

COURT FILE NUMBER: B301-135903

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF ERIKSON NATIONAL ENERGY INC.

COURT FILE NUMBER: 2401-13792

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP
OF ERIKSON NATIONAL ENERGY INC.

DOCUMENT: **AFFIDAVIT**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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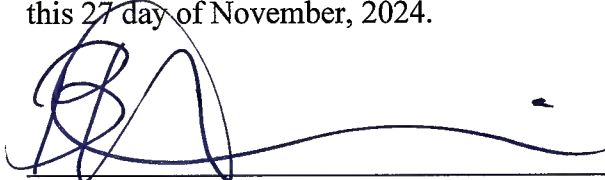
**AFFIDAVIT OF ELENA PRATT
SWORN NOVEMBER 27, 2024**

I, Elena Pratt, of Calgary, Alberta, **SWEAR THAT:**

1. I am a legal assistant with the law firm of Osler, Hoskin & Harcourt LLP ("**Osler**"), counsel to Canadian Natural Resources Limited ("**CNRL**"), in this Action. As such, I have personal knowledge of the matters referred to in this Affidavit, except where stated to be based on information and belief, in which case I verily believe such information to be true.

2. Attached as **Exhibit "A"** is the transcript from the hearing of Erikson's application on October 21, 2024 before the Honourable Justice Johnston in Court File No. B301-135903 (the "**Erikson NOI Proceeding**").
3. Attached as **Exhibit "B"** is the transcript from the hearing of Erikson's application on November 21, 2024 before the Honourable Justice Burns in Erikson's NOI Proceeding.
4. Attached as **Exhibit "C"** is correspondence dated July 29, 2019 between Emily Paplawski of Osler then counsel to CNRL in the receivership proceedings of, among others, Ranch Energy Corporation, in ABQB Action No. 1801-09188 (the "**Ranch Receivership Proceeding**") and Joseph Reynaud of Stikeman Elliott LLP, then counsel to Third Eye Capital Corporation, in the Ranch Receivership Proceeding.
5. Attached as **Exhibit "D"** is a copy of the Approval and Vesting Order (excluding schedules "C" and "D" thereto) granted by the Honourable Justice Horner on July 29, 2019 in the Ranch Receivership Proceeding.

SWORN BEFORE ME at Calgary, Alberta,)
this 27 day of November, 2024.)
)
)
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)



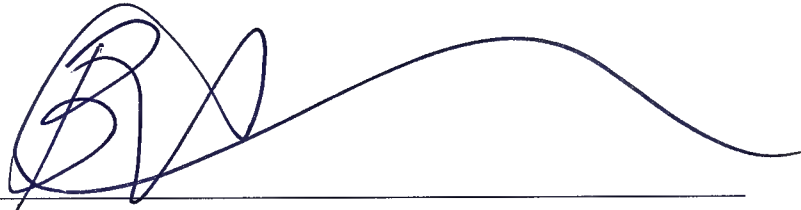
A Commissioner for Oaths in and for Alberta



ELENA PRATT

LAURA BRIANNE HARRIS
A Commissioner for Oaths
In and for Alberta
My Commission expires May 4, 2025

This is **Exhibit "A"** to the Affidavit of Elena Pratt
sworn before me this 27th day of November 2024.

A handwritten signature in blue ink, consisting of a large, stylized initial 'L' followed by a long, sweeping horizontal line that ends in a small dot.

Notary Public/Commissioner for Oaths in and for Alberta

LAURA BRIANNE HARRIS
A Commissioner for Oaths
In and for Alberta
My Commission expires May 4, 2025

Action No. B301-13590
E-File Name: CVK24ERIKSON
Appeal No. _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF
ERIKSON NATIONAL ENERGY INC.

P R O C E E D I N G S

Calgary, Alberta
October 21, 2024

Transcript Management Services
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1 Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

2

3

4 October 21, 2024

Afternoon Session

5

6 The Honourable Justice Johnston
7 (remote appearance)

Court of King's Bench of Alberta

8

9 M. Selnes (remote appearance)

For Erikson National Energy Inc.

10 L.R. Rollingson (remote appearance)

For Erikson National Energy Inc.

11 J. Reid (remote appearance)

For BC Energy Regulator

12 D. McDaid (remote appearance)

For BC Energy Regulator

13 A. Welch (remote appearance)

For His Majesty the King in Right of the
Province of British Columbia

14

15 P. Harnett (remote appearance)

For Third Eye Capital Corporation

16 E. Paplawski (remote appearance)

For Canadian Natural Resources

17 E. Wilson (remote appearance)

For Manage Compliance Freehold Royalties Ltd.

18 J.L. Oliver (remote appearance)

For the Proposed Receiver

19 N. Honess (remote appearance)

For the Proposed Receiver

20 A. Basi (remote appearance)

For KSB Restructuring Inc.

21 J. Cameron (remote appearance)

For KSV Restructuring Inc.

22 J. Liakos

Court Clerk

23

24

25 THE COURT:

Good afternoon. This is Justice Johnston. It looks
like we have a number of parties online, so I am wondering if perhaps counsel could
introduce everyone, or as many people as they can.

26
27
28

29

Discussion

30

31 MR. SELNES:

Absolutely and good afternoon Justice Johnston.

32 My name is Michael Selnes and I am from Bennett Jones LLP and I am here on behalf of
33 the applicant, Erikson National Energy Inc. I am joined by my colleague and associate, Luc
34 Rollingson.

35

36 I will try to go through, kind of the list and order of parties you will see and if I do miss
37 anybody, I would just ask that they please identify themselves.

38

39 First, in attendance from the proposal Trustee, there is Mr. Andrew Basi. From Baskin
40 Martineau, counsel for the Proposal Trustee, Ms. Jessica Cameron.

41

1 From Third Eye Capital, secured creditor and proposed DIP lender we have Patrick
2 Harnett, who is internal counsel.

3
4 From Osler, counsel for the respondent, CNRL, we have Emily Paplawski and Stephanie
5 Kruger (phonetic).

6
7 From Miller Thomson we have counsel for the British Columbia Energy Regulator, or
8 CBER, which is Mr. James Reid. We also have Ms. Dorothy McDaid who I understand is
9 the internal counsel for the BC Energy Regulator.

10
11 From Cassels Brock, we have Mr. Jeffrey Oliver, who is here, I understand in an observing
12 capacity today and is counsel to Grant Thornton, who is the proposed Receiver if the future
13 extension is not granted. I'm not seeing that Mr. Neil Honess from Grant Thorton is online,
14 as well.

15
16 There is Mr. Aaron Welch who is counsel for the Attorney General of British Columbia.

17
18 THE COURT: Sorry, Mr. Well, W-E-L-L?

19
20 MR. SELNES: Sorry, I believe it is W-E-L-C-H.

21
22 THE COURT: Okay and you said he is for the BC AG?

23
24 MR. SELNES: Correct.

25
26 THE COURT: Okay.

27
28 MR. SELNES: And I believe I saw Mr. Darrell Peterson from
29 McMillan LLP, who I believe is here as an observer.

30
31 THE COURT: Okay.

32
33 MR. SELNES: And there are a couple of names I cannot identify
34 and I apologise for that. One is listed as observer, as well as there is an Andrew Grant and
35 an Everett, so I'd just ask if those people could identify themselves.

36
37 THE COURT: Right, so is there anyone else that has not been
38 identified who is online? Who is here, I suppose, other than in an observer capacity? All
39 right.

40
41 So, this is, Mr. Selnes, your application.

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MR. SELNES: That is correct.

THE COURT: I will say that there is a large number of materials that have been given to me at what I would say, kind of last minute, including some I think Friday late in the day and some as early as this morning. I have done my best to read everything, I think I have read virtually everything I have been given, at least, in some cases quicker than others. But I have -- I hopefully have been able to review everything in advance of the application.

MR. SELNES: And first I do want to say, we greatly appreciate your efforts in that, Justice. As often happens in these kind of proceedings, there is some last minute filings, just due to the nature of the relief being sought.

THE COURT: Right.

MR. SELNES: But it does put yourself in a more difficult position than if there would be some notice on that and so I appreciate the efforts. And what I would like to do right now is go through a summary of the relief being sought and then the materials that you will have before you.

THE COURT: All right.

MR. SELNES: As well as to review service and then I can kind of go through the course of my application, but I think first off just to review the applications themselves, as well as the materials to make sure if there's anything you are missing, we can maybe identify that up front.

THE COURT: All right. Go ahead.

MR. SELNES: And so first is the application of Erikson which was filed Tuesday, October 15th, which I'll call the primary application which is to extend the stay of proceedings to November 30th, 2024, to approve a sales and investment solicitation process or a SISP as we call it, granting priority administration charge in the amount of \$200,000 and approving Sayer Energy Advisors as the sale agent under the SISP. And finally sealing the confidential appendix in the proposal Trustee's First Report which relates to certain confidential fee information.

THE COURT: Okay and I am not surprised -- oh sorry never mind, it is paragraph 16 and 17. I do see that now. Okay. Yes, I had reviewed that.

1 MR. SELNES: Perfect. Thank you. And then the second is the
2 application that was filed, as you have addressed, on Friday, October 18th, which is
3 authorising Erikson to borrow up to \$250,000 and granting an interim lender's charge to
4 the proposed debtor-in-possession or DIP lender, Third Eye Capital.
5

6 THE COURT: Okay. I have reviewed those materials, as well.
7

8 MR. SELNES: Perfect and then so the materials, I believe, that
9 should be encompassing everything before you today and again I would ask if any of the
10 other parties here, if I have missed something for them to just please speak up. But there
11 should be the two applications I just reviewed, both of which have the forms of order
12 appended to them.
13

14 There is the brief of law of Erikson filed on October 15th, 2024. Two affidavits in support
15 of Erikson's application which are both of Mr. Mark Horrox's. The first sworn on October
16 15th, 2024 and the second being identified as the supplemental affidavit which was filed
17 on Friday, October 18th.
18

19 THE COURT: Right.
20

21 MR. SELNES: Or sent for filing. I do believe there may be a
22 procedural issue, just with the signature, but the intention is to have that filed, but it was
23 circulated to the parties.
24

25 THE COURT: Yes and I did get a copy of it.
26

27 MR. SELNES: Thank you. There is the First Report of the
28 Proposal Trustee dated Friday, October 18th and that is of KSV Restructuring Inc. There
29 is the affidavit of Ron K. Laing, sworn October 18th and that is the affidavit of CNRL in
30 opposition to this application.
31

32 And then there is, what maybe the last thing that reached you, but I believe it was circulated
33 yesterday, which is a brief of law of CNRL, which is obviously in opposition to this
34 application.
35

36 THE COURT: Right, yes, indeed I have received it and
37 reviewed it. And might I just ask, I know that in the letter that was sent, I cannot remember
38 if it was to me or to the Commercial Coordinator, it was indicated that there might be two
39 parties in opposition. Are we anticipating a second party in opposition? I only received
40 materials from CNRL, that is why I am asking.
41

1 MR. SELNES: I appreciate you asking that and that's a fair
2 question and at this point, I would turn the floor over to my friend Mr. Reid from Milner
3 Thomson on behalf of the BC Regulator.

4
5 THE COURT: Oh okay, all right, fair.

6
7 MR. SELNES: And in that regard my understanding and I don't
8 want to speak anymore for Mr. Reid but is that they are not taking a position in response
9 to the application.

10
11 THE COURT: Okay.

12
13 MR. REID: I actually have nothing else to add. No, the BC
14 Energy Regulator is not taking a position on today's application.

15
16 THE COURT: Okay.

17
18 MR. REID: You will see Mr. Oliver is here, who is counsel
19 for the proposed Receiver. You will note in Ms. Paplawski's -- the affidavit filed by Ms.
20 Paplawski's office, it's the affidavit of Ron Laing. He notes that in the event that the Court
21 is going to terminate the NOI proceeding we would like the opportunity to bring back the
22 receivership application.

23
24 THE COURT: Oh okay and that is fine.

25
26 MR. REID: We are not taking a position today.

27
28 THE COURT: Okay and I obviously will allow everyone to
29 address the Court, I just wanted to know going in what to anticipate given what I was
30 advised of and given that I had only received CNRL material.

31
32 So thank you for that. So I think that then, we are ready to proceed.

33
34 MR. SELNES: Perfect and in that regard, and you will see his
35 camera on, as well, which is -- my colleague Mr. Patrick Harnett, who is counsel for Third
36 Eye Capital, the proposed DIP lender and Mr. Harnett does intent to make submissions as
37 well on behalf of his client.

38
39 And so I believe primarily the parties you will hear from today are myself. Mr. Harnett and
40 then Ms. Paplawski on behalf of CNRL and obviously the other parties should they choose
41 to make submissions.

1
2 THE COURT: All right. That is very helpful. Thank you
3 counsel.

4
5 MR. SELNES: And I don't want to tell you how the application
6 should run, but what I would propose to do, Justice is, that we would make our submissions,
7 followed by Mr. Harnett on behalf of the DIP lender as they kind of flow into each other
8 and then understanding that there will be the opposition and any chance to respond at that
9 point.

10
11 THE COURT: Yes, that works for me and that is what I was
12 anticipating. I do like to hear all of those in support first and then those opposing after. So
13 that works for me.

14
15 MR. SELNES: Perfect.

16
17 **Submissions by Mr. Selnes**

18
19 MR. SELNES: So then what I would intend to do and just to give
20 you some signposts of where I'm going with this is, to review service very briefly, any
21 questions you may have in that regard. Then I intend to provide a general overview of why
22 we are here today and what we are seeking. And then I want to go linearly to our
23 submissions of first the stay extension being sought, second to review the proposed form
24 of SISP. Third the administration charge being sought. Fourth, the interim lending charge
25 and agreement and then finally, speaking the sealing order briefly. And at the end of my
26 submissions, I may make some preliminary statements on the objections being raised by
27 CNRL and would just ask for a brief opportunity to respond depending on what those
28 submissions are.

29
30 THE COURT: Absolutely and I will ask you questions if you do
31 not mind as we go along. I do have a number of questions as you can imagine, having
32 reviewed all the materials. And so, I will try really hard not to take you too far off of your
33 argument, but if you will indulge me, it would be helpful if I could ask you, as we go.

34
35 MR. SELNES: Absolutely and I will do my best and please do
36 speak up if it is helpful to you, because I would prefer to address it when it's on your mind.
37 And to the extent that there is something that I may need to pass to Mr. Harnett, just from
38 the proposed DIP lender's perspective, I would do so and in part because they as a secured
39 lender have been very involved in aspects of this file throughout the history and may be in
40 a better position to speak to it, but absolutely happy to.

41

1 THE COURT: Okay. Very well and I intend to be muted unless
2 I am speaking, just as I think we hear everyone better, but if you see me talking and I am
3 muted, you will waive your hand at me if you do not mind. I have been known to forget
4 from time to time. So, with that, you can proceed.
5

6 MR. SELNES: Absolutely and I would ask the same for myself
7 as I have had that happen in my past, as well.
8

9 And so, when it comes to service and just very briefly to address an affidavit of service of
10 Ms. Stephanie Dumoulin, an assistant at Bennett Jones, was filed on October 18th and a
11 second affidavit of service of Allison Badger was sent today. For expediency, we intend to
12 rely upon those affidavits of service and I think as you've seen from the numerous parties
13 before the Court, the interested parties to these proceedings are here and represented by
14 counsel.
15

16 But in brief summary, the application and initial affidavit of Mark Horrox, together with
17 the brief, were served on October 15th on the service list by email and registered mail. The
18 second application and supplemental affidavit were served on Friday, October 18th by
19 email and I think the Proposal Trustee can as well speak to the Proposal Trustee's Report,
20 but that was circulated on Friday, October 18th, as well.
21

22 THE COURT: And I gather on the service list, that included
23 CRA? I did notice in your material somewhere there was a reference to CRA, but I just
24 wanted to make sure they were included in the service list.
25

26 MR. SELNES: Let me just ask Mr. Rollingson to doublecheck
27 that and we can report back. I do believe that CRA was served physically and there was an
28 attempt to serve Justice Canada and who had indicated they had not yet been retained,
29 'cause often they will be acting for CRA. But it is my understanding that notice was
30 provided to the CRA.
31

32 THE COURT: Okay. Thank you.
33

34 MR. SELNES: And subject to any questions you have regarding
35 service, we would just -- Mr. Rollingson is --
36

37 MR. ROLLINGSON: I can confirm that what Mr. Selnes said is
38 correct.
39

40 THE COURT: Okay and subject to any concerns raised by
41 anyone on the call, I am -- does anyone wish to speak to service, before I -- I will just deal

1 with that upfront if that is okay.

2
3 All right. Having no concerns raised about service and having noted that the affidavits of
4 service have been filed or sent for filing and obviously noting the number of people online,
5 I am satisfied that service is in order and we can proceed.

6
7 MR. SELNES: Thank you Justice. I appreciate that.

8
9 So then first turning to my substantive submissions, I want to emphasise upfront the goal
10 of the applicant and why we are here before you today seeking the various forms of relief.
11 And the first is obviously to obtain a brief extension which is allowed for under the
12 *Bankruptcy and Insolvency Act* and this is to allow for a sales process to be continued and
13 finalised to market some to all of Erikson's assets.

14
15 And the SISP that is being run and I will speak to this in more detail, is to provide for the
16 purchasing or investment opportunities that are broader than what was done in a previous
17 sale process, as that have previously only been involved in an unblocked sale of the assets.
18 So, the future sales process or the one that is currently being run, is designed to either
19 engage an investment in the entire business which is possible or more targeted investments
20 and so it's been more broadly and specifically marketed in that regard.

21
22 And in conducting the SISP, this will allow Erikson, together with the Proposal Trustee to
23 either develop a proposal to creditors or to complete an orderly wind down of the business.
24 The key stakeholders to the process generally support it and that is Third Eye Capital, who
25 I may also refer to as TEC, which is the primary secured creditor of Erikson, or the other
26 being the BC Energy Regulator, which as Mr. Reid as stated is not opposing the
27 application. And I don't want to misrepresent they're substantively supporting the
28 application, but they, at least at this point, have been involved in the development of the
29 SISP and are not opposing it at this time.

30
31 And as Mr. Reid has mentioned there is counsel for a potential Receiver in this case which
32 would be Grant Thornton and which would absent the extension being sought and the
33 ability to run this process, the logical extension is either an immediate bankruptcy or the
34 appointment of a Receiver which will likely result in significant assets being put to the
35 British Columbia Orphan Fund for Abandoned Reclamation.

36
37 The only opposition that we are aware of today is from CNRL, which is an unsecured
38 judgment creditor and a party to several agreements with Erikson. And as noted in the DIP
39 materials, we are seeking to carve out their interests from the priming loan that would be
40 advanced by Third Eye Capital as DIP lender and therefore we submit there is no
41 prospective prejudice to CNRL.

1
2 And I want to state that we do understand the CNRL is frustrated with how things have
3 gone over the course of the last several years of these assets. And in all honesty, all parties
4 are somewhat frustrated with how things have gone. We've been dealing with challenging
5 situation of challenging assets and the solution is either to give a month to Erikson to allow
6 for a sales process with an experienced sales advisor and a proposal Trustee or an
7 immediate receivership.

8
9 We submit that there is the potential for a better outcome that could arise from sale or
10 restructuring through these proceedings. So CNRL has listed a litany of past frustrations,
11 but I do not believe there is any prospective prejudice for the next three weeks if this
12 extension is granted in a limited fashion to allow for the sales process to run.

13
14 And just initially despite CNRL's suggestions, Erikson has been acting in good faith in
15 trying to deal with these challenging assets. And a couple of points I want to emphasise
16 there is they're located in northern British Columbia. There are currently employees on site
17 that are being paid to maintain those assets, which is being funded by Erikson, that is what
18 the \$250,000 per month that is being expended. It's maintaining control of the assets. It's
19 maintaining the employees to preserve these assets and it has already arranged for an
20 commenced running a process to try to sell them.

21
22 And so, the process is being run in good faith and I think everybody in this room is aware
23 that if things don't go well in the next several weeks in that sales process, then the
24 receivership is the logical outcome, but we think that can be avoided and it is in the interest
25 of all of the stakeholders that it be avoided to the extent possible.

26
27 THE COURT: And I do not know if you are just sort of getting
28 into an overview or if I can ask you a specific question --

29
30 MR. SELNES: Please do.

31
32 THE COURT: -- about your suggestion that they are acting in
33 good faith. And I suppose this question is probably not going to come as a large surprise
34 to you given the CNRL materials that have been filed. But CNRL certainly raises concerns
35 about the fact that the licences are not extant and that that was not raised in the original
36 affidavit of Mr. Horrox.

37
38 And indeed they are suggesting, I think, and I will let them probably articulate their position
39 a little better than I am able to, but I gather their submission is that there has been an opacity
40 of good faith, in fact, potentially bad faith by a lack of disclosure or a lack of transparency.
41 And obviously, I think that that question sort of fits, as well, in terms of whether or not

1 there's any point in proceeding with a SISP when, in fact, you do not have those licences
2 and I think as they say -- I am asking a few questions her together -- so you may want to
3 break them down. But that that process has been underway since January of 2023 and
4 notwithstanding your assertions that it is slightly different, but there is really not much of
5 a prospect of success.

6
7 So, perhaps the two questions are; Is there an absence of good faith or is there potentially
8 bad faith based on their submissions? And two, Is the SISP process doomed to fail
9 particularly because there are no extant licences, other than I gather the ones that they were
10 able -- I think it was four -- that they were able to have renewed, they said on their own.

11
12 MR. SELNES: Correct. And so that is a fair question and I think
13 it is part of crux of what the opposition and what you have to decide today as in the good
14 faith element comes up in the stay extension application and one of the three parts of the
15 test is that we, as applicants, and I say "we" as being Erikson, is acting in good faith. And
16 so, it is a condition precedent to the relief being sought.

17
18 And in that we have -- in our brief, cited two cases being *H & H Fisheries* and *Chester*
19 *Basin Food Group*. And the reason I say that, is that there are two schools of thought as to
20 good faith is whether the other parties has the onus of saying that we are acting, in effect,
21 in bad faith. Or whether or not there's a positive obligation to act in good faith. In either
22 sense, I am going to suggest that we meet that test and that we are acting in good faith of
23 that Erikson is acting in good faith in these circumstances.

24
25 And the components, at least as I understand them from CNRL's concerns is in related to
26 past conduct of Erikson which pre-dates the NOI proceedings.

27
28 THE COURT: Well, sure, that is part of it, but I think part of it
29 is they are suggesting that, you know, that the October 15th Horrox affidavit did not
30 mention the leases and that there has been a lack of transparency with the Court. I do note,
31 by the way, that the Proposal Trustee's Report did address it, as did the October 18th
32 supplemental affidavit. But I think they are saying the lack candid disclosure is a problem
33 and concern for them.

34
35 MR. SELNES: And it's -- and I appreciate you raising that
36 because I think that is the two points I would like to suggest to the Court, is 1) there had
37 been an understanding from the applicants that, as you can imagine, there's always some
38 conversations going on with the Proposal Trustee about the relief being sought and that in
39 Ms. Cameron's Report, that that would be addressed as it was. And secondarily and I think
40 it may have just been the way or the timing of the materials drafted, but the supplementary
41 affidavit was actually provided prior, I believe, to us receiving affidavit materials from

1 CNRL.

2

3 And in any event, it was intended that that information would be before the Court, so that
4 it was not included in the first affidavit was not an attempt to frustrate this Court from
5 understanding that, it's a key piece of evidence. It was always intended that that information
6 would be before the Court and addressed.

7

8 THE COURT: Okay. So, you are saying there is no lack of
9 transparency or candor in disclosure to the Court.

10

11 MR. SELNES: Correct and I would suggest that is a very high
12 bar to suggest that there is a lack of candour in that regard. It was not intentional to the
13 extent that it was not included in the first affidavit. It is before this Court in the affidavit
14 we are speaking to it and secondarily, the Proposal Trustee was well aware and prepared
15 to report to his Court, as well, as it had done.

16

17 And so, I do not believe there is any real prejudice from that, nor does the Court has to
18 worry about the parties were not aware of interested, 'cause it was always going to be
19 raised. And one of the reasons and it's a bit of technical reason as to why the NOI
20 proceedings are important and this goes to the status of the leases right now. But I don't
21 know if this would've made it to you Justice, and I apologise, we had intended very late in
22 the game and I think it just -- getting things complied was to give you copies of the
23 *Petroleum and Natural Gas Act of British Columbia* and the *Energy and Resources*
24 *Activities Act*.

25

26 THE COURT: I do not recall seeing that, so if it is in the
27 materials, I did not see it. But, so perhaps someone will enlighten me if I have missed it.

28

29 MR. SELNES: And it's -- there is no enlightenment there, it was
30 not in the materials and what I can do is summarise briefly for you, what the importance
31 of that legislation is and the sections that are relevant are sections 117.1 of the *Petroleum*
32 *and Natural Gas Act of British Columbia* and section 45(2)(a)(i) and 45(6) of the *Energy*
33 *and Resources Activities Act*.

