

**ENTERED**

602090



COURT FILE NUMBER: 2101-05019

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

COM  
June 16, 2021  
Justice Romaine

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

DOCUMENT: **AFFIDAVIT #3 OF MICHAEL BEYER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**OSLER, HOSKIN & HARCOURT LLP**  
Barristers & Solicitors  
Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
File Number: 1217428

**AFFIDAVIT #3 OF MICHAEL BEYER**

**SWORN JUNE 10, 2021**

I, Michael Beyer, of the City of Palm Beach Gardens, in the State of Florida, **MAKE  
OATH AND SAY THAT:**

1. I am the Chief Executive Officer ("CEO") of Vista Energy Holdings LLC ("VE Holdings"), the parent corporation of Coalspur Mines (Operations) Ltd. ("Coalspur"). I have been CEO of VE Holdings and a related company, Vista Energy Resources LLC ("VE Resources"), since February 2019. As CEO of VE Holdings, I am responsible for overseeing, among other things, all coal mining operations of Coalspur and other subsidiaries of VE Holdings. Prior to my roles at VE Holdings and VE Resources, I served as President and CEO of Foresight Energy Inc, an Illinois Basin coal producer, and as President of American Electric Power Coal Inc, a Columbus,

A handwritten signature in black ink, appearing to be "MB".

Ohio based coal producer. I have held both finance and engineering positions related to the mining industry at PNC Bank and BethEnergy. I hold a Bachelor of Science in mining engineering from Pennsylvania State University, and a Master of Business Administration from Duquesne University.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where such matters are stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I have consulted with Coalspur's management team and advisors and reviewed relevant documents and information concerning Coalspur's operations, financial affairs and restructuring activities.

3. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Amended and Restated Initial Order of the Honourable Madam Justice Shelley, granted May 6, 2021 (the "**Amended Initial Order**").

4. I swear this Affidavit in support of an application by Coalspur for order:

- (a) authorizing the Applicant to provide cash collateral to Royal Bank of Canada ("**RBC**") in the amount of CAD \$200,000 (or such other amount as may be required by the Royal Bank of Canada and as may be approved by the Monitor) (the "**Authorized Cash Collateral**"), and to grant RBC a security interest in such Authorized Cash Collateral, and, with the Monitor's consent, execute such documents as may be required in connection therewith, with respect to obligations incurred after the date of the Order under various corporate credit cards to be provided by RBC to the Applicants for use by the Applicants in the normal course of business;

- (b) sealing the Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2021 (the “**Confidential Swartz Affidavit**”), as well as the transcript of any cross-examination thereon, any exhibit thereto, or any answer given or document produced in response to a cross-examination question or undertaking where such information or documentation is subject to third party confidentiality obligations or which is, or contains confidential financial, business strategy or other commercially sensitive information or proprietary information not otherwise known or available to the public (collectively, the “**Confidential Evidence**”), on the Court file; and
- (c) such further and other relief as counsel may request and this Honourable Court may grant.

**A. Posting of Cash Collateral in Favour of RBC**

5. Prior to the Filing Date, U.S. Bank National Association through its Canadian branch (“**U.S. Bank**”) provided corporate credit card services to Coalspur in accordance with the terms of a Commercial Credit Application, dated January 14, 2011 between Coalspur and U.S. Bank (the “**Credit Card Agreement**”). All obligations of Coalspur under the Credit Card Agreement were secured by a letter of credit (the “**TD LC**”) granted by Toronto-Dominion Bank (“**TD Bank**”) posted in favour of U.S. Bank in the amount of CAD \$210,000. The TD LC, in turn, is secured by cash in the amount of CAD \$210,000 which is being held by the TD Bank as collateral for the TD LC.

6. On May 14, 2021, U.S. Bank provided notice to Coalspur that it was terminating the Credit Card Agreement because of Coalspur’s filing for protection under the CCAA, and advising that Coalspur was no longer permitted to use the credit cards or make charges on the account (the “**Termination Notice**”). A copy of the Termination Notice is attached as **Exhibit “A”** hereto.

7. Since receipt of the Termination Notice, U.S. Bank advised Coalspur that it intended to draw approximately CAD \$70,000 on the TD LC to repay Coalspur's unpaid balance on the credit cards as at the date of termination. Coalspur and U.S. Bank have engaged, and continue to engage, in discussions regarding release of the undrawn portion of the TD LC. A release of the undrawn portion of the TD LC will also result in a release of the balance of the cash collateral being held by TD Bank.

8. Coalspur requires access to credit cards in order to conduct its business in the normal course. Accordingly, following receipt of the Termination Notice, Coalspur contacted RBC to canvass its willingness to provide corporate credit cards to Coalspur. RBC confirmed that it was willing to provide Coalspur with replacement corporate credit cards having an aggregate limit of CAD \$200,000, but requires that -- similar to U.S. Bank -- Coalspur post cash collateral, and grant RBC a security interest in such cash collateral, equal in value to the aggregate credit card limits.

9. Coalspur is accordingly seeking this Court's authorization for Coalspur to provide the Authorized Cash Collateral to RBC, and to grant RBC a security interest in the Authorized Cash Collateral, and, with the Monitor's consent, execute such documents as may be required in connection therewith.

