

**Action No. 0901-13483**

**TRIDENT EXPLORATION CORP., FORT ENERGY CORP.,  
FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD.,  
981422 ALBERTA LTD., TRIDENT RESOURCES CORP.,  
TRIDENT CBM CORP., AURORA ENERGY LLC,  
NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.**

**SECOND REPORT OF THE MONITOR**

**November 17, 2009**

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TRIDENT EXPLORATION CORP., FORT ENERGY CORP.,  
FENERGY CORP., 981384 ALBERTA LTD., 981405 ALBERTA LTD.,  
981422 ALBERTA LTD., TRIDENT RESOURCES CORP.,  
TRIDENT CBM CORP., AURORA ENERGY LLC,  
NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.**

**SECOND REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA ULC  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On September 8, 2009, Trident Exploration Corp. (“**TEC**”), Fort Energy Corp. (“**Fort**”), Fenergy Corp., 981384 Alberta Ltd., 981405 Alberta Ltd., 981422 Alberta Ltd., Trident Resources Corp. (“**TRC**”), Trident CBM Corp., Aurora Energy LLC, Nexgen Energy Canada, Inc. and Trident USA Corp. (collectively, the “**Applicants**”) made an application under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Hawco of the Court of Queen’s Bench of Alberta, judicial district of Calgary (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants until October 7, 2009, (the “**Stay Period**”) and appointing FTI Consulting Canada ULC as monitor (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. Also on September 8, 2009, Trident Resources Corp., Trident CBM Corp., Aurora Energy LLC, Nexgen Energy Canada, Inc. and Trident USA Corp. (collectively, the “**US Debtors**”) commenced proceedings (the “**Chapter 11 Proceedings**”) under Chapter 11, Title 11 of the *United States Code* in the United States Bankruptcy Court, District of Delaware (the “**US Court**”). The case has been assigned to the Honourable Judge Mary F. Walrath.
3. On October 6, 2009, the Honourable Madam Justice Romaine granted an order *inter alia* extending the Stay Period to December 4, 2009 and, subject to the parties agreeing the wording of certain paragraphs, amending and restating the Initial Order (the “**Amended and Restated Initial Order**”).
4. The purpose of this report is to inform the Court on the following:
  - (a) The receipts and disbursements of the Applicants for the period from the September 26, 2009 to November 6, 2009;
  - (b) The current status of discussions with Nexen Inc. (“**Nexen**”) regarding payments of amounts currently owing to the Applicants and future amounts that will become payable pursuant to Joint Operating Agreements between Nexen and TEC and between Nexen and Fort;
  - (c) The agreement of the parties on the wording of the Amended and Restated Initial Order and the Applicants’ request for approval of the proposed amendments to paragraph 13 thereof;
  - (d) The Applicants’ request for approval of an employee retention plan and the Monitor’s recommendation thereon.

5. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
  
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Initial Order or in the Monitor's previous reports.

**RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO NOVEMBER 6, 2009**

7. The Applicants' actual cash flow on a consolidated basis for the period from September 26, 2009, to November 6, 2009, was approximately \$13.7 million better than the September 30 Forecast, which was filed as Appendix A to the Monitor's First Report, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
<b>Receipts:</b>			
Production Revenue	9,900	13,243	3,343
Receivable Collections	5,655	4,483	(1,172)
DIP Proceeds	0	0	0
<b>Total Receipts</b>	<b>15,555</b>	<b>17,726</b>	<b>2,171</b>
<b>Disbursements:</b>			
Royalties	1,940	734	1,206
Opex	7,712	5,047	2,665
G&A	3,486	2,276	1,210
Capex	5,014	5,754	(740)
Restructuring Fees	6,042	782	5,260
Contractual/Regulatory Deposits	10,500	8,621	1,879
Interest	0	0	0
DIP Finance Costs	0	0	0
<b>Total Disbursements</b>	<b>34,694</b>	<b>23,214</b>	<b>11,480</b>
<b>Net Cash Flow</b>	<b>(19,139)</b>	<b>(5,488)</b>	<b>13,651</b>
<b>Opening Cash</b>	33,213	33,213	0
Net Cash Flow	(19,139)	(5,488)	13,651
<b>Closing Cash</b>	<b>14,074</b>	<b>27,725</b>	<b>13,651</b>

8. Explanations for the key variances in actual receipts and disbursements as compared to the Initial Forecast are as follows:

