

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re: § Case No. 16-50778
SANJEL (USA) Inc., et al., §
§ (Chapter 15)
§
Debtors in a foreign proceeding. § JOINTLY ADMINISTERED

BONDHOLDER TRUSTEE’S OBJECTION TO
MONITOR’S MOTION FOR AN ORDER (I) SPECIFICALLY RECOGNIZING
CANADIAN COURT ORDER AUTHORIZING DEBTORS TO BORROW UNDER A
POST-PETITION CREDIT FACILITY, (II) APPROVING LIENS ON ASSETS
LOCATED IN THE TERRITORIAL JURISDICTION OF THE UNITED STATES
AND (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED
PARTIES

Now comes Nordic Trustee ASA, as the trustee on behalf of the holders of the Sanjel Corporation 7.5% Callable Bond Issue 2014/2019 (the “Bond Trustee”), through its attorneys, Togut, Segal & Segal LLP (the “Togut Firm”), and hereby objects to the *Motion for an Order (I) Specifically Recognizing Canadian Court Order Authorizing Debtors to Borrow Under a Post-Petition Credit Facility, (II) Approving Liens on Assets Located in the Territorial Jurisdiction of the United States and (III) Granting Adequate Protection to Prepetition Secured Parties* (the “Post Petition Financing Motion”) ¹ [Doc. No. 13] filed on April 4, 2016 by PricewaterhouseCoopers Inc., as the monitor (the “Monitor”) appointed by the Queen’s Bench of Alberta, Judicial Centre of Calgary (the “Canadian Court”) in the reorganization proceedings pursuant to the Canadian Companies Creditors Arrangement Act (“CCAA”), currently pending in Canada as *the Matter of Sanjel Corp.*, Court File No. 1601-03143 (the “Canadian Proceedings”), and respectfully states:

¹ Capitalized Terms used herein but not otherwise defined shall take the meanings ascribed to them in the Post-Petition Financing Motion.



PRELIMINARY STATEMENT

Under the guise of a Canadian CCAA proceeding meant for a debtor to reorganize by proposing a plan, Sanjel has instead sought to legitimize an outright liquidation that is nothing more than a secured creditors foreclosure sale that the secured creditors are capable of doing themselves. But where a debtor conducts a business like this one, a business that may create hazardous wastes, secured creditors never want to even touch the assets. They prefer their borrower to be responsible for the foreclosure, run all the risks, and just turnover the sale proceeds. And that is what is happening here.

This is not a restructuring. It is a straight liquidation. The CCAA is not an appropriate proceeding when it is all about a foreclosure sale that is being done without a restructuring plan. Objections to this effect -- and more -- will be made tomorrow to the Canadian Court and will be considered at an April 28 hearing in Calgary. It will be shown that this Court is being improperly used to carry out the secured creditors' goals.

The Court should understand that in the weeks preceding the commencement of this case, the Debtors and the Syndicate² were negotiating with a number of parties, including Ascribe and Clearlake, two of the bondholders who account for nearly half of the \$300 million bondholder debt (jointly, the "Bondholders"). So on dual tracks, PJT (formerly Blackstone) was hired to seek buyers for the Debtors' business assets and the Bondholders began negotiating to infuse \$230 million into the Debtors' businesses, keep them intact, pay the Syndicate in full, and provide a return for unsecured creditors. The Bondholders believe in the Debtors' businesses.

² Capitalized Terms used herein but not otherwise defined shall take the meanings ascribed to them in the Sealing Motion.

The Debtors turned their back on the Bondholders' offer. Instead, the Debtors have chosen, no doubt with the Syndicate's approval, to liquidate the Debtors by splitting their businesses into pieces, selling them to different buyers, and as best as the Bond Trustee knows, pay the Syndicate less than the full value of its secured claim. That decision allowed counsel for the Monitor to represent to this Court at the April 5, 2016 "first day" hearing that the members of the Syndicate are the fulcrum creditors in the case.

It is readily apparent that since the Bondholders propose to pay the banks in full, it is the bondholders, not the banks, who are the fulcrum creditors.

The Post-Petition Financing Motion was to have followed the hearings in Canada, now scheduled for April 28, but instead this application is being presented first. The Bond Trustee is opposing the CCAA application in Calgary and has, through discovery in the CCAA case, amassed overwhelming evidence that the Bond Trustee expects to stop the asset sales from being approved. Following that outcome, the Bond Trustee will, at a minimum, ask this Court to modify the preliminary stay to file a Chapter 11 case so that there can be an open plan process.

These Chapter 15 Cases and the Canadian Proceedings are being used to enable an improper foreclosure sale for the benefit of one party – the Syndicate – to the detriment of all other stakeholders. This has become clear since the Monitor and the Debtors summarily commenced these proceeding while the Debtors pretended to be negotiating a restructuring transaction with the Bondholders, which – it is now clear – the Debtors never had any intention of pursuing. Instead, they were using pretend negotiations as a delay tactic to prevent all bondholders from taking any actions while the Debtors and the Syndicate finalized the terms of the foreclosure sales and commenced these cross-border proceedings to approve them. The Monitor and the

Debtors have created a false sense of urgency that they had to quickly consummate the proposed sale transactions or else there will be a liquidation of the Debtors. But in reality, this Court is being asked to expedite a liquidation of the Debtors. The Court should see past this façade to view the Post-Petition Financing Motion as containing unreasonable and unnecessary accelerated milestones (the “Milestones”), and not approve them.

It is well established that excessive control by a post-petition lender is an appropriate ground to deny post-petition financing. Here, prepetition, the Syndicate made clear it wanted out of the Pre-Petition Facility and exerted immense pressure on the Debtors to conduct a lightning fast foreclosure sale pursuant to a CCAA proceeding that benefits the Syndicate alone. All other parties-in-interest, including the bondholders whose interests the Bond Trustee protects, and the other approximately \$135 million worth of unsecured debt, are being ignored in this process. If the Chapter 15 and Canadian Proceedings were legitimate, these other parties’ interests would be taken into account and the Debtors would conduct a good faith effort to explore other restructuring alternatives. Indeed, the Bondholders proposed a restructuring plan that would pay the Syndicate in full, and provide a return to unsecured creditors. The Debtors turned their back on the Bondholders’ proposal.

It is now readily apparent that the Debtors never intended to reach a deal with the Bondholders, but were merely dragging the Bondholders along to keep them in the dark and prevent them from filing an involuntary Chapter 11 petition in the United States while they could finalize the APAs and commence a CCAA. A CCAA proceeding benefits the Syndicate because unlike under Chapter 11, the CCAA does not permit cram-down and does not require a creditors committee.

In light of the bad faith circumstances surrounding the commencement of these cross-border proceedings, the Bond Trustee's Canadian Counsel will be filing an application tomorrow in the Canadian Court (the "CCA Application") that will set forth the factual case supporting the position that the Debtors' are abusing the CCAA process and made a bad faith CCAA filing in order to conduct foreclosure sales that will return capital to the Syndicate and leave all other parties-in-interest with nothing.³ As the Bond Trustee's Canadian Counsel will explain, such tactics run contrary to the very purpose of the CCAA, which is designed to facilitate the approval of a restructuring process, not foreclosure sales. Declarations are being made for tomorrow's filing and when they are done, they will be filed with this Court to also support this objection. Accordingly, the Bond Trustee reserves his right to supplement this Objection.

The forced foreclosure that Debtors' are attempting to push through this Court is also antithetical to the purpose of the title 11 of the United States Code (the "Bankruptcy Code"). The Bankruptcy Code is premised on a transparent process designed to accommodate all stakeholders. What the Debtors are doing here is the opposite – a process heavily cloaked in secrecy designed to accommodate just one stakeholder, the Syndicate. The Post-Petition Financing and its fast track Milestones are an integral element of this bad faith scheme, and, indeed, the vehicle the Debtors are using to drive their disguised foreclosure sale process forward. Simply, the Milestones are designed to bully stakeholders and the Court into adhering to a schedule that seeks to dispose of substantially all of the Debtors property in a month and a half. This schedule, if

³ Due to the Monitor and the Debtors' unwillingness to adjourn the April 26, 2016 hearing (using the cudgel of needing to stick to the Milestones), the Bond Trustee is forced to file this Objection before the CCAA Application will be filed. The CCAA Application will be filed on Friday, April 22, 2016 and the Bond Trustee will file a copy of the CCAA Application as a supplemental exhibit to the Bond Trustee's objection to the Monitor's Petition for Recognition of the CCAA Proceeding as a Foreign Main Proceeding, which the Bond Trustee is filing contemporaneously with the Objection.

allowed, forecloses stakeholders from truly assessing the merits of any proposals or even determining whether the marketing process the Debtors undertook was a good faith process.

The Debtors state that the Post Petition Financing is necessary for the Debtors' "to be able to carry on in business or attempt a restructuring." Post Petition Financing Motion ¶ 13. This justification rings hollow because the Debtors instituted this process to sell off substantially all of their assets and liquidate. They have no intention of attempting a restructuring. The Debtors' CFO, Alexander Crilly, admitted as much in his examination on April 20, 2016 in Calgary when he stated in response to the question: "And if those two sales are consummated, there would be no restructuring of Sanjel; is that correct?" he answered: "Practically speaking that would be, correct, yes." See April 20, 2016 Crilly Examination Transcript 14:10 attached hereto as Exhibit "A".

In these cross-border restructuring proceedings, the Debtors' choice of venue for its main proceeding, the Post-Petition Credit Facility, and the Milestones are all specifically crafted to benefit only one party. This flies in the face of the very purpose of the Bankruptcy Code.

The Monitor will no doubt argue comity and ask this Court to ignore everything that is really going on and simply rubber stamp the Post Petition Credit Agreement because it has been previously approved by the Canadian Court. Again, some context is required. The Canadian Court approved the Post Petition Credit Agreement on the first day of a CCAA Proceeding for which the Bond Trustee and most other stakeholders had no advance notice and before the Bond Trustee was able to obtain Canadian counsel. That relief is being challenged in Canada by the Bond Trustee. In short, what so far has been done in Canada in no way offers precedent for what is being asked for here.

Thus, there is no reason – besides the arbitrary Milestones designed to force the Court’s hand and prevent careful consideration of the issues – to rush to final judgment on the Post Petition Financing Motion before there is a final resolution in Canada. Further, comity should not be extended where both the Canadian Court and the Bankruptcy Court are being used as tools to further an agenda that is the polar opposite of what both restructuring regimes are designed to do, restructure business entities as going concerns while addressing the interest of all stakeholders.

Consequently, the Bond Trustee respectfully requests that this Court defer the Post Petition Financing Motion or, in the alternative, order the Debtors and the Monitor to significantly modify the Milestones and related penalties imposed by the Post Petition Financing and extend the Milestones by at least thirty (30) days to enable the Debtors to conduct an actual meaningful postpetition marketing process that takes into consideration the interests of all parties in interest, and all parties-in-interest sufficient time to investigate the events leading to the commencement of these Chapter 15 Cases and the Canadian Proceeding.

Finally, should the Court decide to approve the Post Petition Financing Motion, the proposed final order (the “Proposed Final Order”) omits certain critical protections that should be incorporated into any order approved by the Court.

BACKGROUND

1. The Monitor and the Debtors sought Chapter 15 relief on April 4, 2015 (the “Petition Date”).⁴
2. Immediately prior to the Petition Date, the Debtors reached an agreement with two prospective purchasers to sell substantially all of the Debtors’

⁴ Debtor Sanjel Canada Ltd. filed its petition on April 11, 2016.

assets. Sealing Motion ¶ 4. Ostensibly, one transaction involves the Debtors' Canadian assets (the "Canada Transaction") and the other involves the Debtors' United States assets (the "Liberty Transaction"). *Id.* ¶ 5. The Debtors propose that under the Liberty Transaction, Liberty Oilfield Services Holding LLC ("Liberty") "will acquire . . . property and assets used in connection with the U.S. cementing, fracturing and coil tubing business." *Id.* ¶ 6. If both sales are consummated, there is nothing left to reorganize.

3. On the Petition Date, the Debtors entered into the Post Petition Credit Agreement with the Syndicate.

4. As soon as possible following the Petition Date, the Bond Trustee retained Osler, Hoskin & Harcourt LLP ("Osler") as its Canadian Counsel.

5. On April 15, 2016, Osler requested an audience with Justice Romaine of the Canadian Court on April 18, 2016 so that the Canadian Court could extend the proposed schedule to, among other things, change the hearing on approval of the APAs from April 25, 2016 to April 28, 2016 to allow more time for the Bond Trustee to conduct its examination. The correspondence is attached hereto as Exhibit "B".

6. Justice Romaine granted the Bond Trustee's request for an extension. The effect of this extension is significant. Prior to the extension, the sale hearing in Canada would have concluded the day before the April 26, 2016 hearing in this Court to consider the Post Petition Financing Motion. Now the hearing before this Court occurs first while significant uncertainty exists as to whether the Canadian Court will even approve the sale agreements upon which the Post Petition Credit Agreement and its Milestones are based.

