Docket #0138 Date Filed: 4/25/2016

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

In re	:	**Chapter 15**
SANJEL (USA) INC., *et al.*,	:	**Case No. 16-50778-cag**
Debtors in a foreign proceeding.	:	**(Jointly Administered)**

STATEMENT OF ALBERTA TREASURY BRANCHES, AS AGENT, IN SUPPORT OF EXPEDITED PETITION FOR RECOGNITION AS FOREIGN MAIN PROCEEDING

Alberta Treasury Branches ("ATB"), in its capacity as agent for the Senior Secured Lenders (as defined below), respectfully submits this statement in support of the Expedited Petition for Recognition as Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief (Dkt. No. 9) (the "Petition") filed by PricewaterhouseCoopers Inc. as the court-appointed foreign representative for the Chapter 15 Debtors.[1] For the reasons set forth in the Petition and below, the Senior Secured Lenders support the Petition and request that the Court recognize the CCAA Proceedings as foreign main proceedings and grant the related relief requested therein.

BACKGROUND

1. Sanjel Corp. and Sanjel (USA) Inc. are borrowers under an Amended and Restated Credit Agreement (the "Bank Credit Agreement") dated April 21, 2015 (the "Pre-Petition Facility") with a syndicate of senior secured lenders (the "Senior Secured Lenders") led

[1] The Chapter 15 Debtors are: Sanjel (USA) Inc., Sanjel Corporation, Suretech Group Ltd., Sanjel Energy Services (USA) Inc., Suretech Completions (USA) Inc., Sanjel Capital (USA) Inc., Terracor Group Ltd., Terracor (USA) Inc., Terracor Resources (USA) Inc., Terracor Logistics (USA) Inc. and Sanjel Canada Ltd. Capitalized terms that are not defined have the same meanings as in the Petition.

by ATB as agent. The total principal amount outstanding under the Pre-Petition Facility is approximately CAD $396.7 million (CAD $345.1 million and USD $40.3 million). The Senior Secured Lenders have perfected security interests in substantially all of the assets of the Chapter 15 Debtors. *See* Notice of Filing of Documents in Support of First Day Filings, Apr. 4, 2016 (Dkt. No. 24), Ex. F, Affidavit of Paul Crilly ("Crilly Affidavit") ¶ 68.

2. The Senior Secured Lenders have also agreed to provide the Chapter 15 Debtors with post-petition financing of up to CAD $50 million pursuant to the Senior Secured Superpriority Interim Financing Credit Agreement (the "DIP Credit Agreement"). As set forth in the Crilly Affidavit and the accompanying cash flow projections, this financing was essential to allow the Chapter 15 Debtors to continue operating their business during the course of the Companies' Creditors Arrangement Act ("CCAA") Proceedings. Crilly Affidavit ¶¶ 137, 139. On April 6, 2016, the Court entered an order approving the post-petition financing on an interim basis. *See* Interim Order Granting 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, Apr. 6, 2016 (Dkt. No. 42).

3. The relationship between the Chapter 15 Debtors and the Senior Secured Lenders is a relationship between *Canada*-based banks and *Canada*-based borrowers. ATB, the agent for both the Bank Credit Agreement and the DIP Credit Agreement, is a crown corporation owned by the Province of Alberta. ATB's mandate provides that "ATB's customers must be predominantly Alberta residents and corporations"; ATB may not solicit business outside of Alberta; and "ATB must not provide services outside Alberta" except in very limited circumstances. Alberta Treasury Branches Mandate and Roles Document, Jan. 13, 2011,

available at http://www.atb.com/SiteCollectionDocuments/About/regulatory_framework /mandate-and-roles.pdf (emphasis in original). ATB has conducted business in Calgary with the Chapter 15 Debtors for approximately 34 years. Crilly Affidavit ¶ 27. All twelve of the Senior Secured Lenders are Canadian banks or international banks lending through their Canadian branches or offices. *See* Notice of Filing of Documents in Support of First Day Filings, Apr. 4, 2016 (Dkt. No. 24), Ex. S, Senior Secured Superpriority Interim Financing Credit Agreement ("DIP Credit Agreement"), at 84-95. The Chapter 15 Debtors are also dependent on these Canadian banks for banking services, including cash management and credit card services. Crilly Affidavit ¶ 71. In addition, both the Bank Credit Agreement and the DIP Credit Agreement are governed exclusively by the laws of the Province of Alberta and of Canada.[2] *Id.* ¶ 69; DIP Credit Agreement ¶ 14.7.

