

Action No.: 2501-18462  
E-File Name: CVK25CANACOL  
Appeal No.: \_\_\_\_\_

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

IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, RSC 1985,  
c C-36, AS AMENDED

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

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P R O C E E D I N G S

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Calgary, Alberta  
November 18, 2025

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

2

3 November 18, 2025

Afternoon Session

4

5 The Honourable

Court of King's Bench of Alberta

6 Justice B.B. Johnston

7

8 C.P. Prophet

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.

9

10

11

12

13

14 B. Cohen

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.

15

16

17

18

19

20 S. Gabor

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.

21

22

23

24

25

26 K. Yurkovich

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.

27

28

29

30

31

32 J.L. Oliver (remote appearance)

For Ad Hoc Committee of Holders of Senior  
Notes

33

34 M. Wasserman (remote appearance)

For Ad Hoc Committee of Holders of Senior  
Notes

35

36 E. Paplawski (remote appearance)

For Ad Hoc Committee of Holders of Senior  
Notes

37

38 K.J. Bourassa (remote appearance)

For Agent on the Revolving Credit Facility

39 G.H. Finlayson (remote appearance)

For the Board of Directors of Canacol Energy  
Ltd.

40

41 M. Cressatti (remote appearance)

For the Board of Directors of Canacol Energy

1 Ltd.  
2 K.J. Meyer For KPMG Inc.  
3 R. Sahni For KPMG Inc.  
4 C. Brown For KPMG Inc.  
5 J. Makle Court Clerk

---

6  
7  
8 **Discussion**  
9

10 THE COURT: Good afternoon. Please be seated. All right. We  
11 will start with some introductions if we can.

12  
13 MR. PROPHET: Good afternoon, Justice. My name is Clifton  
14 Prophet. I appear on behalf of --

15  
16 THE COURT: Can you -- sorry, just give me one second.

17  
18 MR. PROPHET: Of course.

19  
20 THE COURT: If you can just mute everybody who is online.  
21 Okay. Sorry, go ahead.

22  
23 MR. PROPHET: Not at all, Justice. My name is Clifton Prophet. I  
24 appear on behalf of Canacol Energy Ltd. and its corporate affiliates who are applicants in  
25 the proceedings that have been commenced. With me are my co-counsel Mr. Sam Gabor,  
26 Ms. Katherine Yurkovich to my left.

27  
28 Also in the courtroom we have Mr. Raj Sahni on behalf of the Proposed Monitor KPMG,  
29 and we have his colleague Ms. Kelsey Milton?

30  
31 MS. MEYER: Kelsey Meyer, Justice Johnston.

32  
33 MR. PROPHET: Meyer.

34  
35 THE COURT: I thought that sounded wrong. Thanks.

36  
37 MS. MEYER: With me as well is Chyna Brown, an associate in  
38 our group.

39  
40 THE COURT: Ms. Brown. Okay.  
41

- 1 MR. PROPHET: Also in court --  
2
- 3 THE COURT: And you are all from Bennett Jones; is that right?  
4
- 5 MS. MEYER: Yes.  
6
- 7 THE COURT: Okay, yes, for the Proposed Monitor, yes.  
8
- 9 MR. PROPHET: Also in court is the representative of the  
10 Proposed Monitor KPMG, Ms. Katherine Forbes; my partner Mr. Cohen; the deponent of  
11 the affidavit, the CFO of Canacol, Mr. Bednar, Jason Bednar. Those are the people present  
12 in court.  
13
- 14 THE COURT: All right.
- 15
- 16 MR. PROPHET: I am aware of people who may be present; but I  
17 cannot see them, so I will perhaps leave that to you.  
18
- 19 THE COURT: All right. So if I could have folks who are on  
20 Webex identify themselves if they are here to make any submissions. If you are here just  
21 on a watching brief and do not want to be identified, that is fine.  
22
- 23 MR. OLIVER: Good afternoon, Madam Justice, Jeffrey Oliver,  
24 counsel to an ad hoc committee of a significant number of Canacol senior --  
25
- 26 THE COURT: Sorry, I am going to ask everybody who is not  
27 speaking to mute yourselves. I am getting significant feedback. Okay. Mr. Oliver, sorry,  
28 you are -- everybody, please --  
29
- 30 MR. OLIVER: -- for an ad hoc --  
31
- 32 THE COURT: -- mute yourselves if you are not speaking. Okay,  
33 Mr. Oliver.  
34
- 35 MR. OLIVER: Thank you. We're counsel to an ad hoc  
36 committee of a significant amount of Canacol senior notes. Thank you.  
37
- 38 THE COURT: All right.
- 39
- 40 MS. BOURASSA: Good afternoon, Justice, Kelly Bourassa. We're  
41 counsel to the agent on the revolving credit facility.

1  
2 THE COURT: Okay.  
3  
4 MR. FINLAYSON: Good afternoon, Justice. It's Gavin Finlayson  
5 and Matthew Cressatti of Miller Thomson --  
6  
7 THE COURT: Sorry --  
8  
9 MR. FINLAYSON: -- for the --  
10  
11 THE COURT: -- Gavin Finlayson and who?  
12  
13 MR. FINLAYSON: Matthew Cressatti --  
14  
15 THE COURT: Mr. --  
16  
17 MR. FINLAYSON: -- C-R-E-S-S-A-T-T-I.  
18  
19 THE COURT: Okay. And you are on for whom?  
20  
21 MR. FINLAYSON: The Board of Directors.  
22  
23 THE COURT: Of? The Board of Directors of whom? There are  
24 a lot of entities here.  
25  
26 MR. FINLAYSON: Of Canacol -- sorry, of Canacol.  
27  
28 THE COURT: Okay. Thank you.  
29  
30 MR. WASSERMAN: Good afternoon, Justice, Marc Wasserman; and  
31 my colleague Emily Paplawski is on the line with me. We represent over 40 percent of the  
32 holders of the senior notes. We also have an ad hoc committee.  
33  
34 THE COURT: Okay. Anyone else?  
35  
36 (NO AUDIBLE RESPONSE)  
37  
38 THE COURT: All right. I do have concerns. This matter was set  
39 for one hour.  
40  
41 MR. PROPHET: The material, Justice, is voluminous. It has come

1 on quickly for the reasons that are articulated in my brief and in the affidavit. I am not -- I  
2 haven't heard that there was opposition. It is a first-day order, so I can't make any  
3 commitments that way.  
4

5 THE COURT: So let -- let me just start here. Does anybody  
6 anticipate they may speak in opposition to the application?  
7

8 (NO AUDIBLE RESPONSE)  
9

10 THE COURT: Okay. All right. I mean I will let everyone  
11 address the Court; but when we have this number of parties and this magnitude of materials,  
12 I am always concerned when you set this for one hour. I think this properly should have  
13 been set for much longer.  
14

15 MR. PROPHET: The --  
16

17 THE COURT: But in any event, we are here and I am ready to  
18 proceed.  
19

20 MR. PROPHET: It's presented on an emergency basis because of  
21 the urgency and the --  
22

23 THE COURT: Right --  
24

25 MR. PROPHET: -- hour is what we could get.  
26

27 THE COURT: -- but that does not mean it should be set for one  
28 hour.  
29

30 MR. PROPHET: No. Often it's difficult to get the longer periods;  
31 but thank you very much, Justice, and we shall proceed and hope to get through it. What I  
32 would like to do to that end is I would like to ask you how you want to proceed. I can take  
33 you through my brief and the issues. I can take you to points that you are interested in. I  
34 am very much in your hands.  
35

36 THE COURT: Well, it is your application.  
37

38 MR. PROPHET: Very good.  
39

40 THE COURT: So I have read the materials or most of them. I  
41 think I have spent more time on parts of it, sped read other parts. So you can assume I have

1 some familiarity with the materials, but I certainly have not had the luxury of time to read  
2 the volumina of materials in great detail.

3

4 **Submissions by Mr. Prophet**

5

6 MR. PROPHET: I appreciate that. The best thing to do then to  
7 orient ourselves is to start from my brief if you would; and I think what we can do is just  
8 go to the issues and law section, and it will be convenient to reference --

9

10 THE COURT: What page?

11

12 MR. PROPHET: -- the facts as we go.

13

14 THE COURT: So what page? Can you please help me.

15

16 MR. PROPHET: I am coming to that. If you begin on page 10 of  
17 the brief paragraph 37.

18

19 THE COURT: All right. Thank you.

20

21 MR. PROPHET: Thank you. So before we dip into the preliminary  
22 issue which is service and then move through the other issues in the order they've been laid  
23 out in that paragraph 37, I want to provide the background here. Canacol Energy Ltd. and  
24 its subsidiaries are international gas and oil companies headquartered in Calgary with  
25 operations in Colombia primarily. They are members of the corporate group in Switzerland  
26 and Panama as well. There was contact with the United States of America insofar as their  
27 financings have been largely brokered and driven through New York, and their lenders are  
28 resident in New York. The borrower, the primary obligor on all facilities, is Canacol  
29 Energy Ltd. The other applicants --

30

31 THE COURT: Energy Ltd.?

32

33 MR. PROPHET: Yes, that is the top company. It is a public  
34 company. It is listed on the Toronto Stock Exchange. It is also listed in subordinate listings  
35 elsewhere, and it is as I say the primary obligor on all of the credit facilities. Those credit  
36 facilities are a senior secured loan with Macquarie, a revolving credit facility with a  
37 syndicate -- Ms. Bourassa is here for the agent on that facility -- and then an issue of notes  
38 under a bond indenture. The relative indebtedness down that capital stack is \$37 million  
39 US -- all figures will be in US dollars today -- 200 million and 37 million for Macquarie,  
40 200 million for --

41

1 THE COURT: Sorry, 37 is Macquarie?

2

3 MR. PROPHET: Yes, it is. 200 million for the RCF and 495  
4 million outstanding in respect of the notes for who Mr. Wasserman and Mr. Oliver appear.

5

6 So the background -- and I will spend just a few more minutes on that; I won't go to the  
7 evidentiary references because I don't think it's necessary -- but the background is that this  
8 gas and oil exploration and production company has suffered declining revenue from its  
9 gas production. Those declining revenues have placed it in a liquidity crunch which has  
10 become acute as amortization and installment payments were due on all three levels of the  
11 capital stack.

12

13 THE COURT: 25 million in November?

14

15 MR. PROPHET: 25 million, the November payments as defined,  
16 that's correct, 6.6 today to Macquarie.

17

18 So despite attempts to re-finance which Mr. Bednar provides evidence of in his  
19 affidavit -- and they were considerable -- despite efforts to re-finance --

20

21 THE COURT: Can you mute -- can you mute anyone. Everyone  
22 needs to be muted, please.

23

24 MR. PROPHET: Despite efforts to re-finance that had been  
25 ongoing for some time, time ran out; and no re-financing could be obtained. And in view  
26 of the blocked account or DACA rights of Macquarie, it was necessary to bring this  
27 application on, on an emergency basis. Discussions for re-financing and engagement with  
28 Macquarie was going on right up until yesterday.

