

Action No.: 2001-06997

E-File No.: EVQ20BOW

Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF BOW
RIVER ENERGY LTD.

P R O C E E D I N G S

Edmonton, Alberta
July 24, 2020

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Edmonton, Alberta

2

3

4 July 24, 2020

Morning Session

5

6 The Honourable

Court of Queen's Bench
of Alberta

7 Madam Justice Topolniski

8 (remote appearance)

9

10 R. Gurofsky (remote appearance)

For Bow River Energy Ltd.

11 M. Kelly (remote appearance)

For the Monitor's Office

12 C. Smith (remote appearance)

For the Monitor's Office

13 K. Cameron (remote appearance)

For the Monitor

14 M. Lemmens (remote appearance)

For Debentureholders

15 B. Pierce (remote appearance)

For Debentureholders

16 W. Roberts (remote appearance)

For Husky Energy Inc.

17 A. Stoicheff (remote appearance)

For Husky Energy Inc.

18 C. Dunne (remote appearance)

For Husky

19 E. Paplawski (remote appearance)

For Heritage Royalty

20 R. Gregory (remote appearance)

For Regional Municipality of Beaver River

21 E. Banfield (remote appearance)

For MD of Wainwright

22 M. Lavelle (remote appearance)

For AER

23

24 K. Pryor

Court Clerk

25

26

27 **Discussion**

28

29 THE COURT:

Thanks very much. Good morning, everyone.

30 Justice Topolniski here. And this is the matter of Bow River Energy. I have received a
31 number of materials with thanks to Ms. Gurofsky and Ms. Cameron for passing those on
32 at various hours of the day and night.

33

34 Ms. Cameron, Ms. Lemmens, your microphones are live, if you would not mind just --
35 everybody -- it is really hard to keep track of this, so if everyone would just click off their
36 mics, please.

37

38 MS. CAMERON:

Justice Topolniski, it's Ms. Cameron here. I

39 have muted my line on my cell phone. I sometimes drop the internet connection, so I --

40

41 THE COURT:

Okay.

1
2 MS. CAMERON: -- am unmuted on the Webex, but I will remain
3 on mute on my phone.
4

5 THE COURT: Okay. Great. Thanks very much.
6

7 So I am sure all of you have had experience recently with using the virtual courtrooms,
8 and you know, it is new technology for all of us, and we are all (INDISCERNIBLE), and
9 sometimes we experience glitches. So just if we can sort of try and keep in mind the
10 microphone off hit, and then, everyone, you will probably have to remind me, because I
11 will forget to turn mine back on. We all do it. If there is a problem at all with the
12 technology, just dial back into the courtroom, okay? If you need to reach me if we
13 somehow lose all connections, my cell phone number is 780-405-1408.
14

15 Okay. Ms. Gurofsky, this is your application. If you would be so kind as to conduct roll
16 call .
17

18 MS. GUROFSKY: Yes, My Lady. And -- and for the record, it's
19 Robyn Gurofsky from Borden Ladner Gervais. I am appearing -- appearing today on
20 behalf of the applicant, Bow River Energy Ltd. Can you hear me okay?
21

22 THE COURT: Very well. Thank you.
23

24 MS. GUROFSKY: Great.
25

26 Counsel in attendance today include Ms. Cameron -- Ms. Keely Cameron from Bennett
27 Jones. She acts for the Monitor. I see Mr. Kelly and Ms. Smith from the Monitor's office
28 dialled in today. I see Mr. Pierce, and I had understood Ms. Lemmens would be dialled
29 in. I'm not sure if she is.
30

31 THE COURT: I think, Ms. Gurofsky.
32

33 MS. GUROFSKY: Yes. And -- and they act for the
34 debentureholders. Mr. Gregory appears from Gregory Law Office. He acts for the
35 Regional Municipality of Beaver River in Saskatchewan. Mr. Roberts, I don't know if
36 he's here, but Ms. Stoicheff is. Oh, I see Mr. Roberts. They act for Husky Energy Inc.
37 And I believe Catherine Dunne from Husky is also present on the line. Ms. Paplawski
38 from Osler appears. She acts for Heritage Royalty Resource Corp. And Ms. Banfield
39 from RMRF is here. She acts for the M.D. of Wainwright from Alberta.
40

41 THE COURT: Okay. Have we missed anyone? If you are here

1 for someone, because of this format, we cannot see everybody's photos at the same time,
2 the video links at the same time. And so if you just pipe up if someone is here that we
3 have missed?

4
5 MS. LEMMENS: Hi, good morning, My Lady. Oh, sorry.
6 Ms. Matti Lemmens for the record. I -- I think that Ms. Gurofsky didn't see my picture
7 earlier, so I just want to make sure that you can hear me. I believe that Mr. Brad Pierce is
8 also on the line but not on the video, and he also is with me. He's acting for the
9 debentureholders.

10
11 THE COURT: Okay. And I can hear you just fine. And we
12 have got both you and Mr. Pierce on the roll call. Thanks, Ms. Lemmens.

13
14 MS. LEMMENS: Thank you.

15
16 THE COURT: All right.

17
18 MS. GUROFSKY: My Lady?

19
20 THE COURT: Yes.

21
22 MS. GUROFSKY: My Lady, I understand Ms. Lavelle from the
23 AER all -- was also intending to dial in, and I think she even wanted to speak on the
24 record today. I don't see her here, and I know she was having trouble dialling in. I'm just
25 going to send her a note, but if she's here already, perhaps she can advise.

26
27 THE COURT: I can tell you, Ms. Gurofsky, I do not see her. I
28 am flipping back and forth to try and get everybody. So perhaps you could just send her a
29 quick text. And that is Ms. Lavelle, and she is on behalf of the AER.

30
31 MS. GUROFSKY: Yes.

32
33 THE COURT: Shall we give her a few minutes, folks? It's
34 (INDISCERNIBLE).

35
36 MS. GUROFSKY: I -- I think so. I think it's important that she
37 listens to the submissions.

38
39 THE COURT: Okay. So let us everybody just turn off your
40 mikes. If you want to turn off your videos and drink coffee in peace, feel free to do that.
41 Ms. Gurofsky will give us a shout when we are ready to go. But let us check in in about,

1 you know, five minutes, because we are going to have to move at some point here. Okay?

2

3 (ADJOURNMENT)

4

5 THE COURT: Justice Topolniski. Okay. Everyone turn on
6 your videos, please, and turn off your mics. And we will just give Ms. Lavelle the brief
7 introduction again on our technology issues.

8

9 So, Ms. Lavelle, the matter of Bow River Energy. I do not know how much experience
10 you had yet with the Webex virtual court format, but occasionally we do run into bumps
11 with the technology. And so I just ask that everyone bear with us if that occurs.
12 Hopefully it will not. And if there is a big problem where things just go right off the rails,
13 hang up and dial back into the courtroom, okay?

14

15 The way that we can have the most (INDISCERNIBLE) communication is to have
16 everyone with their mics off until they speak. If anybody has an burning desire that they
17 just cannot hold themselves back and need to speak in the midst of someone else's
18 submissions, I ask you not to. But if you cannot stop yourself, put your hand up. I will be
19 watching as much of the screen as I can see, and we will go from there. Okay?