34

35 And why that is -- why these two pieces of legislation are important is that pursuant to
36 section 117.1 of the *Petroleum and Natural Gas Act*, the Minister has the power to transfer
37 cancelled leases to potential buyers. And they can do so in certain scenarios, one of which
38 is when the -- I guess the party that is seeking to transfer those, is an insolvent person. And
39 so they become deemed insolvent under the *Energy and Resources Activities Act* which
40 then allows for the immediate transfer.

41

1 And so, in the SISP process, I think there has been concern raised and this was your
2 question, as to what are we doing here, if we don't have actual leases to transfer and I think
3 the two key points there are the underlying assets, being the physical infrastructure still
4 exists and is being marketed.

5
6 And if there is a purchaser for some or all of those assets the Minister has the ability to
7 then transfer them pursuant to this section of the legislation.

8
9 THE COURT: When you say "ability" presumably that there is
10 discretion?

11
12 MR. SELNES: Correct.

13
14 THE COURT: Or are you saying -- okay. So, they have the
15 discretion to transfer them?

16
17 MR. SELNES: Correct and our submission, in that exercise of
18 discretion, is so long as it is a qualified purchaser and if were attempting to sell those assets
19 to a non-qualified purchaser there is the understanding that the Regulator would have the
20 opportunity to decline to do that transfer. But if we can -- if we can find a qualified
21 purchaser that transfer can be made and those can be immediately reinstated.

22
23 And I'll also state that there's no difference if there were in a receivership or in the current
24 proceedings for that same issue to be dealt with and arise. So, whether it is through this
25 sales process or any other process that could be run, the Minister would still have to do so.
26 And it's alluded to in Mr. Horrox's first affidavit, but one of the challenges here is the fact
27 that there is an election in British Columbia right now, there was negotiations with the BC
28 Government, but unfortunately the Minister -- at least my understanding is the Minister
29 could not do anything prior to the election because there was, in effect, no prospective
30 Minister, that problem --

31
32 THE COURT: Well, indeed that problem may exist for some
33 time. Hopefully not more than some days.

34
35 MR. SELNES: At least someone I saw on the news this morning,
36 is does not look as definitive as we would've hoped but I guess all I can say to that is it is
37 a problem that will exist regardless of the process. But it's attempting to be addressed and
38 it's attempting in good faith to be addressed and that those conversation have occurred and
39 the intention is, if a prospective purchaser is identified, that they will work with -- with the
40 Government to transfer those licences. And so --

41

1 THE COURT: And I gather that that is part of what the Proposal
2 Trustee has been involved in. I recall reading in the report that that has been part of their -
3 - and perhaps they want to comment on it, but that has been part of what they have been
4 working on, is having discussions about the potential renewal of the leases; is that right?
5

6 MR. SELNES: And I think Ms. Cameron would be better to
7 speak to that than I and I do see her camera on.
8

9 THE COURT: I thought you might say that.
10

11 MR. SELNES: Yes.
12

13 MS. CAMERON: Yes, good afternoon, Justice Johnston, I can
14 confirm for the record that the Proposal Trustee did, in fact, participate in discussions with
15 the BC Ministry of Tenure and Stewardship branch and that meeting occurred, I've just
16 doublechecked my schedule, as I don't believe it was put in the report, but it occurred on
17 October 16th.
18

19 So, to your question to my friend, Mr. Selnes, about good faith and candid disclosure, we
20 did report on that after the meeting was held which was held after Mr. Horrox swore his
21 first affidavit.
22

23 THE COURT: Okay. Thank you very much. But I do recall in
24 your report it did indicate there were discussions occurring or you were involved in
25 discussions, if I am not mistaken.
26

27 MS. CAMERON: That's correct. That was stated there. We have
28 had those conversations, the company invited us to participate in the meeting with the
29 Ministry and we are in those conversations.
30

31 THE COURT: All right. Very well. Thank you.
32

33 MS. CAMERON: Thank you.
34

35 MR. SELNES: And so I was a bit circuitous, but I hope I was
36 able to at least answer some of your two questions there and if there anything follow-up it
37 would be helpful.
38

39 THE COURT: You did and you did a very good job of parsing
40 the two questions and giving clear answers to both of them notwithstanding my putting
41 them together in one giant question. So, thank you.

1
2 MR. SELNES: Appreciate that. Thank you. So, then what I
3 would -- and it's clear from your question that you do have a very good understanding of
4 the background, but I think both for the purposes of the record and to set the stage, I think
5 it is important to review some of the background facts and I would intend to do that.

6
7 THE COURT: That is fine. Yes.

8
9 MR. SELNES: And these are contained in both of the affidavits
10 of Mr. Horrox's and so at a high level, the debtor Erikson is an oil and gas company with
11 assets located in the Fort Nelson and greater Fort St. John areas of northern British
12 Columbia.

13
14 Erikson's natural gas assets were previously owned by an entity called Ranch Energy
15 Corporation and I'll refer to that as Ranch. Third Eye Capital the primary secured lender
16 and proposed DIP lender was originally a secured lender of Ranch and had provided Ranch
17 with a credit facility to fund its purchase of natural gas from another entity called Creditor,
18 as well as for post-acquisition working capital. Like many producers in the late 2010s,
19 Ranch suffered financial difficulties and went through what was then *CCAA* proceedings.

20
21 And during those proceedings, Third Eye Capital discovered issues with Ranch's financial
22 reporting which caused it to seek appointment of a Receiver on July 19th 2018. And at that
23 time Third Eye Capital also sought to run a sales process to mitigate the risks to TEC's
24 investors and to assist the BC Energy Regulator with the orphaning the assets at that time.
25 And I think that's important because that was the first instance of Third Eye Capital funding
26 a process to try to find a purchaser for these assets to allow them to be maintained, utilised
27 for the benefit of, I guess the ultimate stakeholders which are the citizens of British
28 Columbia, who would receive royalties from that and to avoid having them orphaned which
29 there's a significant cost to that abandoning or claiming those assets.

30
31 And so, at the time there were no suitable bidders, so Third Eye Capital worked with the
32 BC Energy Regulator to have one of its nominees assume approximately half or 414 oil
33 and gas wells, with the remaining 401 and 3 facilities being orphaned. So, that's going back
34 somewhat far into the history of these assets and that's then where an entity called Pieridae
35 becomes part of the story and this is where some of the concerns of CNRL arise in the fact
36 of what funds were loaned through to Pieridae and then repaid.

37
38 And I'll give a brief overview, but my friend from Third Eye Capital I think is the best
39 person and position to speak to the details, just based on the involvement of Third Eye
40 Capital at the time of that funding and so I'd defer some of the factual explanation. But,
41 ultimately, what had happened was, Third Eye Capital learned that Pieridae might be

1 interested to purchase Erikson because it operated assets proximate to the Ranch assets.
2 And so what happened was, there was a negotiation of an option agreement for Pieridae
3 where it would buy the assets from -- from Erikson, as well as being funded by a loan that
4 was in effect, flowed through Erikson. There was no specific beneficial interest that
5 Erikson had to those funds. They were advanced to Erikson, which were then advance to
6 Pieridae to form the ability to purchase those assets. And the terms of that flow-through
7 loan are at paragraph 14 of the first Horrox affidavit.

8
9 Importantly, this loan was repaid in July 2023 and again I think Mr. Harnett can better
10 speak to some of this specifics there, but it was Erikson that was the flow through for that
11 loan and therefore Erikson did not receive the funds itself. The funds were repaid to the
12 lender which in that case was Third Eye Capital.

13
14 There was then a second loan advanced to Pieridae where TEC was acting as agent and
15 again that was a flow-through loan at that time. Unfortunately, Pieridae elected not to
16 acquire the Ranch assets and so that left a situation where Erikson remained in operation
17 and possession of those assets and now had to determine how to best deal with that,
18 knowing that the end goal purchaser was no longer available.

19
20 So, Third Eye has provided some working capital support to Erikson over the course of
21 Erikson's ownership, however, Erikson has only been profitable for three quarters and we
22 largely attribute to this spike in natural gas prices due to the conflict in the Ukraine.
23 Unfortunately, that spike did not continue and they have not produced revenues sufficient
24 to cover the cost of producing them.

25
26 And as Mr. Horrox attest to at paragraph 18 of his first affidavit at no time has Erikson's
27 operating cash flow been used to repay any amounts owing to Third Eye on behalf of its
28 senior lenders. So, all money from operations has been used for business purposes. And in
29 total, Third Eye has provided \$33.8 million in working capital to Erikson post-closing.

30
31 THE COURT: Thirty-three million you said, right?

32
33 MR. SELNES: Correct. And this is a significant investment that
34 unfortunately it may not be able to recover in full or in all depending on how the sales
35 process proceeds. So, as the primary secured lender and the fulcrum creditor in this case,
36 it has the most interest in a process that can maximise any recovery for those assets, as well
37 as to deal with ongoing environmental and remediation obligations.

38
39 And so in the summer of 2023 when it became clear to Third Eye that Erikson would not
40 be in a position to repay its loans, there was a forbearance agreement negotiated. This was
41 entered into in October of 2023 and it was between the two entities. And I do want to

1 emphasise the importance the importance of these are separate entities. Third Eye Capital
2 is not Erikson and Erikson is not Third Eye Capital. There is one common Director that in
3 and itself does not mean that one or the other can control. They have -- they have separate
4 operating interests, previous to resignations there were separate Boards of Directors and so
5 it's -- I just don't want them to be conflated as being the same entity in that regard.
6

7 And in June 30th, 2024 a second forbearance agreement was reached. And it was at this
8 time that the second Pieridae loan as well as options and securities related to that loan were
9 assigned on a dollar for dollar basis to Third Eye Capital. And again, I would defer to Mr.
10 -- to my friend from Third Eye just to speak to any specific questions you may have, just
11 as I don't -- I wasn't involved in the negotiations of that, but I want to make sure the Court
12 has accurate information to the extent you do have questions. But, the total due as is
13 indicated in the affidavits, as of September 30th, was \$31,696,600.
14

15 The next thing I want to emphasise is the attempts to mitigate losses over time that Third
16 Eye and Erikson together have done. Operations were suspended in May of 2024. At that
17 time Erikson was losing approximately \$250,000 a month. So what it did was it reduced
18 its staff to ensure the critical onsite assets could be maintained and to help ensure that if a
19 purchaser does materialise in the SISP or one or more, that those assets are in proper
20 functioning order, that they can be transferred and produced by a different party. And so
21 they're not currently operating, they're shut in, but they are being maintained. There is staff
22 onsite and that staff is being paid at this time.
23

24 And so, I would suggest that allegations of bad faith are unfounded when Erikson is
25 expending capital to maintain the assets and liabilities to ensure the environmental issues
26 do not arise and to ensure that staff is onsite to deal with. And that is why the SISP that is
27 being proposed is a very targeted and single phase brief SISP to hopefully find a purchaser
28 for some or more of the assets.
29

30 And then in the timeline, the notice of intention under the *Bankruptcy Act* was filed on
31 October 1st. KSV was appointed by operation as the Proposal Trustee. I'd submit that Mr.
32 Basi and his team at KSV have extensive experience restructuring oil and gas companies.
33 Similar to this, the sales advisor they worked with in the past being Sayer and they are
34 willing to continue as Proposal Trustee and to work with Sayer to run the SISP if this
35 process that we're proposing is approved.
36

37 The sales and investment solicitation procedure is outlined at paragraph 31 of the first
38 Horrox affidavit. It's also discussed at section 3 of the Proposal Trustee's Report.
39

40 THE COURT:

And I gather that is underway notwithstanding
41 the SISP has not been approved yet, a certain element of it?

1
2 MR. SELNES: That is correct and you will have seen from the
3 timing that the marketing phase had commenced on the 16th and the rationale there and I
4 know this is a bit unique where we started a process that had not necessarily been
5 sanctioned by the Court and I'd submit the risk is on Erikson and Third Eye for funding
6 that.

7
8 But at the end of the day it was started because time is of the essence and the ability to get
9 that information out to third parties without waiting longer in the cash flows to do so was
10 important and everything has been commenced. Although obviously there has to be a
11 sanction by this Court for any process to result in an actual purchaser or investment of that
12 process.

13
14 THE COURT: And just so that I am clear and BC ER, I know
15 you were saying no position, but I thought I read I the materials that you were supportive
16 of the proposed SISP or are you taking no position on that, as well?

17
18 MR. REID: We have no position on this application.

19
20 THE COURT: In any respects. Okay. Thank you for that.

21
22 MR. SELNES: And perhaps a better way to phrase it from at
23 least the understanding of Erikson and the Proposal Trustee was that the BC Energy
24 Regulator was involved in understanding what the SISP would be comprised of, the
25 timeframe and that and again is not here to oppose it or say that that SISP should not occur.

26
27 MS. CAMERON: If I might just jump in, My Lady, and direct you
28 to part of the Proposal Trustee's Report in response to this specific question that you have.
29 At page 11 of the Proposal Trustee's Report --

30
31 THE COURT: Right.

32
33 MS. CAMERON: -- which is actually page 13 of the PDF.

34
35 THE COURT: I think I have a hard copy in front of me, so page
36 11 -- go ahead.

37
38 MS. CAMERON: And so it is just above the premarketing stage
39 and it is a discussion about why the SISP was commenced notwithstanding it has not yet
40 been sanctioned by the Court. And it was commenced prior to Court approval, in part, due
41 to the request of the BC Energy Regulator to start a sales process as soon as reasonably

1 practical. And so while they're taking no position on the application today, that was the --
2 part of the rationale underlying the commencement of the SISP.

3

4 THE COURT: Thank you.

5

6 MR. SELNES: And thank you, Ms. Cameron, that's very useful
7 context and I appreciate that. And so, as I mentioned this is, in effect, the second sales
8 process that's being run by Sayer. And why we do believe that it is different in this context,
9 is that it's not just an unblocked sale seeking an investment in Erikson, the is intended to
10 be more broad kind of opportunity in that somebody may be interested in one or two of the
11 assets, somebody may be interested in all of the assets, but at least there is the opportunity
12 to allow for the kind of piecemeal purchase of certain assets or the entirety.

13

14 And my understanding is that at the insistence of the Energy Regulator previously, they
15 wanted an investment in the entire company which is part of the reason it's a little different
16 now. And what is also important is that following that previous deadline there were two
17 parties that approached Erikson regarding transactions that would have ensured all
18 environmental liabilities would be addressed, as well, some cure costs being paid.

19

20 However, those negotiations ultimately didn't materialise into a definitive agreement, but
21 what it does show is there's interest in the assets and there is the opportunity to salvage
22 something here and again, I believe the Proposal Trustee is probably better to speak to this,
23 but my understanding is there have been several parties that have already contacted through
24 the pre-marketing phase, Sayer and the Proposal Trustee to enter into a non-disclosure
25 agreement to review the assets. And so there is some preliminary interest in this process,
26 as well, and the fact that there were other multiple bidders in the past process shows that
27 these aren't assets that should be sent straight to the orphan fund if it can be avoided.

28

29 THE COURT: Okay.

30

31 MR. SELNES: And ultimately, what we would like to do is to
32 maximise recovery for all of Erikson's stakeholders and that's why we worked closely with
33 the BC Energy Regulator to obtain again, support may be the wrong word, in the sense of
34 the application here, but to obtain their blessing and how the process is being run.

35

36 THE COURT: Okay.

37

38 MR. SELNES: And as you'll note, in my substantive
39 submissions under the test, the Proposal Trustee does support the proposed SISP. It is being
40 conducted by a very experienced sales advisor and is being done in a very time sensitive
41 fashion, so as to avoid prejudice to other parties.

1
2 And I've spoken to you about the status of the leases, so I don't intend to go back into that
3 and I appreciate your question upfront in that regard, but to the extent that has to be
4 addressed any further, I'm happy to do so after CNRL's submissions.
5

6 THE COURT: Okay. That is fine.
7

8 MR. SELNES: And so then going to the relief being sought, the
9 first is the extension of the stay of proceedings to November 30th and I'll say this ties to all
10 other aspects of the application. As the Court will be aware, if there is no stay extension
11 granted, by operation of the statute there will be an automatic bankruptcy on October 31st.
12 And you did hear from Mr. Reid that I think the intention would be to likely proceed to
13 request the Receiver be appointed prior to that date, but ultimately either it's a bankruptcy
14 or a receivership if the stay is not granted.
15

16 And written submissions regarding the stay extension are at page 2 of Erikson's brief and
17 the authority is section 50.4(8) of the *Bankruptcy & Insolvency Act*. And three-part test, we
18 addressed part of that being the good faith and due diligence requirement, the potential
19 viability to make a proposal and then third, that no creditor is materially prejudiced.
20

21 And at this point, being the first stay extension, I would submit that the keys here are the
22 good faith requirement as well as considering whether there is material prejudice, as the
23 extension is supported by the Proposal Trustee and it's expected that there will likely be a
24 liquidation of assets, rather than a proposal, although the option of a proposal does remain
25 possible depending on if there is an investment. It's just one of those situations where it is
26 too early to tell and that things have been going for about two and-a-half weeks in this
27 proposal process.
28

29 I note that it's listed in the Proposal Trustee's Report, there are other unsecured creditors,
30 not only CNRL that is an unsecured creditor and those unsecured creditors may or may not
31 have an interest in how the ultimate results of a sale process would go and would be entitled
32 to vote on any proposal. And ultimately, our submission and our hope is the Court will let
33 us run a process to determine what is the most viable for this company.
34

35 The other option would have been to convert this to a *CCAA* proceeding which is often the
36 case where you start with an NOI and move to a *CCAA*. I don't believe that would have
37 made a lot of sense from a cost perspective, it would have been another expensive
38 application requiring an immediate comeback hearing and with time being of the essence
39 and trying to preserve costs, we are proceeding out of the analysed structure.
40

41 And so, I've addressed the good faith elements at a high level, but what I would -- just want

1 to emphasise is that there are a lot of indicia of good faith. Erikson has worked with the
2 Proposal Trustee to prepare cash flows. It is paying for employees to maintain the assets.
3 It is negotiated with third party, that being Third Eye Capital, the DIP financing. It has
4 worked to retain Sayer in advance of sales process. It has been an ongoing negotiation with
5 the British Columbia Energy Regulator as well as with the Crown regarding the restoration
6 of the leases and advancement of the sales process. And so, all of those steps, are for the
7 desire to ensure that the assets are not immediately orphaned and that no other party is
8 currently proposing an alternative sales process.
9

10 So, inherently the option is bankruptcy or receivership, which would result in the
11 termination of employees and it would put the onus then on the British Columbia Energy
12 Regulator to work with the Receiver to wind down those assets. And so, we would submit
13 that the good faith element here is -- it's a challenging set of assets, it's been a challenging
14 series, I guess a challenging timeframe for the last three years of dealing with these assets,
15 but at all times Erikson has maintained them and has been trying to work towards finding
16 a purchaser of them and this is our last attempt to do so.
17

18 And this is to mitigate as much damage as possible whether that be to environment or that
19 to be the assets themselves by orphaning them and what this Court should be reminded is
20 this process is about all stakeholders, it's not just one unsecured creditor, being CNRL.
21

22 And the viability of the proposal, I've spoken to this briefly, but it's too early to make this
23 decision. If there's a significant investment in the SISF or a sale that may facilitate the
24 events with a proposal that can be done and that also, I'd submit, that it's very common at
25 initial extension for NOI proceedings that no proposal has been prepared. The concept of
26 a germ of a plan will be developed through the sales and investment process. If nothing
27 arises in that process, I think everybody would concede that there is no germ of a plan and
28 the receivership is the logical conclusion. But if another extension order is required I think
29 that would be the more appropriate time to focus on this branch of the test.
30

31 And in regards to material prejudice, I submit that the test is that a party is substantially or
32 considerably prejudiced by the extension. And what I want to emphasise there is that the
33 extension is the question that we're asking now, not with the dissatisfaction of a creditor
34 regarding past steps being taken. And I would submit that there is no evidence of express
35 prejudice in a perspective basis and that is for the next month. In contrast, the primary
36 secured creditor owed over \$30 million is supportive and willing to advance more funds to
37 allow for this.
38

39 The Proposal Trustee has been involved in the process and supportive of it and BC Energy
40 Regulator who is the most primary other party that would be affected based on the
41 likelihood of having to abandon orphan assets is not opposing. And so, I think all of that

1 suggests that this is the window, it's a short window, but there is a window to try and
2 salvage some of this through a sales process and we're asking that this Court provide that.

3
4 Moreover, any perspective prejudice is mitigated by the fact that there is now a court officer
5 overseeing this process. I don't think I need to speak to KSV's integrity, they've been a
6 court officer before this Court for three years advancing processes like this, they have
7 excellent counsel and if there is any problems that can properly be addressed by the
8 oversight of the court officer.

9
10 And ultimately there are potential material benefits to Erikson's as abandonment liabilities
11 may be lowered, there are benefits to the secure creditor if additional funds can be created
12 that exceed those.

13
14 THE COURT: Is that part of the analysis, whether there is
15 benefits or is materially prejudice?

16
17 MR. SELNES: And that is fair. The analysis in and of itself
18 requires only that there is material prejudice and so I may be swaying into a bit of a different
19 type of submission, but you are correct, that the three-part test looks at the prejudice of
20 another creditor, not the benefit to other parties.

21
22 THE COURT: Although, presumably if there are benefits then
23 that perhaps is taken into account in assessing material prejudice. I am not sure, but I
24 thought it would ask it.

25
26 MR. SELNES: And that's fair and the test doesn't contemplate
27 that specifically, but I think inherently when you're -- when you're looking at the totality
28 of the evidence the fact that nobody is prospectively prejudiced while other parties and
29 stakeholders maybe benefited would militate in the finding that it's not the substantial or
30 significant type of prejudice that you would kill a process at this time for. And so, based
31 on all of the totality of the three factors, I submit that it militates in favour of the brief
32 extension being requested.

33
34 And subject to any questions you have in regards to the extension I would propose to turn
35 to the SISF.

36
37 THE COURT: Sorry, I was just making a note. I have no
38 questions, you can go ahead.

39
40 MR. SELNES: Okay, I just wanted to give you an opportunity to
41 do that as well.

1
2 THE COURT: Yes absolutely. I am just trying to take notes as I
3 go, as you can probably tell.
4

5 MR. SELNES: And so, the sales investment and solicitation
6 process or SISP is attached as schedule A to the form of order attached to the initial
7 extension application. It's also address at paragraph 3.5 of the Proposal Trustee's Report.
8

9 And I don't intend to get into the minutia of that, but just highlight some of the key points
10 and background of the SISP. As you've already addressed, we're in that unique situation of
11 where it has been launched prior to this application and that was the marketing phase which
12 was on October 16th. The bid dead buying is designated as November 15th, so
13 approximately just over 3 and-a-half weeks from today with the intention then that a sales
14 application can be run for the end of November, being the 25th, with the target closing
15 November 30th.
16

17 So it's very compressed and part of the intention there is that no more funds are expended
18 than necessary to do so, but that the debtor in possession is allowed to run one last process
19 in that regard.
20

21 And the phases are as follows. There's the pre-marketing phase which is largely taking
22 place which was --
23

24 THE COURT: I do not think you need to review the phases, I
25 think that was set out very clearly in your brief. There is pre-marketing, marketing, offer
26 and evaluation and I think that was in your brief pretty clearly.
27

28 MR. SELNES: Okay and so I will leave that and I think that is
29 probably not the -- the concern of the Court in regards to what truly has to be decided here
30 today.
31

32 THE COURT: Yes.
33

34 MR. SELNES: But one -- one point I just wanted to make for the
35 record is that we do understand that court approval is required both for the SISP to be
36 concluded, but also that any offers would be subject to Court approval.
37

38 THE COURT: Right.
39

40 MR. SELNES: And so --
41

- 1 THE COURT: Understood.
- 2
- 3 MR. SELNES: -- the SISP would we'll sell something off --
- 4
- 5 THE COURT: Right.
- 6
- 7 MR. SELNES: -- there's quite a bit of oversight happening in
8 that regard.
- 9
- 10 THE COURT: They will be evaluated and then -- yes.
- 11
- 12 MR. SELNES: Agreed.
- 13
- 14 THE COURT: Okay. Now, I -- your materials were very clear
15 on that.
- 16
- 17 MR. SELNES: And so, what I think is of more importance then
18 because it is being opposed is to what are the specific considerations of this Court in
19 determining whether it can approve the SISP. And the factors are outlined at paragraph 14
20 of the applicant's brief.
- 21
- 22 THE COURT: And you are talking about the *Soundair*
23 principles presumably?
- 24
- 25 MR. SELNES: Correct.
- 26
- 27 THE COURT: The *BIA* factors.
- 28
- 29 MR. SELNES: That's correct and you're right on the mark there
30 and that it's in effect overlapping the two -- the entirety of them often kind of get to the
31 same point, but there are the factors (a) through (f) of section 65.1(3) and (4) of the *BIA*
32 and then the *Soundair* factors which were originally developed in receivership but have
33 been applied by this Court and other Canadian courts as kind of standard for approval of
34 these processes.
- 35
- 36 And the -- what I would propose to do, is very briefly go over each of the statutory factors
37 and why we submit they are met in this case.
- 38
- 39 THE COURT: Okay.
- 40
- 41 MR. SELNES: And first, whether the process leading to the

1 proposed sale or disposition was reasonable in the circumstances and what I'd suggest there
2 is, that there was a past sale process run by Sayer. They were again retained to run this
3 process. It has been developed and done in conjunction with the Proposal Trustee. It has
4 been developed in consultation with the BC Energy Regulator. It is designed to be a single
5 phase and it is being done in a manner that there is Court oversight, as well as required
6 Court approval.