29

30 So that's at the highest of levels what brings us here. The only other things I think that bear  
31 emphasis from the factual record --

32

33 THE COURT: I note there is a \$22 million arbitration award and  
34 a class action that has been certified.

35

36 MR. PROPHET: Yes, that's correct.

37

38 THE COURT: I can see that as well.

39

40 MR. PROPHET: Those -- those are additional challenges to the  
41 company. They are perhaps not quite as pressing as some of the others, but they are still



1 who are here. We have not heard that Macquarie will appear, but they received notice as  
2 did --

3

4 THE COURT: So you said Macquarie, RCF -- can you just  
5 repeat the three?

6

7 MR. PROPHET: Certainly, certainly. Macquarie, RCF and  
8 the -- the indenture trustee on the notes were all given formal notice.

9

10 THE COURT: And when were they given notice?

11

12 MR. PROPHET: That was this morning because it's a public  
13 company after the press release letting the market know that these proceedings were  
14 commenced.

15

16 THE COURT: All right. And that is in the credit agreements you  
17 are saying?

18

19 MR. PROPHET: Yes.

20

21 THE COURT: Okay. Thank you.

22

23 MR. PROPHET: It was an -- it was an --

24

25 THE COURT: So other than that, no notice was given?

26

27 MR. PROPHET: Other than that, no notice; and that is because  
28 this --

29

30 THE COURT: But you are saying it was press-released?

31

32 MR. PROPHET: It was press-released.

33

34 THE COURT: Okay.

35

36 MR. PROPHET: It was press-released, and then the notices under  
37 the credit instruments that I've just mentioned were given in accordance with the  
38 obligations of the company under those instruments.

39

40 So that brings us to the rule 6.4 of the Alberta Rules and *Sun Indalex* --

41

- 1 THE COURT: Can you just give me one minute, please.  
2
- 3 MR. PROPHET: Certainly.  
4
- 5 THE COURT: Okay. Go ahead.  
6
- 7 MR. PROPHET: Very good. That brings us to rule 6.4 of the  
8 Alberta Rules which is in my brief of authorities -- and I am in paragraphs 41 and 42 of my  
9 factum now -- and the *Sun Indalex* case and section 11 of the CCAA. We don't have to go  
10 to the citations here. It's sufficient to say that it's open to this Court under the rules and -- but  
11 it's particularly open to this Court under section 11 of the CCAA and the inherent  
12 jurisdiction that the Court has -- and this is flagged right on the face of the section -- to  
13 make an order without notice where a swift action is required to protect the debtor's assets.  
14
- 15 Equally under the Alberta Rules, it's open to you, Justice, to make an order without notice  
16 where there would be substantial prejudice to the applying party if notice was given. It's  
17 the position of these applicants before you today that there would be very significant  
18 prejudice if significant notice was given in the form of a freezing of the accounts that permit  
19 this company to live.  
20
- 21 THE COURT: I have also noticed that you contemplated the  
22 normal comeback hearing --  
23
- 24 MR. PROPHET: Yes. And so everyone needs their chance, just  
25 not today --  
26
- 27 THE COURT: All right.  
28
- 29 MR. PROPHET: -- in terms of notice.  
30
- 31 So I -- it's my submission then that in view of the prejudice and the risk and the authority  
32 that Your Honour has under section 11 and under 6.4, this matter can proceed effectively  
33 ex parte.  
34
- 35 THE COURT: Yes, I suggest you move on to the more  
36 substantive issues.  
37
- 38 MR. PROPHET: I'm on to the next one now, Your Honour. Thank  
39 you.  
40
- 41 THE COURT: Yes.

1  
2 MR. PROPHET: All the applicants are entitled to seek relief here.  
3 That includes the Swiss affiliates -- there are two of those -- the Panamanian affiliate --

4  
5 THE COURT: -- the Colombian and the Panamanian.

6  
7 MR. PROPHET: -- and the three Colombian affiliates including  
8 operating through the sucursales which are a species of agency and not separate corporate  
9 personality.

10  
11 I say that everyone is entitled because of the definition of company and the definition of  
12 debtor company. Section 3 as you will be aware of the CCAA outlines who the Act applies  
13 to, and it references in turn the definition of debtor company which references the definition  
14 of company. Companies are Canadian companies with some exceptions and a company  
15 incorporated anywhere so long as it has business and assets -- or assets, or assets in Canada.

16  
17 THE COURT: And you are saying it is the bank accounts that is  
18 the link?

19  
20 MR. PROPHET: I'm saying it's the bank accounts, and I am saying  
21 that form -- it is a matter of form based on the law entirely, and that runs back to an old  
22 line of cases, *Elan v. Comiskey* with the instant trust deeds that we had many, many years  
23 ago. We don't have that anymore, but this is the reason for the logic you find in both the  
24 *Global Light* case and the *Syncreon* case. In both those cases, bank deposits or trust deposits  
25 were sufficient. The Monitor's report -- and I can give you the reference -- is the evidentiary  
26 point with regard to the assets in Canada of all of the foreign subsidiaries. You will find  
27 that in paragraph 17 of the pre-filing Monitor's report.

28  
29 Based on the jurisprudence, it's therefore my submission, Justice, that the foreign affiliates  
30 are companies and, therefore, they are companies to which section 3 of the CCAA applies;  
31 and therefore, you have jurisdiction and in my submission are fully empowered to make an  
32 order that takes in all of the applicants before you here today. I am happy to take you to the  
33 references, but I think --

34  
35 THE COURT: No.

36  
37 MR. PROPHET: -- I think I don't need to. I will stop  
38 parenthetically and note that there's a significant integration here between -- and -- between  
39 the affiliates. They're dependent -- there's an interdependency. That's the bottom line. The  
40 affiliates gets financed out of Canada. Canada gets earnings, net income, net revenues. Out  
41 of the affiliates, the seat of the executive management is here in Canada.

- 1  
2 THE COURT: The head office is here?  
3
- 4 MR. PROPHET: The head office, high-level financial  
5 control -- Mr. Bednar is here behind me. This is the site of these companies. They are a  
6 true foreign group; if not here, then where?  
7
- 8 So that's -- I just think that's a good -- an important background fact. This is not purely  
9 formalistic. This is a group that's sited in this city. So are they -- they are companies. They  
10 are affiliate companies. They're all properly before you here in Calgary. Are they debtors?  
11 They only have to be insolvent if -- to be debtors.  
12
- 13 THE COURT: Within section -- under section 2?  
14
- 15 MR. PROPHET: Yes, section 2, section 2(a). It's not bankrupt, of  
16 course --  
17
- 18 THE COURT: Is it 2(1)(a) or 2(a)? I do not have my --  
19
- 20 MR. PROPHET: It's 2(1)(a).  
21
- 22 THE COURT: Yes, that is what I thought.  
23
- 24 MR. PROPHET: The first tab in my brief.  
25
- 26 THE COURT: Yes, okay.  
27
- 28 MR. PROPHET: These are debtors because they are insolvent.  
29 The insolvency is an inability to meet their liabilities generally as they fall due. You will  
30 find that in Mr. Bednar's affidavit as well, but you will also find it in the pre-filing report  
31 at paragraphs 35 and 36 where the Monitor provides its views to the same extent. There is  
32 no doubt that in this liquidity crisis, you don't even have to get to what I call the *Stelco* test  
33 which is looming or pending foreseeable insolvency, foreseeable inability to meet your  
34 liabilities generally if they fall due.  
35
- 36 THE COURT: Well, here we are today; and there is evidence  
37 that they are not meeting them.  
38
- 39 MR. PROPHET: That's exactly right. As of --  
40
- 41 THE COURT: 6.6 million today --

- 1  
2 MR. PROPHET: -- as of today -- as of --  
3  
4 THE COURT: -- 25 million --  
5  
6 MR. PROPHET: If they meet that 6.6 million, they'll be able to  
7 meet nothing else. The Monitor as I --  
8  
9 THE COURT: Sorry, they will meet the 6.6?  
10  
11 MR. PROPHET: No, they -- they --  
12  
13 THE COURT: Oh, that is what I thought.  
14  
15 MR. PROPHET: -- you know, if they do. They have not, they will  
16 not and they don't have enough, period. That then I think takes us to beyond the idea that  
17 these are debtor companies and, therefore, everything is properly before you. I won't stop  
18 on the geographic form within Canada. We've spoken about where the head registered  
19 office is and the mind and control of the company; they're all here. The reference for that  
20 is section 9 of the CCAA.  
21  
22 Your Honour, I say that within the meaning of the *Just Energy* test that it is also the  
23 case -- but I don't ask for an order for this; I just set this out --  
24  
25 THE COURT: Do I need to make a finding on that?  
26  
27 MR. PROPHET: You do not need to make --  
28  
29 THE COURT: I do not need to apply the COMI test --  
30  
31 MR. PROPHET: You do not need to.  
32  
33 THE COURT: That is what I thought.  
34  
35 MR. PROPHET: It's -- you do not -- *Cinram* would suggest to us  
36 that you ought not to, but it -- I thought it is important. It is not unusual to -- for information  
37 purposes --  
38  
39 THE COURT: Right, and I saw that. I do not need your  
40 submissions because I do not need to decide that today. That is for someone else to decide.  
41

1 MR. PROPHET: We agree on that.

2

3 THE COURT: Okay.

4

5 MR. PROPHET: I just thought I wanted to give you the  
6 information in my brief. Should you do this, should the applicants be granted  
7 protection -- and that is matter for section 11 and section 11.02 of the CCAA -- that analysis  
8 as Your Honour is no doubt aware deals with what's -- what's the point, what's the purpose?  
9 What are we protecting and what's the prejudice? Well, the point and the purpose is to  
10 permit interim liquidity measures to be established. This company is going to be actively  
11 pursuing interim financing. If you go to the --

12

13 THE COURT: And I think pursue a SISP you said potentially --

14

15 MR. PROPHET: Oh, no, three things --

16

17 THE COURT: Yes.

18

19 MR. PROPHET: -- interim financing immediately and then a  
20 tandem process of a SISP and a financial re-organization to see what sticks if you will, to  
21 be colloquial. But I think it's -- I think it is incumbent upon a company in this situation  
22 with this range of stakeholders to explore the options, and the company is actively engaged  
23 in that. In that regard it's retained an advisor, a financial advisor -- Plexus -- to search for  
24 interim financing. It is consulting with the Monitor. It has a chief restructuring advisor to  
25 attempt to achieve both a financial restructuring and to formulate a SISP that's acceptable  
26 to the stakeholders.