4. As explained in the affidavit of Paul Crilly, the Chapter 15 Debtors were in default under the Bank Credit Agreement as of December 2015. Accordingly, the Senior Secured Lenders had the ability to exercise remedies, including acceleration of the amounts outstanding under the Pre-Petition Facility and/or set off with respect to amounts held in bank accounts with ATB. Crilly Affidavit ¶¶ 90-91. Nonetheless, rather than exercising remedies, the Senior Secured Lenders negotiated the terms of a forbearance agreement with Sanjel Corp. and Sanjel (USA) Inc., again to be governed by Canadian law, under which the Senior Secured Lenders would forbear from exercising rights and remedies against the borrowers, or from realizing on their security, until April 30, 2016 or the occurrence of an event of default under the forbearance agreement. *See id.* ¶ 92.

[2] The guarantee agreements relating to the Bank Credit Agreement entered into by the subsidiary guarantors (including each of the U.S. subsidiary guarantors) are also governed by Alberta law. As is customary in secured financings, the security documents relating to the Bank Credit Agreement are (with the limited exception of security agreements relating to U.S.-registered intellectual property) governed by the local law of each respective subsidiary guarantor, *i.e.*, Canadian law for the Canadian subsidiary guarantors and U.S. law for the U.S. subsidiary guarantors.

5. Beginning in December 2015, with the encouragement of the Senior Secured Lenders, the Chapter 15 Debtors undertook a robust "Sales and Investment Solicitation Process" ("SISP"). Crilly Affidavit ¶ 108. As a result of those efforts, Sanjel entered into two asset purchase agreements on April 3, 2016. *Id.* ¶ 115. Through the sale transactions, the Chapter 15 Debtors propose to sell their Canadian and U.S. assets—to two separate buyers—as going concerns. As stated in the Crilly Affidavit, the proposed asset sales, if approved and effectuated, will *not* cover the full amount of the Senior Secured Lenders' claims. *Id.* ¶ 142. Accordingly, the Senior Secured Lenders have at all times been incentivized to explore and negotiate superior alternatives, including a transaction sponsored by Sanjel's unsecured bondholders.

6. Although the trustee for the bondholders has recently suggested in court filings that the Chapter 15 Debtors and the Senior Secured Lenders did not engage in good-faith negotiations, nothing could be further from the truth. With the consent of the Senior Secured Lenders, the Chapter 15 Debtors voluntarily agreed to pay a small army of professionals retained by the bondholders, including *two* financial advisors (Moelis & Company and Alvarez & Marsal) and *two* law firms (Fried Frank for an ad hoc committee and Togut Segal & Segal for the trustee). Crilly Affidavit ¶¶ 97, 118. These professionals had access to Sanjel's dataroom, and Alvarez & Marsal was embedded at the company for a period of weeks conducting due diligence. As a result of this extraordinary access, the bondholders were able to make a series of restructuring proposals both before and after the CCAA filing. *Id.* ¶¶ 117-118; Bond Trustee's Objection to Entry of Preliminary and Permanent Injunction, Apr. 22, 2016 (Dkt. No. 125), Ex. A, Aff. of Lawrence First ¶¶ 38-40, 53-60, 67. To date, however, those proposals have been inferior, in multiple respects, to the asset sale agreements, including in the type of consideration being offered and the certainty of closing. Nonetheless, the Senior Secured Lenders have

engaged continuously with the bondholder representatives, including by making a counterproposal—to which they have yet received any response—that would include a higher cash component as compared to new debt. None of this is particularly relevant to the issue of recognition; however, in light of the gratuitous allegations that have begun to appear in the bond trustee's pleadings in Canada and the United States, this paragraph is included to warn the Court against crediting those allegations.

7. On April 4, 2016, the Chapter 15 Debtors commenced proceedings under the CCAA (the "CCAA Proceedings") and filed petitions in this Court for recognition of the CCAA Proceedings.

