

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

ORIGINAL TRADERS ENERGY LTD. ET AL.

**SECOND REPORT OF KPMG INC.,
IN ITS CAPACITY AS MONITOR**

March 13, 2023

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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., 2496750 ONTARIO INC., OTE LOGISTICS LP, AND
ORIGINAL TRADERS ENERGY LP
(collectively the "OTE Group")

SECOND REPORT OF KPMG INC.
In its capacity as Monitor of the OTE Group

March 13, 2023

I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), OTE Group was granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants (defined herein) from January 30, 2023, until February 9, 2023 (the “**Initial Stay Period**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants' CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**” and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. The Initial Order 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 Applicants similarly seek to have the protections granted in the Amended and Restated Initial Order extend to the Limited Partnerships. The terms “**OTE Group**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of Court and other materials pertaining to the CCAA Proceedings are available on the Monitor’s website.
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items;
 - (i) extending the Stay Period to April 28, 2023;
 - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
 - (iii) increasing the Directors Charge to \$2,250,000.
5. Capitalized terms used but not defined in this report are as defined in the Amended and Restated Initial Order.

II. PURPOSE OF REPORT

6. The purpose of the Second Report of the Monitor (the “**Second Report**”) is to provide information to the Court pertaining to:
 - (i) the OTE Group's request for interlocutory injunctive relief (the “**Injunctive Order**”) against Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**” and collectively the “**Mareva Respondents**”), as it relates to the Italian Yacht (defined herein);
 - (ii) the OTE Group's request that they be authorized to commence proceedings under Chapter 15 (“**Chapter 15 Proceedings**”) of the United States Bankruptcy Code (the “**US Code**”) and that the Monitor be authorized to act as foreign representative in those proceedings;
 - (iii) the Monitor’s conclusions and recommendations.

III. TERMS OF REFERENCE

7. The Second Report should be read in conjunction with the Affidavit of Scott Hill sworn March 12, 2023 (the “**Fourth Hill Affidavit**”), filed by the OTE Group in support of the relief sought in the within motion, as certain information contained in the Fourth Hill Affidavit has not been included herein to avoid duplication.
8. In preparing the Second Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations and the Fourth Hill Affidavit in addition to information and documents from third parties that responded to the Monitor’s Information Requested Letters defined herein (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Second Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

10. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is detailed extensively in the First Affidavit of Scott Hill dated January 27, 2023, and the Pre-Filing Report.
11. As noted in the Initial Order and the Amended and Restated Initial Order, the Monitor has been granted expanded investigative powers. Shortly after the Filing Date, the Monitor sent letters (the "**Information Request Letters**") to certain parties (collectively the "**Requested Parties**") who may have been in 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**"). The Information Request Letters instructed Requested Parties to respond with any of the Requested Information in their possession within thirty (30) days and/or any information the Requested Parties may have on the whereabouts of the Requested Information. Further to the Information Request Letters, the Monitor and its counsel had initial discussions with certain counsel representatives of the Requested Parties about the Monitor's information requests.
12. As at the date of the Second Report, the Monitor has received some Requested Information from certain of the Requested Parties and the Monitor is in process of conducting a detailed review of same. The Monitor intends to be back in front of this Court at a later date to report more fully on the status of the Monitor's review of the Requested Information received and may seek further Court assistance if the Information Request Letters are not complied with and/or the Monitor is not agreeable to the extensions of time that may be sought by any of the Requested Parties.

