

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

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 **ORIGINAL
TRADERS ENERGY LTD. and 2496750 ONTARIO INC.**

Applicants

**MOTION RECORD OF THE APPLICANTS
(Returnable April 27, 2023)**

April 20, 2023

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Lawyers for the OTE Group

TO: THE SERVICE LIST

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TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

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Applicants

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2.	Stay Extension Order
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	B. Proof of Claim Instruction Letter
	C. Proof of Claim Form
	D. D&O Claim Instruction Letter
	E. D&O Proof of Claim Form
	F. Notice of Revision or Disallowance
	G. Notice of Dispute of Revision or Disallowance
4.	Information Order
5.	Affidavit of Scott Hill sworn April 20, 2023
	A. Initial Order dated January 30, 2023

	B.	Amended and Restated Initial Order dated February 9, 2023
	C.	Injunctive Order dated March 15, 2023 and Endorsements dated March 21 and March 28, 2023

TAB 1

**ONTARIO
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B E T W E E N:

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Applicants

**NOTICE OF MOTION
(Stay Extension Order, Claims Procedure Order, and Information Order)
(returnable April 27, 2023)**

The Applicants, Original Traders Energy Ltd. ("**OTE GP**"), 2496750 Ontario Inc. ("**249**"), OTE Logistics LP ("**OTE Logistics**") and Original Traders Energy LP ("**OTE LP**" and with OTE GP, 249 and OTE Logistics, collectively the "**Applicants**" and the "**OTE Group**", variously) will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on April 27, 2023 at 9 AM via videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- in person;
- by telephone conference;
- by video conference.

THIS MOTION IS FOR:

1. An Order (the “**Stay Extension Order**”), substantially in the form included in the Motion Record of the OTE Group, which, *inter alia*,
 - (a) approves the Third Report (the “**Third Report**”) of KPMG Inc., the Court-appointed Monitor of the OTE Group (in such capacity, the “**Monitor**”), the and the activities set out therein, as well as all prior reports of the Monitor submitted to this Honourable Court prior to the return date of this Order; and
 - (b) extends the stay period to August 4, 2023 (the “**Stay Period**”);
 - (c) increases the maximum aggregate amount of authorizations of payments to certain critical suppliers for pre-filing expenses to \$6,625,000, with any such payment to be made only with the consent of the Monitor and the OTE Group (the “**Critical Supplier Increase**”), and as are necessary to facilitate the OTE Group’s ongoing operations and preserve value during the restructuring proceedings; and
 - (d) such further and other relief as this Court may find just.
2. An Order (the “**Claims Procedure Order**”), substantially in the form included in the Motion Record, *inter alia*, approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing and empowering the Monitor to administer the Claims Procedure in accordance with the terms of the proposed Claims Procedure Order.
3. An Order (the “**Information Order**”), substantially in the form included in the Motion Record *inter alia*, authorizing and directing AirSprint Inc. (“**AirSprint**”) to provide the information requested by the Monitor or its counsel in connection with the amended and restated initial order issued by this Court on February 9, 2023 (the “**ARIO**”) and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group’s directors or officers (together with the OTE Group, the “**OTE Group Affiliates**”), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates, including, for avoidance of doubt, the information requested by the Monitor by

letter to AirSprint on February 23, 2023 (the “**Information**”), but excluding information subject to legal privilege, including solicitor-client privilege and litigation privilege.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

1. The OTE Group functions as a wholesale fuel supplier which services mainly First Nations’ petroleum stations and First Nations’ communities across Ontario;
2. The OTE Group services a total of over 30 gas stations throughout Southern Ontario, with a majority of these gas stations situated on 9 different First Nations reserves in Southern Ontario;
3. The liabilities faced by the OTE Group were triggered by alarming executive misconduct which threatens the survival of the OTE Group, arising from the actions of the former president of OTE GP, Glenn Page (“**Page**”) among other of his associates and entities, including his spouse, Mandy Cox (“**Cox**”);
4. The OTE Group is missing significant portions of their books and records due to Page’s and others’ alleged misconduct. Financial information and records of the OTE Group for the entire period from January of 2021 to August of 2022 are unreliable and incomplete;
5. On January 30, 2023, the Honourable Justice Osborne granted an initial order (the “**Initial Order**”) which, *inter alia*, provided protection to the OTE Group under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) and granted expanded investigatory powers to the Monitor in light of potential misconduct concerns faced by the OTE Group due to alleged actions of Page and Cox, among others;
6. On February 9, 2023, the Honourable Justice Osborne granted the ARIO which, *inter alia*, extended the stay of proceedings until the end of April 2023;
7. On March 15, 2023, the Honourable Justice Osborne granted an injunctive order (the “**Injunctive Order**”) which restrained Page, Cox and 2658658 Ontario Inc. from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly

dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can”, more particularly described at Schedule “A” to the Injunctive Order;

8. On March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements related to the Injunctive Order;
9. The OTE Group and the Monitor continue to work with American counsel and intend to obtain full force and effect of the aforementioned orders pursuant to recognition in the United States via a Chapter 15 proceeding;
10. Since the end of March 2023, the OTE Group and the Monitor have engaged extensively to determine a potential framework for the emergence and/or future path of the OTE Group and their respective businesses;
11. Both the OTE Group and the Monitor expect to broaden the scope of such discussions to include key stakeholders as matters evolve, and intend to run a claims procedure (as discussed further herein) to assist with the evolution of the respective businesses of the OTE Group, and to assist with the determination of their respective liabilities, in light of the missing financial records;

CLAIMS PROCEDURE

12. The OTE Group anticipates that a determination of the universe of claims against them and their respective directors and officers will be necessary to implement without undue delay the eventual restructuring undertaken by the OTE Group;
13. Accordingly, in consultation with the Monitor, the OTE Group has developed the proposed process to determine the nature, quantum and validity of claims against the OTE Group and their directors and/or officers in a flexible, fair, comprehensive and expeditious manner;
14. Unless otherwise defined in this section, capitalized terms shall have the meaning ascribed to them in the proposed Claims Procedure Order;

15. An overview of the proposed Claims Procedure Order is set out in the Third Report, and includes a summary of the solicitation of claims against the respective members of the OTE Group;
16. A summary of the Claims Procedure timelines are as follows:

Timeframe	Activity
April 27, 2023	Motion for approval of Claims Procedure Order
May 4, 2023	Monitor to cause the Claims Procedure Order and the Claims Package to be posted on the Monitor's Website
May 8, 2023	Notice to Claimants to be published in required newspaper
May 11, 2023	Monitor to send to the Known Claimants a copy of the Claims Package
June 27, 2023	Claims Bar Date
June 27, 2023 or 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant	Restructuring Period Claims Bar Date

17. The Claims Procedure solicits the following Claim classifications from Known Claimants: (a) Pre-Filing Claims; (b) Restructuring Period Claims; and (c) D&O Claims, as well as determines whether each Claim is a secured or unsecured Claim (terms as defined in the Claims Procedure Order);
18. The following Claims are "Excluded Claims" under the proposed Claims Procedure: (a) Claims that may be asserted by any beneficiary of the Administration Charge; (b) any Intercompany Claims; and (c) any claim of the OTE Group against any Directors or Officers (terms as defined in the Claims Procedure Order);

19. Furthermore, the Claims Procedure Order approves relevant forms as appended to it as schedules for the purpose of administering the Claims Procedure, and authorizes the Monitor to distribute and publish said forms;
20. The Monitor shall also review all Proofs of Claim and may attempt to resolve and settle issues within each Proof of Claim, and/or accept, revise or disallow Claims;
21. The Monitor may also attempt to refer any disputed Claims for adjudication, in accordance with the Claims Procedure Order;
22. The Monitor is of the view that the implementation of a Claims Procedure Order is appropriate and necessary in the circumstances and will assist to facilitate timely distributions to stakeholders, where possible. The Monitor is therefore seeking the Court's approval to implement the Claims Procedure Order to allow for an efficient Claims Procedure for the benefit of all stakeholders;

APPROVAL OF THE THIRD REPORT

23. The Monitor's actions and activities, as further described in the Third Report, and up to the return date of this sought Order, are lawful and proper, and consistent with its powers and duties under the ARIO and the Initial Order;

STAY EXTENSION

24. The current stay of proceedings granted in these CCAA proceedings expires on April 28, 2023;
25. The OTE Group is seeking to extend the Stay Period until August 4, 2023. The requested extension of the Stay Period is necessary and appropriate in the circumstances to, among other things, allow the Claims Procedure to be initiated in accordance with the Claims Procedure Order, and provide the OTE Group with the necessary breathing room to continue their ongoing engagement with key stakeholders regarding the determination of their potential restructuring path;

26. The OTE Group has been acting and continues to act in good faith and with due diligence;
27. It is just and convenient and in the interests of the OTE Group and their stakeholders to extend the Stay Period;
28. The OTE Group has sufficient funds to continue their operations and fund these CCAA proceedings until the extended time sought;

CRITICAL SUPPLIER INCREASE

29. The OTE Group relies on certain critical suppliers in their day-to-day operations. To preserve their business and maintain critical relationships, the OTE Group is seeking an increase in authorization to pay amounts owing for goods and services supplied to the OTE Group to a maximum aggregate amount of \$6,625,000;
30. The Critical Supplier Increase was calculated with the assistance of the Monitor, and the OTE Group understands that the Monitor is supportive of this relief, with further details to follow in the Third Report;

INFORMATION ORDER

31. The proposed Information Order would authorize and direct AirSprint to provide the Information to the Monitor and its counsel, other than information subject to legal privilege, including solicitor-client privilege and litigation privilege. It would also authorize AirSprint to provide the Information in accordance with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (the “**Personal Information Protection Act**”) and any similar legislation in any other applicable jurisdictions, notwithstanding that the Information may include “personal information”;
32. The Monitor and its counsel are required to maintain and protect the privacy and confidentiality of the Information in accordance with the proposed Information Order, which would only allow the Information to be used in connection with the performance of the Monitor’s roles and duties. The Information may be shared (and the Monitor and its counsel would be authorized to share the Information pursuant to the Personal

Information Protection Act and any similar legislation in any other applicable jurisdictions) with Additional Recipients (term as defined in the Information Order), who would be required to maintain and protect the privacy and confidentiality of the Information;

33. The Information Order will allow the Monitor to continue its investigation, which is in the best interests of the OTE Group and all of its stakeholders. Such an order is within the scope of the Monitor's duties and powers pursuant to the CCAA and the ARIO;
34. The Monitor is supportive of the relief sought and believes it is fair and reasonable. The OTE Group understands that the Information Order is consented to by AirSprint, and is not aware of any opposition to this relief;

GENERALLY

35. The circumstances that exist make the relief sought by the OTE Group appropriate;
36. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
37. The reasons set out in the Third Report;
38. The Personal Information Protection Act, including, without limitation, s. 7(3) thereof;
39. The *Rules of Civil Procedure* (Ontario), RRO 1990, reg. 194, including, without limitation, rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 59.06 thereof;
40. The *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, including, without limitation, s. 106 thereof; and
41. Such further and other grounds as counsel may advise and this Court may permit.

42. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The Third Report, to be filed; and
- (b) Such further and other material as counsel may submit and this Court may permit.

Date: April 20, 2023

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Lawyers for the OTE Group

TO: SERVICE LIST

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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable April 27, 2023)**

AIRD & BERLIS LLP

Barristers and Solicitors
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181 Bay Street, Suite 1800
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Lawyers for the OTE Group

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 27TH
)
JUSTICE OSBORNE) DAY OF APRIL, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.
AND 2496750 ONTARIO INC.** (each, an "**Applicant**" and
collectively, the "**Applicants**")

STAY EXTENSION ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") dated January 30, 2023 (the "**Initial Filing Date**") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the pre-filing report of the proposed monitor, KPMG Inc. dated January 30, 2023 (the "**Pre-Filing Report**"), the First Report of KPMG Inc. in its capacity as Court-appointed monitor of the OTE Group (the "**Monitor**") dated February 9, 2023 (the "**First Report**"), the Second Report of the Monitor dated March 13, 2023 (the "**Second Report**"), the Third Report of the Monitor (the "**Third Report**"), and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for the Monitor and such other counsel who were present as stated on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Samantha Hans sworn April 20, 2023 and filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 16 of the Initial Order) is hereby extended until and including August 4, 2023.

APPROVAL OF MONITOR'S REPORTS

3. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the OTE Group and these CCAA proceedings are hereby ratified and approved, and that the Pre-Filing Report, the First Report and the Second Report be and are hereby approved.

4. **THIS COURT ORDERS** that the Third Report be and is hereby approved.

5. **THIS COURT ORDERS** that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approvals set forth in paragraphs 3 and 4 of this Order.

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT HEREBY APPROVES** an increase in the maximum aggregate amount of authorizations of payments to certain critical suppliers for pre-filing expenses, as provided for in paragraph 7 of the Amended and Restated Initial Order dated February 9, 2023, to \$6,625,000, with any such payment to be made only with the consent of the Monitor and the OTE Group, and as are necessary to facilitate the OTE Group's ongoing operations and preserve value during these CCAA proceedings.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order is effective from today's date as of 12:01 a.m. Eastern Standard/Daylight Time and is enforceable without the need for entry or filing.

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 ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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Lawyers for the OTE Group

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 27TH
)
JUSTICE OSBORNE) DAY OF APRIL, 2023
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.
AND 2496750 ONTARIO INC.** (each, an "**Applicant**" and
collectively, the "**Applicants**")

CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order (the "**Claims Procedure Order**"), inter alia, establishing a claims procedure for the identification and quantification of certain claims against (i) the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**") and (ii) the current and former directors and officers of the OTE Group, was heard this day by videoconference at Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Third Report of KPMG Inc. (the "**Third Report**"), in its capacity as Court-appointed monitor of the OTE Group (the "**Monitor**"), and on hearing the submissions of respective counsel for the OTE Group, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Samantha Hans sworn April 20, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion, the Motion Record, and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“Assessments”** means any rights or claims of His Majesty the King in Right of Canada or of any province or territory or municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any existing or future notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority (including, for the avoidance of doubt, from any taxation authority in the United States), including without limitation in respect of any income taxes, sales taxes, excise taxes, harmonized sales taxes, goods and services taxes, and fuel taxes, and any Claims for interest or penalties in connection therewith;
- (b) **“Bar Date”** means the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable pursuant to the terms of this Order;

- (c) “**Business Day**” means, except as otherwise specified herein, a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (d) “**Books and Records**” means, collectively,
 - (i) the books and records provided to the Monitor by the OTE Group and/or any of their respective principals, agents or counsel;
 - (ii) information obtained by the Monitor pursuant to its information requests, including pursuant to its powers under the Initial Order and any other Order of this Court; and
 - (iii) any and all instruments registered on title to or in respect of the Property (as defined in the Initial Order) on or prior to the Filing Date;
- (e) “**CCAA Proceedings**” means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-23-00693758-00CL;
- (f) “**Characterization**” means, for the purposes of this Order, solely whether the Claim is a secured or unsecured Claim, Pre-Filing Claim, Restructuring Period Claim or D&O Claim;
- (g) “**Claim**” means:
 - (i) any right or claim of any Person against any of the OTE Group, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such member of the OTE Group in existence

on the Filing Date, including any interest thereon or costs payable in respect thereof, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or claim with respect to any Assessment, or by reason of any equity interest, or by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty), or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the OTE Group with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, or any other right or claim of any kind that would have been a claim provable in bankruptcy had any of the OTE Group become bankrupt on the Filing Date, including for greater certainty any claim against any of the OTE Group for indemnification by any Director or Officer in respect of a Pre-Filing D&O Claim (but excluding any such claim

by a Director or Officer of any OTE Group entity for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)), in each case, where such monies remain unpaid as of the date hereof (each, a "**Pre-Filing Claim**", and collectively, the "**Pre-Filing Claims**");