STATEMENT

8. For the reasons set forth in the Petition, each of the CCAA Proceedings should be recognized as a foreign main proceeding. As set forth in detail in the Petition, the relevant factors—individually and in the aggregate—establish that Canada is the "center of main interest" for each of the Chapter 15 Debtors. *See* Petition ¶¶ 108-116. ATB, as agent, joins in the Monitor's submissions regarding the debtors' COMI.

9. As *Canada*-based lenders represented by a *Canadian* agent under *Canadian*-law credit and DIP-financing agreements, the Senior Secured Lenders have a legitimate expectation that the insolvency proceedings for the Chapter 15 Debtors will occur in a Canadian court subject to Canadian law and procedure. In contrast, Sanjel's unsecured bondholders have no legitimate reason to resist a proceeding in Canada in favor of a U.S. proceeding. The unsecured Bond Agreement between Sanjel Corporation, a *Canadian* issuer, and Nordic Trustee ASA, a *Norwegian* bond trustee, is governed by *Norwegian* law and provides that disputes will be resolved in the District Court of *Oslo, Norway*. *See* Notice of Filing of Documents in Support of

First Day Filings, Apr. 4, 2016 (Dkt. No. 24), Ex. L, Bond Agreement § 18.7; Crilly Affidavit ¶¶ 74, 99. Bond meetings are held in *Norway*; and the location of the bondholders' meeting called for March 10, 2016 by Nordic Trustee ASA was *Oslo, Norway*. *See* Notice of Filing of Documents in Support of First Day Filings, Apr. 4, 2016 (Dkt. No. 24), Ex. N, Summons to Bondholders' Meeting in Oslo, 25 February 2016. The bonds are registered with the *Norwegian* Central Securities Depository; they are not registered on a United States exchange, nor is the Bond Agreement subject to the U.S. Trust Indenture Act. Sanjel's bondholders, accordingly, could have no reasonable expectation that the main insolvency proceeding affecting their bonds would be brought in the United States under chapter 11 of the Bankruptcy Code.

10. Canada, moreover, is clearly an appropriate and acceptable forum for the debtors' insolvency proceedings. Numerous courts, including in the Fifth Circuit, have recognized that CCAA proceedings meet the basic standards of fairness and due process under U.S. policy and are thus entitled to comity and recognition under Chapter 15. *See Collins* v. *Oilsands Quest, Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012) ("It is clear that the Canadian proceedings have been fair and impartial, and that the Canadian proceedings have afforded creditors a full and fair opportunity to be heard in a manner that is fully consistent with this country's standards of due process."); *accord* Order Granting Recognition as a Foreign Main Proceeding, or, in the Alternative, as a Foreign Nonmain Proceeding, *In re Argent Energy (Canada) Holdings, Inc.*, No. 16-20060 (Bankr. S.D. Tex. Mar. 11, 2016), Dkt. No. 73; *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010).

11. By their conduct, Sanjel's bondholders have themselves recognized that the Canadian Court is a fair forum that will provide them with due process and more. Since the CCAA Proceedings were filed, the bondholders have participated at every step in the Canadian

proceedings. They have taken broad discovery of Sanjel executives and advisors, and they are actively resisting the debtors in the Canadian Court. On Friday, April 22, the Bond Trustee filed a slew of applications in the Canadian Court requesting, among other things: reconsideration of the Canadian Court's approval of post-petition financing; relief from the stay of proceedings in Canada; leave to propose a plan of arrangement; and equitable subordination of the secured claims of the secured lenders. *See* Bond Trustee's Objection to Entry of Preliminary and Permanent Injunction, Apr. 22, 2016 (Dkt. No. 125), ¶ 25; Bond Trustee's CCAA Application attached as Exhibit "A" hereto, at 2. The Bond Trustee should not be permitted to use this proceeding as a "second front" to attack the debtors' restructuring plan, proposed transactions and creditor priorities. *See In re Artimm, S.r.l.*, 278 B.R. 832, 836-37 (Bankr. C.D. Cal. 2002) ("The purpose of [a case under former section 304] is to provide a more efficient and less costly alternative to a plenary case that would duplicate the foreign insolvency case."); *see also In re Argent (Canada) Holdings, Inc.*, No. 16-20060 (Bankr. S.D. Tex.), Mar. 10, 2016 Tr. 108-09 (in granting recognition to CCAA proceeding, rejecting attempts to junior creditors to use the ancillary proceeding in Texas to "try[] to undo what happened up in Canada").