27

28 And I should say that the debtor company will be engaging Downs Capital structure and  
29 beyond to try and ensure that stakeholder interests are canvassed and where appropriate  
30 are -- are truly engaged with. So that's -- that's the plan going forward.

31

32 So what -- that's the purpose. What's the prejudice if not? We've talked about that already.  
33 This enterprise needs the protection in order to keep functioning, and it needs to keep  
34 functioning to serve customers in Colombia and to preserve what's there. This is value as  
35 an ongoing enterprise. Liquidation values, no one knows today; but producing the gas and  
36 not having licences cancelled, not having long-term contracts cancelled, the panoply of  
37 difficulties that the company could be in if it doesn't get protection and then get that  
38 protection recognized -- because that's another important point we'll come to --

39

40 THE COURT: Right.

41

1 MR. PROPHET: -- in the list. These things all need to happen in a  
2 cascade of sequence; otherwise, this company is going to be -- this group of companies is  
3 going to be in grave difficulty.  
4

5 So it's my submission then that exercising your authority just even for the ten days under  
6 11.02 is essential today; and I urge you in the strongest terms to do so, Your Honour. We  
7 will, of course, be back next week. We've --  
8

9 THE COURT: Do you have a date?  
10

11 MR. PROPHET: We have a date. I believe -- I believe we have the  
12 26th --  
13

14 MR. GABOR: The 26th --  
15

16 MR. PROPHET: I believe --  
17

18 MR. GABOR: -- for two and a half hours before Justice  
19 Bourque.  
20

21 MR. PROPHET: We have better time on the 26th, Your Honour.  
22

23 THE COURT: As is appropriate.  
24

25 MR. PROPHET: And as --  
26

27 THE COURT: Make sure there is reading -- if the order is  
28 granted, you need reading time, too.  
29

30 MR. PROPHET: Yes. We will also be addressing a reasonable bit  
31 of service in advance. As I said, the circumstances were challenging as we came here today.  
32 That was the issue.  
33

34 So if we're moving through my factum then, if Your Honour is satisfied that a stay and the  
35 general protections of the CCAA should be provided, then next we move to the extension  
36 of the stay. Your Honour, I should also say that subject to Your Honour's directions, we'll  
37 go through --  
38

39 THE COURT: I do not need to deal with the extension of the  
40 stay today. Is that not a matter for the 26th --  
41

1 MR. PROPHET: No, it's an extension of scope, not time.  
2  
3 THE COURT: Oh, okay, I am with you now.  
4  
5 MR. PROPHET: Yeah.  
6  
7 THE COURT: I understand.  
8  
9 MR. PROPHET: And not an --  
10  
11 THE COURT: Application to the other entities.  
12  
13 MR. PROPHET: Correct, and to the --  
14  
15 THE COURT: Okay. I am with you.  
16  
17 MR. PROPHET: -- and to the directors and officers. Scope, not  
18 time; sorry about that, Your Honour.  
19  
20 THE COURT: Okay, that is fine.  
21  
22 MR. PROPHET: What I wanted to say before we -- we got there  
23 though is that I think that having made -- what I want to do rather than go into the  
24 excruciating details of our order is when I am finished submissions on these merits we're  
25 talking about, we'll go back to a comparison of our order to the Alberta template --  
26  
27 THE COURT: Yes. There is no point comparing the order until  
28 there is an order to give.  
29  
30 MR. PROPHET: Hence, my ordering of argument, Your Honour.  
31 I just wanted to note that.  
32  
33 THE COURT: Yes.  
34  
35 MR. PROPHET: So the stay, in my submission, needs to be  
36 extended to the directors and officers. There is explicit authority, of course, under the  
37 statute for that; and I cite --  
38  
39 THE COURT: 11.03.  
40  
41 MR. PROPHET: Yeah, and I have cited --

1  
2 THE COURT: I do not need too much --  
3  
4 MR. PROPHET: That's fine.  
5  
6 THE COURT: -- on that point. I am more interested in the  
7 broader application of the stay, the other entities.  
8  
9 MR. PROPHET: Sure, sure. So that's a section 11 matter because,  
10 of course, these other entities -- and this is in the Bednar affidavit -- these other -- the two  
11 sucursal entities -- and these are the -- these are entities that exist under Colombian law,  
12 and they are required as we are advised by Colombian counsel --  
13  
14 THE COURT: Are they separate and distinct?  
15  
16 MR. PROPHET: No.  
17  
18 THE COURT: I -- this is where I have to candidly admit I was  
19 somewhat confused.  
20  
21 MR. PROPHET: It's somewhat confusing.  
22  
23 THE COURT: Okay. Well, you are going to help enlighten me.  
24  
25 MR. PROPHET: We're going to work on it together, Your  
26 Honour.  
27  
28 THE COURT: I am trying to understand how they can be  
29 included in the scope.  
30  
31 MR. PROPHET: Yes. And so I think -- I think based on the  
32 wording of our order, we can get at that; but it's simply this. We are advised by Colombian  
33 counsel that the sucursal designation is a species of agency -- and very importantly, the --  
34  
35 THE COURT: Who designates it?  
36  
37 MR. PROPHET: What's that?  
38  
39 THE COURT: Who designates it?  
40  
41 MR. PROPHET: I think you have to register, so you have to

1 actually register a sucursal entity --

2

3 THE COURT: So it is a legal construct?

4

5 MR. PROPHET: It's a construct but not a person. Now, I have this  
6 in the affidavit from Colombian counsel --

7

8 THE COURT: Yes, yes.

9

10 MR. PROPHET: So that's what I said, too. And candidly, the  
11 financing lawyers of Nelson Mullins who have acted -- who have acted as corporate  
12 counsel as well, has struggled with this for years. But what Colombian counsel has told me  
13 that the sucursal entity -- if you're a foreigner -- so the Swiss company and the Panamanian  
14 company -- if you're a foreigner carrying on business directly, employing people, buying  
15 and selling things, entering into contracts -- this is important -- in Colombia, then you need  
16 to be registered as a sucursal. But you are not -- Colombian counsel was very clear on  
17 this -- a separate legal person.

18

19 At the end of the day, you are an agent -- and in this case or your principal -- so you  
20 are -- you are contracting, you are having control and administration of property. You are  
21 not really owning it. So the contracts -- the E&P contracts for the Swiss entity and for the  
22 Panamanian entity -- there's E&P contracts below both of those -- those are held in the  
23 name of the sucursal which is a registered name, but they're -- they're not owned. They're  
24 controlled and administered. The Colombian contracting parties, the --

25

26 THE COURT: So are they considered a third party under --

27

28 MR. PROPHET: No, no.

29

30 MR. PROPHET: -- 11.02?

31

32 MR. PROPHET: No, they're not -- they're not a true third party  
33 under 11.02 which is why I'm asking for section 11. What I'm asking, in effect, is for you  
34 to extend the scope of the stay over the property administered and controlled so that when  
35 we go to Colombia for --

36

37 THE COURT: So not the entity itself --

38

39 MR. PROPHET: Not -- not the entity --

40

41 THE COURT: -- but the -- I did read that in the order. I did look

1 at how you addressed it in the order, and you seem to have drafted it over the property, and  
2 there is no reference to the so-called sucursal.

3

4 MR. PROPHET: And that I say is appropriate because the sucursal  
5 couldn't be an applicant in this court.

6

7 THE COURT: That is exactly what I was trying to understand;  
8 but you seem to be asking to include them in the scope of the application, that you are  
9 trying to ask that the stay should be extended to a non-applicant in the form of a sucursal.  
10 So I was very confused because your order is inconsistent.

11

12 MR. PROPHET: It's very confusing because I want the property  
13 of the sucursal to be protected by the stay. So the -- sorry, let me rephrase that -- the  
14 property controlled by the sucursal.

15

16 THE COURT: So you are not -- because I think in your  
17 application, you are asking for it to be extended to the sucursal entities --

18

19 MR. PROPHET: Yeah, and --

20

21 THE COURT: -- but your order is different, and now you are  
22 saying it is not the entities, it is the property --

23

24 MR. PROPHET: It is. The order has it right.

25

26 THE COURT: Okay. So tell me this. So they support the stay  
27 being extended to what, the property --

28

29 MR. PROPHET: -- controlled and administered by the sucursal  
30 which is the -- which is what Colombian counsel tells us is the case. They -- ultimately,  
31 that is --

32

33 THE COURT: And that -- is the sucursal, is there some sort of  
34 legal description or --

35

36 MR. PROPHET: Yes, the best I can do is the affidavit. I will take  
37 you to the reference if it is helpful because the affidavit reflects what Colombian counsel  
38 has told us.

39

40 THE COURT: Right.

41

- 1 MR. PROPHET: And that's the best I can do.  
2
- 3 THE COURT: Okay. So do you have any authority for courts  
4 having done this in Canada?  
5
- 6 MR. PROPHET: No. It's -- it's a matter of first instance entirely.  
7 The reason I -- but I say -- I've cited 11 and 11.02 because I say it's an analogous -- it's an  
8 analogous authority in some ways to extending a --  
9
- 10 THE COURT: So 11.02 is -- sorry, what is an analogous  
11 authority?  
12
- 13 MR. PROPHET: 11.02 let's go through briefly.  
14
- 15 THE COURT: Right, which is where the Court can extend a stay  
16 of proceeding to third parties that are integrally and closely interrelated with the debtor  
17 company's business or where doing so --  
18
- 19 MR. PROPHET: Correct.  
20
- 21 THE COURT: -- would further the purpose of the CCAA.  
22
- 23 MR. PROPHET: Correct. It doesn't strictly apply here; but if you  
24 take -- if you take your leave from that permission expressly and back into section 11, I say  
25 that you can get -- you find the authority easily to protect the property administered and  
26 controlled by the sucursal. That's my argument, Your Honour.  
27
- 28 THE COURT: Okay.  
29
- 30 MR. PROPHET: Let me just quickly find the sucursal reference in  
31 the affidavit --  
32
- 33 THE COURT: So you are saying the *JTI* factors support the stay  
34 being extended to the property controlled and administered by the sucursales; is that --  
35
- 36 MR. PROPHET: Precisely --  
37
- 38 THE COURT: Okay.  
39
- 40 MR. PROPHET: -- reasoning by analogy.  
41

1 THE COURT: And you are asking -- you are saying my -- which  
2 I know my jurisdiction under section 11 is quite broad -- but you are saying that there is  
3 no -- that 11.02 does not expressly provide; but by analogy I should be comforted in  
4 exercising my authority under section 11 that 11.02 has as its intention the inclusion of  
5 third parties in appropriate circumstances?  
6