(ii) any right or claim of any Person against any of the OTE Group in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such member of the OTE Group to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such member of the OTE Group on or after the Filing Date of any contract, lease or other agreement or arrangement, whether written or oral (each, a "**Restructuring Period Claim**", and collectively, the "**Restructuring Period Claims**");

(iii) any right or claim of any Person against one or more of the Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any

Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a “**Pre-Filing D&O Claim**”, and collectively, the “**Pre-Filing D&O Claims**”); and

- (iv) any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a “**Restructuring Period D&O Claim**”, collectively, the “**Restructuring Period D&O Claims**”);

provided, however, that in any case “**Claim**” shall not include an Excluded Claim, but for greater certainty, shall include any Claim of any insurer under a director and officer insurance policy arising through subrogation against member of the OTE Group or any Director or Officer;

- (h) “**Claimant**” means (a) a Person, including without limitation a Known Claimant asserting a Pre-Filing Claim or a Restructuring Period Claim against any of the OTE Group, or (b) a Person, including without limitation a Known Claimant asserting a D&O Claim against any of the Directors or Officers;
- (i) “**Claims Bar Date**” means 5:00 PM (Eastern Time) on June 27, 2023, or such later date as may be ordered by this Honourable Court;
- (j) “**Claims Officer**” means the individual(s) designated by the Court pursuant to paragraph 35 of this Order;
- (k) “**Claims Package**” means the document package to be disseminated by the Monitor in accordance with the terms of this Order, which shall consist of a Proof of Claim form, a Proof of Claim Instruction Letter, a D&O Proof of Claim form, a D&O Claim Instruction Letter, and such other materials as the OTE Group, in consultation with the Monitor, may consider appropriate;
- (l) “**Claims Procedure**” means the procedures outlined in this Order, including the Schedules hereto, in connection with the assertion of Claims against the OTE Group and/or the Directors and Officers, or any of them, as amended or supplemented by further order of the Court;
- (m) “**Court**” or this “**Honourable Court**” means the Ontario Superior Court of Justice (Commercial List);

- (n) “**D&O Claim**” means any Pre-Filing D&O Claim or Restructuring Period D&O Claim, and “**D&O Claims**” means, collectively, the Pre-Filing D&O Claims and the Restructuring Period D&O Claims;
- (o) “**D&O Claim Instruction Letter**” means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “D” hereto;
- (p) “**D&O Proof of Claim**” means the proof of claim to be filed by Claimants in connection with any D&O Claim, substantially in the form attached as Schedule “E” hereto, which shall include all available supporting documentation in respect of such D&O Claim;
- (q) “**Directors**” means all current or former directors (or their estates) of any of the OTE Group, in such capacity, or any who may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any member of the OTE Group, and “**Director**” means any one of them;
- (r) “**Employee**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a current or former employee of any of the OTE Group whether on a full-time, part-time or temporary basis, other than a Director or Officer, including any individuals on disability leave, parental leave or other absence;
- (s) “**Excluded Claim**” means any:

- (i) Claim that may be asserted by any beneficiary of the Administration Charge, the Directors' Charge and the RBC Security, (as such terms are defined in the Initial Order), and any further Court-ordered charges in these CCAA proceedings;
 - (ii) Intercompany Claim; and
 - (iii) Claim that may be asserted by any of the OTE Group entities or by the Monitor, including, without limitation, pursuant to section 36.1 of the CCAA and sections 95 and 96 of the *Bankruptcy and Insolvency Act*, against any Directors and/or Officers;
- (t) “**Filing Date**” means January 30, 2023;
- (u) “**Initial Order**” means the order of the Honourable Justice Osborne dated January 30, 2023 issued pursuant to the CCAA, as amended by the order of the Honourable Justice Osborne dated February 9, 2023, and as further amended, restated or varied from time to time;
- (v) “**Instruction Letter**” means a letter to Claimants regarding the Claims Procedure containing instructions regarding the completion and return of a Proof of Claim, substantially in the form attached at **Schedule “B”** herein;
- (w) “**Intercompany Claim**” means any Claim that may be asserted against any of the OTE Group by or on behalf of any of the OTE Group or any of their affiliated companies, partnerships, or other corporate entities;

- (x) **“Known Claimants”** means:
 - (i) those Claimants which the Books and Records disclose were owed monies as Claimants by one or more of the OTE Group as of the Filing Date and which monies remain unpaid in whole or in part; and
 - (ii) any Person which commenced a legal proceeding against any of the OTE Group, including the Directors or Officers, which legal proceeding was commenced and served upon such member of the OTE Group or such Director or Officer prior to the Filing Date and is known to the Monitor as of the date of the Claims Procedure Order;
- (y) **“Meeting”** means any meeting of the creditors of the OTE Group, or of any one or more of them, called for the purpose of considering and voting in respect of a Plan;
- (z) **“Monitor’s Website”** means the case website established by the Monitor with the following URL: <http://home.kpmg/ca/OTEGroup>;
- (aa) **“Notice of Dispute of Revision or Disallowance”** means the notice, substantially in the form attached as Schedule “G” hereto, which may be delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance received by such Claimant;
- (bb) **“Notice of Revision or Disallowance”** means the notice, substantially in the form attached as Schedule “F” hereto, which may be prepared by the OTE Group, in consultation with the Monitor, and delivered by the Monitor to a Claimant revising

or disallowing, in part or in whole, a Claim submitted by such Claimant in a Proof of Claim or D&O Proof of Claim;

- (cc) “**Notice to Claimants**” means the notice for publication by the Monitor as described in paragraph 12(d) herein, substantially in the form attached as Schedule “A” hereto;
- (dd) “**Officers**” means all current and former officers (or their estates) of any of the OTE Group, in such capacity, or anyone who may be deemed to be or have been, whether by statute, operation or law or otherwise, an officer or *de facto* officer of any of the OTE Group, and “**Officer**” means any of them;
- (ee) “**Order**” means this Claims Procedure Order;
- (ff) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), joint venture, unincorporated organization, governmental unit, body or agency or any instrumentality thereof, Canadian or non-Canadian regulatory body or agency or any instrumentality thereof, or any other entity;
- (gg) “**Plan**” means any proposed plan of compromise, arrangement or reorganization that may be filed in respect of any or all of the OTE Group pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof;
- (hh) “**Proof of Claim**” means the proof of claim to be submitted or delivered to the Monitor by a Claimant in respect of any Pre-Filing Claim and/or Restructuring

Period Claim, substantially in the form attached as Schedule “C” hereto, which shall include all available supporting documentation in respect of such Claim;

(ii) **“Proof of Claim Instruction Letter”** means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule “B” hereto;

(jj) **“Restructuring Period Claims Bar Date”** means, in respect of a Restructuring Period Claim or Restructuring Period D&O Claim, the later of: (i) the Claims Bar Date; and (ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant;

3. **THIS COURT ORDERS** that, except where otherwise specified herein, all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

5. **THIS COURT ORDERS** that all Claims filed shall be denominated in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank

of Canada daily average exchange rate on the Filing Date, which for the United States dollar is USD\$1:CAD\$1.3356.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the solicitation by the OTE Group and the Monitor of Proofs of Claims and D&O Proofs of Claims, and the filing by any Claimant of any Proof of Claim and D&O Proof of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or standing in the CCAA Proceedings or rights under a Plan, except as specifically set out in this Order.

7. **THIS COURT ORDERS** that the Monitor, in consultation with the OTE Group, and if applicable, the applicable Directors and Officers in respect of any D&O Claims, is hereby authorized to use reasonable discretion to determine the adequacy of compliance with respect to the manner in which any forms submitted or delivered hereunder are completed and executed, and the time in which they are submitted, and may, where the Monitor, in consultation with the OTE Group and, if applicable, the applicable Directors and Officers in respect of any D&O Claims, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms and to request any further documentation from a Claimant that the Monitor, the OTE Group and the applicable Directors and Officers in respect of any D&O Claims, may require.

8. **THIS COURT ORDERS** that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

MONITOR'S ROLE

9. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, shall assist the OTE Group in the administration of the Claims Procedure provided for herein, including the determination and resolution of Claims, if applicable, and is hereby authorized, directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

10. **THIS COURT ORDERS** that the Monitor: (i) shall have all of the protections afforded to it by the CCAA, this Order, the Initial Order, any other orders of the Court in the CCAA Proceedings, and other applicable law, or as an officer of the Court, in connection with its activities in respect of this Order, including the stay of proceedings in its favour pursuant to the Initial Order; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the OTE Group and any information provided by any of the OTE Group, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order from the OTE Group or any of their affiliated companies, partnerships, or other corporate entities, including making such inquiries and obtaining such records and information as it deems appropriate in connection with the Claims Procedure.

11. **THIS COURT ORDERS** that the OTE Group, the Directors, the Officers and their respective employees, agents and representatives and any other Person given notice of this Order

shall fully cooperate with and assist the Monitor in the exercise of its powers and the discharge of its duties and obligations under this Order.

NOTICE TO CLAIMANTS

12. **THIS COURT ORDERS** that:

- (a) The OTE Group shall, no later than five (5) Business Days following the granting of this Order, provide to the Monitor a complete list of Known Claimants which the Books and Records disclose were owed monies as Claimants by one or more of the OTE Group as of the Filing Date and which monies remain unpaid in whole or in part, and/or confirm to the Monitor that the Monitor is already in possession of such list;
- (b) The Monitor shall post a copy of this Order and the Claims Package on the Monitor's Website as soon as practicable after the date of this Order but no later than five (5) Business Days following the granting of this Order;
- (c) The Monitor shall, as soon as practicable, but no later than ten (10) Business Days following the granting of this Order, send to each of the Known Claimants, as evidenced by the Books and Records of the OTE Group, at their last known municipal or e-mail address as recorded in the OTE Group's Books and Records a copy of the Claims Package;

- (d) The Monitor shall cause to be published for at least two (2) Business Days in consecutive weeks the Notice to Claimants in *The Globe and Mail* (National Edition) as soon as practicable after the date of this Order, with the first such notice to be published no later than seven (7) Business Days following the granting of this Order; and
- (e) The Monitor shall, provided such request is received prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor a copy of the Claims Package to any Person claiming to be a Claimant and requesting such material in writing.

13. **THIS COURT ORDERS** that any notices of disclaimer or resiliation delivered after the date of this Order to potential Claimants in connection with any action taken by the OTE Group or the Monitor to restructure, disclaim, resiliate, terminate or breach any contract, lease or other agreement, whether written or oral, pursuant to the terms of the Initial Order, shall be accompanied by a Claims Package.

14. **THIS COURT ORDERS** that the form and substance of the Claims Procedure, this Order and all Schedules, substantially in the forms attached as schedules hereto, are hereby approved. Notwithstanding the foregoing, the OTE Group, in consultation with the Monitor, may, from time to time, make non-substantive changes to the forms as they may consider necessary or desirable.

15. **THIS COURT ORDERS** that the sending of the Claims Package either electronically or physically to the applicable Persons as described above, the publication of the Notice to Claimants, each in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice on all Persons who may be

entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order. All Persons (including Claimants) are bound by the timelines set out in this Order and any notices published in accordance with the terms of this Order, regardless of whether or not they received actual notice, such that it is the sole obligation of any Person asserting a Claim to file such Claim with the Monitor in accordance with the terms of this Order and the applicable Bar Date set out in this Order.

16. **THIS COURT ORDERS** that the Monitor shall be entitled to rely on the accuracy and completeness of the information obtained from the Books and Records of the OTE Group regarding the Known Claimants. For greater certainty, the Monitor shall have no liability in respect of the information provided to it or otherwise obtained by it regarding the Known Claimants and shall not be required to conduct any independent inquiry and investigation with respect to that information.

CLAIMS PROCEDURE

(A) Pre-Filing Claims and Pre-Filing D&O Claims

17. **THIS COURT ORDERS** that any Claimant that intends to assert a Pre-Filing Claim or a Pre-Filing D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor so that it is actually received by the Monitor on or before the Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Monitor in accordance with the provisions of this Order. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed with the Monitor by every Claimant in respect of every Pre-Filing Claim and every Pre-Filing D&O Claim, regardless of whether or not a legal proceeding in respect of such Pre-Filing Claim or Pre-Filing D&O Claim has been previously commenced.

18. **THIS COURT ORDERS** that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Claims Bar Date, or such later date as the Monitor, in consultation with the OTE Group, may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s) against the OTE Group, the OTE Group shall not have any liability whatsoever in respect of any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s), and all such Pre-Filing Claims or Pre-Filing D&O Claims shall be forever extinguished without any further act or notification by the OTE Group or the Monitor;
- (b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or these CCAA proceedings with respect to such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s); and
- (d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s).

(B) Restructuring Period Claims

19. **THIS COURT ORDERS** that, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim or Restructuring Period D&O Claim, the Monitor, in

consultation with the OTE Group, shall send a Claims Package, as appropriate, to the Claimant in respect of such potential Restructuring Period Claim or Restructuring Period D&O Claim in the manner provided for herein.

20. **THIS COURT ORDERS** that any Claimant that intends to assert a Restructuring Period Claim or a Restructuring Period D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor so that it is actually received by the Monitor on or before the Restructuring Period Claims Bar Date. Proofs of Claim and D&O Proofs of Claim may be submitted to the Monitor in accordance with the provisions of this Order hereto. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed with the Monitor by every Claimant in respect of every Restructuring Period Claim and every Restructuring Period D&O Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or Restructuring Period D&O Claim has been previously commenced.

21. **THIS COURT ORDERS** that any Claimant that intends to assert a Restructuring Period Claim or Restructuring Period D&O Claim, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor, in consultation with the OTE Group, may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s), the OTE Group shall not have any liability whatsoever in respect of any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s), and all such Restructuring Period Claims or Restructuring Period D&O Claims shall be forever

extinguished without any further act or notification by the OTE Group or the Monitor;

- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or these CCAA Proceedings with respect to such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s); and
- (d) will not be permitted to participate in any distribution under any Plan or otherwise on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s).

(C) Adjudication and Resolution of Claims

22. **THIS COURT ORDERS** that the Monitor, in consultation with the OTE Group, shall review and record all Proofs of Claim and D&O Proofs of Claim that are received on or before the applicable Bar Date.

23. **THIS COURT ORDERS** that the Monitor shall make reasonable efforts to promptly deliver a copy of any D&O Proofs of Claim, Notices of Revision or Disallowance with respect to any D&O Claim, and Notices of Dispute of Revision or Disallowance with respect to any D&O Claim, to the applicable Directors and Officers named therein.

24. **THIS COURT ORDERS** that, (i) the Monitor, in consultation with and on behalf of the OTE Group, shall accept, revise or reject each Claim set out in each Proof of Claim, and (ii) with

respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor, in consultation with and on behalf of the OTE Group and the applicable Directors and Officers named in respect of such D&O Claim, shall accept, revise or reject such D&O Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Director(s) and Officer(s) or further Order of the Court.

25. **THIS COURT ORDERS** that, if the Monitor, in consultation with the OTE Group, agrees with the amount and Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with the provisions of this Order and intend to accept the Claim, the Monitor shall notify such Claimant of the acceptance of its Claim by the OTE Group.