12. Although ATB will defer to the Monitor to refute the Bond Trustee's assertions relating the relevant COMI factors—including location of the debtors' headquarters (Canada), location of those who manage the debtor (Canada), and the location of assets and creditors (various jurisdictions including Canada and the U.S.)—two arguments put forward by the Trustee require a brief response here.[3] *First*, as explained above, the relevant debt documents establish that the law of *Canada* or *Norway* would apply to disputes relating to the debtors'

[3] The Bond Trustee's objection to recognition (Dkt. No. 132) was filed on the morning of April 25, 2016, as this Statement was being finalized for filing. Accordingly, the Senior Secured Lenders have not attempted to respond here to the various arguments in the objection, and reserve all rights to supplement this Statement, including at the hearing on recognition scheduled for April 26, 2016.

secured debt or the bonds, and the parties agreed to resolve such disputes in jurisdictions outside the United States. Ignoring this, the Bond Trustee makes the extraordinary argument that because section 363 *automatically* applies in a chapter 15 proceeding (*see* 11 U.S.C. § 1520(a)(2)), and could apply here to the debtors' proposed sale of assets in the United States, this Court should deny recognition to the CCAA proceedings of the U.S.-incorporated debtors. *See* Obj. ¶ 30. This is backwards: The statute provides that section 363 and certain other provisions of the Bankruptcy Code apply only "*upon recognition*" of a foreign main proceeding (*id*.)—it does *not* provide that recognition itself should depend on the future application (or non-application) of U.S. bankruptcy law to particular transactions. If the Bond Trustee were correct, any foreign proceeding involving disputes regarding the *automatically*-applicable provisions of U.S. law (including sections 361, 362, 549 and 552 of the Code) would be denied recognition; there is no support in the law for this approach.

13. *Second*, the Bond Trustee contends that the proposed sale of the debtors' U.S. assets and operations somehow means that the debtors COMI is not *currently* in Canada. *See* Obj. ¶ 26. It is well-established, however, that a Chapter 15 debtor's center of main interests is determined based on its activities and operations at the time of the filing of the Chapter 15 petition—not at some other time. *See, e.g.*, *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 133 (2d Cir. 2013); *In re Ran*, 607 F.3d 1017, 1025 (5th Cir. 2010); *In re Irish Bank Resolution Corp.*, 2014 WL 9953792, at *11 (Bankr. D. Del. Apr. 30, 2014). Here, the Monitor has put forward overwhelming evidence establishing that, as of the date of their Chapter 15 petitions, the debtors are operating an integrated business enterprise based in Calgary, Canada.

CONCLUSION

ATB, as agent for the Senior Secured Lenders, thus respectfully requests that the Court recognize the Canadian Proceedings as foreign main proceedings, and grant the relief requested in the Petition.

Dated: April 25, 2016

Respectfully submitted,

LANGLEY & BANACK, INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 25, 2016, a true and correct copy of the foregoing *Statement of Alberta Treasury Branches, as Agent, In Support of Expedited Petition for Recognition as Foreign Main Proceeding* was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court CM/ECF system and via First Class Mail, postage prepaid on the Master Service List.

/s/ *David S. Gragg*
David S. Gragg

EXHIBIT A

COURT FILE NUMBER	1601-03143
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY

Clerk's Stamp

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF SANJEL CORPORATION, SANJEL CANADA LTD., TERRACOR GROUP LTD., SURETECH GROUP LTD., SURETECH COMPLETIONS CANADA LTD., SANJEL ENERGY SERVICES (USA) INC., SANJEL (USA) INC., SURETECH COMPLETIONS (USA) INC., SANJEL CAPITAL (USA) INC., TERRACOR (USA) INC., TERRACOR RESOURCES (USA) INC., TERRACOR LOGISTICS (USA) INC., SANJEL MIDDLE EAST LTD., SANJEL LATIN AMERICA LIMITED and SANJEL ENERGY SERVICES DMCC

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Matter No.: 1173038

NOTICE TO THE RESPONDENT(S)

This Application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	April 28, 2016
Time:	9:00 a.m.
Where:	Calgary Courts Centre, 601 – 5th Street SW, Calgary, AB
Before Whom:	The Honourable Justice B. E. Romaine

Go to the end of this document to see what you can do and when you must do it.

