

COURT FILE NUMBER: 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

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

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF COALSPUR MINES (OPERATIONS)
LTD.

DOCUMENT: **AFFIDAVIT
(Sanction Order)**

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CONTACT
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AFFIDAVIT #8 OF MICHAEL BEYER

Sworn on January 10, 2022

I, Michael Beyer, of the Town of Highland Beach, in the State of Florida, **MAKE OATH AND
SAY THAT:**

I. INTRODUCTION

1. I am the Chief Executive Officer of Vista Energy Holdings LLC, the parent corporation of Coalspur Mines (Operations) Ltd. ("**Coalspur**"). As such, I have personal knowledge of the

facts and matters hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be true.

2. As is described below, I have sworn seven prior affidavits in these proceedings, which describe the events that led to Coalspur's initial filing under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA") and subsequent events, all of which are demonstrative of Coalspur's good faith. I swear this affidavit supplementary to the affidavits I previously swore in these proceedings.

3. On April 19 and 23, 2021 respectively, I swore an affidavit and a supplemental affidavit in support of an initial order (the "**Initial Order**") pursuant to the CCAA. On April 26, 2021 the Initial Order was granted by the Honourable Mr. Justice Mah.

4. On April 30, 2021, I swore a further affidavit in support of an amended and restated initial order (the "**Amended Initial Order**"), which was granted by the Honourable Justice Shelley on May 6, 2021. Among other things, the Amended Initial Order extended the stay period, initially set to expire on May 6, 2021, through to July 23, 2021 (the "**Stay Period**").

5. Over the next several months, I swore: (i) a third affidavit on June 10, 2021; (ii) a fourth affidavit on June 28, 2021; (iii) a fifth affidavit on July 14, 2021; and (iv) a sixth affidavit on August 23, 2021. These affidavits were sworn in support of various orders which were granted by this Court, namely: (i) the RBC Cash Collateral Order was granted on June 16, 2021 by the Honourable Justice B.E. Romaine; (ii) the Stay Extension and Critical Supplier Charge Order was granted on July 9, 2021 by the Honourable Justice B.E. Romaine; (iii) the Approval of Settlement and Increase in Interim Facility Order was granted on July 16, 2021 by the Honourable Justice B.E. Romaine (iv) the Claims Process Order was granted on August 9, 2021

by the Honourable Justice K. D. Yamauchi, and (v) a Stay Extension Order (extending the Stay Period through to December 15, 2021) was granted on August 30, 2021 by the Honourable Madam Justice Eidsvik.

6. On November 29, 2021, I swore a seventh affidavit (the “**Seventh Affidavit**”) in support of an application for, among other things: (1) a Creditors’ Virtual Meeting Order (the “**Meeting Order**”) accepting for filing Coalspur’s Plan of Compromise and Arrangement, dated November 29, 2021 (which was subsequently amended in accordance with its terms on January 5, 2022) (the “**CCAA Plan**”) and authorizing Coalspur to call and hold a virtual meeting of its creditors to vote on the CCAA Plan (the “**Creditor Meeting**”); and (2) a Stay Extension Order, which extended the Stay Period up to and including January 31, 2022. The orders sought were granted by the Honourable Mr. Justice K. Feth on December 7, 2021.

7. All capitalized terms used but not defined herein take their meaning from the CCAA Plan and my affidavits previously sworn in these proceedings.

8. This Eighth Affidavit is sworn in support of an application (“**Application**”) for an Order (the “**Sanction Order**”), which seeks, among other things, to:

- a. abridge the time for service of the Application and supporting documents and declares service to be good and sufficient, if necessary;
- b. declare that the Creditor Meeting held on January 6, 2022 was duly convened and held in accordance with the CCAA and the Meeting Order; and
- c. sanction and approve of the CCAA Plan and grant the various ancillary relief requested in the Sanction Order.

II. UPDATE ON THE CCAA PROCEEDINGS

9. Coalspur has been working diligently, in good faith, and in close consultation with the Monitor and its principal stakeholders to advance these proceedings in a timely manner for the benefit of all stakeholders.