26. **THIS COURT ORDERS** that, if the Monitor, in consultation with the OTE Group, disagrees with the amount or Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed in accordance with the provisions of this Order, the Monitor shall, in consultation with the OTE Group and any applicable Directors or Officers, attempt to resolve such dispute and settle the purported Claim with the Claimant for voting and/or distribution purposes.

27. **THIS COURT ORDERS** that, subject to and in accordance with paragraph 22, if the OTE Group and the Monitor intend to revise or reject a Claim that has been filed with the Monitor, the Monitor shall notify the applicable Claimant that its Claim has been revised or rejected for voting and/or distribution purposes, and the reasons therefor, by sending a Notice of Revision or Disallowance. The Monitor, in consultation with the OTE Group, may allow a Claim for voting purposes and may revise or disallow the Claim for distribution purposes provided it does so in the Notice of Revision or Disallowance.

28. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Revision or Disallowance received from the Monitor shall deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor such that it is received by the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor, in consultation with the OTE Group, in writing.

29. **THIS COURT ORDERS** that, where a Claimant who receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 28 above, then such Claimant's Claim shall be deemed to be as determined in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

30. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a Claim, the Monitor, the OTE Group and any applicable Directors or Officers, shall attempt to resolve such dispute and settle the purported Claim with the Claimant, and in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the OTE Group and any applicable Directors or Officers, the Monitor shall, at its election, refer the dispute raised in the Notice of Dispute of Revision or Disallowance to the Court or a Claims Officer appointed by the Court for adjudication, and the Monitor shall send written notice of such referral to the Claimant.

31. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the Monitor, in consultation with the OTE Group and any applicable Directors or Officers, may, at its election, refer any Claim to the Court or a Claims Officer appointed by the Court for adjudication at any time, and the Monitor shall send written notice of such referral to the applicable parties.

32. **THIS COURT ORDERS** that nothing in this Order shall affect any right of set-off which the OTE Group may have against any Claimant.

33. **THIS COURT ORDERS** that, for greater certainty, no Person holding an Excluded Claim shall be required to file a Proof of Claim in respect of such Excluded Claim, and such Person shall be unaffected by this Order in respect of such Excluded Claim.

34. **THIS COURT ORDERS** that nothing in this Claims Procedure Order shall constitute or be deemed to constitute an allocation or assignment of Claims into particular classes for the purpose of the Plan and, for greater certainty, the treatment of Claims, or any other claims and classification of Claimants for voting and distribution purposes, shall be subject to the terms of a Plan or further Order of this Court.

CLAIMS OFFICER

35. **THIS COURT ORDERS** that one or more Persons may be appointed by the Court from time to time on a motion by the OTE Group or the Monitor as the Claims Officer for the Claims Procedure.

36. **THIS COURT ORDERS** that the decision as to whether a disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the discretion of the OTE Group, in consultation with the Monitor.

37. **THIS COURT ORDERS** that, where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine the classification, validity and/or amount of such disputed Claim in accordance with this Order and, to the extent necessary, may determine whether any Claim or part thereof constitutes an Excluded Claim, and shall provide written reasons. Where a disputed Claim has been referred to a Claims Officer, the Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. The Claims Officer shall have the discretion to mediate any dispute that is referred to such Claims Officer at its election. The Claims Officer shall also have the discretion to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid.

38. **THIS COURT ORDERS** that the Monitor, the Claimant, the OTE Group and/or, in respect of any D&O Claim, the applicable Directors and Officers, or any other stakeholder (if applicable) may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the amount and Characterization of a Claimant's Claim or any other matter determined by the Claims Officer, appeal such determination to the Court by filing a notice of appeal, and the appeal shall, subject to the availability of the Court, be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.

39. **THIS COURT ORDERS** that, if no party appeals any determination of any Claims Officer within the time set out in paragraph 38 above, the decision of the Claims Officer in determining the amount and Characterization of the Claimant's Claim or any other matter determined by the Claims Officer in accordance with paragraph 38 shall be final and binding upon the applicable OTE Group, the applicable Directors and Officers in respect of any D&O Claim,

the Monitor, the Claimant and any other applicable stakeholder and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

NOTICE TO TRANSFEREES

40. **THIS COURT ORDERS** that, subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns its Claim to another Person, neither the Monitor nor any of the OTE Group shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of such Claim, and the OTE Group and the Monitor shall thereafter only be required to deal with such transferee or assignee and not the original Claimant. Any such transferee or assignee of such Claim shall be bound by any notices given or steps taken or not taken in respect of such Claim in accordance with this Order prior to receipt by the Monitor and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the OTE Group and/or the applicable Directors and Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim shall not be entitled to set-off, apply, merge, consolidate or combine any Claim assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the OTE Group or the applicable Directors and Officers.

SERVICE AND NOTICE

41. **THIS COURT ORDERS** that the OTE Group and the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Claims Package,

and any letters, notices or other documents, to the appropriate Claimants or any other interested Persons by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons or their counsel at the physical or electronic address, as applicable, shown on the Books and Records of the OTE Group or, where applicable, as set out in such Claimant's Proof of Claim or D&O Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario) or within the United States (other than within California), as applicable, and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

42. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Claimant to the Monitor or the OTE Group under this Order shall, unless otherwise specified in this Order, be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to:

If to the Monitor:

KPMG Inc.
Bay Adelaide Centre, 333 Bay St. #4600
Toronto, ON M5H 2S5

Attention: Chris Gard and Broderick Lomax
Email: cgard@kpmg.ca; blomax@kpmg.ca;
and OTEGroup@kpmg.ca

With a copy to Bennett Jones LLP

If to the OTE Group:

Aird & Berlis LLP
Brookfield Place, 181 Bay St. #1800
Toronto, ON M5J 2T9

Attention: Steven Graff, Tamie Dolny and
Samantha Hans
Email: sgraff@airdberlis.com,

100 King Street West, Suite 3400
Toronto, ON M5X 1A4
Attention: Raj Sahni, Danish Afroz and
Thomas Gray
Email: sahnir@bennettjones.com,
afrozd@bennettjones.com and
grayt@bennettjones.com

tdolny@airdberlis.com and
shans@airdberlis.com

Any such notice or communication delivered by a Claimant shall be deemed received if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email, upon actual receipt thereof before 5:00 p.m. on a Business Day, or if delivered outside of normal business hours, the next Business Day. For greater certainty, a copy of any correspondence delivered by the Claimant to the OTE Group must also has to delivered to the Monitor.

43. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not be effective, and all notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order, in each case unless otherwise determined by the Monitor, in its reasonable discretion and in consultation with the OTE Group.

MISCELLANEOUS

44. **THIS COURT ORDERS** that the OTE Group or the Monitor may from time to time apply to this Court to extend the time for any action which the OTE Group or the Monitor are required to take if reasonably required to carry out their respective duties and obligations pursuant to this Order and for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

45. **THIS COURT ORDERS** that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the OTE Group's insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any OTE Group; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, where and if available, the OTE Group' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a OTE Group or Director or Officer, as applicable.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Southern District of Florida, or in any other foreign jurisdiction, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents, in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that this Order is effective from today's date as of 12:01 a.m. Eastern Standard/Daylight Time and is enforceable without the need for entry or filing.

SCHEDULE "A"

NOTICE TO CLAIMANTS OF ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP

(collectively, the "OTE Group")

RE: NOTICE OF CLAIMS PROCEDURE

NOTICE IS HEREBY GIVEN that pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made on April 27, 2023 (the "**Claims Procedure Order**"), a claims procedure has been commenced for the identification, quantification, and resolution of certain claims of creditors of the OTE Group and their respective directors and officers (the "**Claims Procedure**"). Capitalized terms that are not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

PLEASE TAKE NOTICE that any Person that wishes to assert a Pre-Filing Claim or a Pre-Filing D&O Claim (against any of the current or former Directors or Officers of the OTE Group), other than an Excluded Claim, must deliver to KPMG Inc., in its capacity as the court-appointed monitor of the OTE Group (the "**Monitor**") on or before the Claims Bar Date a completed Proof of Claim form or a completed D&O Proof of Claim, as applicable, including all relevant supporting documentation in respect of such Claim, in the manner set out in the Order.

Pursuant to the Claims Procedure Order, the Claims Bar Date is 5:00 p.m. (Eastern Time) on June 27, 2023. Proofs of Claim in respect of Pre-Filing Claims and D&O Proofs of Claim in respect of D&O Claims must be completed and filed with the Monitor such that it is received on or before the Claims Bar Date.

PLEASE TAKE NOTICE that any Person that wishes to assert a Restructuring Period Claim or a Restructuring Period D&O Claim, other than an Excluded Claim, must deliver to the Monitor on or before the Restructuring Claims Bar Date a completed Proof of Claim form or a D&O Proof of Claim, as applicable, including all relevant supporting documentation in respect of such Claim, in the manner set out in the Order.

Pursuant to the Claims Procedure Order, the Restructuring Period Claims Bar Date is 5:00 pm (Eastern Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant. Proofs of Claim in respect of Restructuring Period Claims or D&O Proofs of Claim in respect of Restructuring Period D&O Claims must be completed and filed with the Monitor such that they are received on or before the Restructuring Period Claims Bar Date.

Pursuant to the Claims Procedure Order, the Monitor will cause Claims Packages to be sent to all Known Claimants on or before Thursday, May 11, 2023. A copy of the Claims Procedure Order and the Claims Package can be found at the following website: <http://home.kpmg/ca/OTEGroup>

CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

CLAIMANTS REQUIRING INFORMATION or claim documentation may contact the Monitor at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission, email or telephone:

KPMG Inc., Court-appointed Monitor of the OTE Group

Claims Process

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax
Telephone: 1-833-665-0666 (toll free within North America)
416-468-7000 (local)
Fax: 416-777-8818
Email: OTEGroup@kpmg.ca

SCHEDULE “B”

**PROOF OF CLAIM INSTRUCTION LETTER OF
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP AND
ORIGINAL TRADERS ENERGY LP**

(collectively, the “OTE Group”)

CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) dated April 27, 2023 (as such Order may be amended from time to time, the “**Claims Procedure Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCA**”), the OTE Group and KPMG Inc., in its capacity as the Court-appointed monitor of the OTE Group (the “**Monitor**”), have been authorized to conduct a claims procedure (the “**Claims Procedure**”). A copy of the Claims Procedure Order and other public information concerning this proceeding can be obtained from the Monitor’s website at <http://home.kpmg.ca/OTEGroup>.

This letter provides general instructions for completing a Proof of Claim form. Capitalized terms not defined within this instruction letter shall have the meaning ascribed thereto in the Claims Procedure Order.

The Claims Procedure is intended to identify and determine the amount of any claims against the OTE Group or any or all of their respective current or former Directors or Officers, whether unliquidated, contingent or otherwise, that are to be affected in the plan of compromise or arrangement being pursued by the OTE Group under the CCA. Please review the Claims Procedure Order for the full terms of the Claims Procedure.

All forms and inquiries with respect to the Claims Procedure should be directed to the Monitor by prepaid registered mail, courier, personal delivery, facsimile transmission, email, or telephone at the address below:

KPMG Inc., Court-appointed Monitor of the OTE Group

Claims Process

333 Bay Street, Suite 4600

Bay Adelaide Centre

Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax

Telephone: 1-833-665-0666 (toll free within North America)

416-468-7000 (local)

Fax: 416-777-8818

Email: OTEGroup@kpmg.ca

FOR CREDITORS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Pre-Filing Claim against any of the OTE Group, you must complete and file a Proof of Claim form with the Monitor. All Proofs of Claim for Pre-Filing Claims (i.e. Claims against the OTE Group arising prior to the Filing Date) **must be received by the Monitor before 5:00 p.m. (Eastern Time) on June 27, 2023** (the “**Claims Bar Date**”). If you do not file a Proof of Claim in respect of any such Claims by the Claims Bar Date, you shall not be entitled to vote at the meeting of creditors regarding

any plan of compromise or arrangement being proposed by the OTE Group or participate in any distribution under such plan in respect of such Claims and any such Claims shall be forever extinguished and barred.

All Proofs of Claim for Restructuring Period Claims (i.e. Claims arising on or after the Filing Date arising out of the restructuring, disclaimer, repudiation or termination by the OTE Group of any contract, lease, employment agreement or arrangement or other agreement or obligation) **must be received by the Monitor before 5:00 p.m. (Eastern Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim** (the “**Restructuring Period Claims Bar Date**”). If you do not file a Proof of Claim in respect of any such Restructuring Period Claims by the Restructuring Claims Bar Date, you shall not be entitled to vote at the meeting of creditors regarding any plan of compromise or arrangement being proposed by the OTE Group or participate in any distribution under such plan in respect of such Claims and any such Claims you may have against the OTE Group shall be forever extinguished and barred.

ADDITIONAL FORMS

Additional Proof of Claim forms can be obtained from the Monitor’s website at <http://home.kpmg/ca/OTEGroup> or by contacting the Monitor.

DATED this _____ day of _____, 2023.

SCHEDULE “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

PROOF OF CLAIM

**FOR CLAIMS AGAINST ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC.,
OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP**

(collectively, the “OTE Group”)

1. PARTICULARS OF CLAIMANT

(a) Full Legal Name of Claimant:

(b) Full Mailing Address of Claimant:

(c) Telephone Number of Claimant:

(d) Facsimile Number of Claimant:

(e) E-mail Address of Claimant:

(f) Attention (Contact Person):

2. **PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by assignment? Yes No
(if yes, attach documents evidencing assignment)

(b) Full Legal Name of original Claimant(s): _____

3. **PROOF OF CLAIM**

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

(a) That I am a Claimant of the OTE Group / I hold the position of _____ of the Claimant;

(b) That I have knowledge of all the circumstances connected with the Claim described and set out below;

(c) The OTE Group was and still is indebted to the Claimant as follows: ¹

Applicable OTE Group Debtor(s)	Pre-Filing Claim Amount	Restructuring Period Claim Amount	Secured, Priority Unsecured, or Unsecured	Value of Security, if any

4. **PARTICULARS OF CLAIM:**

The particulars of the undersigned's Claims (including Pre-Filing Claims, and Restructuring Period Claims) are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim

¹ Any Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the Filing Date

allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)

5. **FILING OF CLAIM**

For Pre-Filing Claims, this Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Eastern Time) on the Claims Bar Date (June 27, 2023)**.

For Restructuring Period Claims, this Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Eastern Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim**.

In both cases, completed forms must be delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email at the address below to the Monitor at the following address:

KPMG Inc., Court-appointed Monitor of the OTE Group

Claims Process

333 Bay Street, Suite 4600

Bay Adelaide Centre

Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax

Telephone: 1-833-665-0666 (toll free within North America)

416-468-7000 (local)

Fax: 416-777-8818

Email: OTEGroup@kpmg.ca

DATED at _____ this _____ day of _____, 2023.

(signature of Claimant or its authorized representative)

Name:

Title:

Capitalized terms that are not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

SCHEDULE “D”

D&O CLAIM INSTRUCTION LETTER

**FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP AND
ORIGINAL TRADERS ENERGY LP**

(collectively, the “**OTE Group**”)

CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) dated April 27, 2023 (as such Order may be amended from time to time, the “**Claims Procedure Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”), the OTE Group and KPMG Inc., in its capacity as the Court-appointed monitor of the OTE Group (the “**Monitor**”), have been authorized to conduct a claims procedure (the “**Claims Procedure**”). A copy of the Claims Procedure Order and other public information concerning this proceeding can be obtained from the Monitor’s website at <http://home.kpmg/ca/OTEGroup>.

This letter provides general instructions for completing a D&O Proof of Claim form. Capitalized terms not defined within this instruction letter shall have the meaning ascribed thereto in the Claims Procedure Order.

