

Action No. 2501-18462
E-File Name: EVK25CANACOL
Appeal No. _____

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



IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, As Amended

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF
CANACOL ENERGY LTD., 2654044 ALBERTA LTD., CANACOL
ENERGY ULC, 2498003 ALBERTA ULC, et al

PROCEEDINGS

Edmonton, Alberta
December 10, 2025

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

2

3

4 December 10, 2025

Morning Session

5

6 The Honourable Justice D.R. Mah
7 (remote appearance)

Court of King's Bench of Alberta

8

9 C.P. Prophet (remote appearance)

For Canacol Energy Ltd., 2654044 Alberta Ltd.,
Canacol Energy ULC, 2498003 Alberta ULC,
Cantana Energy GmbH, CNE Oil & Gas, S.R.L.,
Canacol Energy Colombia S.A.S., Shona
Holding GmbH, CNE Energy S.A.S. and CNE
Oil & Gas S.A.S.

10

11

12

13

14

15 S. Gabor (remote appearance)

For Canacol Energy Ltd., 2654044 Alberta Ltd.,
Canacol Energy ULC, 2498003 Alberta ULC,
Cantana Energy GmbH, CNE Oil & Gas, S.R.L.,
Canacol Energy Colombia S.A.S., Shona
Holding GmbH, CNE Energy S.A.S. and CNE
Oil & Gas S.A.S.

16

17

18

19

20

21 K. Yurkovich (remote appearance)

For Canacol Energy Ltd., 2654044 Alberta Ltd.,
Canacol Energy ULC, 2498003 Alberta ULC,
Cantana Energy GmbH, CNE Oil & Gas, S.R.L.,
Canacol Energy Colombia S.A.S., Shona
Holding GmbH, CNE Energy S.A.S. and CNE
Oil & Gas S.A.S.

22

23

24

25

26

27 C. Brunet (remote appearance)

For Canacol Energy Ltd., 2654044 Alberta Ltd.,
Canacol Energy ULC, 2498003 Alberta ULC,
Cantana Energy GmbH, CNE Oil & Gas, S.R.L.,
Canacol Energy Colombia S.A.S., Shona
Holding GmbH, CNE Energy S.A.S. and CNE
Oil & Gas S.A.S.

28

29

30

31

32

33 E.S. Dushenski (remote appearance)

For Citibank, National Association

34 A.C. Maerov (remote appearance)

For Citibank, National Association

35 J. Levine (remote appearance)

For Citibank, National Association

36 J.L. Oliver (remote appearance)

For the Ad Hoc Committee of Senior
Noteholders

37

38 K.J. Bourassa (remote appearance)

For Agents on the Revolving Credit Facility

39 J. Willis (remote appearance)

For Agents on the Revolving Credit Facility

40 G.H. Finlayson (remote appearance)

For the Board of Directors of Canacol Energy
Ltd.

41

1	M. Cressatti (remote appearance)	For the Board of Directors of Canacol Energy
2		Ltd.
3	J. Pasquariello (remote appearance)	For Macquarie Bank Ltd.
4	E. Axell (remote appearance)	For Macquarie Bank Ltd.
5	R. Chadwick (remote appearance)	For Macquarie Bank Ltd.
6	R.I. Thornton (remote appearance)	For NG Energy
7	G.F. Body (remote appearance)	For Justice Canada, Canada Revenue Agency
8	R.S. Sahni (remote appearance)	For the Monitors, KPMG Inc.
9	K. Forbes (remote appearance)	For the Monitors, KPMG Inc.
10	K.J. Meyer (remote appearance)	For the Monitors, KPMG Inc.
11	E. Buhendwa	Court Clerk

12
13

14 **Discussion**

15

16 THE COURT: Good morning everyone. Here to deal with the
17 matter of Canacol and related companies. I am going to go to my usual introductory spiel
18 and then after that I am going to suggest a proposal to counsel as to how potentially the
19 stress that has been brought to bear in this case can at least be partially alleviated.

20

21 I understand that Macquarie Bank has expressed concern about the compactness of the
22 schedule, both in terms of the solicitation of the DIP financing and the scheduling of this
23 matter itself. So I want to comment on that and propose something and I will just get to
24 that in a moment.

25

26 So, I do understand that this is an application under the *CCAA* for a second amended and
27 restated initial order. Someone from Gowling is going to be taking the lead, I think.

28

29 MR. PROPHET That would be me, Justice. It is Clifton Prophet
30 of Gowling Firm. I'm legal counsel the applicants.

31

32 THE COURT: Right. Okay. Thank you. Counsel, I am going to
33 ask you then to do the introductions, at least of those whom you know are attending and
34 are familiar with. Indicate to me who will have a speaking role and who you anticipate
35 might oppose the application and as I already stated, I am aware that someone from
36 Goodman's on behalf of Macquarie Bank seeks either an adjournment or opposes at least
37 part of the application.

38

39 I am going to ask you also then to go over the material that I should have before me and
40 there is a lot of it. I will just make the comment that some of it was quite late breaking
41 indeed as late as this morning. So, I have done my best to review what I think is critical for

1 this morning, but I will need the help of counsel as we proceed and I am confident that
2 counsel will provide that.

3

4 Then, Mr. Prophet you can discuss service with me and at that point we can move onto a
5 discussion of the merits. I am guessing that the adjournment request that counsel for
6 Macquarie is requesting is kind of intertwined with the merits of the request for the DIP
7 financing and we cannot really separate the adjournment from the rest of it, so it might
8 have to be just dealt with altogether.

9

10 That is my sense of it, at any rate. Okay. Now, to get back to this proposal that I have. It is
11 really about timing and about how to best achieve a fair and robust adjudication.
12 Macquarie's objection is first of all to the timeline that was adopted by the company and
13 the monitor for selection of the DIP provider and also for the very short notice period for
14 the hearing of this application.

15

16 Now, I am aware that, I referred to it as "stress," was at least in part caused by the Court's
17 own schedule and as it turned out, this morning, the 2 and ½ slot that has been allotted is
18 the only time that the commercial court has between now and the end of the year. Originally
19 counsel had requested December 16th or 17th, which I understand would be tied to the stay
20 expiry, but neither of those dates were available. The only available date was today.

21

22 So, everything has been sort of done on an expedited basis and that is part of Macquarie's
23 concern. Okay. Which gets me to what I am going to ask counsel to consider and
24 particularly counsel for Canacol, the Monitor and Macquarie. So, I am the Chair of the
25 Edmonton Commercial list and I have looked at the commercial list for the first week in
26 January, for both Edmonton and Calgary. Calgary is out because Justice Simard is sitting.
27 Edmonton Justice Harris is sitting and I will just ask is anyone -- is Dentons involved in
28 this case at all? Okay, I do not hear --

29

30 MR. PROPHET: I don't -- I don't believe so, Justice.

31

32 THE COURT: Okay. So, what I am going to ask counsel to
33 consider is a partial adjournment relating to the DIP issue to the first week in January before
34 Justice Harris, which would give everyone not quite a month to kind of deal with what I
35 have referred to as "stress". So that would either mean a new or continued DIP solicitation
36 process or the generation of a better record for the Court because Macquarie had talked
37 about cross-examinations and so forth or both.

38

39 So, does that have any interest as far as counsel for those three parties are concerned?

40

41 MR. PROPHET: Perhaps I could speak to that Justice. I'll say this,

1 the -- and I'm not pre-arguing my response to the adjournment request, although I do agree
2 with you the intertwined nature of the issues that my friends for Macquarie raise, I would
3 say if we do proceed today, they really have to -- they all a piece, they need to be considered
4 together, it's not a case where I think respectfully -- so I agree with you, they should be
5 dealt with as a discreet adjournment request.

6
7 But having said that and not wanting to pre-argue the adjournment, I'll say this about
8 moving this into the first week of January before Justice Harris, the company faces real
9 liquidity challenges and it is a large and complication company as you'll know from review
10 of the materials. It's geographically complicated and it's operationally complicated and it's
11 complicated by the fact of conditions, commercial conditions in Columbia, being perhaps
12 different, without making any judgment at all, than they are here. And so, there is great
13 urgency to getting DIP financing.

14
15 The cashflows at Appendix F, the Monitor's Report, show a very -- quite a perilous situation
16 by the week ending the 10th of January and by the week ending the 17th of January, with
17 no DIP, there's a \$4 or \$5 million deficit. Small changes to a large enterprise could lead
18 this company to be effectively out of money, with no DIP in the week ending the 10th of
19 January.

20
21 So that is the exigency that we work against that that combined with the fact that we
22 couldn't get the 16th or 17th is an issue. It is the issue frankly that has caused the extent of
23 the expedition that has characterized these proceedings.

24
25 Despite that, the company has worked it's absolute best with it's advisors to ensure that
26 reasonable but expedited measures could be taken to stabilize it to get it the financing that
27 it needs. We also have a scheduled US Hearing for DIP approval and we have timing
28 exigencies on that. It's scheduled for the 18th of December. We had some difficulty getting
29 that.

30
31 On the bond holder DIP that the company has accepted, the \$15 million initial advance is
32 obviously condition on this Court's approval, but it is also conditional on US court
33 approval. So, I am concerned if this matter is put over to the first week of January that we
34 will not have a new US date and if the only DIP in place is the one offered by the
35 Bondholders, we will effectively have lost it, in terms of its ability to rescue the company.

36
37 I should also say that the DIP that has been accepted by the company, subject to this Court's
38 approval, contains milestones in it which require the debtors to obtain approvals on the
39 expedited timeframe that we were all operating under because of what we could get in
40 terms of court time in this venue, in this jurisdiction.

1 So, I'm in a bit of a difficulty, Justice, in terms of holding my hand up and saying this
2 would be a solution for all and that I'm not in a position of utmost expedition in terms of
3 what I need for my client.
4

5 THE COURT: Okay. I get it with regard to the US proceedings
6 and I, of course, have no way of knowing whether the US court would be prepared to
7 adjourn because I adjourned. On the other hand, my thought from looking at the material
8 that there was liquidity until January 10th.
9

10 MR. PROPHET: There's -- the cashflow shows approximately \$2
11 million for the week ending Jan. 10 and then it shows, if you back the DIP out, we have to
12 back the DIP -- we can go to the cashflow Justice, but if you back the DIP out for the week
13 ending January 17th --
14

15 THE COURT: right.
16

17 MR. PROPHET: -- it actually shows a deficit of I think \$4 million
18 perhaps more, around that number, I can go to it. So it's cutting it very fine and then we
19 have the further potential issue, more than potential, with the DIP that the company has
20 accepted subject to this Court's approval, it is a condition of further advance of that DIP
21 that we also get Columbian recognition, so we back up into that schedule, as well.
22

23 So, outside -- if we went back to the 13th weeks, I think the second advance, conditional
24 upon the Columbia approval, I'm not sure whether it appears in the 13 weeks, but if it does,
25 we would then also have a problem with that. I think it may not but I can check that quickly.
26

27 So, those are the -- those are the limitations I have, Justice, with (INDISCERNIBLE)
28 situation.
29

30 THE COURT: Okay. I understand. Ms. Meyer, are you taking
31 any position on behalf of the Monitor?
32

33 MS. MEYER: Thank you Justice Mah. My comments are
34 effectively the same as what Mr. Prophet has just said. Certainly, there is an urgent liquidity
35 crisis and due to that situation, as you pointed out, the cashflow forecast as Mr. Prophet
36 has pointed out, leading to liquidity coming to an end as of the week ended January 10th
37 and then a deficit after that. And the need for not only Canadian Court approval but also
38 US recognition of a DIP order, as well as the additional Columbian approval to follow, are
39 all considerations as to why there is urgency for this matter to be dealt with.
40

41 I have just been advised by email that -- and I have to say that it seems that it's a bit unclear

1 at this time, but it may be that Dentons does actually have a role in this matter or will have
2 a role in this matter and so that's another point to consider.

3

4 THE COURT: All right. Mr. Pasquariello, you have your
5 camera on?

6

7 MR. PASQUARIELLO: Yes, thank you Justice and thank you for taking
8 the time obviously to read the materials and to highlight the issues that are at play in respect
9 of this application. There are, as you no doubt have tuned into, there are material facts in
10 dispute here. There are material issues of law in dispute and then there is underlying it all,
11 the procedure issue of fairness. This is an extremely truncated process. The timeline in
12 respect of this litigation does not lend itself at all to a contested matter, let alone one with
13 this material impact in respect of not only these proceedings, but more -- more generally.

14

15 So, we certainly would agree with, Justice, an adjournment to a timeframe in January, the
16 later part of that first week would certainly work and we would work with the company
17 counsel and the Monitor to come forward with a schedule to accommodate that timeframe,
18 to provide for the necessary examinations, for example, that would have to happen. And to
19 the extent necessary, even discuss interim financing if that were really an issue.

20

21 One of the matters that my friends point to, is this urgency in the cashflows and with
22 respect, the cashflows themselves which we received last night, you know, after 9 PM
23 Eastern, warrant questioning themselves. There is significant line items that would be
24 called into question if the DIP is not approved, for example, the various fees and interest
25 would not be -- would not be payable providing further liquidity. The CapEx expenses for
26 example, called for in January, again would to the extent either delayed by a week or so,
27 would provide significant liquidity. But perhaps most importantly and this is an example
28 of the issues that are at play, the material presented last night as I said, after 9:00 to us in
29 this cashflow differ materially -- materially to the tune of millions of dollars of difference,
30 all variances to the downside, I should add, as compared to the cashflow and the modelling
31 that was provided to Macquarie in the context of the DIP solicitation process.

32

33 So there are significant questions, issues, factual matters that needs to be addressed and I
34 don't agree, Justice, that there is an intertwining in respect of the adjournment request and
35 the merits. We can certainly adjourn this matter in its totality and work with cooperatively
36 hopefully with company lawyer and bondholder counsel, and to the extent that there are
37 milestones, there are significant milestones relating to Columbia over which in the DIP
38 facility, over which the company has had no visibility and is not reported any progress on
39 in respect of set dates.

40

41 And again, with respect, those dates should not be driving issues of procedural fairness and

1 matters of the *CCAA* Court that the company is now in front of seeking the requested relief
2 today.

3

4 THE COURT: Okay. Well, what this leads me to conclude at
5 least at this stage, is that my idea of postponing part of the application is controversial and
6 so I should simply proceed to hear the application with the adjournment request as well.
7 So Mr. Prophet, let's go ahead and do that.

8

9 MR. PASQUARIELLO: Justice, would you like to hear our adjournment
10 request first, given that we are requesting that the matter be put over?

11

12 THE COURT: Okay. Well, you do not agree with me that the
13 adjournment and the merits are intertwined, so how would you -- I will just give you a
14 moment to address this. How would you extract the adjournment from the context of the
15 rest of it?

16

17 MR. PASQUARIELLO: Well, I'm going to be dealing with in the
18 adjournment request, the facts that, you know, are in dispute and deal with procedural
19 fairness issues in the context of the case.

20

21 THE COURT: Okay. And I think that what Mr. Prophet and Ms.
22 Meyer would say is that, yes, you may well raise issues of procedural fairness, but those
23 issues have to be balanced against the exigencies of the situation and it is because of the
24 dire state of Canacol, if it does not get its DIP financing today, that means I should not be
25 granting an adjournment.

26

27 So, I just see the two as connected and putting out an initial proposal to adjourn this to
28 January was not meant to pre-empt any adjournment request on your part, nor is allowing
29 Mr. Prophet to embark on a fuller discussion of the merits meant to prevent you from
30 making an adjournment request. I just thought from my review of the material thus far that
31 I have to look at -- in making the adjournment decision, I have to look at both sides, which
32 is your issues about procedural fairness, as well as, whether by adjourning I am going to
33 actually frustrate the objectives of the *CCAA* because basically facilitated the failure of this
34 company because I have granted an adjournment. And that is what I need to figure out.

35

36 MR. PASQUARIELLO: Understood Justice. I'm in your hands. I'm happy
37 to address the adjournment request in due course.

38

39 THE COURT: Okay. Thank you. Go ahead, Mr. Prophet.

40

41

1 **Submissions by Mr. Prophet**

2

3 MR. PROPHET:

4 Thank you Justice. So given our preliminary
5 conversation, I am well aware that you expended significant effort to get through what is a
6 good amount of materials. There's no doubt about that, so I appreciate that, then I won't
7 belabour what we're doing, what we're here for.

7

8 The amended application in paragraph 4 -- sorry -- let me just get to that. Paragraph 1, just
9 sets it out in brief, it is an extension of the stay of -- it's an abridgement of service
10 technically, but it is an extension of the stay of proceedings to February 6, 2026. It is the
11 approval of the Bondholder Group DIP commitment in the ultimate amount of US \$67
12 million, plus interest and fees. It is the provisions for the DIP lender's charge to secure
13 advances under that commitment, that rank second only to the admin charge in priority to
14 all prior claims, including the prior claims of Macquarie, that claim security. It is to increase
15 the maximum amount that can be paid by the applicants or pre-filing critical vendors,
16 amounts were authorised in that respect by Justice Johnston on the 18th of November and
17 by his decision by Justice Bourque on the 28th of November. And finally, it is to facilitate
18 any mechanism to provide a replacement letter of credit on an urgent basis before DIP loan
19 letter of credit facilities can be made available.

20

21 So, that's the essence of the relief before you. The Monitor also seeks approval or the
22 company does in connection with the Monitors, they seek approval of the Monitor's Second
23 Report, that is more in the nature of process. And there is finally a sealing request for the
24 signature pages and commitment amounts for the participants in the Bondholders DIP loan
25 on the basis that they constitute sensitive commercial information.

26

27 So that's the relief before you. I want to before I begin what I think is the heart of the matter,
28 which is 11.2(4)(f) of the *CCAA*, no prejudice, everything turns on that and I agree with
29 you, Justice, that this is a real time insolvency. This is not protracted civil litigation and the
30 weighing respectfully, Justice, that has to be done between the Alberta Rules of Civil
31 Procedures or somebody's notion of perfect procedural justice, has to strongly engage the
32 substance, 'cause that's how I say these matters proceed.

33

34 So I want to come back to the central fact when I get into my submissions and that is, there
35 is no prejudice here and this is the only alternative that has manifested itself given the
36 actual timelines, as opposed to somebody's hoped for timeline.

37

38 But let me go through the chronology, because I do think it helps orient where we've been.
39 You can find this in the Bednar affidavits. The Bednar affidavit 3, particularly, the main
40 affidavit in support of this swore on December 5th, it attaches the prior affidavits of Jason
41 Bednar, cause Mr. Bednar is the CFO of the Canacol Group and is intimately familiar with

1 all of these things. But this chronology, I'm not going to go to the references, but it's all --
2 it's all in those affidavits, those three affidavits.

3
4 So, on the 18th of November, the initial order was applied for ex-parte, Justice Johnston
5 ruled that that was a good ex-parte application, the initial order was granted on the 18th of
6 November this occurred, because on the 18th of November, following the breakdown in
7 negotiations with Macquarie to extend an amortisations payment and to potentially achieve
8 other accommodations, there was no wherewithal to pay the \$6 million amortisation
9 payment due that day.

10
11 On the 20th of November, the US Bankruptcy Court in the Southern District of New York,
12 made a provisional order, subject to recognition hearing, which is scheduled for tomorrow,
13 the 11th of December, that provisional order granted stays that protect the group in the
14 United States.

15
16 On the 21st of November, the DIP solicitation process was commenced by delivery of the
17 initial letter. This was done with that speed on the basis that DIP financing as recognised
18 both by Justice Johnston and Justice Bourque was urgent because of the liquidity crisis that
19 the company was in. The transcript of the hearing before Justice Johnston including her
20 decision and the decision of Justice Bourque rendered orally on the 28th of November,
21 forms part of an affidavit that was provided to you by a Gowling staff member, Arriane
22 Tano. You should see those materials should that be of interest to you.

23
24 After Justice Bourque granted the amended and restated initial Order including granting a
25 priority admin charge and a priority Director's charge against the objections of Macquarie,
26 the company proceeded with also with its -- within the context of its extended stay to the
27 18th of December to implement and administer in connection with its advise, there is the
28 DIP solicitation process, more of that later.

29
30 The DIP bits were due after extension, we were wanting to extend as far as possible, but
31 they ended up being due on the 2nd of December, given that we had a hearing today and
32 you will recall I'm sure, Justice, the real-time consultations concerning scheduling that led
33 you to hearing us today. And we understood from your directions that the materials for
34 today were to be delivered on Friday, the 5th, which we did in the principal materials and
35 the responding materials from Macquarie were to be delivered on the 18th of December,
36 which they did late at night, which I don't fault them for, given where we're at.

37
38 So, those things then occurred on the 9th of December, Jason Bednar served a reply
39 affidavit and an affidavit addressing the provision of interim LC facilities, on sorry that's
40 the 9th of December. On the 10th of December, we are here. That's where we've been.

