



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, RSC 1985, c-36, AS AMENDED AND IN
THE MATTER OF ENDURANCE ENERGY LTD.

DOCUMENT: **APPLICATION ORDER (FINAL DISTRIBUTION,
TERMINATION OF PROCEEDINGS AND DISCHARGE OF
MONITOR)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

BENNETT JONES LLP

Barristers and Solicitors

4500 Bankers Hall East

855-2nd Street SW

Calgary, Alberta T2P 4K7

Attention: Chris Simard

Telephone No.: 403-298-4485

Fax No.: 403-265-7219

Client File No.: 76142.2

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: July 4, 2017
Time: 3:00 p.m.
Where: Calgary Courts Centre
601 – 5th Street S.W., Calgary, Alberta
Before Whom: Madame Justice Romaine, on the Commercial List

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 FTI Consulting Canada Inc., the Court-appointed Monitor
(the "**Applicant**" or the "**Monitor**") of Endurance Energy Ltd. ("**Endurance**").

REMEDIES CLAIMED OR SOUGHT

Service

1. An Order abridging service and declaring that service of this Application on the service list is valid and deemed good and sufficient.

Final Order

2. An Order, in substantially the form of the proposed Order attached hereto as **Schedule "A"**:

- (a) authorizing, directing and empowering the Monitor to forthwith make the Final Distribution (as defined in the Twelfth Report of the Monitor, hereinafter the **"Twelfth Report"**) to the Lenders in partial satisfaction of the amounts owing to the Lenders under the Credit Facility;
- (b) approving the Monitor's Fees and the Monitor's Counsel's Fees (as defined in the Twelfth Report);
- (c) approving the conduct of the Monitor during these proceedings;
- (d) upon the filing of a Monitor's Termination Certificate (as defined in the Twelfth Report) terminating these proceedings and discharging the Monitor; and
- (e) such further and other relief as counsel requests and this Honourable Court may deem just in all of the circumstances.

GROUND FOR MAKING THIS APPLICATION

Introduction

3. On May 30, 2016, Endurance Energy Ltd., commenced an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the **"CCAA"**), as amended and was granted an Initial Order. The Initial Order, amended and restated, was granted on June 15, 2016.

Previous Extension of the Stay Period

4. The Stay Period has been extended from time to time. Most recently, on January 31, 2017, the Honourable Madame Justice Horner extended the Stay Period up to and including June 30, 2017.

5. Endurance no longer has any active business operations. As previously reported to this Court, the Court approved the sale of substantially all of Endurance's assets and the sale was completed on or about October 26, 2016.

6. On November 21, 2016, the Court approved an interim distribution to the Lenders of \$100 million. On December 5, 2016, the Court approved a second interim distribution to the Lenders of \$25 million. On January 31, 2017, the Court approved a third interim distribution of \$5 million plus the entire D&O Claims Holdback to the Lenders. All interim distributions have been made, in partial repayment of the debt owed by Endurance to the Lenders. The Lenders are still owed amounts far in excess of the distributions made to date and the amounts remaining with the Monitor. The primary tasks that remain to be completed in the administration of Endurance's affairs are the final winding up of the affairs of Endurance, a final distribution or distributions to the Lenders, and the termination of these CCAA proceedings and discharge of the Monitor in order that Endurance may be assigned into bankruptcy.

Final Distribution

7. Endurance 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**"). The Lenders have valid first-priority security over the assets of Endurance.

8. The Monitor proposes a final distribution to the Lenders, in the approximate amount of \$1.9 million. Upon this final distribution, the Lenders will still be owed approximately \$61,500,000.00. Consequently, and notwithstanding the GST arrears owing to Revenue Canada, no other creditors will receive a distribution during these proceedings.

Termination of CCAA Proceedings

9. Upon the completion of the events described above, all necessary steps in these CCAA proceedings will be completed. Upon the filing and service of the Monitor's Termination Certificate, the Monitor requests that these CCAA proceedings be terminated (the "**Termination**") in order that Endurance may be assigned into bankruptcy under the *Bankruptcy and Insolvency Act* (Canada).