OBJECTION

The Milestones are Unreasonable and Burdensome and Designed to Benefit Only the Syndicate

7. Excessively burdensome milestones foisted upon a debtor by a post-petition lender designed to benefit the lender to the detriment of the estate and its remaining creditor body is grounds to deny a postpetition financing. Courts have refused to “allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender.” See *In re Mid-State Raceway, Inc.*, 323 B.R. 40, 59 (Bankr. N.D.N.Y. 2005); *In re Tamarack Resort, LLC*, No. 09-03911, 2010 WL 4117459, *13 (Bankr. D. Idaho Oct. 19, 2010) (denying request for post-petition financing when default was likely due to short milestones, financing imposed time sensitive obligations to file a sale procedure motion, plan, and disclosure statement, which were all subject to approval of the lender).

8. Here, the provisions contained in the Post Petition Credit Agreement require an extremely expedited sale process and the penalties and harm to be visited upon the Debtors and their estates if these provisions are not satisfied are unduly onerous, unwarranted and untenable. These Milestones relating to the deadline for entry of the “Chapter 15 Recognition Order” and a “Final APA Closing” are especially unwarranted and unacceptable given that the Milestones are designed solely to accommodate the Syndicate’s desire to effectuate a quick disguised foreclosure sale. The Milestones force a very fast sale process – that leaves zero remaining value for any of the Debtors’ other creditors. Courts will not approve a financing agreement that contains terms that unfairly seek to utilize the bankruptcy process and judicial powers. See generally, *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (although reaffirming the discretion of the debtor to exercise reasonable business

judgment in arranging post-petition financing, noting “a proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate”); see *In re Tenney Village Co., Inc.*, 104 B.R. 562, 568 (Bankr. D. N.H. 1989)(financing cannot “pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interest to one specially crafted for the benefit of the [lender].”).

9. Accordingly, the Post Petition Financing Motion should be denied or the Milestones and related penalties imposed by the Post Petition Credit Agreement need to be significantly modified and extended by at least thirty (30) days to enable the Debtors to conduct a more meaningful and robust post-petition marketing and sale process for the benefit of their estates and general creditors. The Court should not be forced to make a final determination on the Post Petition Credit Agreement when there is still a great deal of uncertainty whether the Canadian Court will approve the sale agreements the Milestones in the Post Petition Credit Agreement are designed to facilitate.

Comity Should Not be Used to Condone an Abuse of Process

10. As noted above, the Monitor will likely ask this Court to ignore the circumstances surrounding the commencement of these cross-border proceedings and the unreasonableness of the Milestones and ask the Court to approve the Post Petition Financing Motion based on notions of comity. As noted, however, the Post Petition Credit Facility was approved on the first day of proceedings that were commenced without any notice and before his counsel could even consult with the Bond Trustee. The secrecy and speed with which these proceedings have been undertaken is all part of a deliberate scheme to force the currently contemplated sales on stakeholders. Additionally, by filing the CCAA Application tomorrow, the Bond Trustee will be

asking the Canadian Court to revisit its approval of the Post Petition Credit Facility. In this context, granting a motion based on comity is premature.

11. Additionally, the Monitor's argument that this Court approve the Post Petition Financing Order based on comity is also inconsistent with section 1506 of the Bankruptcy Court, which provides that:

Nothing in this chapter prevents the court from **refusing** to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

11 U.S.C. § 1506 (emphasis added).

12. The Monitor and the Debtors are attempting, through the Milestones in the Post Petition Credit Facility, to bully the Court into going along with a disguised foreclosure sale. This is the antithesis of what Congress's carefully crafted bankruptcy regime is intended to do. *See, e.g., Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (stating that "the restructuring of debtor-creditor relations . . . is at the core of the federal bankruptcy power"). Comity does not require that this Court be forced to grant relief that is contrary to the very fabric of our bankruptcy laws.

The Proposed Order Omits Critical Provisions

13. Finally, should the Court determine to approve the Post-Petition Financing Motion, the Proposed Final Order omits certain important provisions and protections for the Debtors and their estates. Specifically, the Bond Trustee has identified the following modifications that must be made before the Court enters the Proposed Final Order.

(a) *There should be an opportunity to review the validity of the liens of the Pre-Petition Secured Parties.*

14. There should be an opportunity to investigate and challenge the Syndicate's purported claims and liens as a curb on their effort to control the conduct of the Chapter 15 cases for their own benefit at the expense of the Debtors' estates. The findings as to the validity of such liens and similar provisions are "generally not favored by Bankruptcy Courts in this District without a reason and time period for objections." *See Local Rules, Exhibit J. Checklist For Lengthy Motions and Orders Pertaining To Cash Collateral And Post-Petition Financing 2(d),(f).* The Bond Trustee suggests 90 days would be sufficient. *See In re Spansion Inc.*, No. 09-10690 (Bankr. D. Del. May 18, 2009) (providing for a 90-day period after the entry of the final order approving post-petition use of cash collateral to assert claims and defenses against pre-petition lenders).

(b) *Any payments to the Pre-Petition Secured Parties as adequate protection should be subject to a reasonableness review and subject to disgorgement in the event of a successful lien challenge*

15. Paragraph 7 of the Proposed Final Order contemplates adequate protection payments being made to the Syndicate for their pre- and post-petition fees and expenses. Generally, such payments can only be authorized and made to the extent such parties are fully secured. *See United Sav. Ass'n. of Tex. v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 (1988) (denying post-petition interest sought as adequate protection by an undersecured creditor); *Baybank-Middlesex v. Ralar Distributions, Inc.*, 93 F.3d 1200, 1203 (1st Cir. 1995) ("We need not determine whether there was a failure of adequate protection because . . . Baybank, as an undersecured creditor, is not entitled to postpetition interest and fees under § 506(b) . . ."); *Final Order Authorizing Use of Cash Collateral, In re TCI 2 Holdings, LLC*, No. 09-13654 (Bankr. D.N.J. Mar. 23, 2009) (denying post-petition fees to undersecured creditors). Thus, to the extent any such payments are

to be made, they should first be subject to review and oversight and, if ultimately approved, the Proposed Final Order should clearly provide that all such payments should be charged first against the principal amounts owed such secured parties and will be subject to disgorgement should such secured parties ultimately prove to be undersecured (as a result of, for example, a successful lien challenge).

(c) The Proposed Final Order should expressly provide that there be no waiver of the “equities-of-the-case” statutory rights under section 552(b).

16. Finally, section 1520 automatically applies section 552 of the Bankruptcy Code to property of the debtor that is within the territorial jurisdiction of the United States. Section 552(b) of the Bankruptcy Code and its “equity exception” are to be used in Chapter 11 “to prevent an oversecured lender from receiving a windfall by taking assets that would otherwise go to rehabilitating the debtor.” *See In re Muma Servs.*, 322 B.R. 541, 558 (Bankr. D. Del. 2005). Section 552(b) thus prevents a secured creditor from reaping the benefits of appreciation in value of its purported collateral as a result of the use of other estate assets. Accordingly, the Proposed Final Order should have an “equity exception” to section 552(b) of the Bankruptcy Code to prevent in an unjust windfall for the Pre-Petition Secured Parties at the expense of unsecured creditors.

CONCLUSION

17. Based on the foregoing, the Bond Trustee submits the Post Petition financing Motion should be deferred and not granted at this time.

[concluded on the following page]

WHEREFORE, the Bond Trustee respectfully requests that the Court deny the Post Petition Financing Motion, or, in the alternative, either delay consideration until after resolution of the CCAA Application, or extend the Milestones by at least thirty (30) days, and grant such other and further relief as is appropriate.

Dated: New York, New York
April 21, 2016

NORDIC TRUSTEE ASA,
as the trustee on behalf of holders of
Sanjel Corporation 7.5% Callable Bond
Issue 2014/2019

By Its Attorneys,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 21, 2016, a true and correct copy of the foregoing document was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system and via United States First Class Main, postage prepaid on the Master Service List.

/s/Scott E. Ratner
Scott E. Ratner

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1 Clerk's stamp:

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4

5 QUESTIONING OF PAUL ALEXANDER CRILLY

6 BY MR. R. ANDERSON, QC

7 AFFIDAVIT SWORN APRIL 4, 2016 (X2) AND APRIL 12, 2016

8 HELD APRIL 20, 2016

9

10

11 COURT FILE NUMBER 1601-03143

12

13 COURT COURT OF QUEEN'S BENCH OF

14 ALBERTA

15

16 JUDICIAL CENTRE CALGARY

17

18 APPLICANT(S) IN THE MATTER OF THE

19 COMPANIES' CREDITORS

20 ARRANGEMENT ACT, R.S.C., 1985,

21 c.C-36, as amended

22

23 AND IN THE MATTER OF THE

24 COMPROMISE OR ARRANGEMENT OF

25 SANJEL CORPORATION, SANJEL

26 CANADA LTD., TERRACOR GROUP

27 LTD., SURETECH GROUP LTD.,

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1 SURETECH COMPLETIONS CANADA
 2 LTD., SANJEL ENERGY SERVICES
 3 (USA) INC., SANJEL (USA) INC.,
 4 SURETECH COMPLETIONS (USA)
 5 INC., SANJEL CAPITAL (USA)
 6 INC., TERRACOR (USA) INC.,
 7 TERRACOR RESOURCES (USA) INC.,
 8 TERRACOR LOGISTICS (USA) INC.,
 9 SANJEL MIDDLE EAST LTD.,
 10 SANJEL LATIN AMERICA LIMITED
 11 and SANJEL ENERGY SERVICES
 12 DMCC

13

14 DOCUMENT QUESTIONING ON AFFIDAVIT

15

16 Taken before S. Murphy, Official Court Reporter,
 17 pursuant to Rules 5.26, 6.20, and 13.46 of the Court of
 18 Queen's Bench of Alberta, at the offices of Bennett
 19 Jones LLP, Calgary, Alberta.

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1 (PROCEEDINGS COMMENCED AT 9:45 AM)
2 PAUL ALEXANDER CRILLY, Previously Sworn, Examined by
3 Mr. Anderson.
4 Q MR. ANDERSON: Mr. Crilly, you acknowledge
5 you're still under oath?
6 A I do.
7 Q And you have not discussed your evidence with anyone
8 since I last questioned you?
9 A I have not.
10 Q I'm advised by Mr. Simard that there has been no
11 valuation no enterprise valuations done by heater by
12 either PJT or Credit Suisse is that your understanding,
13 sir?
14 A That is correct.
15 Q So I just to be very clear, one of the outstanding
16 undertakings has to do with the impairment analysis
17 that you did in house in a preliminary way. I'm
18 setting that aside that's the subject of an undertaking
19 and I'm trying to get at any other valuations done by
20 Sanjel Corporation or by its professional advisors.
21 And is the short answer that there is has been no

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22 enterprise valuation or indication of value done by
23 Sanjel or its professional advisors save and except
24 what may be in the impairment analysis that you're
25 going to send me; is that fair?
26 A I need to clarify that, sir. There's been no formal
27 valuation done by Sanjel. I do recall Credit Suisse

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1 providing some valuation metrics to I believe PWC.

2 Q Okay will you provide those to me?

3 MR. SIMARD: We will, yes. We will do

4 that.

5 UNDERTAKING ^ - ^

6

7 Q Is that it that's the only exception?

8 A That's correct, yeah.

9 Q Would it be fair to say sir that based on whatever you

10 were provided by PJT in terms of these metrics whatever

11 they provided to PWC that is ^ ^ ^ and your

12 preliminary impairment analysis, you concluded that

13 there was no value for equity; is that fair?

14 A For clarification, I believe it was CS that was

15 providing information to PWC.

16 Q Sorry I miss took?

17 A With respect to valuation of equity, I would agree with

18 that statement.

19 Q Okay. Now so CS provided some me tricks to PWC did

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20 they provide it to you as well?

21 A I did see the final form I do believe they were asking

22 my not opinion but asking for some information other

23 than that process.

24 Q Some input of some sort?

25 A Input or review.

26 Q Okay. And was that provided?

27 A I can't confirm that.

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1 Q Who would have provided that in Sanjel?

2 A No one would have provided I can't confirm whether I

3 did a comprehensive review. I do believe I viewed an

4 email chain and an email to myself from CS with some

5 broad valuation metrics and stated purpose was to

6 provide PWC some indications of value ^ ^ ^ on a

7 potential sale process when I say that, sir, I mean

8 outside the prospect of the current APAs what might be

9 the valuation of the company based on existing sales

10 metrics for like assets in the marketplace ^ ^ ^ .

11 Q Are we talking about distress sale value or what do you

12 mean?

13 A It would be it would have sale of specific pressure

14 pumping assets in the marketplace I believe outside of

15 going concern value.

16 Q So a non- going concern sale of iron essentially?

17 A That's correct that's a great way to say it, yes.

18 Q You provided them with some information on that; is

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19 that right?

20 A I did not, I just asked the sources of the information.

21 Q Are these people inside Sanjel?

22 A The people.

23 Q When you asked the sources the information?

24 A I asked CS what their source of information was in

25 terms of getting the market comparables for the sale of

26 assets.

27 Q If I now understand you correctly CS had provided some

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9

1 indication of non- going concern sale value of the iron

2 and you wanted to know what the sources were?

3 A The sources for comparable transactions.

4 Q Right?

5 A Upon which that valuation was premised on.

6 Q And this valuation you're talking about is a non- going

7 concern sale of the iron?

