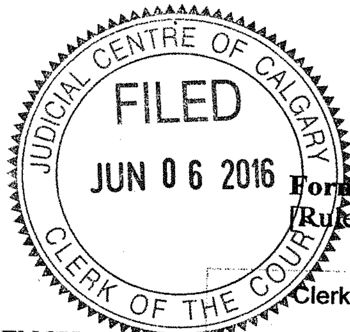
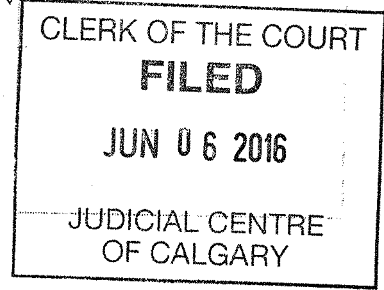


Form 49
[Rule 13.19]

Clerk's Stamp



COURT FILE NUMBER	1601 06765
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, as amended** **AND IN THE MATTER OF ENDURANCE ENERGY LTD.**
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Thornton Grout Finnigan LLP** 100 Wellington Street West, Suite 3200 Toronto, Ontario M5K 1K7 CANADA Phone: (416) 304-1616 Fax: (416) 304-1313 **Attention: Robert I. Thornton / Leanne Williams / Rachel Bengino** File No: 1751-001

I hereby certify this to be a true copy of the original Affidavit

Dated this 6 day of June 2016

for Clerk of the Court

SUPPLEMENTARY AFFIDAVIT OF STEVEN VANSICKLE

~~Sworn~~ (or Affirmed) on June 6, 2016

I, Steven VanSickle, of Calgary, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am the President and Chief Executive Officer of Endurance Energy Ltd. ("**Endurance**" or the "**Company**"). Through my involvement with the Company, I have knowledge of the matters to which I hereinafter depose. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe such information to be true.

INTRODUCTION

2. As described in my affidavit sworn in support of the Initial Order (the "**Initial Affidavit**"), Endurance is experiencing serious liquidity needs and requires immediate and continued funding in order to conduct the Sale Process in an attempt to sell the Company as a going concern for the general benefit of its stakeholders or, in the alternative, complete a safe and proper shutdown of its operations.

3. On May 30, 2016, Endurance was granted an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "**CCAA**") for relief including (i) a stay of proceedings until June 29, 2016, (ii) the appointment of FTI Consulting Canada Inc. as Monitor (the "**Monitor**"), (iii) approving certain Charges, and (iv) approving the Interim Facility Commitment Letter between the Company and WP Private Equity XI Inc. (the "**Interim Lender**") for interim funding during these CCAA proceedings (the "**Interim Funding**"). This Honourable Court also granted an Order (the "**Sale Process Order**"), on May 30, 2016, approving the sale process outlined in the Application Record (the "**Sale Process**" and together with the Initial Order, the "**Orders**"). Capitalized terms not defined in this Supplemental Affidavit are as defined in the Initial Affidavit, a copy of which is attached (without exhibits) as Exhibit **"A"**.

4. The purpose of this Supplemental Affidavit is to address the specific objections raised by the Lenders as set out in the correspondence from Blake, Cassels & Graydon LLP (the "**Blakes Letter**") and Peacock Linder Halt & Mack LLP (the "**Peacock Linder Letter**" and together with the Blakes Letter, the "**Objection Letters**") to certain terms of the Orders. Copies of the Objections Letters are attached as Appendix **"A"** to the

Confidential First Report of the Monitor dated June 4, 2016 (the "**Monitor's Report**"). It is the position of the Company that the Orders should not be altered and that the relief requested in the Objection Letters be denied.

5. As outlined in the Objection Letters, the Lenders have objected to the following relief granted by this Honourable Court:

   (a) the engagement of the Financial Advisor and the quantum of its fees;

   (b) the quantum of the Administration Charge and non-inclusion of the Lenders' counsel and financial advisor in the Administration Charge; and

   (c) the inclusion of a right of first refusal ("**ROFR**") in favour of the Interim Lender in the Sale Process.

ENGAGEMENT OF THE FINANCIAL ADVISOR

Engagement of the Financial Advisor

6. The Peacock Linder Letter requests that this Honourable Court reject or amend the Engagement Letter entered into with the Financial Advisor. For the reasons set out below, the Company believes that any alteration of the Engagement Letter would put the operation and ultimate sale of the Company in jeopardy.

7. During March 2016, it became evident that the Company would be in default of its obligations under the Credit Agreement on March 31, 2016. As a result of the downturn in oil and gas prices, the Company was not generating sufficient revenue and cash flow to meet the new borrowing base requirements which would become effective pursuant to the terms of the Credit Agreement on March 31, 2016. The Company also realized that it

would be forced to liquidate certain of its Swaps to comply with the paydown required on March 31, 2016.

8. The Lenders communicated their financial concerns to the Company and engaged PricewaterhouseCoopers LLP ("**PwC**") on or about March 16, 2016 as their financial advisor.

