

COURT FILE NUMBER 1601-06765

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT 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 **FOURTH REPORT OF FTI CONSULTING CANADA INC., IN
ITS CAPACITY AS MONITOR OF ENDURANCE ENERGY
LTD.**

July 28, 2016

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INTRODUCTION

1. On May 30, 2016, Endurance Energy Ltd. (“Endurance” or the “Applicant”) sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to an order granted by this Honourable Court (the "Initial Order").
2. The Initial Order granted, *inter alia*, a stay of proceedings against the Applicant until and including June 29, 2016 (the "Initial Stay Period"), and appointing FTI Consulting Canada Inc. as monitor (the “Monitor”). The proceedings commenced by the Applicant under the CCAA will be referred herein as the “CCAA Proceedings”.
3. Also on May 30, 2016, this Honourable Court granted an order (the “Sale Process Order”) which, *inter alia*, approved a sale process (the “Sale Process”) as set out in the Sale Process Order.
4. On June 15, 2016, this Honourable Court granted an Amended and Restated Initial Order which, *inter alia*, reduced the amount of the Administration Charge from \$2.5 million to \$1.5 million and included the fees of the Lending Syndicate’s professional advisors in the Administration Charge. The Initial Order and the Amended and Restated Initial Order will be referred to hereinafter collectively as the “Initial Order”.
5. On June 22, 2016, after subsequent court hearings on June 8 and June 15, the stakeholders agreed on an amended Sale Process and this Honourable Court granted an order approving the amended Sale Process (the “Sales Process and Interim Financing Order”) which, *inter alia*, amended Schedule A of the Sales Process Order and approved the Amended and Restated DIP Facility Loan Agreement.

6. On June 27, 2016, this Honourable Court granted an order (the “Stay Extension Order”) which, *inter alia*, extended the Stay Period to and including August 5, 2016.

PURPOSE

7. The purpose of this fourth report of the Monitor (the “Fourth Report”) is to provide to this Honourable Court the Monitor’s comments with respect to:
 - (a) the activities of the Monitor since the Third Report dated June 24, 2016;
 - (b) an update of the activities of Applicant and its financial advisor, BMO Nesbitt Burns Inc. (“BMO”) with respect to the Sale Process;
 - (c) the Applicant’s budget to actual cash flow results for the period of June 18, 2016 to July 22, 2016;
 - (d) the Applicant’s revised cash flow statement for the period of July 23, 2016 to September 2, 2016;
 - (e) the Applicant’s proposed key employee retention plan (“KERP”) and key employee incentive plan and (“KEIP”) and related KERP and KEIP Charge (as defined below); and
 - (f) the Applicant’s request for an extension of the stay period (the “Stay Period”) to and including August 31, 2016.

TERMS OF REFERENCE

8. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicant, the Applicant's books and records, certain financial information prepared by the Applicant and discussions with various parties, including senior management ("Management") of the Applicant (collectively the "Information"). Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
9. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook. Future oriented financial information reported or relied on in preparing this report is based on Management's assumptions regarding future events and actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined herein have the meaning defined in the previous reports of the Monitor or the Initial Order issued in these CCAA Proceedings.
11. Further background and information regarding the Applicant's and these CCAA proceedings can be found on the Monitor's website at <http://cfcanada.fticonsulting.com/endurance>.

ACTIVITIES OF THE MONITOR

12. Since the date of the Third Report, the Monitor has:
- (a) attended various meetings with respect to the Sale Process with the Applicant, BMO and the Lending Syndicate, as discussed in further detail below;
 - (b) engaged in discussions with various stakeholders and creditors;
 - (c) reviewed the Applicant's cash disbursements; and
 - (d) advised the Applicant with respect to the preparation of the its cash flow statement and reporting as required by the Interim Lender.