Remedy Claimed or Sought

1. An Order among other things:

   (a) Dismissing the Applicants', Sanjel Corporation ("**Sanjel**"), Sanjel Canada Ltd., Terracor Group Ltd., Suretech Group Ltd., Suretech Completions Canada Ltd., Sanjel Energy Services (USA) Inc., Sanjel (USA) Inc., Suretech Completions (USA) Inc., Sanjel Capital (USA) Inc., Terracor (USA) Inc., Terracor Resources (USA) Inc., Terracor Logistics (USA) Inc., Sanjel Middle East Ltd., Sanjel Latin America Limited and Sanjel Energy Services DMCC (collectively, the "**Company**"), applications filed in these proceedings on April 12, 2016 for approval of the Liberty Transaction and the STEP Transaction, vesting of the assets thereunder in the respective purchasers and distribution of the proceeds realised (the "**Applications**").

   (b) Granting leave to Ascribe and Clearlake permitting them to propose a plan of arrangement to the Company.

   (c) Lifting the stay to the extent necessary to permit the Bond Trustee to commence an involuntary filing of the Company under Chapter 11 of the United States Bankruptcy Code.

   (d) Directing a new Court-monitored Sale and Investor Solicitation Process.

   (e) In the event that this Honourable Court approves the sale of any of the Company's assets, the proceeds of all such sales shall be held in trust by Canadian counsel to the Applicants, Bennett Jones LLP ("**Bennett Jones**"), pending determination of whether the Syndicate of twelve financial institutions led by Alberta Treasury Branches (the "**Syndicate**") is subordinated in equity to the Bond Trustee and other creditors of the Company.

   (f) Declaring that all fees, costs or expenses incurred by the Company in relation to the pre-CCAA SISP including, but not limited to, any break fees payable under the Liberty Asset Purchase Agreement (the "**Liberty APA**") and/or the STEP Asset Purchase Agreement (the "**STEP APA**"), including Financial Advisor's (as that

term is defined in the Initial Order) fees (if any) shall be deemed to be unsecured claims within this proceeding and shall rank *pari passu* with all other unsecured claims.

(g) Directing that the only evidence that is to be considered at the hearing of the Bond Trustee's and Company's applications is sworn affidavit evidence where the affiant is made available to be questioned thereon (whether by teleconference or in person).

(h) Directing that a representative of the Syndicate with personal knowledge of the Interim Credit Agreement ("**DIP Financing**"), the pre-CCAA SISP, the Liberty APA, and the STEP APA file an affidavit regarding the Syndicate's involvement therewith and be made available for questioning thereon.

(i) Directing that Darin MacDonald shall file an affidavit in this proceeding addressing: (i) all transfers or payments made to MacBain Properties Ltd. and its affiliated Canadian and U.S. entities (collectively, "**MacBain**") by each of the entities that comprise the Company; (ii) all leases between MacBain and each of the entities that comprise the Company; (iii) all cost cutting measures undertaken by the Company during 2015 and 2016 to reduce operating expenses; (iv) all information regarding the efforts of the Company to reduce, cancel or renegotiate any contracts or arrangements between MacBain and the each of the entities that comprise the Company and MacBain; (v) all matters relating to the SISP, the Bondholders, the Senior Bonds, the Syndicate, and the Company's or its advisors' engagement with the Bondholders and/or the Bond Trustee that are relevant and material to this Action; and (vi) any other issues that are relevant and material to the current Action, and be made available for questioning thereon.

(j) Scheduling a Comeback Hearing for determination of:

(i) whether the DIP Financing should be reconsidered;

(ii) the removal of Mr. Paul Crilly as Chief Restructuring Officer ("**CRO**") and the appointment of a new CRO as agreed upon by the Syndicate, the Monitor, Ascribe, and Clearlake; and

(iii) the validity and quantum of the Financial Advisors' Charge (as that term is defined in the Initial Order).