7
8 And so it's in some ways a standard SISP but in a very truncated fashion and in that regard,
9 we do believe that the process that led to it was reasonable and I don't think it's important
10 for this Court to focus on what was done 1, 2, 3 years ago in different processes.

11
12 THE COURT: Right.

13
14 MR. SELNES: It is this process itself and looking at this process
15 itself that is well in line with the processes approved by this Court and with the experienced
16 professionals involved, I don't think there needs to -- well I'd submit there is no concern
17 about the ability to run that process in an efficacious manner.

18
19 And the second part of the test is whether the Proposal Trustee approved the process
20 leading to sale or disposition. And it's a bit of a strange because we're looking at the process
21 being approved without the process being run, but in that regard the Proposal Trustee does
22 support the process and so there is the development and oversight of the Court officer.

23
24 And third, whether the Trustee filed with the Court stating that in their opinion, the sale or
25 disposition would be more beneficial to the creditors than a sale or disposition under a
26 bankruptcy. And again, we haven't got to the point where we're approving the sale, just the
27 process, but again the Proposal Trustee has included it in its report that it thinks this is a
28 beneficial process and is prepared to assist with running it.

29
30 To the extent that creditor were consulted is the next statutory consideration. And in that
31 regard, the fulcrum creditor is involved, that is Third Eye Capital. It will be providing the
32 funding to run the process. It is also being done with the input of the BC Energy Regulator
33 who is inherently a creditor from the environment reclamations obligations. And I say,
34 inherently a creditor, in the sense that they are an interested party and what will happen
35 with the assets afterwards.

36
37 The nature of them being a creditor versus a regulator is a different argument, but not
38 necessarily for today, but the reason I say they're a creditor in that sense, is they will have
39 significant involvement regardless of where this goes.

40
41 And then when looking at the affects of the proposed sales on creditors and interested

1 parties. If a sale is completed it will generate revenue that will either go to paying the
2 secured creditor or for abandoning and reclaiming assets. It will avoid moving those
3 liabilities to the orphan fund and it also is open for CNRL as a creditor to participate and
4 if they see value in certain assets where they currently joint operator on, they would have
5 the ability to participate and purchase some of those assets, as well.

6
7 And so, at this time, all interested parties can participate and the benefit of generating some
8 recovery is better than not. And I think what is most important here is that -- and this goes
9 to what Erikson has been trying to do for several years is finding a purchaser to take on
10 some of the liabilities and obligations and ultimately we feel that it's a much better scenario
11 than if everything is sent to be orphaned.

12
13 And so, there is a potential large benefit if even only some of the assets are purchased, but
14 I don't want to pre-suppose what will come out of the process and that it could be
15 everything, as well.

16
17 THE COURT: So you are saying it will help reduce the risk of
18 any assets being orphaned or as many, is that sort of part of it?

19
20 MR. SELNES: Correct. And that's exactly right and that's
21 twofold and you've identified that correctly in that, if a purchaser comes along and they're
22 deemed a qualified purchaser and the government is willing to reinstate the leases, the
23 abandonment reclamation obligations would carry forward with those assets to the new
24 purchaser and they would then take on those obligations.

25
26 And secondarily, if funds are created and it would have to be determined who has
27 entitlement to those funds at that time, but they're -- there's the potential that some funds
28 can go to reclamation obligations as well. And so, again don't want to presuppose what
29 would happen out of the process, but at least it creates the potential for that type of
30 recovery.

31
32 And then finally, the last statutory consideration is whether the consideration is reasonable
33 and fair, taking into account the market value and again, this tends to be more of a question

34 --

35
36 THE COURT: Yes.

37
38 MR. SELNES: -- once the process is run.

39
40 THE COURT: I was going to say it is hard to argue one way or
41 another, other than perhaps you have experienced professionals helping and marketing the

1 materials.

2

3 MR. SELNES:

4 And that's exactly correct and that's the most wait
5 and see part, but clearly this Court will have the ability to evaluate that evidence in the
6 future and I think all the parties are aware that if it's not an actual qualified bidder, that it's
7 not going to be approved in the long run. And so, the process has to run to determine what
8 that market value actually is.

8

9 And then as you properly identified, the *Soundair* test then is kind of the overarching
10 common law in respect to this and that's a four-part test. And the first part is, whether the
11 Receiver of in this case, the Proposal Trustee has made sufficient effort to get the best price
12 and is not acted improvidently. And what I should say, is it's actually the debtor in
13 possession of, not the Proposal Trustee there, but with the oversight of the Proposal
14 Trustee.

15

16 And in that regard it's a robust process, it's built on the back of the past marketing efforts
17 with the same parties and our submission is that it will solicit the best price as it's a debtor
18 possession sale rather than a sale out of a receivership. And ultimately if the alternative is
19 to go to a receivership, it's going to have to be a similar type of process that would be run
20 by a Receiver if they chose to do so. And so doing that while the company has employees
21 on the ground is a much better chance of making sure we can get the best price in doing
22 so.

23

24 The efficacy and integrity of the process. I've spoken somewhat to the good faith aspects,
25 but the integrity of the process more speaks to whether or not it is being done in a proper
26 manner with proper oversight. In that regard, it's not just the company or the Proposal
27 Trustee going out and soliciting offers, there is an experienced sales advisor that's been
28 retained as well and we believe that is the best way to market them to a broad group of
29 individuals and companies and hopefully generate some form of sale.

30

31 Whether there's been any unfairness in working with the process. And in that regard I'd
32 suggest that any of the concerns of good faith again relate to past conduct and don't relate
33 to the process itself. Anyone can bid and participate. The Energy Regulator has been
34 involved. There are multiple court officers that are involved. One court officer, sorry, as
35 well as the sales advisor that's involved. And so, the process is open and I think fair to any
36 party to participate.

37

38 And the last part of the test is the interest of all parties needing to be considered. In here,
39 again I'd suggest this is not just one unsecured creditor being CNRL, it's the interest of the
40 primary secured creditor. It's the interest of Erikson as a company. It's an interest of the
41 citizens of British Columbia, the BC Energy Regulator, those employees that remain. And

1 so, there are a lot of other parties that stand to benefit if the sales process is successful and
2 that means, in my humble submission, that all parties absent CNRL opposition are either
3 supportive or not against the process for good reason.
4

5 And if you don't have any further questions about the SISP, I would turn to the admin
6 charge.
7

8 THE COURT: Okay. Go ahead.

9
10 MR. SELNES: And so the administration charge being sought is
11 for \$200,000. Very common in proceedings of this nature where an administration --
12

13 THE COURT: Right.

14
15 MR. SELNES: -- is sought. And the purpose is to protect the
16 professionals --
17

18 THE COURT: Right, without them there is no process usually,
19 in my experience.
20

21 MR. SELNES: That is exactly right and there's always an
22 inherent self-interest for us saying we would like the admin charge, but there's -- it's a
23 difficult scenario for particularly the Proposal Trustee and others to get involved in these
24 when there's a lack of resources. And so that charge is only in place as long as these
25 proceedings are going, or if it is carried forward to a subsequent proceeding.
26

27 And I do understand that CNRL is saying, is opposing that, but I've sense at least from the
28 materials that they're opposition is more and related to other aspects, but I do not want to
29 speak to their submissions there. I would suggest though that this is a scenario where it is
30 appropriate --
31

32 THE COURT: I do not, I honestly do not need to hear too much
33 about the admin charges obviously, I will hear what CNRL have to say. But again it was
34 pretty straightforward your argument and this is not -- it is something that I am obviously
35 quite familiar with so ...
36

37 MR. SELNES: Perfect and --
38

39 THE COURT: Perhaps we could talk about the lender's charge
40 and the interim financing which seems to be a bigger issues.
41

1 MR. SELNES: Agreed and I think that is the crux of where we
2 are landing as to why it is necessary and why we think that it is appropriate for this Court
3 to grant the charge.
4

5 And so we apologise that this was the second application filed the reason being was for
6 several and the first was, there had always been the intention to negotiate the debtor in
7 possession financing, that was underway when the first application was filed. Ms. Cameron
8 can speak to this, but the were legitimate concerns from the Proposal Trustee about the
9 cash flows and timeline if there wasn't funding put in place.
10

11 And so after we had those conversations with the Proposal Trustee we then contacted and
12 worked with Third Eye Capital to ensure that they would be willing to put debtor in
13 possession financing in place. And so that is why the timing, kind of late in the day, this
14 came about but it is -- it is necessary and you will have seen from the cash flows that
15 without debtor in possession financing, effectively in October there would be no ability to
16 continue with this process.
17

18 THE COURT: Right. So I think again your arguments are pretty
19 clear. I suspect that perhaps you may have more to say in response to CNRL. But one other
20 question I had is, there is, you know, I think in response to the concerns raised by CNRL,
21 I think you are saying you are going to exclude the CNRL joint interests from the interim
22 lending charge priority.
23

24 MR. SELNES: Correct.
25

26 THE COURT: So they are not put in a worse position. But I
27 guess my question was and I am not sure I am going to articulate this the best way, but
28 what I am wondering is, is it appropriate to prefer one creditor over others? I mean do we
29 run into problems if we say okay we got a super priority over the world, except we are
30 going to carve out CNRL? Is there a problem doing that? Is that going to cause issues? Is
31 that appropriate? I think you get the gist of what I am concerned about.
32

33 MR. SELNES: Yes and if I understand the question it's, why
34 would only one unsecured creditor (INDISCERNIBLE) --
35

36 THE COURT: Well, I mean I do not think it is a fraudulent
37 preference, but is it? I mean I do not know. Do we get into those issues? I am not sure what
38 the concern is, other than are we in a position -- are you in a position where that is going
39 to cause other problems with other creditors and are you preferring CNRL over everyone
40 else?
41

1 MR. SELNES: And that is a fair question and the reason I do not
2 think there is any preference issue is because there is no actual change in money passing
3 hands as it relates to CNRL. It's just that the level of security that they have is not being
4 primed.
5

6 THE COURT: Well, okay, you might not be transferring, you
7 know, in the traditional sense you know, transferring a house to someone to keep it out of
8 a creditor's reach, but in essence what you are doing is you are privileging CNRL over
9 other creditors by exempting them from the super priority, are you not?
10

11 MR. SELNES: I see how you -- I see what you are saying in the
12 sense that they are getting differential treatment from other unsecured creditors.
13

14 THE COURT: Yes.
15

16 MR. SELNES: And at least in my experience, and there are more
17 experienced with structuring professionals here to speak to it, but it isn't uncommon that
18 there will be some carve outs within any of the charges for parties. And often that is the
19 case where the overall best interest for everybody is having this put in and I think that's to
20 me, the bigger consideration would be what is the alternative to doing so? And CNRL has
21 raised the concern and --
22

23 THE COURT: Yes --
24

25 MR. SELNES: -- the reason it is put in there is because of the
26 concern they raised. We wouldn't normally be carving this out as I think you're suggesting
27 is why one over the other, but it is to get it across the finish line. And the fact is, absent
28 that, we knew there would be no support from CNRL and we were trying to address the
29 concern that they had as it relates to the security they hold over certain assets.
30

31 And so, it's because they have, I guess, the interest in those leases and the interest in those
32 assets, which would be different from other parties, who are just general unsecured
33 creditors. And again, this was served on the BC Energy Regulator who I don't understand
34 has any opposition to the nature of the priming charge and that would be the other
35 predominant interested party as to where money may flow if it first starts by going to the -
36 - if it first starts by going to Third Eye Capital.
37

38 And so, I don't have any specific authority to point you to that says, yes or no, in the
39 circumstance, but --
40

41 THE COURT: All right.

1
2 MR. SELNES: -- the unique nature of the way they hold security
3 over those assets --
4

5 THE COURT: Right.
6

7 MR. SELNES: -- makes it -- makes it appropriate in the
8 circumstances.
9

10 THE COURT: Okay. Fair enough. Okay.
11

12 MR. SELNES: And as you've had an opportunity to go through
13 the DIP, I won't be reviewing all of the specific aspects of it, but I do understand that there
14 was the concern about the least reinstatement having been obtained and that is your
15 subsection 8(m), which is the lease reinstatement not being obtained as of November 1st.
16

17 And so, I think again this is probably more appropriate for the DIP lender to speak to.
18

19 THE COURT: Yes, okay.
20

21 MR. SELNES: I would defer to them, but ultimately that is a
22 trigger, I guess, we'll have a lot more idea of what is happening in the sales process, because
23 it will have been run for three weeks at that point -- or I guess two weeks at that point. And
24 it's -- any condition in this can be waived, but it is an opportunity for Third Eye to evaluate
25 the potential success of this.
26

27 And again, I would defer to my friend from Third Eye during the submissions to speak to
28 why they wanted that clause and why it's appropriate.
29

30 THE COURT: Sorry that -- and just so that I am clear, that is the
31 clause that says that leases have to be reinstated by November 1, right? That is what you
32 are referring to?
33

34 MR. SELNES: That is correct. And I know that CNRL had
35 raised concern about that clause in their submissions.
36

37 THE COURT: Yes. Okay.
38

39 MR. SELNES: And there are some obligations on Erikson which
40 it is prepared to meet, which is through weekly reporting, which will be overseen by the
41 Proposal Trustee and then the repayments of all amounts by November 30th. And this

1 allows for the sales process to run.

2

3 Section 25 of the agreement allows for amendments or waivers and so, to the extent it will
4 be in Third Eye's interest to allow for an extension of the DIP term if there actually is an
5 effective sales process and I think what we're trying to say, is not put the cart before the
6 horse in any capacity here. But the lending, at least in its initial course, will run through
7 the sales process.

8

9 And so the considerations for this Court when determining whether it can approve the DIP
10 financing, is that section 50.6 of the *BIA* and it's a non-exhaustive set of factors, the first
11 being the period which the debtor is expected to be subject to proceedings under this Act.
12 And again I've noted that currently it runs to the end of November, which coincides with
13 the current extension and the cash flows for the sales process.

14

15 If the proceedings are further extended, there will be an opportunity to extend or modify
16 the DIP at that time and that would have to be dealt with in an extension application which
17 will be coming before this Court, both for an extension of the stay and for approval of
18 anything under the SISP. Obviously if the SISP does not result in anything effective, will
19 be the scenario I believe where the BC Energy Regulator will be appointing its Receiver
20 and the charge and any amounts owing will then be dealt with in the receivership.

21

22 THE COURT: Okay.

23

24 MR. SELNES: And how the debtors business and financial
25 affairs are to be managed during the proceedings. And in that regard, the cash flows show
26 -- and these are the cash flows that --

27

28 THE COURT: That is the 13-week forecast --

29

30 MR. SELNES: That's correct.

31

32 THE COURT: -- that was in the affidavit, yes I saw that.

33

34 MR. SELNES: And the key thing with cash flows is it's the week
35 of November 9th when -- this is appendix D to the Proposal Trustee's Report.

36

37 THE COURT: Right, oh that is right, sorry, you are right.

38

39 MR. SELNES: No and that's -- trust me we've got a lot of maters.

40

41 THE COURT: I was going to say, yes, at least I know it was

1 there.

2

3 MR. SELNES: And if you look in that, it's forecast week 6,
4 which is the week of November 9th, where the funds would first be required in the cash
5 flows.

6

7 And so, there will be -- I guess what I am saying is the four weeks that are -- or three weeks
8 that are after that is where the \$250k number comes in, because to get through the next
9 three weeks cash flow, there would need to be a little over \$200,000. And that's why --

10

11 THE COURT: For week 6 we are saying that you need the
12 funds.

13

14 MR. SELNES: Yes, so week 6 is the trigger point.

15

16 THE COURT: Okay.

17

18 MR. SELNES: And because it's not an operating company --
19 sometimes cash flows are a bit variable because of revenues coming in and out.

20

21 THE COURT: Right.

22

23 MR. SELNES: This is a very predicable scenario because we
24 don't have that and again Third Eye has stepped up to be able to fund at that time. And the
25 assets sorry -- the operations are quite limited right at this time. It's preserving the assets,
26 it's paying the employees to do so and then the professional fees.

27

28 And so, I think it's very predicable as to what amounts are required and the DIP has been
29 structured to not advance more than is needed. And I think why that is important is we are
30 not trying to put more money out and make more interest on it or Third Eye Capital isn't
31 trying to do that.

32

33 THE COURT: Right.

34

35 MR. SELNES: It's very targeted for the amount that's required.

36

37 And then the third branch of the test is whether the debtor's management has the confidence
38 of its major creditors. And I know CNRL speaks to this in their brief that they do not have
39 the confidence of the creditors. And why I think there is distinguishable is that the primary
40 creditor here is the secured creditor, as well as BC Energy Regulator and in that sense, they
41 have the confidence of Third Eye Capital as it's secured lender. Third Eye is the one

1 stepping up to advance the funds and the BC Energy Regulator is not opposing the lending
2 charge.

3

4 THE COURT: Okay. So you are saying management has the
5 confidence of TEC.

6

7 MR. SELNES: That's correct.

8

9 THE COURT: And you are saying by the fact the Regulator is
10 not opposing it, they might not have the confidence, but they are not unconfident, is that a
11 fair way of saying it?

12

13 MR. SELNES: I think that's a very fair way of saying it and
14 ultimately it's one unsecured creditor that is expressing pretty significant reservations about
15 what's going on. But the creditor that would be most affected being the secured lender itself
16 is advancing those funds and is prepared to do so.

17

18 And then, I think this is a very important part of the branch, as to where we are, is whether
19 the load would enhance prospects of a viable proposal being made, but that means proposal
20 and/or process at this time. And it absolutely will because the sales process is the key to
21 allowing whether that be a proposal or a restructuring or a liquidation. Whatever that is, it
22 has to be done through a sales process and that sales process cannot be completed without
23 the debtor in possession financing.

24

25 And the nature and value of the debtor's property and here these are shut-in oil and gas
26 assets, the reality is, is that if there's a sale, the DIP will be paid from those proceeds first
27 and if there's no sale the risk is to the DIP lender which is aware of that because of -- they'll
28 have a change on assets that haven't been sold and are subject for abandonment and
29 reclamation at that time.

30

31 THE COURT: So what about -- oh sorry go ahead, finish your
32 point.

33

34 MR. SELNES: And please I'd be happy to take the question.

35

36 THE COURT: Well, they say that they are being prejudiced by
37 this.

38

39 MR. SELNES: Correct and in that regard and I think this goes to
40 your first question about whether or not it's fair to exclude them from the DIP. But the
41 prejudice that they would suffer truly is, if they were in some way being primed by this

1 and that their -- any amounts they may recover were being watered down. The fact is, these
2 assets have to be dealt with and whether it is through this sales process that we are
3 proposing or through a receivership, the outcome is ultimately going to be very similar for
4 CNRL in either scenario.

5
6 And so, we don't think that there's a material prejudice to them in allowing for a three week
7 process particularly where their -- any security interest they may have which not
8 presupposing it actually exists, that has to be proven at some point, but to the extent it
9 exists, it's very cognisantly has been excluded from the DIP charge.

10
11 THE COURT: Okay. Now, I am noticing it is 3:15 and I want to
12 make sure that we have lots of time to hear from everyone. So I am just going to get you
13 to move on to address any final matters. I do not need you to address the ceiling order. It
14 is pretty straightforward based on your submissions.

15
16 MR. SELNES: Thank you.

17
18 THE COURT: And I do not know if anyone is even opposing it.

19
20 MR. SELNES: And so in that regard then, I think I've largely
21 spoken to the concerns that CNRL has raised from our perspective. The one case I wanted
22 to reference that they list as the -- I think it's *Nautican v. Dumont*, which is the case that
23 they have cited about in opposition of the DIP lending and that it's being advanced by the
24 only shareholder and this is a problem.

25
26 I think that case is distinguishable in that while Third Eye has an equity interest, it is also
27 a secured lender, owed over \$32 million. It's very common that secured lenders act as DIP
28 financiers. They're the only lender that has stepped forward and able to advance. And so, I
29 think it's ultimately appropriate that they are doing so.

30
31 THE COURT: And so they raised concerns that -- sorry -- can
32 you just repeat that?

33
34 MR. SELNES: Yeah and so in their brief and what I understand
35 that CNRL's concern is, is that effectively the inter-related nature of Erikson and Third Eye
36 Capital and the case they cite is in relation to the lender, in that case of the proposed lender
37 being a sole shareholder.

38
39 And I think what's distinguishable is that the reason Third Eye is the logical lender in this
40 case is it's the fulcrum secured creditor. It's the one that would be primed by somebody
41 else if they were to advance the funds and it's very common in proposal proceedings or

1 CCAA proceedings for a secured creditor to advance DIP.

2

3 And so I understand your desire to have everybody else do submissions. I will reserve any
4 final comments following CNRL.

5

6 THE COURT: All right. Perfect. Thank you so much. Thank
7 you for entertaining my questions as we have gone along.

8

9 Okay. So who is going to speak, is it Third Eye next?

10

11 **Submissions by Mr. Harnett**

12

13 MR. HARNETT: Yes, My Lady, it's Patrick Harnett, Third Eye
14 Capital Corporation. I am internal counsel.

15

16 Mr. Selnes has done a very nice job summarising the general overall nature of the
17 transactions, so for the sake of brevity, I think I'll focus on some of the questions that you
18 had.

19

20 But first, just to set the record straight on some technical points and give you a bit more
21 background as set out in the Horrox affidavits about the Ranch/Erikson transactions which
22 I think will tie into some of the concerns CNRL has.

23

24 So, firstly, Third Eye Capital is Erikson's first ranking secured creditor, which a charge
25 over all of it's assets and is owed in excess of \$32 million to date. Third Eye supports
26 Erikson's application for an extension till November 30th to run the SISP. And an important
27 distinction because I think Mr. Selnes said this, there are no common directors between
28 Erikson and Third Eye Capital. Mr. Horrox is an employee of Third Eye Capital, but he is
29 not a Director. He is a Director of Erikson which is why he's swearing the affidavits on
30 their behalf.

31

32 Third Eye is mindful of CNRL's concerns but we also note that Third Eye has invested
33 significant capital into Erikson on behalf of its investors and Third Eye's position has been
34 entirely consistent today with what it was back in 2020 when it first acquired the assets,
35 which is specifically, the goal has always been to find a home for these assets. And it's
36 always been the driving force between when the Erikson/Ranch transaction happened in
37 the first place in 2020 and how the Pieridae transactions evolved to use Erikson as a flow-
38 through.

39

40 So, I know Mr. Selnes referenced the Erikson/Ranch transaction, but in brief, Ranch was a
41 borrower of Third Eye Capital and was placed into receivership for the reasons set out in

1 the affidavit and is part of a liability management exercise because bids that weren't
2 sufficient to cover off liabilities that were appropriate, the lack of those bids meant Third
3 Eye Capital was the natural bidder. And through its bid, it's nominee corporation, Erikson
4 acquired the assets.

5
6 Over the past four years, Third Eye has been running those assets through Erikson with
7 significant support. As set out in the affidavits, the Erikson assets had never been cash flow
8 positive and holes in that cash flow has been plugged by Third Eye faithfully through
9 advances.

10
11 I think an important distinction here is that Third Eye Capital and its investors have not
12 received any benefits from those oil and gas assets and I think when we pivot to discuss
13 the Pieridae transactions it becomes a bit more clear why things were structured as a flow-
14 through lender.

15
16 So, if we look at the two Pieridae transactions that are set out in the Horrox affidavit, the
17 first Pieridae loan was advanced in 2019 and it's purpose was, in part, structured to find a
18 home for these Erikson assets. The Ranch transaction and the Pieridae loans were
19 developed independently and it was only when the Pieridae transaction evolved to
20 understand that there were assets in the region that could be used by Pieridae and they
21 could become an actual buyer. Again, this is consistent with Erikson finding a home for
22 the Ranch transaction assets.

23
24 The Pieridae loan was paid out in 2023 and a further loan was advanced in 2023. That
25 remaining \$20 million stub loan as we call it, was repaid by virtue of an assignment off of
26 Erikson's balance sheet to Third Eye in repayment of its loans. And so this was the
27 condition of forbearance where by Third Eye Capital provided Erikson with additional time
28 to come up with a plan to market its assets.