20

21 With that, are there any preliminary matters that we need to address before Ms. Gurofsky
22 gets underway with her application?

23

24 Oh, I do not have a video on. Hold on. See, this is nonstop learning.

25

26 Okay. Ms. Gurofsky, the floor is yours.

27

28 **Submissions by Ms. Gurofsky**

29

30 MS. GUROFSKY: Thank you, My Lady.

31

32 So we have gone through roll call. There's a -- a long list of people. I can advise you that
33 the service list will be the law firms. That's attached as Schedule A to our application. I
34 can also advise you that although there may be a party or parties, including Ms. Lavelle,
35 maybe she can speak on the record today that she's not anticipating any opposition to the
36 relief sought.

37

38 There is various relief sought today, as you will see. What I would first like to do is
39 briefly outline what that relief is. I'll take you through the various materials that were
40 filed into court of the relief sought. I'll walk you through service of those materials, and
41 then I will get to the substantive application.

1
2 Thank you.

3
4 So the relief sought is contained in two orders. Those orders were appended as schedules
5 to our application, although the (INDISCERNIBLE). And I do intend to take you through
6 the blackline order if we get there at the end of this hearing.

7
8 The first order contains a stay extension request to October 16th, 2020, the current stay
9 extension expiring next week. We are seeking approval of a settlement agreement
10 entered into by Bow River Energy and Husky Energy. We are seeking approval of
11 interim financing together with an interim financing charge from and in favour of Bow
12 River's secured creditors, certain of them, in the amount of 1.1 million dollars. And I can
13 note that if the settlement agreement is approved, these will be the first secured creditors
14 of Bow River. We are also seeking a sealing order with respect to confidential exhibits
15 contained in the third Belot affidavit and supplement to the third Belot affidavit. Those
16 are the unredacted versions of the Husky settlement agreement, one being executed, one
17 being not executed. That's the only difference between them. So that's the order first.

18
19 The second order deals primarily with the sale and investment solicitation process, or a
20 SISP. It seeks approval of Sayer Energy advisor and SISP advisor. It seeks approval of
21 the SISP which contains Stalking Horse process. It seeks approval of the Stalking Horse
22 APA, although you will note we're not seeking a (INDISCERNIBLE) investing order at
23 this time. We're just seeking approval to advance that APA as the Stalking Horse. Those
24 approvals have to come back to court at the end of this process so that
25 (INDISCERNIBLE). And -- and lastly, the Court -- Bow River, pardon me, seeks an
26 order from the Court sealing the confidential exhibits relating to the unredacted Sayer
27 engagement agreement.

28
29 You should have, My Lady, before you the application, the third affidavit of Mr. Daniel
30 Belot, and the second report of the Monitor. Those documents uncopied -- or unfiled
31 copies were served on the service list on Friday, July 17th. This matter was originally
32 scheduled to be before Justice Campbell in Calgary, and we had previously obtained
33 approval from her to extend our filing date to Friday instead of the prior Monday.
34 Unfortunately, due to a relationship -- a cordial relationship she had with Mr. Belot, we
35 thought it best to move the matter to Edmonton.

36
37 Those filed materials were circulated to the service list on the 20th, the following
38 Monday. Again, unfiled materials hadn't been served (INDISCERNIBLE) on the Friday.

39
40 We also provided Your Ladyship with some additional documents just to give you some
41 context and background of the proceedings. We provided you with the amended and

1 reinstated initial order, the two prior affidavits of Mr. Belot, Affidavits 1 and 2, and the
2 Monitor's first report. We also filed a brief -- an actual brief brief on -- on July 20th, an
3 unfiled copy which was circulated on that day, the filed copy circulated the following day.
4 And, again, this (INDISCERNIBLE) and not been case managed, so we are able to
5 provide a little bit more background in the brief, knowing that Your Ladyship would not
6 have had any of the background in -- in (INDISCERNIBLE).

7
8 And, finally, we also provided the -- a supplement to Mr. Belot's third affidavit. That
9 supplement was prepared yesterday and served on the service list yesterday at about 4:10
10 in the afternoon. And all that document does, is it contains an exhibit which is the
11 executed copy of the settlement agreement previously appended to the third affidavit as
12 well as an amending agreement to the Stalking Horse APA. And what that amending
13 agreement does, is it adds some additional wells and facilities to the Stalking Horse bid in
14 the same area. And (INDISCERNIBLE) why that was done in a moment.

15
16 The last (INDISCERNIBLE) --

17
18 THE COURT: Ms. Gurofsky --

19
20 MS. GUROFSKY: -- (INDISCERNIBLE) yes.

21
22 THE COURT: -- (INDISCERNIBLE). I will just let you know,
23 I have read all of these materials, and I thank you for them. They are very
24 comprehensive, and I did appreciate having a less-than-brief brief to fill me in on the
25 background, okay?

26
27 MS. GUROFSKY: Thank you.

28
29 The last thing with respect to service I'll say is that (INDISCERNIBLE) relief sought
30 today are a sealing order. I can advise that the clerk was given notice for
31 (INDISCERNIBLE) provide notice to media with respect to this application. That notice
32 was sent on July 15th in accordance with Rule 6.31. I'm not sure what the practice is on a
33 commercial list in Edmonton, but these days in Calgary, compliance with the notice to
34 media is -- is required. So I can advise that's been done.

35
36 With all of that, I would submit, My Lady, service is in order, and all of this is set out in
37 an affidavit of service of Ms. King (phonetic), which was sworn yesterday.

38
39 So that brings me to the substantive portion of the relief sought which I would propose to
40 address in the following order. My Lady, I recognize there's no opposition today, you've
41 read everything, so at any point in time you wish me to move on, please don't hesitate to

1 let me know.

2

3 Oh, I'm sorry, you're on mute.

4

5 THE COURT: I told you it would happen.

6

7 So to start with the extension, I am just going to ask if there is any opposition to the
8 extension. I see that the Monitor is supportive of the extension. I have reviewed the
9 Monitor's report, indicating all of the efforts that have been taken to this point in time and
10 the affidavit information. And then you can tell me why you complied with the
11 requirements if no one objects. And we can just tic that one off. So --

12

13 MS. GUROFSKY: (INDISCERNIBLE)

14

15 THE COURT: -- before you begin, does anyone have anything
16 to say about the extension application?

17

18 It is a bit like running an auction with this. Hearing no one, all right, you can move on
19 with your application, and you can be brief with it.

20

21 **Submissions by Ms. Gurofsky (Stay Extension)**

22

23 MS. GUROFSKY: Thank you, My Lady. I -- I will be.

24

25 As you'll note in the affidavit and -- and the (INDISCERNIBLE) of relief sought today, I
26 would submit the company has been very busy advancing these proceeding --
27 proceedings. It's been about a month and-a-half (INDISCERNIBLE) indicated in the
28 initial order, and since then, the company has continued to engage with these
29 stakeholders. I can advise certain operations (INDISCERNIBLE), they've reviewed those
30 costs including through the issue of the disclaimer noted in the affidavit, the rotating
31 settlement with Husky, negotiated Stalking Horse APA with debentureholders and the
32 interim financing, (INDISCERNIBLE) SISP, it's engaged Sayer (INDISCERNIBLE) are
33 on the (INDISCERNIBLE). It's packed away in a data room in expectation of
34 (INDISCERNIBLE) and it has worked with Sayer to develop marketing materials such
35 that if the SISP order is granted today, they will be ready to receive the
36 (INDISCERNIBLE) immediately. And it has all the while continued to operate
37 responsibly as an oil and gas production company in the ordinary course.