**B. Restricted Court Access Order**

10. The Confidential Swartz Affidavit contains and appends confidential information relating to Coalspur's business, finances, operations, and other matters which, if disclosed or made public, would cause serious and irreparable harm to the commercial interests of Coalspur, various of its key counterparties, and impact Coalspur's ongoing ability to negotiate with vendors and conduct ongoing commercial operations.

MP

11. In addition, the Confidential Swartz Affidavit contains and appends highly confidential, commercially sensitive information that is subject to third party confidentiality obligations pursuant to an Amended and Restated Shipping Agreement, dated May 19, 2021 (the “**Westshore Agreement**”) between Coalspur and Westshore Terminals Limited Partnership (“**Westshore**”), and a CN Confidential Transportation Master Agreement No. 551105-AA 0000, effective as of January 1, 2019 (the “**CN Agreement**”) between Coalspur and Canadian National Railway Company (“**CN**”). Such confidential information included, but is not limited to, pricing, rates, penalty rights and remedies, volume requirements, and other confidential and commercially sensitive terms unique to the Westshore Agreement and the CN Agreement. Disclosure of such confidential and commercially sensitive information could materially harm the interests of both Coalspur, Westshore, and CN if disclosed or made public.

12. Disclosure of the Westshore Agreement and/or the CN Agreement without the prior consent of Westshore or CN, as applicable, would constitute a breach of the Westshore Agreement and the CN Agreement. A Restricted Court Access Order generally in the form sought by Coalspur furthers the general commercial interest of preserving confidential information.

13. At all relevant times, Coalspur has consistently treated the Westshore Agreement and the CN Agreement as confidential. I understand that both Westshore and CN have also consistently treated their respective agreements as confidential. The information contained in the Confidential Swartz Affidavit, including the terms of the Westshore Agreement and the CN Agreement, would be of interest to competitors of Coalspur, Westshore and CN. Information regarding the rates, pricing, volume requirements, penalties and other information detailed in the Confidential Swartz Affidavit, if disclosed, would permit competitors of Coalspur, CN and Westshore to gain an unfair competitive advantage.

14. There are no other reasonable alternatives to a Restricted Court Access Order. Both Westshore and CN have required the granting of a Restricted Court Access Order as a condition of agreeing to permit Coalspur to make certain limited disclosure of the Westshore Agreement, the CN Agreement and the other information and documentation comprising “Confidential Evidence” within these proceedings. A Restricted Court Access Order is necessary to prevent the Confidential Evidence from forming part of the public record or otherwise being published and disclosed.

15. The deponent was not physically present before the commissioner, but was linked with the commissioner utilizing video technology and the process described in the *Notice to the Profession and Public: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic* was utilized.

**SWORN BEFORE ME** at the City of Calgary, in the Province of Alberta, this 10<sup>th</sup> day of June, 2021.

\_\_\_\_\_  
Commissioner for Oaths in and for the Province of Alberta

  
\_\_\_\_\_  
Michael Beyer



This is **Exhibit "A"** to the Affidavit of Michael Beyer  
sworn before me this 10<sup>th</sup> day of June 2021.

---

Notary Public/Commissioner for Oaths in and for Alberta

*MJB*





Corporate Payment & Treasury Solutions  
120 Adelaide Street West  
Suite 2300  
Toronto, Ontario, M5H1T1

usbank.com

May 14, 2021

VIA ELECTRONIC MAIL, READ RECEIPT REQUESTED

Coalspur Mines (Operations) Ltd.  
550 11<sup>th</sup> Ave SW, Suite 880  
Calgary, AB T2R 1M7  
Attn: Controller

**RE: TERMINATION NOTICE**

Dear Readers:

Reference is hereby made to the Commercial Card Application dated January 14, 2011 between Coalspur Mines (Operations) Ltd. ("**Company**") and U.S. Bank National Association operating through its Canada branch ("**U.S. Bank**") as may be amended (collectively, the "**Agreement**"). Capitalized terms used in this letter but not defined in this letter have the same meaning as in the Agreement.

U.S. Bank hereby provides Company notice of termination of the Agreement, with the result being that the Agreement shall terminate immediately. As of the date of this letter, Company will no longer be able to use the cards or otherwise make charges on the accounts. Notwithstanding the termination of the Agreement, all obligations and rights which survive termination of the Agreement shall continue, including Company's obligation to pay any outstanding amounts owing to U.S. Bank. All of U.S. Bank's rights and remedies under the Agreement are reserved.

If you have questions regarding this communication, please do not hesitate to contact Donna Johnston at 416-427-6323 or donna.johnston@usbank.com.