29
30 This is a continued effort by Erikson, funded by Third Eye, to mitigate the impact of these
31 Ranch assets that couldn't find a home in 2020.

32
33 So, I think the important thing to note here is while there are concerns raised by CNRL
34 about Third Eye Capital's role as a DIP lender, we do have faith in the management, we do
35 have faith in the professionals that are overseeing the process and I think most importantly,
36 Third Eye is again being wholly consistent with its approach to find the best way to deal
37 with the liabilities. And we think that a sales process administered by Sayer and KSV is
38 the best way to do that.

39
40 The Court raised some questions about CNRL's comments on the interim financing term
41 sheet that mentioned reinstatement of the leases by November 1st. And I think again, this

1 is consistent with Third Eye Capital's desire to have a meaningful sales process. If there no
2 prospect of having a SISP that generates a bid, there's no need to pursue a sales process
3 within the NOI. And as Mr. Selnes mentioned and as Mr. Reid mentioned, the natural pivot
4 in that circumstance would be a receivership or bankruptcy.

5
6 THE COURT: Yes and is it -- is that concern not somewhat
7 premature as well?

8
9 MR. HARNETT: I think it is a bit premature because we're in a
10 wait and see period right now. Right now the whole purpose of the funding is to give
11 Erikson enough time to get to that initial bid deadline to see if it's worth pursuing further.
12 But the quantum of the interim financing has been calibrated to be as tight as the cash flow
13 forecast allows to get us to that November 30th date.

14
15 So to CNRL's point where there's a level of inappropriateness for an existing shareholder
16 or lender is funding an interim financing, this is not a profit maximizing engagement by
17 Third Eye Capital. It is a genuine effort to provide capital to reach an outcome that is
18 consistent with what we've wanted to do from the beginning.

19
20 And then to the Court's question about carving out, is it appropriate to carve out CNRL's
21 joint interest from the charge? I think if we take a step back and look at Erikson's capital
22 structure, Third Eye Capital is a \$32 million as a first ranking secure creditor. To the extent
23 that there are any joint interests in Erikson's assets, CNRL has a first registered PPR charge
24 over those interests, which I believe are intangible.

25
26 And so, if we look to a sales process, in order for CNRL to receive any payments from the
27 sale of Erikson's assets over \$32 million of first ranking secured debt would have to be
28 paid. And so, practically there is no prejudice, first by virtue of the charge carving amount
29 and two, Third Eye Capital as the markedly senior secured creditor here, with such a
30 quantum outstanding, is not looking -- the assets to date haven't produced an outcome that
31 got its debt paid out.

32
33 So we're not expecting CNRL to be prejudiced by the interim lenders charge and we're not
34 expecting the sales process or the admin charge to do the same.

35
36 And lastly, to CNRL comments about the process overall being prejudicial to the leases in
37 question, they're going to be subject to the sales process and so CNRL has a remedy, they
38 can acquire these leases through the sales process and move on with their operations. And
39 the very nature of single phase SISP which is set to end on November 16th, subject to
40 further interest in the process, is tight enough to avoid any prejudice to the additional
41 (INDISCERNIBLE) costs.

1
2 So, put simply, we believe that the interim financing be approved. We think that it's
3 calibrated to be appropriate in the circumstances for what the process is tailored to
4 accomplish and we think that it's meaningful because it is a continuation of Third Eye's
5 efforts and Erikson's efforts to find a home for the assets and do right by the stakeholders.
6

7 And so subject to any further questions from the Court, those are my submissions.
8

9 THE COURT: No, thank you very much, no questions. All
10 right. Anybody else wish to address the Court in support? I do not need to hear from anyone
11 necessarily, but if anyone wants to address the Court they can, of course.
12

13 **Submissions by Ms. Cameron**
14

15 MS. CAMERON: Justice Johnston, it's Ms. Cameron on behalf of
16 the Proposal Trustee. I'm not -- I do have submissions to make. The Proposal Trustee is
17 supportive of the relief sought by the company today so I'm not sure if you prefer I go now
18 or wait until the end when CNRL has --
19

20 THE COURT: Well, I mean, I just want to make sure we hear
21 CNRL and we have an opportunity to respond. I have reviewed your report, I have asked
22 you very specific questions which you have been kind enough to answer, so I do not know
23 if you have anything to add that was not in your report? How about we start there.
24

25 MS. CAMERON: Sure. I can do that. There are some specific
26 comments that I have tailored with respect to the concerns that CNRL has raised --
27

28 THE COURT: Okay.
29

30 MS. CAMERON: -- having had an opportunity to review those.
31

32 THE COURT: Okay. Why do we not deal with those in response
33 then if they are just in response to CNRL if that is okay with you. Does that work?
34

35 MS. CAMERON: It does. And I am just making sure that there is
36 nothing else in here. The other thing I would suggest that perhaps I put on the record now
37 is just with respect to the interim financing as the Proposal Trustee did not have an
38 opportunity to file a report with the Court.
39

40 THE COURT: Right.
41

1 MS. CAMERON: We have reviewed the interim financing term
2 sheet provided by Third Eye Capital and the Proposal Trustee has a few comments to make
3 on that, mainly --
4

5 THE COURT: Okay. Why do you not go ahead and do that. Yes.
6

7 MS. CAMERON: Thank you. And I will keep it brief.
8

9 Mainly, we note that the principal proposed \$250,000 is sufficient to support the company's
10 stay extension, subject to the fact that the company is now proposing to defer \$100,000 in
11 estimated capital expenditures which were previously forecast to be occur -- incurred the
12 week ending week 7.
13

14 THE COURT: So you are saying had those expenditures gone
15 ahead, the 250 would not have been enough, or? Is that what you are saying?
16

17 MS. CAMERON: Correct. Yes. The math on that is had those
18 expenditures gone ahead, I understand they would've needed about \$355,000 to make it to
19 the end of November. However, they are planning now to defer those expenses.
20

21 The interest rate proposed is 12 percent which, based on the Proposal Trustee's experience,
22 is reasonable and actually below market for insolvency financings of these natures,
23 especially considering the oil and gas interest involved.
24

25 We note that the maturity date under the facility is November 30th, which is tied to the stay
26 extension date, as well as the target closing date for any transactions arising under the SISP.
27

28 We also note, and this has been raised in submissions already, that it is a condition to an
29 advance under the interim financing facility that Erikson's cancelled Crown mineral leases
30 be reinstated by the BC Government no later than November 1st. As I've previously
31 indicated, while we are in discussions about the reinstatement of those leases, we do not
32 have certainty that they will be reinstated, let alone within this timeframe. That being said,
33 this is the only interim financing offer presently available to the company and they do need
34 financing. Unless and until someone else steps up and says they are going to fund this
35 process, there really are no alternatives here. The company has urgent cash needs to pay
36 for its ongoing operational expenses and this is separate and apart from needing to fund the
37 sale process. Those operational expenses relate to primarily employees, utilities, and
38 insurance. And while Erikson's assets are shut in, they are, I understand, sour -- sour gas
39 wells --
40

41 THE COURT: M-hm.

1
2 MS. CAMERON: -- and so there are safety concerns. They require
3 supervision and oversight. They are located in remote areas of northern British Columbia.
4 And so of Erikson's seven employees, my understanding is that the vast majority of those
5 employees are in the field. They are located in either Fort St. John or at the company's
6 camp called Wildboy.

7
8 THE COURT: So you are saying the assets require oversight so
9 you need these funds to continue to ensure that there is proper oversight, is that what you
10 are saying?

11
12 MS. CAMERON: Correct. There needs to be care and custody of
13 these wells.

14
15 THE COURT: Okay.

16
17 MS. CAMERON: With respect to your question about whether
18 carving CNRL's interests constitutes some form of preference, the Proposal Trustee does
19 not view this as a preference issue or privileging CNRL over other creditors. I submit that
20 they already have deferential treatment because they are in fact not all -- CNRL's claims
21 are not entirely unsecured. While they are a judgment creditor, they are also a secured
22 creditor on the joint asset.

23
24 THE COURT: Right. M-hm.

25
26 MS. CAMERON: And so it's not uncommon for charges to carve
27 out certain parties, especially parties with secured interests in insolvency proceedings to
28 reach an agreement for funding that benefits the estate as a whole.

29
30 I would also reference the *BIA* provisions with respect to approval of interim financing.

31
32 THE COURT: Right.

33
34 MS. CAMERON: And that's section 50.6 of the *BIA*. And I submit
35 that it provides the Court with great discretion about the charges to be granted. It indicates
36 that a Court may make an order declaring that all or part of the debtor's property is subject
37 to a charge and that it can give certain priority rankings to that charge as the Court sees fit.

38
39 THE COURT: So statutorily allowed is what you are saying.

40
41 MS. CAMERON: That would be my submission, yes.

1
2 THE COURT: Okay. Great. That is very helpful. Okay. Was
3 there anything else or those are the, I mean, I will give you an opportunity to respond if
4 anything comes out of CNRL's arguments obviously, but --

5
6 MS. CAMERON: I think those are my primary submissions and
7 facts that I wanted to put on the record. I might have some responding remarks after my
8 friend, Ms. Paplawski, is given an opportunity to speak here so I'll reserve those for then.
9 Thank you.

10
11 THE COURT: Thank you, Ms. Cameron.

12
13 Anyone else wish to speak prior to hearing from CNRL?

14
15 All right. Ms. Paplawski, I believe that is you then.

16
17 **Submissions by Ms. Paplawski**

18
19 MS. PAPLAWSKI: All right. Good afternoon. Can you hear me
20 okay?

21
22 THE COURT: Yes, I can hear you very well. Thanks.

23
24 MS. PAPLAWSKI: So E. Paplawski, counsel for Canadian Natural
25 Resource Limited, or CNRL. There's been a lot said today about the nature of CNRL's
26 interests. Now, I think Ms. Cameron likely corrected the record on it, but I do want to make
27 sure that it's clear to the Court what CNRL's interest is here and why they're concerned
28 about the processes being proposed.

29
30 So, CNRL really has three interests in Erikson which make it a major stakeholder in these
31 proceedings. CNRL's of course a working interest partner, they own a working interest in
32 68 wells and 19 facilities and roads. And so what this means and why it's important to
33 understanding why CNRL is so opposed to this process, and in particular allow Erikson to
34 remain as a debtor in possession, is that so the jointly owned interests that Erikson operates,
35 it's in possession not only of its own property, but of CNRL's property.

36
37 CNRL is also a judgment creditor. And there's been a lot said about CNRL being an
38 unsecured creditor. A portion of that judgment, all of the amounts that Erikson has not paid
39 relating to the jointly owned interests, are secured by Canadian Naturals' operators' liens
40 registered against the assets in the BC PPR and those operators' liens are registered in
41 priority and prior in time to Third Eye Capital. So when Third Eye Capital submits that

1 they're the fulcrum creditor and they would have to be paid out 32 million before any other
2 creditors would see a dime, that's simply untrue. Canadian Natural does have a prior
3 ranking security interest over those assets and a portion of the judgment that -- outstanding
4 does relate to those jointly owned assets.

5

6 And so those are the three --

7

8 THE COURT: Sorry, (INDISCERNIBLE) interest?

9

10 MS. PAPLAWSKI: I believe, just bear with me one second ...

11

12 THE COURT: You can come back to it if you want.

13

14 MS. PAPLAWSKI: I just need to find the judgment. I want to say it's
15 north of 800,000, but --

16

17 THE COURT: Okay.

18

19 MS. PAPLAWSKI: -- I want to make sure that I'm accurate in that.
20 Yeah. Invoices owned by Erikson to Canadian Natural totalling \$817,306.52.

21

22 THE COURT: And you are saying they have priority to TEC?

23

24 MS. PAPLAWSKI: That -- that would be our position because those
25 are joint interest billings that haven't been paid with respect to those assets. And then in
26 addition to those joint interest billings, there's also interest totalling just under 50,000.
27 \$49,555. Which we would also submit would be secured because, again, they relate to the
28 joint interests.

29

30 THE COURT: Thank you.

31

32 MS. PAPLAWSKI: And so CNRL is opposed to -- not to the fact that
33 a sales process needs to be undertaken, I think that the Court can proceed -- that we agree
34 with Erikson, we agree with the Proposal Trustee, that this company is insolvent and that
35 some sort of process needs to be undertaken with respect to it. So Canadian Natural's
36 concern is not with a sale process being undertaken, it's with Erikson and Third Eye Capital
37 remaining and in charge of that sale process. And it's for that reason that Canadian Natural
38 seeks to have these NOI proceedings stayed and the BC Regulator's receivership
39 application heard.

40

41 THE COURT: What about the fact that there is oversight with

1 the Proposal Trustee and, quite frankly, BCER is not opposing the process that has been
2 suggested? I would have got they have got a fairly significant interest in these proceedings.

3

4 MS. PAPLAWSKI: Yeah. We of course weren't privy to any of the
5 discussions between Erikson and the BCER so Mr. Reid would have to address what was
6 said and the reasons that the BCER decided to stand down its application for 30 days.

7

8 THE COURT: Do they have to give you reasons?

9

10 MS. PAPLAWSKI: They don't. They're of course entitled to proceed
11 or not proceed with their application as they see fit. But with respect to the Proposal
12 Trustee, there's no doubt that the Proposal Trustee is an independent court officer here
13 qualified to do the job with great counsel, so there's no suggestion here that there's anything
14 wrong with the Proposal Trustee. But the fact of the matter is that by allowing Erikson to
15 remain as a debtor in possession, they retain control of the process. And of course there's
16 oversight by the Court, but it doesn't get around the fact that they continue to have control
17 of these assets. Not only their assets but CNRL's assets.

18

19 THE COURT: And I take your concerns. It is not lost on this
20 Court why you are raising these concerns. But what about also the fact that there is that
21 connection to the November 1st renewal of the -- or reinstatement of the leases, does that
22 not put them under some sort of imperative to operate in an appropriate manner to ensure
23 that they get those leases? I mean, I do not know if you are understanding what I am saying,
24 but in other words, it is not just that they are a debtor in possession and sort of can go in
25 whatever manner they see. They are almost boxed in because they know that they need
26 those leases.

27

28 MS. PAPLAWSKI: Well, if I can just clarify what I -- what I think
29 you're asking so I make sure that I answer responsively, are you asking whether the
30 November 1st deadline assists in putting Erikson in a more stringent controlled process?

31

32 THE COURT: Yes, exactly. I think that is a better way of
33 articulating it. That is exactly what I am asking. Because I think that when you have the
34 belts and suspenders, when I look at it and I think, okay, we have got the Proposal Trustee,
35 we have got BCER, and then we have got what is the proposed DIP lender who is saying
36 we want those leases back by November 1, are they as free as you have suggested or are
37 there some fairly significant constraints here that perhaps mitigate the concerns around a
38 debtor in possession process?

39

40 MS. PAPLAWSKI: Well, I think the problem with that -- I think it
41 would be a different situation and a different question if we were talking about a third-party

1 lender who was representing different interests than Erikson. And so if Erikson was,
2 frankly, not managed by Third Eye Capital, I think I would agree with you that it would
3 put in further constraints on Erikson's behaviour. But Erikson and Third Eye Capital,
4 notwithstanding, you know, my friend's suggestions to the contrary, I mean, Mr. Harnett
5 admitted in an email of last year, October of 2023 or September 2023 --

6
7 THE COURT: Is that before the Court this email?

8
9 MS. PAPLAWSKI: It is. It's Exhibit --

10
11 THE COURT: Okay.

12
13 MS. PAPLAWSKI: I'll give you the reference number.

14
15 THE COURT: Okay. I know there are a bunch of emails
16 exchanged, I just was not sure if that was one of them.

17
18 MS. PAPLAWSKI: It's Exhibit U.

19
20 THE COURT: Okay.

21
22 MS. PAPLAWSKI: To Mr. Laing's affidavit. Mr. Harnett advised me
23 that Third Eye Capital controls Erikson. As in Exhibit T, we know from Exhibit T that
24 Erikson's CEO resigned in -- or left the company for whatever reason in October of 2023
25 and all dealings with Erikson since then have been with Mr. Horrox and Mr. Harnett. And
26 you see that in the correspondence attached to Mr. Laing's affidavit. So I think that Erikson
27 would be constrained because it has an obligation under its DIP loan to have leases
28 reinstated by November 1st, it is a bit of a falsity because the interests of Erikson are the
29 interests of TEC, and vice versa. And so I don't think it provides the external control that
30 one would usually expect in such a deadline.

31
32 My friend also, my friend, Mr. Selnes, also talked about how a significant portion of the
33 evidence that CNRL has adduced today goes to past conduct of Erikson and he's questioned
34 the relevancy of that. And I'm going to go through some of that past conduct today because
35 I submit that it's relevant to, in particular, Erikson's ability to put forward a viable proposal
36 to its creditors, but also to the question of why CNRL is not comfortable leaving Erikson
37 as a debtor in possession of its own assets. And our submission would be that Erikson's
38 shown incompetence, it's shown an egregious disregard for its obligations, and any
39 confidence that CNRL has in Erikson or its management is no longer in existence. And of
40 course, that's also part of the test for approval of the DIP. And, you know, we talked today
41 about how CNRL has security in front of Erikson at least -- or, excuse me, over Third Eye

1 Capital, at least with respect to a portion of the assets.

2
3 And so if I could then spend a couple moments and I want to turn and review really three
4 examples of that historical conduct because they're going to frame my submissions then on
5 the actual relief being sought and why CNRL is concerned about the relief being sought,
6 and why we submit Erikson doesn't meet the legal test for that relief.

7
8 So the first of the three examples is, not surprisingly, Erikson's permitted cancellation of
9 the lease by the BC Ministry of Energy for nonpayment of rentals. Now, I --

10
11 THE COURT: And I think you articulate that CNRL raised it on
12 a numerous occasions and there was no proactive steps that were taken to deal with it.

13
14 MS. PAPLAWSKI: They did. So you will have seen in Mr. Laing's
15 affidavit that in March of this year, Canadian Natural wrote Erikson and flagged the lease
16 nonpayment and said to Erikson, you know, when are you going to pay these? Can you
17 please confirm that payment will be made so that the leases are not compromised? And
18 there was no response. Then in May of this year, my office wrote to Mr. Harnett and not
19 only raised the lease pay issue, but said to Third Eye Capital here please transfer the payor
20 interests to CNRL so that CNRL can pay the outstanding rentals so that the leases are not
21 compromised. So it's not only please pay these, it was a request to allow CNRL to pay
22 them, and before CNRL could do that, Erikson just needed to transfer payor status on the
23 leases to CNRL. And, again, there was no response.

24
25 And I'm going to suggest to you that as we go through these examples, I think a common
26 theme you'll see is that Erikson has all but ignored its working interest partners and their
27 interests throughout their dealings with them. These are not unique examples. It's a
28 common theme.

29
30 And so in ignoring CNRL -- ignoring CNRL's request to (1) make payment, (2) transfer
31 payor status so that CNRL could make payment, Erikson deliberately allowed, or
32 incompetently allowed, I'm not sure it matters which -- which you use, allowed the leases
33 to expire. And in doing that, it had two significant impacts on CNRL. The first is that it
34 compromised CNRL's property because without leases, you can't drill wells, you can't
35 produce wells, and of course CNRL is the working interest in those wells, so separate and
36 apart from Erikson's property interests, CNRL lost its own property interests. It can no
37 longer produce those wells and it's no longer entitled to any production from those wells.

38
39 The second is it compromised the value of CNRL's security because of course CNRL held
40 the security interest over producing assets and it now no longer does.

41

1 And so we cite in our brief the case of *Adeco*. It's tab 10 to our brief, the Alberta Court of
2 Appeal. And I apologize, it was inadvertently excluded from the original version that was
3 there.

4

5 THE COURT: That is okay. I was provided it by the commercial
6 coordinator this morning.

7

8 MS. PAPLAWSKI: Perfect. So in that case, the Court of Appeal
9 actually considered this very issue - cancellation of a lease by an operator -- or an operator's
10 permitted cancellation of a lease. And the Alberta Court of Appeal called it conscious
11 indifference and they held that conscious indifference constituted gross negligence. And
12 so what you have here is you have a debtor who's grossly negligent in the administration
13 of their assets and their third-party assets that are in their possession and control, asking
14 for the protection of this Court to continue in a self-directed process and CNRL's
15 submission would be that that's just simply inappropriate.

16

17 The second example as detailed in Mr. Laing's affidavit at paragraphs 37 to 40, Erikson
18 was providing various gas-handling services to CNRL pursuant to the terms of a Buick
19 Creek Gas Handling agreement. And you'll note in Mr. Horrox's affidavit that he advises
20 that gas prices were particularly high throughout 2022. And so on November 1st, 2022,
21 CNRL wrote to Erikson advising them that they were electing to take their production in
22 kind. So under this agreement, Erikson is providing a service to CNRL. It's CNRL's gas
23 and Erikson is providing a service. They're transporting it, they're handling it, they're
24 marketing it, unless CNRL elects to take it in kind in which case Erikson's obligation is
25 simply to deliver it to CNRL.

26

27 Now, as is common, Erikson did not respond to CNRL's election to take its production in
28 kind and so CNRL followed up on November 10th and November 23rd. Erikson did not
29 respond to any of CNRL's elections to take its property, its production, in kind. And in
30 December, they failed to deliver any production to CNRL. So at this point now, they've
31 retained CNRL's gas.

32

33 And so I sent the letter at Exhibit R to Mr. Laing's affidavit advising that Erikson's failure
34 to deliver CNRL's gas was not only a contractual breach, but a wrongful interference with
35 CNRL's property and demanding that they deliver it immediately. So that was in January.

36

37 If you turn forward to Exhibit S if you have it in front of you, on page 2 you'll see an email
38 from Robert Smith to me. So this is now 5 months later at the end of May.

39

40 THE COURT: Oh, sorry, I was on mute. Is that on page 263 of
41 the PDF? Just want to make sure I have the right one. Two-sixty-two maybe, 263. Is it May

1 31, 2023?
2
3 MS. PAPLAWSKI: May 29th, 2023. But May 31 is on page 1. If you
4 just go --
5
6 THE COURT: Okay. Yes, I have the May 29 one. Yes. Okay.
7
8 MS. PAPLAWSKI: So we're now into May, so we're 5 months after
9 --
10
11 THE COURT: Right.
12
13 MS. PAPLAWSKI: -- 6 months after Canadian Natural elected to
14 take its production in kind and 5 months after I wrote them --
15
16 THE COURT: M-hm.
17
18 MS. PAPLAWSKI: -- Mr. Smith advised that Erikson will begin the
19 take in kind for the production month of January 2023 -- excuse me, June of 2023.
20
21 THE COURT: June.
22
23 MS. PAPLAWSKI: So if you go back a page then to page 1.
24
25 THE COURT: Page 1 of what? Sorry, I am not --
26
27 MS. PAPLAWSKI: That email.
28
29 THE COURT: -- I do not know what you mean by page 1. It is
30 hard to say what page 1 is. It is the first page after Exhibit S?
31
32 MS. PAPLAWSKI: Correct.
33
34 THE COURT: Due to the low commodity pricing? Okay. I am
35 with you.
36
37 MS. PAPLAWSKI: So in my email of June 12th, I advised Erikson
38 that contrary to their representations, no production was in fact delivered in June. And it
39 was only then, you will see the email immediately following on June 13th: (as read)
40
41 Due to low commodity pricing, the assets in question have been shut-

1 in plus or minus May 1st and will stay shut-in until pricing recovers.

2
3 So Erikson took CNRL's production, they converted CNRL's property to their own benefit
4 while prices were high, gas prices were high, and it was only once gas prices declined they
5 shut-in the assets. But even knowing they shut-in the assets a month prior, they advised
6 CNRL through myself that they would be reinstating CNRL's production come June. So
7 they misrepresented to CNRL that their production would be forthcoming knowing full
8 well that the assets had in fact been shut-in. So now we have a grossly negligent
9 counterparty who's actively misleading their counterpart and converting their counterpart's
10 property to their own benefit.

11
12 And then -- and then third, if you turn to Exhibit V as in Victor, the very, very last exhibit
13 in Mr. Laing's affidavit, this is --

14
15 THE COURT: I am there, yes.

16
17 MS. PAPLAWSKI: This is indicative of Erikson's dealings. And of
18 course, you see Third Eye Capital at the bottom, not Erikson. Mr. Horrox. He writes
19 directly to CNRL asking for a call to discuss a "win-win solution". Canadian Natural wrote
20 back that day, about an hour later, saying, "Are you available tomorrow at 9 PM Mountain
21 Time?" No response. They then wrote back a week later, "Mark, do you still want to meet?
22 I'm available until 9." No response. They then wrote back a month later referencing
23 numerous voicemails they had left him during that time. "I left you another voicemail. I
24 have no details on what you want and you haven't returned any of my calls," is effectively
25 the note.