38

39 The extension sought is to April 16th. We hope that -- oh, pardon me, October
40 (INDISCERNIBLE).

41

1 THE COURT: And my question, Ms. Gurofsky, is not long
2 enough. I mean, I appreciate everybody has been negotiating on this basis, but I just am
3 loathe to see people having to expend valuable assets to keep returning to court. And
4 October 16th is obviously a date that your client thinks is enough. Not for most --

5
6 MS. GUROFSKY: Well --

7
8 THE COURT: -- of -- in the middle now, but...

9
10 MS. GUROFSKY: I don't think it will be enough to complete the
11 entirety of this process. If we are lucky enough to get to negotiate purchase and sale
12 agreements by that point, we'll have to come back to court anyway to get sale and vesting
13 order, at which point in time we can add on a further stay extension to be efficient or
14 condense the application. We're hopeful that we'll be able to come back to court for
15 approval of sale and vesting order before October 16th. (INDISCERNIBLE) this order,
16 okay, worst-case scenario, this will give us enough time, and then we'll likely, I expect,
17 apply for a further stay extension at that time.

18
19 THE COURT: Okay. Thanks.

20
21 Now, I just want to turn to Monitor's counsel. Ms. Lemmens, Mr. Pierce, you are in
22 support of the stay extension, and you have outlined here clearly -- the Monitor has
23 outlined very clearly the steps that have been taken. Is there anything else that I should
24 know about at this juncture before considering this extension?

25
26 MS. CAMERON: Good morning, My Lady. It's Keely Cameron,
27 counsel for the Monitor.

28
29 THE COURT: I made a mistake, they are on with the
30 debentureholders. Fire away.

31
32 MS. CAMERON: Correct. There -- there's nothing additional that
33 I would add already than what's already been set out in the Monitor's report. As
34 mentioned in that report, the Monitor is supportive of the approach being taken by the
35 company in this application.

36
37 THE COURT: Thanks very much.

38
39 Do you need to tell me anything about the law, Ms. Gurofsky? Or do you want to just fire
40 away?

41

1 MS. GUROFSKY: No, My Lady, I -- I do absolutely need to tell
2 you -- well, and -- and also I would say in that respect, is that it's our position that Bow
3 River has been acting in good faith and with due diligence and (INDISCERNIBLE)
4 evidenced by the work that's done to date. It is keen to conclude its SISP in an efficient
5 manner and in a way that maximizes Stalking Horse stakeholders. And in that respect, I'd
6 submit that the stay extension (INDISCERNIBLE) in the circumstances.

7

8 **Decision (Stay Extension)**

9

10 THE COURT: All right. Subject to my hearing from anyone
11 else, I am going to give you one more chance here to address the stay.

12

13 Hearing nothing, I am satisfied from having reviewed the Monitor's report and the
14 evidence submitted in this case that this entity has indeed worked in good faith and with
15 due diligence. And, in fact, it is actually very impressive to see the number of
16 accomplishments that have been achieved in this short stay period that precedes this
17 application. And with that, I am satisfied that the extension to October 16 of this year is
18 perfectly reasonable and warranted. So check that one off your list.

19

20 MS. GUROFSKY: Thank you.

21

22 What I propose to do is move on to the Husky settlement agreement, because that's what
23 sets the stage for the other relief sought, if that pleases the Court.

24

25 THE COURT: Go ahead.

26

27 **Submissions by Ms. Gurofsky (Husky Settlement Agreement)**

28

29 MS. GUROFSKY: Thank you.

30

31 So this settlement agreement was borne out of a series of discussions held between Bow
32 River, Husky, and the debentureholders and Husky. It encompasses a -- a number of
33 claims primarily by Husky against Bow River but also small claims over
34 (INDISCERNIBLE) Husky and a claim Husky has asserted against the debentureholders,
35 which would also have an impact on Bow River. And the details of these claims are set
36 out between paragraphs 9 through 17 of the affidavit.

37

38 Very briefly, My Lady, Husky is owed just over 2.7 million dollars by Bow River. Some
39 of that is (INDISCERNIBLE). Some of that is (INDISCERNIBLE). Husky has
40 registered security against the (INDISCERNIBLE) claim, but it also has a royalty
41 agreement and a royalty interest it claims which amounts -- through which amounts

1 owing to Husky are to be paid. So the (INDISCERNIBLE) was really the catalyst that led
2 to the overall settlement discussion.

3
4 Bow River had raised early on in the proceedings some question about record of
5 (INDISCERNIBLE) interest is truly an interest in land given that it appears that
6 (INDISCERNIBLE) a security for a debt. And Justice Horner's recent decision in the
7 (INDISCERNIBLE) CCAA matter on -- more specifically in this issue, provides a basis
8 for -- for raising this question.

9
10 However, to complicate matters, Husky also (INDISCERNIBLE) a portion of Bow River
11 oil production. This means that on the 25th of any given month, Husky is holding a
12 significant portion of Bow River's production revenues from the prior month,
13 (INDISCERNIBLE) relation to where, it is just for the record. If production is sold in
14 May, it gets paid out on the 25th of the following month, in June.

15
16 So under this marketing agreement that Husky has with Bow River, it has lease rights as
17 well as well rights, safety plans, not just for amounts owing under the
18 (INDISCERNIBLE) agreement but for (INDISCERNIBLE) by Husky to -- or owing by
19 Bow River to Husky.

20
21 So starting on June 25th, Husky began holding back all of the production revenues it
22 holds for Bow River in May. This of course had a negative impact on the company's cash
23 flow. Husky also asserted it would hold back June's production and it would
24 (INDISCERNIBLE) this would continue until if the counterclaims was
25 (INDISCERNIBLE).

26
27 Now, to further compound matters, the debentureholders, secured creditors of Bow River,
28 had debentures which contained subordination clauses, pursuant to which they
29 subordinate their secured interest to Husky. Husky then (INDISCERNIBLE) debentures
30 (INDISCERNIBLE) about facility contracts. So there is some authority providing that
31 debenture does not require Husky to sign off on this. It's -- the debenture is agreeing to
32 take a subordinate position on Husky. But there's now circumstances that have been
33 uncovered in which it appears the debentures are the second (INDISCERNIBLE)
34 creditors, not the first. Husky is the first. It's a (INDISCERNIBLE). And Bow River
35 now needs to be (INDISCERNIBLE) marketing arrangements for (INDISCERNIBLE) oil
36 production. And in addition to all of that, Husky says to Bow River, You obtain your
37 second secured creditors (INDISCERNIBLE) to CCAA proceedings in preference to us,
38 we intend to pursue that. And, again, as I said, not only is this detrimental to the
39 debentureholders, but it also is -- or detrimental to Bow River, who would necessarily be
40 dragged in to further litigation, delaying the sales (INDISCERNIBLE), providing
41 uncertainty and additional cost.