41

1 Where we are going, in terms of what has been schedule and what's been driven by this
2 company's needs and the availability of the Court(s), plural I should say, is that on the 11th
3 of December, there as I said earlier, there is a recognition hearing to recognise the SARIO,
4 the Second Amended and Restated Initial Order in the Bankruptcy Court for the Southern
5 District of New York. On the 12th of December, a letter of credit, initially posted by
6 DaviBank, in favour of the ANH, the Agency of the Columbia Government that controls
7 the exploration and production contracts, which are the core of this company's business,
8 that letter of credit expires, there will be more of that later.

9
10 On the 18th of December, as I've said, there is a hearing schedule, to the extent this Court
11 approves DIP financing, there is a hearing scheduled in the Bankruptcy Court for the
12 Southern District of New York for recognition and approval of any DIP financing approved
13 by this Court.

14
15 In late December or early January, a hearing has been scheduled before the
16 Superintendency of Columbia. I should say that a proceeding called the PRES Proceeding
17 has already been commenced in Columbia. That began on the 25th of November. So, where
18 my friend says that there have been no steps taken or clarity concerning proceedings in
19 Columbia, that's not true, they're well summarised in the Monitor's Report.

20
21 So the bookend of today's timeline then, Justice, is the week ending January 10th. Where
22 I've taken you, we've averted to it, this company's down to \$2 million and variance on that
23 will cause the company to be in perilous liquidity circumstances.

24
25 So, that, Justice is the background and it is, at least, when you look at it, in my view, an
26 explanation for why this matter has come in on the way that it does. Each step along the
27 way is both causally linked to something that has happened before and equally driven by
28 what can happen in the future, in terms of both court dates and liquidity. These -- these
29 drivers are key to understanding by substantively this matter has to proceed in the way that
30 it does.

31
32 But perhaps you would ask me, why should it? "Has to" is a big statement. I said it should
33 quite aside from the liquidity crisis and the catastrophic effects, the failure this business
34 would have. I say that it should proceed this way and then you have to balance in favour
35 of the company, when you're considering the procedural objections my friend seems to be
36 making. I say that the substance of this is all about prejudice and the prejudice here is to
37 the company and its stakeholders if the DIP isn't approved today. It's not to Macquarie, in
38 fact, it's never to Macquarie on their own evidence and on the finding of Justice Bourque
39 at the hearing of (INDISCERNIBLE).103219*

40
41 And so I agree with you, process gets measured against outcome and I want to go to

1 outcome. Mr. Bednar in his affidavit swears that Macquarie is, whatever word you want to
2 use, reasonably protected, adequately protected, not prejudiced, because of the value of the
3 assets of this business over which it claims security. And I should say there's no basis for
4 challenging the security that I'm aware of today, I can't admit because I haven't had a review
5 done. The Monitor in their Report finds no basis to challenge the security and I'm not here
6 saying that there is any basis, \$37 million plus fees are Macquarie's security claim. Mr.
7 Bednar says in his affidavit of December 5th, that Macquarie is not in peril in any fashion
8 on a value basis.

9
10 But more importantly and I want to take us there, in Mr. Bednar's affidavit of December
11 8th and I think this is the best evidence of value and it's real and it's very straightforward
12 so I think we should go there now. This is the substance of the matter, under 11.2(4)(f),
13 this is what this all comes down to. So if you have the Bednar December 8 affidavit in front
14 of you, Justice?

15
16 THE COURT: Just give me a moment.

17
18 MR. PROPHET: Certainly.

19
20 THE COURT: Okay. Go ahead.

21
22 MR. PROPHET: Paragraph 7 and 8 summarise the priority claims
23 here, including Macquarie priority claim. Based on the order of Justice Bourque, there is a
24 \$1,500,000 Canadian equivalent of \$1,500,000 US, as an administrative charge. That
25 Justice Bourque ruled is in priority to all claims, including Macquarie, no appeal was taken
26 from that. Macquarie opposed that vigorously and didn't win.

27
28 Before you make the order I request, if you see fit to do so, the next in line in terms of
29 secured claims is a Director's charge for \$1 million, again that was an order made by Justice
30 Bourque, not appealed by Macquarie, but vigorously opposed when it was heard.

31
32 Next, we have Macquarie's secured claim, the principal amount of \$37,500,000. Should
33 you approve the DIP financing today, we would add to these priority claims, the \$67
34 million US that is set as the facility principal limit in the bondholder DIP loan. You add
35 these priority claims up you get to \$109,500,000. But if you just add the priority claims
36 over Macquarie you're of course \$40 million lower. I've used the \$40 million figure because
37 Macquarie has I think -- its counsel has said in Court that their claim could be that high
38 with fees and interest. I haven't seen a payout statement on that but I'll take that as -- without
39 conceding it, I'll take that and Mr. Bednar took it as approximate.

40
41 But the prior claims, that's \$109,000 of prioritized claims that we're aware of. The bonds

1 aren't secured, the revolving credit facility lenders aren't secured. Their \$65 million US is
2 not secured. So the rest of the assets of this business, whatever their value is, are available
3 to Macquarie and if you look again at my paragraph 7 here of Mr. Bednar's affidavit, for
4 Macquarie to get out, they only have to be worth \$109,500,000. I don't think there can be
5 any question about that.

6
7 So that's the narrow question, are the assets of this company worth that? And we don't have
8 to have a definitive valuation. There is much room for error. Now, the book value of the
9 assets, on the most recent interim financial statements is set out in paragraph 9 of the
10 Bednar affidavit. I'm not going to sit here and tell you that you need to take book value as
11 gospel, but as it happens, book value in this case for this energy company, whose value is
12 really based, strongly based in its resources, is quite close to resource value as determined
13 by independent third-party information.

14
15 So, the book value is \$1,292,418,000. So, Justice Bourque determined in his decision, in
16 fact, there was -- if you took a very conservative approach, he actually netted off all of the
17 financial statement liabilities, they were approximately \$900 million, he netted those off
18 and said there was at least \$400 million of asset value. I don't think that was, with the
19 greatest respect, I think really what we're talking about here for Macquarie and the charges
20 is the assets, not net of the liabilities, because all of the amounts we're talking about in my
21 \$109,500,000 those are all priority amounts. They'll feed first to the extent they're needed.

22
23 So, on book value, of course, there's a great buffer, but I can't and shouldn't rest on that,
24 instead I'd like to keep going through the Bednar, December 8 affidavit and you'll see what
25 the reserves are worth. It's stopping here at paragraph 13 and then going to Exhibit A, the
26 Reserve Report.

27
28 THE COURT: All right. I am looking at the Report.

29
30 MR. PROPHET: Yes, so the best part of the Report to look at is
31 the first table. This is a Report that's prepared by an independent internationally recognised
32 energy consultant, Boury Global Energy Consultant Limited. It's prepared because it's
33 required under securities law disclosure. It was -- the last required preparation of this
34 Report was December 31, 2024, but I can give you a thumbnail of how erosion of resource
35 over the year has not been terribly significant and doesn't alter these numbers in a way that
36 is material to the question of whether they are greater than \$109,500,000.

37
38 These are definitive numbers, they're not drawn out of a hat, they're not made up by
39 management and they're required to be disclosed as part of the ongoing disclosure
40 requirements of public companies like Canacol Energy Limited. And we can go back to
41 Exhibit A and I can show you why I say that we can't anticipate much serious change, but

1 before we -- between December 31 as at December 31, 2024, remember this was prepared
2 on March 20, for delivery. I can go back and describe why there isn't much change, but I
3 want -- before we do that to take you to another very sound measure of value and that is
4 the comparable transaction that took place -- took place with respect to a natural gas
5 property immediately adjoining to the west and south of Canacol's main fields in the Lower
6 Magdalena Valley. This is a transaction where by NG Energy sold 40 percent of the
7 working interest in its field, Sinu-9, to a French company called Maurel & Prom. Maurel
8 & Prom paid \$150 million US for that property. We know because of the continuing
9 disclosure requirements of NG Energy, how much that property had in reserve, as they call
10 them 1-P and 2-P reserves. 1-P reserves being proven reserves, 2-P reserves being probable
11 reserves. I should make sure I have that terminology right, yes, proven and probable.
12

13 Just on the 1-P, perhaps more definitive reserve number that arises from this transaction,
14 Mr. Bednar has done a calculation of what the 40 percent of the total reserve for Sinu-9
15 was worth for billion cubic feet of gas reserve and his calculation, which I could take you
16 through and it's accurate and correct, is that as at this transaction date being February of
17 2025 for a gas field immediately to the west of the Canacol main fields, an arm's length
18 transaction, paid \$10,115,000 US per billion cubic feet of natural gas reserve. If that is
19 correct then the multiple of that on the reported reserves of the Canacol Group, implies a
20 value for its proven reserves of \$2,484,244. A similar calculation is done with the 2-P
21 reserves in paragraph 19 and again those are proven and probable.
22

23 The reason that is a lower implied valuation but still one that implies very, very substantial
24 resource value, the reason that that is lower than the 1-P reserves is that when you take --
25 there's a discounting that goes on for the part of the 2-P that is proven and probable reserves,
26 part of that is discounted and so you get a lower unit value because of the discounting and
27 then when you apply that across Canacol's greater overall reserves, you get a much lower
28 value when you have the lower unit price because of the probable. In effect, Canacol has
29 more -- it's probable reserves are -- when you add to the proven are greater and so the lower
30 multiple takes you to a much lower value, even though the reserves are greater themselves.
31

32 So, what you can take from all this and all this comes from what I've attached in the
33 exhibits, the publicly released information about NG Energy concerning this transaction
34 and concerning its reserves and the reserves that were transacted, what this drives is a
35 confirmation that the reserve reports provided as of December 31, 2024 by Canacol
36 indicating asset values of -- in excess of a billion dollars, and that's paragraph 13 again, are
37 reliable and testable against a truly comparable transaction for natural gas resources in this
38 very geographic area. This is what an arm's length party paid and this information is as --
39 in terms of comparables for this sort of property is quite fresh.
40

41 So, that -- if I'm to look at what I've said was important here and that's prejudice and

1 substance, this evidence grounds a conclusion that there can be no prejudice to Macquarie.
2 That they will get out in every circumstance in this case. Now, I want to address an
3 argument that they make in response to that, but before I do so, I want to take you to their
4 own evidence for a moment, as well, in the form of the Pickard affidavit. Let me find the
5 reference for that.

6
7 Yes, in his affidavit Mr. Pickard talks about bond valuation as being some sort of a proxy
8 for asset valuation. I don't accept that in the least because of the discontinuity between the
9 bond market and actual assets. Bonds -- this is -- I'm asking you to take notice of this, trade
10 on the basis of yield and on the basis of moderately short term yield depending on their
11 tenor and are a market phenomena. Unsecured bonds don't represent any tie to the assets. I
12 have the *Nortel* case on that in the allocation dispute, which we can go to. But it's not
13 important really for me to actually go deep into that argument, that bond trading prices
14 post-insolvency are a bad proxy or not at all a proxy for asset value. All I need to do is take
15 you to the evidence of Mr. Pickard in paragraph 56 of his affidavit, page 15 of that
16 document if you have it.

17
18 THE COURT: Okay. I am there.

19
20 MR. PROPHET: As I say I don't accept this as a proxy for asset
21 value, but if you do based on this trading, the implied value of the company's assets is
22 approximately \$200 million. The Reserve Reports of course are definitive, so is the
23 comparable transaction, but at \$200 million there's doubt coverage for Macquarie.
24 Remembering that the secured claims in total, the charges that we have or will have if you
25 approve the DIP and Macquarie secured claim, are \$109 million. If Mr. Pickard is right,
26 which I don't think he is, at all, then on their own evidence they're extremely well covered.

27
28 So, what I want to leave you with here is that Macquarie is not prejudiced by the approval
29 of this DIP loan, but if we don't have \$15 million in the week ending the 10th of January,
30 "we" being Canacol, we could be irrevocably prejudice. And Mr. Bednar's affidavit is I
31 think correctly full of, or at least states a couple of times properly, that the stakeholders
32 affected are not just the \$695 million US of unsecured financial creditors, being the
33 Revolving Credit Facility Lenders and the Bondholders, that's what they total, those aren't
34 the only stakeholders here that could be affected by a disorderly shutdown or liquidation.
35 A key stakeholder or group of stakeholders that will be very adversely affected and this
36 was found both by Justice Johnston and Justice Bourque, are the utilities in Columbia for
37 whom the supply of natural gas by Canacol constitutes their core energy source. Those
38 utility companies and ultimately the consumers in Columbia who use power, if Canacol
39 can't pay its debts and it's picked apart by its creditors in Columbia, which will happen if
40 it doesn't keep paying and we've got evidence in the Bednar affidavit about how that
41 happens; a disorderly shutdown may have -- and I don't use this histrionically, may have

1 catastrophic effects on other stakeholders.

2
3 That weighed against -- and it will be a dissipation of value to the Bondholders and to the
4 RCF lenders, indeed to all of the creditors of Canacol. And I don't have to go much further
5 but to say the prejudice here is all on one side and it's not on the Macquarie side and that
6 is the most relevant, most important factual conclusion to be made in this case. And
7 whether you take Mr. Bednar's affidavit evidence and again, if it were opinion evidence
8 that was difficult and not based on third-party information and maybe Mr. Pasquariello in
9 his cross-examination, which I think is very much a red herring here, would be something
10 to think about or if his witness hadn't admitted that based on his probably misleading
11 approach to value, there's at least \$200 million there. There is no evidence of prejudice to
12 Macquarie.

13
14 All the evidence is to the contrary and the margins there in terms of value are so great that
15 the cost of my friend's stated desire or what he calls procedural fairness can be huge. If he's
16 cross-examining in January and if our DIP lenders are gone, then so is his business. And
17 that's not a way that we should be proceeding. It would be great to be participating in the
18 Sport of Kings in litigation and having all the time in the world and the luxury to indulge
19 lawyer's interests, but what we have here is a substantive issue and that is this company
20 needs money and deserves money and can get money without prejudicing its creditor. And
21 that goes back, secured creditor, that goes back to the legal test.

22
23 So, I think, Justice, there isn't -- it's not a close game. It's not going to benefit from anything
24 further, but more importantly I think, is the motive for Macquarie. They want out. They
25 had an opportunity to participate in the DIP, you'll see in the Bednar affidavit what they
26 put forward was an uncommitted, non-binding term sheet and they had two cracks at it.
27 They had every opportunity, in fact, I want to say Macquarie had far better opportunity
28 than the Bondholders, who actually were able to bring something forward. Macquarie, and
29 this is the evidence in Mr. Bednar's affidavit number 3, had been in constant discussions
30 with Canacol and its advisors, particularly its advisor Plexus, since June to extend further
31 financing, to extend the repayment period, to waive installment dates.

32
33 And each time any sort of further accommodation was proposed, even to the extent of term
34 sheets, the credit committee turned it down. And each time that was done in that period
35 and this is all in the Bednar number 3 affidavit, Macquarie had access to information, both
36 specialised information pertaining to the request to extend and to give further
37 accommodation and to regular credit agreement report information. Macquarie knows all
38 about this company. So, for them to put forward a non-binding, uncommitted term sheet
39 and then to come and say, well we were rushed into the solicitation process, we just didn't
40 have time, it's frankly -- it strains credibility, particularly when the Bondholders didn't have
41 those same reporting obligations and who weren't part of six months of pre-insolvency

1 discussion. The Bondholders got into the data room, everybody was in the data room, it
2 was a highly functioning, although expedited process and were able to commit \$15 million
3 and then \$35 million -- or \$30 million rather, later in February. They're able to commit
4 fully, their only condition is they get some security in Columbia for the last \$30 million.
5 They're committing the \$15 million with no strings frankly, except this Court's approval
6 and the Chapter 15 Court's approval.

7
8 So, it doesn't really lie at all in Macquarie's mouth to be leveling the sorts of process
9 complaints they are and I want to take you to the reason I think behind all of this, from the
10 Macquarie perspective, and that's in paragraph 62. This is the Pickard affidavit again.
11 Sorry, I just have to make sure my reference is correct here. Just bear with me Justice, that
12 is not the right reference.

13
14 THE COURT: All right.

15
16 MR. PROPHET: There is another reference to the same concept,
17 that I will find for you more easily, Justice. I'll come back to that Justice, I'm not finding it
18 quickly enough.

19
20 So, my friend says that if there is so much collateral why don't the Bondholder DIP lenders
21 go second to Macquarie? The answer to that is that they don't want to and no one else made
22 a binding bid. There is no alternative as you've heard, but that's a common enough
23 statement, but we ran a process, others participated, a smaller sub-group of Bondholders,
24 many of which have now joined the main Bondholder Group, were in the data room, The
25 RCF lenders were in the data room, Macquarie was in the data room, obviously the ultimate
26 Bondholders were in the data room.

27
28 There is no other -- there is no other proposal right now and again, I'm back to, if we're in
29 Columbia with no money in middle of January, we don't have a business and that is just an
30 inescapable fact. So, I think where that leaves us, is that with no alternative with Macquarie
31 having been given an opportunity, this DIP needs to be approved.

32
33 And what I want to say, I want to take you to the Macquarie term sheet for a minute, it was
34 the non-binding, uncommitted term sheet. It's in the Bednar, December 5 affidavit, so let's
35 just go to that and it's an exhibit. I want to take you to clause 7(b) just to reveal what the
36 agenda of Macquarie is and how their DIP bid was really not, even if it had been binding,
37 of any use whatsoever and more in the nature of a placeholder. Exhibit 'K' -- no Exhibit 'J'
38 to the December 5, Bednar affidavit, that is the Indicative and Non-Binding DIP Facility
39 Term Sheet submitted by Macquarie, late in the day on the 4th of December. If I can take
40 you to section 7 of that sheet.

41

1 THE COURT: Just give me a minute.
2

3 MR. PROPHET: Certainly.
4

5 THE COURT: Okay. Which exhibit is it?
6

7 MR. PROPHET: It's Exhibit J in the bookmarks entitled Final
8 Macquarie --
9

10 THE COURT: Yes I have got it.
11

12 MR. PROPHET: -- Proposal. I'm in -- I'm at the top -- bottom of
13 page 2, top of page 3, section 7.
14

15 THE COURT: Okay. I am there.
16

17 MR. PROPHET: So this talks about the purpose of the offer of
18 \$15 million which was not binding or wasn't committed. Fund obligations -- now the
19 important part is the parenthetical, provided -- or the proviso, that the borrower shall repay
20 the senior secured debt obligations. Those are Macquarie's creditor claims, as secured
21 lender, in full through the application of the receipt of the loan party's account receivables
22 or other assets. That's a creeping rollup DIP, Justice, and the concept there as you know, is
23 that as receivables are collected, they pay down the pre-filing debt and then the whatever
24 is -- whatever the DIP is available, is used to fund the company.
25

26 Well, the cashflows attached as appendix F to the Monitor's Report, you'd have to back-
27 out all the accounts receivable based on this DIP and then come to what the cashflow hole
28 would be and it would be effectively the \$15 million that is into that in this term sheet,
29 would be completely inadequate to fund the continuation of the business. This wasn't a
30 serious offer. A creeping roll-up DIP with a \$15 million limit that wasn't committed, is not
31 a serious offer for a party that knew all about the company because they've been engaged
32 with it and getting both creditor reporting under their credit agreement and had other
33 reportings.
34

35 So, I take you to that for two reasons. One, it wasn't a serious DIP and two, Macquarie
36 wants to be repaid. One can understand that. They're the senior secured creditor. But their
37 desire to be repaid and to oppress this process with what their counsel claims and I
38 understand his advocacy, but what he claims are important procedural rights, their
39 willingness to take on this process, is to get them paid. And section 7(a) is a clear indication
40 of that and there are indications that that is a preferable outcome for Macquarie to be paid
41 immediately in the Pickford affidavit. And I don't fault the bank for that, that's what they're

1 here for, but the nature of *CCAA* proceedings and prioritising necessary interim funding, is
2 that you don't always get paid immediately, but if you're not prejudiced, if you're not in
3 jeopardy, then the balance has to weigh in favour of the company and its DIP lenders.
4

5 So, I wanted to take you through those matters because that's at the heart of this and I urge
6 you to look at the substance here and not the process.
7

8 Now I want to go back to a few other things that I should address. Macquarie argues
9 partially through a declaration provided by Mr. Velez, who I'm sure is qualified as an expert
10 on Colombian law, I'm not particularly taking issue with that, but the Macquarie argues
11 that there's a problem with the bond holder DIP because the subsequent advance of 30
12 million of the 45 million before we get to the LC facility is conditional upon Colombian
13 recognition of a DIP approval order and priority.
14

15 Mr. Velez, I think the gravamen of his declaration is, in his view, and it's an opinion only,
16 there are other opinions, they're not on the record but there certainly are, in his view it isn't
17 likely that the Colombian Superintendency, the appropriate authority in Colombia, will
18 approve a charge over the Colombian assets, or recognize perhaps is my better word,
19 recognize an order and, thereby, approve a charge over the Colombian assets that primes
20 Macquarie.
21

22 I first say that's the wrong question for this Court. This Court has full jurisdiction as Justice
23 Bourque and Justice Johnston found over all these applicants. This is the primary
24 jurisdiction. This is the main proceeding. The (INDISCERNIBLE) is here. Again, not that's
25 a decision that the US Court will make, that's a decision that the Colombian authorities will
26 make in the superintendency proceedings, but that's -- this Court has jurisdiction to make
27 its order approving the DIP, priming Macquarie, and then, at the end of the order of course
28 as all these orders, there's the aid and recognition paragraph, and that's what this will be
29 about. Canacol recognizes that it will need to get recognition of this order down in
30 Colombia and it's taken steps to do that, it's also do that in the southern district of New
31 York.
32

33 So it isn't a question for this Court as to will the Colombia authority, will the
34 superintendency approve a priming DIP in Colombia isn't actually a question, but if it was,
35 I'd want to say two things about the Velez declaration. I want to take you to paragraph 40
36 of that document if you have it. Again, I'm not adopting this opinion, I'm -- and I don't
37 think -- and it is an opinion, it's not a judicial outcome and neither is it a judicial outcome
38 that this Court has to consider, it's for this Court to make its order and its, in effect, see if
39 it gets recognized for DIP approval, but in paragraph 40, this posits a situation very like
40 what we have here. Instead of a prejudice test, there's a reasonable protection test for a pre-
41 petition, pre-filing secured creditor that is being primed by post-petition financing. So

1 despite the new encumbrance, will they enjoy reasonable protection?

