

COURT FILE NO. 2401-09247

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS **IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, as amended**  
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.**



DOCUMENT **AFFIDAVIT OF ELVINA HUSSEIN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENTS Field Law LLP  
 400, 444 – 7 Ave SW  
 Calgary, AB T2P 0X8  
 Attention: Trevor Batty  
 Phone: (403) 260-8500  
 Fax: (403) 264-7084  
 File No. 81749-2

**AFFIDAVIT OF ELVINA HUSSEIN  
 (Sworn November 7, 2024)**

I, ELVINA HUSSEIN of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am a legal assistant in the law offices of Field LLP, solicitors for Henenghaixin Corp. ("H Corp") and as such, have knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I have stated the source of the information and believe it to be true.
2. Attached hereto and marked as **Exhibit "A"** is a copy of the correspondence from H Corp's counsel dated October 8, 2024, addressed to Torys LLP, counsel for the Monitor in these proceedings, FTI Consulting Canada Inc. (the "**Monitor**").
3. Attached hereto and marked as **Exhibit "B"** is a copy of the correspondence from the Monitor's counsel to H Corp's counsel, dated October 22, 2024.

**SWORN BEFORE ME** at the City of Calgary, )  
 in the Province of Alberta, this 7<sup>th</sup> day of )  
 November, 2023. )

A Commissioner for Oaths in and for Alberta  
**CORI LEE MILLER**

**ELVINA HUSSEIN**

**Trevor Batty**

Partner  
T 403-260-8537  
F 403-264-7084  
tbatty@fieldlaw.com

Assistant: Elvina Hussein  
T 403-232-1797  
ehussein@fieldlaw.com

This is Exhibit "A" referred to in the  
Affidavit of  
Elvina Hussein  
Sworn before me this 7 day  
of November, 2024

October 8, 2024

VIA EMAIL

Torys LLP  
46th floor, 525 - 8 Avenue S.W.  
Calgary, AB T2P 1G1

CORILEE MILLER  
A Commissioner for Oaths in and for Alberta  
My Commission Expires May 22, 2026

WITH PREJUDICE

Attention: Kyle Kashuba

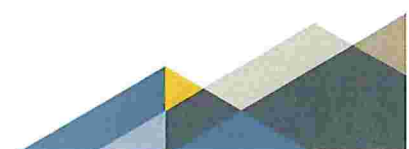
**Re: In the Matter of a Plan of Compromise and Arrangement of Long Run Exploration Ltd. ("Long Run") and Calgary Sinoenergy Investment Corp. ("Sinoenergy", together with Long Run, the "Debtors")**  
**Court of King's Bench of Alberta File No. 2401 09247 (the "CCAA Proceedings")**

As you know, we are the solicitors for Henenghaixin Corp. ("**H Corp**") in the CCAA Proceedings. I understand you act for FTI Consulting (the "**Monitor**"), in its capacity as court-appointed Monitor for the Debtors in the CCAA Proceedings.

As you are also likely aware, H Corp commenced legal action against the Debtors (and others) in Alberta Court of King's Bench Action No: 2001-03353 (the "**H Corp Action**") in February 2020 alleging *inter alia* that the Debtors were the recipients of funds that were diverted from H Corp to the Debtors through transaction(s) that constitute fraudulent conveyances, conversion and/or conspiracy. H Corp claims various remedies against the Debtors, including judgment for damages in the amount of \$44 million, declaratory relief specifying that the funds diverted to the Debtors are held in trust for the benefit of H Corp by way of a constructive trust or equitable lien and a tracing remedy. The Statement of Claim for the H Corp Action is attached for your reference.

More recently, H Corp also filed the affidavit of Frank Zhao affirmed September 13, 2024 (the "**Zhang Affidavit**"), which provides the background to and summarizes the evidence of H Corp Action with 35 Exhibits and more than 1,000 pages.