1
2 So we have got multiple plans of potential litigation from (INDISCERNIBLE) at a time
3 when Bow River urgently needs to move forward with its strategic (INDISCERNIBLE).
4 Bow River ultimately negotiates with Husky in consultation with the Monitor to resolve
5 these issues by having certainty with respect to the outcome of multiple disputes, which
6 I've outlined. Without having to incur -- incur costs of litigation by eliminating what Bow
7 River views as an (INDISCERNIBLE) royalty interest over assets that it would like to sell
8 in the sales process. So by eliminating the royalty interest, Bow River believes these
9 assets are more attractive to a buyer, and it allows Bow River to be able to move forward
10 with the sales process, with certainty in place, which is highly desirable from Bow River's
11 perspective.

12
13 The settlement agreement said one more thing, and there was a question about
14 transferability of its (INDISCERNIBLE) license agreement that Bow River has with
15 Husky, just one more layer of the relationship. Bow River believes that prospective
16 purchasers (INDISCERNIBLE) of their assets would find that (INDISCERNIBLE)
17 agreement extremely valuable and (INDISCERNIBLE). So the second agreement also
18 contemplates Husky covenanting to transfer the licensing agreement to a purchaser, which
19 again, from Bow River's perspective, provides significant value in the process.

20
21 So for all of these reasons, My Lady, there is clearly a real and significant benefit to Bow
22 River's case, and in particular, efforts to maximize value for its stakeholders
23 (INDISCERNIBLE) entering into this settlement agreement. But, yes, the settlement
24 involves payment to Husky to resolve all of these issues and creates desired certainty
25 going forward.

26
27 However, given Husky's position in this proceeding, Bow River submits it's not
28 unreasonable to pay the first secured creditors to make way for a sale of
29 (INDISCERNIBLE) rotation process. In fact, a similar step was reasonably taken in the
30 CCAA proceedings of Cequence Energy, where Justice Lema there has clarified the first
31 (INDISCERNIBLE) position and takes them through the advancement of an interim
32 financing facility that was approved by the Court. That was a settlement agreement.
33 They just took an (INDISCERNIBLE). This is not a payout in its entirety. It's a
34 settlement of claims that would really have a negative impact on the proceedings.

35
36 However, as you'll have seen in our brief (INDISCERNIBLE) settlement agreement in
37 CCAA proceedings, that would be pursuant to their broad discretionary power under the
38 Act. Those were set out in paragraph 54 (INDISCERNIBLE) we don't propose to go
39 through each and every one. I think Your Ladyship is well familiar.

40
41 We've also provided you with the decisions of Justice Moreau in (INDISCERNIBLE) and

1 in (INDISCERNIBLE) where Justice Moreau said, These are the questions the Court
2 needs to ask when contemplating the settlement agreement. First, is it fair and
3 reasonable? And Bow River submits it is in the circumstances, given the nature of the
4 claim asserted by Husky. Their position (INDISCERNIBLE) first secured creditor in the
5 proceeding, the uncertainty and cost litigation would bring to the process, and the
6 certainty it brings to the sale creditors including clearly with respect to the royalty and the
7 license agreement and the structure of the sale process.

8
9 So we think, first, it's fair and reasonable.

10
11 The second question Justice Moreau asked is whether the settlement provides substantial
12 benefit to the stakeholders. And for all the reasons I've already included, I would submit
13 it does, which it moves forward to maximize value in the (INDISCERNIBLE).

14
15 Thirdly, Justice Moreau says, is the settlement consistent with the purpose and the spirit
16 of the CCAA? And, again, it's submitted it certainly is again by allowing Bow River to
17 maximize (INDISCERNIBLE) pursue it maximizing -- by maximizing strategies for the
18 benefit of its stakeholders who (INDISCERNIBLE) of these claims.

19
20 So for all of these reasons, and in addition, you'll note the Monitor is supportive of the
21 settlement agreement, it's respectfully submitted that the settlement agreement should be
22 approved.

23
24 THE COURT: (INDISCERNIBLE) Ms. Gurofsky.

25
26 Ms. Keely Cameron for the Monitor, anything that you would like to add?

27
28 MS. CAMERON: No, thank you, My Lady. My friend's covered
29 the Monitor's position.

30
31 THE COURT: All right. And, Ms. Lemmens and Mr. Pierce,
32 for the debentureholders?

33
34 **Submissions by Ms. Lemmens (Husky Settlement Agreement)**

35
36 MS. LEMMENS: Yes, Sir (sic), I believe that Ms. Gurofsky has
37 covered all of the (INDISCERNIBLE) Husky settlement. The debentureholders are
38 supportive of the Husky settlement. As Ms. Gurofsky said, it does create certainty that
39 the debentureholders would now be the first secured creditors of Bow River and also
40 remove any sort of aspersions being passed about payments that were made to the
41 debentureholders in 2019, 2 -- earlier this year as well. And so it's not that the

1 debentureholders really contributed to the DIP financing, which I'm sure that Ms.
2 Gurofsky's going to turn to next, in order to assist the company with actually funding the
3 Husky settlement to (INDISCERNIBLE). So, yes, the debentureholders are very much in
4 support of the settlement as it does bring certainty and, well, pave the way for the SISP.
5

6 THE COURT: Thank you very much.

7
8 Ms. Dunne and Mr. Roberts and Ms. Stoicheff? I point to you perhaps if you would like
9 to speak.

10

11 **Submissions by Mr. Roberts (Husky Settlement Agreement)**

12

13 MR. ROBERTS: Thank you, My Lady. It's -- it's William
14 Roberts. I've (INDISCERNIBLE) get to my video on. The -- the rural area is at fault
15 from (INDISCERNIBLE) --
16

17 THE COURT: Okay.

18

19 MR. ROBERTS: -- (INDISCERNIBLE). Nothing substantive to
20 add to what Ms. Gurofsky has said.

21

22 This -- this occurs in a negotiated settlement made, that everyone is equally unhappy with
23 the results. It -- it creates a benefit for the process and the remaining stakeholders. And I
24 would suggest that the alternative, if the settlement does not go, the alternative is that
25 Husky continue to serve its setoff rights, which likely would result in significant
26 litigation, effectively a cutting-off of the company revenue (INDISCERNIBLE) continue,
27 would take up everybody's time and the Court's time to deal with that. We've reached a
28 settlement that is going to see that litigation go away, the dispute go away, and Husky, for
29 its part, get to exit this process.

30

31 THE COURT: Okay. Thanks very much.

32

33 Anyone else from team Husky that would like to weigh in? No? All right.

34

35 Ms. Lavelle, I understand you had wanted to make submissions. Is this part of what you
36 would like to speak to?

37

38 MS. LAVELLE: No, My Lady. It's in relation to the SISP and
39 the stop.

40

41 **Decision (Husky Settlement Agreement)**

1
2 THE COURT:

Okay. Great.

