



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00693758-00CL

DATE: DECEMBER 5 2024

NO. ON LIST:3

TITLE OF PROCEEDING: ORIGINAL TRADERS' ENERGY LTD. et al v. HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE et al  
BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Thomas Gray Richard Swan	Lawyers for KPMG Inc. as Monitor for OTE Group	GrayT@bennettjones.com swanr@bennettjones.com
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**ENDORSEMENT OF JUSTICE CONWAY:**

[1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Monitor dated October 22, 2024.**

- [2] This is the return of the motion that I heard on October 23, 2024. At that time, I directed counsel to serve the Office of the Superintendent of Bankruptcy (“**OSB**”) with the motion materials. The Monitor was seeking a “**Transition Order**” that would keep the CCAA proceedings extant even if the Monitor assigned an OTE company into bankruptcy – in other words, there would be concurrent CCAA and bankruptcy proceedings for that company.
- [3] The Monitor has now filed a Supplement to the Eleventh Report of KPMG inc., in its Capacity as Monitor (the “**Supplement**”). The Monitor outlines in the Supplement the discussions the Monitor and its counsel had with the OSB and the revisions that were made to the draft order at the request of the OSB, namely (i) separate dockets are to be kept by KPMG and its counsel for activities undertaken by KPMG in its respective roles as Monitor and OTE Bankruptcy Trustee; (ii) more clearly delineating the protections and powers of KPMG as Monitor and OTE Bankruptcy Trustee, respectively.
- [4] On this basis, the OSB advised in its correspondence of November 26, 2024 that it would not be attending today’s hearing. The OSB makes it clear that “the position of the OSB generally will continue to remain that CCAA and bankruptcy proceedings should not run concurrently, and that the OSB reserves all rights to oppose such relief in other cases if unique circumstances do not make such relief appropriate.”
- [5] The OSB outlines the unique circumstances of this case – “in particular, we understand that it is critical that the Mareva Order remain effective as assets are pursued in Canada and globally, and that allowing the CCAA proceedings to remain extant will ensure that work already undertaken to have orders in these proceedings recognized in the United States does not need to be duplicated. We also understand that no opposition has been expressed to the relief sought, including by the OTE Group's secured lender (RBC) and the relevant taxing authorities, all of which were served and aware of the relief sought.”
- [6] I am now satisfied that the Transition Order, as amended, should be granted.<sup>1</sup> I also state that this is not to be taken as a precedent for concurrent CCAA/BIA proceedings and that I am granting the order based on the unique circumstances of this case.
- [7] I agree that the concurrent proceedings will be in the best interests of the OTE Group and its stakeholders. The continuation of the *Mareva* Order, which was granted within the CCAA Proceedings, will benefit the stakeholders while the Monitor continues its investigation. I further agree that it would be inefficient and costly to require new recognition proceedings be commenced in the bankruptcy when they have already been put

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<sup>1</sup> As the Monitor points out in its factum, there is nothing in the statutes that prevents the concurrent proceedings and it is consistent with other types of concurrent proceedings that have been accepted by the court, such as (i) BIA receivership proceedings that run concurrently with CCAA proceedings; (ii) concurrent bankruptcy and CCAA Part IV proceedings; and (iii) a bankruptcy proceeding under the BIA remaining extant after a successful CCAA application: see: *In the matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove*, 2024 ONSC 5153; *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371; *Canadian Imperial Bank of Commerce v Community Pork Ventures Inc.*, 2005 SKQB 294. *Tucker v Aero Inventory (UK) Limited*, 2010 ONSC 1196, at para 30. *EncoreFX Inc. (Re)*, 2021 BCSC 750, at para 68.

in place in the CCAA proceedings. I accept the Monitor's view that the continued recognition of the CCAA Proceedings in the US will assist in facilitating the sale of the Italian Yacht (located in the US) and may also be useful in connection with its ongoing investigations. RBC supports the relief sought and no one opposes the order.

- [8] I am therefore granting the Transition Order, as revised. Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.
- [9] The current stay expires on April 25, 2025. I have scheduled a motion for **April 24, 2025 at 10 a.m. for one hour (any judge, confirmed with the CL office)** if a further extension or other relief is being sought.

A handwritten signature in blue ink, appearing to read "Conway J.", is positioned in the lower-left area of the page.