10. Since November 29, 2021, when Coalspur filed its materials in support of the Orders sought and obtained on December 7, 2021, Coalspur, among other things:

- a. continued to work with the Monitor to administer the claims process in accordance with the Claims Process Order;
- b. engaged in negotiations with various third parties regarding business issues between them and Coalspur;
- c. continued to engage with suppliers, stakeholders, and creditors of Coalspur regarding these proceedings, the CCAA Plan, the Creditor Meeting, proofs of claim, the status of the various parties' accounts, and the supply of goods and services during these proceedings;
- d. worked with the Monitor to finalize arrangements for the Creditor Meeting; and
- e. operated its business in the normal course with a view to maximizing the value of Coalspur for all stakeholders.

III. SANCTION OF CCAA PLAN

11. The Meeting Order authorized Coalspur to, among other things: (a) call, hold and conduct the Creditor Meeting for the General Unsecured Creditors to vote on and, if deemed

appropriate, approve the CCAA Plan, and (b) approved the procedures to be followed with respect to the Creditor Meeting.

12. On January 6, 2022, the Creditor Meeting was held virtually by Zoom video link and conference line, following the procedures set out in the Meeting Order. At the Creditor Meeting the CCAA Plan was approved unanimously by all creditors present at the Creditor Meeting in person or by proxy.

13. In my Seventh Affidavit, I provided a detailed summary of the main terms and conditions of the CCAA Plan, and appended a copy of the CCAA Plan at Exhibit "A" thereto (prior to the amendment to the CCAA Plan which was made on January 5, 2022). A copy of the CCAA Plan (with the amendment which was made on January 5, 2022) is attached as Schedule "A" to the proposed form of Sanction Order which is attached to the Application.

14. The key elements of the CCAA Plan provide, among other things, for the following:

- a. the operations of Coalspur will continue as normal and without disruption following the implementation of the CCAA Plan;
- b. all Unaffected Claims will continue and will not be compromised, released, discharged or otherwise affected by the CCAA Plan. Such Unaffected Claims include the Claims secured by CCAA Charges, the Claims held by CTC, the Komatsu Claim, the Caterpillar Claim, the Tanager Claim, the RBC Claim, Claims in respect of Regulatory Obligations, Post-Filing Ordinary Course Payables Claims, Municipal Property Tax Claims (except to the extent any such Claims constitute an Unsecured Municipal Property Tax Claim), and Claims

which have been filed and preserved in accordance with the Claims Process Order that cannot be compromised due to provisions of the CCAA;

- c. all Accepted Secured Claims will be paid in full;
- d. the General Unsecured Creditors will be paid in respect of their Accepted Claims, as specified in the CCAA Plan. The CCAA Plan contemplates payment to General Unsecured Creditors of between 50% and 100% of their General Unsecured Creditor Claims depending on a number of factors (including which option is selected by the creditor);
- e. Equity Claims are not entitled to receive any distributions under the CCAA Plan and all Equity Claims (other than those held by CTC and VEH) and D&O Indemnity Claims that are based on Equity Claims will be fully and finally compromised, discharged and extinguished;
- f. The broad release of the Released Parties from the Released Claims, as specified in CCAA Plan but consistently with the restrictions imposed on such releases by the CCAA and Section 10.4 of the CCAA Plan.

15. Section 8.2 of the CCAA Plan sets out various conditions precedent which must be satisfied prior to the implementation of the CCAA Plan, including that:

- a. the CCAA Plan shall have been approved by the Required Majority;
- b. the Sanction Order shall have been granted by this Court in a form acceptable to Coalspur and the Monitor, which Sanction Order shall be in full force and effect and not reversed, stayed, varied, modified or amended;