Sincerely,

E-SIGNED by Brad W. Hoffelt  
on 2021-05-17 15:40:05 GMT

Brad W. Hoffelt, Senior Vice President

CC: CPS Contract Manager



COURT FILE NUMBER: 2101-05019

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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**OSLER, HOSKIN & HARCOURT LLP**

Barristers & Solicitors  
Brookfield Place, Suite 2700  
225 6 Ave SW  
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski  
Telephone: (403) 260-7000  
Facsimile: (403) 260-7024  
Email: [RVandemosselaer@osler.com](mailto:RVandemosselaer@osler.com) / [EPaplawski@osler.com](mailto:EPaplawski@osler.com)  
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**SWORN JUNE 10, 2021**

I, Michael Beyer, of the City of Palm Beach Gardens, in the State of Florida, **MAKE  
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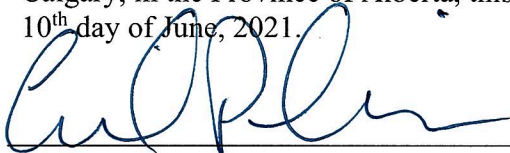
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**SWORN BEFORE ME** at the City of  
Calgary, in the Province of Alberta, this  
10<sup>th</sup> day of June, 2021.



Commissioner for Oaths in and for the  
Province of Alberta

**EMILY E. PAPLAWSKI**  
Barrister & Solicitor

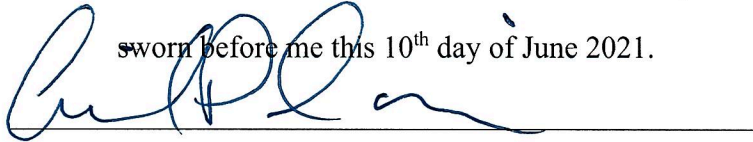
---

Michael Beyer



This is **Exhibit "A"** to the Affidavit of Michael Beyer

sworn before me this 10<sup>th</sup> day of June 2021.

A handwritten signature in blue ink, appearing to read 'Emily E. Paplawski', is written over a solid horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

EMILY E. PAPLAWSKI  
Barrister & Solicitor





Corporate Payment & Treasury Solutions  
120 Adelaide Street West  
Suite 2300  
Toronto, Ontario, M5H1T1

usbank.com

May 14, 2021

VIA ELECTRONIC MAIL, READ RECEIPT REQUESTED

Coalspur Mines (Operations) Ltd.  
550 11<sup>th</sup> Ave SW, Suite 880  
Calgary, AB T2R 1M7  
Attn: Controller

**RE: TERMINATION NOTICE**

Dear Readers:

Reference is hereby made to the Commercial Card Application dated January 14, 2011 between Coalspur Mines (Operations) Ltd. ("**Company**") and U.S. Bank National Association operating through its Canada branch ("**U.S. Bank**") as may be amended (collectively, the "**Agreement**"). Capitalized terms used in this letter but not defined in this letter have the same meaning as in the Agreement.

U.S. Bank hereby provides Company notice of termination of the Agreement, with the result being that the Agreement shall terminate immediately. As of the date of this letter, Company will no longer be able to use the cards or otherwise make charges on the accounts. Notwithstanding the termination of the Agreement, all obligations and rights which survive termination of the Agreement shall continue, including Company's obligation to pay any outstanding amounts owing to U.S. Bank. All of U.S. Bank's rights and remedies under the Agreement are reserved.

If you have questions regarding this communication, please do not hesitate to contact Donna Johnston at 416-427-6323 or donna.johnston@usbank.com.

Sincerely,

E-SIGNED by Brad W. Hoffelt  
on 2021-05-17 15:40:05 GMT

Brad W. Hoffelt, Senior Vice President

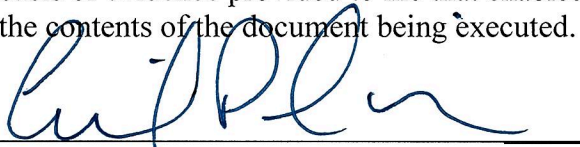
CC: CPS Contract Manager

ef

## Certificate of Execution

1. I, Emily Paplawski, being a Commissioner for Oaths in and for the Province of Alberta:
  - a. witnessed the signature of Michael Beyer named in the attached Affidavit, in a single session during which I was able at all times to see and hear the person swearing the Affidavit by two-way videoconferencing;
  - b. saw Michael Beyer, who, on the basis of the government-issued photo identification shown to me, I reasonably believe to be the person named in the Affidavit, duly sign and execute the Affidavit;
  - c. am reasonably satisfied that this process was necessary because it was impossible or unsafe, for medical reasons, for Michael Beyer and I to be physically present together; and
  - d. have complied with the requirements established by the Law Society of Alberta with respect to this type of witnessing in effect at the date of the Affidavit.
2. The Affidavit was signed at the Town of Hinton, in the Province of Alberta, and I am the subscribing witness thereto.
3. I believe that the person whose signature I witnessed is at least eighteen (18) years of age.
4. I am executing this document separate and apart from any other person.

SWORN BEFORE ME, a Commissioner for Oaths in and for the Province of Alberta, at the City of Calgary, in the Province of Alberta, by two-way videoconferencing with the deponent, who was at the Town of Hinton, in the Province of Alberta this 10<sup>th</sup> day of June, 2021, on the basis of evidence provided to me that enabled me to verify the deponent's identity and confirm the contents of the document being executed.



A Commissioner for Oaths in and for Alberta