3
4 Are there any other counsel that would like to make submissions concerning the approval
5 of the Husky debentureholder settlement agreement? No. Okay.

6
7 Thank you to all counsel, in particular Ms. Gurofsky, for the very thorough submissions
8 on this point and once again for her helpful written submissions which I had reviewed
9 previously.

10
11 I think that beyond debate that it is a wise decision to approve this settlement. It
12 eliminates litigation that could tie up the debtor company and have a massively
13 detrimental effect on all interested parties and stakeholders. This agreement really does
14 commit the debtor to move forward in a coordinated effort without the albatross of this
15 litigation and potentially preference litigation in coming in the future to do its best to
16 restructure, which is the entire objective of this exercise.

17
18 So, yes, going back to the (INDISCERNIBLE) test, it is very reasonable. Yes, it does
19 provide substantial benefit to the stakeholders, and, yes, it is wholly consistent with the
20 spirit and intent of the CCAA.

21
22 So with that, I approve the settlement order.

23
24 Next, Ms. Gurofsky.

25
26 **Submissions by Ms. Gurofsky (Sealing Order)**

27
28 MS. GUROFSKY: Thank you, My Lady. And while we're on the
29 settlement order, there is a sealing order sought with respect to two confidential exhibits
30 attaching the unredacted settlement agreement. These redactions are simply the amounts
31 paid under the settlement agreement. That's the only confidential portion of the
32 settlement. If -- now, this redemption is necessary to protect the commercial interests of
33 Husky as well as Bow River, who have negotiated this settlement at length. We have
34 gotten other third parties looking at what companies -- or what Bow River's really paid or
35 what Husky is really (INDISCERNIBLE) the settlement, et cetera.

36
37 So if released, we submit that the information could adversely affect the parties'
38 commercial interests, particularly in respect of (INDISCERNIBLE) to assert a claim.
39 And we served notice to the media. There's been no objection, that we're aware of, from
40 the media to this, nor are we aware of any objections (INDISCERNIBLE) from the
41 parties. I'll observe that -- I would submit that here the test is met and that the salutary

1 effect of the confidentiality order (INDISCERNIBLE) sulatary effect in those -- the
2 circumstances of this (INDISCERNIBLE) which is very limited.

3

4 **Decision (Sealing Order)**

5

6 THE COURT: Thank you very much.

7

8 Is there anyone else that would like to make submissions in relation to this aspect of the
9 sealing order? No?

10

11 I am satisfied that the exception in the (INDISCERNIBLE) case, Dagenais (phonetic),
12 and other cases are met, and that the benefits of sealing this material, particularly at this
13 heightened time where the restructuring is occurring, is appropriate and does outweigh the
14 negative effect of keeping information that should be out of the public's eye. So that
15 aspect to your sealing order is granted, Ms. Gurofsky.

16

17 **Submissions by Ms. Gurofsky (Interim Financing)**

18

19 MS. GUROFSKY: Thank you.

20

21 I would propose to move on to the interim financing portion of the application. I've
22 (INDISCERNIBLE) that interim financing proposed for a total of 1.1 million dollars.
23 And just for the record, the term sheet for the interim financing is attached to Exhibit B to
24 Mr. Belot's third -- third affidavit.

25

26 You'll have noted possibly, though they're printed very small, in the cash flow appended
27 to the third Belot affidavit at Exhibit B, \$710,000 of the interim financing is required in
28 this (INDISCERNIBLE) stay period. The remaining amount will be required following
29 that stay period to close the transaction or (INDISCERNIBLE) transaction generated in
30 the SISP process.

31

32 I have noted in the Monitor's report the company has also (INDISCERNIBLE) payment of
33 mineral and surface lease (INDISCERNIBLE) in respect of -- only in respect to shut-in
34 properties, that (INDISCERNIBLE) and oftentimes as with our sales process, if it gets
35 offers for properties like this in oil and gas, to negotiate a manner in which the purchasers
36 are able to assume those obligations. So we deferred those, but we've also got a cushion
37 in the interim financing should it be necessary that those -- some or all of those payments
38 be made.

39

40 THE COURT: (INDISCERNIBLE) very much for that.

41 Burning desire to tell me anything else? I have read the materials.

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MS. GUROFSKY: Okay. All I would say, My Lady, of the conditions which I've stated with the interim financing is conditional upon the settlement agreement, so we can tic that box now, conditional on court approval. Of course there are (INDISCERNIBLE) conditional on obtaining the interim financing charge with an interim financing (INDISCERNIBLE) necessary for us to advance.

We've mentioned the (INDISCERNIBLE) in our brief and the (INDISCERNIBLE). I would submit here, the balance (INDISCERNIBLE) clearly weighs in favour of granting the interim financing. The terms are fair and reasonable. They're summarized in the affidavit.

I would point out that aside from payment of the interim lenders' legal fees, there's no other fees and expenses payable, which (INDISCERNIBLE) from many interim financing (INDISCERNIBLE) that have been -- been approved of late by the Court. The Monitor is supportive, so I -- I would leave it to perhaps anyone should raise issues or Your Ladyship would have questions.

THE COURT: Thanks very much.

I would like to hear from Ms. Keely Cameron again. And the only question I really have is in your client's report there is a suggestion that -- I think it is paragraphs 26 and 27 -- that the cash flows are underfunded or not supportable, they are a little weak. But, nevertheless, the interim financing is reasonable and necessary. So maybe just weigh in and talking out with that one.

Submissions by Ms. Cameron (Interim Financing)

MS. CAMERON: Thank you, My Lady. As mentioned in the Monitor's report, there has been some positive areas, as mainly as a result of these deferrals. And that's one of the reasons the Monitor is supportive of deferring certain expenses in this interim, pending the outcome of the sales process. While there is no concerns about cash flows going forward, the interim financing will go a long ways to addressing those concerns. And we're also very hopeful in terms of the outcome of the sales process once approved.

THE COURT: Okay. Thanks very much.

Does anyone else wish to address the plea for interim financing?

Submissions by Ms. Lemmens (Interim Financing)

1
2 MS. LEMMENS: Good morning, My Lady. It's Matti Lemmens
3 again on behalf of the debentureholders. And so I'll just -- so the Court is aware, I think
4 that Ms. Gurofsky's didn't make this clear, that the interim lender is a new company that's
5 been incorporated by the debentureholders. And so the debentureholders will again be
6 funding the expenses of Bow River a little bit further on the DIP. And so it -- obviously
7 they have an interest in ensuring that the Husky settlement can be funded, and that's, you
8 know, sort of the rationale behind the portion of the DIP as well as all ongoing expenses
9 to ensure that the SISP can be (INDISCERNIBLE). And so I just want the Court to be
10 aware that the DIP is being financed by the debentureholders through this new co, and
11 that the -- the charge for the DIP will really only sort of prime themselves in a way.

12
13 I noticed through another entity, the new co 227, but in fact given the Husky settlement,
14 that it -- if that is approved, then that means that the debentureholders are the first secured
15 creditors, and so they're going to be the ones that are really quite significantly impacted
16 by a DIP charge. And so they're really just affecting themselves.