- (a) The \$3.3 million positive variance in production revenue collections is a combination of permanent positive variances totalling approximately \$3.2 million, primarily arising from the collection of hedge notes that had not been included in the September 30 Forecast and positive timing variances;
- (b) The adverse variance of \$1.2 million in receivable collections arises primarily as a result of a number of unresolved disputes that the Applicants had anticipated would be resolved and collected during the period. The Applicants continue to work with the relevant counterparties to resolve these disputes;

- (c) The positive variance of \$1.2 million in royalty payments is a combination of timing differences of \$0.9 million arising due to the delay in finalizing the terms of the Amended and Restated Initial Order, as described later in this report, which is expected to reverse in future periods and a permanent variance of \$0.3 million;
- (d) The positive variance of \$2.7 million in operating expenditures is believed to be primarily timing as a result of credit terms being provided by the majority of vendors;
- (e) The positive variance of \$1.2 million in general and administrative expenses is believed to be a permanent variance as a result of lower than forecast non-restructuring professional costs, payroll and related costs and other administration costs;
- (f) The adverse variance of \$0.7 million in capital expenditures is a permanent variance relating to higher than anticipated costs in respect of development of the Applicants' Montney play;
- (g) A number of legal and professional invoices relating to the period have yet to be submitted, accordingly it is not possible to determine how much of the positive variance of \$5.3 million in restructuring fees is comprised of timing differences and how much is permanent saving. From the invoices submitted to date, at least \$2.2 million of the \$5.3 million is a positive permanent variance and \$2.2 million is a timing difference;
- (h) Contractual/Regulatory Deposits were lower than forecast as the Applicants have not been required to post certain deposits that had been contemplated in the September 30 Forecast.

## NEXEN PAYMENTS

9. Nexen is a partner with TEC and Fort under various Joint Operating Agreements. Pursuant to the agreements, Nexen is billed for various amounts by Fort and Trident and Fort and Trident are billed for various amounts by Nexen on a monthly basis. The agreements provide rights of set-off, with Nexen being a net payor each month.
10. Following the commencement of the CCAA Proceedings, Nexen suspended payments to the Applicants citing concerns over the non-payment of pre-filing amounts by the Applicants and concerns that Nexen could be exposed to liability for lien claims that may be filed in respect of such unpaid pre-filing amounts which could result in Nexen, in effect, being exposed to paying its contribution twice if it was required to make payment of such lien claims. The Applicants and the Monitor recognized those concerns and informed Nexen that it would develop a protocol for payment of the amounts owing by Nexen to the Applicants during the CCAA Proceedings that would address those concerns.
11. On October 5, 2009, Nexen filed a motion seeking an order:
  - (a) Authorizing Nexen to remit amounts owing by it to Fort, net of amounts owing to Nexen by Fort, to the Monitor pending a final arrangement between the parties or further order of the Court; and
  - (b) Declaring that amounts paid to the Monitor are deemed to discharge Nexen's payment obligations.
12. On October 6, 2009, the Honourable Madam Justice Romaine granted an Order (the "**October 6 Order**"), on consent of the Applicants and Nexen, stating, *inter alia*:

“7. Nexen Inc. is hereby authorized to remit to the Monitor (or its counsel) all amounts that are due and owing

by Nexen to Trident on or before October 26, 2009, pending a final arrangement between the parties or further order of this Court.

8. Payment of the moneys described in paragraph 7 of this Order shall:

(a) allow such rights of netting and set off as may exist among the parties;

(b) be held by the Monitor, or its counsel, in an interest bearing trust account, interest to follow principal; and

(c) deemed to discharge Nexen's (and Trident's, to the extent of any netting or set off applied) payment obligations in respect of such payments."

13. Because the October 6 Order also dealt with the approval of the Amended and Restated Order and, as discussed below, the final wording of the Amended and Restated Order has yet to be approved, the October 6 Order has not yet been entered.

14. Nexen expressed concern about making payments in advance of the October 6 Order being entered. In order to address those concerns, the Monitor provided its undertaking to hold any monies received in accordance with the terms of the Order.