The Claims Procedure is intended to identify and determine the amount of any claims against the OTE Group or any or all of their respective current or former Directors or Officers, whether unliquidated, contingent or otherwise, that are to be affected in the plan of compromise or arrangement being pursued by the OTE Group under the CCAA. Please review the Claims Procedure Order for the full terms of the Claims Procedure.

All forms and inquiries with respect to the Claims Procedure should be directed to the Monitor by prepaid registered mail, courier, personal delivery, facsimile transmission, email, or telephone at the address below:

KPMG Inc., Court-appointed Monitor of the OTE Group

Claims Process

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax
Telephone: 1-833-665-0666 (toll free within North America)
416-468-7000 (local)
Fax: 416-777-8818
Email: OTEGroup@kpmg.ca

FOR CREDITORS SUBMITTING A D&O PROOF OF CLAIM

If you believe that you have a D&O Claim against any of the Directors or Officers of the OTE Group, you must complete and file a D&O Proof of Claim form with the Monitor. All D&O Proofs of Claim for Pre-Filing D&O Claims (i.e. Claims against any of the Directors or Officers of the OTE Group arising prior to

the Filing Date) **must be received by the Monitor before 5:00 p.m. (Eastern Time) on June 27, 2023** (the “**Claims Bar Date**”). If you do not file a D&O Proof of Claim in respect of any such Claims by the Claims Bar Date, you shall not be entitled to vote at the meeting of creditors regarding any plan of compromise or arrangement being proposed by the OTE Group or participate in any distribution under such plan in respect of such Claims and any such Claims shall be forever extinguished and barred.

All D&O Proofs of Claim for Restructuring Period D&O Claims (i.e. D&O Claims arising on or after the Filing Date) **must be received by the Monitor before 5:00 p.m. (Eastern Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim** (the “**Restructuring Period Claims Bar Date**”). If you do not file a D&O Proof of Claim in respect of any such Restructuring Period D&O Claims by the Restructuring Claims Bar Date, you shall not be entitled to vote at the meeting of creditors regarding any plan of compromise or arrangement being proposed by the OTE Group or participate in any distribution under such plan in respect of such Claims and any such Claims you may have against the OTE Group shall be forever extinguished and barred.

ADDITIONAL FORMS

Additional Proof of Claim forms can be obtained from the Monitor’s website at <http://home.kpmg/ca/OTEGroup> or by contacting the Monitor.

DATED this _____ day of _____, 2023.

SCHEDULE "E"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

D&O PROOF OF CLAIM
FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP AND
ORIGINAL TRADERS ENERGY LP

(collectively, the "OTE Group")

6. PARTICULARS OF CLAIMANT

(a) Full Legal Name of Claimant:

(b) Full Mailing Address of Claimant:

(c) Telephone Number of Claimant:

(d) Facsimile Number of Claimant:

(e) E-mail Address of Claimant:

(f) Attention (Contact Person):

7. **PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by assignment? Yes No
 (if yes, attach documents evidencing assignment)

(b) Full Legal Name of original Claimant(s): _____

8. **PROOF OF CLAIM**

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

- (a) That I am a Claimant of the Director(s) or Officer(s) of the OTE Group / I hold the position of _____ of the Claimant;
- (b) That I have knowledge of all the circumstances connected with the Claim described and set out below;
- (c) The Director(s) or Officer(s) of the OTE Group was and still is indebted to the Claimant as follows:²

Applicable Directors and/or Officers of the OTE Group	Pre-Filing D&O Claim Amount	Restructuring Period D&O Claim Amount	Secured, Priority Unsecured, or Unsecured	Value of Security, if any

9. **PARTICULARS OF CLAIM:**

The particulars of the undersigned’s Claims (including Pre-Filing D&O Claims, and Restructuring Period D&O Claims) are attached.

(Specify the applicable Directors or Officers and the legal basis for the Claims against them. Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has

² Any Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada’s daily average exchange rate for that currency against the Canadian Dollar on the Filing Date

guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)

10. **FILING OF CLAIM**

For Pre-Filing D&O Claims, this D&O Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Toronto Time) on the Claims Bar Date (June 27, 2023)**.

For Restructuring Period D&O Claims, this D&O Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Toronto Time) on the later of the Claims Bar Date and the date that is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim.**

In both cases, completed forms must be delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email at the address below to the Monitor at the following address:

KPMG Inc., Court-appointed Monitor of the OTE Group
Claims Process

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax
Telephone: 1-833-665-0666 (toll free within North America)
416-468-7000 (local)
Fax: 416-777-8818
Email: OTEGroup@kpmg.ca

DATED at _____ this _____ day of _____, 2023.

(signature of Claimant or its authorized representative)

Name:

Title:

Capitalized terms that are not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

SCHEDULE “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

NOTICE OF REVISION OR DISALLOWANCE

**FOR CLAIMS AGAINST ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC.,
OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP (collectively, the “OTE
Group”) AND/OR AGAINST THE DIRECTORS AND/OR OFFICERS OF THE OTE GROUP**

TO: [insert name and address of creditor]

Capitalized terms not defined in this Notice of Revision or Disallowance have the meaning ascribed to them in the Claims Procedure Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Applicants dated April 27, 2023 (the “**Claims Procedure Order**”).

Pursuant to the Claims Procedure Order, KPMG Inc. in its capacity as the court-appointed monitor of the Applicants (the “**Monitor**”) hereby gives you notice that it has reviewed your Proof of Claim or D&O Proof of Claim and has revised or disallowed all or part of your Claim. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

Name of relevant OTE Group entity and/or applicable Directors and/or Officers, as applicable	Type of Claim per Proof of Claim or D&O Proof of Claim	Amount of Claim per Proof of Claim or D&O Proof of Claim	Type of Claim Allowed per this Notice of Revision or Disallowance	Amount of Claim Allowed per this Notice of Revision or Disallowance
[Insert: name of appropriate party]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	CAD \$	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	CAD \$

Reasons for Revision or Disallowance

SERVICE OF NOTICE OF DISPUTE

If you disagree with the amount of your Claim specified herein for voting and/or distribution purposes, you must deliver a Notice of Dispute of Revision or Disallowance to the Monitor in writing, no later than 5:00 p.m. (Eastern Time) on the day that is not later than **thirty (30) days** after you have been deemed to have received the Notice of Revision or Disallowance under the Claims Procedure Order. The form Notice of Dispute of Revision or Disallowance is enclosed.

If you do not deliver a Notice of Dispute of Revision or Disallowance, your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Notice of Dispute of Revision or Disallowance forms must be delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email at the address below to the Monitor at the following address:

KPMG Inc., Court-appointed Monitor of the OTE Group
Claims Process

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, ON M5H 2S5

Attention: Chris Gard / Broderick Lomax
Telephone: 1-833-665-0666 (toll free within North America)
416-468-7000 (local)
Fax: 416-777-8818
Email: OTEGroup@kpmg.ca

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED at _____ this _____ day of _____, 2023.

SCHEDULE "G"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

**FOR CLAIMS AGAINST ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC.,
OTE LOGISTICS LP AND ORIGINAL TRADERS ENERGY LP (collectively, the "OTE Group")
AND/OR AGAINST THE DIRECTORS AND/OR OFFICERS OF THE OTE GROUP**

1. PARTICULARS OF CREDITOR

(a) Full Legal Name of Creditor:

(b) Full Mailing Address of Creditor:

(c) Telephone Number of Creditor:

(d) Facsimile Number of Creditor:

(e) E-mail Address of Creditor:

(f) Attention (Contact Person):

2. **PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by assignment? Yes No
 (if yes, attach documents evidencing assignment)

(b) Full Legal Name of original creditor(s): _____

3. **DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM FOR VOTING AND/OR DISTRIBUTION PURPOSES:**

Pursuant to the Claims Procedure Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of Applicants dated April 27, 2023 (the “**Claims Procedure Order**”), we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance in respect of our Claim as set out in the following table:

Name of relevant OTE Group entity and/or applicable Directors and/or Officers, as applicable	Type of Claim in Notice of Revision or Disallowance	Amount of Claim in Notice of Revision or Disallowance	Type of Claim Asserted per this Notice of Dispute or Revision or Disallowance	Amount of Claim Asserted per this Notice of Dispute of Revision or Disallowance

[Insert: name of appropriate party]

[Unsecured Claim / Unsecured Priority Claim / Secured Claim]

[CAD \$]

[Unsecured Claim / Unsecured Priority Claim / Secured Claim]

[CAD \$]

4. **REASONS FOR DISPUTE:**

Dated at _____ this _____ day of _____, 202__.

(signature of Claimant or its authorized representative)

Name:

Title:

Capitalized terms that are not defined herein have the meanings ascribed thereto in the Claims Procedure Order.

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 ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

CLAIMS PROCEDURE ORDER

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO#: 31871V)

Tel: 416.865.7726

Email: sgraff@airdberlis.com

Tamie Dolny (LSO#: 77958U)

Tel: 647.426.2306

Email: tdolny@airdberlis.com

Samantha Hans (LSO# 84737H)

Tel: 437.880.6105

Email: shans@airdberlis.com

Lawyers for the OTE Group

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY, THE 27TH
)
JUSTICE OSBORNE) DAY OF APRIL, 2023
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.
AND 2496750 ONTARIO INC.** (each, an "**Applicant**" and
collectively, the "**Applicants**")

ORDER

THIS MOTION, made by the Applicants, OTE Logistics LP and Original Traders Energy LP (collectively with the Applicants, the "**OTE Group**") for an order authorizing and directing AirSprint Inc. ("**AirSprint**") to provide certain information to KPMG Inc., in its capacity as the monitor (in such capacity, the "**Monitor**") in these proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", and these proceedings, the "**CCAA Proceedings**") and counsel to the Monitor, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Motion Record of the OTE Group, the third report of the Monitor (the "**Third Report**"), and on hearing the submissions of counsel for the OTE Group, counsel for the Monitor, and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the affidavit of service of Samantha Hans dated April 20, 2023,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the OTE Group and the Third Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Third Report.

PRODUCTION OF INFORMATION

3. **THIS COURT ORDERS** that AirSprint is hereby authorized and directed to provide the Monitor and its counsel with the information requested by the Monitor or its counsel in connection with the amended and restated initial order issued by this Court on February 9, 2023 (the "**Amended and Restated Initial Order**") and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group's directors or officers (together with the OTE Group, the "**OTE Group Affiliates**"), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates, including for avoidance of doubt the information requested by the Monitor by letter to AirSprint on February 23, 2023 (the "**Information**"), but excluding information subject to legal privilege, including solicitor-client privilege and litigation privilege.

4. **THIS COURT ORDERS** that AirSprint is authorized to provide the Monitor and its counsel with the Information notwithstanding that the Information may include "personal information" as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended (the "**Personal Information Protection Act**") and that in accordance with section 7(3) of the Personal Information Protection Act and any similar legislation in any other applicable jurisdictions, this Order shall be sufficient to authorize the provision of the Information by AirSprint to the Monitor and its counsel.

5. **THIS COURT ORDERS** that AirSprint shall not disclose what Information has been provided to the Monitor and its counsel to any other person, in each case unless such disclosure is required by law or otherwise ordered by the Court.

6. **THIS COURT ORDERS** that the Monitor and its counsel shall maintain and protect the privacy and confidentiality of the Information, and shall only use the Information in connection with the performance of the Monitor's roles and duties pursuant to the to the CCAA, the Amended and Restated Initial Order, and any other Order of this Court.

7. **THIS COURT ORDERS** that the Monitor and its counsel are authorized to share the Information with the OTE Group and its counsel, as well as Glenn Page, 2658658 Ontario Inc. and their respective counsel (together, the "**Additional Recipients**") notwithstanding that the Information may include "personal information" as defined in the Personal Information Protection Act and that in accordance with section 7(3) of the Personal Information Protection Act and any similar legislation in any other applicable jurisdictions, this Order shall be sufficient to authorize the provision of the Information by the Monitor and its counsel to the Additional Recipients, provided however that (i) the Monitor and the Additional Recipients shall comply with applicable privacy laws with respect to personal information received hereunder, and (ii) in the event that the Information provided to the Monitor is identified by AirSprint as being commercially sensitive and confidential in relation to AirSprint, the Information shall not be shared with the Additional Recipients or any other person unless otherwise ordered by the Court.

8. **THIS COURT ORDERS** that the Additional Recipients to whom Information is disclosed shall maintain and protect the privacy and confidentiality of the Information and shall not use such Information for any purpose unrelated to the CCAA Proceedings.

9. **THIS COURT ORDERS** that, without limiting any powers of the Monitor pursuant to the CCAA, the Amended and Restated Initial Order or any other order of this Court the Monitor and the Additional Recipients shall be permitted to use the Information obtained pursuant to this Order for the purpose of investigating the business and affairs of the OTE Group and pursuing legal proceedings to recover any Property (as defined in the Amended and Restated Initial Order) or seek recourse in respect of any reviewable transactions, payments or preferences, for the general benefit of the OTE Group and its creditors. Both the OTE Group and the Monitor shall be permitted to apply to this Court for such further relief as may be appropriate including, without limitation, such further orders that are required to trace, freeze, and recover any Property of the OTE Group or any Property purchased with funds of the OTE Group.

10. **THIS COURT ORDERS** that, in connection with its duties, the Monitor and its counsel and the Additional Recipients may provide the Information to the Court provided that any Information deemed to be confidential by the Monitor or the Additional Recipients shall be provided to the Court confidentially with a request for a sealing order.

11. **THIS COURT ORDERS** that the Monitor, the OTE Group, and AirSprint shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of carrying out the provisions of this Order, except to the extent such losses, claims, damages or liability results from the gross negligence or wilful misconduct of the Monitor and/or the OTE Group and/or AirSprint, as applicable, and as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Monitor under the Amended and Restated Initial Order.

12. **THIS COURT ORDERS** that nothing in this Order shall prejudice the ability of the Monitor to continue to compel the production of Requested Information (as defined in the Amended and Restated Initial Order) from any party, or to continue to request any information necessary to carry out the Monitor's duties pursuant to the CCAA, the Amended and Restated Initial Order, or any other Order of this Court.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order is effective as of 12:01am EST on the date of this Order without the need for entry or filing.

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 ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

INFORMATION ORDER

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO#: 31871V)

Tel: 416.865.7726

Email: sgraff@airdberlis.com

Tamie Dolny (LSO#: 77958U)

Tel: 647.426.2306

Email: tdolny@airdberlis.com

Samantha Hans (LSO# 84737H)

Tel: 437.880.6105

Email: shans@airdberlis.com

Lawyers for the OTE Group

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

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 **ORIGINAL TRADERS
ENERGY LTD. AND 2496750 ONTARIO INC.**

Applicants

**AFFIDAVIT OF SCOTT HILL
(Sworn April 20, 2023)**

I, Scott Hill of the City of Wilsonville, in the Province of Ontario, MAKE OATH AND SAY AS
FOLLOWS:

I. INTRODUCTION

1. I am the president of Original Traders Energy Ltd. ("**OTE GP**"), the general partner of Original Traders Energy LP ("**OTE LP**"). I have been the president of OTE GP since August of 2022. From 2018 until that date, I was a vice-president of development of OTE LP. Since becoming president, I have become aware of the financial and other operational aspects of the Applicants' business. From the inception of the Applicants' business until his sudden resignation on July 14, 2022, Glenn Page was the president of OTE GP and exercised complete financial and operational control over OTE LP and OTE GP's business affairs.