17
18 **Decision (Interim Financing)**

19
20 THE COURT: Thank you very much, Ms. Lemmens. I had
21 understood that, and I appreciate the clarification. (INDISCERNIBLE) one party putting
22 it to themselves, it is pretty hard to say that is a dangerous or a harmful thing to balance
23 for the stakeholders.

24
25 All right. Anyone else choosing or wanting to weigh in? No.

26
27 All right. The legislation clearly permits interim financing in appropriate cases where it
28 is reasonable and where stakeholder interests are looked after. In this case the interim
29 financing is absolutely necessary for this company to go forward and restructure the
30 affairs sufficiently. The filing charge, given the peculiar circumstance, the
31 debentureholders being the shareholders of a new co that is in fact advancing the interim
32 financing, weighs heavily in favour of the charge as well. There is a lot of support for the
33 charge, and I have no hesitation in making the order as requested.

34
35 **Submissions by Ms. Gurofsky (Sayer)**

36
37 MS. GUROFSKY: Thank you.

38
39 Moving on, then, moving on to the sort of the sales or SISP portion of the application.
40 First off (INDISCERNIBLE) or Sayer Energy as (INDISCERNIBLE) or Sayer as the
41 (INDISCERNIBLE). In anticipation of one (INDISCERNIBLE) the company went out

1 and spoke to a number of parties. Sayer came back. It was the most economic offer
2 provided out of three. Sayer is regularly engaged (INDISCERNIBLE) particularly having
3 regard to the (INDISCERNIBLE) of Bow River. They're highly experienced with specific
4 expertise in oil and gas. And they're not duplicating its role, other role to be undertaken
5 by any other professional or consultant in the proceeding.
6

7 The (INDISCERNIBLE) factors, we would submit, are met with respect to on page 28 or
8 paragraph 81 of our brief. And I would submit it's appropriate in the circumstances to
9 approve the engagement of Sayer Energy Advisors pursuant to the terms of their
10 engagement letter, the redacted version of which is Exhibit D to the third affidavit, and is
11 the confidential Exhibit 2 to that third affidavit which is the unredacted version.
12

13 I'll just move into the sealing order very quickly.
14

15 THE COURT: Just do not want to go there quite yet. And tell
16 me why the break fee is reasonable, because that is always a concern.
17

18 MS. GUROFSKY: Well, the break fee I will deal with as part of the
19 Stalking Horse and the SISP. This is just with respect to Sayer's litigation right now.
20 Yeah, and so I (INDISCERNIBLE) --
21

22 THE COURT: (INDISCERNIBLE) together. Okay. Go ahead.
23

24 MS. GUROFSKY: Yeah. I'll definitely deal with the break fee and
25 the other sort of (INDISCERNIBLE) of the SISP.
26

27 Just in terms of the Sayer Energy -- or Sayer engagement letter, Sayer has also asked that
28 an engagement letter be redacted with respect to the fees being charged. As I said, it's
29 common for these things to be redacted in these proceedings. I would submit that
30 (INDISCERNIBLE) again is that here there are valid commercial interests that are
31 (INDISCERNIBLE) to be protected as part of this process. And taking again into -- into
32 account the limited information that it is (INDISCERNIBLE) to be making is
33 confidential. There are the benefits of protecting the commercial interests and engaging
34 Sayer outweighs the harm (INDISCERNIBLE) sealing order in the circumstances.
35

36 **Decision (Sayer)**
37

38 THE COURT: Anyone else who would like to make
39 submissions in connection to the engagement of Sayer and/or the sealing of the
40 engagement letter?
41

1 All right. I have again reviewed all of the materials that were submitted. I note the
2 Monitor's support again for the engagement of Sayer. It is a recognized expert in its field.
3 Its fees appears to be reasonable, and the entire program appears to be fair and reasonable
4 and is obviously an expense that will advance the process for the benefit of all
5 stakeholders.

6
7 The (INDISCERNIBLE) engaged with Sayer and in connection to sealing its engagement
8 letter, I once again agree with counsel that the exception in (INDISCERNIBLE) Dagenais
9 is made out, and that will be sealed.

10
11 **Submissions by Ms. Gurofsky (SISP/Stalking Horse)**

12
13 MS. GUROFSKY: Thank you.

14
15 So now it is the substantive portion of the SISP application, and I'll deal with the SISP
16 and the Stalking Horse together. They are related. I can tell My Lady that the SISP was
17 involved in consultations with the Monitor, with Sayer, and with the debentureholders.
18 That SISP was found in a couple places, but it -- Exhibit F to the affidavit.

19
20 Bow River has determined, in speaking with these various parties, that the best way to
21 maximize value for its stakeholders in this process is through the SISP and the Stalking
22 Horse SISP. Stalking Horse SISP covers specific assets in Alberta. There are other assets
23 in Alberta and assets (INDISCERNIBLE) proposed by the Stalking Horse. But these will
24 be marketed (INDISCERNIBLE) by Sayer as part of the (INDISCERNIBLE) process.

25
26 So the hope is that we come back to court either with an (INDISCERNIBLE) offer but
27 probably more (INDISCERNIBLE) multiple offers, covering different areas. You may
28 have seen in the first Belot affidavit there are some areas in Saskatchewan where
29 (INDISCERNIBLE) are shut in or where they simply operate at a (INDISCERNIBLE) till
30 after the lease payment. But sometimes these properties attach strategic values on parties.
31 And so in this process, Bow River will look at all types of offers in order to not only
32 maximize values but maximize the number of properties that are assumed by purchasers,
33 taking into account the interests of the regulator and (INDISCERNIBLE) litigation.

34
35 So the purchase price for the Stalking Horse is just shy of 4.3 million dollars. A portion
36 of that, just over 100,000 of that, will form attached (INDISCERNIBLE) for certain
37 priority charges like (INDISCERNIBLE) taxes in Alberta. It would also necessarily have
38 to cover other (INDISCERNIBLE) like CCAA charges to the extent there's anything
39 owing under those charges at the end of the day. But the remainder of the Stalking Horse
40 (INDISCERNIBLE) to credit a portion, that's that 4.183 million. This is virtually all of
41 the debts owed to the debentureholders under debenture minus -- minus some interest that

1 has been accruing.

2
3 The contract for this bid is that Sayer will go out and market all of these assets probably
4 for about a four- week period, (INDISCERNIBLE) over the final one
5 (INDISCERNIBLE), as I understand talking to experts who have been hoping that no
6 (INDISCERNIBLE) around and paying attention.

7
8 We also note that given what's happening in the market and in the industry, there is
9 anticipated to be a large falling of inventory coming on the market in the fall, and so we're
10 hoping to give Bow River a head start on that in the market before that happens. If the
11 order is granted today, I think I mentioned Sayer is ready to immediately send out a teaser
12 and other information and begin inviting parties (INDISCERNIBLE) on disclosure
13 agreement and enter the virtual data room, giving them access to the confidential
14 information memorandum.

