



COURT FILE NUMBER 1601-06765
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF ENDURANCE
ENERGY LTD.

DOCUMENT **APPLICATION (INTERIM DISTRIBUTION
AND TRANSITION ORDER)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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**Attention: Robert I. Thornton /
Leanne Williams / Rachel Bengino**

Client File No: 1751-001

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Monday, December 5, 2016
Time: 10:00 a.m.
Where: Calgary Courts Centre
601 5th Street S.W., Calgary, Alberta
Before Whom: The Honourable Mr. Justice LoVecchio

Go to the end of this document to see what else you can do and when you must do it.

This Application is being made by Endurance Energy Ltd. (the "**Applicant**").

Remedy claimed or sought:

1. An Order, substantially the form of the proposed Order, attached hereto as Schedule "A", *inter alia*:
 - (a) approving a further interim distribution to Canadian Imperial Bank of Commerce (the "**Agent**"), in its capacity as the Administrative Agent to a syndicate of lenders (collectively, the "**Lenders**") in the amount of \$25 million;
 - (b) discharging and extinguishing the Administration Charge;
 - (c) transitioning the process, if and when necessary, from being led by the Applicant to being led by the Monitor upon the filing of a certificate of the Monitor (the "**Monitor's Transition Certificate**"); and
 - (d) such further and other relief as counsel may request and this Honourable Court may deem appropriate in the circumstances.

Grounds for making this Application

2. The Applicant was granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order (which was subsequently amended and restated)(the "**Amended and Restated Initial Order**"); which *inter alia*, (i) appointed FTI Consulting Canada Inc. was appointed as monitor of the Applicant (the "**Monitor**"); (ii) granted certain charges, including the Administration Charge and the Directors' Charge (as defined in the Amended and Restated Initial Order); (iii); and (v) granted a stay of proceedings until June 29, 2016 (the "**Stay of Proceedings**"), which was extended by this Honourable Court until January 31, 2017 on November 21, 2016.

3. Also on May 30, 2016, this Court granted an Order approving a sale process in respect of the assets of the Applicant, which resulted in the successful completion of the sale of the Applicant's assets located in British Columbia, Alberta and Saskatchewan.

Interim Distribution

4. The Applicant is indebted to the Lenders under the terms of the credit agreement dated June 27, 2013, as amended and restated, amongst the Applicant and the Lenders (the "**Credit Agreement**").
5. Prior to the date of the Initial Order, the Applicant granted security for its obligations under the Credit Agreement, which were properly registered and perfected by the Lenders.
6. No creditor has claimed an interest over the Applicant's assets in priority to the Lenders.
7. Pursuant to the Order dated November 21, 2016, the Court directed an interim distribution to the Lenders in the amount of \$100 million.
8. The Applicant requests Court approval to make a further interim distribution to the Agent in the amount of \$25 million, which is to be distributed to the Lenders in partial satisfaction of the indebtedness owing to them by the Applicant.
9. The proposed interim distribution will leave a reserve sufficient to complete the finalization of the Applicant's estate and to deal with any claims arising from the Claims Procedure.

Transition of Powers

10. Subsequent to the closing of the sale of the Applicant's assets, the employees of the Applicant were terminated and the directors, with the exception of Mr. VanSickle, resigned. Certain employees of the Applicant have been rehired on a short-term basis to assist with finalizing the Applicant's estate. The Syndicate has requested that, when it is appropriate to do so, these proceedings be transitioned from being directed by the Applicant, to being directed by the Monitor, exercising enhanced powers in an effort to reduce costs.

Termination of Administration Charge

11. The parties secured by the Administration Charge, have determined that the charge is no longer required. The Monitor, the Monitor's counsel and the Applicant's counsel continue to maintain retainers as security for their fees in accordance with the Amended and Restated Initial Order.

Material or evidence to be relied on:

12. The pleadings and proceedings had and taken in this Action;
13. the Affidavit of Steven VanSickle sworn November 30, 2016;
14. the Tenth Report of the Monitor, to be filed; and
15. such further or other material or evidence as counsel may advise and this Court may permit.

Applicable Acts and Regulations:

16. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended; and

17. Such further and other Acts and Regulations as counsel may advise and this Court may permit.

Any irregularity complained of or objection relied on:

18. None.

How the application is proposed to be heard or considered:

19. In person before the Honourable Mr. Justice LoVecchio.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

PROPOSED FORM OF INTERIM DISTRIBUTION AND TRANSITION ORDER

CLERK'S STAMP

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**Attention: Robert I. Thornton /
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Client File No: 1751-001

DATE ON WHICH ORDER WAS PRONOUNCED: December 5, 2016

LOCATION OF HEARING OR TRIAL: Calgary Courts Centre

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice LoVecchio

UPON THE APPLICATION of Endurance Energy Ltd. ("**Endurance**") filed November 30, 2016 (the "**Application**"); **AND UPON** reading the pleadings and proceedings filed herein; **AND UPON** hearing the submissions of counsel for Endurance, and the other parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:**SERVICE**

1. Service of the Notice of Application for this Order is hereby validated and deemed good and sufficient, this application is properly returnable today, and no person other than those persons served is entitled to service of the Notice of Application.