7 MR. PROPHET: I say exactly that.  
8

9 THE COURT: Okay.  
10

11 MR. PROPHET: And it serves a restructuring purpose when we're  
12 thinking about how one exercises the section 11 jurisdiction.  
13

14 THE COURT: Okay. I think I have your point now.  
15

16 MR. PROPHET: I have a reference now for the -- yes, here I have  
17 it. It's paragraph 40 of the Bednar affidavit, and this is the advice we've had from  
18 Colombian counsel which is the backing for the discussion that you and I have just had.  
19

20 THE COURT: I would anticipate -- anyways, that is fine. Okay,  
21 yes.  
22

23 MR. PROPHET: Okay. I am happy to hear from you, Your  
24 Honour, if you have got any --  
25

26 THE COURT: No, that is okay. I think you have answered my  
27 questions, but that was probably the biggest --  
28

29 MR. PROPHET: Yes.  
30

31 THE COURT: -- concern I had.  
32

33 MR. PROPHET: Yes.  
34

35 THE COURT: Okay.  
36

37 MR. PROPHET: It is a request for extraordinary jurisdiction that I  
38 say it's appropriate.  
39

40 THE COURT: Right. But it still has to be -- you still have to get  
41 jurisdiction from Colombia in any event --

1  
2 MR. PROPHET: We are going down to Colombia.  
3  
4 THE COURT: -- even if I say it is appropriate I assume.  
5  
6 MR. PROPHET: We are going down to Colombia. But on the  
7 basis that this is the initiating and the parent proceeding which it really is, we need to start  
8 from here.  
9  
10 THE COURT: Okay.  
11  
12 MR. PROPHET: And I need to convince you -- I need to satisfy  
13 you, Your Honour, that you have authority to start in that fashion.  
14  
15 THE COURT: Okay.  
16  
17 MR. PROPHET: Very good. KPMG is a professional Monitor  
18 across the country and --  
19  
20 THE COURT: You do not have to explain KPMG.  
21  
22 MR. PROPHET: -- I didn't believe --  
23  
24 THE COURT: I am very familiar with them. I know they are  
25 very qualified. The question is -- and they have consented to act I see.  
26  
27 MR. PROPHET: They consent. The consent is in the record.  
28  
29 THE COURT: Yes, I saw that.  
30  
31 MR. PROPHET: Foreign representative, at 56 of the CCAA, it  
32 specifically authorizes orders designating and authorizing foreign representatives to take  
33 these proceedings elsewhere. As the evidence indicates in this case, that's going to be vital  
34 both in New York and in Colombia. The applicants have liaised significantly with counsel  
35 who are -- should this Court see fit to make an order are awaiting -- awaiting the appearance  
36 in their jurisdictions of KPMG as foreign representative.  
37  
38 I will stop and say it's particularly I think important to do this insofar as the proceedings  
39 that are contemplated in Colombia because that I think may give the Colombian authorities  
40 more comfort if a properly-appointed court officer is appearing before them rather than just  
41 a company. And I -- again, 56, I don't think we need to go too far there --

- 1  
2 THE COURT: No.  
3
- 4 MR. PROPHET: -- but you have express authority, and this has  
5 been done -- there's a good quote from PT Holdings --  
6
- 7 THE COURT: I do not need to hear it, yes.  
8
- 9 MR. PROPHET: It's in the -- I wasn't going to read it.  
10
- 11 THE COURT: I think we can move on to the charges if that is  
12 where you are going next.  
13
- 14 MR. PROPHET: That's next. So in keeping with 11.001, all of the  
15 relief sought on this application is the -- the least possible if you will what is -- what is the  
16 minimum required; but that's particularly true with the administrative charge and the  
17 directors' charge.  
18
- 19 THE COURT: Well, I do not have any questions as it relates to  
20 the administrative charge. I take the evidence that this is a fairly complex and multi-  
21 jurisdictional matter. So I get that. Where I am, I will tell you, struggling on -- on the initial  
22 basis is on the directors' charge because certainly one of the things I need to take account  
23 of I assume is whether there is existing, you know, insurance in place. And it does, indeed,  
24 appear that there is; but there is nothing here saying the magnitude of it, how much there  
25 is, why -- why it is insufficient other than there is -- there is potential risk and we are really  
26 worried. But I did not see -- there is a bit of a paucity of evidence around why a million  
27 dollars in this ten-day period is necessary given that there is extant insurance in place.  
28
- 29 MR. PROPHET: So let me answer that with the second aspect of  
30 that comment first, Your Honour, if you will. In the proposed -- in the pre-filing report of  
31 the Proposed Monitor --  
32
- 33 THE COURT: M-hm.  
34
- 35 MR. PROPHET: -- what -- you will find a reference to the sizing  
36 of the charge for want of a better description. And it's in reference to --  
37
- 38 THE COURT: They say it is two weeks' salary. But so what? I  
39 mean it is two weeks' salary, but that does not tell me anything other than there is a lot of  
40 employees.  
41

1 MR. PROPHET: The employee evidence is elsewhere, so we  
2 already know that.

3

4 THE COURT: Pardon?

5

6 MR. PROPHET: The employee evidence is elsewhere, so --

7

8 THE COURT: Right --

9

10 MR. PROPHET: -- we already know that.

11

12 THE COURT: -- I saw that.

13

14 MR. PROPHET: Yeah.

15

16 THE COURT: But what I am saying is I know there are a  
17 number of employees here. It is large, it is complex, it is -- I get all that. But the fact of the  
18 matter is there is no evidence on what is -- what does the D&O insurance cover? What -- it  
19 says oh, there is lots of exclusions, but what are they? Like, what are the exclusions? I  
20 just -- I do not see on the initial stay why it is necessary because as you know, it is limited  
21 to what is reasonable for the stay period.

22

23 MR. PROPHET: Yes. And the difficulty is one of failure in -- of  
24 course, in the short-term initial stay period. What I can tell you about the insurance is  
25 that -- the magnitude of the insurance is substantial. I cannot read it --

26

27 THE COURT: But it is not before me.

28

29 MR. PROPHET: No, I appreciate that.

30

31 THE COURT: Yes.

32

33 MR. PROPHET: It is not evidence. So --

34

35 THE COURT: Right.

36

37 MR. PROPHET: -- what is -- there is evidence though -- and it's  
38 the evidence you have referred to -- the evidence is not highly specific, but the evidence is  
39 nonetheless admissible in this court; and I -- here we are on the first day. I do not have  
40 standing before you a thorough going rigorous analysis of the inclusions or exclusions of  
41 the policy --

1  
2 THE COURT: Right. But presumably they would know the  
3 level of insurance, the deductible, the basic 101 of the --  
4  
5 MR. PROPHET: Sure, well --  
6  
7 THE COURT: -- insurance policy --  
8  
9 MR. PROPHET: -- I can -- I -- the amount of the insurance is  
10 known, so I can -- I can -- we can -- if you need evidence on it -- the CFO is here -- I can  
11 tell you what that is. I think it's \$80 million; and if I'm wrong, the CFO will correct me.  
12 That's not before you, but if you --  
13  
14 THE COURT: No, it is not.  
15  
16 MR. PROPHET: -- if you needed --  
17  
18 THE COURT: But in any event --  
19  
20 MR. PROPHET: -- evidence on that, I can -- that can be obtained  
21 right here. It's the -- the insurance is substantial.  
22  
23 THE COURT: Right.  
24  
25 MR. PROPHET: The difficulties here is so are the risks with this  
26 company.  
27  
28 THE COURT: Sure.  
29  
30 MR. PROPHET: And the devil famously is in the details of the  
31 insurance. I don't have an insurance -- an international insurance opinion. I don't. That's  
32 what I would need.  
33  
34 THE COURT: So --  
35  
36 MR. PROPHET: I -- that's what I would need --  
37  
38 THE COURT: Well, at least some evidence of the value or  
39 anything. There is just really -- it is -- I will be candid with you, it is all pretty vague. You  
40 are asking for a million dollars. You are saying it is necessary in this ten-day period before  
41 the comeback hearing if this order is granted, and you are saying we are just worried. There

1 is lots of liability here. We feel uncomfortable. I mean I am grossly simplifying; but  
2 effectively, that is the evidence before the Court.

3

4 MR. PROPHET: No, I am not going to take issue with your  
5 characterization.

6

7 THE COURT: Yes.

8

9 MR. PROPHET: It would be a bad idea anyway, but I am not -- but  
10 I'm not going to take issue with your characterization of the evidence, Your Honour.

11

12 THE COURT: Yes.

13

14 MR. PROPHET: I am just going to -- though I am going to make  
15 an exigency point I think. This came on quickly. People were trying to re-finance. I would  
16 love to have appended to this -- whether confidentially or not to preserve privilege -- an  
17 international insurance opinion on coverage. Like, I would love to have a coverage  
18 opinion --

19

20 THE COURT: Well, I do not know that you need a coverage  
21 opinion. I think you just need some evidence, and I think there is --

22

23 MR. PROPHET: Would even just --

24

25 THE COURT: -- a paucity of evidence.

26

27 MR. PROPHET: Again, what I can tell you is this. The directors  
28 are not fully satisfied. There hasn't been an opportunity to understand that. The charge, if  
29 you are willing to grant it, is temporary. It will be fully revisited. You can -- you can  
30 imagine having -- should you see fit to grant this -- that when this comes back before you  
31 or another judge of this court that there will be fulsome evidence on the nature of the  
32 insurance coverage. It's -- this is a stop-gap.

33

34 THE COURT: I understand.

35

36 MR. PROPHET: That's -- that's what I'm putting it to you as. This  
37 is a stop-gap. And if it wasn't -- if I was here on comeback in this position, I would be  
38 mortified; but I have --

39

40 THE COURT: Well, I guess where I am struggling is I think  
41 there is a threshold under 11.001, and I think does it not have to be reasonably necessary

1 for the continued operations of the debtor company in the ordinary course during the  
2 period?

3

4 MR. PROPHET: And it's my -- it's my submission that it -- in view  
5 of the -- in view of the -- I don't put it higher than this. In view of the uncertainty and in --

6

7 THE COURT: Yes.

8

9 MR. PROPHET: -- view of the fact that it will be back in seven or  
10 eight -- in eight days --

11

12 THE COURT: Ten I think, but fair.

13

14 MR. PROPHET: Well, ten technically, but I have got to come  
15 back -- given the dates, it's going to be more like eight -- in view of that uncertainty, it's  
16 reasonably necessary because it's not in my submission reasonable given the way this case  
17 has had to come on for these directors and officers to be satisfied that in this situation  
18 they're going to be secure. It may be that I come back and see you or another judge of this  
19 court in eight or nine -- eight days and say, you know, we've had a hard look at the  
20 insurance; it's fine. Or it may be --

21

22 THE COURT: Okay.

23

24 MR. PROPHET: -- that there is an exclusion for environmental  
25 damage in a particular region in Colombia. If that's the case, I would be looking for more.