15
16 Parties will be invited to submit their bid proposed by August 24th. If there are bids for
17 (INDISCERNIBLE) assets that did not form part of the Stalking Horse, Bow River
18 (INDISCERNIBLE) the Monitor and Sayer will need to negotiate purchase and sale
19 agreements. There will be templates for purchase and sale agreements in the data room,
20 and bidders are encouraged to submit their bids on those templates.

21
22 So that's sort of on the side. If there are bids that cover Stalking Horse property -- and it
23 could be portions of the Stalking Horse property and other assets, it could be a
24 combination of things -- Bow River, the Monitor, and Sayer will analyze those bids and
25 determine whether it constitutes superior offers.

26
27 So what does it have to be to be a superior offer? You have to be a qualified bid.
28 (INDISCERNIBLE) criteria set out in paragraph 25, but you also have to include a break
29 fee which works out to be about 4 percent of the total Stalking Horse purchase price. You
30 have to exceed the Stalking Horse offer by \$250,000. You have to cover the secured costs
31 in the CCAA (INDISCERNIBLE) things that the Stalking Horse has to cover, and you
32 have to have -- you have to be able to pay the demand in cash necessary to
33 (INDISCERNIBLE) obligation or have proof of financing available. That
34 (INDISCERNIBLE) sort of the criteria that we consider a qualified bid.

35
36 So as I indicated, the Monitor -- or Bow River worked closely with the Monitor on this
37 process. The Monitor (INDISCERNIBLE) in its report that the break fee is reasonable
38 and (INDISCERNIBLE). So it's the -- and the numbers that were selected to take into
39 account the time and effort the debentureholders have spent not only on the Stalking
40 Horse APA but in assisting in putting this structure together and providing input on this.

41

1 So there is also another element to the process that speaks to further encourage
2 competitive tension amongst bidders. So if there are superior offers, each of those
3 superior bidders who submitted an offer, together with the Stalking Horse, will be invited
4 to partake in an auction. The auction, which I accept will be held virtually, will contain
5 an infinite number of rounds wherein each party will have an opportunity to publicly state
6 its bid in that round. It -- it's not a live auction where you've got an auctioneer and -- and
7 people who raise their hands at -- at certain numbers. It's a little bit more
8 (INDISCERNIBLE) than that. It starts the highest bid received in Round 1
9 (INDISCERNIBLE) with a deadline, and continues under the auction's rules set out in the
10 SISP until there is effectively one bidder remaining.

11
12 Given that these are oil and gas assets and, again, we're balancing the interests of
13 maximizing value and taking -- taking into account the (INDISCERNIBLE) interest in the
14 limiting or (INDISCERNIBLE), the auction has in place that bidders can make their
15 subsequent bid, and (INDISCERNIBLE) not only by amounts of cash, but also here the
16 assumption of properties with (INDISCERNIBLE).

17
18 So going into the auction, we'll have a list of properties set out according to region so that
19 there's some (INDISCERNIBLE), and those properties will have lease liabilities
20 associated with it. And so bidders can say, Well, I'm bidding Property X in this round,
21 which contains the (INDISCERNIBLE) liability of Y. And so that is a design to not only
22 maximize value but also clarify the regulatory considerations that we recognize are very
23 important in this process.

24
25 So, again, the last bidder, then, in the auction is (INDISCERNIBLE) holder, and their
26 offer is then finalized and (INDISCERNIBLE) for approval. That bidder could be the
27 Stalking Horse or -- or it could be a third party.

28
29 We are not seeking approval for these offers. They obviously (INDISCERNIBLE) similar
30 considerations are to be taken into account when a party seeks approval of a sale process,
31 if the Court would look at (INDISCERNIBLE) approval of the sale. Courts have found a
32 Stalking Horse (INDISCERNIBLE) are regularly used in the (INDISCERNIBLE) process
33 and to maximize the value of businesses (INDISCERNIBLE) benefit of the stakeholders.
34 They can also enhance the fairness of the process by providing a (INDISCERNIBLE) in a
35 transparent manner that creates competitive tension for those wanting to participate.

36
37 Further I submit that the Stalking Horse (INDISCERNIBLE) no exceptions to that, and, in
38 fact, again, looked beyond the stakeholders originally -- or ordinarily considered by taking
39 into account the regulator's view (INDISCERNIBLE) and liability includes the value in
40 (INDISCERNIBLE) auction.

1 For these reasons, My Lady, I'd submit that the SISP and Stalking Horse, including break
2 fees, are reasonable and fair in the circumstances and should approved today.

3
4 THE COURT: Thank you very much, Ms. Gurofsky.

5
6 Ms. Keely Cameron, anything to add?

7
8 **Submissions by Ms. Cameron (SISP/Stalking Horse)**

9
10 MS. CAMERON: My Lady, as usual, my friend was very thorough
11 in her submissions. The only thing I'll add is the Monitor has worked closely with the
12 company just to ensure this will be a fair process and that all the assets will be given an
13 equal chance of being marketed and ultimately purchased.

14
15 THE COURT: Thanks very much.

16
17 Ms. Lavelle, this is your area if you wish to speak to your understanding.

18
19 **Submissions by Ms. Lavelle (SISP/Stalking Horse)**

20
21 MS. LAVELLE: Yes, thank you, My Lady. The AER would like
22 to reserve our position on the SISP including the Stalking Horse bid pending the outcome
23 of the sales process. So we would have concerns if the effect -- or the sales process would
24 be that the Stalking Horse bidders (INDISCERNIBLE) assets through the
25 (INDISCERNIBLE) while leaving (INDISCERNIBLE).

26
27 THE COURT: I am not sure how you do that. Tell me how
28 that works, and in the real world, and perhaps on just using what your normal protocol is
29 these days. But it seems to me, if I approve the SISP and the Stalking Horse, that
30 program is underway. And for the regulator to come back after the fact and say, Oh, no,
31 wait, we actually did not like that, and we just wanted to hold back on weighing in to say
32 yes or no. What does the Court do at that juncture in that? Maybe you could just work
33 through the hypothetical with me, okay?

34
35 MS. LAVELLE: Certainly, My Lady. We have in the past
36 reserved our position in similar circumstances, so I -- I believe that it's in fact in -- in
37 reality what would happen, is that we could object to approval of the sale
38 (INDISCERNIBLE) as approved or the license transfer process, exercising our discretion
39 who could -- we -- I can't, you know (INDISCERNIBLE) the discretion of a statutory
40 decision-maker, but then there would be concerns stating they were essentially
41 cherry-picking the best assets and leaving the rest to the (INDISCERNIBLE). However,

1 we have been working with the -- the Monitor and the company to see if there are
2 elements that could be revised or -- or approved as we go forward to ensure that there is
3 a -- that more of the assets are (INDISCERNIBLE) to this process. And at this point it's a
4 little early to tell because we don't know, and we heard from the company that, you know,
5 they're optimistic that more of these assets will be taken up and the sales process, but we
6 can't tell at this point, so...

7

8 THE COURT: So I can simply get my head around what you
9 are doing, you are essentially saying, We are not going to take a position today, but we
10 might come back later and object to the Court approval of any sale. Is that a fair
11 statement of what you are doing?