9. Endurance determined that it would be prudent to engage its own financial advisor to assist with the development and implementation of a strategic plan to recapitalize or restructure its existing indebtedness. To that end, the Company contacted three reputable investment banking firms, which included the Financial Advisor, regarding a possible retainer. Each of the three firms had comparable fee structures, including the quantum of the success fee. However, two of the three firms denominated their fees in USD making the Financial Advisor's fees the lowest of the three firms canvassed.

10. The Financial Advisor came highly recommended and the Company believed that they had the expertise and experience required by the Company.

11. Endurance convened a meeting of its Board of Directors, on March 21, 2016, to consider its options and to select a financial advisor. The Board of Directors resolved to engage the Financial Advisor given its reputation, expertise, experience and competitive fee structure. The Board exercised its prudent business judgment in its decision to engage the Financial Advisor.

12. Endurance negotiated and ultimately executed the Engagement Letter with the Financial Advisor effective as of March 24, 2016. In accordance with the terms of the Engagement

Letter and as described in the Initial Affidavit, the Company agreed to (i) establish the Escrowed Funds in respect of the future obligations that may become owing under the Engagement Letter; and (ii) apply to the Court for approval of (a) the Engagement Letter, (b) the retention of the Financial Advisor, and (c) the Administration Charge to secure the amounts due and owing under the Engagement Letter. The Financial Advisor would not have accepted this mandate without this undertaking.

13. The Financial Advisor has been working with the Company and its legal advisors since it was initially engaged. Endurance continues to require the assistance of the Financial Advisor and believes that if the Financial Advisor's engagement was terminated, it would cause devastating results to the Sales Process and continuing operations of the Company.

14. In addition to the pre-filing work performed by the Financial Advisor as outlined in the Monitor's Report, the Financial Advisor has performed considerable work to commence the Sale Process and continues to do so. As noted in the Monitor's Report, Endurance is an oil and gas producer and as such, requires specific expertise to assist in the marketing of its assets. Sale processes of such companies typically involve an acquisition and divestiture expert who specializes in the marketing of such assets. The Financial Advisor possesses this specialization. I have reviewed Appendix **"B"** to the Monitor's Report and confirm that, to the best of my knowledge, none of the transactions listed involve oil and gas companies requiring such specialization.

15. If this Honourable Court's approval of the Engagement Letter is not upheld, the Company would have no choice but to seek to engage another financial advisor. Any change in the engagement of the Financial Advisor would negate the work performed to

date, cause confusion in the marketplace and result in additional time and expense for which the Interim Lender is not prepared to pay. I have been advised by the Interim Lender that its funding was and continues to be conditional upon the implementation of the Sale Process run by the Financial Advisor. In the event that the engagement of the Financial Advisor is not upheld, I have been advised by the Interim Lender that it will not continue to provide Interim Funding to Endurance.

16. It was and is the opinion of the Company that, at the time the Financial Advisor was engaged, its fees were commercially appropriate and reasonable. This view is supported by the Monitor's Report. The Company does not wish to repudiate or disclaim its contract with the Financial Advisor. The terms of the Engagement Letter should be viewed at the time it was entered into and not with the benefit of hindsight.

17. As outlined in the Initial Affidavit, the Lenders gave the Company no alternative but to file for protection under the CCAA. After severely limiting its funding, the Lenders refused to appoint a receiver or provide debtor-in-possession financing to the Company to enable it to responsibly shut-in its 900 active wells. The Interim Lender did not offer to provide the Interim Financing but was requested and convinced to do so by the Company. The Company is deeply concerned that any alteration to the engagement of the Financial Advisor will have catastrophic consequences to this proceeding.

ADMINISTRATION CHARGE

Quantum of Administration Charge

18. The Blakes Letter requests that this Honourable Court reduce the Administration Charge from \$2.5 million to \$1.5 million in accordance with projected fees set out the 13-week cash flow forecast.

19. The quantum of the Administration Charge was determined by the Company with the assistance of the Monitor. The Monitor's Report sets out the calculation of the Administration Charge. It is the Company's view that the approved quantum of the Administration Charge continues to be appropriate and reasonable in the circumstances. It is clear that the Lenders are attempting to effectively amend the terms of the Engagement Letter through a reduction of the Administration Charge. The Company is concerned that the proposed reduction to the Administration Charge may result in the inability of the Financial Advisor to obtain its fees in its entirety under the terms of the Engagement Letter.

20. In the event that the Administration Charge is reduced to the extent proposed in the Blakes Letter and/or the Financial Advisor's fees are no longer included in the Administration Charge, the Company will not be able to pay all of the fees and expenses payable to the Financial Advisor under the Engagement Letter. The Financial Advisor has informed the Company that it will not continue to perform services under the Engagement Letter without being compensated in accordance with its terms. For the reasons outlined above, any reduction of the Administration Charge to eliminate the ability of the Financial Advisor to achieve its success fee could have grave consequences to the Company.

Inclusion of the Lenders' legal and financial fees in the Administration Charge

21. The Lenders have requested that the fees of its legal counsel and its financial advisor from the date of the Initial Order be included in the Administration Charge.