Discharge of the Monitor

10. Upon the Monitor filing and serving a Monitor's Certificate, the Monitor requests that it be discharged as the Monitor of Endurance and that this Court declare that the Monitor shall have no further liabilities, obligations, responsibilities or duties with respect to Endurance, including, without limitation, any duties arising under the CCAA, the Initial Order, and any other order issued in the within proceedings.

MATERIAL OR EVIDENCE TO BE RELIED ON

11. The pleadings and proceedings had and taken in this Action, including the Twelfth Report of the Monitor.

12. Such further or other material or evidence as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES

13. Part 6, Division 1 of the *Alberta Rules of Court*; and

14. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

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

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

Any irregularity complained of or objection relied on:

17. None.

How the application is proposed to be heard or considered:

18. In person before the presiding Justice in Commercial List Chambers.

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.

CLERK'S STAMP

SCHEDULE "A"

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BENNETT JONES LLP
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4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7
Attention: Chris Simard
Telephone No.: (403) 298-4485
Facsimile No.: (403) 265-7219
Our File: 76142.2

DATE ON WHICH ORDER WAS PRONOUNCED: July 4, 2017

LOCATION OF HEARING OR TRIAL: Calgary

NAME OF JUDGE WHO MADE THIS ORDER: Madame Justice Romaine

UPON THE APPLICATION of FTI Consulting Canada Inc., the Court-appointed Monitor (the "**Applicant**" or the "**Monitor**") of Endurance Energy Ltd. ("**Endurance**"); **AND UPON** having read the Application, the Twelfth Report of the Monitor (the "**Twelfth Report**") and the pleadings and proceedings in this Action, all filed; **AND UPON** hearing the submissions of counsel for the Monitor and counsel for other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Time for service of the application for this order is hereby abridged and service is deemed good and sufficient.
2. 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 Agreement dated as of June 27, 2013, as amended from time to time, among, *inter alia*, Canadian Imperial Bank of Commerce, as Administrative Agent to the Lenders and Endurance,;
 - (b) “**Initial Order**” means the Initial Order of the Court dated May 30, 2016 as amended and restated on June 21, 2016 in these CCAA Proceedings; and
 - (c) “**Lenders**” means the syndicate of lenders that pursuant to the Credit Facility.
3. The Monitor is authorized, directed and empowered to forthwith make the Final Distribution (as defined in the Twelfth Report) to the Lenders in partial satisfaction of the amounts owing to the Lenders under the Credit Facility.
4. The Monitor’s Fees and the Monitor’s Counsel’s Fees are hereby approved.
5. This Honourable Court declares that, from and including the date of the Initial Order to the date hereof, based on the evidence that is currently before this Honourable Court in the Reports of the Monitor and otherwise:
 - (a) the Monitor has exercised its powers and performed its duties and functions, in respect of Endurance including but not limited to those under the CCAA, the Initial Order and all other orders issued in the within proceedings, honestly, in good faith and in a commercially reasonable manner;
 - (b) the actions and conduct of the Monitor are approved and the Monitor has satisfied all of its duties and obligations as Monitor of Endurance;

- (c) the Monitor shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Monitor's duties as Monitor of Endurance, save and except for any liability arising out of fraud, gross negligence or willful misconduct on the part of the Monitor; and
- (d) any and all claims against the Monitor arising from, relating to, or in connection with, the performance of the Monitor's duties and obligations as Monitor of Endurance, save and except for claims based on gross negligence or willful misconduct on the part of the Monitor, shall be forever barred and extinguished.
6. No action or proceeding arising from, relating to, or in connection with, the performance of the Monitor's duties and obligations as Monitor of Endurance may be commenced or continued without prior leave of this Honourable Court, on notice to the Monitor and on such terms as this Honourable Court may direct.
7. Upon the filing of a Monitor's Termination Certificate (as defined in the Twelfth Report) evidencing that all steps described in this Order and any other steps required to complete these CCAA proceedings have been completed, these CCAA proceedings will be deemed terminated without further order of this Court.
8. Upon the Monitor filing and serving the Monitor's Termination Certificate, the Monitor shall be discharged as the Monitor of Endurance and the Monitor shall have no further liabilities, obligations, responsibilities or duties with respect to Endurance, including, without limitation, any duties arising under the CCAA, the Initial Order, and any other order issued in the within proceedings without further order of this Court.

J.C.Q.B.A.