UPDATE ON THE SALE PROCESS

13. BMO has hosted various update calls (generally on a weekly or bi-weekly basis) with the Applicant, the Monitor and the Lending Syndicate (and respective counsel and advisors) to provide updates on the Sale Process. The purpose of these updates on the Sale Process were to provide the Lending Syndicate with an overview of the steps taken by BMO through the Sale Process to solicit interest from potential bidders including:
- (a) providing a listing of counterparties contacted directly by BMO to the Lending Syndicate along with a detailed summary of virtual data room activity;
 - (b) following up with additional potential bidder parties that were suggested by the Lending Syndicate;

- (c) providing the names and background to the Lending Syndicate of all counterparties who signed a non-disclosure agreement and who were active in the Sale Process; and
 - (d) providing the Lending Syndicate with an overview of the bids received by the non-binding bid date of June 28, 2016 and a summary of the bids received by July 25, 2016 (the binding bid deadline). BMO also provided the detailed binding bid information to the financial advisor of the Lending Syndicate.
14. The deadline for the receipt of binding expressions of interest in accordance with the Sale Process was July 25, 2016. BMO and the Applicant are currently reviewing and analyzing the bids and the Applicant anticipates seeking an Order of this Honourable Court approving one or more sale transactions for all or part of the assets of Endurance in the near future.

BUDGET TO ACTUAL CASH FLOW RESULTS

15. The table below presents a summary of the Applicant's receipts and disbursements for the period of June 18, 2016 to July 22, 2016 (the "Reporting Period") against the cash flow statement provided to this Honourable Court in the Monitor's Third Report.

\$ CAD			
June 18, 2016 to July 22, 2016	Forecast	Actual	Variance
Opening Cash	8,813,901	8,813,901	-
Cash Receipts			
Revenue	3,942,771	4,337,271	394,501
Total - Cash Receipts	3,942,771	4,337,271	394,501
Cash Disbursements			
Royalty Expense	39,909	28,917	(10,992)
Operating Expense	4,232,257	3,213,000	(1,019,257)
Monthly AER LLR Deposit Payments	851,109	488,075	(363,034)
Property Taxes	3,537,324	3,537,324	-
Capital Expenditure	100,000	91,621	(8,379)
Transportation	1,473,073	1,414,556	(58,517)
Payroll	1,400,162	1,042,732	(357,430)
G&A	298,655	251,162	(47,493)
Professional Fees	1,725,000	959,978	(765,022)
Interest/Fees	594,563	588,651	(5,912)
Tax/Other	66,000	4,594	(61,406)
Total - Cash Disbursements	14,318,052	11,620,609	(2,697,443)
Net Change in Cash from Operations	(10,375,281)	(7,283,338)	3,091,943
DIP Loan	3,900,000	3,863,061	(36,939)
Ending cash	2,338,619	5,393,624	3,055,005
Opening DIP Loan	10,268,246	10,268,246	-
DIP Loan Drawn	3,900,000	3,863,061	(36,939)
Ending DIP Loan	14,168,246	14,131,307	(36,939)

16. The Applicant's forecast cash receipts for the Reporting Period were \$3.94 million, and actual cash receipts were \$4.34 million. The Applicant's cash receipts have generally been in line with the forecast during the Forecast Period, and the majority of the variance relates to items that were not included in the Applicant's forecast cash flow statement such as joint venture billings and rentals.
17. The Applicant's forecast cash disbursements for the Reporting Period were \$14.32 million, and actual cash disbursements were \$11.62 million. The majority of the \$2.70 million variance is the result timing variances in the payment of operating expenses and professional fees and these variances are expected to reverse in future periods.
18. The \$3.06 million variance in the Applicant's forecast ending cash position is primarily due to the timing variances outlined above. No variances that occurred during the Reporting Period are expected to have a material impact on the Applicant's liquidity needs during the CCAA Proceedings.

REVISED CASH FLOW FORECAST

19. The Applicant, in consultation with the Monitor, has prepared a revised weekly cash flow statement (the "Cash Flow Statement") for the period of July 23, 2016 to August 31, 2016 (the "Stay Extension Period"). A Summary of the Cash Flow Statement is presented in the table below and a copy of the Cash Flow Statement is attached hereto as Appendix A.

\$ CAD July 23, 2016 to September 2, 2016	Stay Extension Period
Opening Cash	5,393,624
Cash Receipts	
Revenue	11,887,368
Total - Operating Receipts	11,887,368
Cash Disbursements	
Royalty Expense	32,853
Operating Expense	4,228,885
Monthly AER LLR Deposit Payments	1,263,034
Property Taxes	-
Capital Expenditure	30,000
Transportation	2,170,752
Payroll	1,812,215
G&A	697,032
Professional Fees	1,300,000
Interest/Fees	1,030,597
Tax/Other	203,000
Total - Operating Disbursements	12,768,369
Net Change in Cash from Operations	(881,001)
DIP Loan	-
Ending cash	4,512,623
Opening DIP Loan	14,131,307
DIP Loan Drawn	-
DIP Loan Ending	14,131,307

20. The Cash Flow Statement indicates the following for the Stay Extension Period:

- (a) total cash receipts of \$11.89 million relating to revenue collections for the Applicant's operations for the production months of June and July;
- (b) total cash disbursements of \$12.77 million; and
- (c) total cumulative draw on the Interim Financing of \$14.13 million.