As evidenced in the Zhang Affidavit, H Corp diligently pursued the H Corp Action until it was stayed by virtue of the Initial Order granted in the CCAA Proceedings on July 4, 2024. On July 11, 2024, H Corp's counsel in the H Corp Action sought the consent of the Monitor to lift the stay of proceedings in order to permit H Corp to proceed with the H Corp Action, including document production and questioning that would provide H Corp with an opportunity to obtain evidence in support of its various claims against the Debtors. The Monitor refused to consent to the lifting of the stay of proceedings for this purpose and accordingly, the Monitor has denied H Corp the opportunity to prove the validity of its fraud and constructive trust claim.



Also in July of 2024, the Monitor brought an Application, dated July 23, 2024 (the “**Application**”) in the CCAA Proceedings for the Second Amended and Restated Initial Order (the “**SARIO**”), among other things, approving the Subscription Agreement (the “**Stalking Horse Bid**”) signed by the Monitor and the Hiking Group Shandong Jinyue Int’t Trading Corporation (the “**Stalking Horse Bidder**”) dated July 23, 2024 and the SISP (as defined in the Application). The Stalking Horse Bid includes a form of Reverse Vesting Order (“**RVO**”). The RVO:

- (a) lists the H Corp Action as one of the “Transferred Liabilities” to be transferred to the Creditor Trust.
- (b) approves the creation of the Creditor Trust named the “Long Run Exploration Residual Trust”.
- (c) substitutes the Creditor Trust as a party in the legal proceedings of the H Corp Action in place of Long Run and changes the style of cause for the proceedings of H Corp Action by deleting Long Run as a party and replacing it with the Creditor Trust as the named defendant.
- (d) approves Long Run’s redemption of all its Common Shares issued to its sole shareholder Calgary Sinoenergy and outstanding immediately prior to the Closing Date at the redemption price of \$0.00001 each.
- (e) approves the issuance of the Purchased Shares by Long Run to the Stalking Horse Bidder at the Purchase Price of \$22 million.

The Creditor Trust will appoint the Monitor as the trustee but designate no beneficiaries. It will have no assets to satisfy any judgment granted against the Creditor Trust other than a Settlement Fund of \$100,000.00 to be paid by the Stalking Horse Bidder or the purchaser of the 100% Purchased Shares at the closing of the Stalking Horse Transaction (as defined in the Application) as the reserve funds for the payment of the compensation of the trustee.

Effectively, if approved the Stalking Horse Transaction and RVO will deprive H Corp of any proprietary interests it has in the “Retained Assets” of Long Run after the conclusion of the CCAA Proceedings relating to Long Run and extinguish the \$44 million fraud claim brought by H Corp against the Debtors four years before the CCAA Proceedings being commenced.

At the Application, H Corp’s then counsel objected to the advance approval of the Stalking Horse Bid on the basis that the effective extinguishment of the H Corp claim, which if proven would rank ahead of the debt of China Construction Bank Toronto Branch or any other secured creditor, is improper and would amount to using the CCAA and the Court’s processes to whitewash a fraud.

Notably, at the same time as the Stalking Horse Bid releases and extinguishes H Corp’s fraud and constructive trust claims against Long Run, it preserves all claims, rights, losses and causes of action by or on behalf of Long Run, against any person including the Third Party Claim filed by the Debtors (the “**Third Party Claims**”) on August 11, 2021 (more than one year after the H Corp Action was filed) naming many of the Defendants in the H Corp Action *and* affiliate companies of H. Corp. The remedies sought by the Debtors in the Third Party Claims include damages for *inter alia*, negligent misrepresentation, knowing assistance, knowing receipt, conversion, and unjust enrichment as follows:

- (a) As against York City, the sole shareholder of H Corp, damages in the amount of \$15 million;
- (b) As against Qingdao Yuheng, the sole shareholder of York City, damages in the amount of \$22 million; and





- (c) As against West Lake, the wholly owned subsidiary of H Corp, damages in the amount of \$30 million for transfers and amounts paid by Calgary Sino on its behalf during the acquisition of Twin Butte.