8 A I believe so.

9 Q Okay. And that's the one you've talked about that was

10 given to PWC?

11 A That's correct.

12 Q It's my understanding that CS gave it to PWC? You

13 think you may have gotten it as well; is that true?

14 A I would have seen yes I would have seen a it's not a

15 very comprehensive analysis, I believe it was a page

16 long on again valuations of our equipment based on

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17 market comparables to which I asked what were the
18 sources of the market comparables.

19 Q So if what I've already requested by way of undertaking
20 does not include what you receive received whether you
21 also include what Sanjel received in addition to what
22 was passed onto the monitor?

23 MR. SIMARD: Yes, we'll take that under
24 advisement. I will have to look at the email I don't
25 know if counsel was involved or but we'll look at the
26 emails Mr. Anderson and we'll produce what we can
27 produce if there's something we don't think we can

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1 provide we will advise you under advisement.

2 Q In case subject of a solicitor client privilege?

3 A

4 UNDERTAKING ^ - ^

5 ^ ^ ^ .

6 Q We talked about CS credit Swiss metrics on a not going
7 concern sale of iron. Was there anything about a going
8 concern sale done to your knowledge by CS or PJT by
9 anyone?

10 A No, sir to my recollection, no.

11 Q If we set aside the Credit Suisse metrics which we
12 talked about you're not aware of any request for value
13 receiving any of such from any source; is that fair?

14 A That's fair.

15 Q And you've I think I understood you to say a moment ago

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16 please confirm from Sanjel's internal preliminary
17 impairment analysis if had concluded that there was no
18 value for equity; is that fair?
19 A I would need to see the calculations, sir. I believe
20 that's the case but it would be from a book value
21 perspective after impairment which is not a market
22 value test, I believe there was not material amount of
23 equity left after those impairments from a balance
24 sheet perspective.
25 Q On a market value basis was it also your that is
26 Sanjel's view that there was no equity, no value for
27 equity?

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1 A The impairment test it different have a market value
2 test.
3 Q I understand?
4 A From a market value test, that analysis was not done
5 for purposes of determining the market value of any
6 equity, but my opinion was that there was no equity
7 value should a market value test have been done.
8 Q . Is that the same?
9 (STRIKE THE QUESTION)
10 Q Was that also Mr. Darin MacDonald's understanding to
11 the best of your knowledge?
12 MR. SIMARD: I don't think you can ask him
13 what Darin's knowledge was I guess you can rephrase and

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14 ask if Darin ever stated that the knowledge or

15 understanding.

16 Q MR. ANDERSON: You would have had discussions

17 with Darin MacDonald in terms of whether there was

18 value for equity left in Sanjel; is that true?

19 A Yes that's true.

20 Q Okay. And would it be fair to say that he shared your

21 opinion that there was no as far as he was concerned

22 there was no value for equity left in Sanjel, true?

23 A I can't say specifically that he stated his opinion on

24 it. Nor did he opposed the premise that that there was

25 no equity value.

26 Q Did he act and did you act in terms of your planning

27 and everything you did consistent with that, there's no

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12

1 value for equity?

2 A We acted in the best interests of the company and all

3 its stake holders.

4 Q That's what you're saying today?

5 A That's true.

6 Q I see. And would it be fair to say sir that the reason

7 you didn't do a an enterprise valuation or indication

8 of value is because you were confident that if

9 obtained, there would be no value for equity?

10 A We had undertaken a very comprehensive process in the

11 fall of 2015 to raise equity for purposes of shoring up

12 the balance sheet and that effort was not successful.

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13 And then over the course of the SISP process which we
14 believe was very comprehensive, the indication of
15 interest suggested minimal equity value.
16 Q No equity value?
17 A That's correct, sir.
18 Q You're talking about the offers to purchase assets
19 isn't that right?
20 A That's correct, sir.
21 Q Yes. And I'm really trying to back up before you do
22 the SISP you SISP on January 17, 2016?
23 A M-hm.
24 Q But you don't before doing it obtain from the three any
25 of the three financial advisors you have, you don't
26 obtain an enterprise valuation or indication of having
27 from any of them and I'm asking you whether the reason

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1 you didn't is because you were confident from the
2 internal analysis that you had done and everything you
3 had done that there was no value for equity?
4 A We provided ^ ^ ^ for the opportunity of a fairness
5 opinion I believe in the other Credit Suisse or PJT
6 engagement letter should it have been needed. Because
7 of the process that we engaged with bank of America and
8 because of the process that we were embarking with the
9 SISP we thought that was sufficient for price discovery
10 in terms of the value of the equity.

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11 Q When you said in your last answer because of the
12 process that you embarked with the bank Syndicate what
13 process are you talking about?

14 A It wasn't with the bank Syndicate. We retained in late
15 summer, early fall of 2015 bank of America Merrill
16 Lynch. At which point in time we contacted
17 approximately 30 private equity firms across North
18 America for purposes of equity capital.

19 Q That's what you're referring to in your answer to the
20 last question?

21 A That's correct.

22 Q I see and your reason for not getting an enterprise
23 valuation or an indication of value was you concluded
24 that the SISP process that ^ ^ ^ conducting would be
25 sufficient to discover value; is that fair?

26 A Combined with the previously previous bank of America
27 process, that's correct.

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14

1 Q The bank of America process to raise further equity?

2 A That's correct.

3 Q Sir, the two APAs that are subject to of the
4 application to liberty and to step involve the sale of
5 approximately 95 percent of Sanjel group's operations;
6 is that fair?

7 A That would be fair.

8 Q And if those two sales are consummated, there would be
9 no restructuring of Sanjel; is that correct?

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10 A Practically speaking that would be, correct, yes.

11 Q If the two APA sales are consummated let's talk

12 about what would be left. I'm going to list what I

13 know. Receivables, some residual assets for which

14 there no purchasers had been identified in the SISP

15 process, anything else?

16 A There's a receivables, there's the Terracor assets upon

17 which there was a separate process with Wells Fargo,

18 there's the Suretech assets, again subject to the same

19 process with Wells Fargo, the Saudi Arabia joint

20 venture as well.

21 Q Okay. And so those receivables and the residual assets

22 you just identified, you expect the Syndicate would

23 realize from the sale?

24 (STRIKE THE QUESTION)

25 Q In your second affidavit, your April I think April

26 12th, is it?

27 MR. SIMARD: Yes, it is.

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15

1 Q MR. ANDERSON: April 12th affidavit you

2 identify towards the end of it a value range or an

3 estimated recovery range of 325 to 375 million?

4 A That's correct.

5 Q And I take it that that's from the bank that's the

6 expected recovery for the bank based on what it will

7 get out of the two APAs and the receivables and the

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8 sale of the other residual assets you just identified?

9 A That's correct.

10 Q If the two APAs sales are consummated, there would be

11 nothing left for the bondholders, correct any doubt

12 about that, sir?

13 A From a financial sense in terms of the total recoveries

14 with those two APAs being executed.

15 Q Consummated?

16 A And the monetization of the other assets, it does not

17 look like there will be any recovery for the

18 bondholders.

19 Q Yeah. You're not?

20 (STRIKE THE QUESTION)

21 Q And they're owed in excess of 300 million dollars US;

22 is that right with interest?

23 A With interest that's correct.

24 Q Nothing for unsecured creditors either, correct?

25 A That's correct.

26 Q And they're owed something like 135 million?

27 A That's correct.

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16

1 Q And a great deal of them are in the United States isn't

2 that right?

3 A That's correct.

4 Q Let's go to the APAs themselves. Just off the record?

5 (DISCUSSION OFF THE RECORD)

6 Q MR. ANDERSON: Let's go to your second

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7 affidavit and to Exhibit 1, which is the STEP

8 agreement?

9 A Yes.

10 Q So, sir, is the document is dated April 3, 2016, and

11 the copy that's marked as an exhibit has the word

12 signed in quotes but it doesn't have an actual

13 signature on it of the last page of the exhibit. Do

14 you see that?

15 A That's correct.

16 Q When was it signed by you first of all?

17 A It would be for the April 30th date 3rd date.

18 Q When did you actually physically sign it?

19 A I can't recall the signature pages that I would have

20 signed but they would have been held in contemplation

21 of the finalization of the APAs.

22 Q It would have been signed sometime prior to April 3?

23 A Effective on the finalization of the APAs, yes that's

24 correct.

25 Q And I take it the same is true with respect to the

26 other parties; is that true?

27 A I could not speak for how the other parties signed the

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17

1 APAs.

2 Q So you signed for Sanjel. You provided it to counsel

3 in you know sometime in advance of April 3rd, true?

4 A That would be correct.

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5 Q And you simply don't know when the other parties STEP
6 energy signed?

7 A Their signature pages, no, I don't.

8 Q Okay. Was it in advance of September 3rd?

9 MR. SIMARD: April 3rd.

10 Q MR. ANDERSON: I meant April 3, thank you?

11 A I couldn't answer that question.

12 Q You just don't know?

13 A I don't know.

14 Q Will you advise me through counsel when this was signed

15 by yourself and when it was signed by STEP energy and

16 will you if it was signed in the kind of way you

17 signed, which is signed, signature page weight for the

18 rest of the document to be finalized, if it was done in

19 that fashion, then also tell me when it was provided

20 when the signatures were provided to counsel pending

21 the completion of the text of the agreement?

22 MR. SIMARD: We will do that. Let's go off

23 the record.

24 (DISCUSSION OFF THE RECORD).

25 UNDERTAKING ^ - ^

26

27 Q MR. ANDERSON: So speaking of how this

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1 closing occurred as it relates to STEP, the closing was

2 scheduled for Sunday, April 3, correct?

3 A The closing wasn't scheduled for Sunday, April 3.

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4 That's how -- that's the time with which the APAs was
5 finalized. There was -- as far as I'm ware there was
6 no plan to have it signed April 3rd, we were continuing
7 to finalize and negotiate the APAs until that point in
8 time.

9 Q Okay and we've had some discussion off the record and I
10 understand from that discussion that whether you plan
11 for some significant time or no time in advance, at
12 some point, there was a planned closing for that
13 Sunday, April 3rd, correct?

14 A Signatures finalizing the APAs, yes. The transaction
15 closed obviously is a different issue, but in terms of
16 signing APAs at some point in time, on the weekend it
17 looked like we were going to sign APAs Sunday, that's
18 correct.

19 Q Okay. And so signatures were collected and the
20 document continued to be negotiated on that Sunday
21 right up until approximately midnight Sunday, that is
22 just before Sunday was over April 3rd; is that true?

23 A That's correct.

24 Q And so the negotiations had flowed right from I take it
25 several days before the weekend right through the
26 weekend, right to the end of Sunday; is that fair?

27 A That's fair.

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19

1 Q Okay. And the reason for that I take it was you wanted

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2 to be ready to file on the next day, the Monday?

3 A I believe the overriding reason was to consummate the

4 APAs as soon as possible.

5 Q Let's be honest with ourselves. Isn't it simply true

6 or you don't work to midnight every day, I take it you

7 were doing this because you wanted to get that deal

8 done so you could get into court and file and commence

9 the CCAA; is that true?

10 A We were working to midnight for probably three weeks

11 before that Sunday. In all fairness. Was there a

12 target to file Monday and needing the APAs signed

13 Sunday, that wasn't in my opinion the overriding plan.

14 It was to consummate the APAs as soon as possible.

15 Q Is it fair to say it was the overriding plan was to

16 consummate the APAs before you filed?

17 A That's correct, sir.

18 Q Now, sir, if let's go to clause 6.1?

19 MR. SIMARD: Before we go to a new topic

20 Mr. Anderson, can you confirm that the information we

21 gave you off the record and you put on the record does

22 that satisfy the last undertaking but when things were

23 signed and exchanged.

24 MR. ANDERSON: It does it does, thank you.

25 MR. ANDERSON: Can we adjourn for 3 or 4

26 minutes.

27 (ADJOURNMENT)

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1 Q MR. ANDERSON: Sir, if you go to clause 6.1

2 (a) of the STEP agreement, you will notice that it

3 references applying or reference bringing an

4 application for an initial order under the CCAA by

5 April 4, no later than April 4 that's 6.1 (a) row

6 unanimous numeral 1 do you see that?

7 A Yes.

8 Q That's a negotiated date I assume? They wanted it they

9 wanted you to bring that application for the initial

10 order by April 4?

11 A That's correct.

12 Q Okay. And that would be part of the reason you were

13 working to midnight on April 3rd to get that agreement

14 finalized because they wanted it done by April 4th?

15 A Sir, I'm not I can't confirm whether April 4th was the

16 predetermined date to which the APAs were signed ahead

17 of or whether the APAs were signed or was contemplated

18 being signed Sunday, hence, the immediate the next day

19 filing of an application for CCAA.

20 Q I don't know what you mean by what you just said. Are

21 you saying this date may have changed?

22 A I'm saying that date may be contingent on the expected

23 signing date of the APAs.

24 Q It was contingent on getting the APAs signed before the

25 initial CCAA application?

26 A That's correct.

27 Q Okay. Then let's go to the nest one. Next one. 6.A

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1 (2) by April 29 or such later date as the parties may
2 agree, acting reasonably bring an application for the
3 issuance of the approval investing order in the CCAA
4 proceeding. Do you see that?