2
3 It all goes back to substance. The value of these assets leave Macquarie reasonably
4 protected on any rational approach and it's not close. Therefore, even on its face, this
5 opinion, and my friend will say, well, the reasonable protection definition is not something
6 that we really know about here, but on its face, this opinion suggests that Colombian law
7 on priming is -- at least had some commonalities with Canadian law on priming,
8 substituting reasonable protection for prejudice. So even if you were minded to give
9 credence to this argument that there's something wrong with the bondholder DIP because
10 it's not going to be approved in Colombia, (1) I disagree with it; (2) it's not a question for
11 this Court; and (3) I think that the value proposition (INDISCERNIBLE) the reasonable
12 protection criteria that may be imposed. I don't urge you to do that, but if you were, and
13 that is to wade into this Colombian matter because it is not for this Court, but my friend
14 has chosen to present this evidence if it is, and to marshal that as an argument against the
15 bondholder DIP, and it's just not -- not appropriate.

16
17 So I think one other aspect of the Velez declaration, Mr. Velez in paragraph 20 indicates
18 that the UNCITRAL Model Law on insolvency has been adopted. I'm sure that's correct.
19 That being the case, the general notions, and I have it in my book -- the supplementary
20 book of authorities, the general notions are that recognition is to be granted generally
21 speaking of foreign pronouncements, foreign orders that is, in a DIP approval order when
22 there's a foreign main proceeding. Recognition is to be granted absent a public policy
23 objection. And that's in section 6 of the UNICTRAL model order and I believe the guide
24 to that (INDISCERNIBLE). I can go to that in a moment.

25
26 But the point I raise in this is that it's perfectly appropriate, and this is what Canacol is
27 doing if you make this order approving the DIP loan today, it's perfectly appropriate for
28 Canacol to go to Colombia to seek to have the DIP loan approved, to seek to have it
29 recognized, not approved at first instance, and to obtain the order that it's seeking at a later
30 date.

31
32 And I want to stop here and emphasize, that is not a precondition to the \$15 million that is
33 immediately needed. That is a precondition (INDISCERNIBLE) to the \$30 million that
34 will be needed later. The bondholder DIP has the most -- well has three conditions to the
35 \$15 million that's needed so urgently. Your order today, if you feel disposed to grant it, the
36 chapter 15 order on the 18th of December and an agreement on a SISP. That's it.

37
38 But even if you're worried about whether the next 30 will come, and I'll stop and say this
39 15 is the only 15 we have, even if you're worried about whether the next 30 will come,
40 that's a decision for Colombia. And on the face of the evidence we have, there's no reason
41 to assume that it won't. Particularly when you go back to the substance of things which is

1 the value.

2
3 So, Justice, there is ancillary relief, but a lot of it flows together from what I've been telling
4 you about DIP approval. If you approve the DIP, we'll have money to carry on until the 6th
5 of February. That's what the 13-week cashflow in appendix F shows you. If you approve
6 the DIP, the increase in the payment of critical prepetition vendors from -- to \$15 million
7 from \$5 million is (1) supported by the Monitor; and (2) contemplated in the cashflow. The
8 Monitor notes in their report that that increase of the ability to pay prepetition critical
9 vendors, that is as against \$108 million of pre-filing trade payables. The important evidence
10 there is repeated in the Bednar 3 affidavit and that is that there's no guarantee that even
11 with proceedings in Colombia that critical suppliers will continue (1) to be able to supply,
12 or (2) be willing to supply despite what we think about when we think about the compulsion
13 of post-filing creditor supply notwithstanding pre-filing debt.

14
15 So the evidence on that point was accepted by Justice Bourque, and indeed was accepted
16 by Justice Johnston in terms of the general need for this. The Monitor, in consultation with
17 management and its (INDISCERNIBLE) function of Canacol, has determined that the 15
18 -- might be 15.5 million, and we'll come to our order later. But the Monitor has, in
19 consultation with the company, determined that is reasonably what needs to be paid to
20 ensure that the wells keep getting serviced and the gas keeps flowing, and the critical
21 vendors don't walk off the job.

22
23 So I think what I want -- I want to end on this -- these main points by going back to 11.2(4)
24 of the *CCAA* and the cases that follow it, whether it's *Hudson's Bay* or whether it's *Tacora*
25 *Resources*, or cases of this jurisdiction about when it's appropriate to approve a DIP. I'll
26 take you there in a moment. It's in my bench brief and those cases are as well. Yeah. I don't
27 think I have anymore substantive on this most important main point.

28
29 So let's go to the bench brief and the test. If we start at paragraph 70 of the bench brief, I've
30 extracted there for you the factors to be considered in approving a DIP loan, including -- a
31 DIP charge particularly. And I should also stop and say that, and maybe it's worked up into
32 the *CCAA*, it's in my book of authorities and we can just go to 11.2. That's do that. It's the
33 first tab of my book of authorities and I just want to look at 11.2.

34
35 THE COURT: Okay. Go ahead.

36
37 MR. PROPHET: Yeah. I just -- I know you're familiar with it,
38 Justice. I just thought it was helpful to actually look at the language. 11.2(2). So 1(1) of
39 course recites the ability to grant a charge, (2) is very clear and it's happened in many cases,
40 I say it has to happen in this case:

41

1 The court may order that the security or charge rank in priority over
2 the claim of any secured creditor of the company.

3
4 So, I know you're not in doubt, but there can't really be any doubt that you have that power.

5
6 So back to the bench brief, the factors in 11.2(4) are all set out there. The bench brief runs
7 through how they're all satisfied. So:

8
9 (a) the period during which the company is expected to be subject to
10 proceedings.

11
12 Well this bondholder DIP -- sorry, Justice, I've lost the -- lost the screen here. There we go.
13 This bondholder DIP goes to the 30th of June and the timing -- it's hoped that there'll be a
14 successful sale and investment solicitation process or capital restructuring by that time. The
15 milestones in the bondholder DIP contemplate that. The -- the DIP provides adequate
16 funding via the Monitor to go out that loss. Certainly for the 13 weeks and for the requested
17 stay extension period there's more than adequate funding. That goes to why I say the stay
18 should be extended but it's also a factor in considering this is an adequate DIP.
19 Uncommitted \$15 million is not an adequate DIP. It's not really a DIP.

20
21 How are the company's -- I'm at 11.2(4)(b) now:

22
23 (b) how the company's business and financial affairs are to be
24 managed during the proceedings.

25
26 They're being managed in connection close cooperation with the Monitor. This is in the
27 Bednar affidavits as well and the Monitor's report. They're being managed in close
28 cooperation with counsel and with counsel and with Plexus, and with a chief restructuring
29 advisor. The management of the company is committed and engaged and all of that is
30 evidenced by what they've been doing.

31
32 So the confidence of the major creditors, you asked me early on whether there were any
33 objections to the relief sought. Following discussions with both the RCF lenders and the
34 bondholders in the DIP yesterday evening, there have been some small changes made to
35 the order concerning whether credit arrangements, both existing and the proposed
36 replacement letter credit arrangements interim replacements, I am not aware of any
37 opposition by any party save Macquarie. So the -- if we look at the position of other
38 creditors, we're satisfied that there's significant support for the way that this is being
39 managed and that management has the confidence of the major creditors
40 (INDISCERNIBLE) presumably Macquarie given their opposition.
41

1 Would the loan enhance the prospects of a viable proposal being made in respect of the
2 company? Without the loan, no viable restructuring will be possible.

3
4 What is the nature and value of the company's property? I've taken you through that
5 extensively. \$67 million, if and when fully drawn doesn't come close.

6
7 Is any creditor materially prejudiced as a result of the charge? We've gone over that at great
8 length.

9
10 And in the Monitor's report, there is strong reasoned support for this DIP obtained --
11 solicited and obtained in the circumstances we have.

12
13 I will say that finding DIP examples are set out there. You will no doubt be aware of many
14 yourself, Justice, so I don't need to go to them. In Tacoma (sic), it was determined by
15 Justice Kimmel of the Ontario Court that it was appropriate to fund -- provide funding to
16 run a SISP. We are doing more than running a SISP, we want a (INDISCERNIBLE) to
17 track arrangement but certainly a priming DIP, and that was an opposed priming DIP, was
18 authorized in that case. In that case in fact, the DIP was provided by a party that had
19 extensive commercial dealings. It was Cargill, it was a mine, extensive prior commercial
20 dealings and the Court had no difficulty with that despite the objections from the losing
21 DIP bidder and another secured. And the secured, they were a pre-filed secured creditor
22 the objectors there, so I give you that case but I'm sure you are aware there are many of
23 them.

24
25 So I think if you look at the 11.2(4) factors, keeping in mind the 11.2(2) power to find as
26 secured creditor, if this wasn't a case for it, I don't know where there is one in the
27 circumstance.

28
29 Justice, I can come back later because I'm conscious that I've now used an hour and I should
30 stop, I can come back later and talk to some of the ancillary relief after should you want to
31 hear more on that. And really, that's -- that's the paragraph 16 of the SARIO, and paragraph
32 17. They require some explanation, they're rationally connected to the company's affairs. I
33 can do that at a later date their details. So, I'm in your hands as to how you want to deal
34 with that.

35
36 THE COURT: Okay. Well, first of all, I have one question --

37
38 MR. PROPHET: Yes.

39
40 THE COURT: -- Mr. Prophet, then I am going to move to other
41 counsel. So there is a portion of the proposed DIP financing that relates to collateralization

1 of some expiring letters of credit and (INDISCERNIBLE) is arguing is that allows these
2 creditors, who would otherwise be unsecured, to jump the queue or reorder some priorities
3 and so forth. So your response to that would be that is permitted by the *CCAA* and does not
4 prejudice them anyway. Does not prejudice Macquarie in any way.
5

6 MR. PROPHET:

That's -- those are two of the responses -- those
7 are two responses, but my other response is it isn't actually -- what we would seek to do
8 with that part of the DIP facility is actually replace expiring letters of credit. So it's new --
9 it's in fact new credit. So if an old letter of credit expires and it's not collateralized, the fact
10 that this will be indirectly collateralized because there'll be a charge for that, it's actually a
11 full replacement. It's not payment to the party providing a letter of credit, would be a new
12 letter of credit. So I say it's not even elevating a prepetition claim. But if it were, there's no
13 prejudice.
14

15 But I really -- in terms of the admonition not to use the charge to secure a pre-filing claim,
16 we're not. These would be replaced with letters of credit. New credit. And they would go
17 to the ANH. And I should say that, and my friend I think suggests that somehow we're
18 wasting money with the ANH if we avail ourselves with letter of credit arrangements. I
19 should say that it's Mr. Bednar's understanding that the failure to have a letter of credit,
20 whether a prior one has been drawn by the ANH or not, it's Mr. Bednar's evidence that the
21 letters of credit have to be replaced. Now I can take you to the paragraphs in his affidavit.
22 They have to be replaced in all circumstances or it will potentially be a breach of the E &
23 P contracts, cause a deterioration in the relationship of Canacol with -- with the ANH. And
24 I have to say, Canacol is very vulnerable to the regulatory decisions and actions of the
25 ANH. They have significant practical and legal power of the core assets of this company -
26 these E & P contracts. So if they want -- if they view the presence of an extant letter of
27 credit, whether or not they've drawn one as something that's required as a term there,
28 exploration and production contracts or something that's required as part of their
29 relationship, the risk of risking that is very substantial. So these are truly necessary and
30 they're not the elevation of a prepetition claim when they're replacements.
31

32 I want to just give you the references in the Bednar affidavit to the concerns with the ANH.
33 So paragraph 51 of the Bednar affidavit: (as read)
34

35 It is my belief that the Canacol Group faces substantial risks to E & P
36 contracts if the expiring letters of credit aren't replaced.
37

38 The collateralization doesn't go to the existing banks, it goes to the new banks who will
39 provide the replacements. That's my pre -- not prepetition point.
40

41 There's one more reference I think that I want to take you to, to the LCs. Paragraph 25: (as

1 read)

2

3 The expiring LCs are vital to maintaining the Canacol Group's going
4 concern operations.

5

6 So that's my response to my friends' suggestions that we're elevating a prepetition exposure.

7

8 There are details in the order about that but I'll leave that for now and we can come back
9 to that.

10

11 THE COURT: Okay.

12

13 MR. PROPHET: Thank you, Justice.

14

15 THE COURT: Thank you, Mr. Prophet.

16

17 Ms. Meyer, I will go to you next, and then we will go to Mr. Pasquariello. Ms. Meyer?

18

19 MS. MEYER: Thank you, Justice Mah. And I did want to note
20 as well that, in advance of the hearing last night, I had circulated an email to the counsel
21 that we thought would perhaps be making submissions today. That includes counsel for the
22 proposed DIP lenders who anticipated that they'd be about 10 minutes, and counsel for
23 Macquarie as well. So I'm not sure if you, considering that and considering the Monitor's
24 role, I'm not sure if you wanted to hear from any other parties before hearing from the
25 Monitor? I, of course, am willing to provide my submissions now, but I wanted to just raise
26 that.

27

28 THE COURT: All right. Well if you are prepared to defer, Ms.
29 Meyer, then let's do that.

30

31 MS. MEYER: Sure. Thank you.

32

33 THE COURT: Okay. I see a number of people lighting up. All
34 right. Let me ask, Mr. Pasquariello, did you want to chime in now or did you want to hear
35 from other counsel first?

36

37 MR. PASQUARIELLO: Thank you, Justice. No, I -- I think, as is
38 appropriate and customary, we should hear from all those in support of the company's
39 application including the Monitor and then we will proceed with our reply.

40

41 THE COURT: All right. Fair enough.

1
2 Mr. Oliver?

3
4 **Submissions by Mr. Oliver**

5
6 MR. OLIVER: Thank you, Sir. For the record, Oliver, first
7 initial J., of the firm Cassels Brock & Blackwell LLP. We are counsel to the ad hoc
8 committee of senior noteholders which represents 75 percent of the \$500 million of senior
9 unsecured notes. We are counsel to the proposed interim lender as well being the same
10 party.

11
12 Our clients support the application to approve the interim financing term sheet both on the
13 basis that they are the proposed lender thereunder, but also on the basis that our client group
14 is Canacol's largest stakeholder with a very -- with a very significant economic interest in
15 the company.

16
17 Our clients' binding DIP financing commitment is a demonstration of their commitment to
18 Canacol as it will ensure that the company has timely access to the liquidity necessary to
19 address the immediate issues and then to see it through the completion of a successful
20 restructuring outcome for the benefit of all stakeholders.

21
22 The proposed DIP facility will do two things: first, it will immediately stabilize the
23 company; and, second, preserve value and permit a timely and thorough restructuring
24 process.

25
26 As you will have seen, Macquarie has complained about the process that gave rise to the
27 DIP financing commitment from our client with particular emphasis on the compressed
28 timelines. It's important to remember of course that the process we are in is a restructuring
29 in which everyone always wants more time, including the debtor. This is a real-time
30 process but we are dealing with sophisticated parties with sophisticated counsel who are
31 familiar with the company and its assets. Of all parties, Macquarie has no legitimate excuse
32 for failing to deliver an actionable, binding, and competitive financing option for the
33 company.

34
35 Similar to Macquarie, our clients were attempting to engage with Canacol prior to the
36 CCAA filing date and were largely unsuccessful and the CCAA filing was made without
37 notice to our client. But that's not unusual of course in a CCAA, it just means everyone was
38 on a level playing field when it came the time to assess a potential DIP loan. Yet our clients
39 were able to respond to Canacol's timeline for interim financing and were able to provide
40 a fully binding and actionable commitment for financing that actually addresses the
41 company's liquidity issues and meaningfully supports Canacol through this process.

1
2 Importantly, the proposed DIP financing preserves the value of assets for the benefit of all
3 stakeholders including Macquarie. Notably, no other party except Macquarie is before this
4 Court arguing that they did not have enough time through this process to provide interim
5 financing. Macquarie suggests that the process was flawed because the debtor's financial
6 advisor was inexperienced and third-party DIP lenders did not make proposals to Canacol.
7 First, we reject the unfair criticism of the company's financial advisor and note that the
8 entire process was entirely overseen by the Monitor, the eyes and ears of this court.
9

10 The point about lack of third-party proposals is a remarkable argument by Macquarie
11 considering their counsel took the position in earlier letter correspondence to the company
12 that an interim financing facility in this case cannot come from a third party and must come
13 from inside the capital structure. Their suggestion at the time was it must come only from
14 them.
15

16 Given that Macquarie failed to issue a binding commitment and their draft non-binding
17 indicative terms provide nowhere close to the level of financing that Canacol actually
18 requires, the obvious inference is Macquarie is simply not interested in being the DIP
19 lender to Canacol, their only interest is to exit this company as quickly as possible. Which
20 is why their indicative terms talk about rolling up pre-filing debt or other DIP lenders taking
21 them out immediately.
22

23 Macquarie complains that the proposed DIP financing somehow reorders the existing
24 priorities of the creditors. That is not true. The pre-filing debt priority remains intact, the
25 unsecured notes remain subordinate to the Macquarie debt. The only debt obligations
26 coming ahead of existing secured creditors would be post-file financing which of course is
27 not unusual.
28

29 I'd now briefly like to address some of the issues raised by Macquarie with respect to the
30 Colombian proceedings, and I will avoid repeating points made by my friend, Mr. Prophet.
31 There is a suggestion in Macquarie's materials that the proposed financing should not be
32 approved because it's conditional upon Court approval in Colombia. First, that's actually
33 not a correct statement; and, secondly, foreign recognition of a debt, as Mr. Prophet
34 indicated, is not a reason to deny its approval in Canada. If that was the case, a staggering
35 portion of interim financing in this country for cases or cross-border would be denied.
36

37 As Mr. Prophet pointed out, the first \$15 million draw under the proposed DIP facility has
38 been thoughtfully designed to ensure it would be advanced without any Colombia Court
39 recognition in light of the urgent need by Canacol for liquidity. It's only the second draw
40 that is the subject of the recognition order.
41

1 Further, there's no *CCAA* proceeding of which we're aware, in which a Canadian Court
2 refused to approve an interim financing agreement simply because there was the possibility
3 of litigation in another jurisdiction. If parties opposing DIP financing could use the threat
4 of objecting to relief in foreign recognition proceedings to successfully deny a debtor
5 access to critical funding, our restructuring regime would be in trouble. We understand that
6 Canacol's confident in its likelihood of success in Colombia if litigation is ever required
7 with respect to the recognition of the DIP. And as Mr. Prophet indicated, in any event, a
8 Colombia Court would adjudicate those -- those issues if necessary.

9
10 Our client's DIP loan is the only actionable and binding commitment for post-filing
11 financing available to the company. As noted in the Monitor's report, the company's
12 materials, the commercial terms are fair and reasonable and are better than the non-binding
13 indicative terms that were presented by Macquarie.

14
15 With respect to the request for the adjournment by Macquarie, there is no benefit to such
16 an adjournment and only potential harm. That is the unequivocal evidence before this Court
17 at this time. Macquarie had time to participate in the process, they did so in an
18 uncompetitive fashion and provided non-binding terms.