26
27 And so our submission is that Erikson doesn't come to this Court with clean hands. It's
28 grossly negligent, it lies, it misleads, it converts its partner's property to its own benefits,
29 and it ignore its working interest partners who have entrusted it with their property.

30
31 Now, my friend noted that -- my friend, Mr. Harnett, noted that TEC has confidence in
32 Erikson's management. Erikson's management is TEC. There's no management. Erikson is
33 being managed by Third Eye Capital and so of course they have confidence in Erikson's
34 management. But that is immaterial because they're one and the same.

35
36 So with that background then, if we can turn to the relief sought by Erikson today. So, first,
37 a continuation of the period for Erikson to make a proposal, an extension of the stay of
38 proceedings in the sale process. I submit they're all related and we can deal with them --
39 I'm going to deal with them together.

40
41 Now, I submit that you can see the issue immediately. They've asked for a sale process, for

1 approval of a sale process, for assets which currently they have no ability to market or sell.
2 The leases --

3

4 THE COURT: And you are saying that is simply because the
5 leases have been --

6

7 MS. PAPLAWSKI: Exactly.

8

9 THE COURT: -- cancelled or terminated.

10

11 MS. PAPLAWSKI: There's no assets. They can't -- they can't drill,
12 they can't produce. The only access they can actually have to the wells is for shut-in and
13 abandonment reclamation purposes. So they --

14

15 THE COURT: But can the leases not be transferred as part of a
16 sale?

17

18 MS. PAPLAWSKI: Well --

19

20 THE COURT: Is that -- are you suggesting they cannot?

21

22 MS. PAPLAWSKI: We're not suggesting they can't, but I think we're
23 suggesting two points. The first is that the leases were transferred -- or, excuse me, the
24 leases were cancelled over 2 months ago and, to date, they have not been reinstated. And
25 they've been -- four of the leases have been reinstated because CNRL took steps to reinstate
26 them. CNRL could only reinstate the leases on which --

27

28 THE COURT: Does that not support the possibility that they
29 may be reinstated? And indeed it is a term of the DIP lending term sheet that that occur by
30 November 1. I am not saying it is going to or that we have any certainty. I think there has
31 been a recognition that there is no certainty. I believe that is what Ms. Cameron said. But
32 the fact that CNRL had them reinstated suggests that perhaps that could occur. I am not
33 saying it will.

34

35 MS. PAPLAWSKI: M-hm. I think the point is that if CNRL could do
36 it without issue, there's no reason that Erikson could also not have done it without issue.
37 There's no reason that we're sitting here 2 months in, they're applying for a sale process
38 over terminated leases that they could have had reinstated. Because if CNRL was able to
39 get them reinstated, there's no reason Erikson couldn't also.

40

41 And so the fact that they haven't I think is indicative of their chances of doing so and so

1 our suggestion --

2

3 THE COURT: But I thought the Proposal Trustee said that they
4 have been in active conversations around those leases.

5

6 MS. PAPLAWSKI: So the Proposal Trustee does say that they've
7 been in active discussions, but one of the key points that I would expect to see in Erikson's
8 materials would be some disclosure, some indication of where those conversations are at,
9 if there is any hope of having them. Just because there's been a discussion, it doesn't mean
10 anything.

11

12 THE COURT: Okay. I agree with you and I understand that. We
13 can say what we want and we can discuss in circles I suppose, but what, if anything, can
14 this Court take from the fact that the Regulator is not taking a position either in support or
15 in opposition to this application?

16

17 MS. PAPLAWSKI: Well, I think -- so Mr. Reid will jump in if I say
18 anything that I'm not supposed to say, I believe that the -- the agreement that was reached
19 between the BC Regulator and Erikson predated Canadian Natural raising issues with the
20 proposed process.

21

22 THE COURT: Well, but they are here today, they spoke on the
23 record and said they are not taking any positions, and presumably they received your
24 materials and they are aware of your opposition. Again, I do not want put words in their
25 mouth, but they certainly would have received your materials I assume. Perhaps Mr. -- Mr.
26 Reid has turned his camera on, so.

27

28 MR. REID: Yeah. I just want to make sure it's clear that the
29 Energy Regulator isn't the one that (INDISCERNIBLE) the licences; right? Or the leases
30 that are -- that were terminated. That's the BC Minister who's represented --

31

32 THE COURT: Right. It is the Minister. But certainly you are not
33 taking any position, and I would have thought that the ability to have those leases reinstated
34 would be something that would be front and centre for the BC Regulator's mind. Maybe I
35 am wrong.

36

37 MR. REID: The -- that is something that I believe that my
38 friends will be undertaking to try to complete and should the application not be granted
39 today, then of course it would be something the Receiver would then have to take steps to
40 try to get reinstated. But, again, we're dealing not with my client, that'd be with the BC
41 Ministry.

- 1
2 THE COURT: Okay. Fair. And I take your point. I understand
3 the distinction.
4
- 5 MR. REID: Yes. Thank you. That's -- that's why I turned on
6 my camera. I just --
- 7 THE COURT: No, important point.
8
- 9 MR. REID: -- (INDISCERNIBLE) the Regulator and the
10 Ministry the same --
11
- 12 THE COURT: Yes.
13
- 14 MR. REID: -- they are definitely not and they're represented
15 by two different counsel, too.
16
- 17 THE COURT: Yes. Point taken.
18
- 19 MS. PAPLAWSKI: And my point was not that the lease renewal --
20 or the lease revival would not be a concern to the Regulator. I think my point was that the
21 agreement between the BC Regulator and Erikson was reached prior to Canadian Natural
22 raising concerns and I think the BC Regulator is bound by that agreement and so they're
23 not taking a position here today.
24
- 25 THE COURT: I do not think the Court has heard about any
26 agreement, unless I am wrong. They said they are not taking a position either in opposition
27 or in support. That is what I have heard, unless I have missed something.
28
- 29 MS. PAPLAWSKI: Okay. Fair enough. I'm in Mr. Reid's hands
30 whether there's anything further he wants to say about that because of course not being BC
31 Regulator's counsel, I'm not at liberty to obviously make representations on its behalf.
32
- 33 THE COURT: Well, and I am bound by the record, the materials
34 that are before me, the affidavits and what I have heard; okay? So, anyways, I take your
35 point. So, you are not suggesting the leases cannot be transferred as part of a sale, but you
36 have concerns that there has been no movement by the applicant to take any positive steps
37 to have those leases reinstated.
38
- 39 MS. PAPLAWSKI: Again, yes, because of the fact that Canadian
40 Natural has lost all confidence in Erikson's ability to actually move this forward and
41 complete a sale. Because Canadian Natural has taken steps and had the leases revived and

1 Erikson has not, and one would -- or Erikson has only recently, under the -- under the --
2 with the involvement of the Proposal Trustee, and one would've expected if they were
3 intending to proceed in a process like the within process that they would have done so. And
4 the fact that they have not or have not until recently I think is absolutely indicative of their
5 ability to do so going forward.

6
7 Just bear with me, I just need one second. I've gotten way off --

8
9 THE COURT: No, no. That is okay. I took you off. That was
10 me.

11
12 MS. PAPLAWSKI: I just want to make sure I don't miss anything.

13
14 THE COURT: And believe me, I have read your materials as I
15 am sure you have gathered by now.

16
17 MS. PAPLAWSKI: Yes. Absolutely.

18
19 CNRL's also concerned, I know that there may be two sides to this point and that the
20 November 1st date, as you say, may provide some structure to Erikson. I don't think we
21 necessarily agree with that but, you know, I do take your point that it may be one side of
22 the coin. But I think the other side of the coin is that we have Third Eye Capital here who
23 has management of Erikson advising or putting a condition in that the leases have to be
24 reinstated by November 1st, failing which, Third Eye Capital will be entitled to pull the
25 DIP. So, Third Eye Capital who manages Erikson isn't even certain that in 10 days' time
26 they will be pulling the DIP and the entire proposed proceedings will be undermined.

27
28 THE COURT: Could the contrary also be argued? I mean, they
29 are putting in more money, they are out over 31, \$32 million, and they are putting in more
30 money, if that was their thinking you would have thought would they be pulling -- cutting
31 their losses as opposed to trying to engage in a SISP process and putting more money in?
32 I do not know.

33
34 MS. PAPLAWSKI: I think Third Eye Capital is either in or it's out.
35 The fact that it wants to fund the sales process, it's not really surprising because of course
36 it wants to remain in control of the process. Because under oil and gas legislation, and I
37 can give you the reference here if you just bear with me, so under the *Energy Statutes*
38 *Amendment Act* in BC, the Regulator, or the Ministry, can impose liability on directors or
39 officers of any corporation, any corporation who directly or indirectly controlled a
40 corporation, or in respect of a corporation that has ceased to exist, you know, those people
41 that were at the time that the corporation was in existence, they can impose liability on

1 those individuals or those corporations if any licensed assets go into the oil -- the --

2

3 THE COURT: Well, but does that not actually support their
4 argument that they have a very strong vested interest to ensure that the SISP proceeds and
5 is successful?

6

7 MS. PAPLAWSKI: Well I think it means that they have a vested
8 interest in staying in control of the process because --

9

10 THE COURT: But to what end? They are putting more money
11 in, they already have over 31 or \$32 million owing to them.

12

13 MS. PAPLAWSKI: They're putting more money in, but in exchange
14 for that, they're getting of course a charge. But they're also getting all of their fees paid,
15 they're getting all of their legal costs paid. Even though they are -- I think what this comes
16 down to is that Erikson and Third Eye Capital, there's very little, if any, distinction between
17 the two of them and so Third Eye Capital is of course putting \$250,000 in, but again, they're
18 getting a charge, they're getting interest, they're getting their legal fees paid. They're
19 continuing to extract a benefit from Erikson which they had --

20

21 THE COURT: What benefit are they extracting?

22

23 MS. PAPLAWSKI: They're extracting more interest, they're
24 extracting payment of their fees, they're extracting -- they have a super priority charge over
25 Erikson's assets.

26

27 THE COURT: So you are saying that it is privileging them to
28 put this DIP loan in place?

29

30 MS. PAPLAWSKI: I'm saying it's giving them control over a process
31 that they already have control over through their absolutely hand-in-hand relationship with
32 Erikson.

33

34 THE COURT: Okay. I take your point. I understand the broader
35 point you are trying to make here, that you have concerns about the process and their ability
36 to control it based on their prior conduct and you are saying that they are not as distinct as
37 it is being articulated. That the one is controlling the other and that is concerning to you
38 and your client I guess. Not to you, to your client at a high level.

39

40 MS. PAPLAWSKI: Now, in order to succeed today, of course they
41 have to meet the tripartite test that Mr. Selnes already took you to, and there's one point

1 that he made that I want to address. I believe he suggested that there was some contradiction
2 in the caselaw about who bore the onus of establishing good faith and due diligence. And
3 he cited to *H & H*, the case of *H & H*, as standing for the proposition that the onus is on
4 anyone opposing the application to prove bad faith. I believe I have that right. And I just
5 want to point out in our brief at tab 3 is the *H & H* case, and at paragraph 12 of that case,
6 the Court said: (as read)

7
8 The onus is upon the applicant, in this case HHFL), to satisfy the court
9 on a balance of probabilities that all three prerequisites have been
10 established on the application.

11
12 So --

13
14 THE COURT: Right. And they have to meet all three, not one
15 of three.

16
17 MS. PAPLAWSKI: Correct. And Erikson -- Erikson has the onus on
18 all three. It's not a negative onus on other parties to prove and I think --

19
20 THE COURT: Yes. I do not think -- I do not need to hear too
21 many submissions on that. I think it is a fairly well recognized proposition where the onus
22 lies.

23
24 MS. PAPLAWSKI: Yes. Okay. So my -- you've seen in CNRL's
25 materials that one of the fundamental concerns that CNRL has with Erikson's ability to
26 meet the good faith test is its failure to disclose that the leases have been cancelled. And
27 my friend suggested, well, they didn't disclose it because they were in discussions and the
28 Proposal Trustee was going to disclose it. But the problem with that is that it's not the
29 Proposal Trustee's duty of good faith and due diligence, it's not the Proposal Trustee that
30 has an obligation to be candid --

31
32 THE COURT: Well --

33
34 MS. PAPLAWSKI: -- forthright --

35
36 THE COURT: -- they have their own obligations I think, would
37 you agree with me?

38
39 MS. PAPLAWSKI: Of course. Of course.

40
41 THE COURT: Yes.

1
2 MS. PAPLAWSKI: But Erikson absolutely has those obligations as
3 well separate and apart from the Proposal Trustee. And so to simply suggest that, well, we
4 didn't disclose it to the Court because we just assumed somebody else was, it doesn't -- it
5 doesn't answer the question and it doesn't justify Erikson's failure to disclose a material fact
6 to this Court.

7
8 And so --

9
10 THE COURT: I mean, I take your point. They did not disclose
11 it in the October 15th affidavit, but then it does show up, I thought it was paragraph 11
12 maybe, or it shows up in the October 18th affidavit.

13
14 MS. PAPLAWSKI: Right. So Mr. Horrox's supplemental affidavit
15 does say that the leases have been cancelled with respect to CNRL joint interests, what it
16 doesn't say is that they've been cancelled with respect to all assets. So both CNRL's working
17 interests and everything else. So, again, it's only -- it's only a sliver of what is actually the
18 case. The only disclosure has been by the Proposal Trustee in its reports.

19
20 CNRL submits that, again, in our brief that the disclosure -- the issues with disclosure are
21 not just limited to that, you know, simple but very material fact. There's no information
22 attached to the affidavit that one would normally expect to see when you have a debtor in
23 possession coming to the Court and asking for relief. So, for example, there's no financial
24 statements. There's no financial information at all other than with respect to Third Eye
25 Capital. There's not copies of any of the documents that they rely on in the discussion in
26 the affidavit, there's no value for the assets that the Court would need to actually assess the
27 viability of a sale process and the need for an NOI --

28
29 THE COURT: Well, if there was a value, would this Court today
30 be able to assess the value or the viability based on that? Is that something this Court is
31 equipped to do?

32
33 MS. PAPLAWSKI: I think the point is that this Court, in approving a
34 sale process and approving a continuation of these NOI proceedings, there needs to be a
35 reason for it.

36
37 THE COURT: Yes. I take your point on that, yes.

38
39 MS. PAPLAWSKI: And there's just a paucity of evidence on that.
40 Erikson's put almost no evidence before this Court about anything.

41

1 And so really throughout their affidavit and throughout these proceedings, they've really
2 adopted, you know, a wait and see, we got this type of approach which (1) doesn't establish
3 their onus within the proceedings, and (2) it makes it difficult for any stakeholders to
4 understand or participate in the process because they don't have any information. Whatever
5 information is being shared with the Proposal Trustee is of course not being shared with
6 stakeholders. And so, you know, the reason that there is a legal test of course and the reason
7 that the onus is on the applicant is because they have the information and yet they have
8 completely failed to provide any of it in these proceedings. So our submission is that they
9 have not been acting in good faith and they have not been acting with due diligence because
10 they have not been candid and they have not been forthright in their disclosure within these
11 proceedings.

12
13 We also submit that they fail in the second part of the test, that they'd be able to make a
14 viable proposal if the extension is granted. CNRL submits that they have not, in any way,
15 shape, or form, put forward germ of a plan, or I think the Court also uses the word a hint
16 of a plan. My friend submitted that this --

17
18 THE COURT: So, Counsel, I am just going to stop you for one
19 second. I note it is quarter after 4, we have a hard stop at 4:30, so I am just going to ask
20 that you can sort of summarize in a couple minutes anything that has not been addressed
21 in your brief. As I said, I have reviewed your materials and I know I have asked you a
22 number of questions, but I would just like you to try to focus on the points that are not in
23 your brief to sum up so I can be assured that we have time for a response.

24
25 MS. PAPLAWSKI: Recognizing that this is a time-saving exercise,
26 I'm going to ask for 10 or 15 seconds just to review my submissions to make sure that I --

27
28 THE COURT: Of course. Of course. I do not want you to miss
29 anything important.

30
31 MS. PAPLAWSKI: So the only point I would add then, our -- the rest
32 of my submissions are contained in our brief both on the DIP and on the legal test, the only
33 point I would make then just to wrap up is that Canadian Natural fully supports the process,
34 it just supports that process not being undertaken by Erikson and Third Eye Capital.

35
36 THE COURT: Right.

37
38 MS. PAPLAWSKI: It supports that process being taken by the
39 Receiver. Not only because there of course needs to be a sale process, but also because
40 notwithstanding Mr. Selnes' and Mr. Harnett's submissions today, I think there's indications
41 that the fact that 174 million in interest and fees was paid to Third Eye Capital at a time

1 when the assets were, for lack of a better word, rotting in the ground and the BC Regulator
2 was cleaning up sludge, Canadian Natural's position would be that that needs to be
3 reviewed by an independent third party and that independent third party should be a
4 receiver.

5
6 THE COURT: All right. Thank you very much. As I said, I do
7 promise you I have read your materials and none of the matters you have not raised in oral
8 argument -- they will still be taken seriously, whatever you have raised in your brief, so
9 thank you for those submissions.

10
11 All right. Anyone else who wishes to speak in opposition?

12
13 Okay. We are going to ask for a brief reply. Mr. Selnes, I am going to ask you to keep it as
14 brief as possible.

15
16 Just before he addresses it, does anyone else need to address the Court on any particular
17 point in reply? Anything that was not raised already? Ms. Cameron? Why do you not start
18 very quickly, Ms. Cameron, because I did sort of abbreviate your submissions.

19
20 **Submissions by Ms. Cameron (Reply)**

21
22 MS. CAMERON: Thank you, My Lady, and I -- and I will keep it
23 brief. The Proposal Trustee appreciates and hears the concerns expressed by CNRL, both
24 in their written materials and the submissions of my friend, Ms. Paplawski, this afternoon,
25 that Erikson should not be in a self-directed process and, moreover, that they have nothing
26 to sell. We also understand that there is a history here between CNRL and Erikson, but a
27 lot of what has been discussed this afternoon is just that. It's history. The Proposal Trustee
28 can only report on matters since its involvement began on October 1st of this year. In that
29 limited period of time, there is nothing that the Proposal Trustee has observed that indicates
30 bad faith, or a lack of good faith for that matter. The company has been responsive to the
31 Proposal Trustee's information requests, has diligently engaged Sayer to act as the sales
32 advisor and commence the sales process, it has negotiated the required interim financing it
33 needs to fund these proceedings, and it has engaged with key stakeholders in discussions
34 including the BCER and the BC Ministry regarding the reinstatement of the leases, and it's
35 included the Proposal Trustee in those discussions.

36
37 I can also advise that, as an officer of this Court, the Proposal Trustee takes its professional
38 obligations to all stakeholders very seriously. The sale process has been designed in
39 consultation with both the Proposal Trustee and the BC Energy Regulator so that the
40 process has significant review and oversight by the Proposal Trustee. Just to highlight three
41 key terms of that oversight: no final bids can be deemed a qualified bid without the approval

1 of the Proposal Trustee in the process, and for your notes that's paragraph 19 of the SISP;
2 the evaluation of qualified bids will be done by Erikson with the assistance of the Proposal
3 Trustee, and that's paragraph 25; also, Erikson and the Proposal Trustee are to review and
4 evaluate the bids together to identify the highest or otherwise best bid or combination of
5 bids. And while Erikson has the ultimate determination on the successful bid, it is to be
6 done in consultation not only with the Proposal Trustee, but also the BC Energy Regulator.
7 That's paragraph 26.

8
9 So the practical reality is that without the support of at least one of those parties, the
10 Proposal Trustee or the BC Energy Regulators, it would be very difficult indeed for Erikson
11 to get any successful bid ultimately approved by the Court. So to the extent that Erikson is
12 in a self-directed process, it is under the supervision of the Proposal Trustee.

13
14 In terms of the proposition that there's nothing to market and sell here, I have to respectfully
15 disagree with my friend on this one. Yes, Erikson's Crown mineral leases have been
16 cancelled. We have covered that, discussions are ongoing about their reinstatement. We do
17 not have clarity. However, it remains an open issue. As you asked my friend, My Lady, it
18 is possible to have them reinstated, it's also possible to have them transferred to a purchaser
19 and the purchaser can deal with reinstatement.

20
21 However, as my friend, Mr. Selnes, noted in his submissions earlier, this issue does not go
22 away if you're in a receivership proceeding. It's going to be an issue facing Erikson no
23 matter what process it is in. There are of course also other assets associated with Erikson's
24 mineral leases and oil and gas interests being surface leases, wellbores, infrastructure on
25 the sites, things of that nature. So a prospective buyer can still acquire these interests and
26 attempt to have the leases reinstated themselves, and if that ultimately fails and they're not
27 reinstated, the buyer can also still wait for the next posting of the minerals by the BC
28 Government itself and acquire them through the normal land sale process. This uncertainty
29 may of course affect the prices to be derived in the sale process, but again, this uncertainty
30 is going to be present whether we're in a receivership or a proposal proceeding.

31
32 I do understand that the situation has changed since the last marketing process was
33 conducted as the Regulator has expressly indicated that it will consider partial asset sales.
34 Based on the Proposal Trustee's discussions with Sayer, the expectation is that this will
35 encourage more participation (WEBEX AUDIO INTERRUPTED) --

36
37 THE COURT: Whoops. You are frozen. You froze there for a
38 minute. You said partial asset sales which will encourage more participation I think and
39 then you cut out.

40
41 MS. CAMERON: Oh, maybe that's what the chime was. Pardon

1 me. Thank you, My Lady.

2

3 So based on the Proposal Trustee's discussions with Sayer, it is Sayer's expectation that
4 this is going to encourage more participation this time around. And to Mr. Selnes' point
5 earlier, without disclosing anything that could compromise the ongoing sale process, I can
6 advise that there are several parties who have already executed NDAs in the process based
7 on the reported activity that was provided to the Proposal Trustee, the company, and the
8 BC Energy Regulator on Friday.

9

10 Is this a perfect situation? No. Insolvency proceedings hardly ever are. The practical reality
11 is that we're dealing with an insolvent oil and gas company, and while its assets are shut-
12 in, they consist of sour gas wells and need to be diligently monitored, the company's assets
13 need to be sold in a process. This is what is being proposed by the company and is not
14 opposed by the Regulator who was consulted with respect to, and had input, into the design
15 of the proposed SISP. For that reason, the Proposal Trustee is supportive of the company's
16 application. And subject to any further questions you may have for the Proposal Trustee,
17 those respectfully are my submissions.

18

19 THE COURT: Thank you very much, Ms. Cameron. You
20 actually addressed every single question I was going to ask you, so thank you for that. That
21 was very succinct.

22

23 MS. CAMERON: Thank you, My Lady.

24

25 THE COURT: All right. Mr. Selnes, anything briefly?

26

27 **Submissions by Mr. Selnes (Reply)**

28

29 MR. SELNES: No, I think Ms. Cameron has very succinctly --

30

31 THE COURT: Yes, she did.

32

33 MR. SELNES: -- kind of closed up the submissions and I
34 appreciate, and Erikson, appreciates the support of the restructuring professionals that are
35 around it. Ultimately, we agree that the past was not perfect on this file, but we're trying to
36 find the solution and we're simply asking for a month to do so. This is a robust process --

37

38 THE COURT: I thought it was 40 days. It is not a month, is it?
39 Am I wrong?

40

41 MR. SELNES: It's 40 days from today, but it's until the end of

1 November.

2

3 THE COURT: Oh, yes. Okay. Fair enough. Fair enough. Okay.

4

5 MR. SELNES: So, you're right. But, ultimately --

6

7 THE COURT: One --

8

9 MR. SELNES: Yes?

10

11 THE COURT: Sorry. One quick question I did have is the
12 concerns that CNRL raises about so we would have expected asset valuations, financial
13 statements, all these other things, what do you to that?

14

15 MR. SELNES: And it -- I think two responses. This is an NOI
16 process that's happening quite quickly, the Proposal Trustee does have access to
17 information and has been provided information and is providing that oversight. The *CCAA*
18 specifically requires that the NOI process does not, at this time, so in meeting statutory
19 requirements they weren't I guess appended to any exhibits. To the extent the Court needs
20 more information, we can work towards that in the coming process obviously if you're
21 willing to grant the application.

22

23 THE COURT: Okay.

24

25 MR. SELNES: But it's -- I think Ms. Cameron very aptly put it,
26 we're -- this is a difficult process, it's not perfect, the amount of information is not going to
27 be perfect, but the parties are in place to ensure that this is not done in an improvident
28 manner.

29

30 THE COURT: Okay. Thank you.

31

32 Does anyone else wish to address the Court?

33

34 **Decision Reserved**

35

36 THE COURT: All right. I had hoped to give my decision right
37 after argument but we are right at the end of the day so I think I am just going to -- the stay
38 is in place until the 30th; is that right? Or the 31st?