26

27 THE COURT: Okay. Well, I have your point; and you  
28 have -- you have addressed my concerns, and I appreciate that.

29

30 MR. PROPHET: Yes. I could take us back then -- so then it's my  
31 submission that given that these are not priming charges, no secured creditor needed to be  
32 given notice -- there's only one anyway --

33

34 THE COURT: So it is only -- and I did see that in the order.  
35 Macquarie is --

36

37 MR. PROPHET: Yeah.

38

39 THE COURT: -- is placed after their --

40

41 MR. PROPHET: Macquarie is --

- 1  
2 THE COURT: -- yes, the charge, yes.  
3  
4 MR. PROPHET: -- yes, it's subordinate to Macquarie, and that has  
5 to be --  
6  
7 THE COURT: Right.  
8  
9 MR. PROPHET: -- they're not here, or they weren't on notice to be  
10 here. That will be changing when we come back, but many things change when we come  
11 back potentially. But we'll give good notice to Macquarie, and we will seek to prime issue  
12 as you do with these charges. But that's not for today.  
13  
14 So, Your Honour, we're getting near the completion of the submissions that I wanted to  
15 make. I am left with my pre-filing payments.  
16  
17 THE COURT: Yes.  
18  
19 MR. PROPHET: The originating application says a million  
20 dollars, an authority to grant a million dollars --  
21  
22 THE COURT: I thought it was 2 -- oh, well, you are asking for  
23 2 is my understanding.  
24  
25 MR. PROPHET: I'm asking for 2 today. And --  
26  
27 THE COURT: Okay. And notwithstanding I said I was not  
28 going to look at the order, I am going to ask you to look at the order.  
29  
30 MR. PROPHET: We're going to look at the order if you're ready.  
31  
32 THE COURT: Because it was not clear to me when I look at 6(c)  
33 and then (d) and (e), there seems to be payments in addition to the 2 million. But I want to  
34 understand that.  
35  
36 MR. PROPHET: Okay, I am in 6.  
37  
38 THE COURT: So it says obligations and expenses owing for  
39 goods and services --  
40  
41 MR. PROPHET: Yes.

1  
2 THE COURT: -- up to a maximum of 2 million, and then it says  
3 payments required to be made -- payments to or required in respect of arrangements related  
4 to the transportation. Are those prospective payments, or are those relating to pre-filing? It  
5 was not clear to me, to be candid.  
6  
7 MR. PROPHET: So --  
8  
9 THE COURT: And again, I read -- I read this all pretty quickly,  
10 but --  
11  
12 MR. PROPHET: So I think -- what this -- I can tell you what this  
13 is simply. So if you go back to the preamble of the paragraph, so this -- this  
14 paragraph -- these two paragraphs in these usual payment clauses --  
15  
16 THE COURT: Because it says prior to or after --  
17  
18 MR. PROPHET: Yes, exactly -- exactly --  
19  
20 THE COURT: -- so it is -- it is pretty ambiguous if these are pre-  
21 filing --  
22  
23 MR. PROPHET: No, and I can help you with that. So the 2 million  
24 is explicitly for pre-filing obligations.  
25  
26 THE COURT: Right, I got that part.  
27  
28 MR. PROPHET: The (d) and (e) are -- they're signals to the ANH  
29 and to Promigas in case there is any doubt we will pay the amounts that are due to you.  
30  
31 THE COURT: Are they inclusive of the 2 million then? It does  
32 not say that --  
33  
34 MR. PROPHET: They're -- no, I -- no, they're -- they're in addition.  
35 I don't believe there's any existing owing -- like, these payments to Promigas are insured,  
36 right? They go into the trust. They never come to us, right? If you think about it -- I've  
37 described that in the affidavit. They go straight into the trust. The main -- these inclusions  
38 in paragraph 6 are there so that if a Colombian authority reads a translation of this  
39 document, they will see that we are specifically authorized to pay and I would say post-  
40 filing. I can consult with Mr. Bednar, but it's my understanding that the 2 million should  
41 be sufficient for existing payables.

1  
2 THE COURT: Because then your order needs to be changed if I  
3 grant any of this.  
4  
5 MR. PROPHET: It needs to be clarified. I will say that because  
6 this is -- I just need to ensure that this is not pre-filing --  
7  
8 THE COURT: Well, paragraph 6 expressly says -- and we will  
9 get to the order when we get there -- incurred prior to or after --  
10  
11 MR. PROPHET: Yes. I --  
12  
13 THE COURT: So it does make it clear that (d) and (e) could be  
14 pre-filing, and that would be an addition the way it is currently drafted.  
15  
16 MR. PROPHET: Which is why I say we could clarify this as --  
17  
18 THE COURT: Yes, all right.  
19  
20 MR. PROPHET: -- with regard to post-filing obligations is what I  
21 would say.  
22  
23 THE COURT: Okay. So why do you not --  
24  
25 MR. PROPHET: And we can put them in a different position, but  
26 they're there as a signal.  
27  
28 THE COURT: Okay. So why do you not tell me about why you  
29 think the pre-filing amount, why 2 million --  
30  
31 MR. PROPHET: Sure.  
32  
33 THE COURT: -- it is a pretty big amount.  
34  
35 MR. PROPHET: Sure.  
36  
37 THE COURT: And I take it -- I gather the -- the Proposed  
38 Monitor says we are going to be conservative. It is only if and when. It is -- I get all that.  
39  
40 MR. PROPHET: Yes.  
41

1 THE COURT: But it is 2 million, and it is the initial -- this is an  
2 initial application.  
3

4 MR. PROPHET: Right. So what the main -- there are two rationale  
5 for permitting pre-filing payment to suppliers, and the first is that you may be in a situation  
6 where if you don't pay a pre-filing amount to a critical supplier that threatens the operation,  
7 the critical supplier will fail.  
8

9 THE COURT: Right.  
10

11 MR. PROPHET: And if that's the case -- and when we -- when  
12 we've done this in the past, the Monitor has engaged and tried to determine the bona fides  
13 of somebody coming and saying, I can't supply you. I can't possibly put these orders in,  
14 dispatch these people to do this work if you don't pay me my pre-filing.  
15

16 THE COURT: No, I get that.  
17

18 MR. PROPHET: Yes.  
19

20 THE COURT: But what I am asking about is where do you get  
21 2 million? It is a big number.  
22

23 MR. PROPHET: I know. So that --  
24

25 THE COURT: It is an initial --  
26

27 MR. PROPHET: It comes entirely from the pre-filing report. I  
28 wanted to just give you the other rationale in this case just at the high-level concept. We're  
29 not in Colombia yet; and if we have somebody cut off a critical gas well service  
30 including -- including critical repair, it could be a big problem.  
31

32 THE COURT: I get that, but where is the --  
33

34 MR. PROPHET: Good.  
35

36 THE COURT: -- \$2 million from?  
37

38 MR. PROPHET: Pre-file --  
39

40 THE COURT: Where is the 2 million from?  
41

1 MR. PROPHET: It's --  
2  
3 THE COURT: Why 2 million?  
4  
5 MR. PROPHET: That is based on the -- the discussions that the  
6 Monitor has specifically had with the people in the financial and operational function at  
7 the company, and the Monitor has evidence of that in its report.  
8  
9 THE COURT: And that is -- the 2 million is necessary in the  
10 next --  
11  
12 MR. PROPHET: Yes.  
13  
14 THE COURT: -- ten days?  
15  
16 MR. PROPHET: It's necessary to have access to that. Whether it  
17 will be used --  
18  
19 THE COURT: Okay.  
20  
21 MR. PROPHET: -- or not --  
22  
23 THE COURT: Right.  
24  
25 MR. PROPHET: -- is the question.  
26  
27 THE COURT: Okay.  
28  
29 MR. PROPHET: It could be that --  
30  
31 THE COURT: That is what I was wanting to understand. So you  
32 are saying that the -- the Proposed Monitor supports -- they do support -- I saw that -- but  
33 they support the 2 million and that that 2 million is indeed necessary in the initial stay  
34 period?  
35  
36 MR. PROPHET: It is.  
37  
38 THE COURT: Okay.  
39  
40 MR. PROPHET: And it's to have -- hopefully it won't get used, but  
41 the Monitor in consultation with -- the Proposed Monitor --

- 1  
2 THE COURT: I think it's para 66 of their report.  
3  
4 MR. PROPHET: Yeah.  
5  
6 THE COURT: Yes, okay. Okay.  
7  
8 MR. PROPHET: Your Honour --  
9  
10 THE COURT: I just -- I wanted to push back on that, and you  
11 have answered that.  
12  
13 MR. PROPHET: No, no, that is fine. Thank you, Your Honour.  
14  
15 THE COURT: All right.  
16  
17 MR. PROPHET: So that comes to the end of the relief at the level  
18 of the things that in my view you have to consider and turn your mind to specifically. I'm  
19 happy to go through the order. I have taken your point on 6 --  
20  
21 THE COURT: No, I think I would like to hear from anyone  
22 else --  
23  
24 MR. PROPHET: Very good.  
25  
26 THE COURT: -- and then I will make a decision. And then if I  
27 grant any part of the order, we will talk about the order at that time.  
28  
29 MR. PROPHET: Very good, Your Honour. Thank you.  
30  
31 THE COURT: Okay? All right. Is there anybody who would  
32 like to address the Court? It looks like Mr. Oliver may have his camera on.  
33  
34 **Submissions by Mr. Oliver**  
35  
36 MR. OLIVER: Yes. Good afternoon, Madam Justice. Jeffrey  
37 Oliver on behalf of an ad hoc committee of the senior notes. Our clients have been over the  
38 course of the last five months attempting to engage with the company to address some of  
39 the issues that have resulted in it being here. The company has not to date been responsive;  
40 so we're, therefore, disappointed that Canacol has chosen to file without notice to our  
41 clients.