PROPOSED KERP AND KEIP

- 21. The details of the KERP and KEIP are attached hereto as Confidential Appendix B due to the confidential and commercially sensitive nature of its contents and the Applicant will be seeking a sealing order over the same.
- 22. The key elements of the KERP are as follows:
 - (a) if approved, a subset of 13 of the Applicant's 76 current employees will participate in the KERP (the "KERP Employees")
 - (b) the KERP Employees will receive the specific cash retention payment on the earlier of (i) the date on which they are terminated without cause, (ii) or the date on which there is a closing of a sale of a material portion of the Applicant's assets;
 - (c) employees who resign or who are terminated with cause are not eligible to participate; and
 - (d) the maximum aggregate amount of cash retention payments to the KERP Employees is \$386,304.
- 23. The key elements of the KEIP are as follows:

- (a) seven (7) designated senior management employees have been included in the KEIP (the “KEIP Employees”, and together with the KERP Employees, the “Employees”).
 - (b) KEIP Employees will be entitled to a percentage recovery of the ‘Net Proceeds¹’ obtained through the Sales Process, with such payments under the KEIP to be funded from the closing cash proceeds resulting from the Sales Process. There is a minimum threshold of sale proceeds that must be met before any amounts become payable under the KEIP;
 - (c) KEIP Employees who resign or who are terminated with cause are not eligible to participate; and
 - (d) KEIP Employees who are offered and agree to be retained by the successful purchaser in the Sales Process are not eligible for any payment under the KEIP.
24. The Applicant is also seeking to have a fourth priority charge securing the KERP and KEIP (the “KERP and KEIP Charge”), which charge shall not exceed \$368,304, plus any amounts that become payable under the KEIP, to rank behind the Administration Charge, the Interim Lender’s Charge and the Directors’ Charge.

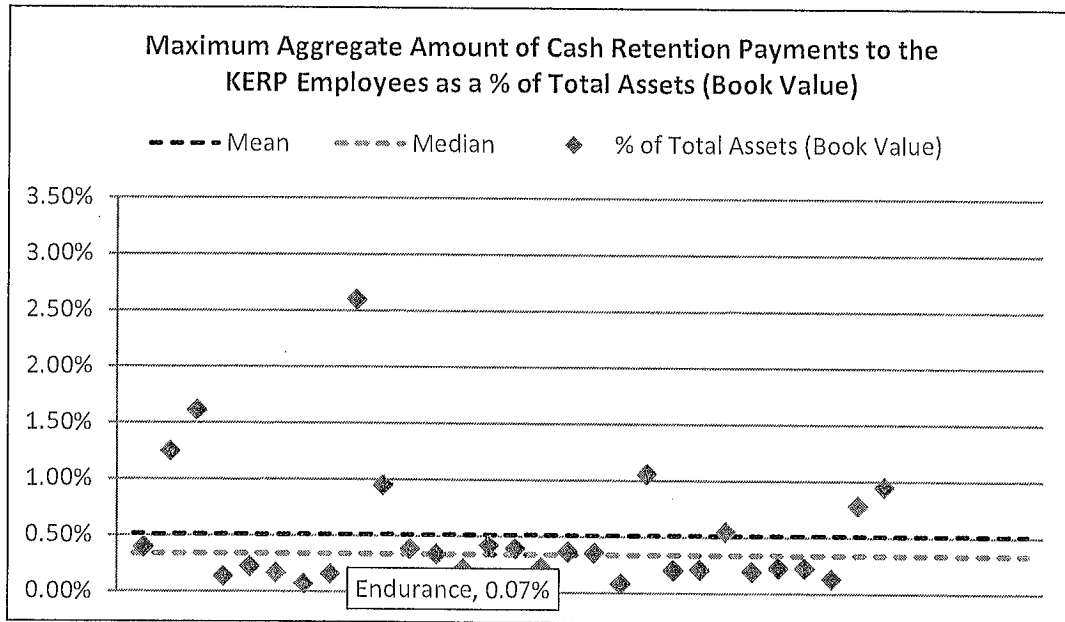
The Monitor’s comments and recommendation with respect to the proposed KERP and KEIP

25. The Monitor has reviewed publically information from other CCAA cases where employee retention plans have been approved and compared these retention plans to the proposed KERP and KEIP.