39

40 MR. SELNES: I will double check. I believe it's the 30th.

41

1 THE COURT: It does not matter. I want to address it this week.
2 I am just going to look at my calendar. I have a fairly booked week, but I am going to
3 suggest that we just plunk it in between some of my matters if that works. I believe since I
4 have the Webex links already for commercial week, I can just book it. I think Wednesday
5 the 23rd at 11 AM would work. Would that work for everyone? Not everyone, I am not
6 going to ask everyone, but can we make that work?
7

8 MR. SELNES: If I cannot, I will ensure somebody from my firm
9 can.
10

11 THE COURT: Okay. So I am going to tentatively book the
12 return for October 23rd, at 11 AM. I am just going to confirm with the commercial
13 coordinator that will work. I do have another matter at 10, just so you know, and I have
14 another one in the afternoon, so hopefully you do not have to listen to the earlier matter.
15 But if you log on and there is something else going on just stand by patiently and I will
16 give you my decision then. So, Wednesday, the 23rd, at 11 AM to be confirmed by the
17 commercial coordinator, via Webex; all right?
18

19 UNIDENTIFIED SPEAKER: Thank you, My Lady.
20

21 THE COURT: All right. Anything else? All right. If not, I wish
22 to thank everyone for their very thorough submissions, both actually written and oral. So
23 thank you very much.
24

25
26 PROCEEDINGS ADJOURNED UNTIL 11:00 AM, OCTOBER 23, 2024
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1 **Certificate of Record**

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3 I, Jarod Liakos, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of King's Bench, held in courtroom 1702, virtual courtroom 60,
5 at Calgary, Alberta, on the 21st day of October, 2024, and that I was the court official in
6 charge of the sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

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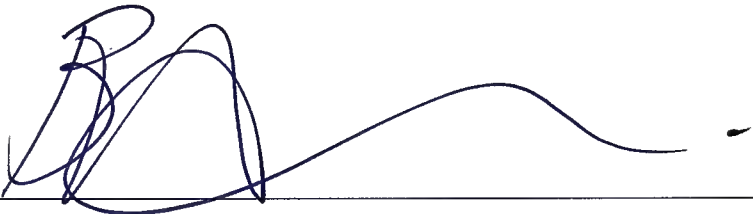
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TEZZ TRANSCRIPTION, Transcriber
Order Number: TDS-1073516
Dated: November 29, 2024

This is **Exhibit "B"** to the Affidavit of Elena Pratt
sworn before me this 27th day of November 2024.

A handwritten signature in blue ink, appearing to be 'L. Harris', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

LAURA BRIANNE HARRIS
A Commissioner for Oaths
In and for Alberta
My Commission expires May 4, 2025

Action No.: 2401-13792

E-File Name: EVK24ERIKSON
Appeal No.: _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

IN THE MATTER OF THE NOTICE OF THE RECEIVERSHIP OF
ERIKSON NATIONAL ENERGY INC.

Action No.: B301-13590

AND:

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF
ERIKSON NATIONAL ENERGY INC.

P R O C E E D I N G S

Edmonton, Alberta
November 21, 2024

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1 Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Edmonton, Alberta

2
3
4 November 21, 2024

Morning Session

5
6 The Honourable Justice Burns

Court of King's Bench of Alberta

7
8 A. K. Glen (remote appearance)

For His Majesty the King in right of the Province
of British Columbia

9
10 K. Cameron (remote appearance)

For Erikson National Energy Inc.

11 L. R. Rollingson (remote appearance)

For Erikson National Energy Inc.

12 J. Reid (remote appearance)

For BC Energy Regulator (remote appearance)

13 P. Harnett (remote appearance)

For Third Eye Capital Corporation

14 J. Cameron (remote appearance)

For KSV Restructuring Inc. (remote appearance)

15 E. Paplawski (remote appearance)

For Canadian Natural Resources Limited
(remote appearance)

16
17 H. Kaur

Court Clerk

18
19
20 THE COURT:

Thank you. Good morning. For those of you
who do not know, I am Justice Burns. I just need a moment. Okay. So we are here on the
receivership of Erikson National Energy Inc. and I would like to know who's online. And
perhaps we should have, I think it's Ms. Cameron, who is on for Erikson today.

21
22
23
24
25 MS. K. CAMERON:

Good -- good morning, Justice Burns. And just
a correction for the record. The proceedings that Erikson is currently in are pursuant to the
Bankruptcy and Insolvency Act. These are NOI proceedings.

26
27
28
29 THE COURT:

Right. Yeah.

30
31 MS. K. CAMERON:

I think you may have been referring to my
friends on behalf of the Energy Regulator are considering bringing a receivership
application --

32
33
34
35 THE COURT:

Yeah.

36
37 MS. K. CAMERON:

-- in December if they're not --

38
39 THE COURT:

Yeah.

40
41 MS. K. CAMERON:

-- satisfied with the progress being made.

- 1
2 THE COURT: Yeah. Okay.
3
- 4 MS. K. CAMERON: I can proceed to introduce the parties based on
5 who has checked in.
6
- 7 THE COURT: Thank you.
8
- 9 MS. K. CAMERON: So appearing -- appearing with me on behalf of
10 Erikson is my colleague, Luc Rollingson. Ms. Jessica Cameron is appearing from Fasken
11 on behalf of KSV Restructuring, the Proposal Trustee. Andrea Glen, counsel for His
12 Majesty the King in right of the Province of British Columbia, is in attendance.
13
- 14 THE COURT: Sorry, who is that again?
15
- 16 MS. K. CAMERON: Dorothy -- Andrea Glen, on behalf of the
17 Province of -- of British Columbia. Dorothy McDaid, internal counsel for the British
18 Columbia Energy Regulator, is in attendance, and their external counsel, James Reid, from
19 Miller Thomson is also in attendance. Patrick Harnett from Third Eye Capital Corporation,
20 the secured creditor of Erikson and the interim lender to Erikson, is also in attendance.
21 Andrew Basi from KSV Restructuring is in attendance. Emily Paplawski of Osler is in
22 attendance on behalf of Canadian National -- Natural Resources Limited. And internal
23 counsel for Canadian Natural Resources Limited, Jelena Molnar, is also in attendance. And
24 then I believe the other parties are just observing.
25
- 26 THE COURT: Okay. All right. So I have read a ton of material.
27 It keeps coming. So even this morning, I got material, which included a transcript of an
28 appearance in front of Justice Dunlop. And I've tried to read it and digest it, but quite
29 frankly, it just seems to be a real moving target. And so I want to know what you expect
30 from this hearing today.
31
- 32 MS. K. CAMERON: Thank you, Justice Burns. What we're seeking
33 today is an extension of the stay and the period of time for filing a proposal. We understand
34 that relief is not objected to, other than counsel for the Energy Regulator's position is that
35 the stay and the extension should be more limited to what is being sought. So the dispute
36 is whether it should be extended to December 10th or whether it should be extended into
37 January.
38
- 39 THE COURT: So you're --
40
- 41 MS. K. CAMERON: The other remedies being sought --

1
2 THE COURT: Just a second. You're seeking January 15th,
3 correct?

4
5 MS. K. CAMERON: Correct.

6
7 THE COURT: And the BCER --

8
9 MS. K. CAMERON: And actually it should -- it should actually be
10 January 14th. That's the 45 day mark.

11
12 THE COURT: Okay.

13
14 MS. K. CAMERON: And the BCER is seeking until December 10th.

15
16 THE COURT: Right. Okay. So that's one thing we're going to
17 have to figure out, the extension. Okay.

18
19 MS. K. CAMERON: And then -- and then the other two pieces of relief
20 are an increase to the interim lending to get us through to the -- through the stay extension
21 period, as well as a sealing order with respect to the confidential exhibit to the second report
22 of the Proposal Trustee.

23
24 THE COURT: Okay.

25
26 MS. K. CAMERON: And that application will be dealt with by
27 counsel for the Proposal Trustee.

28
29 THE COURT: Okay. Okay. So make your application.

30
31 **Submissions by Ms. K. Cameron (Stay Extension and Interim Financing)**

32
33 MS. K. CAMERON: Thank you. So -- so just to confirm, in terms of
34 the materials relevant for today's application, it's the stay application filed on November
35 18th; the second affidavit of Mark Horrox, filed November 18th; the second report of the
36 Proposal Trustee, filed November 19th; the application of the -- and then the application
37 of the Proposal Trustee for an order sealing the confidential appendix 1 to the second report.
38 And then on Tuesday, we had provided a revised proposed form of order, which was
39 intended to address a typo that we noted in the interim financing order that was granted on
40 October 21st. It had stated that the administration charge was 250,000, but it actually
41 should have been 200,000. So we assume that's not controversial, because it actually

1 reduces the charge over the assets.

2
3 THE COURT: Okay. And I can --

4
5 MS. K. CAMERON: In terms of --

6
7 THE COURT: I was going to say I can confirm that I read all of
8 that material in addition to more material, because I did read the first affidavit of Horrox,
9 as well. So ...

10
11 MS. K. CAMERON: Perfect. And then also, in terms of service, we
12 did file an affidavit of service of Stephanie Doolan (phonetic) on November 20th.
13 Stephanie Doolan's affidavit lays out that the application and affidavit of Mark Horrox
14 were served on the service list by email on November 15th. That was done in accordance
15 with an extension that we had received from you, Justice Burns, as we were waiting until
16 the deadline under the sales process had passed, which was on November 14th, to
17 determine what really would actually be sought at today's application.

18
19 THE COURT: Okay. So service is in order, is what --

20
21 MS. K. CAMERON: So we --

22
23 THE COURT: -- you're saying?

24
25 MS. K. CAMERON: Yes. It's (INDISCERNIBLE) order and we're
26 seeking to have it abridged to -- the deadline abridged to November 15th.

27
28 THE COURT: All right.

29
30 MS. K. CAMERON: So as mentioned, the relief sought today, specific
31 to Erikson, is to extend the stay of proceedings and the time to file a proposal to January
32 14th. That's the maximum 45 day period that is -- an extension can be granted under the
33 *Bankruptcy and Insolvency Act*. And we're also seeking an increase in the maximum
34 interim financing from 250,000 to 950,000 to ensure there's sufficient funding to get
35 through the stay period sought.

36
37 THE COURT: Okay. So technically, though, it's only at 200
38 right now?

39
40 MS. K. CAMERON: 200,000 is for the admin charge.

41

1 THE COURT:

Oh, okay.

2

3 MS. K. CAMERON:

250,000 is the current lending that --

4

5 THE COURT:

Interim financing. Okay.

6

7 MS. K. CAMERON:

-- borrowing that was authorized by the previous
8 order.

9

10 THE COURT:

Okay.

11

12 MS. K. CAMERON:

So by way of very brief background, Erikson is
13 a junior oil and gas company. Its assets are primarily located in the Fort Nelson and greater
14 Fort John (sic) areas of British Columbia. It was established to own and operate assets that
15 were acquired from a previous insolvency. It owes its secured lender just over \$31 million.
16 And under the previous application that was heard by Justice Johnston, Erikson was
17 granted an extension to the end of November. So November 30th is currently when the
18 expiry is to occur for this stay and the period of time to file a proposal. And also, as part
19 of that application, a sale and solicitation investment process was approved. That process
20 provided for a very brief sales process. It's just about 30 days and it was a 1 day sales
21 process, given concerns some of the stakeholders have that the assets have been previously
22 marketed and there's some concern on how successful the process would be. As you'll
23 have seen from the Proposal Trustee's report, there were bids that were received as a result
24 of the process that has proceeded.

25

26 THE COURT:

Okay. But none of them were qualified bidders?

27

28 MS. K. CAMERON:

Correct.

29

30 THE COURT:

Okay.

31

32 MS. K. CAMERON:

Yeah. And so just on that point, under these bid
33 processes, normally what's typical, as you're -- you're likely aware, is normally you do a
34 two-phase process where you get letters of intent in the first phase and then the second
35 phase would be the full binding bids that could then be negotiated and further advanced.
36 In this case, we did a very abbreviated process and Erikson is working with the bidders to
37 get them -- try to get them qualified in advance. Erikson is well aware that all of its
38 stakeholders, from its lender and -- lender and the Regulator, wants to see this matter
39 concluded as soon as possible.

40

41 And so in terms of the relief sought and the power to grant the extension that's being

1 sought, that's under section 50.4 of the *Bankruptcy and Insolvency Act*, which allows this
2 Court to grant an (INDISCERNIBLE) an extension for up to 45 days. As noted, we are
3 seeking the full 45 day period to be granted to provide time to negotiate one or more of the
4 transactions and to try to get that qualified bid that could be moved forward for execution
5 and court approval. In seeking the full 45 days, we were aware of holidays coming up in
6 December that may impact the ability to advance matters, as well as trying to ensure
7 adequate access and availability to book court time, should an arrangement be reached.

8
9 In terms of the test and what's to be considered when considering whether to grant an
10 extension, the Court is to have regard to whether the insolvent person has acted and is
11 acting in good faith and with due diligence, whether the insolvent person would likely be
12 able to make a viable proposal if an extension being applied for was granted, and whether
13 a creditor would be materially prejudiced if the extension were granted.

14
15 So dealing first with regards to the good faith, the activities of Erikson are set out in
16 paragraph 16 of the second Horrox affidavit and include working diligently as part of the
17 sales process, including providing information, helping to prepare the form of agreement,
18 reviewing proposed amendments to the confidentiality agreements, and corresponding with
19 potential bidders. Also engaging with the Tenure and Resources Stewardship Branch to
20 understand the process and what would be required to try to get the mineral leases
21 reinstated as part of the sale of any -- sale of any of the assets. Continuing to make
22 payments to Erikson's employees, contractors, and suppliers. Preparing revised statements
23 of cashflows, and negotiating an amendment and waiver under the interim financing
24 agreement with the lender with regards to -- there was a default provision that had required
25 Erikson to get the mineral leases reinstated by a certain period of time. That hasn't
26 occurred. We were able to work with the lender to get that condition waived. Erikson has
27 also worked on negotiating additional borrowings from the lender to enable the process to
28 continue. And then we note that the Proposal Trustee, at their report in section 6, supports
29 a finding that Erikson has and is continuing to act in good faith. So we support on that
30 basis the first prong of the test is satisfied.

31
32 Turning to whether there's evidence of a viable proposal, we say it's too early to make a
33 distinctive determination, but there is terms of -- of a plan and proposal as a result of the
34 offers that have received and that more time is required to be able to fully advance a
35 proposal. And that is not uncommon in these types of proceedings, that extensions be
36 granted to allow a sales process to continue to proceed in order to determine the viability
37 of a proposal. And so on that prong, too, we submit that it's been satisfied.

38
39 And turning to the third prong, on material prejudice, we submit that there's no material
40 prejudice with granting an extension. Rather, it'll enable the process to proceed so Erikson
41 can seek to advance one or more of the transactions for the benefit of its stakeholders. As

1 demonstrated to you by the cashflow, part of the funds sought to be borrowed are to enable
2 further work to occur with regards to the assets. And so -- also, by allowing the process to
3 proceed, it ensures that the assets are looked after for the benefit of stakeholders, that
4 employees are able to be -- continued to be paid and maintained, which also provides a
5 benefit. The Proposal Trustee, in their report at section 4, also notes that there's no
6 prejudice to any parties in granting the extension. It's also noted that Third Eye Capital
7 Corporation and the secured lender, who is also seeking to fund the extension, supports --
8 supports an extension being granted. And this extension will provide further breathing
9 room to enable time to negotiate a transaction, which hopefully, if successful, will result in
10 all environmental liabilities being addressed and assets being able to resume operations.

11
12 In terms of the question of whether the extension should be granted to December 10th or
13 January 14th, our -- our main concern with regards to the shorter stay extension is that to
14 the extent -- the extent that discussions are progressing with regards to a transaction, it
15 necessitates another court application in December, which is going to require the company
16 to expend funds it hadn't planned for in its cashflows, which may impede its ability to
17 extend through to the whole stay extension that's being sought. It also imposes, in our
18 view, an arbitrary deadline in terms of the December 10th date that may impede
19 negotiations with the various bidders, in terms of they may or may not be able to get a full
20 agreement in place by that date, and to the extent discussions, though, are still progressing
21 and it's looking positive, it may impede those discussions. And also it would negatively
22 impact Erikson's bargaining power if bidders think they have until December 10th, which
23 I would say they'd actually have less, given filing deadlines for us to file materials, in order
24 to advance those transactions.

25
26 I note, too, that there would be no prejudice to the BCR if the extension was granted to
27 January, because they could still bring an application in December if they're not satisfied
28 with the progress, seeking to convert to a receivership. So they would not be impeded, as
29 any stay extension would be without prejudice to their ability to proceed. Also, in terms
30 of granting the extension into January, as sought, it does also provide some additional
31 certainty for Erikson's employees, which is important, especially with the holidays
32 proceeding, for them to know whether they're going to continue to have jobs and that we
33 have parties in place to continue to look after the assets.

34
35 Turning to the amendments to the interim financing sought. So Third Eye Capital provided
36 interim financing in accordance with the interim financing order that was granted on
37 October 21st, 2024. Under the -- under those terms of the initial order, they can lend up to
38 250 -- 250,000, and there's a maturity date under the existing interim financing agreement
39 of December 15th, 2024. Erikson has worked with Third Eye Capital to work out an
40 extension and additional financing. So under the amended agreement that we're seeking
41 approval of, it provides the ability to extend the interim borrowing to January 15th, based

1 on the payment of a \$5,000 fee. The interest rate continues to be the 12 percent, which
2 was approved under the previous borrowing. And under -- in terms of what this fund is
3 intended to be used for, it's intended to be used for salaries, operating expenses while the
4 sites are shut down. There are staff who are maintained at a camp to ensure the sites are
5 protected and they're able to respond in the event of an emergency and just to maintain the
6 assets. Additionally, there's other expenses, including insurance and utilities to maintain
7 power at the various sites, and also the funds are sought to be used, of course, for
8 professional fees, as well.

9
10 The Court's approval to authorize borrowings and amendments is -- is under section 50.6
11 of the *Bankruptcy and Insolvency Act* and provides some non-exhaustive factors in terms
12 of what's to be considered when authorizing interim financing. Those include the period
13 during which the debtor is expected to be subject to a proceedings under this Act. In this
14 case, we're requesting that these proceedings continue at least until January, although it is
15 anticipated there may -- we may seek to come back for further extensions to fully conclude
16 a process under these proceedings. In -- another consideration is how the debtor's business
17 and financial affairs are being managed during the proceedings. As noted, Erikson has
18 limited operations, which are focused on preserving the assets. There continues to be
19 employees carrying out that function. The operations, the business and financial affairs of
20 Erikson are over -- are being presided on under the oversight of the Proposal Trustee.

21
22 Another consideration is whether the debtor's management has the confidence of its major
23 creditors. The largest and main creditor of Erikson is Third Eye Capital, who is also the
24 party providing the proposed borrowing, which is evidence of its continued confidence in
25 this process.

26
27 The other consideration is whether the borrowing would enhance the prospects of a viable
28 proposal being made, and we submit that the borrowing would enhance the prospects, as
29 funding is necessary in order for this process to proceed and to enable potential -- a
30 potential transaction to be concluded, as well as to maintain and preserve the assets in the
31 interim.

32
33 Another consideration is the nature and the value of the debtor's property. Here it's oil and
34 gas assets. The reality is if there's a sale, the interim financing would be paid first, along
35 with the admin charge from any proceeds, and if there is no sale, there is risk to the lender
36 that the funds advanced will not be repaid.

37
38 And then the last factor provided is whether any creditor would be materially prejudiced
39 as a result of the increased borrowings and the resulting charge. And in this case, the main
40 creditor who would be impacted would be the secured creditor, Third Eye Capital, who
41 seems to be okay with the priming, given the fact that they're prepared to advance the

1 funds.

2
3 And so on that basis, we submit that the approval of the amendment and the additional
4 borrowing is in the best interests of Erikson and its stakeholders.

5
6 Subject to any questions, Justice Burns, those are my submissions.

7
8 THE COURT: Okay. No, I have no questions. Thank you.
9 Okay. So who else wants to make representations with respect to this?

10
11 MR. REID: I'm happy to go next, Justice, if you want to hear
12 from the Regulator.

13
14 THE COURT: Sure.

15
16 **Submissions by Mr. Reid (Stay Extension and Interim Financing)**

17
18 MR. REID: Okay. For the record, James Reid. I'm with the
19 Miller Thomson firm and we are counsel to the British Columbia Energy Regulator. I am
20 joined by Dorothy McDaid, who is from the Regulator's office. You will have seen,
21 Justice, from our correspondence yesterday we are not opposing this application in its
22 entirety, but given the status of the sales process, which I will explain, we do not support a
23 stay extension into the new year, but are of the view that a shorter stay extension is
24 appropriate until there's more clarity and certainty around the expressions of interest that
25 have been submitted to date in the SISP. I understand that the shorter stay is also supported
26 by other key stakeholders, including the Province of British Columbia, represented here
27 today by Ms. Glen, as well as CNRL. And I understand that the Monitor does not take a
28 position with respect to the length of the stay.

29
30 I think it's important, Justice, to give you some background. I did provide you with some
31 correspondence today. You may recall that this hearing was originally booked by our
32 office last month and it was scheduled by the Regulator in consultation with Erikson for
33 the Regulator to bring back its receivership application, which was filed in early October,
34 in the event that the 30 day single-phase sales process that Erikson was running did not
35 result in a successful binding bid.

36
37 This morning, I sent you that transcript of the first hearing, which was on October 11th,
38 before Justice Dunlop. As you will see from that transcript, starting at the bottom of page
39 2, there was an agreement where the Regulator would adjourn its receivership application
40 sine die in order to allow Erikson to run a 30 day single-phase sales process. You'll have
41 seen from the materials filed by the applicant the next time that we were in court was

1 October 21st, where Erikson sought an extension of the stay period to the end of November
2 and approval of a \$250,000 interim financing facility so that it could run the 30 -- 30 day
3 single-phase sales process. That application and the representations that were made were
4 consistent with what was agreed to by Erikson with the Regulator on October 11th, as was
5 noted in the court record in that transcript that I just referenced.

6
7 Justice, if I could take you to the second report of the Proposal Trustee, if you have a copy
8 of that.

9
10 THE COURT: Yeah. I'm pretty sure I do.

11
12 MR. REID: Okay. Thank you. If you could turn to appendix
13 A of that document. This -- this was the order pronounced October 21st by Justice
14 Johnston, which approved the 30 day single-phase SISP, and that SISP, you have to turn a
15 few pages. There's no page numbers on the order, but it is schedule A to that order. And
16 apologies if this is tedious. I am going to take you to some provisions in the SISP, because
17 I don't think that they were referenced very much in the materials for this application.

18
19 THE COURT: Okay.

20
21 MR. REID: So if you have the SISP, the first -- on page 1 of
22 it, there's section 4, and this provides that solicitation of interest will be on an unpriced
23 basis where no set asking price will be stipulated, but any such purchase shall, at a
24 minimum, assume all regulatory obligations associated with the purchased property to the
25 British Columbia Energy Regulator. Now, Justice, this is important, because if you look
26 at the receivership materials, which I don't need you to do, but there is in the public record
27 and before this Court more than \$12 million in outstanding regulatory orders currently
28 associated with these properties.

29
30 The next section of the SISP that I want to draw your attention to is on page 2, and that's
31 section 7. And it provides that the offer, submission, and valuation stage of Erikson will
32 be comprised of a single-phase offering process whereby qualified bidders, as defined
33 below, will be entitled to submit formal binding offers to Erikson and the proposal trustee.
34 So that sets out the terms that were agreed to and is consistent with what the Court ordered.

35
36 And then section 9, this section is important, because it -- it's a longer section, but it
37 references that in assessing bids, parties will need to take into account the bidder's ability
38 to meet the BCR's -- ER's regulatory and eligibility requirements. Section 10, on that same
39 page, provides the timeline for the SISP and notably that we would -- that we should at this
40 time be seeking approval of a transaction and not a 60 day extension of the SISP, which
41 effectively the proposed stay extension does.

1
2 Now, Justice, if you could turn to page 4 of that SISP, and I'm going to start at the bottom,
3 which is section 18. This section is important, because it sets out what the requirements
4 for a bid to be a final bid is, and that -- and this final bid would need to have been submitted
5 by November 15th at 12 PM.

6
7 And some of these requirements include -- and I'll just summarize, I'm not going to read
8 them out to you. I'll do my best to paraphrase, but in (b)(i), this section provides that any
9 bid would need to set out details of any liabilities that would be assumed by the bidder. In
10 (b)(3), it required that any bidder would submit some financial disclosure to allow the
11 BCER to make a reasonable determination of a bidder's financial capabilities. (f) requires
12 that any bid include a letter stating that the bid is a final bid and is irrevocable. (i), which
13 is on page 6, requires evidence of a financing commitment and financial capabilities to
14 meet regulatory obligations. (m) requires that the bidder make acknowledgements and
15 representations that it's conducted its due diligence. (n), which is important, requires that
16 a bidder has all required corporate approvals. And in (p), this provides that -- that they
17 needed to include a schedule for closing the transaction on or before November 30th.