2. While OTE Logistics LP ("**OTE Logistics**", and together with OTE LP, the "**Limited Partnerships**") and OTE LP are not Applicants in this proceeding, the initial order issued January 30, 2023 (the "**Initial Order**") and the amended and restated initial order issued February 9, 2023 (the "**ARIO**") extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The terms "**OTE Group**" and "**Applicants**" used throughout this affidavit refer to the Applicants and Limited Partnerships collectively.

3. I have previously sworn an affidavit on January 27, 2023 (the "**First Hill Affidavit**") in this proceeding under the Companies' Creditors Arrangement Act (the "**CCAA**"), along with a second,

confidential affidavit on January 27, 2023 (the “**Confidential Affidavit**”). I also swore an affidavit dated February 7, 2023 used for the comeback hearing (the “**Comeback Affidavit**”), as well as a fourth affidavit dated March 12, 2023 (the “**Fourth Affidavit**”) for the purposes of injunctive relief. This affidavit is sworn in addition to the First Hill Affidavit, the Comeback Affidavit, the Confidential Affidavit and the Fourth Affidavit. Capitalized terms in this affidavit have the same meaning as in the First Hill Affidavit unless otherwise defined herein.

4. This affidavit is made in support of the following relief:

- (a) An Order (the “**Stay Extension Order**”), substantially in the form included in the Motion Record of the OTE Group, which, *inter alia*,
 - (i) approves the Third Report of the Monitor (the “**Third Report**”) and the activities set out therein, as well as all prior reports of the Monitor submitted to this Honourable Court prior to the return date of this Order; and
 - (ii) extends the stay period to August 4, 2023 (the “**Stay Period**”);
 - (iii) increases the maximum aggregate amount of authorizations of payments to certain critical suppliers for pre-filing expenses to \$6,625,000, with any such payment to be made only with the consent of the Monitor and the OTE Group (the “**Critical Supplier Increase**”), and as are necessary to facilitate the OTE Group’s ongoing operations and preserve value during the CCAA proceedings; and
 - (iv) such further and other relief as this Court may find just.
- (b) An Order (the “**Claims Procedure Order**”), substantially in the form included in the Motion Record, *inter alia*, approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing and empowering the Monitor to administer the Claims Procedure in accordance with the terms of the proposed Claims Procedure Order.
- (c) An Order (the “**Information Order**”), substantially in the form included in the Motion Record *inter alia*, authorizing and directing AirSprint Inc. (“**AirSprint**”) to provide the information requested by the Monitor or its counsel in connection with the ARIO and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group’s

directors or officers (together with the OTE Group, the “**OTE Group Affiliates**”), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates, including, for avoidance of doubt, the information requested by the Monitor by letter to AirSprint on February 23, 2023, but excluding information subject to legal privilege, including solicitor-client privilege and litigation privilege.

5. On the basis of the above, I have personal knowledge of the matters to which I depose in this Affidavit, including the business and financial affairs of the Applicants, except where I have obtained information from others or where the information is stated to be based on information and belief. Where I have obtained information from others, I have stated the source of my information and, in all such cases, believe such information to be true. In some instances, the information is based on a reconstruction of the books and records from the best information currently available to the OTE Group, created with the assistance of KPMG Inc. (“**KPMG**”), as a result of the removal and/or destruction of the OTE Group’s books and records. In such instances, I have identified where the information is the best reconstruction of the Applicants’ financial information and the source materials from which such information has been reconstructed.

6. In preparing this Affidavit, I consulted with the Applicants’ legal and financial advisors and reviewed relevant documents and information concerning the Applicants’ operations, financial affairs and marketing activities. I am authorized to swear this Affidavit as the corporate representative of the Applicants.

7. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

II. BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS

8. The OTE Group applied for urgent relief under the CCAA as a result of its balance sheet insolvency, and obtained the Initial Order on January 30, 2023. The Initial Order, a copy of which is attached hereto at **Exhibit “A”**, *inter alia*, granted the following relief:

- (a) an initial stay of proceedings (the “**Initial Stay**”) for 10 days (the “**Initial Stay Period**”), with a return date set for February 9, 2023;
- (b) a declaration that the Applicants are entities to which the CCAA applies;

- (c) a declaration that the Limited Partnerships enjoy the benefit of the protections provided to the Applicants under the Initial Order;
- (d) an administration charge of \$500,000.00;
- (e) a directors' charge of \$250,000.00 (the "**Directors' Charge**");
- (f) the appointment of KPMG as an officer of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to monitor the business and financial affairs of the Applicants (in such capacity, the "**Monitor**") with the additional power to compel documents, evidence and witnesses;
- (g) the stay and suspension of all rights and remedies of any regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry ("**Regulators**" and each a "**Regulator**") against the OTE Group, or their respective employees and representatives acting in such capacities, or affecting their business or property, except with the written consent of the OTE Group, the Monitor, or leave of the Court on notice to the service list;
- (h) an order authorizing payments to certain critical suppliers for pre-filing expenses up to a maximum aggregate amount of \$6,375,000.00 any such payment to be made only with the consent of the Monitor and the Applicants, and as are necessary to facilitate the Applicants' ongoing operations and preserve value during the CCAA proceedings; and
- (i) an order sealing the Confidential Affidavit, which contains information that has been sealed by court order in another jurisdiction.

9. Copies of materials filed in the CCAA proceedings (other than the Confidential Affidavit) are available on the website of the Monitor at: kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html.

10. Following the date of the Initial Order, the OTE Group has continued its business operations in the ordinary course. Since the Initial Order was granted, the OTE Group has worked with the Monitor to stabilize operations and begin restructuring. The Applicants' activities during the Initial Stay Period, with the assistance of its advisors and the Monitor, include:

- (a) Creating and implementing a communication plan to advise key stakeholders of the CCAA proceeding, including preparing an advertisement announcing the issuance of the Initial Order;
 - (b) Communicating with, providing information to and answering questions from various stakeholders, including, among others, the Ministry of Finance (the “**MOF**”) and employees, both of which groups are critical to the ongoing operations of the OTE Group;
 - (c) Meeting with employees and the Monitor to discuss expenditure and cash flow management; and
 - (d) Arranging for the payment of cash security to the MOF.
11. The OTE Group has continued to work with the Monitor in good faith to respond to numerous creditor and stakeholder inquiries on a daily basis.
12. On or about February 9, 2023, the ARIO was granted, which, *inter alia*:
- (a) Extended the Initial Stay, as defined in the Initial Order, to April 28, 2023;
 - (b) Amended the breadth of the Initial Stay as applied to Regulators, with certain provisions based upon discussions with the MOF; and
 - (c) Increased the Directors’ Charge to \$2,250,000.00.
13. A copy of the ARIO is attached to this Affidavit at **Exhibit “B”**.
14. On March 15, 2023, the Honourable Justice Osborne granted an injunctive order (the “**Injunctive Order**”) which restrained Glenn Page, Mandy Cox and 2658658 Ontario Inc. from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described at Schedule “A” to the Injunctive Order, and on March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements (collectively, the “**Injunctive Endorsements**”) related to the Injunctive Order. Copies of the Injunctive Order and the Injunctive Endorsements are attached to this Affidavit at **Exhibit “C”**.

III. RELIEF SOUGHT

STAY EXTENSION ORDER

15. The current Stay Period in the CCAA proceedings expires on April 28, 2023. The OTE Group seeks, *inter alia*, an extension of the Stay Period to August 4, 2023.

16. The OTE Group believes that the extension of the Stay Period is necessary and appropriate in the circumstances to allow the OTE Group the breathing room to continue to focus on their stabilization and going concern operations as a part of these proceedings, a proposed restructuring plan, and continue their ongoing engagement with key stakeholders regarding restructuring options and terms. Further, the extension of the Stay Period is necessary to allow the Claims Procedure to be implemented in accordance with the proposed Claims Procedure Order.

17. I understand that the Monitor will file the Third Report which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the OTE Group will have sufficient funds to continue their operations and fund these CCAA proceedings until August 4, 2023. I further understand that the Monitor's Third Report will recommend that the Stay Period be extended.

18. The Stay Extension Order also includes an expansion by \$250,000 to the original \$6,375,000 critical supplier amount granted pursuant to the Initial Order and the ARIO, which is necessary for the going concern operations of the OTE Group. The Critical Supplier Increase amount was determined with the assistance of the Monitor, and I understand that further explanation on this amount will be shared in the Monitor's Third Report.

19. Finally, relief included in the Stay Extension Order includes approval of the Monitor's reports. I understand that the Monitor's Third Report will also provide further comment on the relief sought therein.

CLAIMS PROCEDURE ORDER

20. Terms used in this section but undefined are as used in the proposed Claims Procedure Order.

21. As set out in greater detail in the proposed Claims Procedure Order, the OTE Group are soliciting the following claims:

- (a) Pre-Filing Claims: any right or claim of any Person against any of the OTE Group entities in connection with any indebtedness, liability or obligation of any kind

whatsoever of such OTE Group entity that was in existence on the Filing Date. Such Pre-Filing Claims may include, but are not limited to, general trade creditor claims, customer claims, litigation claims, employee claims, and/or tax claims;

- (b) Restructuring Period Claims: any right or claim of any Person against any of the OTE Group in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such OTE Group member to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such OTE Group member on or after the Filing Date of any contract, lease or other agreement, whether written or oral;
- (c) Pre-Filing D&O Claims: any right or claim of any Person against one or more Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer; and
- (d) Restructuring Period D&O Claims: any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

22. The Claims Procedure does not apply to the following claims (collectively, the “**Excluded Claims**”):

- (a) Claim that may be asserted by any beneficiary of the Administration Charge, the Directors’ Charge and the RBC Security and any further Court-ordered charges;
- (b) Intercompany Claim; and
- (c) Claim that may be asserted by any of the OTE Group entities or by the Monitor, including, without limitation, pursuant to section 36.1 of the CCAA and sections 95 and 96 of the *Bankruptcy and Insolvency Act*, against any Directors and/or Officers;

23. The Claims Procedure is designed to determine the nature, quantum, and validity of claims against the OTE Group and their Directors and Officers. The proposed Claims Procedure has been specifically tailored as a bespoke Claims Procedure that takes into account the key elements of the OTE Group’s business. It has been designed to make the process as easy as possible for potential Claimants to assert and have their Claims resolved in a fair and efficient manner.

24. The proposed Claims Procedure requires the Monitor to send a Claims Package containing a regular Proof of Claim form and D&O Proof of Claim form to send to each of the Known Claimants, as evidenced by the Books and Records of the OTE Group, at their last known municipal or e-mail address as recorded in the OTE Group's Books and Records. The proposed Claims Procedure Order requires that the Claims Package be sent to the foregoing group by no later than the tenth (10th) Business Day following the date of the Claims Procedure Order.

25. Further, in order to ensure that all Persons holding or wishing to assert a Claim against the OTE Group receive notice of the Claims Procedure, the proposed Claims Procedure Order requires:

- (a) the Monitor to cause a Notice to Claimants (substantially in the form attached to the Claims Procedure Order, or a condensed version thereof) to be published for at least two (2) Business Days in consecutive weeks in *The Globe and Mail* (National Edition) with the first such notice to be published no later than seven (7) Business Days following the granting of the Claims Procedure Order; and
- (b) the Monitor to cause the Notice to Claimants, and the Claims Package to be posted to its website as soon as practicable but no later than five (5) Business Days following the granting of the Claims Procedure Order.

26. The proposed Claims Procedure Order also provides a mechanism for the appointment of Claims Officers, if required, on a motion by the OTE Group or the Monitor, for the Claims Procedure.

27. The proposed Claims Procedure Order gives the OTE Group, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (a) determine the amount and characterization of the disputed Claim in accordance with the Claims Procedure Order; (b) determine whether any Claim or part thereof constitutes an Excluded Claim; (c) provide written reasons for its determination of the matter; and (d) determine all procedural matters which may arise in respect of his or her determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. In addition, the Claims Procedure Order provides the Claims Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. Each party to the dispute and the Monitor may appeal any determination by the Claims Officer to the Court within ten (10) days of such party receiving notice of the Claims Officer's determination.

28. The following are the Bar Dates for the submission of Claims:

- (a) Claims Bar Date: 5:00 PM (Eastern Time) on June 27, 2023, or such later date as may be ordered by this Honourable Court; and
- (b) Restructuring Period Claims Bar Date: in respect of a Restructuring Period Claim or Restructuring Period D&O Claim, the later of: (i) the Claims Bar Date; and (ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant.

29. The Proposed Claims Procedure Order provides that any potential Claimant that does not submit a Proof of Claim and/or D&O Proof of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is: (i) forever barred, estopped and enjoined from asserting or enforcing such Claim against the OTE Group and/or their former or current Directors and Officers, as applicable; (ii) not permitted to vote at any Meeting on account of such Claim; (iii) not entitled to receive further notice with respect to the Claims Procedure or these CCAA proceedings with respect to such Claim; and (iv) not permitted to participate in any distributions under any Plan or otherwise on account of such Claim. Pursuant to the proposed Claims Procedure Order, the Monitor, in consultation with the OTE Group, may use its reasonable discretion to determine whether to agree to accept a Claim submitted after the applicable Bar Date.

Adjudication of Disputes

30. The Monitor, in consultation with the OTE Group, will review and record all Proofs of Claim and D&O Proofs of Claim that are received on or before the applicable Bar Date. The Monitor, in consultation with the OTE Group, will review and finally determine the amount and characterization of all such Claims asserted in any Proof of Claim or D&O Proof of Claim. Such review and determination will be completed in accordance with the adjudication and resolution process set out in the Claims Procedure Order.

31. The proposed Claims Procedure Order incorporates flexibility for the Monitor to review and, in consultation with the OTE Group, finally determine all Pre-Filing Claims and Restructuring Period Claims (both secured and unsecured) and D&O Claims on an “as needed” basis at the appropriate time.

Summary of Claims Procedure

32. A summary of key dates in the proposed Claims Procedure is as follows:

Timeframe	Activity
April 27, 2023	Motion for approval of Claims Procedure Order
May 4, 2023	Monitor to cause the Claims Procedure Order and the Claims Package to be posted on the Monitor's Website
May 8, 2023	Notice to Claimants to be published in required newspaper
May 11, 2023	Monitor to send to the Known Claimants a Copy of the Claims Package
June 27, 2023	Claims Bar Date
June 27, 2023 or 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant	Restructuring Period Claims Bar Date

33. The OTE Group are of the view that the proposed Claims Procedure is fair and reasonable in the circumstances, appropriately balances competing views, and will facilitate the determination of Claims against the OTE Group in a fair, comprehensive, and expeditious manner. The OTE Group accordingly request that this Honourable Court approve the proposed Claims Procedure substantially in the form of the proposed Claims Procedure Order.

34. I understand that the Monitor is also supportive of the Claims Procedure Order, as it was developed upon consultation and discussion with the Monitor. I further understand that the Monitor will provide further comment on the Claims Procedure Order in the Third Report.

INFORMATION ORDER

35. As discussed above, the OTE Group is also seeking the Information Order, which would authorize and direct AirSprint to provide the information requested by the Monitor or its counsel in connection with the ARIO and any other Order of this Court. The Information Order will allow the Monitor to continue its investigation, which is in the best interests of the OTE Group and all of its

stakeholders. I understand that counsel to the Monitor has discussed the proposed Information Order with counsel to AirSprint, and that AirSprint consents to the relief sought. Further details regarding the Information Order and certain steps taken by the Monitor in connection with its investigation will be provided in the Third Report.