5 A I do.

6 Q Was that a negotiated term that that application had to
7 occur by April 29th?

8 A Yes.

9 Q What that a negotiated term?

10 A Yes.

11 Q Again I take it that would have been negotiated before
12 the application materials were filed and the finalized?

13 A Together with the entirety of the APAs, yes sir.

14 Q So they would work together. There had to be
15 finalizing getting to an agreement on the APAs and
16 finalizing so they were coordinated the filing
17 materials for the initial application?

18 A That's correct.

19 Q The APAs would be finalized and signed and followed
20 immediately by the application; is that fair?

21 A That's fair, sir.

22 Q Similarly there was to be a motion for a what is called
23 a US provisional relief order in the US bankruptcy
24 court, correct? That's III?

25 A That's correct.

26 Q That I take it you understand to be essentially an
27 application under chapter 15 in the US bankruptcy code

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1 for recognition of the CCAA proceedings and the
2 monitor's appointment and so on here in Canada?

3 A That's my understanding, yes.

4 Q And then similarly, a motion in the US, I'm looking at
5 Roman numeral 4, US sell recognition order there would
6 be a motion for that to have it recognized and approved
7 the APAs approval order when it was obtained here in
8 Canada; is that true?

9 MR. SIMARD: I'm going to caveat that
10 question you added what you and I would recognize some
11 legal terms of art, recognize and approve. He can
12 answer to his understanding but not as to what it
13 legally being sought and granted and in that
14 application. We understand that.

15 MR. ANDERSON: Sure I understand he's not a
16 lawyer.

17 Q I'm asking for your understanding. Is what I just said
18 your understanding?

19 A Yes, sir.

20 Q Okay. So, sir, would it be fair to say that while
21 these dates that we see in 6.1 (a) and I'm speaking of
22 the April 4th and April 29 dates, while they are the
23 dates that were finally set, they may have changed in
24 the negotiations leading up to what became the STEP
25 agreement, APA?

26 A Could you repeat that, sir.

27 Q I'm just trying to get the idea that were these dates

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1 always these dates, or were they negotiated and became
2 maybe started with other dates and they negotiated and
3 became April 4th and April 29th by the time it was
4 signed?

5 A I don't recall whether those dates initially were
6 different than they ultimately became in the finalized
7 APAs.

8 Q Maybe we can in the interest of time cut through this
9 and see if we can keep it to this point. Whether they
10 changed or not, the nature of the negotiation on these
11 points was that the STEP agreement would be finalized
12 and signed and once that was done, the application
13 would be immediately brought in Canada for the CCAA
14 order and after that, the two applications would be
15 talked about in the US; is that fair excuse me as well
16 as the Canadian sell order approval?

17 A It was also our intent to have the liberty agreement
18 signed as well.

19 Q You wanted both signed?

20 A Is that's correct.

21 Q Let me back up and see if we can put the package
22 together. The intention was to finalize and get signed
23 both APAs agreements, to be immediately followed by an
24 application in Canada for CCAA initial order, followed
25 by an application to approve both the Liberty and STEP
26 sales here in Canada, as well as applications that
27 would go in the United States both to recognize the

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1 proceedings here in Canada, the CCAA initial order and
2 proceedings, as well as to recognize the and approve
3 the two sales in the United States?

4 A That's correct, sir.

5 Q Okay. And was that timing that we've just discussed
6 always part of these negotiations with these two
7 lenders with STEP and with liberty that timing that I
8 just described to you?

9 MR. SIMARD: Bidders not lenders. You
10 called them lenders.

11 Q MR. ANDERSON: Let me rephrase. My
12 apologies. Was the timing that we talked about you
13 know getting the APAs finalized and signed up followed
14 up by those proceedings being immediately commenced et
15 cetera, was that always the case in the discussions
16 with STEP and with Liberty during your negotiations
17 with them?

18 A That was the intent, sir, yes.

19 Q To the best of your understanding that intention was
20 communicated by Sanjel to those purchasers and; is that
21 correct?

22 A That would be correct, sir.

23 Q Okay. They were, I take it, in agreement with that as
24 well?

25 A Yes.

26 Q Yes. Okay? Did you seek input from the monitor?

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27 (STRIKE THE QUESTION)

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1 Q Did you seek input from PWC with respect to the

2 negotiation of the two APAs?

3 A I don't think we sought input. We did I believe keep

4 him apprised of the negotiations.

5 Q Does keeping the PWC apprised include sending them

6 drafts of the documents?

7 A I don't recall, sir.

8 Q Does it include telling PWC about the approach that was

9 being taken, namely get these agreements finalized and

10 signed immediately followed by an application under

11 CCAA here in Canada and an application to approve those

12 sales?

13 A I believe so.

14 Q Did you seek input from the Syndicate with respect to

15 the negotiations with the purchasers? The APAs.

16 A I don't know if I would characterize it as seek but

17 they did have input into the APAs.

18 Q I see. So whether or not they requested it excuse me

19 whether or not you sought their input, they offered it

20 and provided it; is that fair?

21 A That's correct, sir.

22 Q Okay. Did that input involve reviewing these APAs in

23 successive drafts?

24 A The banks representatives yes.

25 Q Their professional advisors?

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26 A That's correct.

27 Q So they were aware as well that this was proceeding on

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1 the basis that the APAs would be concluded and once
2 they were concluded and signed that would immediately
3 be followed by the application to the CCAA order and
4 the applications to approve the APAs?

5 A I believe so.

6 Q Were they agreeable to that?

7 A It's my understanding, yes.

8 Q Okay. Were the two purchaser Liberty and STEP advised
9 that PWC would be the monitor?

10 A I don't recall whether they were advised I would
11 suggest to you in all likelihood they knew.

12 Q They were told. That's to the best of your
13 recollection --

14 A I assume in all likelihood, yes.

15 Q Okay. Now, sir, so I'm focused now on this timing
16 issue and the concept of conclude of the APAs and
17 follow it by an application to court under CCAA to
18 appoint PWC as monitor and for the other relief in the
19 initial order and immediately apply by no later than
20 the 29th of April for an order vesting order approving
21 those sales I'm focused on that timing, okay. There
22 was no indication whatever, would you agree, to the
23 bond Trustee the bondholders or others including

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24 unsecured creditors that you were working to get to an
25 agreement with these parties, to conclude an agreement
26 with the APAs and immediately follow it with an
27 application under CCAA to have those APAs approved in

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1 those proceedings within a month; is that true?

2 A Sir, are you asking me a question about having them
3 approved in a month or the transaction itself and the
4 filing a CCAA?

5 Q I'm dealing with the fact that there was this
6 discussion and exchanging of drafts and so on under
7 which it was contemplated that within Sanjel and with
8 the lenders and the purchasers and the monitor being
9 privy to all of this rather PWC being privy to all of
10 this, that the timing would be finalize the APAs and
11 get them signed, then go to Court, get it an initial
12 order under CCAA and apply to have them approved in
13 that proceeding, the APAs approved in that Canadian
14 proceeding and then recognized in the US proceedings.
15 We've talked about that already?

16 A Yes.

17 Q Okay. Now I'm asking you to confirm that there was no
18 indication whatever of that timing of how you were
19 going to go about it to the bond Trustee, the
20 bondholders or others including unsecured creditors?

21 A Excuse me sir I need clarification. Timing of the
22 consummation of the APAs or timing of the CCAA

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23 applications together with the subsequent approval? Or

24 recognition.

25 Q You can do you can separate it out anyway you like. I

26 want to know?

27 A Okay with respect to the APAs, I believe it was quite

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1 clear that the bondholders and their advisors knew

2 there was a SISP process. They flaw knee the deadlines

3 that the SISP process was being conducted under as

4 described in the forbearance agreement the bank

5 forbearance agreement. They knew the deadlines that we

6 were working towards. They also knew or at least their

7 advisors knew A and M certainly did with Peter Gibson

8 of our intent to file ^ ^ ^ initially a CCAA

9 application. Did they know that was going to happen

10 immediately after the signing of an APA, I'm not sure.

11 Q You certainly didn't tell them that, did you?

12 A Tell them?

13 Q Tell the bondholders or their advisors that?

14 A That we were specifically filing CCAA after signing

15 APAs?

16 Q Correct?

17 A I did not specifically tie the two together but they

18 knew individually that those processes were being

19 undertaken.

20 Q So what you mean by that you knew they were conducting

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21 a SISP the bondholders knew you were conducting a SISP,
22 they knew from the bank forbearance agreement what the
23 dates were in the SISP process, and they knew that you
24 were getting ready for a filing, that is a CCAA filing?
25 A That's correct.
26 Q Okay. So let's not quarrel with each other let's deal
27 with the point. The point is you didn't tell them that

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1 the arrangement that was being made from your end was
2 to get those APAs signed up and immediately apply for
3 an order under the CCAA, true, you didn't tell them
4 that did you?
5 A True, sir.
6 Q Okay. And you similarly didn't tell them, did you sir,
7 that there would be an immediate application, within
8 the month, to have them approved this that CCAA process
9 isn't that true?
10 A That's true, sir.
11 Q Yes. You also didn't tell them, sir, if they were
12 approved in that process. There would be nothing left
13 to restructure and nothing for the bondholders or the
14 unsecured creditors; isn't that true?
15 A No, sir. I didn't specifically tell them that.
16 Q Right. You didn't generally tell them either, did you?
17 A It was my assumption with the information available to
18 them through the VDR and numerous meetings with their
19 advisors that they could come to their own conclusion

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20 on that front.

21 Q I see. Sir, your counsel provided me last night with a

22 copy of the PWC retainer. Do you have that handy? Can

23 you please identify that as the retainer that was

24 entered into on January 15th, 2015?

25 A That.

26 Q Let's mark that as the next Exhibit.

27 MR. SIMARD:

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1 EXHIBIT ^ -

2 Q MR. ANDERSON: Sir, so just to confirm

3 Exhibit 8 you have of in front of you, that is the

4 engagement by Sanjel Corporation of PWC?

5 A Yes, sir.

6 Q On January 15, 2015, correct?

7 A That's correct, sir.

8 Q Okay and was this included in the virtual data room of

9 Sanjel group?

10 A I don't recall, sir.

11 Q Can you check and advise?

12 MR. SIMARD: We will.

13 UNDERTAKING ^ - ^

14

15 MR. ANDERSON: If so, when.

16 MR. SIMARD: Yes.

17 MR. ANDERSON: Thank you.

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18 Q MR. ANDERSON: Was a copy of this provided to

19 the lending Syndicate or its advisors?

20 A I don't recall, sir.

21 Q Can you check and advise me whether it was?

22 MR. SIMARD: If so when is.

23 MR. ANDERSON: And if so when, yes, thank

24 you.

25 UNDERTAKING ^ - ^

26

27 Q MR. ANDERSON: Did the Syndicate lenders have

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1 input into the decision to engage PWC?

2 A I do believe they are aware of the different firms that

3 we were considering, but with respect to the decision

4 to engage PricewaterhouseCoopers, no.

5 Q So what you mean to say I take it is that they were

6 told the firms you were considering I take it to see

7 whether they had any objection to any of those firms is

8 that the point?

9 A I didn't solicit their objections or their approval. I

10 think it was just by way of information that we were

11 actually looking to retain a monitor.

12 Q Had they suggested that you retain a monitor or is that

13 something you came up with on your own or do you know?

14 A There would have been discussions with the banks and

15 their advisors about a monitor. We believe we needed

16 to move forward and retain one as a company.

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- 17 Q Sure. And have one ready to move quickly as soon as
18 the APAs were signed?
19 A Our selection of a monitor was not solely premised on
20 APAs being signed, sir. We are in a very difficult
21 financial situation. Our trade creditors were
22 requesting shorter and shorter time frames to be paid.
23 There is rumors afoot on our financial health and we
24 wanted to be ready to seek protection should it be
25 warranted in the situation.
26 Q Okay. So the view was get them in there, knowledgeable
27 and ready because you might have to file quickly; is

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- 1 that fair?
2 A That's correct.
3 Q Okay. And were they aware, for example, that you were
4 continuing to make the payments to MacBain on vacant
5 properties?
6 A The monitor was aware.
7 Q PWC?
8 A I believe so.
9 Q Okay on the other hand they were also aware that you
10 were not making the interest payment to our clients, to
11 the bond Trustee or the bondholders?
12 A That's correct, sir.
13 Q Our clients are the bond Trustee but I'm referring to
14 the interest payment of the bondholders you understand

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15 that?

16 A Understood.

17 Q Okay. Similarly, that they were not making all the

18 lease payments to the equipment lessors were they aware

19 of that?

20 A We continued to make all the lease payments to the

21 equipment lessors.

22 Q You made it to them and you were paying the interest

23 payments to the bank; is that true?

24 A That's correct, sir.

25 Q Okay. So the only person you weren't paying was the

26 bondholders?

27 A We were also delaying payment of a number of trade

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1 creditors as well.

2 Q I see. So you were lengthening your payables?

3 A As much as we could.

4 Q They were start being to increase; is that right?

5 A Increase?

6 Q If you're delaying the payment of them and continuing

7 to operate I assume they were ballooning, your payables

8 are rising?