This specifically demonstrates how inequitable and prejudicial the Stalking Horse Bid is to the rights of H Corp.

The Honourable Justice Little heard the Application and granted the SARIO on July 30, 2024. Justice Little declined to make a ruling on whether the H Corp Action and related claims of H Corp should be Transferred Liabilities or Retained Liabilities and instead at paragraph 51 of the SARIO made it clear that he was reserving H Corp's rights to proceed with its argument at a subsequent motion if the Stalking Horse Bidder is the Successful Bidder pursuant to the SISF.

H Corp's position is that regardless of who the Successful Bidder is under the SISF, the H Corp Action and H Corp's constructive trust claim is a contingent proprietary claim that ought to be preserved as a priority claim against the assets of the Debtors and resolved in an expedited fashion. To do otherwise would be to use the CCAA and the RVO procedure to deprive H Corp of its rights to natural justice. At the same time, H Corp recognizes the Monitor's desire to proceed with the SISF and obtain a sale or investment transaction that is the greatest benefit to all the Debtors stakeholders.

We have instructions to exhaust all legal remedies and oppose the Stalking Horse Bid at the Monitor's application hearing of November 14, 2024 should it proceed.

However, H Corp is prepared to cooperate with the Monitor, and not to object the Stalking Horse Bid ONLY IF the Monitor is prepared to amend the terms of the Stalking Horse Bid by one of the two options as follows that both preserve H Corp's rights and allow the Monitor to proceed with a transaction in the best interests of the Debtors' estates:

- a) If the Stalking Horse Bidder or a third party is the Successful Bidder under the SISF, the Successful Bidder pays the sum of \$44 million (being the maximum amount of H Corp's claim in the H Corp Action) to the Monitor to hold in trust pending an adjudication of H Corp's constructive trust claim, including a determination of the amount and whether it has priority to the claims of the secured creditor of the Debtors. This adjudication could be done on an expedited basis in a streamlined process to be agreed upon between the Monitor and H Corp and could also include the use of an independent Court-appointed Inspector to review the books and records of the Debtors to determine the use and current location of the Diverted Funds – as defined in the H Corp Action;
- b) Alternatively, if the Stalking Horse Bid is the Successful Bidder and the Stalking Horse Bidder is unable or unwilling to post the \$44 million in respect of the H Corp Action, the H Corp Action and H Corp's underlying claims against the Debtors must be included as Retained Liabilities of Long Run in the Subscription Agreement and RVO and following the closing of the Stalking Horse Transaction the H Corp Action will proceed in the ordinary course.

Either of the above two options would allow a transaction to proceed while still preserving H Corp's Action pending a formal and final adjudication. I note that in the recent decision in *Invico Diversified Income Limited Partnership v. NewGrange Energy Inc.* 2024 ABKB 214 the Court only granted a Reverse Vesting Order vesting a royalty claim from the assets AFTER the Court had determined that the royalty claims did not run with the land, were not a proprietary claim and therefore were merely an unsecured contractual obligation.



In this case, due to the more complex nature of H Corp's claim and the Monitor's refusal to consent to the lifting of the stay to allow H Corp to obtain the information required to prove its constructive trust claim, it is not possible for H Corp's proprietary claim to be adjudicated prior to the RVO being granted. This is not, as in *Inviso*, a simple matter of reviewing the language in a royalty agreement and its legal effect. H Corp's constructive trust claim will require an investigation of the circumstances surrounding the transactions whereby the funds were allegedly diverted as well as a tracing exercise to determine their ultimate whereabouts. This cannot be accomplished prior to the upcoming application for approval of a sale transaction and must be done following the approval of a transaction, either in a streamlined process as proposed above or in the ordinary course with H Corp's rights being preserved in either way.