15. The Applicants and the Monitor developed a proposed protocol governing the terms on which payments would be made by Nexen to the Monitor the conditions on which such funds would be released. This proposed protocol was provided to Nexen on October 30, 2009. The Applicants have informed the Monitor that in their view, approximately \$8 million was payable by Nexen by October 31, 2009, in respect of joint interest billings (“**JIB**”) for July, August and September 2009, net of JIBs due to Nexen for the same periods.
16. Nexen raised a number of questions in respect of the proposed protocol. As a result, certain amendments were made to the proposed protocol and a revised protocol was provided to Nexen by the Monitor on November 6, 2009.
17. Further discussions between the Monitor and its counsel, counsel for the Applicants and counsel for Nexen were held in an effort to reach agreement on the protocol and on November 13, 2009, Nexen transferred approximately \$2 million to the Monitor under the terms of the October 6 Order.
18. In its calculation of the amount to be transferred to the Monitor, Nexen deducted the amount of liens filed against the properties. Based on their preliminary analysis, the Applicants are of the view that Nexen has no right of set-off in respect of lien claims filed. The parties have agreed that if agreement is reached between the parties on the protocol, the issue of the amount deducted from the payment in respect of lien claims can be dealt with in that context.
19. Discussions to reach consensus on the protocol are ongoing and are expected to be concluded in the near future. The Monitor intends to continue working with the parties in an effort to find a mutually acceptable resolution to this issue. If that proves not to be possible within a reasonably short period, it may be necessary for this matter to become the subject of a future motion before this Honourable Court.

## **THE AMENDED AND RESTATED INITIAL ORDER**

20. The issues relating to the delay in reaching agreement with stakeholders on the final wording of the Amended and Restated Initial Order are set out in detail at paragraphs 5 to 11 of the affidavit of Mr. Todd Dillabough, President and Chief Executive Officer of TEC, sworn November 17, 2009, and filed in support of the Applicant's motion returnable November 20, 2009 (the "**November 17 Affidavit**").
21. The Monitor has reviewed the November 17 Affidavit and concurs with the statements made in paragraphs 5 to 11 thereof. The Monitor supports the Applicants' request for approval of revised limits for payments of pre-filing liabilities in accordance with paragraph 13 of the Amended and Restated Order as described in paragraph 11 of the November 17 Affidavit.

## **REQUEST FOR APPROVAL OF EMPLOYEE RETENTION PLAN**

### **BACKGROUND**

22. In the initial application under the CCAA, the Applicants sought approval of an employee retention plan (the "**Initial ERP**") as described at paragraphs 52 and 53 of the September 8 Affidavit; the request was adjourned *sine die*.
23. On October 6, 2009, the Applicants sought approval of a revised employee retention plan (the "**October 1 ERP**") as described at paragraph 33 of the affidavit of Mr. Todd Dillabough sworn October 1, 2009 (the "**October 1 Affidavit**").
24. None of the parties present for the hearing on October 6, 2009, raised any objection to the October 1 ERP. However, the Honourable Madam Justice Romaine adjourned the motion *sine die* and requested that the Monitor provide a report with additional detail and analysis of the ERP and its recommendation as to whether it should be approved.

25. In drafting the October 1 ERP, the Applicants intended to include the Executive Chairman as a beneficiary of the plan. Because the October 1 ERP includes the Chief Executive Officer, the inclusion of the Executive Chairman is required pursuant to his contract, which states that the Executive Chairman:
- “shall be provided the same opportunity to earn equity and non-equity incentive compensation in the same amounts, and under the same terms and conditions, to be provided by the Company to its Chief Executive Officer”
26. However, on further review, it was determined that the drafting was not adequately clear on that point and the Applicants have therefore made a further amendment to expressly include the Executive Chairman. A copy of the amended employee retention plan (the “**ERP**”) is attached as Appendix A.
27. As set out in the November 17 Affidavit, the Applicants are of the view that the majority of the employees are critical to the operations and that not extending the retention plan to all employees would be divisive.
28. In the event that the ERP is approved, the Applicants also seek the creation of a charge to secure the ERP payments (the “**Retention Plan Charge**”). It is proposed that the Retention Plan Charge would rank subordinate to the Administration Charge, the Directors’ Charge and the Inter-Company Charge and in priority to all other security and claims.

#### **TERMS OF THE ERP**

29. In summary, the key aspects of the ERP are:
- (a) Each employee of TEC, including senior management and officers of TEC, employed on the date of Court approval of the ERP, if approved, shall receive a bonus of 30% of their annual salary on implementation of a restructuring plan;

- (b) Any employee that resigns or is dismissed for cause prior to the implementation of the restructuring shall not be entitled to the bonus;
  - (c) The Executive Chairman shall receive a bonus of 30% of his annual compensation, excluding meeting fees, on implementation of a restructuring plan, provided that he does not resign and is not removed or replaced for cause.
30. A summary of the number of participants and potential ERP payments by department is attached hereto as Appendix B. The Applicants calculate the total cost of the ERP to be approximately \$3.1 million.