18
19 Now, I know you've got confidential appendix A to the Proposal Trustee's report. I'm not
20 going to say anything about that document, but as you are aware, Justice, the bids are
21 expressions of interest and do not meet these requirements of a final bid.

22
23 So then the last section, Justice, that I want to refer to in the sales process is paragraph 22,
24 because I think this is really important. Section 22 says if Erikson, the BCER, and the
25 Proposal Trustee are not satisfied with the number or terms of the qualified bids, Erikson
26 and the Proposal Trustee in conjunction with the BCER may extend the bid deadline. Now,
27 somehow it seems that this application is effectively changing what was a 30 day single-
28 phase sales process, which was agreed to by the BCER, and it's essentially making this a
29 90 day two-phase sales process without any consultation with the Regulator and in direct
30 breach of the court-approved SISP.

31
32 Now, Ms. -- Ms. K. Cameron referenced the test for this Court to approve a stay extension
33 and she said that this Court needs to be satisfied that the extension does not materially
34 prejudice any of Erikson's stakeholders. We are of the view that this factor, if the -- if the
35 requested extension is granted, is not met for several reasons. First, we are of the view that
36 it blatantly disregards the agreement with the Regulator that caused it to adjourn its
37 receivership application without consultation and in breach of the SISP. Second, the stay
38 extension not only triples the length of the SISP, but it also nearly quadruples the priority
39 interim financing that is going to be needed and the corresponding charge which, of course,
40 subordinates the other creditors, including the Regulator, not by 250,000, as was initially
41 agreed to, but by close to a million dollars now.

1
2 Third, as seen in the receivership materials, there is a much more certain purchaser of
3 Erikson's properties, and this is Kingscrest (phonetic), who is -- has counsel here today, is
4 represented by the McMillan firm, which will almost certainly walk away if there is not a
5 transaction before the new year with it. And this is an important consideration for the
6 Regulator, who needs to see significant advancement in the bids in the SISP in the next
7 couple weeks and including some certain basic things, like proof of financing, board
8 approvals, and financial wherewithal of the bidders.
9

10 Now, luckily, Justice, I think that we have some time. It is still November and we've got
11 another week of this month. And so we do think that there is a very reasonable solution
12 and that if this Court orders a shorter stay -- and we're proposing December 10th, which is
13 a nearly 5 week extension to the SISP and gives an additional 3 weeks from today, to see
14 if any of these bids can develop. And if they can be sufficiently advanced, a stay extension
15 into the new year I don't expect will be a problem, and notably I have court time booked
16 December 9th. And parties can rely on the same materials that they've filed for this
17 application, with maybe some short supplemental documents. Given the nearly \$750,000
18 in costs that are projected between now and the proposed January 15th stay extension, we
19 think that any supplemental materials that may be required if these -- if these bids advance
20 would be an insignificant expense, and it might actually save money by forcing any serious
21 bidders to sharpen their pencils and move them on quickly.
22

23 I know Ms. K. Cameron referenced that -- that this would -- would make an arbitrary
24 deadline, but I think actually what's being done by this application is making no bid
25 deadline. We're just asking for a stay. There was a set bid deadline in the SISP, which
26 this Court approved, and it seems to be unilaterally extended and made into a two-phase
27 bid. Ms. K. Cameron also mentioned that this might chill negotiations with potential
28 bidders, but we don't have any evidence of this. I think it could actually help negotiations,
29 because these bidders knew there were clear deadlines to submit bids for no -- and that they
30 were supposed to close the transaction by November 30th. That did not seem to chill the
31 market.
32

33 I did hear Ms. Cameron suggest that their application is without prejudice for us to bring
34 the receivership application. I understand that that may be the case, but I don't -- I don't
35 know if Ms. Cameron is saying that the Regulator is not subject to the stay of proceedings
36 if -- if that is the case. That might be true. We might still be able to -- to bring the
37 receivership application. But if the position is that actually, no, we would have to lift the
38 stay, then certainly we are prejudiced by -- by the relief that is being sought.
39

40 So in summary, Justice, we think that there is a very reasonable solution, and that is to
41 grant a shorter stay of proceedings.

1
2 THE COURT: Okay. What about the 950? If I were to do it --
3
4 MR. REID: The -- the interim financing?
5
6 THE COURT: -- until December 10th -- yeah.
7
8 MR. REID: I'll take a look at the cashflow, Justice, but I
9 think that's appendix C.

10
11 MS. J. CAMERON: If -- if I might be of assistance to my friend and
12 the Court, that is something that the Proposal Trustee contemplated in terms of how the
13 Court might decide today. So I asked the Proposal Trustee to run the numbers if you were
14 to grant the shorter stay extension and the required financing to December 10th would be
15 4,000 and -- let's call it \$405,000.

16
17 MR. REID: So that's a \$450,000 difference from what's
18 being sought. Is that right, Ms. Cameron?

19
20 MS. J. CAMERON: That's correct.

21
22 MR. REID: And I do -- I believe in my discussions with Ms.
23 Glen, I believe the significant increase to the interim lender's charge and interim financing
24 was a concern of -- of her office, as well. So maybe I would let her speak to that point.

25
26 **Submissions by Ms. Glen (Stay Extension and Interim Financing)**

27
28 MS. GLEN: Justice Burns, for the record, it's Andrea Glen,
29 representing His Majesty the King in right of the Province of British Columbia. I can
30 confirm what my friend, Mr. Reid, has suggested, which is that the Province is also
31 concerned with the length of the extension being sought here and the amount of the interim
32 financing and the charge associated with it. And we support the submissions of the BC
33 Energy Regulator on the -- those two points.

34
35 THE COURT: All right. Thank you. Okay. Mr. Reid, I didn't
36 mean to sort of sidetrack you there. Were you done?

37
38 MR. REID: I am done. Thank you, Justice.

39
40 THE COURT: Okay. All right.

41

1 MR. REID: It was a little tedious, I appreciate.

2

3 THE COURT: No, thank you. So do we have someone else who
4 wants to comment? Ms. Paplawski, maybe?

5

6 **Submissions by Ms. Paplawski (Stay Extension and Interim Financing)**

7

8 MS. PAPLAWSKI: Yes, good morning, Justice. E. Paplawski, for
9 the record, on behalf of Canadian Natural Resources Limited. Canadian Natural supports
10 the Regulator. Canadian Natural appeared -- or we appeared at the last hearing before
11 Justice Johnston. We opposed the entirety of the relief being sought at that time, in
12 particular the continuation of the NOI proceedings. Canadian Natural has significant
13 concerns about Erikson and its parent company, Third Eye Capital, remaining in the
14 driver's seat. It wanted to see the receivership be granted at that time and an independent
15 third party come in and control the process. Canadian Natural was unsuccessful in that
16 application and the NOI proceedings continued, but we do appear today to support the
17 Regulator in its request for the -- for the shorter stay extension and for the -- any reduced
18 amount that may be needed in DIP financing.

19

20 And I'd also just note Ms. Cameron stated in her submissions that Third Eye Capital, as
21 the DIP lender, will be paid first from any proceeds realized from the sale and hence is
22 positioned to suffer prejudice if the sale doesn't proceed, and that's not correct. The DIP
23 charge that was granted by Justice Johnston was only granted with respect to the assets of
24 Erikson that are not secured by the liens filed by Canadian Natural. So Canadian Natural
25 filed a number of operator's liens prior to Third Eye Capital registering its general security
26 interest, and so our position is Canadian Natural has first secured priority over those assets
27 and over any proceeds that may be realized from those assets. Because of Canadian
28 Natural's position, Erikson did not seek to prime those -- the DIP charge over those assets
29 and so it's not -- Canadian Natural was not primed. So the proceeds that may be realized
30 would first, our position, go to pay Canadian Natural and then the DIP lender, because the
31 DIP charge doesn't -- doesn't prime Canadian Natural's liens expressly by court order.

32

33 THE COURT: Okay. Anything else?

34

35 MS. PAPLAWSKI: That's everything.

36

37 THE COURT: All right. Anyone else have a position with
38 respect to the extension or the lending charge?

39

40 MS. J. CAMERON: Justice Burns --

41

1 **Submissions by Mr. Harnett (Stay Extension and Interim Financing)**

2
3 MR. HARNETT: Yes, Justice Burns. Oh, pardon me. I'll be brief,
4 Justice Burns. Patrick Harnett, counsel for Third Eye Capital Corporation, Erikson's
5 secured creditor and interim lender in the proceedings. As Ms. K. Cameron mentioned in
6 her submissions, we do support the extension of the stay to January. This support and the
7 additional interim financing is a continuation of Third Eye's support of the NOI process
8 and finding a bidder for these assets.
9

10 I think importantly, Third Eye's funding has always been conditioned on a meaningful
11 SISP that finds a meaningful offer, and we now have at least seeds of that that are worth
12 exploring. Erikson now needs a safe space to develop those offers into something capable
13 of closing and a reasonable stay extension into January lets them do that. I think coming
14 back to court on 2 to 3 weeks notice is a distraction and an additional incremental expense
15 that shortens the runway and impacts the utility of what this incremental financing is
16 intending to do, because the BCER is privy to the SISP information in real time and KSV
17 has been supervising day in and day out. So I don't think there's a jeopardy in terms of
18 any developments that happen, and again, echoing that Third Eye's incremental financing
19 is meant to support this process. If there isn't a reasonable prospect of closing a deal, there
20 is no intention to continue funding a process that's doomed to fail, but we can't get there
21 yet. We need to -- to let these offers germinate into something capable of closing and time
22 is needed to do that. And we support the extension to January. We think that is the best
23 use of -- of the incremental funding.
24

25 And just -- my final point is it's news to me and perhaps not to others in the room that
26 Kingscrest, which has been mentioned in further submissions by the -- the Regulator, has
27 a deal that's not capable of closing if we don't get something done in the month of
28 December. That is news and it is a bit surprising, because if there was genuine interest by
29 Kingscrest, it could participate in the SISP, potentially put a stalking-horse bid, and have
30 been a frontrunner in the process without the concerns that are being voiced today. So I
31 think that's a secondary concern and I think the focus really should be on the birds in hand.
32

33 THE COURT: Okay. Anyone else?
34

35 **Submissions by Ms. J. Cameron (Stay Extension and Interim Financing)**

36
37 MS. J. CAMERON: Justice Burns -- yes. Thank you, Justice Burns.
38 It's Jessica Cameron for KSV, the Proposal Trustee. I do have a few comments to make
39 for the Court.
40

41 Reference has been made to the Proposal Trustee's second report, which was filed with

1 respect to this application, and in that report, the Proposal Trustee supported the company's
2 stay extension request through to January. After filing and serving that report, we heard
3 from my friend, Mr. Reid's client, the BCER, that they were concerned with the length of
4 the stay extension sought by the company and were requesting this more limited stay into
5 early December.

6
7 The Proposal Trustee is supportive of a stay extension here and corresponding increase to
8 the interim lender's charge to support the company over whatever that extended period of
9 time is determined as appropriate by this Court. The basis for the support is set out in the
10 second report, primarily at sections 3.2 and section 4. I don't need to take you there,
11 Justice. That's just for your reference. The stay extension of whatever duration is
12 necessary to allow the company to continue to advance the offers received in the court-
13 approved SISP to becoming qualified bids. As was noted in the second report and by my
14 friends in submissions today, unfortunately, none of the bids that have been received in the
15 process to date constituted qualified bids within the defined terms of the SISP. This was
16 largely due to their nonbinding nature and also the conditionality contained in some of the
17 bids and the proposed timelines set out therein, I understand, and this has been raised as a
18 concern by the BCER with respect to the company's stay extension into January.

19
20 In terms of the conditionality of those bids, we are dealing with a company whose mineral
21 leases have been cancelled, so I think it's fair to say that having those mineral leases
22 reinstated as a condition to a bid would have been an expectation of the parties heading
23 into this process. There are, however, some other challenging conditions with respect to
24 certain regulatory approvals in one bid and potential board approvals, which the company
25 is working with Sayer, its sales agent, to negotiate with the various bidders towards
26 hopefully progressing one or more of the bids to becoming a qualified bid in order to effect
27 a transaction in these proposal proceedings.

28
29 As set out in the second cashflow forecast, in order to continue the SISP and these
30 proceedings, Erikson requires further capital to do so, and they've negotiated the amended
31 interim financing facility to increase the current lending from 250,000 to \$950,000. This
32 increase is in line with the company's cashflow forecast, and I will actually take you there,
33 Justice Burns. And that's appendix C to the second report.

34
35 THE COURT: Yeah.

36
37 MS. J. CAMERON: The difficulty with this file is that all of -- there
38 are many difficulties with this file, but one of the difficulties is that Erikson's assets are
39 shut-in, so there are no production receipts. There are no receipts being collected at all.
40 And notwithstanding this, Erikson is required to maintain care and custody of its oil and
41 gas assets, which includes ongoing wellsite monitoring. As such, it maintains a small

1 contingent of employees and contractors and incurs certain operational expenses in relation
2 to maintaining the assets and the employees at a remote camp in northern British Columbia.
3 There are also associated professional fees that are being incurred with the process.
4

5 As I noted, if the company -- or, pardon me, if the Court is to grant the company's full
6 extension request into January, the total interim financing facility need is \$950,000, which
7 is an increase of 700,000. If, on the other hand, the Court grants the more limited stay
8 extension sought by the BCER, Erikson will still require interim financing and they'll
9 require a further \$405,000.
10

11 As I noted at the outset, the Proposal Trustee is supportive of a stay extension and increased
12 interim financing for that period. Since the filing, the actions taken by the company
13 demonstrate to the Proposal Trustee that they have been acting in good faith and with due
14 diligence, including with respect to advancing the SISP, engaging in discussions with
15 bidders in that process, as well as engaging in discussions with the BC Ministry of Tenure
16 and Stewardship Branch regarding the process for reinstatement of the Crown mineral
17 leases. In the Proposal Trustee's view, a stay extension will enhance the likelihood that
18 the company will be able to make a viable proposal to its creditors at some point in the
19 future by enabling the company to continue the SISP. Lastly, the stay extension should not
20 prejudice any creditors, as all post-filing obligations are projected to be paid by the
21 company, subject, of course, to the approval of the increased interim financing.
22

23 The question really turns on what's the appropriate length of time. Erikson submits that
24 time is mid-January, the BCER maintains it should be December 10th, and the Proposal
25 Trustee submits that one of these two extensions is needed. We're not taking a position on
26 the length of that time. The Proposal Trustee does, however, note that a more abbreviated
27 stay extension would result in increased costs, due -- to the estate, due to the professional
28 fees that would be incurred in preparing supplemental materials with respect to a stay
29 expiring in early December. On the other hand, the Proposal Trustee also appreciates the
30 concerns of the BCER that the company continues to negotiate with bidders following the
31 November 14th bid deadline and does not yet have a binding bid. Those discussions, as I
32 noted, remain ongoing with bidders. I do also understand, and Mr. Reid has noted in his
33 submissions, that there is court time booked for a potential receivership application on
34 December 9th by the BCER if they are not satisfied with the progress being made in the
35 sale process.
36

37 With those concluding remarks on the stay extension and interim financing, those are all
38 of my submissions on that issue. I do also have brief submissions on the sealing order
39 that's been requested.
40

41 THE COURT:

We'll go to that --

1
2 MS. J. CAMERON: I --
3
4 THE COURT: -- in a minute.
5
6 MS. J. CAMERON: Absolutely.
7
8 THE COURT: We'll do that after. Can you just confirm, then,
9 the 405, is that in addition to the 200, so it's up to 605, or is it 405 if we go to December
10 10th?
11
12 MS. J. CAMERON: I'm just going to check. So that is what is
13 required. So it will be in addition to the 250 already approved, unless my math is bad, and
14 perhaps Mr. Basi can save me from myself if I've gotten that incorrect.
15
16 MR. HARNETT: That -- that comports with my -- my arithmetic,
17 as well, from the interim lender's perspective.
18
19 THE COURT: So it'll be 655?
20
21 MS. J. CAMERON: Yes, that's right.
22
23 MR. REID: I'm looking at the -- I'm looking at the cashflow
24 and I think -- is it 135 that's been advanced to date?
25
26 THE COURT: Yeah, I think that's part of it. Yeah.
27
28 MR. REID: 135 and then next week we see another hundred,
29 approximately, and then another hundred. So we're at about, you know, 340, we'll call it.
30 Then 50. So it's -- and then 152. When I -- when I look at those numbers, I don't think it
31 gets to 650.
32
33 MR. HARNETT: My tally is 540,000, roughly, including the
34 135,000 that was drawn in week 7 of the cashflow statement.
35
36 MR. REID: Sorry, what was that, Patrick? It's 550?
37
38 MR. HARNETT: So if it's -- it's 550 if we round it to something -
39 - to the closest 50,000.
40
41 MS. J. CAMERON: That's right.

1
2 MR. REID: Thank you.

3
4 THE COURT: Okay. Anyone else have representations with
5 respect to these two points? Okay.

6
7 **Decision (Stay Extension and Interim Financing)**

8
9 THE COURT: Well, this is obviously a very difficult decision
10 to make. Obviously, I will grant an extension. The question is whether or not it will be to
11 January 15th or December 10th. And while Ms. K. Cameron presented many persuasive
12 arguments -- in particular, I have concerns with respect to the employees, who are in a very
13 unsettling place. I also wonder about the negotiation process, but as Mr. Reid pointed out,
14 it is speculation. It could go either way with respect to how this would be impacting
15 negotiations.

16
17 I am going to extend the stay only to December 10th. I find that it is true that the SISF was
18 very quick, but that was exactly what was contemplated. And it should have also been
19 contemplated that there might be some issues, and yet what was entered into and agreed to
20 was that there would be a very short process. And as it is, December 10th is already, as
21 Mr. Reid indicated, a further month to be able to explore whether some of these unqualified
22 bidders actually can become qualified to a point that would satisfy the other creditors and
23 the BCER that they will be fruitful. And while I appreciate that it does increase costs
24 somewhat to come back, I also agree with Mr. Reid that much of the material that's already
25 been submitted to the Court can be just identified for the next judge, who will then also
26 then get supplemental affidavits with respect to what has happened between now and
27 December 10th. So I don't think it necessarily has to be a terribly more expensive process.

28
29 I'm going to also then order that the interim financing can be increased to the 550,000 that
30 we just talked about. I just think that when I read the confidential report, I think that there
31 needs to be some end to this. Either they're going to come forward and get something or
32 else this has got to be addressed in a different way, as proposed by BCER and CNRL, both
33 of whom are very impacted parties to this. So I think that checking in on December 10th,
34 or December 9th, rather - it will be a receivership application or maybe there will be a
35 further extension, if progress is being made - is the way to go to make sure that this process
36 gets determined, because it seems that there's no good end to the end of this, but there
37 needs to be an end that the parties are satisfied with.

38
39 So that's what I'm ordering with respect to the extension. It will be to December 10th.
40 And the interim financing will be increased to the 550.

41

1 So we have the confidential exhibits to deal with. Is there anything else before we deal
2 with that? No? Okay. So let's deal with the confidential exhibits. I've read the
3 applications. Are we dealing -- we have two of them or just one of them?
4

5 **Submissions by Ms. J. Cameron (Sealing Order)**

6
7 MS. J. CAMERON: I believe it should just be one --

8
9 THE COURT: Yeah.

10
11 MS. J. CAMERON: -- Justice Burns --

12
13 THE COURT: Yeah.

14
15 MS. J. CAMERON: -- and that is confidential appendix 1 --

16
17 THE COURT: Yeah.

18
19 MS. J. CAMERON: -- to the second report of the Proposal Trustee.
20 And just to confirm for the court record, we did provide the requisite notice to media of
21 our request for a restricted court access order on November 18th, and we've provided that
22 evidence to the Court just this morning by way of an affidavit of service of my assistant,
23 Kim Picard. And I apologize for the late delivery of that --
24

25 THE COURT: Okay.

26
27 MS. J. CAMERON: -- affidavit of service, Justice. We were trying to
28 wait until the bitter end to confirm delivery of some additional couriered materials, with
29 the Canada Post strike wreaking havoc on service of materials on parties not on the
30 electronic service list. Parties on the electronic service list were, of course, served with the
31 application for a sealing order on November 18th. And the materials were also posted to
32 the Proposal Trustee's website.
33

34 THE COURT: Okay.

35
36 MS. J. CAMERON: In -- in terms of that information, it contains the
37 bid summary prepared by Sayer, Erikson's list -- sales agent, with respect to the
38 confidential bids that have been received in this process. We are seeking to seal this only
39 until there is a transaction for substantially all of Erikson's property in this insolvency
40 proceeding or another insolvency proceeding. I submit that by limiting the sealing order
41 for a limited period of time, that that satisfies the *Sierra Club* test, as (INDISCERNIBLE)

1 by the Supreme Court in *Sherman Estate v. Donovan*, in that the sealing order sought is the
2 least restrictive means to prevent the disclosure of the confidential and commercially
3 sensitive information, which, if disseminated at this point in time, could have adverse
4 implications on the ongoing sales process and any future sales process, and that the salutary
5 effects of protecting the disclosure of this information outweigh the deleterious effects of
6 restricting the accessibility in the court proceedings.

7
8 There was a form of proposed sealing order attached to the Proposal Trustee's application
9 as appendix B and I can advise that no changes were proposed to that form of order.

10
11 THE COURT: Okay.

12
13 MS. J. CAMERON: And with respect to that form of order, as I noted,
14 the proposed sealing is only until the closing of a transaction for substantially all of
15 Erikson's assets as a part of any type of insolvency proceeding, because we, of course,
16 have this potential receivership application by the BCER that we are considering, as well,
17 in our request, or until further order of the Court. The Proposal Trustee is permitted to
18 share the confidential appendix with interested parties upon reasonable confidentiality
19 terms. I can also advise the Court that this bid summary has already been provided to the
20 BCER as part of its ongoing consultation in the SISP process.

21
22 THE COURT: Okay. Can you tell me -- again, I'm just looking
23 from the court record point of view. What happens if something miraculous happens and
24 there is no transactions for all of the assets of Erikson? What if Erikson manages to
25 straighten itself out and go straight forward? Then this will be forever sealed, and that's
26 always a problem for me.

27
28 MS. J. CAMERON: We could revise the order to address a proposal
29 and so it would be until the earlier of a transaction for a sale of all -- substantially all the
30 assets or a proposal.

31
32 THE COURT: Yeah, or --

33
34 MS. J. CAMERON: So that --

35
36 THE COURT: Or the other thing I'm always --

37
38 MS. J. CAMERON: It deals with that eventuality.

39
40 THE COURT: Yeah. The other thing I'm always happy with is
41 a date that happens to be a far-off date. If it has to be 2 years or something, something

1 that's reasonable, but that, you know, when the clerks are cleaning out files later, they can
2 go, Oh, wait, this can be opened now, it's after 2 years. It's more a practical thing, because
3 I don't want this --

4

5 MS. J. CAMERON: M-hm.

6

7 THE COURT: -- sitting on the file for 50 years with it still
8 sealed.

9

10 MS. J. CAMERON: Understood, My Lady. I would be open to
11 putting a date in there. Two years seems reasonable to me. So it would be the earlier of -

12 -

13

14 THE COURT: Yeah.

15

16 MS. J. CAMERON: -- the closing of a transaction, a proposal, or --
17 although with a proposal, the issue is that then it's disclosed asset values. And so if it does
18 continue, that could be an issue, as well. So perhaps it's the earlier of a transaction, which
19 I think is what all parties are anticipating to occur here, or 2 years from today's date, subject
20 to any concerns from counsel for Erikson or the BCER.

21

22 **Decision (Sealing Order)**

23

24 THE COURT: Anybody have concerns if we just put an outside
25 timeline of 2 years? No one is jumping up and down, so why don't we just amend the
26 order to include that so that just --

27

28 MS. J. CAMERON: I will do so, and I'll send a copy to my friends
29 and then to yourself, My Lady, for further review.

30

31 THE COURT: Okay. And so with respect to my first order,
32 then, Ms. K. Cameron, you are going to draft the revised order, correct?

33

34 MS. K. CAMERON: Correct. And, Justice Burns, how would you like
35 us to submit it to you?

36

37 THE COURT: Well, Mr. Burrick (phonetic), the commercial
38 coordinator, is always so helpful and I think he's okay with it, if you send it through him.
39 That's the quickest way to get me to see it. So --

40

41 MS. K. CAMERON: Perfect.

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THE COURT: -- that would work for me. Okay. Anything else arising?

MS. J. CAMERON: No, My Lady.

THE COURT: All right. I see no movement or suggestions. Thank you. Thank you all very much for this. Thank you, madam clerk.

THE COURT CLERK: Thank you, Justice.