19
20 Their request for more time to allow for more discussions to occur will not yield better
21 results. There is no benefit to doing so and only risk. Canacol needs liquidity and the time
22 for discussions is over. And as Mr. Prophet indicated, the various milestones contained in
23 our client's interim financing commitment cannot be met in the event of an adjournment.

24
25 In conclusion, Sir, our client group are critical stakeholders in this proceeding. They are
26 willing to provide Canacol with the support that they need, the time that they need it. It is
27 on the terms presented and not other terms that Macquarie would like. The process in which
28 our group's binding financing commitment was solicited, while brief, was fair and
29 appropriate and supervised by the Monitor. The terms of the financing are competitive and
30 represent the only actionable transaction available to Canacol. Critically, the evidence from
31 the company is there's no prejudice to Macquarie as a result of the financing.

32
33 In conclusion, Sir, the DIP financing should be approved so that Canacol can finally start
34 to advance its restructuring efforts and maximize value for all stakeholders. I'd be happy
35 to answer any questions that you may have, Sir.

36
37 THE COURT: No questions for you, Mr. Oliver.

38
39 MR. OLIVER: Thank you very much.

40
41 THE COURT: I see the name Gavin Finlayson with a screen on.

1
2 **Submissions by Mr. Cressatti**

3
4 MR. CRESSATTI: Good morning. I am Matthew Cressatti, for the
5 record, and here with Mr. Finlayson. I'll be making very brief submissions today. We act
6 on behalf of Canacol's board of directors.

7
8 Canacol's board is supportive of the relief being sought today and agrees with all of Mr.
9 Prophet's submissions. Our principal submissions are that the board has acted in an
10 appropriate manner, mindful of its fiduciary obligations and its duty of care, support of
11 what have become very fast paced proceedings.

12
13 As everyone who has spoken today has noted, the timelines on this matter are proceeding
14 on a very expedited basis. This has arisen due to a number of factors including the
15 company's urgent need for liquidity and due to the Court's availability. Ultimately, the
16 interim financing before the Court today is the only interim financing loan that's been put
17 forward after what has been a robust process in the circumstances. The proposals put
18 forward by Macquarie were non-binding and non-conforming. Macquarie, as has been set
19 out already today, has had insight into the company through lender reporting and is
20 otherwise a very sophisticated party. Nonetheless, it failed to make an informed bid. And
21 as Mr. Oliver noted, no one else here has complained about the timelines.

22
23 Now, Macquarie has made what are some very unfair baseless allegations against the board
24 in its evidence. We would just want to point the Court to paragraph 50(d) of the Monitor's
25 second report where the Monitor stated that the approval of the DIP facility is in the best
26 interests of the applicant's stakeholders. Now that, we would submit, is the entire test for
27 the board satisfying its statutory common law obligations.

28
29 We would also note, and this is going to be my final point, Sir, that, as has been stated, the
30 -- whether the Colombian Court will or will not approve a DIP, whether or not this DIP
31 conforms Colombian law, is not an issue for this Court to be concerned with. What is before
32 this Court is whether the DIP should be satisfied and should be approved on the basis of
33 Canadian and Alberta law. And if that is the case, then the DIP should be approved and the
34 Colombian Court can do whatever the Colombian Court wants to do based on the evidence
35 and submissions made to it, and the law of the Colombia.

36
37 Sir, subject to any questions, those are our submissions.

38
39 THE COURT: No questions, counsel. Thank you.

40
41 Ms. Bourassa?

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Submissions by Ms. Bourassa

MS. BOURASSA: Good morning, Justice Mah. Ours will be brief. Our firm represents the RCF lenders who are a syndicate of lenders under a \$280 million unsecured revolving credit facility. Similar to Mr. Oliver's clients, we are some of the largest stakeholders in these proceedings. I would be very, very brief and simply note that we are supportive of the form of order being sought today, particularly based on some discussions that have been very productive over the past 24 hours, and some of the changes that have been incorporated into the order including at paragraph 17 and 41 that provide some needed protections for our clients, in our view. And I have no further submissions.

THE COURT: All right. Thank you, Ms. Bourassa.

I still have Ms. Meyer on my speaker's list. Is there anyone else before I call on Ms. Meyer?

All right. Go ahead, Ms. Meyer.

Submissions by Ms. Meyer

MS. MEYER: Thank you, Justice Mah, In fact, typically the Monitor would provide its submissions after hearing from all the parties and the reply of the applicant, so I did want to just let you know that is typically how the Monitor would proceed. That being said, I will proceed in accordance with your direction.

THE COURT: Sure.

MS. MEYER: Sure. And so how would you like me to proceed?

THE COURT: Oh, I think you can make your submissions now.

MS. MEYER: Okay.

THE COURT: If there is something gets said subsequently, I can come back to you.

MS. MEYER: Certainly. Thank you. Justice Mah, the Monitor is supportive of the relief being sought by the applicants today. You will have received the Monitor's second report, as well as the confidential appendices 1 and 2, which, as Mr. Prophet has mentioned, the company seeks a sealing order over.

1 With respect to the second report, the Monitor's conclusion at paragraph 93, which is on
2 page 40 of the PDF, sets out that the Monitor is of the view that reliefs requested is both
3 appropriate and reasonable, that the applicants are acting in good faith and with due
4 diligence, and that granting the relief sought, including approval of the DIP financing and
5 DIP charge, will provide the applicants the best opportunity to explore restructuring options
6 under the *CCAA*, under the supervision of the Monitor. That would seek to maximize
7 creditor stakeholder value.

8
9 I intend to keep my submissions very simple today, Sir, in that there have been, as you've
10 noted, voluminous materials provided and issues raised, keeping in mind the Monitor's
11 role, and as Justice Bourque has noted in his decision, as the eyes, ears and nose of the
12 Court being the Court-appointed officer. In short, the only evidence before you is that there
13 is urgent need for the DIP financing and the Monitor, as set out in the second report, agrees
14 with that.

15
16 The Court -- number 2, the Court can approve the requested DIP financing today; and (3)
17 in my submission, the Court should approve the requested DIP financing today. The
18 Monitor recommends that it be approved. And that the adjournment request submitted by
19 Macquarie should be dismissed.

20
21 So on those three simple points, with respect to the need for DIP financing, I've made this
22 submission at each of the previous hearings to date but it bears repeating in the
23 circumstance and it comes from the first Bednar affidavit at paragraphs 8 and 9. What that
24 is, is that the Canacol Group is the largest natural gas exploration and production company
25 in Colombia. The largest independent such company I should mention. And the Canacol
26 Group's Colombian natural gas production is a critical fuel source for Colombia's electrical
27 grid with the majority of its gas sold to power generators. Any interruption or disorderly
28 shutdown of Canacol's operations would result in the immediate removal of the substantial
29 share of (INDISCERNIBLE) fuel and have material consequences on Colombia's grid
30 reliability and generation output.

31
32 From Mr. Bednar's third affidavit at paragraph 50, and if you want to turn to that it's page
33 11 of the PDF of that document, he sets out -- I'll give you a moment to turn to it.

34
35 THE COURT:

Okay. Go ahead.

36
37 MS. MEYER:

Mr. Bednar sets out that: (as read)

38
39 The Canacol Group requires DIP financing in the immediate term in
40 order to maintain its oil and gas production operations in Colombia.
41 The failure of the Canacol Group to obtain financing immediately

1 would not only destroy any prospect of the successful restructuring
2 but additionally result in a cascading material impairment to the
3 Canacol Group's ability to sustain its critical and substantial supply of
4 natural gas to the Colombian power grid. It is essential at this time to
5 avoid the prospect of a disorderly disruption to the Canacol Group's
6 operations in Colombia which, in all cases, would have a material
7 effect on end-use consumers in that industry.
8

9 So there is a clear public interest here and numerous stakeholders that will benefit from the
10 continuation of the *CCAA* proceedings in a matter that will allow the company to pursue
11 restructuring options and to maximize value, and to do that requires DIP financing.
12

13 In the second report of the Monitor at page 18 of the PDF, that's 18 of the 129-page PDF,
14 paragraph 39 appears where the Monitor sets out its view that the prospective DIP lenders,
15 including Macquarie, and the proponents of the DIP proposal that was before the Court
16 retreated fairly and equally during the conduct of the DIP selection process, although on
17 an expedited timeframe. But also that the urgency of the company's DIP financing need,
18 coupled with the Court's availability in the coming weeks, does not allow for an extension
19 to the timeline.
20

21 The company is projected to run out of liquidity, absent DIP financing, as of the week
22 ending July -- sorry, January 10th, as Mr. Prophet has noted previously. That liquidity crisis
23 is due in part to collateralization and replacement of expiring letters of credit. This is
24 addressed in paragraph 51 of Mr. Bednar's third affidavit and his previous affidavit
25 evidence. The relevant expiring letters of credit are a material condition of the Canacol
26 Group's E & P contracts with the regulator, ANH, which as Mr. Prophet has noted, are at
27 the heart of all of Canacol's operations
28

29 To your earlier question to Mr. Prophet, Justice Mah, the expiring LCs are not prefilings
30 amounts being paid, nor are they solely for the benefit of unsecured creditors as is asserted
31 at paragraph 13 of the affidavit of Mr. Pickard on behalf of Macquarie. The LCs are
32 expiring and in order for the Canacol Group to be able to continue operations, in other
33 words, for the regulator ANH not to terminate leases or otherwise take enforcement actions,
34 they need to provide replacement LCs. So these are not prefilings amounts, nor do they only
35 benefit unsecured creditors. The benefit is to the company and all of its stakeholders
36 including Macquarie because the company cannot operate if the regulator shuts them down
37 due to breach of their obligations to provide replacement LCs for those that are expiring.
38 So there is real urgency here and that is based on the evidence that is before the Court.
39

40 The affidavit of Mr. Pickard, on behalf of Macquarie, also says, this is at paragraph 52,
41 that: (as read)

1
2 DIP financing is not needed because the company will not be in a
3 cashflow deficit until January of 2026.
4

5 But that is exactly the point, and Court approval by this Court and by the US Court is
6 needed in advance of the company reaching a cashflow deficit, which as we've talked
7 about, will occur by the end of the week of January 10th with there only being about \$1
8 million cushion at that point. And it's not possible to get Court approval from the Canadian
9 Court and the US Court in that timeframe, keeping in mind our earlier discussion about
10 that exact point, but also the potential conflict that Justice Harris has and the lack of
11 information as to whether it would be possible to also deal with the US Court recognition
12 of any DIP approval order granted by this Court in that timeframe.
13

14 I also submit there's no reason to adjourn this matter to the extent that the adjournment
15 request is still under consideration and I expect Macquarie's counsel will be addressing
16 that. So with respect to Macquarie's request for adjournment hearing, the fact is that the
17 company will run out of money, or is projected I should say, to run out of money before it
18 will be possible for the company to reappear in this court and for the foreign representative
19 to bring an application before the US Court based on the information we have available
20 now.
21

22 As to the question of can the Court approve the DIP financing proposed today, I submit
23 that the answer to that is yes, in that the company, with the assistance of its advisors and
24 working with the Monitor, has carried out a DIP selection process that has been fair to all
25 participating parties and treated all of them equally. That process is covered in the second
26 report of the Monitor at paragraph 21 to 39. We acknowledge that it was done on extremely
27 compressed timelines, that is due to the company's urgent need for liquidity, but also, as
28 you've acknowledged, Justice Mah, for the availability of court time before this Court and
29 the US Court for approval.
30

31 It was carried out in a fair and transparent manner and that is set out in considerable detail
32 in the second report. And as has been mentioned by others already today, Macquarie had
33 the same opportunity to participate in the DIP selection process as all other lenders to the
34 Canacol Group, plus with the benefit of its previous knowledge and involvement with the
35 company.
36

37 Macquarie did not submit a qualifying bid, but rather an indicative non-binding term sheet
38 despite having a second opportunity to provide a qualifying bid. That indicative non-
39 binding term sheet contemplated payment of Macquarie's pre-filing debt out of the DIP
40 funds to be advanced, the quantum of which was not specified.
41

1 While Macquarie's counsel submits that it needs an adjournment and more time to put
2 together a DIP financing bid, I submit that it did have the same amount of time as all other
3 participants, did submit to non-binding bids in the DIP selection process, and did also
4 submit two affidavits and a brief of argument served at 9 PM last night. It had the
5 opportunity to cross-examine on affidavits of Mr. Bednar and no cross-examinations
6 occurred. My submission in that respect is that if Macquarie had wanted to provide DIP
7 financing to work constructively to support this company and its restructuring process, it
8 had the same opportunity to do so as other participants.
9

10 At the end of the DIP selection process, only one qualifying bid was received. That bid,
11 which is the DIP loan agreement as amended, has been accepted by the company, subject
12 to Court approval and US Court recognition. The Monitor's view is that the terms of the
13 DIP loan agreement are reasonable, particularly in these urgent circumstances.
14

15 The second report includes at appendix E a spreadsheet of DIP loan market terms and the
16 Monitor has set out in its report that while the fees and interest rates and other rates in the
17 DIP loan agreement are at the higher end of the range, they are within the range of fees and
18 rates of DIP loans in comparable circumstances. The proposed DIP loan will allow the
19 company sufficient liquidity to continue to carry on operations and the *CCAA* proceedings,
20 and to develop a restructuring strategy including appointing a sale advisor and carrying out
21 a sale and investment solicitation process as is contemplated in the DIP loan agreement.
22

23 With respect to priming, the Monitor is of the view that priming -- a priming charge for the
24 DIP loan in priority to the secured creditors, the only secured creditor being Macquarie,
25 that that is also reasonable and appropriate. It is certainly typical of DIP financing that it
26 be a condition that the security primes secured creditors. Here, Mr. Prophet has gone
27 through and detailed the value of the Canacol Group's assets vastly exceed the Macquarie's
28 secured debt. If you go by the book value, and this was commented on by Justice Bourque,
29 there is approximately \$400 million in equity between the book value of the liabilities and
30 the book value of the assets. That comes from paragraphs 80 and 88 of Mr. Bednar's first
31 affidavit, and that \$400 million in equity is about 10 times the amount of the Macquarie
32 loan.
33

34 It is important to note that the proposed DIP lenders are voluntary creditors with respect to
35 proposed DIP. They are voluntarily agreeing to loan funds to a distressed company. So in
36 that circumstance, I submit it is reasonable and appropriate and consistent with the practice
37 at *CCAA* proceedings that they be granted a priming charge in the circumstances where
38 that is a requirement of the loan they are willing to provide.
39

40 Whether a Colombian -- a DIP charge will be represented by a Colombian Court, in our
41 submission, is for the Colombian Court to decide upon hearing submissions from the

1 company and other interested parties, as well as the Monitor. The Monitor's report sets this
2 out at paragraph 60. This Court has already confirmed by way of the initial order and the
3 ARIO that it has jurisdiction over the Canacol Group and, thus, this Court does have the
4 jurisdiction to determine whether it should approve the DIP loan agreement as amended,
5 as well as the proposed DIP charge. Whether a Colombian Court will recognize and give
6 effect to an order of this Court is not a point for this Court to decide, respectfully, nor is
7 that an appropriate consideration for this Court in determining whether to approve the DIP
8 financing and the DIP charge, in my respectful submission. Keeping in mind that Mr.
9 Prophet has already taken you through the factors for the Court to consider in that respect.
10 So that deals with, in my submission, whether the Court can grant approval of the DIP
11 financing and the DIP charge.

12
13 With respect to whether the Court should do so, I would submit, again, the answer to that
14 is yes. Including for the reasons that I've mentioned. There is urgent need for DIP financing.
15 There is only one DIP proposal available and it requires Canadian and US Court approval
16 needed before the company runs out of liquidity, approximately around the end of the week
17 ending January 10th. Notice has been given to the parties of this application. I note that
18 Macquarie is a secured creditor subject to the Monitor completing its independent review
19 of Macquarie's security.

20
21 The important point to note is that Macquarie is not actually secured over any collateral in
22 Canada. Mr. Prophet touched on this in his submissions. The DIP proposal is consistent, in
23 my submission, with the purposes of the *CCAA* to facilitate a restructuring for the benefit
24 of all stakeholders. The proposal, I submit, accomplishes this in that it allows for the
25 continuation of the restructuring and the potential solution to be pursued by the company.
26 As compared to paying out the (INDISCERNIBLE) secured creditor that is remaining.
27 Keeping in mind as well that we've already addressed the point of, and Mr. Prophet has
28 addressed the point, of Macquarie will get out, paid in full, based on the valuations of the
29 company that has been presented by the company.

30
31 We submit as well that the DIP solicitation process has been fair and that Macquarie, along
32 with other parties, have had a fair opportunity to participate considering the urgency. Also,
33 there is the fact that Macquarie has already had the detailed information about the company
34 in advance of the DIP selection process.

35
36 Otherwise, turning to the other relief sought. The company seeks a stay extension to
37 February 6th, of 2026. This is addressed at paragraphs 91 and 92 of the Monitor's second
38 report. The Monitor's view is that, as I said at the outset of my submissions, the company
39 is acting in good faith and with due diligence, and circumstances exist that make an
40 extension of the stay appropriate.
41

1 The activities of the applicants since the ARIO was granted are summarized in paragraphs
2 9 and 10 of the report. I won't go through them here as they're set out there. The
3 circumstances include of course that the stay extension will allow for the company to
4 engage a sales agent and develop the SISP, keeping in mind that the stay extension is tied
5 to DIP financing being approved by the Court.

6
7 Paragraph 92(b) of the report sets out that the granting of the extension will not materially
8 prejudice any creditors as supported by the updated cashflow forecast provided that the
9 DIP financing is approved by the Court and recognition is granted by the US Court, and
10 ultimately, by the Colombian Court as required. In those circumstances, the company will
11 have sufficient funding to continue to operate in the normal course during the proposed
12 stay extension period.

13
14 To touch briefly with respect to the proposed increase to the aggregate amount payable to
15 critical vendors, my friend, Mr. Prophet, has noted that the company seeks approval of
16 amounts to be paid to critical vendors pre-filing amounts up to the Canadian dollar
17 equivalent of \$50.5 million US. That is subject to Monitor approval and also, if the DIP
18 financing is approved, to DIP lender approval with certain exceptions. Specifically if it's
19 already in the cashflow forecast.

20
21 I wanted to note one correction to the Monitor's second report at paragraph 47. While there
22 is a table in the second report starting at page 23 of the PDF, you'll see there's a row in that
23 table regarding the use of funds with respect to the proposed DIP financing. There, it sets
24 out that: (as read)

25
26 Proceeds of the DIP financing cannot be used to pay pre-filing
27 obligations without prior consent of the DIP lenders. If already
28 approved by the Court, consent is not required.

29
30 That is accurate. What is not accurate is at paragraph 47 of the report there is a statement
31 saying that the critical vendor payments do not require further consent of the DIP lenders.
32 That is incorrect. Consent from the DIP lenders of the critical vendor payments is required
33 unless they're already included in the cashflow forecast.

34
35 With respect to the proposed new letter of credit for \$5.2 million, another point to note,
36 and this is as a result of developing circumstances over yesterday and this morning,
37 paragraph 77(b) of the report says that with respect to the proposed new letter of credit to
38 replace the \$5.2 million letter of credit expiring on December 12th, that once the cash level
39 is posted with Citibank, Citibank will then issue a letter of credit to a bank in Colombia.
40 Citibank's counsel has requested -- rather, counsel for the RCF lenders, including Citibank,
41 has requested that. I clarify at the hearing that the discussions are continuing at this point

1 but there is no current commitment from Citibank to provide that proposed letter of credit.

2
3 To the extent that the \$20 million and \$2 million tranches of the proposed DIP lending
4 needed to be provided, those need to be provided by a lender capable of issuing letters of
5 credit, and so those have been discussions between the bondholders and Citibank that are
6 ongoing. So just want to note that. Otherwise, with respect to the new proposed letter of
7 credit, I've already addressed the comments with respect to Macquarie's submissions as
8 you've raised in your questions to Mr. Prophet.

9
10 One point I wanted to note as well with respect to the cashflow forecasts, which are
11 included at appendix F to the second report, is that the cash comes in at the end of each
12 month but the company prepays its suppliers. So there are timing issues with respect to the
13 cashflows that are built into this. The cashflow forecast contemplates as well that expenses
14 will be COD and that payroll will continue to be paid in the ordinary course. The cashflow
15 forecast ends at the week ending February 7th. And you'll see on page 125 of the PDF that
16 the second row from the bottom is the proposed DIP draw and it shows \$15 million coming
17 in, in week 4 of the forecast. The week ending December 27th. With then the further
18 amounts in weeks 5 and 9.