#### **THE MONITOR'S COMMENTS AND RECOMMENDATION**

31. Until the proclamation of changes to the CCAA and its regulations on September 18, 2009, there was no central repository of data on CCAA cases. While employee retention plans are frequently approved in CCAA cases, the details of such plans are treated as confidential and decisions on Court approval are rarely reported. Accordingly, exhaustive research on employee retention plans approved in CCAA cases is difficult, if not impossible.
32. The Monitor has, however, been able to obtain information on a number of employee retention plans approved by the Court and by other courts in CCAA cases.
33. The Monitor has reviewed the information available in respect of 9 employee retention plans approved in CCAA cases in 2008 and 2009. Based on the information available to the Monitor, those plans are summarized as follows:

CCAA Debtor	Filing Jurisdiction	Employees Covered	Individual Payments	Total Cost
Earth First Canada Inc.	Alberta	11 (subset of total)	Unknown	\$775,500
Challenger Energy Corp.	Alberta	2 (all)	20%-26% salary increase plus bonus of 1 year's salary	\$484,000 plus salary cost
Oilexco Incorporated et al	Alberta	38 (all)	3 months' salary	US\$2 million
Semcanada Crude Company	Alberta	22 (all)	Existing bonuses plus severance of greater of contract or 6 months	\$6.3 million
Semcams ULC	Alberta	331 (all)	Existing bonuses plus severance in accordance with policy plus bonus of 6 months' salary for senior management, 3 month's for others	\$9.1 million
Semcanada Energy Company	Alberta	64 (all)	Unknown	4% of net liquidation recoveries + \$200,000. \$1.6 million at midpoint of liquidation range
Quebecor World Inc.	Quebec	575 (subset)	Unknown	\$33.7 million
Nortel Networks et al	Ontario	972 (subset)	Unknown	Up to \$45 million
Canwest Global Communications Corp. et al	Ontario	20 (subset)	Unknown	\$5.9 million

34. The Monitor concurs with the Applicants that the departure of certain employees would be detrimental to the business and operations of the Applicants and that the approval of the ERP would provide incentive for the employees to remain for the duration of the restructuring process. Payments under the ERP for the Executive Chairman, the President/CEO and the CFO would be in addition to the significant amounts owing to those individuals under the Applicants' pre-filing Long-Term Incentive Plan (the "LTIP") described at paragraph 55 of the September 8 Affidavit, which amounts would be forfeit in the event of resignation. The Monitor notes that payments under the ERP to the individuals mentioned above represent approximately 10% of total proposed ERP payments.
35. While incentive plans approved in CCAA proceedings are often targeted at "key" employees, incentive plans that include all company employees have been approved, most frequently in circumstances where there are a relatively small number of employees.
36. From its interactions with the Applicants and their employees throughout the CCAA Proceedings, it does appear to the Monitor that many of the employees are critical to the smooth operation of the Applicants' business, that the Applicants have a stream-lined work force and that there is a strong feeling of "team spirit" amongst the management and staff. In the specific circumstances of this case, the Monitor concurs with the Applicants' opinion that singling out certain individuals and designating them as "key" could be detrimental. Furthermore, given the stream-lined work force and the relatively small proposed incentive payments, it is likely that even if the Applicants undertook a detailed review of which employees would be designated "key" to the operations and restructuring efforts, a significant portion of the personnel would be so designated and there would not be a material reduction in plan cost from excluding "non-key" personnel.

37. From on its review of the court-approved retention plans described above, the Monitor is satisfied that the ERP is consistent with current practice for retention plans in the context of a CCAA proceeding and that the quantum of the proposed payments under the ERP, both to individuals and in the aggregate, are reasonable in the circumstances.
38. Based on the totality of the foregoing, the Monitor is of the opinion that the ERP is reasonable in the circumstances and its implementation would be beneficial to the Applicants and their stakeholders. Accordingly, the Monitor respectfully recommends that the ERP be approved by this Honourable Court. The Monitor also supports the granting of the Retention Plan Charge to secure the obligations under the ERP.

The Monitor respectfully submits to the Court this, its Second Report.

Dated this 17<sup>th</sup> day of November, 2009.

FTI Consulting Canada ULC  
In its capacity as Monitor of  
Trident Exploration Corp., Fort Energy Corp., Fenergy Corp., 981384 Alberta Ltd.,  
981405 Alberta Ltd., 981422 Alberta Ltd., Trident Resources Corp., Trident CBM Corp.,  
Aurora Energy LLC, Nexgen Energy Canada, Inc. and Trident USA Corp.