(k) Directing that the professional fees and disbursements of Osler Hoskin & Harcourt LLP ("**Osler**") and Togut, Segal & Segal LLP ("**Togut**"), as counsel to the Bond Trustee, shall be paid by the Company, and included with the Administration Charge (as defined in the Initial Order).

(l) Sealing the following confidential materials (the "**Confidential Materials**") on the Court file and declaring that the Confidential Materials shall not form part of the public record: the Confidential Affidavit of David Cunningham, sworn April 22, 2016, including confidential exhibits thereto (the "**Cunningham Affidavit**").

(m) Such further and other relief as counsel for the Bond Trustee may advise and this Honourable Court considers to be appropriate in the circumstances.

Grounds for Making this Application

2. The Company is attempting to use the CCAA to obtain court approval for a guised receivership, which will result in the liquidation of the Company's assets for the sole benefit of the Syndicate.

3. The Company has no intention of conducting a restructuring process and is fully aware that the Syndicate is the only party in interest in line to receive recoveries under the current sale process. During Mr. Crilly's questioning on April 20, 2016, in response to the question "And if those two sales are consummated, there would be no restructuring of Sanjel; is that correct?" Crilly answered: "Practically speaking that would be, correct, yes."

4. Sanjel and Nordic Trustee ASA (the "**Bond Trustee**"), on behalf of the bondholders in the bond issue (the "**Bondholders**"), are parties to a Bond Agreement dated June 18, 2014 (the "**Bond Agreement**"), pursuant to which Sanjel issued US$300,000,000 of Senior Bonds to the Bondholders, among then Ascribe Capital LLC ("**Ascribe**") and Clearlake Capital Group, L.P. ("**Clearlake**").

5. On December 19, 2015, Sanjel failed to make an interest payment of $11.25 million USD under the Bond Agreement, thereby causing an Event of Default on December 21, 2015.

6. Since December 2015, in good faith Ascribe and Clearlake have engaged in restructuring negotiations with the Company.

7. It is clear with the benefit of hindsight (and the evidence obtained by questioning Mr. Crilly) that what the Bond Trustee and Bondholders thought was a good faith negotiation for a comprehensive going concern restructuring was really a delaying tactic on the part of the Company to prevent any action by the Bond Trust or Bondholders while the Syndicate and Company pursued foreclosure sales that benefits only the Syndicate.

8. The Company is now asking this Honourable Court to approve the pre-CCAA SISP and the STEP APA and Liberty APA within these CCAA proceedings despite them being conducted outside the CCAA and being contrary to the spirit and purpose of the CCAA. The Company:

   (a) used the guise of good faith negotiations as a means of depriving the Bondholders of their opportunity to protect their interests while at the same time advancing a proposed plan that would prejudice the interests of Bondholders' and other creditors; and

   (b) failed to disclose material information in breach of the Bond Agreement. Fundamental tenants of the CCAA are openness and fairness.

9. Such maneuvering is expressly contrary to the fundamental purpose of the CCAA – to maintain the status quo to permit the debtor to restructure for the benefit of all stakeholders. The CCAA provides a process for the orderly restructuring of the debtor within a court and monitor supervised process. The pre-CCAA SISP was anything but open or fair.

10. Further, the CCAA is a restructuring statute. It was never intended to be a disguised receivership. Approval of the STEP APA and Liberty APA will result in the liquidation of the Company. There will be nothing left to restructure.

11. The Company's Applications are an abuse of the CCAA.

12. It is appropriate that Ascribe and Clearlake be granted leave to propose a plan of arrangement to restructure the Company.

13. Ascribe is willing to provide substitute DIP Financing to replace the existing DIP Financing by the Syndicate.

14. The Cunningham Affidavit contains confidential information, the disclosure of which may be detrimental to a new Court-monitored Sale and Investor Solicitation Process, and therefore it is appropriate that the Cunningham Affidavit be sealed.

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations

16. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended;

17. *Judicature Act*, RSA 2000, c. J-2; and

18. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on

19. None.

How the application is proposed to be heard or considered

20. In person before the Honourable Madam Justice Romaine in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.