19
20 With respect to approval of the second report, the Monitor -- the Monitor's activities are
21 summarized at paragraph 15 of the second report. But the report also covers updates on the
22 chapter 15 proceedings in the US and regarding Colombian recognition proceedings, as
23 well as carrying out the DIP selection process. The Monitor does seek approval of its
24 activities as set out in its second report.

25
26 Otherwise, there is the sealing order, which I understand Mr. Prophet will be speaking to
27 and so I will leave that to him. But we do request as well that the confidential appendices
28 to the second report be sealed on the court file and I'll defer to Mr. Prophet for submissions
29 on that point unless you would like to hear further from me on that, Sir.

30
31 Subject to any questions you may have, those are my submissions.

32
33 THE COURT: All right. I do not have any questions for you,
34 Ms. Meyer.

35
36 So, at long last, Ms. Pasquariello, we will come to you.

37
38 MR. PASQUARIELLO: Thank you, Sir. I was wondering if this is an
39 appropriate to take a 10-minute recess?

40
41 THE COURT: Well I need to discuss timing with counsel in any

1 event. This was scheduled for 2 1/2 hours. I was supposed to have a meeting at 12:30 but
2 it looks like I am not going to make it, and then I have another matter in this court at 2 PM.
3 I am going to need probably 15 or 20 minutes to gather my thoughts before I give a decision
4 on the adjournment plus the merits of the stay extension and the request for the DIP
5 financing. So we can take 10 minutes now. Tell me how long you think you will need, Mr.
6 Pasquariello.

7
8 MR. PASQUARIELLO: Well, Sir, we discussed with my friends, and I
9 raised the issue of having equal time for those in support and those objecting, I note that
10 my friends have been over 2 hours. I hope not to be as long but I am not exactly sure. There
11 is a lot to cover both in respect to the adjournment request and the substance as well
12 replying to the matters that have been raised and the late breaking materials served.

13
14 THE COURT: Okay. Let's take a 10-minute break now and I am
15 going to have an offline chat with madam clerk and I will turn my camera back on in about
16 10 minutes.

17
18 MR. PASQUARIELLO: Thank you, Sir.

19
20 (ADJOURNMENT)

21
22 THE COURT: All right, I just want to be sure that everyone who
23 wants to be here is back.

24
25 All right, counsel, I did not realize that this application was going to be this protracted. Had
26 I known, I might have tried to arrange something else. So, you know what kind of
27 limitations in terms of time that I am operating under, madam clerk has graciously agreed
28 to work straight through.

29
30 So, Mr. Pasquariello, you can start. We will go as long as we can and just see where we
31 get.

32
33 **Submissions by Mr. Pasquariello**

34
35 MR. PASQUARIELLO: Okay, thank you -- thank you, Sir. Let me, if I --
36 if I may, just address the adjournment request and again repeat that Macquarie would
37 certainly be amenable to dealing with this matter at the -- the back end of that first week of
38 January. With all due respect, I'm not sure that potential conflict of Justice Harris is
39 sufficient, or that (INDISCERNIBLE) potential retainer shouldn't be a reason to -- to -- to
40 halt that type of an arrangement or dealing with the matter in a timely way, in that fashion,
41 given what we're discussing in the materiality of -- of the issues, appreciating that Court

1 making itself available at -- at that time.

2
3 The adjournment request, Sir, is best highlighted given the material, for example that came
4 in just last night. There was two there were two affidavits served, and there was an
5 amendment to the application seeking fresh new relief. So, this hearing today unfolded live
6 in real time at our last hearing, when counsel for the company was checking with the
7 commercial court office and perhaps even your schedule and -- and announced to the Court
8 that the only availability was for today, and that your officer or -- or someone had directed
9 that the schedule was going to be such that the company's material were to be filed
10 December 5th, reply to that material was to be delivered December -- and served December
11 8th, and the hearing would be December 10th. There was no mention in that compressed
12 time frame, understandably, of any reply material given that there was no time, there was
13 no mention that the Monitor's Report be provided at some later time.

14
15 With all due respect, that is not typical in terms of *CCAA*'s, and I know Monitor's counsel
16 wrote to you unilaterally requesting that that transpire. But unfortunately, what that results
17 in is us receiving the second report of the Monitor last night after 9 PM Eastern, which
18 includes a number of important facts, not the least of which is an updated cashflow. And
19 that updated cashflow is the grounding upon which urgency is being put before you. I'll get
20 to that in a second. But let me deal first with the -- the two affidavits that were late breaking,
21 and why I say that that is really indicative of the problem here in this unfortunately, catch
22 me if you can approach that has been advanced in respect of these proceedings

23
24 The affidavit Mr. Prophet raised with you and -- and pointed to the -- Mr. Bednar's affidavit,
25 which was affirmed December 8th as being the linchpin to, I think he said it all comes
26 down to this, which was the -- the valuation affidavit. Firstly, extremely unfortunate that
27 the affidavit was affirmed December 8th, but the company chose not to serve it on the
28 service list, including ourselves until yesterday, especially given this compressed time
29 frame. But in any event, the -- the contents of that affidavit, Sir, speak to again what goes
30 to, like Mr. Prophet described, the poor valuation to say no prejudice to Macquarie, and
31 here's valuation evidence.

32
33 With all due respect, Mr. Bedner, as far as I know, is not a valuation expert. Their -- the
34 information that was included is a reserve report. Again, not -- we're not able to test any of
35 this. We -- Macquarie has significant questions and concerns that have come through in
36 the -- the solicitation process with respect to the very valuation issues and the reserves in
37 question, which we saw for the first time in an affidavit last night. It is respectfully,
38 completely unfair for Macquarie not to be able to have the opportunity to test and question
39 and lead contrary evidence in respect of what the company and others are now saying is a
40 sure thing in terms of Macquarie getting out, and here's the evidence.

41

1 Likewise, they point to a comparable transaction. Again, comparable transaction is
2 valuation speak. It is -- we don't have an expert valuator; it was not able to be tested by
3 Macquarie; it was presented last second contrary to the -- the company's own timeline. Mr.
4 Prophet says that it -- there's an implied value of 2.8 billion dollars there. That's -- and says,
5 if that's correct, and the correct is given that there's a 10 million per cubic foot calculation
6 of natural gas reserve, or something along those lines, and if that's correct, well there's to
7 be a value of 2.4 billion.

8
9 Well, it's great for Mr. Prophet to give that evidence, it's great for Mr. Bednar to give that
10 evidence, but they're not, with all due respect, properly suited to give that evidence. And
11 that evidence needs to be tested in fairness, especially if that's the underpinning for
12 valuation. And I just raise that as being indicative of the problem here in dealing with this
13 matter in such a compressed time frame where there are serious factual issues in dispute,
14 as I said, legal issues in dispute and procedural issues in -- in dispute.

15
16 Even more illuminating on this front is the company serving an affidavit yesterday. This
17 one fortunately was, or unfortunately was actually affirmed yesterday, so served the same
18 day it was -- it was affirmed but calling for completely new relief. So, and this new relief
19 is in respect of a letter of credit that is set to expire December 12th. The company surely
20 knew that this letter of credit was expiring December 12th. I -- I hope that is the case. If
21 not, we have other concerns for sure that are greater than this letter of credit issue.

22
23 But my point is, again, no ability to deal with this. The urgency is created by the company,
24 and that has been, unfortunately, the scenario in respect of this entire case. There's created
25 or manifestly created urgency upon which then the company relies on to say, We have no
26 time, we have no money, therefore, cram everything that we want through without the
27 ability to question, without giving proper procedural fairness, without the luxury of King's
28 time, as Mr. Prophet referenced, and there's nothing to see here, because there's no
29 alternative. And if you don't do that, well, there's going to be repercussions, and those
30 repercussions are in Colombia.

31
32 Again, with all due respect, the fact that there's a potential failure, which nobody wants,
33 and I would submit, won't be the result here, given the economic parties interest and those
34 who will act commercially reasonable, in any event. But that can't be the reason for the
35 Court to overstep its bounds and to -- to trample on procedural fairness, and to, in this case,
36 grant security in what we say is a completely inappropriate -- inappropriate and
37 unprecedented manner. And I'm going to say unprecedented a lot, Sir, and -- and that's
38 because you've heard from a lot of people over the 2 hours before I spoke, and Mr. Prophet
39 took you to a lot of cases and pointed to a lot of examples that support his position.

40
41 I just note that not one case was given to you that is analogous to this case in terms of a

1 precedent, and of course, the company bears the onus seeking approval on this application
2 for what is extraordinary relief. I -- I want to just step back a touch, if I may, and I -- I --
3 this is unfortunate, just because we've had to deal with three different Judges in a very short
4 period of time, and having to play catch up, and appreciate especially, Sir, you taking the
5 time to -- to dig into all of the materials. But Mr. Prophet started by way of a -- a
6 chronology, and he started that chronology on November 18th, 2025 and with respect, Sir,
7 I'd like to provide you with some more chronology. I think you need more background in
8 order to better understand this current situation the company finds itself in and what's being
9 requested in this context.

10
11 So obviously, Sir, Macquarie, as you know, is a large international financial institution.
12 We've heard that they -- they're owed here as the sole secured creditor, over for
13 approximately \$40 million -- all these dollars are going to be in US dollars -- and you've
14 heard about Canacol's core business being the development and production selling of
15 natural gas in Colombia. To be clear though, Sir, those -- those operations include a main
16 operating subsidiary, the -- so a separate company. Its own separate subsidiary is a
17 Colombian company, not a Canadian company. The assets of the Canacol group are all in
18 Colombia, the main operating assets. The customers, you've already heard from others, are
19 Colombian customers in Colombia, and the vast, vast, vast majority of employees are in
20 Colombia.

21
22 So, it is really a good question as to why we're here in Alberta, dealing with the *CCAA*
23 proceeding. And the only tie -- the only tie, Sir, is that Canacol has a Canadian holding
24 company in Alberta. It has no assets other than monies on deposit in Canada. So, my
25 friends, counsel for the Monitor and in their materials make a big deal of Macquarie not
26 having security in Canada. There's no assets in Canada. There -- the assets that are there
27 are a minimal account in respect of monies, which I'll explain in a second, that are simply
28 there to pay for maybe Canadian employees and debt service, which there is none that is
29 happening.

30
31 So Canacol sells its gas to those branches of the Colombian government, receives payment
32 for those and then those recoveries and -- and revenues for the company are deposited into
33 these accounts in Colombia and in the US. And in the ordinary course, as I -- as I
34 mentioned, there might be some money that would make its way from those foreign
35 jurisdiction accounts to Canada to pay some of the debt payments, which aren't happening
36 now. But -- but that's it, in terms of the -- in Canada. So, Canacol then, at some point, is
37 looking to raise money. And in 2021 -- November 2021, they issued these unsecured notes
38 and those total some 500 million. So that's November 2021, 500 million notes are there on
39 an unsecured basis.

40
41 In 2023, February of 2023, Canacol enters into a \$200,000,000 revolving credit facility

1 with the syndicate of banks -- banks that you've heard about: again, all in an unsecured
2 basis. So, we have 500 million unsecured notes that are in place since 2021, the banks come
3 in 2023, February unsecured 200 million. As explained in the company's materials, they -
4 - the company starts to encounter difficulties, or difficulties continue, and in 2024 in
5 particular -- so that's just last year -- they require additional liquidity. Did Canacol get that
6 liquidity from the banks holding the 200 million of unsecured debt? No. Did they get it
7 from the Noteholders that held 500 million of unsecured debt? No. So last year, Sir, it was
8 our client, Macquarie, that provided Canacol with the liquidity it needed.

9
10 So just last year, in September of 2024, Macquarie entered into a secured term loan with
11 Canacol, and it provided an aggregate commitment of 75 million, and that, as we
12 mentioned, is what's owed under that is approximately 40 million. So last year, in
13 consideration for that term loan that the banks knew about and were present for, the
14 Noteholders knew about and were present for, and either consented or the documentation
15 obviously provided for the ability to grant security, Macquarie obtained a fulsome security
16 package, and that included, as one would expect, first ranking security over all of Canacol's
17 main assets -- and those assets are all in Colombia -- over the accounts in Colombia and
18 into the US, where there are the -- operations as I mentioned, were deposited. And in
19 addition, Macquarie also obtains control accounts on those deposits in the US, and with
20 respect to the holding companies, Macquarie also has the pledge of shares by those holding
21 companies, including the Canadian holding companies, of the shares of its subsidiaries. So
22 that's the -- the security package.

23
24 We're now finding ourselves a year, just over a year later, after obtaining the benefit of the
25 Macquarie term loan for the granting of that first security, and we have Canacol and the
26 group of Noteholders, the 500 million unsecured Noteholders, asking this Court in Canada
27 to undo all of that first ranking priority security granted a year ago. And over the assets that
28 are located in Canada on the basis of having a Canadian Holdco in place with no assets.
29 Again, unprecedented, Sir. You were not presented it, and I submit that the company is not
30 satisfied its burden in this regard with any example of -- of such a scenario.

31
32 So, Canacol could have, but they chose not to, go into the Columbian Courts and seek
33 creditor protection for its Colombian subsidiary. Remember, separate company in
34 Colombia to get DIP monies and to get the DIP charge to prime over the secured assets in
35 Colombia. Well, why didn't they do that? Obviously, it's not permitted, as you've seen from
36 our -- the expert report of Mr. Velez-Cabrera, which is the only uncontroverted expert
37 opinion provided in respect of Colombian law before you, Sir. And he was, as you will see
38 from his CV, I won't take you to it, but he was actually the former superintendent of
39 Columbia, and that is the head of the superintendency of companies that you heard Mr.
40 Prophet talk about, and as being the insolvency authority for companies, and the sole
41 tribunal in Colombia. That's the tribunal that, if it gets to that point, that Canacol will have

1 to go before to seek recognition.

2
3 With respect, Canacol is, instead of taking that path, Sir, is attempting a back door
4 approach, and they're trying to obtain a Canadian order, giving them this extraordinary
5 relief, and then trying to take their chances down there to just get a recognition order in
6 Colombia. So, they'll try to lead on the Colombian court on the basis of comity,
7 international cooperation, UNCITRAL, you heard about, which, again, by the way, our
8 expert you will have seen in the material, says won't work anyway in Colombia. So, we
9 would submit that this back door approach should not be endorsed by -- by this Court.

10
11 If the Court grants the priming relief over the assets here, which are located in a foreign
12 jurisdiction here in Colombia, and again, with only ties being this holding company with
13 no assets, in -- in my respectful submission, it -- Sir, it will set an extremely dangerous and
14 negative precedent. It will impact the way parties do business with international Canadian
15 companies, the way they lend or choose not to lend to those companies. If a Canadian court
16 can in a *CCAA* context, just as they are -- the applicants are putting before you now, reach
17 into those jurisdictions here in Colombia, and reorder the priorities of security, including
18 important rights of secure creditors, irrespective of the own local law that materially differs
19 from, in this case, Canadian law.

20
21 So, this is not in my respectful submission, sir, just not another *CCAA*, and this is just not
22 another DIP application. It's completely unprecedented, and does have these far reaching
23 implications, and I -- I don't say that lightly. It also has extreme material prejudice to
24 Macquarie as the sole securer, and again, the proof is in the pudding here. Why -- I come
25 back to why didn't Canacol just file for insolvency protection for its Colombian
26 (INDISCERNIBLE) in Colombia. Why is so much of the availability of the DIP funding
27 under this proposed DIP facility, contingent on and tied to Colombian recognition orders.
28 And I'd submit to you that the answer is plain and obvious, and that is because Colombia
29 is the key here. The main operating company is in Colombia as I said, the assets are in
30 Colombia, and Colombia does not permit a Priming DIP.

31
32 So, with that context and -- and with the importance of the issues at hand and given the
33 prejudice to Macquarie as sole senior securer here --

34
35 (WEBEX AUDIO INTERRUPTED)

36
37 MR. PASQUARIELLO: Sorry, I may have cut out there. And that is -- I
38 said that we would expect the fulsome process, both in terms of the DIP solicitation process
39 itself, and in terms of this litigation schedule leading to the Court's decision on such a
40 matter. But instead, we've been under constant time pressures, and it would be extremely
41 prejudicial in terms of jamming through approvals of a security position in respect of a

1 Colombian company and its assets to the tune of a \$67,000,000 priming charge to do it on
2 the basis of urgency. Again, this all comes down to applying it to an urgent situation, and
3 the company's materials make reference -- Mr. Bednar's affidavit, paragraph 53 and 54,
4 this is a December 5th affidavit -- tie urgency to the cashflow forecast that we're supposed
5 to see in the Monitor's second report, if you -- if you go to the Gowling's bench brief at
6 paragraph 98 and 99 you'll see the same thing tying it to the second report. But when we
7 finally got that second report, it didn't exactly say what the parties were saying it would
8 say, of course, we've had no opportunity to -- to discuss the matter. And I -- I'll -- I'll just
9 comment that Ms. Meyer's submission with respect to the ability to cross-examine, I found,
10 frankly, a bit unfortunate, especially coming from counsel for a Court Officer, to suggest
11 that in this circumstance we had opportunity to cross-examine and chose not to. But I'll --
12 I'll leave that for now, and I'll just ask you to go to, Sir, if you could go to the second report
13 of the Monitor, and in particular the cashflows that are at Appendix F.

14
15 THE COURT: All right, I am there.

16
17 MR. PASQUARIELLO: Sir, it doesn't -- with all due respect, doesn't leap
18 off the page when looking at the ending cash position at the bottom of each week that this
19 company is in need of cash. Especially, and I appreciate that -- that there is a DIP draw
20 line. For example, that the week of December -- ending December 27th, \$15,000,000 DIP
21 drop. But if one were to back out, even that DIP draw from the final ending cash of 27
22 million. Do you follow, Sir?

23
24 THE COURT: Yes, I am with you.

25
26 MR. PASQUARIELLO: Yeah. So, that would leave 12 million or so, 11.9
27 nine of cash. But also, then back out, there's a -- a line item called DIP fees and interest,
28 which, of course, if there's no DIP, those wouldn't come to fruition. So that frees up another
29 four and a half -- 4.4 million. So, there is cash in the system, even on these projections and
30 on this cashflow.

31
32 Unfortunately, as I mentioned earlier, this cashflow, also for reasons that, of course, are
33 unbeknownst to us, differs materially from the cashflows that were included in the DIP
34 modeling that was provided to Macquarie in its consideration of providing DIP financing.
35 And I -- I'm -- they're dramatically different. I can't -- I probably won't get into the
36 specifics, given confidentiality concerns, but within -- there are millions of dollars of
37 difference, and they are specific line items that differ, and every single delta that is in this
38 material, in this cashflow forecast, paints a dimmer picture from a cashflow perspective, in
39 other words, creating more of a liquidity crisis in sooner than was provided to Macquarie
40 in its DIP solicitation process material.

41

1 Furthermore, on the revenue side, you will see, I think the Monitor explained, receipts
2 come into this company at the end of each month. So, you'll see on the December 27th
3 week ending cashflows, you'll see receipts there of 19.6 or 19.8. And so, this cashflow
4 again, unfortunately, Sir, you weren't either -- you don't have the benefit or the burden of -
5 - of the prior attendances, but the Monitor filed a report prior -- as a pre-filing report, as --
6 as is -- is typical in these situations for the Monitor (INDISCERNIBLE), and in that pre-
7 filing report that was dated November 17th. That was a 6-week Cash Flow Report. I can
8 take you to it. I can take you to it, it's in the -- it's the pre-filing report of the Monitor, and
9 it's the cashflows attached to it. But I just wanted to highlight that that was a 6-week
10 cashflow for the first report on this -- for this company by KPMG, and it provided, for this
11 time period in question, revenues of something like 21.8 million as compared to the 19.6
12 million here. Again, dramatically lower here, not explained.

13
14 The further unfortunate fact is that when the Monitor was appointed for the comeback
15 hearing, the Monitor prepared its first report, and then, for some reason, instead of a
16 comparable 6-week that it prepared in respect of the pre-filing period, it produced a 4-week
17 cashflow, and it eliminated the week that had passed, obviously since the hearing, initially
18 to the comeback, but also eliminated this week of December 27th. It eliminated this week
19 where all of this revenue comes into the company. Again, painting a very different picture
20 than what was provided for even November 17th. And now here again, without a basis of
21 comparison and now we have a 10-week, and the -- and there's no variance report as
22 between any of the three that I just -- cashflows that I've just highlighted. So, it's extremely
23 difficult and burdensome to try to follow the bouncing ball, especially where it's served at
24 9 PM the night before.

25
26 So, as part of the request, I would certainly request that the Monitor be directed into the
27 future to provide a consistent cashflow with a variance in respect of the same time period,
28 and comment on it on a go-forward basis, as opposed to the shift.