V. ITALIAN YACHT

13. As detailed in the Fourth Hill Affidavit, the Monitor understands that 265 purchased a seventy-foot yacht bearing the name "Cuz We Can" (the "**Italian Yacht**") from Pride Marine Group ("**Pride Marine**") substantially using funds wired directly from the OTE Group's bank accounts, and that 265 caused OTE Logistics to guarantee a chattel mortgage held by Essex Lease Financial Corporation ("**Essex**"), secured on the Italian Yacht. The Monitor also notes that the OTE Group is not in the business of owning and/or managing maritime vessels.
14. The Monitor notes that Pride Marine was one of the Requested Parties that received an Information Request Letter. In response to the Information Request Letter, Pride Marine provided the following items with respect to its sale of the Italian Yacht:

- (i) a copy of a purchase contract (the "**Yacht Purchase Contract**") dated September 20, 2020 and signed by Page as between Pride Marine, Page, and Gen7 Logistics LP ("**Gen7 Logistics**") with a total before tax in the amount of USD \$3,300,000 (the "**Purchase Price**"). Gen7 Logistics is a prior name of OTE Logistics as noted in the Fourth Hill Affidavit. A copy of the Yacht Purchase Contract is appended as Exhibit "J" to the Fourth Hill Affidavit;
 - (ii) a copy of an invoice (the "**Pride Invoice**") containing the breakdown of the payment for the Italian Yacht. A copy of the Pride Invoice is appended as Exhibit "L" to the Fourth Hill Affidavit;
 - (iii) a copy of certain Pride Marine bank statements detailing funds received by Pride Marine from accounts belonging to both OTE Group and 265 during the period of September 22, 2020 to August 12, 2021 (the "**Pride Marine Payments**"); and
 - (iv) a copy of a delivery confirmation signed by Page on August 15, 2021 indicating that the Italian Yacht had passed a pre-delivery inspection.
15. As indicated in the chart below, the Purchase Price of the Italian Yacht was substantially funded by the OTE Group with wire transfers totalling USD \$3,218,500. As the Pride Marine bank statements contain confidential information of Pride Marine that is not specifically related to the OTE Group's payments, the Monitor has not included the bank statements as an appendix in order to protect such confidential information and has instead prepared the below summary based upon the information it received from Pride Marine.

Summary of Italian Yacht Payments				
Date	Payor	Payee	Payment Currency	USD \$
9/22/2020	ORIGINAL TRADERS ENERGY	Pride of Muskoka Marine Limited	USD	500,000.00
10/9/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
11/10/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
11/20/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
12/8/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
12/15/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
1/15/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
1/20/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
2/5/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
2/16/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
3/9/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
3/30/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
4/15/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
4/28/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
5/14/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
5/18/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	118,500.00
6/7/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
6/10/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
8/5/2021	ORIGINAL TRADERS ENERGY	Pride of Muskoka Marine Limited	USD	1,000,000.00
Purchase Price Funded by OTE Group			USD	3,218,500.00
8/12/2021	2658658 ONTARIO INC.	Pride of Muskoka Marine Limited	USD	100,000.00
Purchase Price Funded by 265			USD	100,000.00
Total Purchase Price			USD	3,318,500.00
8/26/2021	ORIGINAL TRADERS ENERGY	North Cove Marina	USD	8,400.00
9/20/2021	ORIGINAL TRADERS ENERGY	North Cove Marina	USD	8,400.00
6/9/2022	ORIGINAL TRADERS ENERGY	Azimut Benetti SPA	USD	5,751.00
Other Italian Yacht Related Payments			USD	22,551.00
Grand Total Italian Yacht Payments			USD	3,341,051.00

16. In addition to the above amounts, the Monitor notes that per Exhibit "P" to the Fourth Hill Affidavit, the OTE Group has a copy of an excel spreadsheet excerpt received from its customs broker that indicates payments made by OTE Group entities for duties in the amount of \$374,675.24 and GST of in the amount of \$226,886.67 in respect of the Italian Yacht (the "**Tax Payment**").
17. The Monitor also notes that Essex was another one of the Requested Parties that responded to the Information Request Letter. Essex provided the Monitor with the following information related to the financing it provided on the purchase of the Italian Yacht:
- (i) a copy of a loan and security agreement between Essex and 265 dated July 19, 2021 (the "**Yacht Financing Agreement**");