1  
2 With that said, with the increased transparency that this process should bring, we trust that  
3 the company and the Monitor will reach out to our clients and engage with them moving  
4 forwards. Our clients are available to discuss, for example, interim or other forms of  
5 financing that the company requires and our clients may be interested in providing.  
6

7 Finally, notwithstanding the fact that I'm here in light of the lack of notice, I simply put on  
8 the record that this is effectively an ex parte hearing and our clients reserve any and all of  
9 their rights with respect to this matter. Thank you.  
10

11 THE COURT: All right. Thank you very much, Mr. Oliver; and  
12 that was very succinct. I appreciate your directness. Anybody else? Ms. Bourassa?  
13

14 **Submissions by Ms. Bourassa**  
15

16 MS. BOURASSA: Good afternoon, Justice. Kelly -- yes, Kelly  
17 Bourassa on for the revolving credit facility lenders as noted previously. I would pick up  
18 the thread from my friend Mr. Oliver's comments which is we're not aware of a formal  
19 notice having been given to the RCF agent. We became aware of today's filing through the  
20 press release which I anticipate is how many people became aware of it and started making  
21 outreach to gain information and get materials including the dial-in for today's hearing. It  
22 is (INDISCERNIBLE) --  
23

24 THE COURT: I had thought your -- I had thought your client  
25 was given notice as part of the credit requirement. Did I -- they were not? I thought -- I  
26 thought he said as required under the credit agreements, they were given advance notice.  
27 You are saying it did not happen?  
28

29 MS. BOURASSA: Neither -- neither and both. Those were Mr.  
30 Prophet's submissions that notice had been given.  
31

32 THE COURT: Yes.  
33

34 MS. BOURASSA: What I am saying is I am not aware of notice  
35 having been given.  
36

37 THE COURT: All right.  
38

39 MS. BOURASSA: So whether it was given in accordance with the  
40 credit agreement to some mailbox at Deutsche Bank --  
41

- 1 THE COURT: Fair, okay.  
2
- 3 MS. BOURASSA: -- it never actually got to the people, right? So  
4 I'm not suggesting --  
5
- 6 THE COURT: No.  
7
- 8 MS. BOURASSA: -- notice wasn't given, just saying we weren't  
9 aware of it --  
10
- 11 THE COURT: Yes.  
12
- 13 MS. BOURASSA: -- because of how we came to be here today.  
14
- 15 THE COURT: And I -- I take your point, and this has happened  
16 very quickly. So I am not shocked to hear you say that. Okay. Thank you.  
17
- 18 MS. BOURASSA: And all of that, the only reason I say that is to  
19 make the point which Mr. Oliver made as well that this is an ex parte application. We view  
20 it as being ex parte. Yes, we have attended today; but we are reserving all of our rights with  
21 respect to all of the relief that has been sought today for the comeback.  
22
- 23 THE COURT: Thank you. All right. Anybody else?  
24
- 25 **Submissions by Mr. Wasserman**  
26
- 27 MR. WASSERMAN: Yes, Madam Justice, if I could, please.  
28
- 29 THE COURT: Go ahead, Mr. Wasserman.  
30
- 31 MR. WASSERMAN: So I just reiterate again, Madam Justice, we  
32 represent a group of over 40 percent of the senior notes. Our group has been organized for  
33 a number of months. Like Mr. Oliver, we've reached out to the company throughout the  
34 time period and haven't got constructive engagement from them. We are looking forward  
35 to receiving that engagement going forward. In fact, we had a constructive call with  
36 company counsel just before the hearing who provided us with input around potential  
37 financing processes and the like that we think will be constructive on a go-forward basis.  
38
- 39 From our perspective -- and I anticipate that Mr. Prophet and Mr. Sahni and KPMG will  
40 ensure that this is the case -- that there will be transparency, there will be a quality of  
41 information provided to the various stakeholder groups and that a financing process to the

1 extent that there is one -- and I understand there will be one -- will be done so on the basis  
2 where parties have an equal ability to participate in that financing process. Our group would  
3 be interested in providing that financing and participating in that process.  
4

5 The other thing that I think is a critical point to make -- to mention here, Madam  
6 Justice -- and I think Mr. Prophet did a good job of articulating it -- there's obviously other  
7 stakeholders that are part of these proceedings that aren't represented here. Sometimes we  
8 call them the vulnerable stakeholders. We understand the importance of those stakeholders.  
9 We understand the importance of ensuring that there's a successful outcome here to those  
10 local communities and the local economies, and we're aware of both of that and both -- and  
11 both in the US and Canada and obviously in Colombia.  
12

13 So our submissions here are just to indicate both to the Court and to the company, the  
14 Monitor and the other stakeholders that we are eager and willing to participate in a  
15 constructive way forward in this process and look forward to both the transparency and the  
16 quality of information flow to the various stakeholder groups.  
17

18 THE COURT: Okay. Thank you very much for your  
19 submissions. Is there anybody else that wishes to address the Court?  
20

21 (NO AUDIBLE RESPONSE)  
22

23 THE COURT: All right -- oh, sorry, yes, go ahead. Thank you.  
24 I forgot about our courtroom. I was so focused on -- on -- my apologies. Go ahead.  
25

26 **Submissions by Ms. Meyer**  
27

28 MS. MEYER: No problem, Justice Johnston. And just to  
29 confirm for the record, Kelsey Meyer from Bennett Jones on behalf of the Proposed  
30 Monitor KPMG Inc.  
31

32 THE COURT: And I gather you have heard all of the comments  
33 and have been listening intently --  
34

35 MS. MEYER: Yes --  
36

37 THE COURT: -- no doubt.  
38

39 MS. MEYER: -- of course. And so I hope to comment on some  
40 of the questions you've raised in my submissions today --  
41

1 THE COURT: Yes, thank you.

2

3 MS. MEYER: -- which I will try to -- being that we're at  
4 3:00 -- keep brief. I trust you've received the Monitor's -- Proposed Monitor's --

5

6 THE COURT: I did. And as you can probably tell, I have done  
7 my best to review the materials and -- and I have reviewed your materials as well. Again  
8 as I said, I read very quickly; but I think I have the big picture.

9

10 MS. MEYER: It does seem that way.

11

12 THE COURT: So some of the details happy to have you fill in.

13

14 MS. MEYER: Thank you. And it does certainly seem that way  
15 from your questions today, Justice Johnston, so we appreciate your attention to the  
16 materials in the short time frame given to you.

17

18 I think that the crux of this comes down to paragraph 99 of the Proposed Monitor's pre-  
19 filing report. To confirm, the Proposed Monitor -- this is the last paragraph --

20

21 THE COURT: Yes, and I think I know what it says, but you tell  
22 me.

23

24 MS. MEYER: Our view is that the relief sought is both  
25 appropriate and reasonable and that the granting of that relief will provide the applicants  
26 the best opportunity to restructure under the CCAA, thereby preserving value for the  
27 benefit of the applicant stakeholders, and the Proposed Monitor supports the applicants'  
28 application and respectfully recommends that the Court approve the relief sought.

29

30 With respect particularly to the reasonableness and appropriateness of the relief sought, I  
31 refer in particular to paragraphs 8 and 9 of the Bednar affidavit.

32

33 THE COURT: All right.

34

35 MS. MEYER: It's page 4. The Canacol Group is the largest  
36 independent natural gas exploration and production company in Colombia, and its: (as  
37 read)

38

39 ... natural gas production is a critical fuel source for Colombia's  
40 electrical grid, with the majority of its gas being sold to power  
41 generators ... any interruption or a disorderly shut down of

1 Canacol's operations would result in the immediate removal of a  
2 substantial share of dispatchable fuel and have material  
3 consequences on Colombia's grid reliability and generation output.  
4

5 THE COURT: And I think the comment was they are one of the  
6 vulnerable stakeholders.

7  
8 MS. MEYER: Right, and there are --

9  
10 THE COURT: That was not -- that is not lost on this Court.

11  
12 MS. MEYER: And there aren't just one. There's --

13  
14 THE COURT: Right.

15  
16 MS. MEYER: -- you know, a country is reliant on this company  
17 effectively is what we're saying and all of the various stakeholders associated with that.  
18 And so my submission is that a stay of proceedings and the related relief sought by the  
19 applicants is reasonable and appropriate in those circumstances, and there's a clear public  
20 interest here associated with this.

21  
22 Macquarie being the only secured lender is not being primed by any of the relief sought by  
23 the applicants today; and of course, in accordance with the CCAA, the stay that is sought  
24 can only last for ten days, and the comeback hearing has now been scheduled before Justice  
25 Bourque. At that comeback hearing, case law confirms that the onus is on the company to  
26 prove that the stay should be extended. That's set out in the *Muscletech* decision --

27  
28 THE COURT: Right, yes.

29  
30 MS. MEYER: -- and others. I do have case law I can hand up  
31 on that.

32  
33 THE COURT: Yes. I am familiar with that --

34  
35 MS. MEYER: I assumed so.

36  
37 THE COURT: -- and I think that -- if I grant the order, that is for  
38 another day.

39  
40 MS. MEYER: Yes, right.

41

1 THE COURT: Yes.  
2

3 MS. MEYER: And my point, of course, being that --  
4

5 THE COURT: Right.  
6

7 MS. MEYER: -- that is for another day; and so this is just  
8 interim relief --  
9

10 THE COURT: And there is an onus, yes.  
11

12 MS. MEYER: Right.  
13

14 THE COURT: Yes, I appreciate that.  
15

16 MS. MEYER: Thank you. I just want to briefly touch on our  
17 submissions that the Monitor's view is the Canacol Group does meet the criteria for the  
18 CCAA, that each of the entities are a company. My friend Mr. Prophet has already  
19 addressed that each of the entities has assets in Canada including assets and bank accounts  
20 in Canada in the case of the foreign subsidiaries. I won't repeat what he's already said in  
21 that respect --  
22

23 THE COURT: That is at paragraph 17 of your report I think, yes.  
24

25 MS. MEYER: That sounds right. The companies obviously  
26 have over \$5 million in debt. In fact, it's more like \$906 million US in debt.  
27

28 THE COURT: 906? I thought it was 650 US; am I wrong?  
29

30 MS. MEYER: It's paragraph 20 of the Bednar affidavit.  
31

32 THE COURT: Okay.  
33

34 MS. MEYER: The total combined liabilities of the Canacol  
35 Group are in US dollars 906,816,000.  
36

37 THE COURT: Okay, all right. I must have misread -- I had 670,  
38 so thank you for that clarification.  
39

40 MS. MEYER: Thank you.  
41

1 THE COURT: Okay.  
2

3 MS. MEYER: The companies are insolvent in that they are  
4 unable to meet their liabilities as they come due. Mr. Prophet has already spoken to that.  
5 And again, this is referenced in the Bednar affidavits with respect to the upcoming  
6 November payments --  
7