9 A Not generally we had a number of critical suppliers

10 that we were having to pay earlier to maintain our

11 operations, where feasible and not critical, we were

12 delaying payment to ^ ^ ^ certain trade creditors

13 but were cognizant of the ramifications of doing so and

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14 quite frankly ultimately and a majority of the cases

15 actually had to pay them earlier to maintain the

16 business.

17 Q So some got delayed, some got paid earlier is that what

18 happened?

19 A Depending on how critical they were to the business,

20 that's correct.

21 Q Okay and was the PWC made aware of all of this?

22 A I assume that's the case, sir.

23 Q Because you would have kept them up to speed?

24 A Because they would have seen our forecasted cash flows

25 and understood our assumptions with respect to payment

26 of payables.

27 Q They would understand we weren't being paid some

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1 creditors were weren't being paid some paid or earlier?

2 A Earlier relative to what, sir?

3 Q You're the one who said you had to pay some early.

4 What do you mean by that?

5 A Relative to other trade creditors.

6 Q Okay. So were paying being paid earlier relative to

7 other trade creditors, some later, and we weren't being

8 paid. All of that is correct?

9 A That would be, correct.

10 Q And MacBain was being paid and the equipment lessors,

11 they were being paid?

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12 A That's correct.

13 Q And you believe that PWC knew all of that; is that

14 true?

15 A That is true, sir.

16 Q Yes, okay. Sir, I'd like to turn next to the drafting

17 of the initial order and application. So you're aware

18 that there was an initial order drafted and then the

19 application materials for that initial order which

20 would be a document called an application, as well as

21 your affidavit in support, and I gather you filed two

22 affidavits at that point, one confidential and one not?

23 MR. SIMARD: I'm just going to show him the

24 pleadings.

25 MR. ANDERSON: Absolutely.

26 A Okay.

27 Q So is the documents that I'm aware of are an

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1 originating application, an affidavit by Mr. Genereux,

2 your affidavit that we've examined on over the last

3 couple of days, a confidential affidavit, that I

4 haven't examined on and I don't have, a bench brief,

5 sorry you filed a bench brief or your counsel did, as

6 well as a proposed monitor's prefilling report to the

7 court, as well as a draft initial order including a

8 black line to what we call the model order, you can

9 confer with counsel those would be the documents that

10 were provided to the Court at the application for the

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11 initial order; is that true?

12 A Yes, sir.

13 Q Okay.

14 MR. SIMARD: Mr. Anderson the confidential
15 affidavit you and Sanjel executed an NDA yesterday do
16 you want it.

17 MR. ANDERSON: Yes I would like it, thank
18 you.

19 Q MR. ANDERSON: Sir, these documents are in my
20 estimate whatever it is, 3 or 4 inches thick, there's
21 lots of material there. And they went through I
22 presume drafts before they were finalized isn't that
23 right?

24 A The documents you're referring to are the filing
25 material in and the affidavits.

26 Q The application materials you just identified for the
27 initial order application?

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1 A Yes, sir.

2 Q Okay. And now in drafting those materials, both the
3 initial order?

4 (STRIKE THE QUESTION)

5 Q In drafting the application materials, would it be
6 accurate that input was sought from the monitor?

7 MR. SIMARD: We're talking about drafts of
8 documents by counsel, Mr. Anderson. So part of a

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9 litigation brief, and you're asking me who had input on
10 the drafting of those documents and you'll have to help
11 me understand why that's not privileged.

12 MR. ANDERSON: I don't think what (e) you do
13 with your client is something that I'm asking about.
14 I'm asking about input from the advisor that was
15 engaged PWC under Exhibit 8, can you Exhibit 8 in front
16 of you, sir. That document. Go to the first page of
17 it or second page I guess; the cover page is the first.
18 Notice how it says in the letter in the second
19 paragraph: (as read).

20 We are prepared and principal to act as
21 monitor must be satisfied with the form of
22 order before consenting to our appointment do
23 you see that.

24 A I do, sir.

25 Q You also see that they intended to engage their own
26 counsel as well it's paragraphs down, in order to
27 perform our duties we will require the services of

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1 independent counsel. You were aware of that right?

2 A Yes, I was.

3 Q And you're aware that Mr. Kruger's firm was engaged
4 then for PWC to act as monitor's counsel?

5 A That's correct.

6 Q Okay. And you were aware that this punitive -- the
7 monitor before he was appointed PWC before they were

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8 appointed would want to review at least the order
9 before consenting to act as monitor isn't that correct
10 the form the order?

11 A That is correct.

12 Q Okay. And I'm asking you whether they did, first of
13 all, did they review it?

14 MR. SIMARD: Again Mr. Anderson, I posed
15 the question you responded with respect to the
16 solicitor client privilege. I'm not talking about that
17 I'm talking about litigation privilege. And I'm not
18 satisfied but I will consider I just don't know the
19 answer to be candid with you. Why don't we list the
20 questions you're interested in getting into. Put them
21 on the record and take them under advisement I've got
22 to satisfy myself if they are covered by litigation
23 privilege or not, if not we will obviously give you the
24 answers. If that's efficient.

25 Q That's all we can do you're not going to agree without
26 considering them. So let's go there. Here what I
27 would like, sir, I want to know what input and I'm

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1 thinking of drafts exchanged and markups and that sort
2 of thing, what input was exchanged between you or your
3 professional advisors and the monitor, PWC, and its
4 professional advisors concerning the initial
5 application materials, okay. So that includes the

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6 order, but it's not limited to the order, could be the
7 application itself, if comments were provided could
8 include the affidavits in support, both confidential
9 and non- confidential, everything. I want to know what
10 input they provided. My position is so that you know
11 this, that that is not the monitor is not your client.
12 It's a different party. It acts as principal and there
13 is no litigation privilege, he doesn't have a common
14 interest privilege with you or anything else. So I'm
15 entitled to that information. That's my position. I
16 want that.

17 I would like the same with respect to the
18 Syndicate. That is, I want everything that was
19 exchanged between you and your professional advisors
20 and the lending Syndicate or its professional advisors
21 regarding these application materials?

22 MR. SIMARD: Okay. And I understand your
23 position I think. The first question though I do want
24 to clarify one thing, the first question you want to
25 understand the input that PWC had on the initial
26 application materials and then with respect to the
27 Syndicate you slightly different wording and you said

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1 you want to see or are you asking for every draft if
2 drafts were exchanged.

3 MR. ANDERSON: If drafts were exchanged I
4 want every draft.

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5 MR. SIMARD: Covers the PWC and bank

6 Syndicate request.

7 Q When I say input that's what I'm talking about. What

8 input have they provided and the mechanic anymore is

9 the in the form of markups if it came by phone calls

10 instead of markups I would want that?

11 MR. SIMARD: As I say we'll take that under

12 advisement but the very broad and over reaching nature

13 of that undertaking, will inform my decision but we

14 will look at the privilege issue and we'll look at you

15 know it does get back into the issue in my mind of the

16 scope of undertaking requests in a cross-examination on

17 affidavit and we'll respond properly.

18 MR. ANDERSON: I think that the context of

19 the application and demands that it be provided in my

20 respectful opinion.

21 MR. SIMARD: I understand.

22 MR. ANDERSON: And to be clear, you can

23 consider what I have requested in segments. That is

24 you can consider I've requested what input they

25 provided, I requested copies of exchanged drafts and

26 I've requested if the input was not in the form of

27 exchanged draft, to the extent it was in the form of

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1 oral communications, I've requested those. You can

2 consider those in those three segments.

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3 MR. SIMARD: I assure you we will look at
4 everything and to the extent we can give you some but
5 not all, we'll do that.

6 MR. ANDERSON: I understand my point is that
7 some are easier than others.

8 MR. SIMARD: Yes.

9 MR. ANDERSON: To provide.

10 UNDERTAKING ^ - ^

11

12 Q MR. ANDERSON: Sir in terms of general terms
13 without getting into specifics, you've already told me
14 that you believe the monitor I thought you told me
15 maybe I better ask it. Is it correct that you did
16 receive some input so far as you're aware from the
17 monitor or its professional advisors to your
18 professional advisors concerning the initial
19 application materials?

20 MR. SIMARD: I don't think you asked that
21 question. If you did I didn't let him answer. The
22 question previous were with respect to the APAs were
23 they aware of the structure.

24 MR. ANDERSON: I am asking that question
25 thank you for testifying clarification.

26 MR. SIMARD: Did the monitor or their
27 advisors have input into the initial application

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1 materials.

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2 MR. ANDERSON: Provide you with input into
3 the initially application materials.

4 MR. SIMARD: I don't view that as any
5 different to the second-last undertaking I gave.

6 MR. ANDERSON: So it's under advisement.

7 MR. SIMARD: It's part of that same
8 undertaking, I believe.

9 MR. ANDERSON: I asked the same question with
10 respect to .

11 MR. SIMARD: The banks.

12 MR. ANDERSON: The banks and you're taking
13 that under advise many.

14 MR. SIMARD: Yes.

15 MR. ANDERSON: So it's on the record I'll ask
16 it. I'm asking you whether the Syndicate or its
17 professional advisors provided Sanjel group or its
18 professional advisors with input with respect to the
19 initial application materials.

20 MR. SIMARD: We will similarly take that
21 under advisement.

22 UNDERTAKING ^ - ^

23

24 Q MR. ANDERSON: And it would be correct sir
25 that the bondholders or their professional advisors
26 certainly asked Sanjel for input into the initial
27 application materials, they wanted to see them and

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1 provide input on them and that was denied. Do you

2 agree with all of that?

3 A Could you clarify who was asking for that.

4 Q I'm thinking of Peter Gibson?

5 A As an advisor to?

6 Q To the bondholders, ad hoc bondholders?

7 A That's correct, sir.

8 Q Okay. So you've narrowed it to that, so I want to be

9 clear that's that's the limit of your understanding of

10 who made the request is that what you're getting at for

11 filing materials?

12 A I just wanted to confirm who requested that information

13 from me and it was Peter Gibson as an advisor to the ad

14 hoc committee is my understanding.

15 Q Okay. Let's go back through that so we don't have any

16 muddle on it. You understood that Peter Gibson was a

17 financial advisor from Alvarez and Marsal, and he was

18 an advisor to ad hoc bondholders?

19 A That's correct, sir.

20 Q And you understand that they were proposing that he be

21 the CRO correct?

22 A That's correct, sir.

23 Q And you're aware that he was in contact with Sanjel and

24 indeed at your offices and had had requested both

25 orally and by email copies of any documentation that

26 was being prepared for the application for the initial

27 order?

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1 A That's correct, sir.

2 Q True?

3 And that was refused, it wasn't provided, correct?

4 A We provided information regarding cash flows that were
5 being used for purposes of the application.

6 Q I'm going to provide you with a document. This is my
7 copy, we'll mark it first as Exhibit the next one for
8 identification. It's not just off the record?

9 (DISCUSSION OFF THE RECORD)

10 Q MR. ANDERSON: Sir, with respect to the
11 document I've just showed to you, I'm going to mark
12 that now, it's a cash flow forecast I'm going to mark
13 it as the next exhibit for identification and discuss
14 it with you. So if you can hand it to Madam reporter
15 she'll mark it.

16 EXHIBIT ^ -

17 Q MR. ANDERSON: I'm showing you Exhibit G for
18 identification. My understanding sir is that that
19 document was received from by Mr. Gibson from Sanjel
20 approximately March 21st of 2016. Will you please
21 check we'll provide you with a copy of that, will you
22 check and confirm whether that is the cash flow draft
23 cash flow statement that you provided to him on or
24 about that date?

25 MR. SIMARD: We'll do that.

26 A Sir could I clarify that.

27 Q Yes?

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1 A You say that as in the only or just one of.

2 Q There may have been others, this is one that you

3 provided on that date?

4 A Okay.

5 MR. SIMARD: We'll do that.

6 MR. ANDERSON: You'll do that.

7 UNDERTAKING ^ - ^

8

9 Q MR. ANDERSON: And I'm advised sir that you

10 didn't provide him with any other one after March 21st,

11 than the one that is Exhibit G for identification,

12 until of course the filing version, the one that's

13 attached to your Exhibit 28 to your first affidavit.

14 Will you confirm check and confirm that that is so?

15 MR. SIMARD: We will.

16 UNDERTAKING ^ - ^

17

18 Q MR. ANDERSON: Do you understand the question

19 you seem?

20 A I understand the question, yes.

21 Q What I'm really seeking to know is whether Exhibit G

22 was provided to you on about March 21st, and whether

23 that is the last one in terms of cash flow that was

24 provided to Alvarez and Marsal or any of the

25 professional advisors to the ad hoc bondholders until

26 after the filing, okay? Are you clear about that?

27 A I am clear, sir.

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1 Q And you will give me the?

2 MR. SIMARD: Yes, we'll do that.

3 Q MR. ANDERSON: Thank you. So the next one

4 that came out, if the answer to that question is that

5 that's the only one, would be the one that is Exhibit

6 28 to the your first affidavit?

7 A It came out and was delivered to ...

8 Q Correct. Sure you may have done all manner of them

9 internally for all I know. I'm talking about the ones

10 that went to the advisors.