- (ii) a copy of a letter of direction from 265 instructing Essex to distribute financing proceeds to Gen7 Fuel Management Services LP (“**Gen7 Fuel**”) (the “**265 Direction**”). Gen7 Fuel is a prior name of OTE Logistics as noted in the Fourth Hill Affidavit;
 - (iii) certain wire transfer details confirming that Gen7 Fuel received CAD \$1,230,000 from Essex on August 20, 2021 (the “**Essex Wire Transfer**”). Copies of the Yacht Financing Agreement, 265 Direction and Essex Wire Transfer are appended as Exhibit "N" to the Fourth Hill Affidavit; and
 - (iv) copies of two guarantees of the Italian Yacht chattel mortgage dated July 21, 2021: one purportedly executed by Brian Page as director on behalf of Gen7 Fuel (the previous name of OTE Logistics) (the “**Gen 7 Guarantee**”) and the other purportedly executed by Donald Herbert Miles Hill as director of 2496750 Ontario Inc. (the “**249 Guarantee**”). Copies of the Gen 7 Guarantee and the 249 Guarantee are appended as Exhibit "D" and Exhibit "O", respectively to the Fourth Hill Affidavit.
18. Based on the timing of payments, the Monitor notes that the Essex Wire Transfer appears to have been used to fund a portion of the Pride Marine Payments.
19. Further, as detailed in the Fourth Hill Affidavit and the Affidavit of Donald Herbert Miles Hill sworn March 12, 2023 (the “**Miles Hill Affidavit**”), the Monitor understands it is the OTE Group's position that Brian Page was not actually a director of Gen7 Fuel and therefore had no authority to execute the Gen 7 Guarantee and that Miles Hill did not execute the 249 Guarantee and his signature was forged.
20. Based on these details and the Monitor’s review of the Requested Information received from both Pride Marine and Essex and other available OTE Group information, the Monitor notes that significant OTE Group funds appear to have been misappropriated or paid by the OTE Group without proper authorization to purchase the Italian Yacht.

VI. INJUNCTIVE ORDER

21. The Monitor shares the concerns of the OTE Group that the Italian Yacht is a material asset and that the Italian Yacht and any sale proceeds thereof must not be permitted to disappear, dissipate or be moved beyond the reach of the OTE Group and its creditors. This is of particular concern given the evidence set out in the Fourth Hill Affidavit that the yacht has regularly been moved between international jurisdictions, attempts have been made to hide or obscure its identity, including changing its name, removing it from Transport Canada's registration system and apparently deactivating or

interfering with its maritime tracking devices such that the Italian Yacht cannot be located using its GPS locator. In addition, the Italian Yacht has apparently been put up for sale by multiple boat brokers under apparently suspicious circumstances, including in Bimini and Florida, all as summarized in paragraphs 36-44 of the Fourth Hill Affidavit.

22. In addition to the claims of the OTE Group noted in the Fourth Hill Affidavit, including the claims asserted in the Page Claim (as defined in the Fourth Hill Affidavit), the Monitor continues to review the Pride Marine Payments and whether these wire transfers and transactions connected therewith could potentially constitute preferences or transfers at undervalue pursuant to sections 95 and 96 of the *Bankruptcy and Insolvency Act* or otherwise constitute impugnable transactions pursuant to applicable law. Accordingly, the Monitor is supportive of the Injunctive Order sought by the OTE Group to prevent the Italian Yacht and any proceeds from the sale thereof from dissipating while the Monitor conducts its investigation, after which it will report back to the Court.
23. Since it is contemplated that the Italian Yacht and any proceeds from the sale thereof would simply be frozen and not paid to the OTE Group or any other person pending further Order of the Court, and since the Injunctive Order is narrow in scope in that it deals only with the Italian Yacht, the Monitor believes that the granting of the Injunctive Order would not be prejudicial to the interests of the Mareva Respondents as they would still have the opportunity and entitlement for judicial determination by the Court of any claims they might assert over the Italian Yacht and its proceeds. On the other hand, if the Injunctive Order is not granted, the OTE Group and its creditors could be severely prejudiced if the Italian Yacht is again moved or is sold and its proceeds are dissipated.