Nigel D. Meakin  
Senior Managing Director

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# **Appendix A**

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## **The Employee Retention Plan**

**TRIDENT EXPLORATION CORP.**  
**EMPLOYEE RETENTION PLAN**

**Policy Statement**

Trident Exploration Corp. (“Trident”) is undergoing a process of restructuring which has included, among other things, an application to the Court of Queen’s Bench of Alberta (the “Court”) for protection under the provisions of the *Companies’ Creditors Arrangement Act* (Canada) (“CCAA”). Trident recognizes that its most valuable resources are its people. As such, in order to (i) confirm to its employees that the current restructuring will not disrupt Trident’s operations or their employment with Trident, and (ii) encourage Trident’s employees to continue their efforts through this process for a successful conclusion to this restructuring process, Trident is pleased to implement this Retention Plan (the “Plan”).

**Terms and Conditions**

1. Each employee eligible to participate in this Plan (the “Participating Employee”) will be specifically advised by way of a written and executed memorandum that identifies the Participating Employee as being eligible to participate in this plan. Eligible employees are those employees that are employed by Trident on the date of Court approval of this Plan including, without limitation, the senior management and officers of Trident and the Executive Chairman (in respect of his contract fees).
2. Upon the issuance of an order by the Court approving the implementation of this Plan, each Participating Employee unless he or she resigns from his or her employment or is dismissed, removed or replaced for just cause prior to the date that Trident emerges from the restructuring process by Court order, will receive a one-time bonus equal to the value of thirty percent (30%) of his or her annual base salary on the earlier of the date that the Participating Employee is dismissed, removed or replaced without just cause from his or her employment with Trident or the date that Trident emerges from the restructuring process by Court order.
3. This Plan is subject to approval of the Court, and can only be modified by order of the Court.

Any questions or comments regarding this Plan should be directed to Alan G. Withey.

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# **Appendix B**

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## **Summary of Employee Retention Plan Participants and Payments**

**Trident Resources Corp./Trident Explorations Corp.**  
**Employee Retention Plan Profile**

<b>Department Group</b>	<b>Senior Management</b>	<b>Management</b>	<b>Technical/ Supervisory</b>	<b>Tech/Admin Support</b>	<b>Total Employees</b>	<b>Annual Salary</b>	<b>Proposed ERP</b>
Drilling and Completions	-	1	6	-	7	779,700	234,000
Facilities	-	1	1	-	2	272,700	81,800
<b>Drilling and Facilities</b>	<b>-</b>	<b>2</b>	<b>7</b>	<b>-</b>	<b>9</b>	<b>1,052,400</b>	<b>315,800</b>
Finance	1	2	6	13	22	1,857,700	557,200
Human Resources	-	-	1	1	2	143,800	43,100
Information Technology	-	1	1	2	4	352,500	105,800
<b>Finance and Administration</b>	<b>1</b>	<b>3</b>	<b>8</b>	<b>16</b>	<b>28</b>	<b>2,354,000</b>	<b>706,100</b>
Corporate	2	1	-	3	6	1,051,300	315,400
Marketing	1	-	2	-	3	386,100	115,800
<b>Corporate and Marketing</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>9</b>	<b>1,437,400</b>	<b>431,200</b>
Operations	-	2	11	9	22	1,803,000	541,100
Joint Venture	-	1	-	2	3	235,600	70,700
Environment, Health & Safety	-	1	1	-	2	261,400	78,400
<b>Operations, Joint Venture and Environment</b>	<b>-</b>	<b>4</b>	<b>12</b>	<b>11</b>	<b>27</b>	<b>2,300,000</b>	<b>690,200</b>
Regulatory	-	1	-	2	3	240,000	72,000
Reserves	1	1	2	-	4	587,300	176,100
Project Management	-	1	4	-	5	522,800	156,800
<b>Reserves and Project Management</b>	<b>1</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>12</b>	<b>1,350,100</b>	<b>404,900</b>
Land	-	2	2	5	9	955,060	286,600
Geoscience	1	1	5	1	8	868,700	260,600
<b>Land and Geoscience</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>6</b>	<b>17</b>	<b>1,823,760</b>	<b>547,200</b>
<b>Total</b>	<b>6</b>	<b>16</b>	<b>42</b>	<b>38</b>	<b>102</b>	<b>10,317,660</b>	<b>3,095,400</b>
<b>Proposed ERP</b>	<b>533,300</b>	<b>781,000</b>	<b>1,121,700</b>	<b>659,400</b>	<b>3,095,400</b>		