DEFINITIONS AND INTERPRETATION

2. All capitalized terms not otherwise defined herein shall be as defined in the Affidavit of Steven VanSickle, sworn November 1, 2016, and that the following terms shall have the following meanings for the purpose of this Order:

- (a) **“Credit Facility”** means the senior secured credit facility pursuant to a credit facility agreement dated June 27, 2013 between Canadian Imperial Bank of Commerce, as Administrative Agent to the Lenders and Endurance, as amended from time to time;
- (b) **“Amended and Restated Initial Order”** means the Initial Order as amended and restated on June 21, 2016 in these CCAA Proceedings;
- (c) **“Lenders”** means the syndicate of lenders that granted the Credit Facility;
- (d) **“Monitor”** means FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor of Endurance; and

DISTRIBUTION

3. The Applicant is authorized, directed and empowered to make a distribution in the amount of \$25,000,000 to the Lenders in partial satisfaction of the amounts owing to the Lenders under the Credit Facility (the **“Lenders Distribution”**).

4. The Applicant is hereby authorized, directed and empowered to take any further steps that it deems necessary or desirable to complete the Lenders Distribution described in paragraph 3, above.

5. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Applicant,

the Lenders Distribution shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall they constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation, and shall, upon the receipt thereof by the Lenders be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicant.

EXTINGUISHMENT OF ADMINISTRATION CHARGE

6. The Administration Charge (as defined in the Amended and Restated Initial Order) is hereby discharged and extinguished. All of other provisions of the Amended and Restated Initial Order shall remain in full force and effect unamended.

TRANSITION PROVISIONS

7. Paragraphs 8 - 13 of this Order shall come into force and take effect upon the filing of a Monitor's Certificate confirming same (the "**Monitor's Transition Certificate**"). The Monitor shall have the authority and discretion to file the Monitor's Transition Certificate as and when the Monitor deems it appropriate to do so, and the Monitor shall provide timely notice of the filing of the Monitor's Transition Certificate to the Service List established in these proceedings. Paragraphs 8 - 13 of this Order shall be of no force and effect until the filing of the Monitor's Transition Certificate.

8. The expansion of the Monitor's powers in respect of the Applicant as set forth below is hereby authorized and approved, on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the Initial Order.

9. In addition to the powers and duties of the Monitor set out in the Amended and Restated Initial Order, without altering in any way the limitations and obligations of the Applicant as a result of these proceedings, the Monitor be and is hereby authorized and empowered to:

- (a) preserve, protect and maintain control of the Property, or any parts thereof;
- (b) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:
 - (i) retaining or terminating employees or contractors; and
 - (ii) administering and winding-down the estate of the Applicant and making and endorsing all filings related thereto (including, without limitation, tax returns and tax filings).
- (c) engage consultants, agents, experts, accountants and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (d) receive, collect and take possession of all monies and accounts now owed or hereafter owing to the Applicant;
- (e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of the Applicant (including, without limitation, tax returns and tax filings);
- (f) initiate, prosecute, make and respond to applications in, and continue the prosecution of any and all proceedings on behalf of or involving the Applicant (including the within proceedings) and settle or compromise any proceedings or claims by or against the Applicant. For greater certainty, such authority shall include the ability to represent the Applicant in any negotiations or mediation

with respect to such claims by or against the Applicant. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceedings;

- (g) exercise any rights which the Applicant may have;
- (h) provide instruction and direction to the advisors of the Applicant;
- (i) make any distribution or payments required under any Order in these proceedings;
- (j) assign the Applicant into bankruptcy or obtain a bankruptcy order against the Applicant. Nothing in this Order shall prevent the Monitor from acting as Trustee in Bankruptcy of the Applicant; and
- (k) to perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any other order of this Court.

10. No provision in this Order is intended to appoint the Monitor as an officer, director or employee of the Applicant or to create a fiduciary duty to any party including, without limitation, any creditor or shareholder of the Applicant. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of the Applicant and any distribution made to creditors of the Applicant will be deemed to have been made by the Applicant.

11. The Applicant and its current and former shareholders, officers, directors, agents and representatives shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court.

12. The Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, in any foreign jurisdiction, for the recognition of this Order and for assistance in carrying out the terms of this Order, including in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code, and to take such actions necessary or appropriate in furtherance of the recognition of these proceedings in any such jurisdiction.

13. The Monitor shall continue to have the benefit of all of the protections and priorities as set out in the Amended and Restated Initial Order and any such protections and priorities shall apply to the Monitor in fulfilling its duties under this Order or in carrying out the provisions of this Order.

MISCELLANEOUS

14. The Interim Distribution and Stay Extension Order dated November 21, 2016 be and is hereby amended such that the Stay of Proceedings is correctly extended to January 31, 2017.

15. This Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

16. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

17. Each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

J.C.Q.B.A. or Clerk of the Court