- c. the CTC ARCA and all related agreements and other documents contemplated thereunder shall be in form and substance acceptable to Coalspur, CTC and the other parties thereto, each acting reasonably, and shall have been executed by the parties and become effective, subject only to the implementation of the CCAA Plan;
- d. the Monitor shall have received from Coalspur the funds needed to establish and shall have established the Plan Implementation Fund;
- e. no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the compromises, arrangements, releases and the transactions, including the Restructuring Transactions, contemplated by this Plan, and no proceedings therefor shall have been commenced before any court or governmental or regulatory authority;
- f. all necessary corporate action and proceedings of Coalspur shall have been taken to approve this Plan and to enable Coalspur to execute, deliver and perform its obligations under the agreements, documents and other instruments to be executed and delivered by it pursuant to the CCAA Plan; and
- g. all agreements, resolutions, documents and other instruments, which are reasonably necessary to be executed and delivered by Coalspur, in order to implement this Plan or perform Coalspur's obligations under the CCAA Plan or the Sanction Order, shall have been executed and delivered.

16. Coalspur and CTC have completed the negotiation of, and are working toward the anticipated closing of, the CTC ARCA. Amongst other things, the CTC ARCA will extend the

maturity of approximately CAD \$370 million owing from Coalspur to CTC from December 31, 2021 to December 31, 2023. Coalspur and CTC are working towards closing the CTC ARCA, and ensuring all other conditions precedent under the CCAA Plan are satisfied, concurrent with the hearing of the application for the Sanction Order.

17. The releases in favour of the Released Parties as described in paragraph 15(f) above as well as paragraphs 33 to 37 of my Seventh Affidavit, are necessary to bring finality to this CCAA proceeding. All of the parties being released worked diligently and made significant contributions to Coalspur's restructuring efforts, resulting in the CCAA Plan. These efforts include those of the Directors and Officers, who have overseen, directed and developed potential restructuring options and have dedicated significant time and resources prior to and since the Filing Date to achieve a successful restructuring outcome for Coalspur. Similarly, the Officers have invested significant time and effort into advancing the restructuring and maximizing the value of the Coalspur's business. These efforts have resulted in the execution and approval of the CCAA Plan by the Required Majority. If the CCAA Plan is Sanctioned by this Court, Coalspur's going concern value will be preserved for the benefit of its stakeholders.

18. The releases are intended to protect those who contributed to the CCAA Plan from liability and will assist Coalspur in implementing the CCAA Plan. The releases are seen as critical aspects of the CCAA Plan by the Released Parties. As indicated in my Seventh Affidavit, the releases provided in the CCAA Plan contain several exceptions, including that the releases do not release or discharge the Directors from Claims that have been filed and preserved in accordance with the Claims Procedure Order that cannot be compromised due to the provisions of section 5.1(2) of the CCAA. (Although I am advised by the Monitor that no claims against

Directors and Officers have been filed pursuant to the Claims Process Order, and Coalspur is not aware of any such claims.)

19. Schedule “C” to the proposed form of Sanction Order are builders’ liens registered with Alberta Energy against Coalspur’s Crown mineral interests by various pre-filing creditors, whose claims underlying those builders’ liens have been settled, compromised, and released by the CCAA Plan. Accordingly, those builders’ liens should be discharged as part of implementation of the CCAA Plan. Similarly, Schedule “D” to the proposed form of Sanction Order are registrations in the Alberta Personal Property Registry against Coalspur’s personal property by various pre-filing creditors whose claims underlying these registrations have been settled, compromised and released by the CCAA Plan. Accordingly, those registrations should be similarly discharged as part of implementation of the CCAA Plan. Finally, Schedule “E” to the proposed form of Sanction Order are builders’ liens registered in the Land Titles Office by a pre-filing creditor against Coalspur’s surface interests, whose claims underlying those builders’ liens have been settled, compromised and released by the CCAA Plan. Accordingly, those builders’ liens should be discharged as part of implementation of the CCAA Plan.