8 THE COURT: I think there is 670 million in actual indebtedness  
9 as opposed to liabilities.  
10

11 MR. PROPHET: It's the --

12

13 THE COURT: The liability number is the -- I just figured out  
14 why I had the 670, right?  
15

16 MS. MEYER: The 670 is the -- I believe that's right --  
17

18 THE COURT: -- is -- yes, okay.  
19

20 MR. PROPHET: It's -- it's the funded debt versus total liabilities.  
21

22 THE COURT: I was pretty sure I did not pull that out of the air.  
23 Now I have figured it out. So thank you.  
24

25 MR. PROPHET: I was rather frightened that I got it wrong, but I  
26 believe it's the funded debt --  
27

28 THE COURT: Yes. No, that is good because I did see  
29 the -- the -- the assets exceed the liabilities I think.  
30

31 MS. MEYER: Right. And --

32

33 THE COURT: But I get the point -- the overall point, yes.

34

35 MS. MEYER: Right. And so the overall liabilities are the \$907  
36 million --  
37

38 THE COURT: Right.

39

40 MS. MEYER: -- the debt being the Macquarie debt, the bond  
41 holder debt --

1  
2 THE COURT: 670.  
3  
4 MS. MEYER: -- and the RCF debt is where the 670 comes  
5 from --  
6  
7 THE COURT: Yes, okay. Thank you.  
8  
9 MS. MEYER: -- yes. And so, of course, we've got that looming  
10 liquidity crisis as per the *Stelco* decision that my friend has referenced including in his brief  
11 as well as the fact that there is evidence before the Court that the company is unable to  
12 meet its liabilities as they come due. You have already touched on the fact that the  
13 Monitor -- or Proposed Monitor KPMG is qualified to act as Monitor. It's a trustee and has  
14 experience and has consented to act.  
15  
16 The cash flow forecast is included at Appendix "B" to the pre-filing report. As just a few  
17 points to note on that, one point to note is that cash comes in at the end of each month; but  
18 the company prepays its suppliers.  
19  
20 THE COURT: Oh, okay.  
21  
22 MS. MEYER: And so the cash flow forecast contemplates that  
23 this will continue --  
24  
25 THE COURT: It is for 12 weeks or 13 weeks?  
26  
27 MS. MEYER: It goes until December 27th --  
28  
29 THE COURT: Okay.  
30  
31 MS. MEYER: -- the week of ending December 27th.  
32  
33 THE COURT: Okay. And it also contemplates that payroll will  
34 continue to be paid in the ordinary course and that, for conservatism, expenses are assumed  
35 to be COD in that cash flow forecast.  
36  
37 THE COURT: Okay.  
38  
39 MS. MEYER: With respect to critical vendors and some of the  
40 specific relief sought, you've already pointed out that the proposed initial order seeks the  
41 authorization to pay pre and post-filing critical vendors up to \$2 million US with the

1 approval and oversight of the Proposed Monitor if the Monitor is appointed.

2

3 THE COURT: Right.

4

5 MS. MEYER: In that regard, of course, the applicants -- in order  
6 for the applicants to continue to operate as a going concern and to provide that critical fuel  
7 source for Colombia's electrical grid, the Monitor -- Proposed Monitor is supportive of the  
8 applicants' request for that relief. And as you noted, this is addressed in the pre-filing report  
9 starting at paragraph 66.

10

11 One point to note is that with respect to that \$2 million cap, it is intended to be a cap --

12

13 THE COURT: A max.

14

15 MS. MEYER: -- keeping in mind that there's \$108 million US  
16 in unpaid trade creditor amounts; and so it is less than 1 percent. The intent is for the  
17 Monitor to -- well, in fact the order proposed contemplates that the Monitor will have  
18 oversight and approval of the amounts. And so it will be a matter of the Monitor -- Proposed  
19 Monitor reviewing requests as they're made to determine whether to approve them. And so  
20 on that basis, we submit that this request is reasonable in these circumstances.

21

22 It's important to note in this situation that the anticipated types of critical vendor payments  
23 as they're referenced in the materials include expenses in the nature of production drilling  
24 and completions. But what's important to note is that in this situation, these effectively  
25 capital expenditures are really treated as operational expenditures when you consider the  
26 fact that the applicants' ability to continue to produce consistent volumes of natural gas  
27 requires that it continue to explore and develop reserves.

28

29 And so on that basis, those may fall within the critical supplier category with respect to the  
30 vendor -- or the Monitor -- Proposed Monitor considering those with respect to whether to  
31 approve them if that order is granted. And to be clear, there is no actual critical vendor  
32 charge against the assets being sought today.

33

34 Otherwise, with respect to the directors' charge that is proposed --

35

36 THE COURT: They are -- they are just looking for authorization  
37 to payment.

38

39 MS. MEYER: Authorization.

40

41 THE COURT: Yes, yes, yes. And if I did call it a charge, I

1 misspoke. So thanks for that.

2

3 MS. MEYER: There is no charge contemplated at this time --

4

5 THE COURT: Yes, yes.

6

7 MS. MEYER: -- yes.

8

9 THE COURT: Okay.

10

11 MS. MEYER: With respect to the proposed directors' charge,  
12 this charge will only become necessary in the event that the director and officer insurance  
13 does not cover or provide coverage. That's addressed at paragraph 23(b) of the proposed  
14 initial order. It specifically contemplates that. And so keeping in mind this is also a charge  
15 only, there is no impact on cash; and the charge would only be relied on if required if the  
16 insurance doesn't provide coverage.

17

18 To the extent that the director and officer insurance that is in place and applies and covers  
19 the issue, the initial order as proposed does not prejudice or alter any rights against the  
20 insurance; and it's important in these circumstances of this insolvency proceeding and the  
21 circumstances of the company that the Board of Directors be focused on the restructuring  
22 without worrying about personal liability in the circumstances.

23

24 To be clear, the proposed initial order confirms it is not priming Macquarie, and the  
25 Proposed Monitor understands that Macquarie is the only secured creditor of the applicants.  
26 My friend Mr. Prophet has already pointed out as well that it is a temporary charge for the  
27 proposed stay of proceedings until the comeback hearing.

28

29 Just briefly -- unless you have any questions on the directors' charge? Thank you, Justice  
30 Johnston. I will move on then to the foreign recognition. It is contemplated that the  
31 Proposed Monitor will seek foreign recognition of the CCAA proceedings if the application  
32 is granted today in the US and Colombia. I should note those are the only ones  
33 contemplated at this time, although both the Proposed Monitor's report and --

34

35 THE COURT: The US and Colombia you said?

36

37 MS. MEYER: The US and Colombia.

38

39 THE COURT: Yes.

40

41 MS. MEYER: You will have noted perhaps that in the pre-filing

1 report --  
2  
3 THE COURT: Panama.  
4  
5 MS. MEYER: -- and in the form of order, it also referenced  
6 Panama, Bolivia --  
7  
8 THE COURT: Yes, I did see that.  
9  
10 MS. MEYER: -- and Switzerland. That is not contemplated at  
11 this time.  
12  
13 THE COURT: Okay.  
14  
15 MS. MEYER: As I noted at the outset of my submissions, this  
16 proposed CCAA proceeding involves a stay of proceedings for creditor protection of a  
17 company whose natural gas production is a critical fuel source for Colombia's electrical  
18 grid, and the company is seeking foreign recognition in the US and in Colombia. That will  
19 be critical if these proceedings advance but won't be immediate. And so we wanted to note  
20 that in consideration of that, we trust the creditors will be mindful of that interim period  
21 where the stay if granted by this Court has not yet been recognized in those other  
22 jurisdictions.  
23  
24 Subject to any questions you have, those are my submissions.  
25  
26 THE COURT: Thank you very much.  
27  
28 MS. MEYER: Thank you.  
29  
30 THE COURT: Was there anything briefly in reply? I do not  
31 need to hear from you, but if there is something you wanted to address.  
32  
33 MR. PROPHET: The commitment to transparency is a given --  
34  
35 THE COURT: Yes, okay.  
36  
37 MR. PROPHET: -- is what I have to say.  
38  
39 **Decision**  
40  
41 THE COURT: All right. Well, I think you have heard the

1 comments, and I am sure they are not lost on you and the -- and KPMG. So I will just leave  
2 it at that.

3  
4 All right. I am prepared to give my decision, and then we will go from there. So this is my  
5 oral decision. The applicants seek an initial order under the *Companies' Creditors*  
6 *Arrangement Act*. I have reviewed to the best of my ability all of the materials filed in this  
7 application and considered all of the arguments of the parties and stakeholders that are  
8 present here.

9  
10 I note the Proposed Monitor KPMG has consented to act. They have also confirmed at 99  
11 of their pre-filing report that they are: (as read)

12  
13 ... of the view that the relief requested by the Applicants is both  
14 appropriate and reasonable. And they are of the view that granting  
15 the relief requested will provide the Applicants the best  
16 opportunity to restructure under the CCAA, thereby preserving  
17 value for the benefit of the Applicants' stakeholders.

18  
19 As such, they support the application and respectfully recommend the Court grant the relief  
20 sought.

21  
22 I am satisfied that the applicants are eligible for relief under the CCAA. In particular,  
23 Canacol, the parent of Canacol Group is incorporated -- was incorporated I guess in BC  
24 but was continued under the ABCA in November of 2024. The registered office is in  
25 Calgary. Canacol is a publicly-traded company and operates as a holding co for the  
26 additional applicants in these proceedings. 265 Canacol ULC and 249 were incorporated  
27 pursuant to the laws of Alberta. The Colombian subsidiaries Canacol Energy Colombia  
28 S.A.S., CNE Energy S.A.S. and CNE Oil & Gas S.A.S. are registered under the laws of  
29 Colombia. The Swiss subsidiaries Cantana Energy GmbH, Shona Holding GmbH are  
30 registered under the laws of Switzerland. CNE Oil & Gas, S.R.L. is registered under the  
31 laws of Panama. And as confirmed by the -- by KPMG in their pre-filing Monitor report at  
32 paragraph 17, each of the subsidiaries has assets in Canada by virtue of deposits held in  
33 Canadian financial institutions. Therefore, the applicants are companies to which the  
34 CCAA applies.

35  
36 I also find that the liabilities of the debtor companies and affiliated companies meets the  
37 \$5 million threshold collectively. *Victorian Order of Nurses for Canada*, 2015 ONSC 7371  
38 at para 10.

39  
40 Each of the applicants are also debtor companies within the meaning of section 2(1)(a) of  
41 the CCAA based on their insolvency. Canacol has approximately \$670 million US of

1 indebtedness which includes imminent payments and obligations, and there's insufficient  
2 liquidity to repay this indebtedness as more particularly described in the affidavit of Mr.  
3 Bednar and as set out in the pre-filing report of KPMG.

4  
5 Further, each of the applicants is liable to Canacol's lenders or certain of them as guarantees  
6 of the indebtedness.

7  
8 Over \$25 million, US dollars is, under the Macquarie credit agreement, the syndicate credit  
9 agreement and the indenture, are due in November of 2025. Indeed, the November  
10 payments due in the next 14 days substantially exceed Canacol Group's existing available  
11 cash, and Canacol has not been able to source further financing.

12  
13 As there is also -- although maybe not as material -- \$22 million US arbitral award in  
14 Colombia against CNE O&G Colombia and CNE Panama and there is a proposed class  
15 action against Canacol.