12

13 MS. LAVELLE: Well, effectively that we might object to the fact
14 that regulatory obligations are made -- made second to a sale that would essentially
15 reduce the secured creditor's debt that are (INDISCERNIBLE) --

16

17 THE COURT: Yes.

18

19 MS. LAVELLE: -- (INDISCERNIBLE).

20

21 THE COURT: But that would be an opposition to the Court
22 approval of the sale. You cannot --

23

24 MS. LAVELLE: Correct.

25

26 THE COURT: -- come back after the Court has approved the
27 SISP and say, Oh, by the way --

28

29 MS. LAVELLE: That's correct, My Lady.

30

31 THE COURT: -- (INDISCERNIBLE) yes, okay. I have got it.
32 So you are basically just taking no position and saying, Heads up, everybody, we might
33 come back down the road and oppose the sale that actually comes to fruition from this
34 process.

35

36 MS. LAVELLE: Yes, that's --

37

38 THE COURT: Is that --

39

40 MS. LAVELLE: -- fair, yes.

41

1 THE COURT: Okay. I got it, then. Okay. Great.

2

3 Anybody else?

4

5 THE COURT CLERK: I'm sorry, My Lady, can I get counsel's name for
6 the record?

7

8 MS. LAVELLE: Maria Lavelle for the Alberta Energy Regulator.

9

10 THE COURT CLERK: Thank you.

11

12 THE COURT: I think you have to spell it, Ms. Lavelle.

13

14 MS. LAVELLE: Maria, M-A-R-I-A, and Lavelle,
15 L-A-V-E-L-L-E.

16

17 THE COURT CLERK: Thank you.

18

19 **Decision (SISP/Stalking Horse)**

20

21 THE COURT: Thank you. We just had everybody else check
22 in when you were locked in the virtual host room or lobby.

23

24 Okay. Anybody else on the SISP and the Stalking Horse?

25

26 All right. Thank you very much, again, everyone, for your submissions on this. The use
27 of SISP and Stalking Horses has become not de rigueur in restructurings but certainly
28 much more common place than in years gone by concerning more complex restructuring
29 such as this.

30

31 The terms of the SISP, I have reviewed and am satisfied that the process itself and the
32 terms of it are reasonable in all the circumstances and once again look to balancing
33 stakeholder interests. I am mindful of the regulator's view at this point and that it may
34 down the road choose to oppose any sale that comes to fruition from the SISP,
35 nevertheless, at this juncture is simply taking no position.

36

37 The Monitor is supportive. There has been a great deal of work that has gone into this.
38 The parties have, I think, tried very hard to create a process that is fair to everyone, and
39 hopefully in the end will avoid any of the cherry-picking, as Ms. Lavelle describes it, that
40 could result by leaving abandoned wells behind. I guess that would make them
41 abandoned, so it kind of is redundant. Nevertheless, the balancing interest in the SISP, I

1 think, is quite carefully crafted. And as far as the break fee is concerned, I actually think
2 that is reasonable. Sometimes the eyebrows raised significantly, but not in this case.

3
4 And in all of the circumstances, I think it is fair, reasonable, and proper to approve the
5 SISP and Stalking Horse as presented.

6
7 MS. GUROFSKY: Thank you, My Lady. I think that takes me
8 through all of the relief. What I propose to do now, we've provided you with clean copies
9 of the order together with blackline (INDISCERNIBLE) to a version (INDISCERNIBLE)
10 the application. So whichever order you have in front of you first, I will walk you
11 through.

12
13 THE COURT: I just opened up the SISP and Stalking Horse
14 blackline order.

15
16 MS. GUROFSKY: Right.

17
18 THE COURT: So I do want to go into that one.

19
20 MS. GUROFSKY: Right. What you'll see, and then the only
21 changes made on the first page are to request the change in location. And Your Ladyship
22 hearing the matter, we'd ask the supplement third affidavit, two there was
23 (INDISCERNIBLE).

24
25 In paragraph 4 of the order, we reference approval of not only of the APA dated July 17th,
26 but the amending agreement to the APA dated July 23rd. That's just to capture what was
27 filed in the third -- or in the supplement third report.

28
29 The only other changes found at paragraph 12, and that's for -- that was the sealing order
30 was granted by Your Ladyship.

31
32 Otherwise the orders are the same. I could take you through exactly the relief, but I
33 understand you read it already.

34
35 THE COURT: Ms. Gurofsky, I have read it, and subject to my
36 asking all counsel if they have any comments or concerns with the order as presented, I
37 am happy to sign it. So going once.

38
39 All right. Hearing nothing, that order is granted. And, madam clerk, if I could ask you as
40 a matter of expediency to sign this order on my behalf. And I am going to speak to you
41 about getting it filed immediately. I know that is a problem because you are so busy, but

1 this is time-sensitive. So we will talk about that later.

2

3 THE COURT CLERK: Yes, Ma'am.

4

5 THE COURT: Moving forward, Ms. Gurofsky.

6

7 MS. GUROFSKY: So the -- the other order we're seeking deals
8 with the stay extension, the interim financing, and approval of the settlement agreement.
9 Again, the changes made are -- are largely administrative, I will call them, and similar to
10 the -- the -- we outlined before, so this -- again, on the first page, same changes to your
11 prior order. It references the supplement to the third affidavit. The approval of the
12 settlement agreement, again, requested the approval of the settlement agreement attached
13 to the supplemental affidavit. That's the (INDISCERNIBLE) signed version. The
14 approval of the interim financing is largely the same. And that's -- that language is taken
15 from the template initial order, so it mirrors that.

16

17 And the only other changes, again, are found beginning at paragraph 18 to 20, and they
18 deal with the fact that we now have two confidential exhibits (INDISCERNIBLE) to be
19 sealed again, because of the supplemental affidavit.

20

21 THE COURT: Okay. Thank you.

22

23 Again, is anyone wishing to speak to the language, what I am going to call the more
24 general order? No?

25

26 That order is granted (INDISCERNIBLE).

27

28 MS. GUROFSKY: Thank you, My Lady. And those are my matters
29 today.

30

31 THE COURT: Okay. Well, thanks very much.

32

33 Before we leave, everyone, you may just want to hear what I have to say, or in fact Ms.
34 Gurofsky, is not every one person who really has to stick around. I just want to have a
35 word with madam clerk regarding ensuring that we can get these orders in Ms. Gurofsky's
36 hands right away because as I am sure all of you are aware, where we -- I am calling it the
37 pandemic pileup, we are having difficulty in just processing orders. And these
38 time-sensitive matters, we have to lean on our administrative staff.

39

40 So if you would like to leave, please do. If you would like to stick around, you are more
41 than welcome to. And thank you for your appearance today. Madam clerk, are you

1 there?

2

3 THE COURT CLERK:

Yes, My Lady. I'll just turn off the record here.

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7 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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I, Kyla Pryor, certify this recording is a record made of the evidence in proceedings in Court of Queen's Bench, held in Courtroom 315 at Edmonton, Alberta, on the 24th day of July 2020, and that I, Kyla Pryor, was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

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I, Jill Williams, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Jill Williams, Transcriber
Order Number: AL2579
Dated: October 13, 2020