VII. CHAPTER 15 PROCEEDINGS

24. The Monitor understands that the OTE Group will be seeking to appoint the Monitor as foreign representative to seek recognition of these proceedings outside of Canada. The Monitor notes that in the event that the Court issues the Injunctive Order, the OTE Group and the Monitor intend to proceed as soon as practicable with commencing Chapter 15 Proceedings under the US Code to recognize and enforce the orders made within these CCAA proceedings.
25. Based on the details provided in the Fourth Hill Affidavit and as noted above, the OTE Group's claimed interest in the Italian Yacht or its proceeds may be a significant source of recovery for the OTE Group and its creditors. Based on the evidence set out in the Fourth Hill Affidavit, the Italian Yacht's last known whereabouts were in Florida, such that recognition of the Injunctive Order in the United States is likely to be necessary and expedient to try and freeze the Italian Yacht and its proceeds.

Furthermore, the Monitor's investigation into the activities of the OTE Group is in its early stages and the Monitor is uncertain as to whether there are additional assets in the United States related to the OTE Group that remain to be identified by the OTE Group and/or the Monitor.

26. Relief under the Injunctive Order coupled with the Chapter 15 proceedings provides the most expedient way to preserve the potential recovery of the Italian Yacht and its proceeds and the potential recovery of assets related to the OTE Group that may be located in Canada or the United States.

VIII. OTHER MATTERS

27. The Monitor is continuing to investigate payments that may have been made by OTE Group entities in respect of other goods and services that appear to be unrelated to the OTE Group's business. Based on its investigation to date, the Monitor understands that between March 2021 and June 2022, approximately USD \$6,864,425 and approximately CAD \$1,057,681 was wired by OTE Group entities to AirSprint Inc. ("**AirSprint**"). The Monitor has sent an Information Request Letter to AirSprint requesting further information and that all remaining funds received by AirSprint from any OTE Group entity be safeguarded and returned and that no further usage of those funds or any fractional aircraft ownership or interests be permitted without the prior written consent of the Monitor or further order of the Court. The Monitor will report further on this matter to the Court and may request further assistance of the Court if necessary.
28. As indicated in paragraph 49(h) of the Fourth Hill Affidavit, the OTE Group received from the CRA: (i) an assessment letter dated February 21, 2023, based on the audit of its Fuel Charge Account for the periods from April 1, 2019, to September 30, 2022, totalling \$91,734,032; and (ii) an assessment letter dated February 21, 2023, based on the audit of its Excise Tax Account for the periods from October 1, 2018, to September 30, 2022, totalling \$82,699,794. Copies of the CRA assessment letters are appended as Exhibit "GG" to the Fourth Hill Affidavit. The Monitor has not yet had an opportunity to review the amounts claimed or discuss them with the CRA and intends to do so and report further to the Court in due course.

IX. MONITOR'S RECOMMENDATIONS

29. For the reasons set out in this Second Report, the Monitor is of the view that the relief requested by the OTE Group is both appropriate and reasonable. The Monitor is also of the view that granting the relief requested will provide the OTE Group the best opportunity to prevent the dissipation of and seek recovery on a significant asset for the benefit of the OTE Group's creditors.

30. Based on the foregoing, the Monitor respectfully recommends that this court approve the relief sought for the Injunctive Order and support the OTE Group's request to commence Chapter 15 Proceedings, with the Monitor being authorized by this Court to act as the foreign representative in connection therewith.

All of which is respectfully submitted this 13 day of March 2023.

KPMG Inc.
In its capacity as Monitor of
Original Traders Energy Group
And not in its personal or corporate capacity

Per:



Paul van Eyk
CPA, CA-IFA, CIRP, LIT, Fellow of INSOL
President



Duncan Lau
CPA, CMA, CIRP
Senior Vice President