11 A Yes, sir.

12 Q Off the record.

13 (DISCUSSION OFF THE RECORD)

14 Q MR. ANDERSON: Okay, sir. I'd like to take

15 you to the bank forbearance agreement first. Just give

16 us a moment. If I can take you to page 10 of the

17 document. So this is Exhibit 11 to your first

18 affidavit. And page 10. Subclause C. In your

19 testimony yesterday you referred to additional

20 reporting that was required to the lending Syndicate.

21 Do you recall?

22 A I don't recall the context of that question, sir.

23 Q In any case we discussed yesterday the fact that you

24 had some additional reporting obligations to the bank

25 Syndicate and I'm trying to bring your attention to

26 this clause as being that additional reporting that

27 you're referring to, if indeed that's what you're

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1 talking about?

2 A We had numerous additional reporting requests. This

3 would have been one of them, yes.

4 Q Sorry I'm not talking about requests. I'm talking

5 about agreements to additional reporting obligations.

6 An agreement that resulted in you having to do more

7 reporting to the bank than before the agreement?

8 A Yeah this was an unsigned agreement but we adhered to

9 it nevertheless.

10 Q I guess that. You told me that?

11 A Yes.

12 Q So when you talk about additional reporting

13 obligations, what you're referring to are the

14 obligations that you treated as though binding in this

15 document, the ones I'm pointing out to you, 2.10 (c) on

16 page 10 of Exhibit 11?

17 A That's one of them, yes.

18 Q Is there another one?

19 A No there's a number of reporting requirements in this

20 agreement.

21 Q Sorry, fine. True enough. But this is the agreement

22 you're talking about the additional reporting

23 obligation being under?

24 A That's correct, sir.

25 Q Okay. Thank you. And so as part of those additional

26 reporting obligations, you understood or treated

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27 yourselves as obliged to provide the bank or rather to

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1 provide and cause your advisors to provide regular
2 updates to the lenders and their advisors with respect
3 to the sale and recapitalization process being
4 undertaken by such advisors on behalf of the loan
5 parties.

6 In terms of the sale and recapitalization process
7 you're talking about the SISP.

8 A That's correct.

9 Q And you're ^ ^ ^ including the discussions with in
10 terms of the recapitalizing process negotiations with
11 the ad hoc bondholders about potentially recapitalizing
12 Sanjel; is that true?

13 A That would be correct, sir.

14 Q Okay. And in executing that duty as you understood it
15 under this unsigned agreement, you did what you've been
16 testifying to over the last day, you kept the bank up
17 to date on essentially everything you were doing in the
18 SISP process and the negotiation of the APAs, in
19 engaging of PWC and preparation of the application
20 materials for the CCAA and so on is that all true?

21 A That's all true under the agreement on the forbearance,
22 that's correct.

23 Q Sir let's go to it's Exhibit 12 to your initial
24 affidavit?

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25 A M-hm.

26 Q This too is unsigned?

27 A M-hm.

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1 Q But per your testimony yesterday, it was finalized

2 there was no more negotiations with respect to. Would

3 it be accurate to say that you abode by this agreement,

4 you treat it as though you were going to act in a way

5 that it was binding on you; is that fair, sir?

6 A I'm just was reading some information here. We we

7 tried to adhere to the agreement even though it's

8 unsigned that's correct, sir.

9 Q Let's go to Number 9, the information and access:

10 A Yes.

11 Q Part way through if you read down, it says in

12 connection there with, that is in connection with the

13 potential sale recapitalization refinancing and

14 restructuring transaction involving the company,

15 provide the advisors with access to non- public

16 information concerning the company, which is otherwise

17 available to other parties interested in participating

18 in a sale recapitalization refinancing, restructuring

19 transaction. And make representatives available for

20 meetings and discussions.

21 Did you do that?

22 A Yes, sir we did.

23 Q Let's in addition the company will provide the consent

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24 bondholders with periodic but at least two times per
25 week up dates on the sale recapitalization,
26 refinancing, and restructuring process and the
27 company's view and understanding of the timing, of the

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1 sale of the recapitalization process which shall
2 include among other things a summary and status of the
3 non- disclosure or confidentiality agreements, letters
4 of intent, purchase agreements, or other financial
5 commitments received by the company by not include
6 terms and conditions of such letters of intent purchase
7 agreements or specifically not include the
8 consideration offer, et cetera?

9 Did you do that all of that.

10 MR. SIMARD: By the word do you mean

11 Sanjel.

12 Q Sorry, I mean Sanjel?

13 MR. SIMARD: No it's advisors just Sanjel.

14 Q Sanjel or its professional advisors?

15 A It was my understanding that professional advisors were
16 up dating the advisors of the consenting bondholders of
17 progress and information that was requested here.

18 Q Was there any updating the ad hoc bondholders with
19 respect to timing more than what I can read in the
20 Exhibit 11, the bank forbearance agreement that had as
21 you'll recall the March 24th date as one of the

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22 milestones?

23 A I don't recall, sir.

24 Q Sir, you were aware at that when the?

25 (STRIKE THE QUESTION)

26 Q On March 18th, we discussed this yesterday, the bank

27 issued a demand which included a demand and

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1 acceleration and a notice of intention to enforce. Do

2 you recall?

3 A Yes, sir.

4 Q Okay. And your understanding from that is that that

5 accelerated the indebtedness owed to the bank Syndicate

6 by Sanjel; is that true? Do you have any doubt about

7 that, sir?

8 A Sir, my only hesitation is provided for the

9 acceleration.

10 Q Do you want to go to it?

11 A Yes, please.

12 Q Let's go to it. If you look at paragraph 5 on page 3.

13 Do you want me to restate my question?

14 A If I could just spend a second reviewing this again,

15 please, sir.

16 Q Take all the time you like?

17 A Could you repeat your question, please.

18 Q Sure. I ask whether when you received the March 18th,

19 2016, demand from the lending Syndicate's counsel, did

20 you understand that the bank had accelerated the

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21 indebtedness of Sanjel group to the Syndicate?

22 A Yes.

23 Q Okay. Can you get out Exhibit F for identification,

24 that's Mr. Simard's?

25 MR. SIMARD: What tab was it in your

26 binders.

27 Q Tab 45?

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1 MR. SIMARD: We have it.

2 Q MR. ANDERSON: It's the second page, well

3 it's the page that has date March 23, 2016. Do you

4 have that part in front of you?

5 A Simard.

6 MR. SIMARD: Yes.

7 Q MR. ANDERSON: So, sir, I take it from this

8 email which was by Mr. Simard to Mr. Togut, being the

9 bond Trustee's US counsel and copied to Mr. John

10 mercury the company formally requested on behalf of

11 Sanjel that the Trustee postpone the bondholders

12 meeting, this is the one that had been on March 10,

13 postponed to March 31st, request that it further be

14 adjourned to to weeks, April 14. We went through this

15 yesterday?

16 A Yes, we did.

17 Q Now we're going to give more ton text for it, okay.

18 Context. Now that was to be one of these update

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19 meetings, was it not excuse me. Let me strike that?

20 (STRIKE THE QUESTION)

21 Q So at this stage, March 23rd, the request is to adjourn

22 to April 14th, and to have an information update

23 presentation call with ad hoc bondholders and the

24 Trustee's counsel on March 31st?

25 A That's correct, sir.

26 Q Okay. And so based on this letter, I think we

27 discussed yesterday, it was put over, that is the

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1 bondholders meeting was further postponed to April

2 14th, correct?

3 A That's correct.

4 Q And now let's deal with this bondholders presentation

5 meeting. That meeting was to be on March 31 and it got

6 further postponed, didn't it, until April?

7 MR. SIMARD: 6.

8 Q MR. ANDERSON: April 6; is that true?

9 A I believe that's the case.

10 Q Yes. You can confirm the date to me, but I'm fairly

11 sure. The reason I'm is fairly sure because I was on

12 the call?

13 A I was going to look to my daytimer if that's okay.

14 Q Please look at your daytimer.

15 A Not that I don't trust your memory.

16 Q Well, you shouldn't?

17 A Was it.

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18 A Yes, sir.

19 Q So the update meeting that was scheduled for the 31st,
20 was postponed until April 6th?

21 A That's correct.

22 Q But it did proceed on April 6th?

23 A Yes it did.

24 Q It was a telephone call?

25 A That's correct.

26 Q You don't need to get into the name of everyone on the
27 call. Let's deal with who was on the call in general

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1 terms. It would be the bond Trustee's counsel in
2 Canada and the United States, correct do you recall?

3 A Sir, I couldn't confirm that. There's numerous
4 participants.

5 Q Do you recall me being on the call?

6 A Quite frankly, no.

7 Q I know I don't leave much of an impression with people
8 so I may have not have there. Mr. Simard was on the
9 call?

10 A Why.

11 Q He led it in fact isn't that right?

12 A That's correct.

13 Q And would it be accurate to say that during that call
14 the substance of what was communicated to the ad hoc
15 bondholders, their professional advisors and the bond

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16 Trustee advisors was this, namely the filing that had
17 occurred on April 4th, the scheduling that was
18 contemplated for an application in Canada to approve
19 the 2 APAs and applications that either were made or
20 were going to be made in the United States under
21 chapter 15 to recognize the Canadian proceedings and to
22 approve and recognize the sales?
23 MR. SIMARD: Mr. Anderson, I know you
24 joined the call late. Your associate Mr. Ross was on
25 your partner Mr. Ross was on from the start as was
26 Mr. Togut so you should check with them, but the call
27 was expressly stated to be without prejudice and

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1 subject to federal evidence federal rule of evidence in
2 US 408 at the commencement of the call which was agreed
3 by all participants. I don't think we can get into the
4 contents of the call.
5 MR. ANDERSON: I was unaware of that.
6 MR. SIMARD: You came on late.
7 MR. ANDERSON: Okay. I came on late. I
8 don't know what you just told me. I'm going to have to
9 look into it.
10 MR. SIMARD: That's my recollection, I'm
11 fairly sure about that.
12 MR. ANDERSON: Okay. Let's go off the
13 record.
14 (DISCUSSION OFF THE RECORD)

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15 Q MR. ANDERSON: Pursuant to discussion we've
16 had off the record, I'm going to limit what I ask about
17 this. I'd ask you simply to confirm that in that call
18 there was -- your counsel advised of the filing on
19 April 4th in the Canadian proceedings and of scheduling
20 with respect to various court applications; is that
21 fair?

22 MR. SIMARD: That is partially correct,
23 Mr. Anderson. But I don't want to leave you with the
24 misimpression. On the early evening in Calgary on
25 April 4th Bennett Jones had a call with Mr. Togut's
26 firm having provided the materials we disclosed to him
27 the filing and he saw the dates and the scheduling on

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1 this call on the 6. A portion of the call which I
2 agree is not privileged involved us explaining the
3 filing and the scheduling to the participants.
4 Q Okay you confirm that your counsel's answer is your
5 own?
6 A Yes.
7 Q Okay. Thank you. Sir would it be accurate, can I have
8 your attention for this question, would it be accurate
9 sir that the reason there was an adjournment of the
10 call that had been scheduled from March 31st to April
11 6th was that you weren't yet finalized with the APAs
12 and hence weren't ready to deliver that message that we

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13 just talked about; is that fair?

14 A Sir, I can't confirm that that was the case. I do know

15 that we were incredibly resource constrained as we

16 tried to move the APAs to the finish line and whether

17 the resource constraint was an issue which I think it

18 was as the predominant issue, I believe it was as

19 opposed to some strategic rational to delay a

20 bondholders a call for purposes of a CCAA filing. That

21 would be my recollection.

22 Q So constraint on resources was the reason; is that

23 right?

24 A I could -- I could confirm that's one of the reasons.

25 I can't confirm that there was a strategy to delay the

26 bondholders call because we were waiting to file a CCAA

27 application.

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1 Q It may been one of the reasons, but you're not able to

2 confirm either way?

3 A That's correct.

4 Q I see, okay. And you don't know why they didn't advise

5 if it wasn't a strategy reason, you have no reason or

6 explanation for why you just didn't notify them in

7 writing that you were doing that?

8 A That we were doing what, sir.

9 Q Delaying if it wasn't strategy, delaying this call but

10 the intent was to file the application and talk to you

11 about a scheduling for, for example, of applications to

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12 approve a sale to purchasers and so on?

13 A I'm not going to get you to repeat that.

14 Q I can repeat it if I'm not being clear. I'm wondering

15 why if it was just resource constraints because

16 everybody is so busy why somebody didn't dash off an

17 email to Mr. Togut and ad hoc bondholders counsel and

18 tell them we can't talk to you on today because we're

19 busy working on APAs but we'll be applying next week

20 and here's the schedule that we have in mind. The only

21 reason why they didn't do that if it wasn't strategy to

22 keep us in the dark?

23 A I can confirm that we delayed the bondholders update.

24 My recollection is that might have not been the first

25 delay. Again regarding timing constraints. The fact

26 that we didn't initiate a an information on our CCAA

27 application timelines quite frankly is not -- how do I

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1 say it. It wasn't requested, nor did we volunteer.

2 Q I see. Thank you, sir.

3 Let's sir if you could go to Tab 45. Sorry, sir,

4 Tab 48. Again we talked about this yesterday, but I

5 don't think we entered as an exhibit. Mr. Simard I'd

6 like to enter your email to Mr. Togut's firm of March

7 30, it's on the second page there.

