4. Owing to the delay occasioned by BP's objections, an extension to the Stay of Proceedings until July 20, 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 Sixth 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>

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**"),

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<sup>1</sup> Affidavit of Peter Kravitz affirmed June 27, 2024 [Sixth Kravitz Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Sixth Kravitz Affidavit.

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

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 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 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>

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

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

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

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

11. On June 7, 2024, the Court further extended the Stay of Proceedings to July 7, 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>

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>

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<sup>7</sup> Sixth Kravitz Affidavit at para. 10.

<sup>8</sup> Sixth Kravitz Affidavit at paras. 11-12.

<sup>9</sup> Sixth Kravitz Affidavit at paras. 13-14.

<sup>10</sup> Sixth Kravitz Affidavit at paras. 15-17.

<sup>11</sup> Sixth Kravitz Affidavit at paras. 18-19.

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

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

17. This Bench Brief addresses whether the Stay of Proceedings should be extended until July 20, 2024.

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

18. 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.

19. The Stay of Proceedings currently expires on July 7, 2024. The closing of the Transaction was postponed pending the granting of the Chapter 15 AVO Recognition Order, which is a condition precedent to closing the Transaction. As BP's objection has now been settled, the Applicants intend to close the Transaction as soon as is practicable.<sup>13</sup>

20. The Applicants therefore request that the Stay of Proceedings to be extended to July 20, 2024, for the following reasons:

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<sup>12</sup> Fourth Report of the Monitor dated July 2, 2024 at para. 1.3.6 [Fourth Report].

<sup>13</sup> Sixth Kravitz Affidavit at paras. 17, 19, 21; Fourth Report at para. 1.3.6.

- (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>14</sup>
- (b) the Applicants have acted in good faith and due diligence throughout these CCAA proceedings,<sup>15</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>16</sup>
- (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>17</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>18</sup>

21. The Monitor supports the proposed extension.<sup>19</sup>

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<sup>14</sup> Fourth Report at paras. 4.0.1, 4.0.1(c).

<sup>15</sup> Fourth Report at para. 4.0.2(a).

<sup>16</sup> Fourth Report at para. 4.0.2(b).

<sup>17</sup> Fourth Report at para. 4.0.2(d).

<sup>18</sup> Fourth Report at paras. 3.0.2-3.0.3, 4.0.2(e).

<sup>19</sup> Fourth Report at para. 4.0.2.



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

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of July, 2024:

A handwritten signature in blue ink, appearing to read "M. Dick", is written above a horizontal line.

Osler, Hoskin & Harcourt LLP  
Counsel for the Applicants

## **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