Likewise, in *American Iron v. 1340923 Ontario*, 2018 ONSC 2810, the Court at paragraphs 29 and 33 only agreed to grant a Vesting Order vesting off a contingent constructive trust claim on the condition that the Receiver holds an equivalent amount of funds in trust to be available to the constructive trust claimant after an adjudication of the constructive trust claim. H Corp's position is that the same remedy is appropriate in these circumstances to protect H Corp's rights and prevent undue prejudice to H Corp.

I trust the foregoing is clear but please let me know if you have any questions. If the Monitor is willing to entertain one of the solutions H Corp has proposed in this letter, please advise at your earliest opportunity so that we can discuss further and work out the details in advance of the sale approval application scheduled for November 14, 2024. If the Monitor is not willing to agree to one of H Corp's proposed solutions, or to propose an alternative solution that preserves H Corp's rights in an equivalent manner, H Corp will oppose any form of transaction that has the effect of depriving H Corp of its contingent proprietary rights in the assets of the Debtors without a proper adjudication of H Corp's claims set out in the H Corp Action.

Regards,

FIELD LLP



Trevor Batty  
Partner

TAB/eh

Cc: *Wilson Laycraft, Attention: Robert Stack*  
*Song & Howard Law Office, Attention: Roger Song*  
*Cassels Brock LLP, Attention: Jeff Oliver and Danielle Marechal*  
*FTI Consulting Canada Inc., Attention: Deryck Helkaa, Dustin Olver and Brett Wilson*



October 22, 2024

This is Exhibit "B" referred to in the

Email: [tbatty@fieldlaw.com](mailto:tbatty@fieldlaw.com)

Affidavit of

**WITH PREJUDICE**

Trevor Batty  
Field Law  
400 - 444 7 AVE SW  
Calgary, AB T2P 0X8

Sworn before me this ..... day  
of November 2024

CORIEE MILLER  
A Commissioner for Oaths in and for Alberta  
My Commission Expires May 22, 2026

Dear Sir:

**Re: In the Matter of a Plan of Compromise and Arrangement of Long Run Exploration Ltd. ("Long Run") and Calgary Sinoenergy Investment Corp. Court of King's Bench of Alberta File No. 2401 09247**

We are in receipt of your letter dated October 8, 2024 (the "Letter"), and have had the opportunity to discuss the same with the Monitor. Their response is as follows.

In the Letter, you indicate, among other things, that you have been instructed to pursue all legal remedies to oppose the Stalking Horse Bid at the Monitor's application hearing on November 14, 2024, unless the Monitor amends the terms of the bid based on one of the two options you proposed.

The Monitor rejects both of the options that you suggested, for the reasons outlined below.

Option 1

The Successful Bidder is not obligated to pay \$44 million in cash to complete the transaction. Imposing such a requirement is not commercially viable and would discourage bidders from participating in the present SISP or any potential future SISP.

Therefore, option 1 is not feasible and is hereby rejected.

Option 2

If H Corp's claim is classified as "Retained Liabilities," it will transfer to the "Purchased Shares," making the Successful Bidder responsible for an ongoing lawsuit with H Corp. The Stalking Horse Bidder has made it clear they will not proceed with the transaction if H Corp's claim is included as a "Retained Liability."

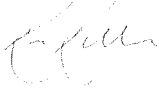
Therefore, option 2 is not feasible and is hereby rejected.

The Monitor's position is that H Corp's claim is deficient, does not warrant special treatment (whether by priority or constructive trust), and is obstructing the best and only viable transaction identified

through the Monitor's SISP process. As a result, the Monitor will oppose any objections raised by H Corp at the hearing to approve the Stalking Horse Bid on November 14, 2024.

I trust that the above is satisfactory, but should you have any further questions or concerns respecting same, you may contact the undersigned to discuss.

Yours truly,



Kyle Kashuba

KK/rj

cc:

Copies to: The Monitor, FTI Consulting Canada Inc., Attention: Dustin Olver and Brett Wilson  
Cassels Brock & Blackwell LLP, Attention: Jeff Oliver and Daniel Marechal

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