8 MR. SIMARD: Again we didn't talk about

9 this email yesterday but it's similar to one what we

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10 did because my email is the start of the chain and
11 there are two more emails or three more emails on which
12 no one at the company or counsel was copied. So I
13 think we have to mark it as an Exhibit for
14 identification.

15 Q MR. ANDERSON: Okay. That's fine. But we're
16 going to -- that's fine. And the part that I'm focused
17 on is your email. Let's first mark it for
18 identification. And that will be Exhibit H?

19 EXHIBIT ^ -

20 Q MR. ANDERSON: Sir, I just want you to
21 confirm and you can confer with counsel if you wish,
22 that on the second -- on the second page, there's an
23 email that was sent by Mr. Simard to Mr. Scott Ratner,
24 who is with the bond Trustee's US counsel, Mr. Togut's
25 firm on that date, about midway down the page, do you
26 see that?

27 A Yes, I do.

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1 Q Was that sent by Mr. Simard to Mr. Ratner on or about
2 that date?

3 A Yes, it was.

4 Q And it references in the first paragraph, second
5 sentence, the company and advisors are not going to be
6 able to attend a call on March 31 for various
7 logistical reasons. That the limited resources and
8 working 'til midnight every day thing that you were

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9 talking about earlier?

10 A This is Mr. Simard's wording but I would agree it was

11 they said a resource constraint which could be

12 logistical in nature.

13 Q The resource constraint was you folks were working

14 night and day at that time to get the APAs finalized

15 and signed isn't that right as well as the originating

16 application materials?

17 A As well as the demands of the business in a very

18 difficult environment, yes.

19 Q All of the above?

20 A Yes.

21 Q Thank you.

22 (ADJOURNMENT)

23 Q MR. ANDERSON: Mr. Crilly, I just would ask

24 that you identify what I'm showing you which is an

25 email from Mr. Peter Gibson of Alvarez to yourself on

26 March 19, 2016, and then the response by you inside his

27 email, if I can put it that way, by answering questions

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1 inside, on the same date. Do you confirm that that

2 email exchange took place?

3 A That's correct, sir.

4 Q On that date?

5 A That's correct, sir.

6 Q We'll mark that as next exhibit?

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7 EXHIBIT ^ -

8 Q MR. ANDERSON: Let's keep that handy. Don't
9 put it away. And Mr. Simard sent me as an answer to an
10 undertaking yesterday a chain of email correspondence
11 as well as a hand note. Do you have that handy?

12 A Yes.

13 Q I'd ask you to confirm that's the answer to the
14 undertaking you gave regarding Mr. Gibson knowing about
15 a plan to do a CCAA filing to that extent, to know that
16 there was a CCAA filing contemplated?

17 MR. SIMARD: Yes that's the undertaking we
18 provided, response we provided.

19 MR. ANDERSON: Let's mark that as the next
20 exhibit 10.

21 EXHIBIT ^ -

22 Q MR. ANDERSON: There's some overlap between
23 these exhibits but we'll work through that?

24 A I understand.

25 Q Perhaps I can start with your note of March 16, which
26 is part of what is now Exhibit 10. Do you have that?

27 A

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1 MR. SIMARD: The handwritten note.

2 Q The handwritten note, yes?

3 A M-hm.

4 Q Those are your notes?

5 A That's correct.

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6 Q They're on the fourth page of the exhibit. The one

7 that has the redactions on it?

8 A Fifth page, sir.

9 Q Is it the fifth page?

10 A Yes.

11 Q My apologies fifth page. You have that and can you

12 just read into the record the first line?

13 A "Can Peter Gibson see the filing (CCAA) cash flows".

14 Q So he's requesting the draft filing materials is that

15 what he's asking for?

16 A The cash flows.

17 Q What about the filing, those words see the filing CCAA,

18 (e) he wants to see the -- the application materials

19 for the initial order?

20 A I took that as just the cash flows, sir.

21 Q You thought he was just asking for cash flows?

22 A That's correct.

23 Q I see. Can you read the next line?

24 A Apologies for the writing, "does the DIP maximum

25 include priority claims of 20 million length of DIP

26 period".

27 Q The next line CCAA communications plan?

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1 A CCAA communications plan.

2 Q Next line concern details?

3 A Bank syndicate dollars per bank in terms of the

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- 4 commitment or amounts allocated to the Syndicate
- 5 members. The next.
- 6 Q Sorry do you mean the breakdown of who is owed what by
- 7 Sanjel?
- 8 A No of the banking Syndicate under the RCF revolving
- 9 credit facility, what banks were had advanced what
- 10 sums.
- 11 Q I see. The next line?
- 12 A Warren's availability. Being our chief operating
- 13 officer, and the next one is wi fi access wi fi.
- 14 Q And that's wi fi access to the virtual data room?
- 15 A No that's wi fi access while Peter was in our offices.
- 16 Q I see. Okay. So you discuss those points. Do you
- 17 recall anything?
- 18 (STRIKE THE QUESTION)
- 19 Q Let's go then to the email of March 17th, which on mine
- 20 is the next page, maybe not on yours. It's an email
- 21 from Peter Gibson to Jason Ning and yourself?
- 22 MR. SIMARD: We have it on page 3 of the
- 23 exhibit.
- 24 MR. ANDERSON: That's fine. Wherever it is.
- 25 March 17th email. So.
- 26 A Yes.
- 27 Q This is the day following the phone call with him?

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- 1 A Yeah.
- 2 Q Yes. He was requesting if you look in at the second

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3 paragraph, he was requesting details of the draft or
4 otherwise that has been prepared in anticipation of the
5 filing. Did you understand him there to be requesting
6 the application for the initial order of the filing
7 materials for that?

8 A Yes.

9 Q Yes, okay. And he was looking forward to hearing from
10 you in due course about that, correct?

11 A That's correct.

12 Q Okay. So then let's go to March 19, this is now on
13 Exhibit 9. Also the other exhibit but it doesn't
14 matter. Let's go first to the email from Mr. Gibson to
15 yourself dated March 19. He sets forth a list of
16 things he's requesting?

17 A M-hm.

18 Q Including in 1 (d) all of the documentation draft or
19 otherwise relating to the filing but for now excluding
20 the SISP material since our access to that is currently
21 under discussion between respective counsel?

22 A That's correct.

23 Q Right. So the concept was give us everything with
24 respect to your filing?

25 A M-hm.

26 Q But if there's something with respect to the SISP for
27 now that's under discussion, so I take it there was

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1 some resistance to that SISP that is, details of the

2 SISP?

3 A Yeah the resistance was the quantum of the purchase

4 price on the APAs.

5 Q Okay. So that quantum price thing, that was to be held

6 back but he was requesting the balance of the

7 materials?

8 A That's correct, sir.

9 Q Okay. Then your response to him?

10 A M-hm.

11 Q Is in the body of his email?

12 A Yes.

13 Q And so, for example, CCAA budget cash flow and

14 assumptions, the answer will have the schedules Monday

15 do you see that?

16 A M-hm.

17 Q Is your answer?

18 A Yes.

19 Q Okay. And the schedule we're talking about is the one

20 that is the subject of the separate undertaking I

21 believe?

22 A Yes.

23 Q That you're to get back to me on?

24 A Yes.

25 Q Which is?

26 MR. SIMARD: G for Identification.

27 MR. ANDERSON: Thank you. And the KERP you

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1 were not prepared to provide.

2 A No.

3 Q And you would give us give him information on the stake

4 holder communication on Monday?

5 A That's correct, sir.

6 Q And then let's look at the next one. He says all other

7 documentation draft or otherwise relating to the filing

8 but for now excluding SISP materials that is currently

9 under discussion between counsel. Your answer to that

10 was advise not to provide?

11 A That's correct.

12 Q Okay. So you were telling him on the 19th you're not

13 giving him that stuff?

14 A That's correct.

15 Q Okay. He was explaining to you yes needed DIP

16 information or rather it was difficult for him to

17 finalize the term sheet addressing the DIP when the

18 parties putting in the money have very limited

19 visibility on how it's going to be spent. He's

20 explaining why this information is important.

21 There was no response to that I gather because

22 there was no specific request there?

23 A No that was a specific reference to the cash flow

24 statements that we were providing the following Monday.

25 Q I see. Okay. So a bunch of stuff was going to be

26 provided on the following Monday, which is -- this is

27 Saturday, so that will be the 21st?

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1 A That's correct.

2 Q Sir, there was some discussion about where a filing
3 would occur and some discussion between the ad hoc
4 bondholders and Sanjel and its professional advisors on
5 that subject,, for example, whether to file in Canada,
6 in the states, in both places. Do you recall any
7 discussion about that?

8 A I recall that the ad hoc bondholders restructuring
9 proposal requested a Chapter 11 filing.

10 Q Right. And did the company not want to file Chapter 11
11 in the states?

12 A That's correct.

13 Q Why not?

14 A It's my understanding that the Chapter 11 filing would
15 be materially more expensive and logistically onerous.

16 Q Were you, for example, in Chapter 11 it has cram down
17 provisions?

18 A No I'm not aware of that.

19 Q Okay. You must have had some experience you told us
20 you had some experience with US bankruptcy proceedings.
21 You're aware under Chapter 11 that the that there's the
22 appointment of a bankruptcy Trustee?

23 A I believe so, yes.

24 Q Yes. And did you have any discussions with Mr. Darin
25 MacDonald about not want a US bankruptcy Trustee
26 sniffing around intercompany transactions with MacBain
27 and the family enterprises?

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1 A No, I didn't, sir.

2 Q Do you know whether Mr. MacDonald had any concerns

3 about there being a US filing?

4 A I'm aware that he was party to the same discussions I

5 was with counsel regarding the cost and.

6 Q I don't want to you let's not get into your discussions

7 with counsel. Let's just limit ourselves to any

8 discussions that you had outside of counsel

9 discussions, okay?

10 A I understand.

11 Q Let's put that aside?

12 A Yes.

13 Q Okay. Were you party setting aside counsel

14 discussions, to any discussions with Mr. MacDonald from

15 which you can tell me whether or not he was a proponent

16 or an objector to filing Chapter 11 in the US?

17 A I had no such discussions.

18 Q Were there any discussions with the bank Syndicate

19 about this concept of filing either Chapter 11 in the

20 US entirely or concurrently with Canadian filing under

21 CCAA?

22 A Chapter 11?

23 Q Chapter 11 in the states, any discussions with the

24 lending Syndicate about chapter 11 in the states and a

25 concurrent filing in Canada let's start with that?

26 A I don't recall a concurrent Chapter 11 filing together

27 with the CCAA filing, no.

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1 Q Okay. Do you recall a discussion about a Chapter 11

2 filing with the lending Syndicate?

3 A Not specifically, sir. My recollection is having this

4 discussion with my counsel.

5 Q Okay. But not with the lending Syndicate or anyone

6 from them?

7 A That's correct.

8 Q So if there were any such discussions, there may have

9 been discussions but they would have been at the

10 counsel level the advisor level?

11 A That's correct.

12 Q I see. Now, sir, I want to make sure that I have this

13 correct. Throughout the time frame from the bond

14 Trustee's involvement and even from the involvement of

15 the ad hoc bondholders from December forward, Sanjel

16 was represented throughout by both Canadian and US

17 counsel, correct?

18 A Sir, I can't recall the date that Vinson and Elkins

19 started representing Sanjel.

20 Q Let's deal with Canadian counsel first. Throughout

21 that period you were represented by Canadian counsel?

22 A That's correct.

23 Q And that was Bennett Jones?

24 A That's correct.

25 Q And for at least part of that period but you're not

26 sure whether it was it went back as far as December of

27 2015 is that your point?

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1 A That's correct.

2 Q And it was Vinson Elkins?

3 A That's correct.

4 Q Can you let me know by way of answer to undertaking
5 from December forward you had US counsel and if it was
6 later than December, from what date you had counsel in
7 the US, will you do that?

8 MR. SIMARD: Yes.

9 UNDERTAKING ^ - ^

10

11 Q MR. ANDERSON: I take it the only US counsel
12 you've had in the this matter has been Vinson Elkins;
13 is that right?

14 A I believe so, sir, yes.

15 Q Okay. Now let's talk about what you know about lending
16 Syndicate's counsel. Throughout this same period,
17 would you agree that you were aware that they were
18 represented throughout by both Canadian and US counsel;
19 is that true?

20 A Yes, sir.

21 Q So from December certainly onto now?

22 A At some point in December I was aware of their US
23 counsel, yes.

24 Q And that US counsel was Wachtell firm?

25 A That's correct.

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26 Q And their Canadian counsel is the Blakes firm?

27 A That's correct.

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1 Q Sir, just going back to quickly to the agreements, the

2 APAs, from my quick review of them, I did not see any

3 fiduciary out clause are you familiar with that term?

4 A Yes, I am, sir.

5 Q What's your understanding of a fiduciary out?

6 A The preservation of utilize -- of considering competing

7 proposals on the basis of the best interest of the

8 company.

9 Q An ability of the company to exit from an agreement

10 it's entered into if something better comes along that

11 is if the best interest of the company; is that fair?