III. UPDATE ON THE ACTIVITIES OF THE OTE GROUP

36. The OTE Group have acted and continue to act in good faith and with due diligence in these CCAA proceedings. In addition to the OTE Group's ongoing efforts to canvass viable restructuring options with key stakeholders and finalize the requested Orders, the OTE Group has, *inter alia*:

- (a) continued to maintain regular communications with various regulators across Canada. The OTE Group remain committed to working cooperatively with regulators as the CCAA and Chapter 15 proceedings progress;
- (b) engaged in active negotiations with various suppliers to enable the going concern of the OTE Group;
- (c) continued working with the Monitor to trace, investigate and review missing books and records of the OTE Group, and assist the Monitor in investigating assets of the OTE Group; and
- (d) operated the business in normal course with a view to maximizing the value of the OTE Group for the benefit of all stakeholders.

37. I understand that a more detailed summary of the activities of the OTE Group in conjunction with work completed by the Monitor to-date is provided for this Honourable Court's review in the Third Report.

Chapter 15 Proceedings

38. As previously disclosed to this Court, it is my understanding that Chapter 15 proceedings under the US Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "**US Bankruptcy Code**") will be commenced shortly hereafter, to recognize and enforce any orders made within these CCAA proceedings. Separately, but in the context of those pending proceedings, we have engaged Florida counsel and have been working comprehensively with both them and the Monitor to seek recognition of and aid in enforcing the Injunctive Order. I further understand that Chapter 15 of the US Bankruptcy Code provides a mechanism

pursuant to which foreign insolvency proceedings are granted recognition in the United States, which allows for streamlined cooperation between the United States and foreign courts.

39. Relief under the Injunctive Order coupled with foreign recognition under the US Bankruptcy Code is likely the most expedient and only viable way to prevent the loss of the Italian Yacht or its proceeds, in case the asset is moved within the jurisdiction of the United States. Furthermore, recognition under the US Bankruptcy Code may assist the OTE Group and/or the Monitor in the future with other asset recovery efforts, pending the Monitor’s ongoing investigation of the other wire transfers, among other ongoing financial analyses.

Conclusion

40. For the reasons set out herein, the OTE Group requests that this Honourable Court grant the above-noted relief.

41. I swear this Affidavit in support of a motion for the relief set out above, and for no improper purpose.

SWORN BEFORE ME over video teleconference this 20th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Wilsonville in the Province of Ontario, while the Commissioner was located in the City of Toronto in the Province of Ontario.



DocuSigned by:
Samantha Hans

402DBD30548546A...

DocuSigned by:
Scott Hill

77F3D36A123C418...

SCOTT HILL

A Commissioner for taking Affidavits (*or as may be*)

SAMANTHA HANS (LSO#: 84737H)

This is Exhibit "A" of the Affidavit of Scott Hill sworn before me this 20th day of April, 2023

DocuSigned by:
Samantha Hans
402DD030546546A...

A Commissioner, etc.



Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) MONDAY, THE 30TH
JUSTICE OSBORNE) DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an "Applicant" and
collectively, the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Hill Affidavit**"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Second Hill Affidavit**"), the pre-filing report of the proposed monitor, KPMG Inc. ("**KPMG**") dated January 27, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for Royal Bank of Canada ("**RBC**") and such other counsel who were present, and on reading the consent of KPMG to act as the monitor (the "**Monitor**"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and
- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including February 9, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial and federal regulators and/or border authorities that have authority with respect to the importation and exportation of fuel, petroleum, diesel and/or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the

Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court on notice to the Service List, such that no licenses held by any of the OTE Group may be revoked or expire during the Stay Period and same are further extended during the course of these CCAA proceedings.

NO INTERFERENCE WITH RIGHTS

20. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$250,000**, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

26. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;
- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");

- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. THIS COURT ORDERS that the priorities of the existing security held by RBC (the “**RBC Security**”), the Directors’ Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors’ Charge.

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the RBC Security (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

39. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written

consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

40. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>’.

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the OTE Group's creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

46. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

47. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

48. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

49. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

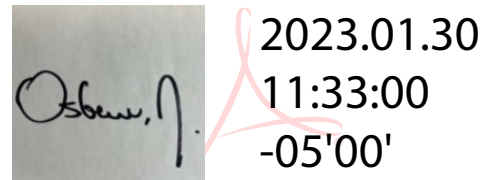
notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

52. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

53. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.



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OSBORNE, J.

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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

AIRD & BERLIS LLP

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Tel: 416.863.1500

Fax: 416.863.1515

Lawyers for the OTE Group

This is Exhibit "B" of the Affidavit of Scott Hill sworn before me this 20th day of April, 2023

DocuSigned by:
Samantha Hans
402DED39546546A

A Commissioner, etc.



Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 9TH
JUSTICE OSBORNE) DAY OF FEBRUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an "**Applicant**" and
collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") dated January 30, 2023 (the "**Initial Filing Date**") was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Hill Affidavit**"), the second affidavit of Scott Hill sworn January 27, 2023 and the Exhibits thereto (the "**Second Hill Affidavit**"), the third affidavit of Scott Hill sworn February 7, 2023 and the Exhibits thereto (the "**Third Hill Affidavit**") the pre-filing report of the proposed monitor, KPMG Inc. ("**KPMG**") dated January 27, 2023 (the "**Pre-Filing Report**"), the first report of KPMG dated February 8, 2023 (the "**First Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, OTE Logistics LP and Original Traders Energy LP (with OTE Logistics LP, the "**Partnerships**" and collectively with the Applicants, the "**OTE Group**"), counsel for Royal Bank of Canada ("**RBC**") and such other

counsel who were present, and on reading the consent of KPMG to act as the monitor (the “**Monitor**”),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. THIS COURT ORDERS that capitalized terms used within this Order shall have the meanings ascribed to them in the Hill Affidavit or the Pre-Filing Report, as applicable, if they are not otherwise defined herein.

APPLICATION

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the OTE Group.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the OTE Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the OTE Group shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The OTE Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or

employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the OTE Group shall be entitled to continue to utilize the central cash management system currently in place as described in the Hill Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the OTE Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the OTE Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any future Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the OTE Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the OTE Group in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the Monitor and the OTE Group, amounts owing for goods or services actually supplied to any of the OTE Group prior to the date of this Order by third party suppliers, up to a maximum aggregate amount of \$6,375,000, if such third party is critical to the Business and ongoing operations of the OTE Group; and

- (d) amounts owing to the Ministry of Finance relating to an agreement reached with the Ministry of Finance on January 26, 2023 regarding the extension of certain fuel and gas tax licenses.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the OTE Group shall be entitled but not required to pay all reasonable expenses incurred by the OTE Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) any payments required by RBC under the existing credit facilities extended by RBC to certain of the OTE Group; and
- (c) payment for goods or services actually supplied to the OTE Group following the date of this Order.

9. THIS COURT ORDERS that the OTE Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the OTE Group in connection with the sale of goods and services by the OTE Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the OTE Group.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the OTE Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the OTE Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the OTE Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the OTE Group to any of its creditors as of this date, save and except for RBC; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

CARVE-OUT

12. THIS COURT ORDERS that RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.

RESTRUCTURING

13. THIS COURT ORDERS that the OTE Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the OTE Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. THIS COURT ORDERS that the OTE Group shall provide each of the relevant landlords with notice of the OTE Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the OTE Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the OTE Group, or by further Order of this Court upon application by the OTE Group on at least two (2) days notice to such landlord and any such secured creditors. If the OTE Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the OTE Group's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the OTE Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the OTE Group in respect of such lease or leased premises, provided that nothing

herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE OTE GROUP OR THE PROPERTY

16. THIS COURT ORDERS that until and including April 28, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court, tribunal, agency or other legal or, subject to paragraph 19, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of the OTE Group or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the OTE Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the OTE Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. THIS COURT ORDERS that the Stay Period does not apply to the rights and remedies of RBC as it pertains to security provided by the OTE Group in favour of RBC.

NO EXERCISE OF RIGHTS OR REMEDIES

18. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, regulatory body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), other than RBC, against or in respect of the OTE Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the OTE Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the OTE Group to carry on any business which the OTE Group is not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. THIS COURT ORDERS that subject to paragraph 20 and notwithstanding Section 11.1 of the CCAA, those rights and remedies of provincial and federal regulators and border authorities that have authority with respect to the importation and exportation of fuel, petroleum,

diesel or gasoline against or in respect of the OTE Group or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, which would materially impair the operation of OTE Group as a going concern, including the revocation or expiry of applicable licenses held by any member of the OTE Group, are hereby stayed and suspended during the Stay Period except with the written consent of the OTE Group and the Monitor, or leave of this Court obtained by motion on no less than ten (10) days' notice to the Service List, such that any applicable license held by any member of the OTE Group is otherwise extended during the Stay Period.

20. THIS COURT ORDERS that nothing in this Order shall prevent any government or regulatory agency or body from taking any action it deems necessary:

- (a) to protect public or employee health and/or safety;
- (b) to address exigent environmental contamination, hazards or other adverse effects; or
- (c) to investigate and prosecute criminal and quasi-criminal offences under federal or provincial laws, but enforcement of monetary orders arising therefrom are stayed subject to further order of this Court.

NO INTERFERENCE WITH RIGHTS

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the OTE Group, except with the written consent of the OTE Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the OTE Group or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the OTE Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of

such goods or services as may be required by the OTE Group, and that the OTE Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the OTE Group in accordance with normal payment practices of the OTE Group or such other practices as may be agreed upon by the supplier or service provider and each of the OTE Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the OTE Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the OTE Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the OTE Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the OTE Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the OTE Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

25. THIS COURT ORDERS that the OTE Group shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the OTE Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

26. THIS COURT ORDERS that the directors and officers of the OTE Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$2,250,000**, as security for the indemnity provided in paragraph 25 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the OTE Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 25 of this Order.

APPOINTMENT OF MONITOR

28. THIS COURT ORDERS that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the OTE Group with the powers and obligations set out in the CCAA or set forth herein and that the OTE Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the OTE Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the OTE Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the OTE Group in its development of the Plan and any amendments to the Plan;

- (d) assist the OTE Group, to the extent required by the OTE Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the OTE Group, to the extent that is necessary to adequately assess the OTE Group's business and financial affairs or to perform its duties arising under this Order;
- (f) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**");
- (g) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such a longer time period as the Monitor may agree to in its discretion;
- (h) conduct investigations from time to time, including examinations under oath of any Person reasonably thought to have knowledge relating to the Requested Information;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

31. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated,

might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

32. THIS COURT ORDERS that the Monitor shall provide any creditor of the OTE Group with information provided by the OTE Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the OTE Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the OTE Group may agree.

33. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

34. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the OTE Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the OTE Group as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the date of this Order, by the OTE Group as part of the costs of these proceedings. The OTE Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the OTE Group on a weekly basis and, in

addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicant, retainers in the approximate amount of **\$950,000** to be held by them as security for payment of their respective fees and disbursements outstanding for certain pre- and post-filing costs.

35. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the OTE Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$500,000**, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the existing security held by RBC (the "**RBC Security**"), the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – RBC Security;

Second – Administration Charge; and

Third – Directors' Charge.

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the RBC Security (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the RBC Security (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the OTE Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the RBC Security, unless the OTE Group also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge, the RBC Security and the Administration Charge, or further Order of this Court.

41. THIS COURT ORDERS that the Directors' Charge, the Administration Charge and the RBC Security shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the OTE Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the OTE Group of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the OTE Group entering into the creation of the Charges; and
- (c) the payments made by the OTE Group pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the OTE Group's interest in such real property leases.

SERVICE AND NOTICE

43. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the OTE Group of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

45. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/original-traders-energy-group.html>>.

46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the OTE Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the OTE Group’s creditors or other interested parties at their respective addresses as last shown on the records of the OTE Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

47. THIS COURT ORDERS that the OTE Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the OTE Group, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to

assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the OTE Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the OTE Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

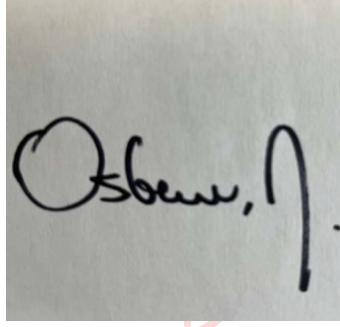
53. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

SEALING RELIEF

54. THIS COURT ORDERS that the Second Hill Affidavit shall be and is hereby sealed, kept confidential, and shall not form part of the public record until the earlier of (a) the vacating of the sealing order appended as Exhibit B to the Second Hill Affidavit (the "**Foreign Sealing Order**"), without being replaced by another sealing order granted by a court of a foreign jurisdiction, (b) the vacating of any sealing order that may granted by a court of a foreign jurisdiction to replace the Foreign Sealing Order, or (c) further Order of this Court.

INITIAL ORDER AND INITIAL FILING DATE

55. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for above.



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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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street

Suite 1800

Toronto, ON M5J 2T9

Steven Graff (LSO# 31871V)

Miranda Spence (LSO# 60621M)

Tamie Dolny (LSO#77958U)

Samantha Hans (LSO# 84373H)

Tel: 416.863.1500

Fax: 416.863.1515

Lawyers for the OTE Group

This is Exhibit "C" of the Affidavit of Scott Hill sworn before me this 20th day of April, 2023

DocuSigned by:
Samantha Hans
402DBD39546546A

A Commissioner, etc.



Court File No. CV-23-00693758-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) WEDNESDAY, THE 15TH
JUSTICE OSBORNE) DAY OF MARCH, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**
AND 2496750 ONTARIO INC. (each, an "Applicant" and
collectively, the "Applicants")

INJUNCTIVE ORDER

NOTICE

If you, the Mareva Respondents, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Applicants and the Monitor (as defined herein), for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Mareva Respondents to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made by the Applicants, Original Traders Energy LP and Original Logistics LP (collectively, the "**OTE Group**") for an interim Order in the form of a *Mareva* injunction restraining Glenn Page, Mandy Cox and 2658658 Ontario Inc. (the "**Mareva Respondents**"), from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the assets identified at Schedule "A" to this Order and certain other relief against third parties who may be in possession of or have records relating to the assets identified at Schedule "A" to this Order, was heard this day via videoconference.

ON READING the affidavit of Scott Hill sworn March 12, 2023 and the Exhibits thereto (the “**Fourth Hill Affidavit**”), the affidavit of Miles Hill sworn March 12, 2023 and the Exhibits thereto (the “**Miles Affidavit**”), the second report of KPMG Inc. (in such capacity, the “**Monitor**”) dated March 13, 2023 (the “**Second Report**”) and on hearing the submissions of counsel for the OTE Group and counsel for the Monitor, along with all additional parties in attendance and represented per the counsel slip,

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

Defined Terms

2. **THIS COURT ORDERS** that capitalized terms used within this Order shall have the meanings ascribed to them in the Fourth Hill Affidavit, as applicable, if they are not otherwise defined herein.

Mareva Injunction

3. **THIS COURT ORDERS** that the Mareva Respondents, and their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the assets identified at Schedule “A” to this Order, wherever situated;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

4. **THIS COURT ORDERS** that this Order applies to the assets identified at Schedule “A” to this Order, whether or not they are in the possession or control of any of the Mareva Respondents and whether they are solely or jointly owned by any other party. The Mareva Respondents are to be regarded as having such power if a third party holds or controls the assets in accordance with any of their direct or indirect instructions.

5. **THIS COURT ORDERS** that the assets identified in Schedule “A” to this Order, being the vessel bearing VIN number XAXS704F122 and the three (3) Volvo Engines with identification numbers 20132060472, 20132060504, and 2013060470, respectively, shall be returned to the territorial jurisdiction of the Florida courts forthwith.