22. As a general proposition, the Company is of the opinion that only those advisors who intend to work cooperatively within a successful CCAA proceeding should be included in

the Administration Charge. Although these CCAA proceedings are in their early days, it has become apparent that the Lenders do not intend to be cooperative in a process of their making.

23. As noted above, the Lenders severely limited Endurance's financing with very little notice and refused to either provide additional funding in excess of $700,000 (the "**Funding Limit**") or appoint a receiver to responsibly shut-in the Company's active wells.

24. As a result of the Company's need to fund payroll on the day after the Lender's implemented the Funding Limit, the Company and the Lenders agreed that two payments would be allowed to clear the Company's accounts. The two payments both related to the employees of the Company and were under the Funding Limit. One of those payments was to Sunlife Financial ("**Sunlife**") in the amount of $45,672.55 through electronic transfer. These funds are electronically debited through the Company's bank account with the Agent. Notwithstanding the Agent's agreement to clear these funds, the payment to Sunlife was not honoured by CIBC.

25. When the error was discovered by the Company, CIBC was notified but refused to reverse the error as a result of the CCAA stay of proceedings. The Company was disappointed that the Agent did not propose any solution to this issue and did not offer to assist in rectifying their error.

26. The morning following the granting of the Initial Order, Ms. Schoenroth, Chief Financial Officer of the Company (the "**CFO**") received a message on her office phone from the Agent while attending a lengthy meeting with the Monitor. The Agent's message advised

that the Company would be required to open a new bank account with CIBC in order to receive the Interim Funding because any funds deposited into the Company's existing account would be swept by the Lenders and applied against their indebtedness. This message was not received by the CFO until after her meeting with the Monitor. At no time during the negotiation of the terms of the Initial Order, which included the lengthy negotiation of a specific provision preventing the Agent from setting off funds deposited into the Company's account with the Agent, did anyone mention that the Company would be required to open a new bank account.

27. As a result of the directions of the Agent not to deposit any proceeds from the Interim Financing into its account, the Interim Lender was unable to wire funds to the Company. The only bank account maintained by the Company is at CIBC. Due to the liquidity constraints imposed by the Lenders, the Company needed immediate funds. The Interim Lender advised that in order to fund the following day and guarantee receipt of same-day funds, wire instructions to the new account had to be provided by CIBC by 10:00 am (EDT).

28. The process of opening a new bank account with CIBC took an inexplicably long time to complete, despite the urgency. It was not apparent to the Company that CIBC was taking any steps to expedite and elevate the process within the bank until late in the morning of June 1, 2016. The bank account was not opened until after the cut-off time advised by the Interim Lender for guaranteed same-day funds. Notwithstanding that the Company was financially constrained by the Lenders and given no choice but to apply for immediate CCAA protection, the actions of the Lenders continued to put a financial strangle hold on the Company following the stay of proceedings.

29. As result of the urgency of the situation, excessive time and expense was undertaken by the advisors for the Company, the Lenders, the Monitor and the Interim Lender. Instead of focussing on the normal issues that arise in the first few days of a CCAA filing, the parties were inappropriately focused on unnecessary administrative issues that put the operations in jeopardy by delaying necessary funding.

30. For the reasons outlined herein and the objections raised by the Lenders to-date, the Company is not confident that the Lenders will begin to work cooperatively with the Company. The Company objects to its advisors being included in the Administration Charge. It is not reasonable to provide the Lenders with funding to make the CCAA proceedings difficult for the Company to navigate.

SALE PROCESS

31. In the Objection Letter, the Lenders have advised that they are objecting to the ROFR in the Sale Process Order.

32. The Company understands that the ROFR may have a potential chilling effect on the Sale Process. As an attempt to mitigate this effect, the Company has proposed that it uses the 5% ROFR Premium (as defined in the Monitor's Report) to provide a mechanism of bid protection to the bidder that would have been successful, but for the Interim Lender's exercise of the ROFR. This would help to provide financial protection for the costs associated with becoming the finalist in the bidding process. As noted in the Monitor's Report, this could reduce the chilling effect that the ROFR would have on the Sale Process.

33. The Company has been advised by the Interim Lender that the ROFR is the most critical term of the Interim Facility Commitment Letter and that the Interim Lender will not provide further funding if the ROFR is removed. The Company is in critical need of funding. The Lenders have advised that they are not prepared to provide any additional funding to the Company. Without the Interim Financing, the Company will not be able to maintain the safety and integrity of its 900 active wells.

PURPOSE OF THE AFFIDAVIT

34. I hereby swear this Affidavit in support of the preservation of the terms of the Initial Order and for no other or improper purpose.

SWORN (OR AFFIRMED) BEFORE ME at Calgary, Alberta, this 6th day of June, 2016.

(Commissioner for Oaths in and for the Province of Alberta)

Alison Scott
Barrister and Solicitor
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

PRINT NAME AND EXPIRY/LAWYER /STUDENT-AT-LAW

(Signature)

STEVEN R. VANSICKLE

(Print Name)

I certify that Steven VanSickle satisfied me that he was a person entitled to affirm.