20. If sanctioned and implemented, the CCAA Plan will permit Coalspur to emerge from CCAA protection as a going concern, having preserved its business and the jobs of employees and contractors, maintained critical relationships with regulators and other business-critical stakeholders, and ensured Coalspur’s long-term viability, while maximizing the value to Coalspur’s creditors and achieving a recovery for unsecured creditors in excess of what would be achieved in a liquidation scenario. For clarity, the Monitor has concluded that the recoveries offered in the Plan are, among other things, expected to be greater for General Unsecured Creditors than would likely be received in an alternative liquidation scenario.

21. I am advised by the Monitor and believe that the Monitor has duly served all of the necessary notices and meeting materials to Coalspur's creditors in accordance with the CCAA Plan and as required by paragraphs 7 and 8 of the Meeting Order.

IV. TERMINATION AND DISCHARGE, and RESTRICTED COURT ACCESS ORDER EXTENSION

22. Assuming the Sanction Order is granted by this Honourable Court, it is anticipated that the CCAA Plan will be implemented shortly thereafter. The CCAA Plan contemplates that the Monitor will make the required distributions to the General Unsecured Creditor Class within five days of the satisfaction of conditions precedent to the CCAA Plan, one of which is the granting of the Sanction Order. Accordingly, Coalspur, in consultation with the Monitor, has developed a two-stage process (the "**Termination and Discharge Process**") for Coalspur to swiftly and efficiently exit these CCAA Proceedings, and subsequently for the Monitor to be discharged.

23. The process being proposed is as follows:

- a. Upon the completion of the Restructuring Transactions under the CCAA Plan, including payment of amounts required to be distributed by the Monitor in accordance with section 7.1(a)(iii) of the CCAA Plan, the Monitor would file a certificate (the "**CCAA Termination Certificate**") certifying as to the completion of these matters;
- b. Pursuant to the order being sought from this Court, the within CCAA proceedings shall be declared to have been concluded and terminated upon the Monitor filing the CCAA Termination Certificate with this Court;

- c. Thereafter the Monitor shall be required to provide a copy of the CCAA Termination Certificate to Coalspur, and to post same on its website and on CaseLines.

24. The conclusion and termination of these CCAA proceedings as against Coalspur shall not affect the Monitor's appointment as Monitor or its remaining incidental and administrative duties. Once those duties have been completed, the Monitor shall file a second certificate (the "**Monitor's Discharge Certificate**") certifying as to the completion of these matters, at which time the Monitor shall be discharged as Monitor.

25. This proposed Termination and Discharge Process will allow for Coalspur's swift and efficient exit from these CCAA proceedings without the delay, cost, administrative burden, and imposition on Court resources associated with having to bring a separate application to ensure that these CCAA proceedings are terminated as against Coalspur. Moreover, it is critically important to Coalspur's business moving forward (as well as to its major stakeholders) that Coalspur is able to exit these CCAA proceedings as quickly as possible after the implementation of the CCAA Plan.

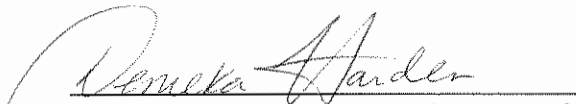
26. I am advised by Coalspur's counsel and do believe that on December 7, 2021 Mr. Justice Feth granted an Interim Restricted Court Access Order in respect of Confidential Exhibit "B" to my Seventh Affidavit, with leave to apply for an extension of the sealing of Confidential Exhibit "B" beyond January 13, 2022 to be heard by this Court on January 13, 2022. The interim nature of Mr. Justice Feth's Order was a result of the fact that the required Notice to the Media of the application for the Restricted Court Access Order on December 7, 2021 was only provided on December 6, 2021. I am advised by Coalspur's counsel and do believe that the required Notice

to Media in respect of the January 13, 2022 application for the continuation of the sealing of Confidential Exhibit "B" was provided on December 8, 2021.

V. CONCLUSION

27. I swear this Affidavit in support of an application for the Sanction Order and other associated relief, and for no improper purpose.

SWORN BEFORE ME at the city of
Palm Beach Gardens, in the State of Florida, on
January 10th, 2022.


A Notary Public in and for the State of Florida


MICHAEL BAYER