¹ Net Proceeds equal to the total cash sale price less any adjustments and selling commissions

26. The Monitor understands that details around key employee retention plans are difficult to compile as the specific details of the plans are often kept confidential. Additionally, each case has specific circumstances that make each situation unique and therefore assessing the reasonableness of a key employee retention plans requires a certain level of judgement in considering the size and complexity of the operations, the historical facts leading up to the case and its effects on employees and employee morale, the tasks and workload that will be required of employees throughout the case and the future prospects and potential outcome of the company.
27. The Monitor has reviewed the publically available information of 29 CCAA cases with Court approved employee retention plans and compared them against the Applicant's proposed KERP considering the maximum aggregate amount of cash retention payments to the KERP Employees, the payment as a percentage of the company's total book value of assets at the time of filing and the payment as a percentage of secured debt and total debt.
28. The Monitor has provided the figure below to illustrate the total the maximum aggregate amount of cash retention payments to the KERP Employees as a percentage of total assets (book value). The Monitor notes that while it has not included the maximum aggregate amount of cash retention payments to the KERP Employees as a percentage of secured debt or total liabilities the trend is similar in those cases.

29. The table below illustrates that the retention payments under the proposed KERP as a % of assets (book value) is below the average of the comparable data.



30. The Monitor agrees with the Applicant's assessment that the departure of the Employees may be detrimental to the Sale Process and their retention will be critical to maximizing value for stakeholders given the proposed timing of attempting to complete a sale transaction. The approval of the KERP and KEIP should provide sufficient incentive for the Employees to continue their employment for the conclusion of the Sale Process and the closing of any resulting sale transaction or until their services is no longer required by the Applicant.
31. From its review of prior court-approved retention plans, the Monitor is satisfied that the KERP and KEIP are consistent with current practice for retention plans in the context of a CCAA proceeding and that the maximum aggregate amount of cash retention payments to the Employees are fair and reasonable in the circumstances.

32. The Monitor further advises that the details and structure of the KERP and KEIP have been shared with the Lending Syndicate and its financial advisor such that they have included and consulted with respect to the proposed KERP and KEIP.
33. The Monitor understands that the Lending Syndicate is not opposing the Applicant's KERP or KEIP.

EXTENSION OF THE STAY PERIOD

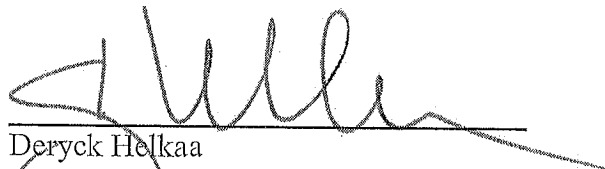
34. The Stay Period set out in the Stay Extension Order is until and including August 5, 2016. The Applicant is seeking an extension to the Stay Period until and including August 31, 2016 in order to provide sufficient time to substantially complete the Sale Process and move towards finalizing one or more transaction resulting therefrom.
35. The Cash Flow Statement demonstrates that the Applicant will have sufficient liquidity under the Interim Financing to continue to meet its post-filing obligations until August 31, 2016.
36. In the Monitor's view, the Applicant has continued to act in good faith and with due diligence during the CCAA Proceedings and the Monitor supports the Applicant's request for an extension to the Stay Period until and including August 31, 2016.

RECOMMENDATIONS

37. The Monitor respectfully recommends that this Honourable Court:
 - (a) approve the proposed KERP and KEIP;
 - (b) approve the proposed KERP and KEIP Charge;

- (c) grant a sealing order over the details of the KERP and KEIP in Confidential Appendix B; and
- (d) approve the Applicant's request for an extension to the Stay Period to and including August 31, 2016.

All of which is respectfully submitted this 28th day of July, 2016.



Deryck Helkaa
Senior Managing Director,
FTI Consulting Canada Inc.

APPENDIX A