12 A That's fair, sir.

13 Q Okay. And is there a reason why let me ask first of

14 all. Did you ask that a fiduciary out clause be

15 included in either of these agreements?

16 A We did not ask on the basis that probably would result

17 in a break fee as typically is the case.

18 Q And those run 2, 3 percent?

19 A It varies, but I'll take your word for that, sir.

20 Q Don't take my word. You don't know?

21 A I know the range is broader than that, sir.

22 Q Sure. Is that typical?

23 A What's typical?

24 Q Do you think in your experience is a break fee in the

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25 neighbourhood of 2 to 3 percent?

26 A It's reasonable, sir.

27 Q Okay. Did you speak with monitor or with PWC or its

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1 counsel about whether a break -- a fiduciary out clause

2 should be included in these agreements?

3 A Not that I recall, sir.

4 Q You don't recall them suggesting that to you?

5 A I don't recall, no.

6 Q Okay. I'm just going to ask for three minutes and I'm

7 going to just check my notes and see whether I have

8 anything else?

9 MR. SIMARD: Thank you.

10 (ADJOURNMENT)

11 Q MR. ANDERSON: Mr. Crilly, those are my

12 questions. Subject to obviously to anything arising

13 from the undertakings. Thank you for attending this

14 examination?

15 A Thank you.

16 MR. SIMARD: Mr. Anderson I have a few

17 questions in Re-Examination. I will be brief though.

18 Mr. Crilly, yesterday Mr. Anderson asked questions and

19 you provided answers about why Sanjel did not negotiate

20 a forbearance with MacBain do you recall that.

21 A Yes, I do.

22 Q And also he asked questions and you answered about why

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23 Sanjel did so with the three equipment lessors whom are
24 named in the draft forbearance agreements we see in
25 Exhibits 13, 14 and 15 of your first affidavit do you
26 recall those questions?
27 A Yes, I do.

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1 Q I recall you saying something to the effect that the
2 equipment leases had crossed default provisions. Am I
3 question for you is when those forbearance agreements
4 with the equipment lessors were being negotiated had a
5 cross default been triggered under the equipment leases
6 or in your mind was there a risk that a cross default
7 might be triggered?
8 A We had defaulted under the RCF and the bond covenants
9 and those were the triggers on the cross default of the
10 leases.
11 Q And under the leases between Sanjel and MacBain were
12 their cross defaults and those leases triggered by
13 defaults under the bank credit agreement or the bond
14 agreement?
15 A I believe there was no cross defaults on those leases.
16 Q You also testified yesterday that Sanjel paid the
17 MacBain lease payments from January 2016 go forward
18 less certain agreed amounts of discounts or deferrals,
19 you recall that?
20 A Yes, I do.
21 Q Did Sanjel also pay the equipment leases from that same

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22 January 2016 period forward?

23 A Yes, we did.

24 Q Did Sanjel make full payments to its equipment lessors

25 during that period?

26 A Yes, we did.

27 Q And would those full payments have included to the

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1 three equipment lessors named in the draft forbearance

2 agreements?

3 A Yes they would.

4 Q There was another question yesterday from Mr. Anderson

5 about VDR access to the SISP bidders who moved to the

6 second stage of the SISP process. Do you remember

7 that?

8 A That's correct.

9 Q In the undertaking response which is Exhibit 10, I'll

10 ask you to open to flip to the 8th page if you could

11 and specifically at the bottom of the eighth page?

12 MR. ANDERSON: I'm not sure I've got a null
13 copy of it. It might be in different order than yours.

14 MR. SIMARD: What I'm referring to for
15 everyone's reference is an email chain the first page
16 of which starts with a Jason Ning email on Monday,
17 March 14, 2016. So if we go to the second page of that
18 chain, please. At the bottom March 1 email to Paul
19 Crilly to Mr. Gibson where it says Peter, on the next

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20 page, in order to provide you and your clients with
21 access to Sanjel information currently being compiled I
22 suspect that's a typo we are setting you up additional
23 access to a newly created VDR and the sales and
24 solicitation process. I have copied Jason with this
25 email who will be setting up your access shortly.
26 Now the reference in that email to the newly
27 created VDR for second stage bidder investors, is that

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1 the same stage 2 VDR that you spoke of in your answers
2 to Mr. Anderson yesterday.
3 A I believe so.
4 Q And the access that you spoke about in this email we're
5 looking at to Mr. Gibson, do you know if Mr. Gibson
6 accessed that VDR?
7 A I believe so. I would like to just clarify if it
8 wasn't a specific -- if it wasn't the identical VDR, it
9 was a mirror of the second stage VDR.
10 Q Okay. So it may not have been the exact same but a VDR
11 with the same information?
12 A Absolutely.
13 Q Further up on the second page of that email chain, if
14 you go to the top email, it says VDR 2, this is your
15 email to Mr. Gibson on March 13th. Supplemental
16 information from the last VDR, Ascribe and Clear Lake
17 had the access to the previous information and they're
18 welcome to have access to this one. Did you know if

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19 Ascribe and Clear Lake were given access to this one?
20 A I believe so.
21 Q Mr. Anderson asked you questions this morning about
22 whether would be or would not be recovery to
23 bondholders and other unsecured creditors if the APAs
24 closed and the other assets were monetized. I want to
25 ask you a little bit about that. If the APAs sale
26 transactions close and the other assets are monetized,
27 is the contemplation that the corporate entities

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1 compromises the Sanjel group still be in place?
2 A Could you repeat the question, please.
3 Q Sure. In the APA sale transaction close and then the
4 other realizations of the non- core assets in cash and
5 AR you were speaking about with Mr. Anderson. If those
6 things happen, will the corporate entities compromising
7 the Sanjel group continue to exist is that the
8 contemplation?
9 A Yes.
10 Q Are you aware of any potential transactions or current
11 offers of transactions involving those remaining
12 corporate entities?
13 A Yes.
14 Q Can you expand on that that you're aware of?
15 A One of the APAs requested the possibility of buying the
16 corporate entities.

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17 Q Which APAs was that?

18 A That would be the STEP APA.

19 Q And if that potential transaction goes ahead, do you

20 know, as we sit here today, what consideration would be

21 offered in that transaction?

22 A No.

23 Q Okay. Mr. Anderson asked you this morning questions

24 about the bondholders interest payment not being made.

25 We've looked at Exhibit 12 to your first affidavit

26 which is the bond forbearance agreement. And I

27 understand from your evidence that that the form of

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1 that agreement was settled by about mid-February 2016;

2 is that correct?

3 A That's correct.

4 Q And in that form of agreement settled at that time what

5 had Sanjel agreed with respect to the payment of the

6 bond interest?

7 A The bond forbearance agreement called for the interest

8 being paid on the December 19 coupon.

9 Q And I understand from that agreement that a

10 precondition of that one of the preconditions of that

11 agreement becoming enforceable was the bondholders

12 obtaining two-thirds consent of all holders to that

13 agreement, do you know if that occurred?

14 A I'm not aware of that occurring.

15 Q Did you ever receive notice from the bond Trustee or

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16 the bondholders that that occurred?

17 A No.

18 Q Ultimately I understand that the interest payment was

19 not made?

20 A That's correct.

21 Q And to your understanding why was that the case?

22 A The condition upon that being paid, i.e., two-thirds of

23 the bondholders had not become counterparties to the

24 forbearance.

25 Q Those are all my questions?

26 A Agreement.

27 MR. ANDERSON: Are we done?

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1 Q MS. BOURASSA: I have one question

2 Mr. Crilly. I want to give you a document here.

3 So, Mr. Crilly, I'd like to have this marked as an

4 exhibit I think we're on Exhibit 11. Mr. Crilly this

5 is a letter addressed to you from Malcolm Tinsley,

6 December 14, 2015, who is the managing director of loan

7 syndications, ATB. Do you recall receiving this

8 letter?

9 A Yes.

10 Q Did you receive it around the time dated?

11 A I believe so.

12 Q Thank you.

13 MR. SIMARD: Sure we'll mark that.

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14 EXHIBIT ^ -

15 Q MR. ANDERSON: One matter on recross.

16 MR. SIMARD: Any other questions on

17 re-exam. Go ahead.

18 Q MR. ANDERSON: Sir I want to be clear that

19 the bondholders meeting for two-thirds approval of the

20 bondholders forbearance agreement is the very meeting

21 that we've been talking about that was scheduled for

22 March 10th and which at your request, that is Sanjel's

23 request, and lend's request was adjourned to March 31

24 and at your counsel's request adjourned until April

25 14th?

26 A That's not my understanding, sir. The bond forbearance

27 agreement we tried to construct was the intent was to

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1 have lock up agreements or commitments by two-thirds of

2 the bondholders, not necessarily through the -- not

3 necessarily dependent on the meeting being held.

4 Q Off the record?

5 (DISCUSSION OFF THE RECORD) ?

6 Q MR. ANDERSON: Sir the clause you're

7 referring to is 6 sub-- just a moment (b) of the

8 forbearance agreement unsigned that is Exhibit 12 to

9 your affidavit and 6e as in echo to the bank

10 forbearance agreement, again unsigned Exhibit 11; is

11 that right?

12 A That's correct.

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13 Q And you're making a distinction as I understand you
14 between approval of a bondholders meeting and physical
15 two-thirds of bondholders signing, locking them up as
16 it were, two-thirds of them to sign?

17 A That's correct.

18 Q Have I got it correct?

19 A That's correct.

20 Q And you understood, sir, that if the bondholders
21 meeting approved the forbearance, then the forbearance
22 agreement, then it would achieve the same result?

23 A I can't answer that, sir. All I understand is the bond
24 forbearance agreement says it's written and it's the
25 execution of two-thirds of the or consummation of the
26 two-thirds of the bondholders. To the extent
27 two-thirds voting in favour and obviously were amenable

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1 to signing the forbearance agreement individually, yes.
2 Q Okay. Sir, here's what I'm going to do because you
3 have to catch a plane, will you please check the
4 records of Sanjel and provide me through counsel with a
5 copy if it exists of any proposed language that was
6 provided by Sanjel to the bond Trustee or ad hoc
7 bondholders or their professional advisors regarding
8 the approval that was being sought and so it could be
9 in the form, for example, of an approval for a
10 resolution at a bondholders meeting, it could be in the

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11 form of a separate approval by bondholders in whatever
12 form, I want to know whether there is language that
13 came from Sanjel to the entities I identified making
14 that request?

15 MR. SIMARD: We'll do that.

16 MR. ANDERSON: If there is such, provide it
17 to me you will do that.

18 MR. SIMARD: Yes we will.

19 MR. ANDERSON: Thank you.

20 UNDERTAKING ^ - ^

21

22 MR. ANDERSON: I have nothing further. Thank
23 you for attending.

24 (WHICH WAS ALL THE EVIDENCE TAKEN AT 12:32 PM)

25

26

27

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April 15, 2016

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 randerson@osler.com
 Our Matter Number: 1173038

Toronto

Montréal

SENT VIA FACSIMILE

Ottawa

Alberta Court of Queen’s Bench
 Calgary Courts Centre, Judicial District of Calgary
 601 – 5th Street SW
 Calgary, AB T2P 5P7

Vancouver

New York

Attention: The Honourable Justice B.E.C. Romaine

Your Ladyship:

Re: *In the Matter of the Compromise or Arrangement of Sanjel Corporation, et al*
(“Sanjel”) Action No: 1601-03143

We were retained yesterday in this matter to represent Nordic Trustee ASA (the “**Nordic Trustee**”), trustee for the holders of \$300,000,000 of unsecured senior bonds issued by Sanjel Corp. (the “**Bondholders**”).

We write to request a brief (less than ½ hour) audience before Your Ladyship on Monday, April 18, 2016, to speak to scheduling. Currently, Sanjel has proposed scheduling cross examinations of its affiants this coming Tuesday (April 19) with the approval application to be heard by Your Ladyship on April 25th. As we were just retained yesterday, we need and request a short extension to the proposed schedule to allow us sufficient time to prepare for questioning and file materials on behalf of the Nordic Trustee. We propose the following schedule:

April 21, 2016	examinations of Mr. Crilly and Mr. Genereux
April 22, 2016	file evidence intended to be relied on by the Nordic Trustee
April 25, 2016	any examinations on evidence filed by Nordic Trustee
April 26, 2016	briefs of all parties to be filed
April 28 or 29, 2016	hearing before Your Ladyship

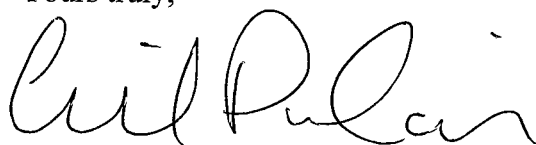
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Page 2

If Your Ladyship is amenable to giving us the opportunity to attend before you to speak to scheduling, we would appreciate hearing from your assistant regarding your availability. We will advise the service list (who is copied on this letter) of the timing of our audience before you so that anyone who wishes to attend can do so.

Thank you for your attention to this request.

Yours truly,

A handwritten signature in black ink, appearing to read "A. Robert Anderson". The signature is fluid and cursive, with a large initial "A" and "R".

for
A. Robert Anderson
EP

c: Service List
Client