PROCEEDINGS ADJOURNED UNTIL DECEMBER 9, 2024

1 **Certificate of Record**

2

3 I, Harman Kaur, certify that this recording is a record made of evidence in the proceedings in
4 the Court of King’s Bench, held in courtroom 516, at Edmonton, Alberta, on the 21st day of
5 November, 2024, and I, Harman Kaur, was the court official in charge of the sound-recording
6 machine during the proceedings.

7

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1 **Certificate of Transcript**

2
3 I, Victoria Winning, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

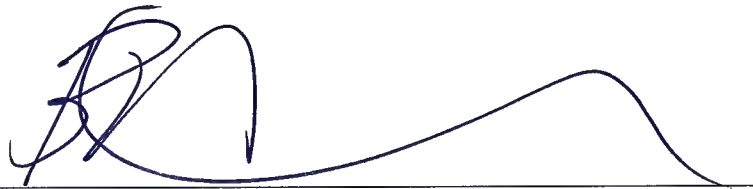
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15 Pro-to-type Word Processing

16 Order: TDS-1073120

17 Dated: November 25, 2024

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This is **Exhibit "C"** to the Affidavit of Elena Pratt
sworn before me this 27th day of November 2024.

A handwritten signature in blue ink, consisting of a stylized 'L' and 'H' followed by a long horizontal stroke that curves upwards at the end.

Notary Public/Commissioner for Oaths in and for Alberta

LAURA BRIANNE HARRIS
A Commissioner for Oaths
In and for Alberta
My Commission expires May 4, 2025

From: Joseph Reynaud <JReynaud@stikeman.com>
Sent: Monday, July 29, 2019 11:58 AM
To: Paplawski, Emily
Subject: Re: Order (Language)

I think it should be fine. Please just send a revised invitation.

Joseph Reynaud
Direct : +1 514 397 3019
Mobile : +1 514 261 4605
Email : jreynaud@stikeman.com

De : Paplawski, Emily <EPaplawski@osler.com>
Envoyé : Monday, July 29, 2019 11:54:01 AM
À : Joseph Reynaud <JReynaud@stikeman.com>
Objet : RE: Order (Language)

Joseph – CNRL is still working on compiling the costs. Can we push back the call by 30 minutes to 12:30?



Emily Paplawski
Associate
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Joseph Reynaud <JReynaud@stikeman.com>
Sent: Monday, July 29, 2019 10:51 AM
To: Paplawski, Emily <EPaplawski@osler.com>
Cc: Shereen Botros <shereen.Botros@ranchenergy.ca>; Mark Horrox (mark@thirdeyecapital.com) <mark@thirdeyecapital.com>; Casey Howell (casey@thirdeyecapital.com) <casey@thirdeyecapital.com>
Subject: Re: Order (Language)

Hi Emily,

12 pm Calgary time works for a call. In addition to myself, the following will be attending for TEC: Mark Horrox, Casey Howell and Shereen Botros (copied on this email). Can I ask you to circulate a dial-in to everyone including your clients? Thanks.

Joseph Reynaud
Direct : +1 514 397 3019
Mobile : +1 514 261 4605
Email : jreynaud@stikeman.com

De : Paplawski, Emily <EPaplawski@osler.com>
Envoyé : lundi, juillet 29, 2019 10:27 a.m.

À : Joseph Reynaud

Objet : RE: Order (Language)

Joseph, does 12 pm (Calgary time) work for your client for a call to discuss costs?

OSLER

Emily Paplawski

Associate

403.260.7071 | EPaplawski@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Joseph Reynaud <JReynaud@stikeman.com>

Sent: Monday, July 29, 2019 8:06 AM

To: Paplawski, Emily <EPaplawski@osler.com>

Cc: Gurofsky, Robyn <RGurofsky@blg.com>

Subject: RE: Order (Language)

Emily,

Thank you for your note and the draft Letter. It helps clarify CNRL's position. I confirm that we have revised the material to add CNRL's security agreement registrations as Permitted Encumbrances, under both the Order and to the PSA, and to add your new paragraph 4 to the Order. A revised PSA will be filed this morning by the Receiver with a supplemental report and a modified form of order with a blackline will be sent to you shortly as well.

Regarding the Letter, our client believed it was clear that it would not be providing any firm covenant to CNRL with respect to its ability to sell or transfer Trinitaine. However, our client did confirm it was not performing a so-called "butterfly" transaction and that it was agreeable to putting the applicable Trinitaine executive team in touch with Mr. Harvey when he returns from vacation in early August to discuss any operational or commercial matters between our clients.

Regarding the payment obligations in s. 2(b) and s. 4 of the Letter, my clients would like to have a discussion with CNRL today or tomorrow to get a better understanding of the invoices/payments CNRL believes would be owing by Trinitaine. Let me know what is the best way to facilitate this and what timing looks like on your end, we can make time this morning.

Best regards,

Joseph Reynaud

Direct : +1 514 397 3019

Mobile : +1 514 261 4605

Email : jreynaud@stikeman.com

Stikeman Elliott

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De : Paplawski, Emily <EPaplawski@osler.com>

Envoyé : Sunday, July 28, 2019 3:45 PM

À : Gurofsky, Robyn <RGurofsky@blg.com>

Cc : Joseph Reynaud <JReynaud@stikeman.com>

Objet : RE: Order (Language)

Joseph and Robyn,

Further to the discussions last week between Jerry Harvey of Canadian Natural and Casey Howell of TEC, and between our offices, please find below Canadian Natural's proposed additions to the PSA and Approval and Vesting Order to address the continuation of Canadian Natural's operator's/processor's liens and the reservation of all Canadian Natural's rights as against Predator BC, Fireweed Energy and Highwood Oil in its ongoing litigation in ABQB Action No. 1801-09601.

Joseph – please also find attached a letter agreement for your clients' consideration detailing the proposed undertaking we discussed on Friday and clarifying the scope of the operator's/processor's liens as applying only to post-closing obligations and not to any outstanding amounts incurred pre-receivership. The only addition to the letter which we did not discuss on Friday is outlined at sub-paragraph #4 on page 2 of the letter in which Canadian Natural is seeking to provide some clarity to the definition of "Post-Closing Costs" in the PSA. While we wanted to send you the letter so as not to hold up your client's review and consideration of same, Canadian Natural is reviewing and seeking clarification regarding the "Additional PSA Assets" disclosed in the Affidavit filed by the BC OGC on Friday so may be in touch to discuss further once that review is complete. We look forward to hearing from you.

Proposed Revisions to Approval and Vesting Order

Section 3 of Approval and Vesting Order:

Subject to section 4 below, having been served with notice of the Application, to the extent the WIPS and NOWIPS have consent rights associated with the transfer of any of the Purchased Assets, the WIPS and NOWIPS are deemed to have consented to the Transaction.

New section 4 of Approval and Vesting Order:

Nothing in this Approval and Vesting Order or otherwise related to the Transaction including, but not limited to, the granting of consent by Canadian Natural Resources Limited and Canada Natural Resources, a General Partnership by its Managing Partner, Canadian Natural Resources Limited (together “Canadian Natural”) to same, shall act in any manner as a waiver of, or in any way be prejudicial to, Canadian Natural’s claim against Predator Oil BC Ltd., Fireweed Energy Ltd. or Highwood Oil Company Ltd. in Alberta Court of Queen’s Bench Action No 1801-09601 (the “Claim”) or constitute a granting of consent by Canadian Natural to the assignment of the Purported Assigned Interests (as that term is defined in the Claim) as between Ranch Energy Corporation, Predator Oil BC Ltd., Fireweed Energy Ltd. or Highwood Oil Company Ltd., as applicable.

Schedule “C” Permitted Encumbrances shall be amended to include the following:

All PPSA Security Agreement Registrations registered against Ranch Energy Corporation’s right, title and interest in and to the Purchased Assets by Canadian Natural in the British Columbia Personal Property Registry on or about October 22 – 25, 2018.

Proposed Revisions to Asset Purchase Agreement

Section 1.1(nn) (Definition of “Permitted Encumbrances”) of the Assets Purchase Agreement shall be amended to include the following:

- (i) All PPSA Security Agreement Registrations registered against Ranch’s right, title and interest in and to the Assets by Canadian Natural Resources Limited and/or and Canada Natural Resources, a General Partnership by its Managing Partner, Canadian Natural Resources Limited, in the British Columbia Personal Property Registry on or about October 22 – 25, 2018.

Regards,

OSLER

Emily Paplawski

Associate

403.260.7071 | EPaplawski@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Gurofsky, Robyn <RGurofsky@blg.com>

Sent: Sunday, July 28, 2019 11:16 AM

To: Paplawski, Emily <EPaplawski@osler.com>

Cc: Joseph Reynaud (JReynaud@stikeman.com) <JReynaud@stikeman.com>

Subject: RE: Order (Language)

Thanks Emily.

Robyn Gurofsky

Lawyer

T 403.232.9774 | RGurofsky@blg.com

Centennial Place, East Tower, 1900, 520 – 3rd Ave. SW, Calgary, AB, Canada T2P 0R3

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From: Paplawski, Emily <EPaplawski@osler.com>

Sent: July 28, 2019 10:49 AM

To: Gurofsky, Robyn <RGurofsky@blg.com>

Cc: Joseph Reynaud (JReynaud@stikeman.com) <JReynaud@stikeman.com>

Subject: RE: Order (Language)

I am just waiting for final sign off from Canadian Natural so I expect we will send you our proposed language within the hour.

OSLER

Emily Paplawski

Associate

403.260.7071 | EPaplawski@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Gurofsky, Robyn <RGurofsky@blg.com>

Sent: Sunday, July 28, 2019 10:48 AM

To: Paplawski, Emily <EPaplawski@osler.com>

Cc: Joseph Reynaud (JReynaud@stikeman.com) <JReynaud@stikeman.com>

Subject: Order (Language)

Emily, I understand are drafting proposed language for the order. Do you know when you'll be in a position to flip us your language?



Robyn Gurofsky

Lawyer

T 403.232.9774 | RGurofsky@blg.com

Centennial Place, East Tower, 1900, 520 – 3rd Ave. SW, Calgary, AB, Canada T2P 0R3

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This is **Exhibit "D"** to the Affidavit of Elena Pratt
sworn before me this 27th day of November 2024.

A handwritten signature in blue ink, consisting of a large, stylized initial 'L' followed by a long, sweeping horizontal line that ends in a small curve.

Notary Public/Commissioner for Oaths in and for Alberta
LAURA BRIANNE HARRIS
A Commissioner for Oaths
In and for Alberta
My Commission expires May 4, 2025

COURT FILE NUMBER 1801-09188
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF THIRD EYE CAPITAL CORPORATION



DEFENDANTS RANCH ENERGY CORPORATION,
OPSMOBIL INC., 1734163 ALBERTA INC., 1859821 ALBERTA INC.,
OPSMOBIL GROUP INC., OPSMOBIL CONSTRUCTION INC., OPSMOBIL ENERGY SERVICES INC., AIR DALLAIRE LTD., and K.L. CAPITAL CORP.

DOCUMENT APPROVAL AND VESTING ORDER (Sale by Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Josef G.A. Kruger, Q.C./ Robyn Gurofsky
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 232-9774 / (403) 232-9774
Facsimile: (403) 266-1395
Email: JKruger@blg.com/ RGurofsky@blg.com
File No. 413255.63

I hereby certify this to be a true copy of the original Order
Dated this 31 day of July 2019
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 29, 2019

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K. Horner

UPON THE APPLICATION (the “**Application**”) by Ernst and Young Inc. (“**EY**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertakings, property and assets of, among others, Ranch Energy Corporation (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Trinitaine Energy Inc. (the “**Purchaser**”) dated July 2, 2019 and appended to the Tenth Report of the Receiver dated July 19, 2019 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”);

AND UPON HAVING READ the Receivership Order dated July 19, 2018, as amended on August 7, 2018 (the “**Receivership Order**”), the Application appending the Service List and order sought, the Report, the Confidential Supplement to the Tenth Report of the Receiver dated July 19, 2019, the Brief of Law of the Receiver dated July 19, 2019, the Supplemental to the Tenth Report of the Receiver dated July 29, 2019 and the Affidavit of Service dated July 29, 2019;

AND UPON NOTING that the British Columbia Oil and Gas Commission’s (the “**BCOGC**”) position respecting the Application and this Order is the result of a negotiated arrangement which the BCOGC determined was appropriate in these particular and unique circumstances;

AND UPON HEARING the submissions of counsel for the Receiver, the Purchaser, and any other person on the service list in attendance at the hearing;

AND UPON BEING ADVISED that the Service List includes the working interest partners (“**WIPS**”) and the non-operating working interest partners (“**NOWIPS**”) associated with the Purchased Assets;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Debtor’s right, title and interest in and to the Purchased Assets to the Purchaser.
3. Having been served with notice of the Application, to the extent the WIPS and NOWIPS have consent rights associated with the transfer of any of the Purchased Assets, the WIPS and NOWIPS are deemed to have consented to the Transaction.

4. Nothing in this Approval and Vesting Order or otherwise related to the Transaction, including but not limited to, the granting of consent by Canadian Natural Resources Limited and Canada Natural Resources, a General Partnership by its Managing Partner, Canadian Natural Resources Limited (together, "**Canadian Natural**") to same, shall act in any manner as a waiver of, or in any way be prejudicial to, Canadian Natural's claim against Predator Oil BC Ltd., Fireweed Energy Ltd. or Highwood Oil Company Ltd. in Alberta Court of Queen's Bench Action No. 1801-09601 (the "**Claim**") or constitute a granting of consent by Canadian Natural to the assignment of the Purported Assigned Interests (as that term is defined in the Claim) as between Ranch Energy Corporation, Predator Oil BC Ltd., Fireweed Energy Ltd. or Highwood Oil Company Ltd., as applicable.
5. Pursuant to the Transaction, the Purchaser shall be assuming and, after closing the Transaction, responsible for satisfying all amounts constituting Post-Closing Payments (as such term is defined in the Sale Agreement) arising on or after the date of the Receivership Order. This Sale Approval and Vesting Order shall be without prejudice to the position of any claimant or the Purchaser regarding the validity and enforceability of any claim asserted as a Post-Closing Payment and whether such claim constitutes a Post-Closing Payment. Any disputes between a claimant and the Purchaser with respect to the validity and enforceability of a claim for any Post-Closing Payment shall be determined either by agreement of the claimant and the Purchaser or by Court order upon application by either the claimant or the Purchaser. For clarity, any application as aforesaid shall be made after closing the Transaction, on notice to the Receiver, although the Receiver's participation in such application or any settlement reached in respect thereof as between the claimant and the Purchaser, is not necessary.

PERMIT TRANSFERS BY PREDATOR OIL BC LTD.

6. Predator Oil B.C. Ltd. ("**Predator BC**") shall duly execute any documentation presented to it by the Receiver that is necessary, in the Receiver's sole discretion, to initiate the transfer application to the BCOGC with respect to those permits, leases and approvals associated with the Purchased Assets and regulated by the BCOGC (the "**PSA Permits**"), and shall further be obligated to take any other reasonable administrative steps or execute any further documentation reasonably necessary to complete the BCOGC transfer application with respect to the PSA Permits, and transfer the PSA Permits to the Purchaser pursuant to the BCOGC's regulatory, including permit transfer approval, process.

VESTING OF PROPERTY

7. Subject only to approval by the BCOGC of the transfer of any applicable licenses, permits and approvals pursuant to section 29 of the *Oil and Gas Activities Act* (British Columbia) and approval by a Government Authority (as defined below) of the transfer of any applicable agreement, license, permit, approval, certificate, lease or other instrument or authorization, upon delivery of a Receiver's certificate to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Closing Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets listed in the Sale Agreement shall vest absolutely in the name of the Purchaser, free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
- (a) any encumbrances or charges created by the Receivership Order;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
 - (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta)
- and for greater certainty, this Court orders that all Claims affecting or relating to the Purchased Assets, other than those permitted encumbrances, caveats, interests, easements and restrictive covenants listed in **Schedule "B"** (collectively, "**Permitted Encumbrances**") which shall remain registered, are hereby expunged, discharged and terminated as against the Purchased Assets
8. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey

to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of British Columbia Land Titles (“**Land Titles Registrar**”) for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
 - (i) cancel existing Certificates of Title as summarized in **Schedule “C”** (the “**Lands**”)
 - (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser, namely, Trinitaine Energy Inc.;
 - (iii) discharge and expunge any Claims, excluding Permitted Encumbrances, including those which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands;

- (b) The British Columbia Ministry of Energy, Mines and Petroleum Resources (“**Energy Ministry**”) shall and is hereby authorized, requested and directed to forthwith:
 - (i) cancel and discharge those Claims including builders’ liens, security notices, assignments under section 426 (formerly section 177) of the *Bank Act* (Canada) and other Encumbrances (but excluding Permitted Encumbrances) registered (whether before or after the date of this Order) against the estate or interest of the Debtor in and to any of the Purchased Assets located in the Province of British Columbia; and
 - (ii) transfer all Crown leases listed in **Schedule “D”** to this Order held by the Debtor or on behalf of the Debtor by Predator BC, to the Purchaser (or its nominee) free and clear of all Claims including Encumbrances but excluding Permitted Encumbrances;

- (c) the Registrar of the British Columbia Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the British Columbia Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.

- (d) the Registrar of the Alberta Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
9. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
10. No authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement, other than any required approval by the BCOGC or other Governmental Authority with statutory discretion over transfers and referenced in paragraph 8 above.
11. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.
12. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any

distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

13. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code* and section 97 of the British Columbia *Employment Standards Act*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.
14. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
15. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.
16. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
17. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

SEALING ORDER

18. The Confidential Supplement shall be sealed on the Court file, kept confidential, and shall not be available for public inspection until three months after the Receiver has filed the Receiver's Closing Certificate.

19. The Receiver is empowered and authorized, but not directed, to provide the Confidential Supplement (or any portion thereof or information contained therein) to any interest party, entity or person that the Receiver considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Receiver.
20. The Clerk of the Court shall file the Confidential Supplement in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS, BEING THE CONFIDENTIAL SUPPLEMENT TO THE RECEIVER'S TENTH REPORT DATED 19 (THE "**CONFIDENTIAL MATERIALS**") PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE MADAM JUSTICE K. HORNER ON JULY 29, 2019. THE CLERK OF THE COURT SHALL NOT RELEASE THE CONFIDENTIAL MATERIALS TO THE PUBLIC UNTIL THE THREE MONTHS AFTER THE RECEIVER HAS FILED A CLOSING CERTIFICATE CONFIRMING THAT THE TRANSACTION APPROVED PURSUANT TO THE JULY 29, 2019 ORDER HAS CLOSED.

MISCELLANEOUS MATTERS

21. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtor, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Debtor; and
 - (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

22. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

23. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

24. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Purchaser or the Purchaser's solicitors; and

(b) Posting a copy of this Order on the Receiver's website at:
www.documentcentre.eycan.com/

and service on any other person is hereby dispensed with.

25. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

"Karen Horner"

Justice of the Court of Queen's Bench of Alberta

TAB A

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER	1801-09188	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	THIRD EYE CAPITAL CORPORATION	
DEFENDANTS	RANCH ENERGY CORPORATION, OPSMOBIL INC., 1734163 ALBERTA INC., 1859821 ALBERTA INC., OPSMOBIL GROUP INC., OPSMOBIL CONSTRUCTION INC., OPSMOBIL ENERGY SERVICES INC., AIR DALLAIRE LTD., and K.L. CAPITAL CORP.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Josef G.A. Kruger, Q.C./ Robyn Gurofsky Borden Ladner Gervais LLP 1900, 520 3 rd Ave. S.W. Calgary, AB T2P 0R3 Telephone: (403) 232-9774 / (403) 232-9774 Facsimile: (403) 266-1395 Email: JKruger@blg.com / RGurofsky@blg.com File No. 413255.63	

RECITALS

- A. Pursuant to an Order of the Honourable Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated July 19, 2018, as amended on August 7, 2018, Ernst and Young Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property and assets of, *inter alia*, Ranch Energy Corporation (the "**Debtor**").
- B. Pursuant to an Order of the Court dated July 29, 2019 the Court approved the agreement of purchase and sale made as of July 2, 2019 (the "**Sale Agreement**") between the Receiver and Trinitaine Energy Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the

Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at [Time] on [Date].

**Ernst and Young Inc., in its capacity
as Receiver of the undertakings,
property and assets of Ranch Energy
Corporation, and not in its personal
capacity.**

Per: _____

Name:

Title:

TAB B

SCHEDULE "B"**PERMITTED ENCUMBRANCES***Alberta Personal Property Registry*

1. Registration Number 17071013336 dated July 10, 2017 by Third Eye Capital Corporation against Ranch Energy Corporation in "all present and after acquired personal property of the debtor".
2. Registration Number 17071013353 dated July 10, 2017 by Third Eye Capital Corporation against Ranch Energy Corporation as land charge.
3. Alberta Personal Property Registration Number 17102519206 dated October 25, 2017 by ATB Financial against Ranch Energy Corporation in "All monies deposited in segregated Cash GIC account Nos. 32465977500, 32466301200, 750-32754843500 and 750-33400899500.

British Columbia Personal Property Registry

4. British Columbia Personal Property Registration Number 122481K dated July 6, 2017 by Third Eye Capital Corporation against Ranch Energy Corporation in "ALLPAAP and uncrystallised floating charge".
5. British Columbia Personal Property Registration Number 128171K dated July 10, 2017 by Third Eye Capital Corporation against Ranch Energy Corporation in "ALLPAAP and uncrystallised floating charge".
6. All Personal Property Security Agreement Registrations registered against Ranch Energy Corporation's right, title and interest in and to the Purchased Assets by Canadian Natural Resources Limited and Canadian Natural Resources, a General Partnership by its Managing Partner, Canadian Natural Resources Limited between approximately October 22, 2018 to October 25, 2018, to secure post-closing obligations of the Purchaser.

British Columbia Land Titles Office

7. Claims of Lien filed on August 29, 2018 on behalf of Pioneer Engineering Inc. on account of work done for OpsMobil Group Inc. and registered (under registration numbers CA7032802 and CA7032803) against title to lands (and in the case of CA7032803 against a statutory right of way on title to such lands) legally described as: "That Part of Unsurveyed Crown Land within Peace River District Shown As Area 5 on Plan PGP47626" (PID 025-327-607).

British Columbia Ministry of Energy, Mines and Petroleum Resources

8. Registration Number E13012 by Third Eye Capital Corporation as against the Purchased Assets.

Miscellaneous

9. All encumbrances, overriding royalties and other royalties, net profits interests and other burdens listed in Schedule "C" hereto.
10. Preferential Purchase Rights (as defined in the Sale Agreement) or any similar restriction applicable to any of the Assets.

11. The terms and conditions of the Title Documents, including the requirement to pay any rentals or royalties (including reassessments) to the grantor thereof to maintain the Title Documents in good standing and any royalty or other burden reserved to the grantor thereof or any gross royalty trusts applicable to the grantor's interest in any of the Title Documents.
12. The right reserve to or vested in any grantor, Governmental Authority by the terms of any Title Document or by Applicable law to terminate any Title Document.
13. Easements, rights of way, servitudes or other similar rights in land, including rights of way and servitudes for highways, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone or cable television conduits, poles, wires or cables.
14. Taxes on Petroleum Substances or the income or revenue from the Petroleum Substances and requirements imposed by Applicable Law or Governmental Authorities concerning rates of production from the Wells or from operations on any of the Lands, or otherwise affecting recoverability of Petroleum Substances from the Lands, which taxes or requirements are generally applicable to the oil and gas industry in the jurisdiction in which the Assets are located.
15. Agreements for the sale, processing, transmission or transportation of Petroleum Substances, which are terminable on not more than 60 (sixty) days' notice (without an early termination penalty or other like cost).
16. Any obligation of Ranch or Vendor to hold any right or interest in and to any of the Assets in trust for a Third Party.
17. The right reserved to or vested in any Governmental Authority to control or regulate any of the Assets in any manner, including any directives or notices received from any Governmental Authority pertaining to the Assets.
18. Undetermined or inchoate liens incurred or created as security in favour of any Person with respect to the development or operation of any of the Assets, as regards Vendor's or Ranch's share of the costs and expenses thereof which are not due or delinquent as of the date hereof or, if then due or delinquent are being contested in good faith by Vendor or where, at the time of receivership, the same were being contested in good faith by Ranch.
19. The reservations, limitations, provisos and conditions in any grants or transfers from the Crown of any of the Lands or interests therein, and statutory exceptions to title.
20. Agreements and plans relating to pooling or unitization of any of the Petroleum and Natural Gas Rights.
21. Agreements respecting the operation of Wells by contract field operators.
22. Provisions for penalties and forfeitures under agreements as a consequence of non-participation in operations.
23. Liens created in the ordinary course of business in favour of any Governmental Authority with respect to operations pertaining to any of the Assets.