Disclosure of Information

6. **THIS COURT ORDERS** that the Mareva Respondents prepare and provide to the OTE Group and the Monitor within thirty (30) business days of the date of service of this Order, a sworn statement describing the nature, value, and location worldwide, of the assets identified at Schedule “A” to this Order, whether in their own name or not and whether solely or jointly owned, as well as an explanation for where all funds used to purchase the assets identified at Schedule “A” to this Order originated from.

7. **THIS COURT ORDERS** that the Mareva Respondents submit to examinations under oath within fifteen (15) days of the delivery by the Mareva Respondents of the aforementioned sworn statements.

8. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate the Mareva Respondents, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraphs 6 and 7 herein is contempt of court and may render the Mareva Respondents liable to be imprisoned, fined, or have their assets seized.

Third Parties

9. **THIS COURT ORDERS** Allied Marine, Inc., American Yacht Group LLC, Brewer Yacht Sales, LLC, or any other boat broker who may hold, be assigned or be transferred the assets listed on Schedule “A” to this Order (collectively, the “**Boat Brokers**”) to forthwith freeze

and prevent any removal or transfer of the assets listed on Schedule “A” to this Order, held physically by the Boat Brokers, in any account or on credit on behalf of the Mareva Respondents or any third party, with the Boat Brokers, until further Order of the Court.

10. **THIS COURT ORDERS** that the Boat Brokers forthwith disclose and deliver up to the OTE Group and the Monitor any and all records held by the Boat Brokers concerning the assets listed on Schedule “A” to this Order, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Mareva Respondents by the Boat Brokers relating to the assets listed on Schedule “A” to this Order, including but not limited to: (a) copies of vehicle/vessel registration details; (b) copies of any relevant financial records; and (c) location details.

11. **THIS COURT ORDERS** that the Boat Brokers may only sell or transfer any of the assets listed on Schedule “A” to this Order upon receipt of express written consent by both the OTE Group and the Monitor, and if consent is received, that any funds received by the Boat Brokers will be held in trust on behalf of the OTE Group. Upon receipt of written demand by the Monitor on the OTE Group’s behalf post-sale of any asset, the Boat Brokers will transfer any funds held in trust to the attention of the Monitor.

Variation, Discharge or Extension of Order

12. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to both the OTE Group and the Monitor.

13. **THIS COURT ORDERS** that the OTE Group and the Mareva Respondents shall attend at a case conference in the next ten (10) business days, or at another time agreed upon by the OTE Group, the Monitor and the Mareva Respondents, to set a timetable for: (i) the exchange of the following materials; and (ii) the eventual motion, if requested by the Mareva Respondents, to argue the reversal of this Order within the ongoing *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”) proceedings of the OTE Group:

- (a) Responding materials of the Mareva Respondents;
- (b) Reply materials of the OTE Group, if necessary;

- (c) Cross-examinations of the Mareva Respondents, per paragraph 7 of this Order;
- (d) Factum of the OTE Group of the Mareva Respondents;
- (e) Reply factum of the OTE Group, if necessary;
- (f) Motion for reversal of this Order, if sought by Mareva Respondents; and
- (g) Cost assessment hearing.

General

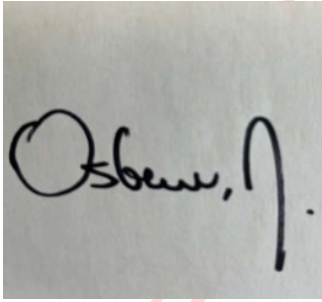
14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that the Monitor and the Applicants are each authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition and/or enforcement of this Order, the Initial Order dated January 30, 2023, the Amended and Restated Initial Order dated February 9, 2023 and any further orders issued in these proceedings, and for assistance in carrying out the terms and/or intent of all such orders. Without limiting the foregoing, the Monitor and the Applicants are each authorized and empowered to apply: (i) to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States' Bankruptcy Code; (ii) to Florida State and/or Federal Courts in connection with any dispute between any of the OTE Group and the Mareva Respondents; and (iii) to obtain relief in connection with the assets listed on Schedule "A" to this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

COSTS

17. **THIS COURT ORDERS** that the costs of this motion shall be determined by the Court upon further attendance before the Court.



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SCHEDULE "A"

Assets:

COLLATERAL DESCRIPTION

2022	AZIMUT	S7	XAXS7047F122	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060472	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060504	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060470	MV

COMMON DESCRIPTION

Motor Vehicle / Boat under name "CUZ WE CAN", and all ENGINES, TACKLES, FURNITURE and APPAREL, also may be named as "HOME SOUTH", or any other name that Motor Vehicle / Boat may be changed or assigned under VIN XAXS7047F122, formerly registered under Canada Official Number 844825

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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

INJUNCTIVE ORDER

AIRD & BERLIS LLP

Barristers and Solicitors
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181 Bay Street
Suite 1800

Steven Graff (LSO# 31871V)
Martin Henderson (LSO# 24986L)
Tamie Dolny (LSO#77958U)
Samantha Hans (LSO# 84737H)

Tel: 416.863.1500
Fax: 416.863.1515

Lawyers for the OTE Group

CITATION: Original Traders Energy Ltd., 2023 ONSC 1887
COURT FILE NO.: CV-23-693758-00CL
DATE: 20230321

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: Original Traders Energy Ltd., Applicant

BEFORE: Osborne J.

COUNSEL: *Steven Graff, Samantha Hans and Martin Henderson*, on behalf of Original Traders Energy Ltd.

Fredrick Schumann, Dan Goudge and Mitch Grossell, on behalf of 2658658 Ontario Inc.

Natai Shelsen, on behalf of Mandy Cox

Raj Sahni, on behalf of KPMG Inc., Court-appointed Monitor

Melanie Fishbein, on behalf of Essex Financial

Doug Smith, on behalf of Royal Bank of Canada

Steven Groeneveld, on behalf of Ministry of Finance

HEARD: March 15, 2023

ENDORSEMENT

[1] On March 15, 2023, I heard a motion by the OTE Group for a *Mareva* injunction over certain assets and related relief, at the conclusion of which I granted the order, with minor amendments, with reasons to follow. These are those reasons.

[2] Unless otherwise indicated, defined terms in this Endorsement have the meaning given to them in my Initial Order Endorsement dated January 30, 2023, the motion materials, and/or the Second Report of the Court-appointed Monitor.

[3] On January 30, 2023, I granted the Applicants protection from their creditors pursuant to the CCAA. I appointed KPMG as Monitor, with certain investigatory powers in the circumstances, given that the Applicants were unable to locate all books and records, said to be as a result of

alleged misconduct of certain former executives, including Mr. Glenn Page. On February 9, 2023, I granted an amended and restated initial order.

[4] On this motion, the OTE Group seeks an interlocutory injunction restraining Mr. Page, his spouse Ms. Mandy Cox, and 2658658 Ontario Inc. (“265”) (collectively for the purposes of this motion and this Endorsement, the “Respondents”), and those acting on their behalf or in conjunction with them, from directly or indirectly selling, transferring encumbering or dealing with a 70 foot yacht bearing the name “Cuz We Can” or “Home South”, together with its engines, all as further described in the motion materials (the “Yacht”).

[5] 265 is an entity owned and/or controlled by Page and Cox. They are both directors of 265.

[6] The OTE Group also seeks ancillary relief requiring the Respondents to deliver a sworn statement providing particulars with respect to the Yacht as set out in the motion material, and directing the Boat Brokers who may have possession of the Yacht to not remove or transfer the Yacht, and other relief.

[7] The motion did not proceed *ex parte* or without notice. The Respondents were given advance notice of this motion by the OTE Group and were served with the Notice of Motion and materials on Monday, March 15, 2023.

[8] The hearing of this motion was scheduled to proceed at 12 PM noon on Wednesday, March 17, 2023. As further discussed below, the Respondents were represented by counsel today who opposed the granting of any relief for a number of reasons, including but not limited to the fact that they had received only two days’ notice. At the outset of the hearing, counsel for the Respondents indicated that a brief adjournment of the matter might allow the parties to agree to consensual interim terms of an order. I granted that request for a brief adjournment to allow the parties and their counsel to have discussions, in fact twice, and the parties advised that they were unable to agree to terms, with the result that the motion was argued on the merits beginning at 1:30 PM.

[9] Prior to filing for CCAA protection, the OTE Group and others commenced a claim in this Court against Page, Cox and others asserting unjust enrichment, fraud, breach of fiduciary duty and other causes of action.

[10] Among other things, that claim alleges that Page and Cox purchased, in 2021, and through a corporate entity (265) the Yacht using funds wire transferred from OTE LP accounts, and caused OTE Logistics to guarantee chattel mortgage secured by the vessel (both entities are defined in my Endorsement of January 30, 2023).

[11] Today, the OTE Group relies upon the Affidavit of Scott Hill sworn March 12, 2023 with exhibits thereto, the Affidavit of Miles Hill sworn March 12, 2023 and exhibits thereto, and the Second Report of the Monitor.

[12] As set out in the Affidavit of Scott Hill, the position of the OTE Group is that at least USD \$3,675,687.05 of OTE Group funds were used to purchase the Yacht, currently owned by 265.

[13] At the time of filing the Notice of Motion, OTE Group was unaware of the exact whereabouts of the Yacht, although filed evidence confirming that it was listed for sale by various Boat Brokers in Hollywood, Florida without the permission of the OTE Group which maintains the security interest registered over the Yacht.

[14] At the outset of the hearing of this motion, Mr. Martin as counsel for the OTE Group advised the Court that the Applicants had just been advised, although had no sworn evidence, that subsequent to the service and filing of the Notice of Motion, the Yacht had in fact left port at Hollywood, Florida, and was believed to be bound for the Bahamas.

[15] Mr. Schumann, as counsel for the Respondents advised, in fairness and with candor, that while he had just recently been retained and could not advise the Court with certainty when the Yacht had left port, it was at the time of the hearing at sea and, he believed, headed for the Bahamas.

[16] The Respondents control the Yacht, and the evidence on this motion was to the effect that it was up for sale with multiple Boat Brokers (with active listings at the time of the hearing of the motion).

[17] Moreover, the evidence of the OTE Group is that the Respondents have caused a deregistration of the Yacht from Canada, changed its name and taken other steps all in an attempt to remove the asset from the control or reach of the OTE Group, have forged certain documents to fund the purchase of the Yacht, and are otherwise acting in an attempt to frustrate the efforts of the OTE Group and the Monitor to investigate the use of OTE Group funds, the purchase of the Yacht and the whereabouts of the Yacht.

[18] As a result of the above, the OTE Group brought this motion for *Mareva* relief to freeze the Yacht and direct the Respondents to order its return to Florida pending a determination of the origin and ownership of funds used to purchase it and guarantee payment of the balance of the purchase price, and the determination of rights to the Yacht or any proceeds of sale thereof.

[19] As stated above, at the conclusion of the hearing and having heard from counsel for all parties who wished to make submissions, I granted the order freezing the Yacht and directing the Respondents to order its return to port in Florida.

Mareva Injunction

[20] The test for a *Mareva* injunction is well established. This Court has jurisdiction to grant an interlocutory injunction, including a *Mareva* injunction, pursuant to section 101 of the *Courts of Justice Act*, where it appears just or convenient to do so. Pursuant to Rule 40.01, an interlocutory injunction or mandatory order under section 101 may be obtained on motion to a judge. The order may include such terms as are just, and may be sought on motion made without notice for a period not exceeding 10 days.

[21] That said, the relief is extraordinary. As numerous courts have observed, the harshness of such relief, usually issued *ex parte*, is mitigated or justified in part by the requirement that the defendant have an opportunity to move against the injunction immediately. The relief remains

extraordinary even in circumstances such as are present here, where the relief was not sought *ex parte*, but rather on notice to the Respondents, albeit brief.

[22] The factors to be considered in determining whether to grant *Mareva* relief include whether the moving party has established the following:

- (a) a strong *prima facie* case;
- (b) particulars of its claim against the defendant, setting out the grounds of its claim and the amount thereof, and fairly stating the points that could be made against it by the defendant;
- (c) some grounds for believing that the defendant has assets in Ontario (although this requirement has been modified by more recent jurisprudence discussed below, such that it is perhaps better expressed as: some grounds for believing that the defendant has assets within the jurisdiction of the Ontario Court);
- (d) some grounds for believing that there is a serious risk of defendant's assets being removed from the jurisdiction or dissipated or disposed of before the judgment or award is satisfied;
- (e) proof of irreparable harm if the injunctive relief is not granted;
- (f) the balance of convenience favours the granting of the relief; and
- (g) an undertaking as to damages.

(See *Aetna Financial Services Ltd. v Feigelman*, [1985] 1 S.C.R. 2 (“Aetna”) at paras. 26, 30; *Chitel v. Rothbart*, 1982 CANLII 1956 (ONCA) at para. 60; and *Lakhani et al v. Gilla Enterprises Inc. et al*, 2019 ONSC 1727 at para. 31).

[23] A strong case that a defendant has committed fraud against the plaintiff can be important evidence in support of the relief sought. The “reluctance” of the common law toward allowing execution before judgment has recognized exceptions, including circumstances where the relief is necessary for the preservation of assets, the very subject matter in dispute, or where to allow the adversarial process to proceed unguided would see their destruction before the resolution of the dispute. (See *Aetna*, at para. 9).

[24] The test as to whether a strong *prima facie* case exists has been expressed by the courts as the question of whether the Plaintiff would succeed “if the court had to decide the matter on the merits on the basis of the material before it” (See *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917 at para. 25).

[25] The following elements are required for the tort of civil fraud: a false representation by the defendant; some level of knowledge of the falsehood of the representation by the defendant (i.e., knowledge or recklessness); the false representation caused the plaintiff to act; and, the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8 at paras. 17-21.

[26] Applying the test to this case, I am satisfied that the *Mareva* injunction should be granted.

[27] At the outset I observe two obvious factors relevant here.

[28] First, the injunction is extremely limited in scope and applies only to the Yacht (and its engines which have distinct serial numbers and are separately registered although obviously affixed to the vessel itself) or to proceeds of sale therefrom. The order has no application to any other assets of the Respondents. It follows that issues that are in some circumstances relevant to the granting and scope of *Mareva* relief, such as access to funds for living and/or legal expenses, are not relevant here and were not argued as an issue by any party.

[29] Second, as noted, this injunction was brought on notice, and I heard submissions from counsel to the Respondents. The fact that notice was given is relevant to my analysis of the serious risk of the assets being removed from the jurisdiction and the balance of convenience.

[30] The purpose of a *Mareva* injunction is to freeze exigible assets when found within the jurisdiction of the Court. Such assets include personal property such as a vessel: *Total Traffic Services Inc. v. Kone*, 2020 ONSC 4402.

[31] The basis for *Mareva* relief will be more readily justified where the rights of the moving party are specifically related to a physical asset in question – in this case, the Yacht.

[32] The evidence relied upon by the OTE Group as to the underlying allegations of fraud are found in the two affidavits on which they rely (Affidavit of Scott Hill sworn March 12, 2023, principally at paras. 21-30, and Affidavit of Miles Hill also sworn March 12, 2023 at paras. 4-5).

[33] That evidence is to the effect that the Respondents transferred funds or permitted and authorized the transfer of funds from OTE accounts, inappropriately and without the right to do so, and used those funds to purchase the Yacht, in part through the alleged misuse of the signing authority of Page at OTE Logistics. The OTE Group received no benefit or consideration for these fund transfers. It appears the Respondents further fraudulently executed and forged signatures on documents to Essex, the party that provided financing for the Yacht.

[34] The Respondents filed no evidence on this motion, perhaps not surprisingly given that they had received only two days-notice. In submissions, counsel for the Respondents submitted not that the transfers of funds did not occur, but rather that they were not improper, or at least they did not constitute *prima facie* evidence of fraud, since they could be said to be distributions of profits to which the Respondents were entitled.