29
30 I -- I should also point out other discrepancies are, for example, the capital expenditures
31 line, Sir. So, you'll see -- I'll just keep pointing to this December 27th. That December 27th
32 line on capital expenditures is 3.4 million. Again, in that pre-filing report, not a month ago,
33 November 17th, the Monitor, the proposed Monitor at the time, had a \$2.4 million dollar
34 proposed cash -- capital expenditure for that number. Again, these numbers may be influx,
35 I -- I -- I appreciate that, but a) the timeliness of disclosure is problematic, and b) every
36 variance goes in the exact same direction.

37
38 You'll also see in this cashflow, continuing on that capital expenditure line, you'll see that
39 up until the end of December, there's a million, a million and a half, 3 million, as it pops
40 from what I mentioned before was a supposed previously, 2 million. And then in January,
41 those numbers escalate dramatically every week in terms of the expenditures of this

1 company. These expenditures, Sir, are not ongoing operational expenses; those are
2 captured in the operating expense line, three lines above it. These capital expenditures are
3 primarily new exploration and drilling, which in our affidavit material, as we commented
4 on that as being -- these are the risky activities that the -- the company is risking dollars
5 for, and we would argue for the benefit of the unsecured holders of the notes/DIP lenders,
6 and not for Macquarie.

7
8 So, I raise these points not for -- not to demonstrate a degree of certainty, but exactly the
9 opposite. There's a high degree of uncertainty, a high degree of inability to obtain
10 information and question the information that is provided. And again, with these issues, to
11 the extent that new drilling capital expenditures were postponed for a week or two, the
12 urgency that you keep hearing about, the gun to your head is removed, and -- and -- and
13 again, that is aside from the capital expenditure line.

14
15 There is time to deal with matters in a more fair and even-handed reasonable approach in
16 the circumstances. Macquarie, as you know, Sir, has had 3 days, two of which being a
17 Saturday and a Sunday, to prepare and reply to the Company's application, and respond to
18 the proposed DIP facility which seeks to prime Macquarie with \$67,000,000 over
19 Macquarie's \$40,000,000, being 175 percent of Macquarie's debt position.

20
21 Mr. Prophet raised with you in a different context, the *Tacora* case, and he talked about
22 that being a contested DIP, which is absolutely correct. In -- in that case, for example, Sir,
23 and we've included the discussion in paragraph 75 of our bench brief, and you should have,
24 in addition, our book of authorities. You will see at tab 18 of that book of authorities. Do
25 you have that, Sir?

26
27 THE COURT: Yes, I am just going to it. Okay, tab 18, yes.

28
29 MR. PASQUARIELLO: You will see in the -- in the court a case in respect
30 of the very contested DIP motion that Mr. Prophet referenced, Justice Kimmel set forward
31 a litigation schedule where there was a contested DIP, and it was about a 2-week schedule,
32 and it provided -- which was, in any event, compressed. We're not talking about something
33 with respect to litigation in the ordinary courses my friends talked about that's going to be
34 months down the line. That -- that's not what we're talking about. We're talking about a
35 degree of fairness and reasonableness built within real time litigation. And this is a perfect
36 example in my respectful submission. It's over a 2-week process, provides opportunity for
37 the filing of materials, provides examinations that -- to be taken, and the exchange of
38 FATCA, leading to a hearing for half a day, provided -- and providing Justice Kimmell
39 with a fulsome record upon which she could and did issue a Reasons Decision, which in
40 my respectful submission, I would say that is not present here today for you, Sir.

41

1 Justice, you -- you also picked up on the request for adjournment, not being just tied to the
2 procedural fairness in respect of the litigation, but also in respect of the -- this -- the DIP
3 solicitation process not being fulsome. In -- in -- in our respectful submission, that process
4 has been and continues to be, extremely expedited. The Company did not reach out to other
5 market participants, and failed to canvas the market, and we're really only talking about the
6 bonds, Macquarie and the banks. So, when my friends talk about no one else is complaining
7 about the process, there's not a lot of other people to complain, and those others are
8 participants, mainly in the -- in the -- the DIP facility before you for -- for approval.
9

10 The -- I can take you to Mr. Pickard's Affidavit, if you have that.
11

12 THE COURT: Okay, I have it.
13

14 MR. PASQUARIELLO: So, if -- in paragraphs -- starting at paragraph 38
15 really through paragraph 50. I -- I -- I won't take you through each of those paragraphs, but
16 I'll -- I'll ask you to -- to reference them later. But therein it lies the concerns with respect
17 to this DIP solicitation process and why Macquarie says that the -- the process was flawed.
18 And we -- or Macquarie, recognized the challenges immediately upon being retained, and
19 you will see that we wrote to the Company and the Monitor, November 24th expressing
20 concerns with all of these timelines, and making it abundantly clear from the -- from the -
21 - the get-go that Macquarie was not amenable to having its position primed in any fashion.
22

23 Mr. Pickard continues to describe the shifting conditions and requirements of the DIP
24 solicitation process, which again extremely curtailed and with shifting information, and
25 also, you know, even -- even the request for the amount was constantly shifting during this
26 timeframe. Mr. Pickard explains that there was like, no consistency of information, the
27 diligence material was incomplete, and Macquarie was prejudiced to the -- in respect of
28 this process and wasn't really afforded a reasonable opportunity to participate
29 meaningfully. And therefore, was advancing and provided the non-binding bids that you've
30 heard about. It wasn't from lack of interest. Macquarie has already demonstrated support
31 for this company last year by providing the term loan. It was from lack of consistent and
32 reliable and timely information, lack of interaction with management and advisors to
33 properly advance and risk additional monies.
34

35 The fact that this is a compressed timeframe is unfortunate, Sir, and is also atypical, as --
36 as -- as you will -- will know, it is very often the case that these types of DIP processes
37 where companies recognize they need money, typically happen prior to the filing of a
38 CCAA proceeding, not immediately upon its commencement for a 2-week period. So, it's
39 unfortunate that the company has put its stakeholders and -- and you the Court in this
40 situation, but it is of its own making. And this was not, and continues not to be a reasonable
41 process, and my friends point to in their material to it, in effect, being saved by the business

1 judgment rule. And I would submit, Sir, as -- as provided for in the *Crystallex* decision,
2 and that's referenced in our bench brief at footnote 42, and you'll see it in our book of
3 authorities. I won't take you to it, but it -- it's clear that stands for the proposition that the
4 Court has to reach its own independent determination in respect of the appropriateness, and
5 there's not -- it won't rely on and should not rely on the business judgment of company in
6 -- in respect of -- of -- of that decision. Plus, in any event, we have no evidence in record
7 here of the company's business judgment decision.

8
9 So that -- all those reasons, Sir, ground the request for the adjournment in a short period of
10 time, the -- to the extent that the Court would -- is considering deciding the approval on its
11 merits.

12
13 Let me move to my submissions as to -- unless you have any questions, Sir, I'll move to
14 my submissions as to why Macquarie's of the view that the DIP facility should not be
15 approved. And those fall under the headings of five categories, one of which I -- I just
16 addressed, which is that the DIP solicitation process was flawed. Second being that the
17 approval would set a negative and far-reaching precedent. Third, that approval will cause
18 uncertainty in these *CCAA* proceedings. Fourth, that material prejudice will fall upon
19 Macquarie if the DIP facility is approved. And of course, Mr. Prophet, I take no issue with
20 the provisions of the *CCAA*, obviously, the core of which deals with material prejudice
21 amongst others. And fifth, that in Macquarie's view, the refusal of the DIP facility is likely
22 to lead to a better outcome in any event.

23
24 So having addressed -- and -- and, Sir, this follows our bench brief that was provided to
25 you, that we provided to your office. It may have been last night or -- or earlier today. Let
26 me -- let me address the second of those factors, which is the approval would set a negative
27 and far-reaching precedent. I've said that I, and I will repeat, that the relief today is -- sought
28 today is extraordinary and completely unprecedented and I put my friends to the test on
29 reply to put you -- put to you a case that comes close to this case. There is no example of a
30 similar contested Priming DIP, which involves just the Canadian holding company, no
31 assets that asks this Court to grant the super priority security over the assets of a foreign
32 company. So that's a Colombian company whose assets are all located in a foreign
33 jurisdiction in Colombia, and I would submit that Canacol and the proposed DIP lenders,
34 also know that this is critical and extraordinary, and that is, as I mentioned, because it's
35 built in as a condition to get recognition in Colombia. And -- and to be clear, Sir, those are
36 conditions precedent of the advance of the second monies.

37
38 There are two separate conditions. First, the company has to go before the superintendency,
39 which, by the way, I did not hear my friend say there was a set date I heard, December or
40 January. So, I don't know of a set date. If there is one, it would be helpful to know. But in
41 any event, they are to go to -- in front of the superintendency first to get recognition of --

1 generally, get recognition of the *CCAA* proceedings. And so that first hurdle will be clearly
2 contested, unfortunately, and Macquarie reserves all of its rights in that regard. And that
3 would deal with the appropriate forum, center of main interest, all of those issues, and
4 thereafter, and only if successful on that hearing at some subsequent time, at some
5 subsequent hearing, even if successful, the company would have to go and get that same
6 superintendency to issue the Colombian DIP recognition order. And it's in that regard that
7 the only evidence before you today is that of our expert, Mr. Velez-Cabrera, and I'd ask
8 you to pull up his affidavit, Sir.

9
10 Mr. Prophet pointed you to one paragraph of Mr. Cabrera's declaration, having not taken
11 any issue with him as an expert, as I would expect, him not having an issue that is, but --
12 and -- and pointed to reasonable protection, and that his point was, that's a similar concept
13 to -- to what we have and so very, very analogous law. And with all due respect, Sir, that's
14 completely inaccurate. I would ask you, go to the conclusions of Mr. Cabrera, which start
15 at paragraph, 60 through 66, and in dealing with reasonable protection, in the context of
16 recognition in -- in paragraph 64, Mr. Velez-Cabrera states: (as read)

17
18 In the absence of consent from this prime secured creditor, here being
19 Macquarie, the insolvency Judge will reject an order of a foreign court
20 as being manifestly contrary to public policy if the displacement of
21 the Original secured creditor occurs and reasonable protection is not
22 met.

23
24 In talking about reasonable protection in paragraph 62, Mr. Cabrera -- Mr. Velez-Cabrera
25 states that: (as read)

26
27 Reasonable protection means implementing measures to safeguard
28 the originally secured creditors position, that's Macquarie, which in
29 practice means that such existing creditors must receive material value
30 in the form of repayment, a substantial guarantee, or security on new
31 assets.

32
33 So real protections, not my friends giving evidence that, Oh, don't worry, under any
34 scenario, Macquarie is covered. Of course, they're covered. That's not sufficient. The
35 claims of there being no material prejudice is not sufficient. In fact, again, the only evidence
36 before you on this point is in Mr. Velez-Cabrera's declaration, paragraph 66.

37
38 A statement that the secured creditor may not be prejudice will not be considered
39 reasonable protection, and I am of the view, he being the prior superintendent, I am of the
40 view a Colombian court would not grant such relief. The common practice in Colombia is
41 to have the consent of any secure -- existing secured creditor, here Macquarie, as prying

1 such a creditor is not an executable strategy. Secured creditors priority rights in Colombia
2 need to be protected. How? With consent or material, valuable consideration;
3 uncontroverted evidence, Sir.

4
5 So, Macquarie respectfully submits that a Colombian court based on this, again,
6 uncontroverted expert evidence, would deny recognition of any attempt by this Court to
7 issue a Priming DIP order, and therefore any subsequent advance, this 30 million that
8 you've heard about under the DIP facility, is respectfully illusory and underscores the
9 impracticality of this Court approving the DIP facility. So not -- nothing to do with should
10 you, shouldn't you. It's about can you, and where does this take us, if you do.

11
12 Approving a DIP facility, Sir, that strips the creditors of bargained rights and protections
13 under foreign law would, in my respectful submission, set a very far reaching precedent
14 and raise real issues and concerns about the cross-border enforceability of Canadian
15 insolvency proceedings in foreign jurisdictions like Colombia. And also, extremely
16 importantly, would call into question comity that we've enjoyed between Canadian and
17 such foreign courts like the Colombian court. Again, this is not your run-of-the-mill *CCAA*,
18 is not your run-of-the-mill DIP. This is not your --

19
20 THE COURT:

Can I ask you here, counsel, how are Macquarie's
21 rights stripped under foreign law? Macquarie's rights in Canada right now are the right to
22 look to the security that it has, all right? And you just made the statement that, of course,
23 they are covered, and I think what you meant was that under any scenario, under any
24 method of valuation, they are covered. So, by granting this priming charge, how is your
25 client divested of rights under foreign law?

26
27 MR. PASQUARIELLO:

No, I -- I'm -- I'm saying that it's not sufficient
28 for my friends to say, in fact, that we're covered. And what I'm saying is that the foreign
29 law here, which Macquarie was cognizant of in obtaining security in Colombia from a
30 Colombian company protects secured creditors rights. It does not, under Colombian law,
31 recognize priming rights of those secured creditors, the company has chosen, instead of
32 proceeding in that jurisdiction where the assets are located that involve a Colombian
33 company, has chosen where there is no concept of priming in a DIP in a restructuring, has
34 therefore chosen to come to Canada, and in my respectful submission, try this on. Try
35 getting an order from the Canadian court, indirectly, to bring down to Colombia, to try to
36 get on a lesser standard in respect of recognition, and it's -- that is the prejudice, that
37 Macquarie has rights as a secured creditor in respect of Colombian assets, a Colombian
38 company, and it's the relief sought today by introducing a priming concept that is foreign
39 to Colombia through the *CCAA*, I would submit, is respectfully prejudicial to Macquarie.

40
41 THE COURT:

Okay, and those additional rights under

1 Colombian law, you say, well, first of all, you have the ability to consent, or Macquarie
2 would have the ability to consent or not consent. So that is one thing. The other is they
3 would have a right to be either paid out their original indebtedness from the DIP financing
4 or obtain additional security. And you are saying that by the Colombian court merely
5 recognizing a Canadian court order, that basically deprives your client, of those extra
6 attributes under Colombian law.

7
8 MR. PASQUARIELLO: I'm saying that the applicants are attempting to
9 have this Court exercise domain over the Colombian company and its assets to provide for
10 relief that otherwise is not available in Colombia itself.

11
12 THE COURT: Okay.

13
14 MR. PASQUARIELLO: Namely priming of secured creditor rights.

15
16 THE COURT: Right. But the order still has to be recognized in
17 Colombia. There still has to be some kind of proceeding in Colombia, and presumably that
18 Judge would apply Colombian law.

19
20 MR. PASQUARIELLO: Sure, Sir, that ties into my -- my -- my next point,
21 which is this just all creates complete uncertainty in these *CCA* proceedings, to the extent
22 that this Court approves the DIP facility and then will result in, unfortunately, continued
23 litigation in respect of this very issue. Macquarie's will then be put in a position where it
24 will have to oppose recognition in the US, oppose recognition in Colombia, deal with its -
25 - its rights in Canada in respect of any decision, and that additional litigation will again,
26 unfortunately detract from the company's objective of advancing a timely restructuring,
27 and those efforts which in my respectful submission could have been and can still be
28 avoided by this company.

29
30 It's not -- it's not, as my friends talked about, the -- the threat of litigation, and therefore
31 should be all -- should be avoided. It -- it is to the extent that there's material prejudice in
32 respect of actions on a foreign company with foreign assets, the secured creditor will have
33 no choice but to advance its position to protect its security. Had this company, for example,
34 advanced a DIP, as we had encouraged it, to a process that was for a DIP that was junior
35 to the senior, secured position, ee wouldn't be in this predicament.

36
37 THE COURT: Okay, it sounds to me like you want me to apply
38 Colombian law. I mean, that is what it comes down to.

39
40 MR. PASQUARIELLO: I don't want you to apply Colombian law, but I
41 do want you to be cognizant of what Colombian law says in respect of the relief that's being

1 sought before today. Sorry, there is someone who has turned their mic on. If you could
2 please mute that (INDISCERNIBLE)?

3

4 THE COURT: Okay, if there is someone who has their
5 microphone on, could it please be muted so that we can hear counsel. Okay, sorry about
6 that. Go ahead.

7

8 MR. PASQUARIELLO: No, no. No, worries. So let me -- let me get to the
9 material prejudice of an approval to -- to Macquarie. And it's important to remember and
10 to deal with the balancing of interests here. If I could ask you, Sir, to turn up our bench
11 brief?

12

13 THE COURT: (INDISCERNIBLE) --

14

15 MR. PASQUARIELLO: Yeah, in paragraph 69, the *Simpsons Island* case
16 is referenced for this proposition that -- that in order for the DIP financing with super
17 priority status to be authorized, there must be evidence, cogent evidence, that the benefit
18 of that financing clearly outweighs the potential prejudice to the secured creditors whose
19 security is being eroded. And under the heading of our material prejudice, the first aspect
20 of that material prejudice that I point you to is -- is the quantum of the DIP facility in
21 question.

22

23 Section 11.24 of the *CCAA*, Mr. Prophet spoke to you about, deals with the assessment of
24 the material prejudice, and it requires consideration of the extent to which the creditors are
25 being subordinated by a prior DIP charge coming out of that *Tacora* case as -- as well. And
26 here, Sir, the DIP facility of \$67,000,000 represents 175 percent of the 40 million owed to
27 Macquarie as being secured. It is disproportionate, to say the least, and significantly
28 impairs Macquarie's security position. And Canacol had previously, prior to Mr. Bednar's
29 late breaking affidavit pointed just to the book value or the test of -- of the assets in
30 question. But -- but that isn't the test. And when we look at and look at the market value,
31 we see and Macquarie has considerable concerns in that regard. And in paragraph 65 of
32 our brief, we reference the -- which was included in the Pickard Affidavit at paragraph 56,
33 that importantly, the bonds in the notes here are trading at 18 cents on the dollar, and that
34 has an implied value of approximately \$200,000,000 for the market cap of this company.

35

36 So that's again, should all be subject to further cross-examinations on -- on both fronts, but
37 that's not being put before you, Sir, as in to prove valuation and prove it at a level of 200
38 million. It's being proved to demonstrate that there is a high degree of variability between
39 the trading value and the asset value. And these are notes that aren't being traded by
40 strangers. These are the unsecured creditors that are the bonds, and -- and now these are
41 the same parties that are lending into this company. They are the ones who are trading at

1 these levels.

2

3 I would submit, at the very least, that demonstrates significant variability and risk in respect
4 of the valuation, all on very as I said, uneven and loose footing, from an evidentiary
5 perspective as to who's advancing valuation -- valuation numbers.

6

7 So, Macquarie would submit, Sir, that the DIP facility, therefore, is really entirely for the
8 benefit of the unsecured ad hoc group of Noteholders, and it's to deal with, as you saw, these
9 capital expenditures in large measure, that are exploratory, high risk activities. And if the
10 position here is that don't worry, there's such huge asset value behind the Macquarie
11 position, behind its secured position, then and there's therefore no prejudice to Macquarie.
12 Then there's also clearly no prejudice to the DIP facility, ranking junior to the Macquarie
13 security and ahead of other unsecured creditors. And respectfully in the circumstances,
14 Macquarie would submit that the risk here should not be borne by it, as the primary secured
15 creditor that provided a liquidity solution just last year to this company for valuable
16 consideration in the form of a fulsome security package, should not be borne by them, but
17 should be borne by the ad hoc group, and Macquarie should not be impaired to the tune of
18 approximately \$70,000,000.