[35] I cannot accept the submission, however, in the complete absence of any evidence to corroborate the suggestion. The books and records of the OTE Group are incomplete and lacking. There is no evidence before me of resolutions, meeting minutes, correspondence or any documents demonstrating or even suggesting that these transfers were in fact, or were even intended to be, distributions of profit or income. There is also no evidence of any corresponding distributions, at the same time or in the same amount, to the other partners who presumably would have been entitled to the same distribution.

[36] Finally, there is no evidence that the partnership had, at the time of the impugned transfers, sufficient profits to fund such distributions in any event.

[37] Even if the Respondents were entitled to distributions of profit at the relevant time, it does not follow that they are somehow entitled to simply take funds and apply them for their own uses.

[38] In short, I am satisfied that the moving parties have established, with sufficient particulars, a strong *prima facie* case.

[39] I am also satisfied as to the requirement for jurisdiction. The individual Respondents are residents of Ontario and this Court has *in personam* jurisdiction over them. Moreover, the earlier requirement that a moving party establish that a respondent have assets in Ontario before *Mareva* relief could be granted (whether restricted to Ontario or beyond) no longer exists. Rather, this Court has discretionary jurisdiction to grant a *Mareva* injunction where circumstances merit, even absent any evidence of assets in Ontario: *Associated Foreign Exchange Inc. et al v. MBM Trading*, 2020 ONSC 4188 at para. 54.

[40] As observed by the Divisional Court in *SFC Litigation Trust (Trustee of) v. Chan*, 137 O.R. (3d) 382, 2017 ONSC 1815:

[26] I do not accept the appellant's assertion. I recognize that in *Chitel* the injunction was sought to restrain the dissipation of assets in Ontario. Similarly, in virtually all of the cases referenced by counsel on this appeal, the assets which were at the risk of dissipation existed in Ontario.

[27] However, a court's *in personam* jurisdiction over a defendant justifying the issuance of a *Mareva* injunction is not dependent, related to or "tied to" a requirement that a defendant has some assets in the jurisdiction.

[28] Section 101(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides the court with jurisdiction to grant an interlocutory injunction or mandatory order "where it appears to a judge of the court to be just or convenient to do so".

[29] A *Mareva* injunction is an equitable remedy and as such I agree with the respondent's submission that this remedy evolves as facts and circumstances merit.

[30] The availability of the equitable remedy of a *Mareva* injunction in England has evolved. This evolution was commented on by Sharpe J.A. in *Injunctions and Specific Performance*, looseleaf (Toronto: Canada Law Book, 2015), where he observed, at para. 2.910, the following:

The strict rule requiring assets in the jurisdiction has now been abandoned and, in special circumstances the English courts will grant *Mareva* Orders to restrain disposition of assets elsewhere. The basis upon which "world-wide" *Mareva* Orders are made is that the English courts assert "unlimited [page390] jurisdiction ...*in personam* against any person, whether an individual or a corporation, who is, under English procedure, properly made a party to proceedings pending before the English court".

[31] Sharpe J.A. also observed that "orders of this kind have also been made by Canadian courts", referencing, amongst other cases, *Mooney v. Orr* [[1994] B.C.J. No. 2652, 100 B.C.L.R. (2d) 335 (S.C.)], a case considered by Weiler J.A. in *R. v. Consolidated Fastfrate Transport Inc.* (1995), 24 O.R. (3d) 564, [1995] O.J. No. 1855 (C.A.), as set out below.

[32] The English evolution was described in the U.K. Court of Appeal decision in *Derby & Co. v. Weldon (No. 2)*, [1989] 2 W.L.R. 276, [1989] 1 All E.R. 1002 (C.A.), at para. 6, as follows:

It seems to me that the time has come to state unequivocally that in an appropriate case the court has power to grant an interlocutory injunction even on a worldwide basis against any person who is properly before the court, so as to prevent that person by the transfer of his property frustrating a future judgment of the court. The jurisdiction to grant such injunctions is one which the court requires and it seems to me that it is consistent with the wide words of section 37(1) of the Act of 1981.

In matters of this kind it is essential that the court should adapt the guidelines for the exercise of a discretion to meet changing circumstances and new conditions provided always the court does not exceed the jurisdiction which is conferred on it by Parliament or by subordinate legislation.

It remains true of course that the jurisdiction must be exercised with care.

[33] The concept of a *Mareva* injunction being an evolving remedy was also commented on by Weiler J.A. in *Consolidated Fastfrate Transport Inc.*, at para. 142, as follows:

The practice with respect to the granting of *Mareva* injunctions is still in the process of evolving. The early *Mareva* cases involving foreigners were simply concerned with the fact that the assets might be removed from England and that any judgment granted would be unenforceable. However, in *Barclay-Johnson v. Yuill*, [1980] 3 All E.R. 190, [1980] 1 W.L.R. 1259 (Ch. D.) and *Prince Abdul Ralman bin Turki Al Sudairy v. Abu-Taha*, [1980] 3 All E.R. 409 (C.A.), injunctions were granted against English nationals as opposed to foreigners. In *Derby & Co. Ltd. v. Weldon [(No. 1)]* (1988), [1989] 1 All E.R. 469 (C.A.) a *Mareva* injunction was granted on a worldwide basis on the condition that certain undertakings were given by the applicant which would protect the defendant from oppression and misuse of information and protect the position of third parties. Most recently, *Mooney v. Orr*, B.C.S.C., November 24, 1994 (unreported, Vancouver Registry No. C908539) [now reported 100 B.C.L.R. (2d) 335, [1995] 3 W.W.R. 116], Huddart J. granted a worldwide *Mareva* injunction against Mooney, who, prior to entering into business dealings with the Orrs, had so arranged his affairs as to protect any offshore property he might have from execution. Huddart J. cited the decision of the British Columbia Court of Appeal in *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at p. 346, [1987] 2 W.W.R. 331 (C.A.), where McLachlin J.A. said: [page391]

...the judge must not allow himself to become the prisoner of a formula. The fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case.

[34] These observations set out above were noted by Weiler J.A. in relation to her finding that in order to obtain a *Mareva* injunction it is unnecessary to incorporate a requirement that a dissipation or transfer of assets was pursued for an improper purpose.

[35] In relation to *Chitel*, Weiler J.A. made the following observation, at para. 147:

In commenting as he did on the fourth guideline, I am of the opinion that MacKinnon A.C.J.O. was attempting to encapsulate the essence of the English authorities he had just reviewed and to give guidance as to when the requirements for granting a *Mareva* injunction would be met. I do not think that in recognizing the availability of the remedy in Ontario he meant to foresee and to foreclose all of the kinds of situations where a *Mareva* injunction could be granted.

[36] Therefore, I think it is clear that when an equitable remedy is sought the court ought to consider the guidelines set out in *Chitel*, but ultimately the court must consider what is just or convenient.

[37] Furthermore, I note also that, at para. 154, Weiler J.A. observed that "the threatened removal of assets outside of Canada is more likely to lead to the granting of a *Mareva* injunction because, generally, it is more difficult to enforce a judgment outside the jurisdiction". These are the very circumstances before the court.

[38] The usual case is that a party seeks a *Mareva* injunction to prevent assets from leaving the jurisdiction. However, *Mareva* injunctions have been granted on a worldwide basis with increasing frequency in our global economy. The purpose of the injunction in both circumstances is to ensure that a judgment can be enforced in the exceptional circumstances where the plaintiff, after making the required full and frank disclosure, establishes a strong *prima facie* case on the merits.

[41] In this case, the individual Respondents are, as noted, Ontario residents. The Yacht was originally owned by 256, the company owned or controlled by them. The evidence before me is to the effect that the exact whereabouts of the Yacht at the time of the hearing is unknown, although the evidence is clear that it was in Florida recently, and counsel for the Respondents admitted, as noted above, that it has recently left Florida and is apparently en route to the Bahamas.

[42] In the circumstances, I conclude that the Yacht is reasonably connected to this jurisdiction and the injunctive relief should be granted in respect of it.

[43] As noted above, while there is no clear evidence in the record before me as to when the Yacht left port in Florida as against when on Monday two days prior to the hearing, the Respondents received notice of this motion, all parties are in agreement that the Yacht did in fact leave port in Florida and was at the time of the hearing believed to be headed for the Bahamas.

That fact serves to heighten dramatically the concern and urgency of the moving parties and their fear that attempts are being made to place the asset beyond the reach of this Court.

[44] The Respondents submit that nothing can or should be taken from the fact that the Yacht has left port and specifically, no inference should be drawn as to any intent or effort to hide the asset.

[45] In my view, and as submitted by the OTE Group, the objective facts support my conclusion that there is a serious risk that the asset will be removed from the jurisdiction (in the sense of the jurisdiction and reach of this Court) and/or will be dissipated.

[46] The Yacht was, and apparently still is, listed for sale although it has been listed for sale in at least two locations (Palm Beach, Florida and Bimini, Bahamas. It has been delisted from Canadian registries. It has been renamed, and listed on the websites of the Boat Brokers as being for sale in Hollywood, Florida. Its GPS locator, whether intentionally disabled or simply malfunctioning, is not active, with the result that the exact location of the vessel cannot be determined.

[47] I am satisfied there is a risk of dissipation of assets. Different jurisdictions are, on the face of the evidence, involved. Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from *Sibley v. Ross*, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849).

[48] In my view, and notwithstanding the able submissions of counsel for the Respondents, I have little difficulty in concluding that there is a risk of removal or dissipation of the asset here and such is easily inferable from the circumstances.

[49] I similarly conclude that the moving parties have established irreparable harm for the purposes of this motion and if the Yacht cannot be located or attached, or if it is sold and proceeds cannot be traced, any judgment that may be made will likely be frustrated. The probability of irreparable harm increases as the probability of recovering damages decreases: *Christian-Philip v. Rajalingam*, 2020 ONSC 1925 at para. 33.

[50] In the same way, I am satisfied that the balance of convenience overwhelmingly favours the moving parties. The harm to them if the injunctive relief is not granted would likely be irreparable, but the harm to the Respondents if this relief is granted, on an interim and very limited basis, is minimal. The Yacht is for sale anyway. The injunctive relief is limited in scope to the Yacht (and the engines) and does not extend to other assets of the Respondent.

[51] Finally, pursuant to Rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE Group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

[52] While it is not determinative of the test as to whether the injunctive relief sought should be granted, I draw additional comfort from the Second Report of the Court-appointed Monitor dated March 13, 2023.

[53] The Monitor, independent of the parties and, as has often been described, the “eyes and ears of the Court”, fully supports the relief requested by the OTE Group, for the benefit of stakeholders including creditors.

[54] The Monitor’s own review of the evidence of the OTE Group supports the conclusion that the Yacht was purchased substantially using funds wired directly from the bank accounts of the OTE Group and further that 265 caused OTE Logistics to guarantee a chattel mortgage held by Essex, secured on the Yacht (para. 13).

[55] The third party entity from which the Yacht was purchased, Pride Marine Group, was one of the parties from whom the Monitor sought information and documentation pursuant to its investigatory powers granted by this Court. In response to that request, Pride provided a copy of the purchase contract for the Yacht, signed by Page, together with a breakdown of the payments for the Yacht as well as Pride bank statements showing funds received by Pride from accounts belonging to both OTE Group and 265 during the period from September 22, 2022 August 12, 2021. The Monitor concludes at paragraph 15 that the purchase price of the Yacht was substantially funded by the OTE Group with wire transfers totaling USD \$3,218,500.

[56] I observe that as reported by the Monitor, it is the intention of the OTE Group to seek to appoint the Monitor as foreign representative to seek recognition of these proceedings outside Canada and particularly to commence Chapter 15 Proceedings in the United States to recognize and enforce orders made by this Court. The Monitor observes that the Yacht, or proceeds of sale with respect thereto, may be a significant source of recovery for the OTE Group and its Creditors.


[57] The scope of the injunctive relief sought has been described above. The moving parties have provided a draft order, blacklined as against the Model Order of the Commercial List. The relief, though narrow in scope, is consistent with the nature and scope of relief granted by this Court in circumstances such as I have found are present here.

[58] The draft order contains the usual comeback clause, such that any party may return to this Court to vary or rescind the order on notice at any time.

[59] For all of the above reasons, I granted the order at the conclusion of the hearing of this motion, and directed the Respondents to, in turn, direct and facilitate the return of the Yacht to Florida forthwith.

[60] As to a return date of this motion before me, I offered to the parties alternative dates well within 10 days of the date of the order I have made. Due to personal and professional commitments of counsel, and the collective desire between and among them to have ongoing discussions with a view to having all or part of this matter possibly proceed on consent, they requested that they be given an opportunity to caucus amongst themselves and agree on the next return date. I agreed.

[61] Subsequent to the hearing of the motion and the granting of the order, the Commercial List Office advised me that the parties have scheduled a hearing before me on Tuesday, March 28.



Osborne J.

Date: March 21, 2023



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-23-00693758-00CL DATE: March 28, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: *ORIGINAL TRADERS ENERGY LTD et al*

BEFORE: **MR JUSTICE OSBORNE**

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The parties attended today for the return of *Mareva* relief I granted by order dated March 15, 2023. Today's date was scheduled on the consent of all counsel to accommodate personal and other commitments.

[2] Defined terms in this Endorsement have the meaning given to them in my Endorsement of March 22 by which I gave reasons for my March 15 order.

[3] There were two main issues before me today: a request for additional information relating to the Yacht, and the setting of a schedule for the return of this motion.

[4] Counsel for the Respondents confirmed that, subsequent to my March 15 order, the Yacht returned from the Bahamas to Florida where it is today. It is, however, moored at a temporary slip and the Respondents propose to move it to the marina located at Hollywood, Florida from which it departed a few days prior to the March 15 motion. Before it is moved, however, the OTE Group and the Monitor want certain information.

[5] Counsel for the Respondents will provide to counsel for the OTE Group and the Monitor as soon as possible but in any event within 48 hours the name and contact information for the Captain of the Yacht and a copy of the insurance policy on the Yacht. The GPS locator system onboard the Yacht is not functioning. It is unclear when it will be repaired. If it cannot be repaired immediately, the Respondents will obtain a portable GPS locator unit, and undertake that it will remain on board the Yacht and operational so that its location can be tracked at any time and continuously.

[6] Once that information has been provided, the Yacht will be moved to the marina at Hollywood, Florida and will remain there unmoved until further order of this Court.

[7] The parties will advise me via email from the Court-appointed Monitor no later than 4:30 PM on Friday, March 30, whether the above noted information and GPS operational capability has been provided and confirmed. If it has not been, the parties may if necessary schedule a brief attendance before me to discuss the timing of next steps. Counsel for the Respondents has undertaken to provide the material and information as soon as possible and all parties are in agreement that the Yacht will not be moved until it is provided.

[8] The parties wish collectively to agree among themselves on a schedule for the exchange of materials and the return date for this motion, which is agreeable to me. They will agree upon a schedule and the Monitor will provide that to me as soon as possible, preferably with two alternative hearing return dates for the motion. I will then schedule the return of the motion and advise the parties via email to the Monitor, or if that cannot be done, I will schedule a brief case conference.

[9] For greater certainty, my earlier order remains in effect pending the return of the motion and any further order of this Court.

A handwritten signature in black ink that reads "Osborne, J.". The signature is written in a cursive, flowing style.

Justice Osborne

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 ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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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 ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
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Court File No. CV-23-00693758-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**MOTION RECORD OF THE APPLICANTS
(Returnable April 27, 2023)**

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