19

20 THE COURT: Okay, I want to try and understand this point. So,
21 you are saying Macquarie submits that the DIP facility's entirely for the benefit of the ad
22 hoc group, because it enables Canacol to do this risky exploratory stuff, in order to further
23 develop their business, in the hope that the ad hoc groups underlying indebtedness will be
24 paid off. Did --

25

26 MR. PASQUARIELLO: In large measures.

27

28 THE COURT: -- I get all that?

29

30 MR. PASQUARIELLO: Yes, in --

31

32 THE COURT: Okay.

33

34 MR. PASQUARIELLO: -- large measures. And --

35

36 THE COURT: Okay.

37

38 MR. PASQUARIELLO: -- and --

39

40 THE COURT: Okay --

41

- 1 MR. PASQUARIELLO: I'm sorry?
2
- 3 THE COURT: But you are recognizing that the DIP facility is
4 new money?
5
- 6 MR. PASQUARIELLO: Yes --
7
- 8 THE COURT: It is always going to be --
9
- 10 MR. PASQUARIELLO: -- it's always going to be --
11
- 12 THE COURT: Yes.
13
- 14 MR. PASQUARIELLO: -- it's always going to be new money. It's not a
15 question of, is it new money? The question is, where does new money in these
16 circumstances, where should it slot in? And again, given that what you've just described,
17 and given the circumstances here, and given the high degree of comfort that's been
18 expressed to you regarding the asset value below the Macquarie security position. You
19 know, they've -- they've talked about Macquarie as only being \$40,000,000. It's only
20 \$40,000,000, of course they're covered. Well, (INDISCERNIBLE) that's great. If that's the
21 case and there is this huge cushion of security below it, then the junior advances should be
22 completely covered and fall behind it, given that they're the ones that should be bearing the
23 risk in the circumstances.
24
- 25 Again, huge cushion. They're saying, pick a number, 100 million is covered. 200 million,
26 300 million; there's hundreds of millions of dollars. If the first advance is \$15,000,000;
27 have the \$15,000,000 slot in behind the Macquarie 40 million. The rest is for another day
28 and is contingent on Colombian approvals. But to the extent that we're talking, and in any
29 event, should slot in junior, because the company and others have provided submissions
30 and evidence that there is significant asset value in this company, greater than Macquarie's
31 first 40, and -- and that gives more than enough protection for the next 67 that is the DIP
32 facility.
33
- 34 THE COURT: Okay. So, what you are saying that is the DIP
35 lender is not sticking its neck out --
36
- 37 MR. PASQUARIELLO: Not at all.
38
- 39 THE COURT: -- so it should not be entitled to some kind of
40 advantage.
41

1 MR. PASQUARIELLO: And there's no evidence in the record that the
2 DIP lenders would not provide financing on a junior basis. It -- it's not the corollary is not
3 -- it's the fact that the DIP facility is contingent on getting a priming order. It does not
4 necessarily follow, and there is no evidence that the DIP holders -- sorry, that the unsecured
5 ad hoc would not -- would definitively not provide financing here, junior to the secure
6 position of (INDISCERNIBLE). And in fact, that ties into one of my other factors, that --
7 that the refusal would likely lead to a better outcome. And I say that taking into account
8 that the ad hoc group would act and continue to act as reasonably commercial players, and
9 their exposure in this matter is unsecured to the tune of \$500,000,000.

10

11 It is not a stretch, and Mr. Pickard, in his affidavit indicates it's his view that those ad hoc
12 bond holders would step up and find a financing solution in any event, to protect their
13 economic interests, again, to the tune of 500 million of unsecured debt, if the DIP facility
14 was not approved and priming was not granted.

15

16 THE COURT: Well, no one knows.

17

18 MR. PASQUARIELLO: Well, there's no evidence to suggest that they
19 won't, and I would urge the Court to take notice of the fact that a commercial reasonable
20 player who's exposed to the tune of \$500,000,000, who where the Company says there's
21 tremendous asset value beyond the secured creditor of 40 would find a way to deal with
22 the financing issues of this company and not let its investments crater. They all have duties
23 to their own holders in their financial institutions. And --

24

25 THE COURT: But the bondholders are in position of greater
26 financial jeopardy than your client, so does that not entitle them that as the ones who step
27 up to provide the DIP financing? Are they not entitled to a measure of security through the
28 priming? Is that not what the Supreme Court of Canada talks about in *Canada North*?

29

30 MR. PASQUARIELLO: With all due respect, not in these circumstances,
31 Sir. Like, the -- they -- a priming is not a -- a -- a right. It is a -- in fact, it's quite the opposite.
32 It's -- the DIP and the DIP charge is considered to be an extraordinary remedy, as the case
33 law indicates, and -- and that's understandable. It's not -- should not be that the secured
34 creditors rights are lightly trampled on and with a charge over its own security, and so
35 they're not entitled as of right, and it's always an issue of the circumstances of each case,
36 and in this case, in these -- in this fact situation where there is this apparent, huge coverage,
37 from an asset perspective, number one, and number two, dealing with it in the context of a
38 Canadian CCAA, in respect of a Colombian company with Colombian assets, that -- that
39 cannot be in my respectful submission, ignored here. That -- that is critical in terms of
40 understanding the gatekeeper role that you as a CCAA Judge have and play throughout
41 these proceedings.

1
2 It is not uncommon for, of course, a *CCAA* judge in that scenario to disagree with the debtor
3 company and its court officer, and I would submit that this is one of those times. I'll take
4 you to our bench brief, and you will see in paragraphs 76 through 78, examples of where,
5 and as it turns out, it's primarily Justice Morawetz, as he then was in these cases, has no
6 problem in the right circumstances, telling parties in (INDISCERNIBLE), in *Nortel* and I
7 believe the *Nortel* case actually -- we will correct that. I believe the -- the cite is to a
8 different *Nortel* case, but in that, in the *Nortel* case, and in *Payless* where the company
9 comes forward and where it's supported by a court officer, in the -- in circumstances where
10 Justice Morawetz is not persuaded, given the balancing of the interests of the parties,
11 refuses and sends them back to the drawing board, recognizing the uncomfortableness that
12 that may entail.

13
14 And you will see in *Payless* in paragraph 77 in particular, there was an interim DIP order
15 there before Justice Morawetz, which did not adequately protect the interests of one group
16 of creditors, and Justice Morawetz would not recognize the order in question, and he
17 pointed to and emphasized that it was his, in fact, his role in that regard -- it was not his
18 role, rather, to resolve those DIP issues like the ones before you, and that they were to be
19 dealt with by the parties themselves. The answer was not just a DIP, and not to just prime,
20 and not to disregard the interests of creditors.

21
22 Another solution here, so I've already discussed the solution of a junior DIP, and again,
23 nothing prevented the company from -- in its DIP solicitation process for -- from pursuing
24 only a junior DIP in these circumstances. It chose not to, I would say, unfortunately and
25 that then brings us and puts us, our client and this Court, in a very difficult position having
26 made that choice.

27
28 Another solution is one that was advanced in the *Toys R Us* case and reference that in our
29 bench brief at paragraph 78, Sir. And the solution there was to have a takeout DIP. So,
30 advance a DIP at a super senior level, which includes paying out the first senior security.

31
32 There are ways to solve this issue, other than putting a gun to the Court's head on short
33 timeline, to say, put me at the front of the line immediately, because I got -- there's no
34 money, and disregard the commercial reasonableness of where this may go if you say no.
35 Disregard the bonds having \$500,000,000 of exposure, and not feeling comfortable to slot
36 in behind the Macquarie security of 40 million. What does that say that the bonds
37 themselves feel uncomfortable if that is, in fact, the case, sitting in that secondary position,
38 but that's the exact position they want to push the existing senior security to, despite all this
39 evidence you've heard -- evidence, I use that loosely -- with respect to asset value, beyond
40 Macquarie's security position.
41

1 Let me just touch on a couple of others, unless you have any questions there, Sir. Couple
2 of --

3

4 THE COURT: No, keep going.

5

6 MR. PASQUARIELLO: Thank you. A couple of other heads of prejudice.
7 One is with respect to the letter of credit, this Tranche B sub facility, and again, little
8 confusion around that issue as being discussed. But this is basically another priming feature
9 in disguise. If you go to paragraph 53, of the Pickard Affidavit, it -- it is addressed fully in
10 that paragraph. These -- do you have that, Sir?

11

12 THE COURT: I am going there. Okay, paragraph 53?

13

14 MR. PASQUARIELLO: Yeah. So, the -- these -- these LCs, these expiring
15 LCs were issued by various other lenders, these LC lenders, some of which are RCF lenders
16 as I understand it. But any exposure on those pre-filing expiring LCs would constitute
17 unsecured obligations of the company. So, if any third parties draw on those LCs, which
18 they appear entitled to do, they would hold cash for the company's obligations, and that
19 would leave the company with an unsecured, free filing obligation to the LC lender.

20

21 So that's why we respectfully submit that this is in effect, converting a pre-filing unsecured
22 claim to a priming -- a primed obligation ahead of Macquarie's security. And -- and in our
23 brief, we cite the *CanWest* case of paragraph 71 for the proposition that Justice Pepall, as
24 she then was in that case, in deciding whether a -- a DIP stressed the importance --

25

26 (WEBEX AUDIO INTERRUPTED)

27

28 MR. PASQUARIELLO: -- the proposed DIP does just that. So that, just
29 for your reference, Sir, is paragraph 71 of our brief.

30

31 Another factor here is, again, the treatment of these companies and of the approach under
32 the DIP facility, we would submit is effectively amounting to substantive consolidation.
33 The discussion around these companies as in the material always references, or, for the
34 large measure, references the Canacol's group's assets and liabilities. And it does so, even
35 though that's across a whole host of different and various companies, and those companies
36 are in multiple jurisdictions. So, it just blurs the line around geography. And that includes,
37 not -- that only includes Colombian companies, Panamanian companies, Swiss companies,
38 that are in the Canacol group structure. And again, we would submit that that type of
39 consolidation would alter creditor priorities to the detriment of Macquarie and interfere
40 with its rights.

41

1 And on that front, I point you to the *Redstone* case, paragraph 73, of our bench brief, where
2 the Ontario Court again, (INDISCERNIBLE) consolidation is extreme -- where -- sorry.
3 Justice Morawetz in that case, he declined consolidation, finding that it would be extremely
4 prejudicial to the first group of creditors in that case, and it -- it emphasized that substantive
5 consolidation is an extraordinary, equitable remedy.

6
7 A couple of features, specifically of the DIP facility, the point 2, Sir.

8
9 THE COURT: Yes.

10
11 MR. PASQUARIELLO: One is that the DIP facility itself includes in our
12 respectful submission, inappropriate, unprecedented and unearned fees, which are
13 completely out of line. I -- with all due respect, the Monitor was being extremely generous
14 in its characterization of fees under this DIP.

15
16 I'll take you to paragraph 26 of our bench brief, and you will see in the material, including
17 in Mr. Pickard's affidavit, a summary of the terms of the -- the ditch. I'm not going to --
18 not going to take you to them, and it's not controversial. They are what they are, but the
19 DIP facility obligates the DIP lenders to pay a commitment fee, and that commitment fee
20 under the DIP facility is a fee that's equal to 5 percent of the maximum amount under the
21 Tranche A. So that Tranche A is the 15 million that is contingent on Canadian order or US
22 order, and also the 30 million follow up that's contingent on the Colombian recognition
23 orders.

24
25 So, 5 percent of the 45 and it's fully earned, pursuant to its terms, upon a DIP approval
26 order by this Court, and payable in full, even though the entire tranche won't be advanced
27 unless the Colombian DIP recognition order is granted.

28
29 So, some quick math, and that could be dangerous. This way, the 5 percent of the full 45
30 million amounts to a \$2.25 million dollar commitment fee. That 2.25 commitment fee on
31 \$15,000,000 which is all that's guaranteed to be advanced in respect of an initial tranche
32 that amounts to a 15 percent commitment fee. It's 15 percent on \$15,000,000. So, in my
33 respectful submission, the 5 percent was not as my friend, Monitor's counsel described,
34 the higher end of the range. Let's look at that the Monitor included in its second report, Sir,
35 if you go to Appendix E of that second report?

36
37 THE COURT: Okay.

38
39 MR. PASQUARIELLO: The Monitor included some DIP -- current DIP
40 loan market terms that it pulled from a source, insolvency insider DIP tracker is the source
41 that the Monitor is relying on. You'll look, if I can take you to this -- the penultimate column

1 on the right, Commitment Fee is the heading. Do you have that, Sir?

2

3 THE COURT: Yes, go ahead.

4

5 MR. PASQUARIELLO: Yeah, you'll see down the line here, 1 percent, .7,
6 1.5, 0.3 percent, 1.7 percent, 0.25, 3 percent, 2 percent, 1 percent, 2 percent, .6 percent.
7 Five percent is not on the higher end, with all due respect. Five percent sets a new standard
8 ceiling. Forget about the 5 percent; the 15 percent that I've just described is astronomical
9 with all due respect, and completely out of line. And unfortunately, the Monitor did not
10 describe it that way.

11

12 The other point, with respect to the DIP facility, Sir, is again, the identity. There's no -- we
13 have not been provided with the identity of who the DIP lenders are, or how much each is
14 contributing. We don't know if there are new lenders, if they're the same lenders, and with
15 all due respect, I would submit that this Court and the stakeholders in a *CCAA* proceeding
16 here ought to know the identity and the respectful holdings of the parties that are proposing
17 a DIP facility stemming from a *CCAA* DIP solicitation process and seeking the benefit of
18 this Court for purposes of granting a DIP super priority charge. The confidentiality should
19 not be respected, with all due respect.

20

21 Let me just address a couple of points in reply.

22

23 My friend was going to or mentioned that the appropriateness of approving a DIP is tied to
24 to *Tacora* and *HBC* cases, both of which we happen to be involved in. The *Tacora* case
25 was for materially less than the -- than is before the Court now, and the priming resulted in
26 the parties breaking *pari passu* with the banks and the bonds.

27

28 The *HBC* case is a cautionary tale for this Court on approving a DIP in a hurried fashion,
29 with the threat looming overhead that the world will fall apart if a DIP is not provided, and
30 in that case, it was the secure creditors who were advancing a DIP and who were tying to
31 the DIP a Restructuring Support Agreement that would provide significant controls of the
32 restructuring going forward. The DIP was approved, and within a matter of days, literally
33 3 or 4 days, despite the company and the Monitor putting forward materials, the DIP was
34 completely re-paid and vacated. The company did not need the money in question. The
35 world did not end as predicted. There was again, there no opportunity to deal with it on the
36 timelines that were put before the Court, and I would submit that it's very analogous to the
37 situation here. That deciding these issues in a hurry up offence way leads to bad decisions
38 in my respectful submission, and that the Court should continue to operate as the
39 gatekeeper in the *CCAA* cases. It's -- our -- our system is predicated on it.

40

41 In conclusion then, Sir, if the relief sought today by Canacol is granted, again in this hurry

1 up offence, it would set a very negative and far reaching precedent in the context of not
2 only *CCAA*'s, but DIP approval orders and international commerce for Canadian
3 companies doing business abroad, not to mention the negative impact on comity with the
4 courts of Colombia.

5
6 The DIP facility is much larger than needed, and primes Macquarie's position by 175
7 percent and its proceeds are aimed at funding risky capital exploration activities that are
8 for the benefit only of the ad hoc group. And then for, in our respectful submissions, should
9 be that group that bears the risk, and not Macquarie, especially if Canacol and that group
10 feel so strongly about the unproven and untested asset value below the security secured
11 position.

12
13 Again, I'll just highlight the unprecedented request here. The request is as follows.

14
15 *CCAA* court grant a super priority property charge over the main Colombian company and
16 over all of its assets, even though the only connection to Canada is an Alberta holding
17 company with no assets other than a bank account. And do so where under Colombian law,
18 DIP Priming is not permitted, nor would an order from Canada including such priming be
19 recognized in Colombia. That -- that -- that is the ask, and in my respectful submission, if
20 this Court takes the unfortunate step of approving this unprecedented relief, Macquarie will
21 be forced to pursue litigation in Canada, the US and Colombia, thereby diverting focus and
22 resources away from the restructuring process, and that, Sir, would be to the detriment of
23 all stakeholders, including Macquarie.

24
25 Unless you have any questions those -- those are my submissions, Sir. Thank you.

26
27 THE COURT: I think I have asked you, counsel, what I have
28 wanted to ask you. I just want to talk a moment now with all of you about how to proceed
29 from here. I have got another crew coming in at 2:00; 4:00 Eastern Time. They may have
30 already arrived.

31
32 Mr. Prophet, no doubt Ms. Meyer is going to want some right of reply. So, let's start there.
33 Mr. -- Mr. Prophet, how long do you think you would be in reply?

34
35 MR. PROPHET: I would endeavor to keep my reply to 20 minutes.

36
37 THE COURT: Ms. Meyer, how about you?

38
39 MS. MEYER: Likely less than 5 minutes, Sir.

40
41 THE COURT: I do not want to keep the other group waiting for

1 too long. Let me propose this. I will hear from you, Mr. Prophet, and do whatever you can
2 to be concise, and then I think I am going to have to adjourn this matter. And I am going
3 to ask counsel, can you come back tomorrow?
4

5 MR. PROPHET: Justice, I'm happy to come back tomorrow. And
6 I just, of course, to accommodate the Court, to get people coming in, I will stick to the 20
7 minutes. If we do it tomorrow, it would -- I'm in your hands, of course, but I'm happy not
8 to rush this (INDISCERNIBLE) --
9

10 THE COURT: Well, here is the problem I have. I've got a full
11 day tomorrow too, and I have got what I know is a difficult, contested matter starting right
12 at two o'clock. What I was going to propose, Mr. Prophet, is that I let you proceed right
13 now, then I think about this overnight and give you my decision at maybe 1:00 tomorrow.
14

15 MR. PROPHET: Okay, Justice. I'm -- I'm in your hands. So, I will
16 proceed. Let me look at my notes.
17

18 THE COURT: Yes. I am going to apologize to anyone who is
19 attending for the 2:00 application. I have to spend some time with the previous application.
20 We will try to keep it as brief as possible, and as soon as it is over, I will move directly to
21 the other matter. So, I apologize for that.
22

23 Go ahead, Mr. Prophet.
24

25 **Submissions by Mr. Prophet (Reply)**
26

27 MR. PROPHET: Thank you, Justice.
28

29 My friend's submissions in response, proceed to a very significant extent as a collateral
30 attack on the orders of Justice Johnston and Justice Bourque. He says, This is extraordinary,
31 and you can -- there will be wide ranging, precedential consequences if you give the
32 company the only certainty, which is the DIP loan that is before the Court.
33

34 I disagree, of course, but I also note he is relitigating what was argued -- what was decided
35 in the two prior appearances. He will say, he would, but he won't (INDISCERNIBLE), he
36 would say that he wasn't there for the initial order that Justice Johnston found, and this was
37 not an interim finding; this is a final finding. The initial order was properly before her ex
38 parte, but when it came back before Justice Bourque, Justice Bourque on notice, which he
39 felt, and again he found was adequate notice, upheld the initial order, made the ARIO, and
40 approved because he refers to it, the decision of Justice Johnston about the authority of this
41 Court. This is not a back door. This is not proceeding in the wrong fashion; a court has

1 adjudicated -- two Justices this Court have adjudicated on the propriety of proceeding in
2 Canada.

3
4 I want to refer you to Justice Johnston's finding on this. So, if you look at the affidavit of
5 Ariane Tano (phonetic), sworn December 9. It attaches the transcripts of -- the transcript
6 of the hearing before Justice Johnston, and the transcript of the reasons of Justice Bourque.
7 I want you to go to Exhibit A, page 45 of the transcript.

8
9 THE COURT: Okay, I am there.

10
11 MR. PROPHET: I want you to go to the paragraph starting at line
12 22. This whole question was fully briefed before Justice Johnston, and then fully briefed
13 on comeback as it had to be, before Justice Bourque.

14
15 Here's the finding that Justice Bourque upheld when he made the ARIO: (as read)

16
17 Each of the subsidiaries has assets in Canada by virtue of deposits held
18 in Canadian financial institutions. Therefore, the applicants are
19 companies to which the *CCAA* applies.

20
21 If that is the case and my friend has not moved to set that aside. He argued and lost the
22 comeback hearing. He has not moved to set that aside. Not moved -- he couldn't move to
23 vary after the comeback hearing. This is -- this Court has full jurisdiction, and that's an
24 adjudication. For him to say now that this Court has no power to make an order over
25 applicants, affiliate applicants that are, to quote Justice Johnston, "companies to which the
26 *CCAA* applies", is a collateral attack, and it's completely improper, and it
27 (INDISCERNIBLE) all of his arguments that impropriety concerning your approval of DIP
28 loan over these Colombian companies and their -- and subject to recognition, their assets
29 in Columbia.

30
31 So, this is not unprecedented. This is an application of the *Statute* by a Court, this -- Judges
32 of this court, and you are to proceed, I respectfully suggest, on the basis that there's nothing
33 unusual about this. It's up to the Colombian court, and I said that before, but it's up to the
34 Colombian court to determine whether recognition will be provided. There's no question
35 of you having jurisdiction.

36
37 As for it never having been done before, that's actually not true. Whether the circumstances,
38 my friend says, are different, but his expert's report or the report -- I should say the
39 declaration of Mr. Velez, points to the *Pacific Exploration* case, and I will take you to that
40 in the Velez declaration.

41

1 Now Mr. Velez, of course, said the circumstances are entirely distinguishable, but in
2 *Pacific Exploration*, and let me get you the paragraph. Here we are, paragraphs 45 and
3 following. There's a long discussion of how *Pacific Exploration* is a case, and I'm reading
4 in paragraph 49 here, where a Canadian company with Colombian assets and subsidiaries
5 had recognition of its proceeding and of a DIP loan. I don't have the facts or report of that
6 case. I'm not going to argue the case, but it is a fact, and as I say, Mr. Velez goes to some
7 lengths to distinguish this, but it is a fact that a company whose parent was resident in
8 Canada, with subsidiaries and assets, and it's the Pacific Group of Companies with
9 operational branches in Colombia, it is a fact that the sort of order we're looking for here
10 today was made, including a DIP order.

11
12 So, it's -- this isn't unprecedented. If my friend is arguing that the circumstances are
13 different, well, that will be an interesting argument for him or his client, I should say,
14 represented by Colombian counsel, to have in Colombia. But launching the collateral attack
15 on decisions he hasn't appealed or moved to vary is not the way for him to proceed. In fact,
16 it's completely wrong.

17
18 So, I say, back to his point the approval sets a negative precedent; it doesn't, it abides by
19 the orders of this Court.

20
21 Next, my friend says, approval. I'm not even going to go into the flawed DIP process.
22 You've heard enough from me on that, that the DIP process was fair and appropriate in the
23 circumstances.

24
25 Approval causes uncertainty, my other friend's point. I say to that that the uncertainty is
26 entirely caused by his client's choices. If his client chooses to litigate in every forum
27 because they want to be paid out, which is what is behind it, then that's how uncertainty
28 will arise, and to the extent that that strategy, to secure payout by leverage, delays or
29 hinders the only actionable DIP that this company has, then the choice to create that
30 uncertainty will actually deprive the company of the only certainty that it has, which is the
31 provision of a DIP loan.

32
33 If we are -- if you, respectfully Justice, are to take my friend's submission and adjourn this
34 to permit either further discussion of a DIP that's never offered, that's never been made, or
35 further litigation, the first branch creates immediate uncertainty and deprives the company
36 of the certainty of \$15,000,000 that it desperately needs.

37
38 So, it doesn't lie in Macquarie's mouth or my friend's mouth, to say that proceeding
39 properly, as a company has done, creates uncertainty. It is Macquarie that creates the
40 uncertainty. My friend then goes into a material prejudice argument and suggests that a
41 better outcome will happen. I'm conflating his two last points.

1
2 The better outcome that my friend is arguing for, I think, and now I finally found the part
3 of the Pickard Affidavit I wanted to take you to, is best articulated in paragraph 62. I said
4 that before, but now I've found it. And -- and my friend actually been quite forthright about
5 this. In the middle of paragraph 62 of the Pickard Affidavit, if you have it, page 16?

6
7 THE COURT: Yes. Go ahead.

8
9 MR. PROPHET: : (as read)

10
11 In my view, the company --

12
13 This is Mr. Pickard, of course, or Macquarie (INDISCERNIBLE).

14
15 -- could have prioritized securing a junior DIP from the outset from
16 the ad hoc group, or alternatively, pursued a more fulsome DIP that
17 would have repaid the Macquarie term loan.

18
19 Whether or not that is permissible, and let's just say it is, that assumes endless appetite to
20 make a DIP loan. I say there are lots of assets here to back a DIP loan, but that doesn't
21 change the fact that one still has to go out and get it. Paying off the Macquarie loan as the
22 first use of dollars from a DIP loan, assuming that's permissible, is not a use that benefits
23 any of the other stakeholders. All of this is for Macquarie's interest only. The notion that a
24 second priority DIP would be available or on offer from anyone putting in new money is
25 speculative at best, and disingenuous at worst.

26
27 Mr. Pickard appears to say he believes or it's likely, and my friend tries to elaborate on this.
28 He, Mr. Pickard, tries to say that it's likely that the bond DIP participants would offer a
29 second priority DIP, and he then -- my friend, goes on to say there's no evidence that they
30 wouldn't. That's the classic proving of the -- of the negative. It's impossible, and that's not
31 a standard proof that the Company could be put to at all. What is a fact and what can be
32 proved by the evidence before the Court is that in the circumstances, a proper DIP process
33 was run, and the DIP that was offered is a first lean DIP. There's no other offer on the table,
34 and there's no other certainty for this company.

35
36 So, I think you should entirely discount the evidence, if it is evidence -- it's about a belief
37 and speculation -- of Mr. Pickard about what might or might not be out there. That is the
38 rankest of speculation, and it ought not to sway this Court in any fashion.

39
40 So, a refusal won't lead to a better outcome. It'll create the very uncertainty that I say
41 Macquarie wants in order to secure it hands, which are apparent on the -- on the face of

1 page -- of paragraph 62. I would also refer you to paragraph 65 of the Pickard Affidavit,
2 where the threat of litigation is raised again. These are all choices. These are choices made
3 by a lender who wouldn't make the credit decision to support this company. They don't
4 have to; but when they don't, the other stakeholders interests are invoked entirely, which is
5 what you're here respectfully to protect. And they're the bonds, they're the RCF, and they're
6 a broad constituency.

7
8 Justice, on fees, I want to do a little comparison. I want to go quickly to the Bednar
9 Affidavit J and K. And it's -- it's quite simple. It's an interest rate delta. So, the Macquarie
10 offer, had it been an offer, contemplated an interest rate of 14 percent. I'll find that for you
11 here. The bondholder offer, on the other hand, is at 11 percent; let me find the rate.

12
13 Here we are. Interest rate, it's at 15 in the Macquarie sheet, 14 percent per annum. Contrast
14 that, if a 3 percent interest rate over the amounts due for the -- for the term that this will be
15 outstanding, mitigates, in a very significant way, any concerns about fee. Eleven percent
16 as a -- as a rate on either the chart that the Monitor has or just generally, compared to the
17 Macquarie offer, is significantly different.

18
19 The 11 percent rate --

20
21 (WEBEX AUDIO INTERRUPTED)

22
23 MR. PROPHET: -- kicks in after the subsequent advance -- sorry,
24 there's somebody on the line there.

25
26 This is -- this is page 5 of the term sheet, section 4(b). There's a step down to an 11 percent
27 interest rate for the whole of (INDISCERNIBLE) as soon as the subsequent advance is
28 made. So, I think it's important to put that context around the rate comparison.

29
30 My friend also said that it's impossible, or words to that effect, to get recognition of a prime
31 -- of a (INDISCERNIBLE) in this case, should you make it in Colombia.

32
33 One, that's not what the Velez declaration says. Two, as I've said before, that just can't be
34 a determination for this Court, and I'll move on from that. But coming back to that point is
35 bothersome insofar as it's premised on the collateral attack, and that just can't be a basis on
36 which you proceed in. My friend should have appealed or moved to vary after he lost the
37 ARIO, and he didn't.

38
39 My friend also made a number of comments about the cashflows. I believe the Monitor
40 will respond to those. We have a proper 13-week cashflow. It's been tested by the Monitor,
41 it's an evolving situation, it's hard in the time pressures, but this cashflow is the result of

1 as much work as the Monitor could put in. The fact that it includes capital expenditures
2 that are required by the company, and the fact that my friend wants to characterize them as
3 somehow speculative or exploratory; this is an oil and gas producing company without
4 capital expenditures for -- and it's not just exploration, it's actual exploitation to -- once
5 you've found reserves, and this is an important distinction. The reserves here exist. You
6 have to put capital in to get them out of the ground. It's not -- so -- so this isn't speculative,
7 and this is capital expenditure for an oil and gas company that needs to get reserves out of
8 the ground, and that is its business. It's not capital expenditure and improving a plant or
9 something. The very product that causes its cashflow, requires what are categorized as
10 capital expenditure.

11
12 So, to say they're all about speculative exploration is wrong. To say, in fact, that they're a
13 responsible way to ensure that the company is fiscally solvent even in the midterm, or
14 solvents the wrong word, but at least that its cashflow is sustainable in the midterm is the
15 correct statement. So that's a very unfair criticism of this cashflow, and Mr. Bednar's
16 Affidavits speak to that.

17
18 Lastly, my friend was quite critical of Mr. Bednar's Affidavit evidence. And I think that's
19 wrong, and I think it's the best evidence on value and lack of prejudice that is available. It
20 came as it did, on the 9th of December, as reply only after Macquarie, in the guise of Mr.
21 Pickard, had suggested that there was a problem with the value statements that had
22 previously been made, and that somehow the bond trading range at 18 cents -- that's --
23 that's what he said. In fact, it is what he said. Somehow that suggested that Macquarie was
24 in jeopardy. This was proper reply evidence; it was prepared late into the evening on the
25 8th of December, and it was served all at once on the 9th, not through any
26 (INDISCERNIBLE), but to try -- to try vainly, as it turned out, to serve everything all at
27 once so as not to cause a plethora of emails. And that didn't happen despite the best
28 attempts, but certainly the applicants tried to provide their amended application, the
29 affidavit about the letter of credit issue, and the reply affidavit all at once, and those were
30 not ready until -- in the totality, even though the reply affidavit of Bednar was ready, until
31 later in the afternoon yesterday, the 9th of December. But the very best efforts to respond,
32 to reply to the points raised by my friend on value for the first time, in the evening of the
33 8th, or later in the day on the 8th of December, the very best efforts were put in to
34 accomplish that.

35
36 And I'll -- I'll close with this, on value. And that is your (INDISCERNIBLE) here. The
37 reserve reports that are extracted, they don't -- they're not Mr. Bednar's valuation evidence
38 they're (INDISCERNIBLE) valuation evidence; they're mandated to be prepared and were
39 prepared under required securities legislation continuance disclosure. That's a third party
40 expert statement of what the net present value after tax --
41

1 (WEBEX AUDIO INTERRUPTED)

2

3 MR. PROPHET: -- value of the proven reserves and the proven
4 improbable separately, but of the proven reserves, we'll just stick with that -- of the
5 applicants is, and that value, as I said, is a \$1,087,000,000.

6

7 So, this isn't about -- Mr. Bednar is a longtime CFO and financial executive in the oil and
8 gas industry. He knows, but I don't have to do that. What he's doing is providing recent,
9 firm, independent valuation evidence. His comparables analysis is the same. It has some
10 arithmetic, but you don't even have to go to that. I say you should, because it supports the
11 valuation in the reserve report. But there's nothing in that reply affidavit when Mr. Bednar
12 concludes by saying the value is at least 900 million dollars US, there's nothing in that
13 that's subject to doubt or subject to the idea that you have to somehow qualify Mr. Bednar
14 fully as a valuation expert. At its heart, he's reporting on facts that are separately,
15 objectively provable, and that's all he's doing.

16

17 So those are my submissions in reply, Your Honour. Let me just make sure that I've covered
18 what I needed to cover. Certainty requires that the \$15 million DIP be approved, Your
19 Honour, it's \$15,000,000 certain, it's \$30,000,000 likely. Uncertainty in peril for everyone
20 except Macquarie is introduced by their strategy; I urge you to take those submissions into
21 account, respectfully, Your Honour, and to rule in favour of the applicants and grant the
22 relief requested, particularly the approval of the DIP.

23

24 Thank you.

25

26 THE COURT: Okay. Ms. Meyer? Quickly.

27

28 MS. MEYER: Thank you, Sir. I do see Mr. Oliver has turned on
29 his camera. Shall I proceed, or --

30

31 THE COURT: Mr. Oliver, is there something you wanted to
32 say?

33

34 **Submissions by Mr. Oliver (Reply)**

35

36 MR. OLIVER: Yes, Sir, just 30 seconds. There was one item I
37 just wish to clarify --

38

39 THE COURT: Okay. Go ahead.

40

41 MR. OLIVER: -- (INDISCERNIBLE). I just wish to end any --

1 any speculation on this one point, and to ensure that you have the -- the correct facts here.

2

3 Our client, the Noteholder group, is not prepared to fund a DIP loan subordinate to
4 Macquarie. They are willing to do a loan on the terms that have been put forward in the --
5 in the existing term sheet, in priority to Macquarie, which terms were found by the Monitor
6 to be fair and reasonable.

7

8 That's it, Sir. I just wish the record to be clear. Thank you.

9

10 THE COURT:

Okay. Thank you, Mr. Oliver. Go ahead and Ms.

11 Meyer.

12

13 **Submission by Ms. Meyer (Reply)**

14

15 MS. MEYER:

Thank you, Justice Mah.

16

17 A few points. One point raised by my friend Mr. Pasquariello, is he indicated that there
18 was no evidence before the Court of the identities and commitment amounts of the DIP
19 lenders. Those are before the Court in the confidential appendices. So, just wanted to note
20 that.

21

22 With respect to the fees, with respect to the DIP lending that is proposed, and my friend
23 Mr. Pasquariello's comments on that, the Monitor addresses this at paragraph 50 of the
24 second report. It's page 26 of the PDF, and it sets out that the Monitor reviewed the fees
25 and interest terms of the DIP facilities for DIP facilities above \$20 million in the last several
26 years, and notes that the commitment fees of the proposed DIP facility are higher than the
27 DIP financing facilities reviewed in the market. And the Monitor understands that the
28 commitment fee and the lender's fees and expenses are driven by the company's urgent
29 liquidity needs, the highly compressed timeframe in which to address those liquidity needs
30 due to factors at least in part outside the company's control -- court scheduling being one
31 of those, the multi-tranche nature of the DIP facility, and the large number of participating
32 lenders. And in the face of the applicant's urgent liquidity needs and the lack of viable
33 alternative DIP proposals, the Monitor is of the view that the DIP loan agreement is not
34 overly prejudicial to any party and should be approved, and that schedule of the DIP market
35 terms reviewed is included at Appendix E to the second report.

36

37 In other words, the DIP financing is, in the Monitor's view, urgent. The DIP lenders are
38 voluntary creditors, and in these circumstances, the Monitor is satisfied that the DIP loan
39 terms are not overly prejudicial and should in our respectful submission be approved.

40

41 My friend, Mr. Pasquariello, had made the comment that what is sought here is

1 unprecedented, and you've heard Mr. Prophet's reply on that. But one point I wanted to
2 note is with respect to whether this is unprecedented or not, Mr. Velez-Cabrera's opinion,
3 which is included in his affidavit. And I'm gonna (sic) go to page 10 of the 31 page PDF,
4 includes an overview of the general Colombian insolvency regime.

5
6 At paragraph 16, there he says that the corporate insolvency law of Columbia is codified
7 in law 1116, of 20 -- 2006, pardon me. And then down at paragraph 20, he says that: (as
8 read)

9
10 Law 1116 includes the adoption of the UNCITRAL Model Law.

11
12 Which of course, is the same model law that the Canadian *CCAA* incorporates with respect
13 to foreign recognition proceedings.

14
15 And so, with respect to precedents, there's not only precedent on a broader perspective with
16 respect to the UNCITRAL Model Law, but the UNCITRAL Model Law is incorporated in
17 the Colombian insolvency regime, according to Macquarie's own expert. The Colombian
18 Court will consider the Colombian law and evidence and submissions of the parties,
19 presumably including on those UNCITRAL provisions that are incorporated under law
20 1116.

21
22 And comity and corroboration really set out that it is appropriate that the Colombian court
23 be the -- the court that addresses whether the DIP lending charge, if approved by this Court,
24 should be recognized and enforced in Colombia.

25
26 A couple more points. With respect to variances in the cashflow forecast. With respect to
27 the cashflow forecast in the pre-filing report provided in support of the application for the
28 initial order, it's important to have the context that the Monitor came on the scene only days
29 before the filing of the application for the initial order. The information and the Monitor's
30 understanding of the information has continued to evolve since then.

31
32 With respect to my friend Mr. Pasquariello's comment that the Court should direct the
33 Monitor to provide a comparison of the cashflow forecast to the previous one. That actually
34 is exactly what Appendix G to the Monitor's second report is. It's exactly that. It's a
35 comparison to the November 23rd forecast. At that comeback hearing before Justice
36 Bourque, the Monitor's first report projected that the Company would run out of cash by
37 December 19th, and that was in particular due to \$15,000,000 in letters of credit coming
38 due and needing replacement by the end of December. So, the cashflow forecast that was
39 before Justice Bourque at the application for the ARIO only went to December 19th.

40
41 Since then, the company has had some success in discussions and negotiations with

1 Promigas, which is related to the transportation of the natural gas in Colombia, and
2 Promigas has agreed that the \$15,000,000 in letters of credit do not need replacement. So
3 that's a significant part of the explanation for the variances. Mr. Bednar's Affidavit number
4 three explains, and this is filed December 8th, also explains the more recent cashflow
5 forecast variance at paragraph 54. There, it said that: (as read)

6
7 The positive variance, as I've just said, resulted from discussions with
8 Promigas following the comeback hearing, which have led the
9 Canacol group to understand that certain of the expiring LCs in favour
10 of Promigas will not need to be replaced or collateralized upon expiry
11 in December of 2025.

12
13 So, all of that is on the record, all of that has been served upon counsel for Macquarie.

14
15 Macquarie also had previous information in relation to the company and its financial
16 situation prior to the DIP selection process but also had data room access during the DIP
17 selection process. Could have asked questions regarding the cashflow forecast, could have
18 asked those of the company its advisors and the Monitor, but did not do so.

19
20 Finally, Macquarie submissions, or rather I should say, the submissions of counsel on
21 behalf of Macquarie with respect to the speculative exploration costs. My friend Mr.
22 Prophet has explained that the exploitation of known reserves and production is capex of
23 the company. But I think it's also an important point to note, Sir, that in this situation, the
24 capex effectively is operating expenditures, because the company has to continually exploit
25 and produce reserves, in order to continue to have natural gas to supply to the Colombian
26 power grid. This is a submission that has been addressed in the previous hearings on this
27 matter as well; it's not speculative.

28
29 My final point, sir, is my friend Mr. Pasquariello's submissions raises the question, at least
30 in my mind, of what exactly is Macquarie seeking to do here. There is nothing in
31 Macquarie's evidence or in the submissions of Macquarie's counsel that they actually want
32 to provide DIP financing. They had the opportunity to do so, they didn't do so. They didn't
33 do so on the second opportunity to do so within the context of the DIP selection process,
34 and they still are not offering to do so. So, it raises the question of, what is the point for an
35 adjournment? If they actually wanted an adjournment in order to provide a DIP themselves,
36 presumably they would be saying that.

37
38 In relation to that, my friend Mr. Pasquariello has referred to the November 24th 2025,
39 correspondence that Goodman says, counsel for Macquarie, had sent to the Monitors
40 counsel and also to the company's counsel. That is Exhibit A of the Pickard affidavit, and
41 it's page 20 of the PDF, Sir, if you have that?

1
2 THE COURT: Page 20?

3
4 MS. MEYERS: Yes, page 20 of the PDF.

5
6 THE COURT: Okay, I'm there.

7
8 MS. MEYERS: All right. And so, to the question of, what exactly
9 is it that Macquarie is seeking to do here by objecting and seeking an adjournment in
10 particular. You'll see in the first line of Goodman's letter -- first line of page two in
11 Goodman's letter that we're looking at here that it says: (as read)

12
13 It would be extremely unfortunate, time consuming and disruptive if
14 Macquarie is jammed and forced to argue about priming and related
15 matters at the comeback motion.

16
17 I submit that this appears to be a threat to disrupt the proceedings. That is, in fact, exactly
18 what Goodman's on behalf of Macquarie, tried and failed to do at the comeback motion.
19 And I submit, it seems that it -- perhaps that's what it's doing here today, in the
20 circumstances where it is requesting an adjournment, but it's not at all clear what exactly it
21 intends to accomplish as a result of an adjournment.

22
23 Those are my submissions, sir. I see that Mr. Pasquariello has turned on his camera. I
24 submit that there isn't a right of reply in this circumstance. Thank you.

25
26 **Decision Reserved**

27
28 THE COURT: Okay, I would like to thank counsel for their
29 submissions, and I will tell you how we are going to go forward tomorrow. What I would
30 like to do is reconvene at 1 PM, same courtroom. I am the Commercial Court Judge
31 tomorrow, so I think I can make that happen. But you will nonetheless get a confirmation
32 from the commercial court coordinator later today.

33
34 What I will decide are the following.

35
36 First of all, the stay extension. I will also decide whether or not there will be an -- an
37 adjournment with regard to the application for the DIP, and if we get past that, then I'll
38 decide whether or not the application for interim financing and charge are approved. I will
39 also deal with the new letters of credit, and I think that the payment of the critical vendors
40 as applied for would follow whether or not I approve the DIP financing.

41

1 And then I realize the sealing order is still outstanding, but I will deal with that tomorrow.

2

3 MS. MEYER: Thank you, Sir.

4

5 THE COURT: All right, Counsel. I'm going to have to terminate
6 this hearing. I'm going to take a short break while madam clerk, can check in the next
7 group.

8

9 MR. PASQUARIELLO: Thank you, Justice.

10

11 THE COURT: Thank you everyone.

12

13 MS. MEYERS: Thank you.

14

15 MR. OLIVER: Thank you.

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18 PROCEEDINGS ADJOURNED UNTIL 1:00 PM, DECEMBER 11, 2025

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1 **Certificate of Record**

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3 I, Esther Buhendwa, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of King's Bench, held in courtroom 516, at Edmonton, Alberta on
5 the 10th day of December 2025, and that I, Esther Buhendwa, was the court official in
6 charge of the sound recording machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, Su Zaherie, certify that

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

8

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

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19 TEZZ TRANSCRIPTION, Transcriber

20 Order Number: TDS-1099550

21 Dated: December 15, 2025

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