16  
17 Canacol does not have sufficient liquidity to make the November payments or to continue  
18 normal course operations, notwithstanding their combined total assets exceed their  
19 liabilities. The applicants have established a looming liquidity condition.

20  
21 I also agree that a disorderly shutdown of operations at this time would destroy the  
22 prospects of the Canacol Group continuing as a going concern. I am also concerned about  
23 the fact that they are a critical fuel source for the Colombian electrical grid and the impact  
24 of not granting this order would have on that.

25  
26 I also agree given the above was appropriate to grant -- it is appropriate to grant an initial  
27 order on an ex parte basis given the extreme urgency of this. Having said that, I note that  
28 RCF and the indentured trustee were all -- appeared at today's application. They -- the  
29 applicants indicated they were given notice including Macquarie under the terms of the  
30 credit agreements, and a press release was also issued; but there is no doubt that the parties  
31 did not probably get formal proper notice and did not have time to make fulsome  
32 submissions. And so they will reserve their rights to take positions at a later date, and that  
33 is recognized.

34  
35 Proper Forum

36  
37 I find that Alberta is the proper forum for the purposes of the initial application. Section  
38 9(1) of the CCAA provides that an application may be made to the Court that has  
39 jurisdiction in the province where the debtor company has its head office or chief place of  
40 business. As noted above, Canacol and the Canadian subsidiaries have their registered and  
41 head offices in Calgary. And given the foreign subsidiaries are affiliated corporations and

1 they seek relief as a corporate group, Alberta at least for the purposes of this application is  
2 the proper forum.

3  
4 Stay Application

5  
6 The Court may grant an initial order staying all proceedings in respect of debtor companies  
7 for no more than ten days, provided the Court is satisfied that the circumstances exist that  
8 make the order appropriate. Section 11.02 of the CCAA. I find such an order is appropriate  
9 in the circumstances before this Court. In this case, I accept that a stay of proceedings  
10 would be consistent with the key purpose of the CCAA in that it would maintain the status  
11 quo to allow the Canacol Group breathing room to deal with their liquidity crisis, to allow  
12 them to consult with stakeholders and hopefully develop a viable restructuring plan with a  
13 view to continuing operations for the benefit of stakeholders while at the same time  
14 exploring a potential sales and solicitation process and financing. I therefore find it  
15 appropriate to grant a ten-day stay.

16  
17 Stay Application to Directors and Officers and Sucursales Entities

18  
19 In this case, the applicants ask that on an initial basis, the stay should be extended to the  
20 non-applicants including the directors and officers; and although initially they said the  
21 sucursal entities, it is actually the property over which the sucursales have control. They  
22 seek this in accordance with section 11 and 11.03 of the CCAA and by analogy section  
23 11.02.

24  
25 Section 11.03 empowers the Court to stay proceedings against the directors of a debtor  
26 company with respect to pre-filing claims relating to legal liability they incur in their  
27 capacity as directors and officers -- or sorry -- directors for obligations of the company.  
28 This can be extended to officers under section 11. I agree it is appropriate to extend the  
29 stay to the officers and directors on an initial basis. A stay will ensure the directors and  
30 officers are able to continue to provide governance and management of the business.

31  
32 Pursuant to section 11.02, a Court may extend a stay of proceedings to third parties that are  
33 integrally and closely interrelated with the debtor company's business or doing so would  
34 further the purpose of the CCAA. See *Laurentian University of Sudbury*, 2021 ONSC 651.  
35 Although not directly analogous, section 11.02 I agree does give the Court some comfort  
36 in extending the relief requested as it relates to the properties over which the sucursales  
37 have control under section 11.

38  
39 In his affidavit, Mr. Bednar deposes that under Colombian law, sucursales operate as  
40 branches of corporate entities. They do not have independent legal personalities separate  
41 and apart from their parent corporate entities, and they hold all property and rights for the

1 account of their parent corporate entity. In this case, the sucursales have rights to control  
2 and administer certain assets of Canacol -- of the Canacol Group business including E&P  
3 contracts and bank accounts amongst other things. On an initial basis, the applicants have  
4 demonstrated that the stay should be extended to the property controlled and administered  
5 by the sucursales.

6  
7 I note that the business and operation of the sucursales are integrated with the Canacol  
8 Group as they hold control or administer property as I said including E&P contracts and  
9 bank accounts for account of the members of the group. If the sucursales are not included  
10 in the stay or the property over which they have control or not included, this could  
11 jeopardize the success of a restructuring of the Canacol Group causing economic harm  
12 potentially to stakeholders including creditors and, of course, as one of the creditors noted,  
13 vulnerable stakeholders such as relating to the critical field source for the Colombian  
14 electrical grid.

15  
16 I also accept on an initial basis that there is little prejudice to anyone with a claim against  
17 the sucursales or their controlled property as staying such claims gives practical effect to  
18 the stay against the Canacol Group.

19  
20 Given the factors above, support to stay and given the Canacol Group intends to bring  
21 recognition proceedings in Colombia in particular, but the US, and in relation to the  
22 Colombian subsidiaries including those carrying on business through the sucursales, it is  
23 appropriate to extend the stay to apply to property controlled, administered or recorded in  
24 the name of the sucursales within the definition of property in accordance with section 11.  
25 To be clear, it is only with respect to the property related to the Canacol Group. That is just  
26 a clarification.

27  
28 This in no way limits the rights of the parties to argue the appropriateness of the stay at the  
29 comeback hearing with more fulsome argument from any appropriate interested parties.

### 30 Appointment of KPMG as Monitor and Foreign Representative

31  
32  
33 The Court agrees that the Proposed Monitor KPMG is appropriate and should be appointed  
34 as Monitor. They are also appointed as foreign representative for the applicants for the  
35 purpose of commencing and continuing recognition or comparable proceedings in CCAA  
36 proceedings in jurisdictions outside of Canada including in particular the US and  
37 Colombia. Section 56 of the CCAA gives this Court the authority to grant such an order.

### 38 Charges

39  
40  
41 The applicants seek various relief including the approval of an administrative charge and

1 the approval of a directors' charge. Section 11.001 of the CCAA makes it clear that relief  
2 during the initial period shall be limited to relief that is reasonably necessary for the  
3 continued operations of the debtor company in the ordinary course of business during that  
4 period. In essence, this means the decision taken at the outset of CCAA proceedings must  
5 be limited to measures that are necessary to avoid the imminent -- sorry -- immediate  
6 liquidation of an insolvent company.

#### 7 8 Administration Charge

9  
10 The applicant seeks an initial charge of \$1 million as part of the initial order. The Proposed  
11 Monitor is of the view that the administrative charge is appropriate in light of the applicants'  
12 operation and the proposed duties of the Monitor and their various professional advisors.  
13 The administration charge in particular would secure the fees and expenses of professionals  
14 involved in this filing. I note the view of the Proposed Monitor is that given the complexity  
15 and multi-jurisdictional nature of the case, the amount proposed is reasonable and  
16 proportionate in the circumstances.

17  
18 They further confirm the proposed charge is limited to what is necessary during the initial  
19 stay period in order to secure the professional fees for those professionals who are critical  
20 to the commencement and continuation of these proceedings.

21  
22 Further, they note that the roles of professionals are not duplicative, and they are unlikely  
23 to participate without the initial charge. They have also confirmed -- the applicants have  
24 also confirmed that the charge will be subordinate to Macquarie as the secured creditor.

25  
26 I, therefore, find that the \$1 million is reasonably necessary during the initial period given  
27 the substantial size of the Canacol Group, the complexity and multi-jurisdictional nature  
28 of the proceedings.

#### 29 30 Directors' and Officers' Charge

31  
32 The applicants seek a director and officer charge to secure an indemnity in favour of the  
33 directors and officers up to a maximum of \$1 million US which is equivalent to roughly  
34 two weeks of aggregate payroll for the group of companies. The applicants note they have  
35 consulted with the Proposed Monitor to determine the proposed quantum of the directors'  
36 charge and believe that the \$1 million amount is conservative and the minimum amount  
37 required to provide adequate protection to the directors and officers during the initial stay  
38 period.

39  
40 Section 11.51 of the CCAA provides that the Court may grant such a charge in an amount  
41 it considers appropriate provided notice is given to the secured creditor who is likely

1 affected by it. The applicant argues there's no secured creditor who is being primed in this  
2 case, given the charge will be subordinate to the secured creditor, so no notice is required.  
3

4 A further consideration under section 11.51 is whether there is adequate insurance coverage  
5 available or that could be obtained at a reasonable cost. The applicants in their materials  
6 confirm that there is directors' and officers' liability insurance in place, but they argue,  
7 "Given the very significant complexity and risks of the Canacol Group's gas exploration  
8 and development activities, the directors and officers are justifiably concerned about the  
9 scope of their coverage."

10  
11 In his affidavit at paragraph 151, Mr. Bednar deposes in part as follows: (as read)

12  
13 "... there is a potential for inadequate insurance coverage in respect  
14 of potential director and officer liabilities. The directors and  
15 officers of the Applicants have expressed their desire for certainty  
16 with respect to potential personal liability if they continue in their  
17 current capacity in the context of a CCAA proceeding and the  
18 proposed charge is therefore necessary."  
19

20 I accept that a successful restructuring of the applicants will only be possible with the  
21 continued participation of the directors and officers, but there is insufficient evidence  
22 before this Court to grant the charge on this initial application. In particular, there is no  
23 evidence about the amount of coverage under the policy or what the exemptions relate to  
24 or why the coverage might be insufficient. The applicants have not demonstrated in  
25 accordance with section 11.001 of the CCAA that the relief during the initial period is  
26 reasonably necessary for the continued operations of the debtor company in the ordinary  
27 course of business. I only decline on the initial basis to grant the charge, but the applicants  
28 can file further evidence in anticipation of addressing the director and officer charge at the  
29 comeback hearing.  
30

### 31 Payments to Critical Vendors for Pre-filing Amounts

32  
33 The applicants ask for the ability but not the obligation to pay certain critical vendor  
34 invoices related to pre-filing goods and services supplied to the applicants up to the total  
35 amount of \$2 million US. The Monitor has indicated that some payments will be critical  
36 and necessary in order to ensure the viability and stability of the applicant businesses and  
37 to allow them to complete their operations during the CCAA proceedings.  
38

39 The Court has concerns with the application for the payment of pre-filing amounts,  
40 particularly at this stage of the proceeding. I also have concerns with the amount sought.  
41 However, I note the proposed order contemplates that critical vendor payments can only

1 be made in consultation with the Monitor. I, therefore, accept the representations of the  
2 Proposed Monitor that these amounts are critical and may need to be paid and that the  
3 Monitor intends to take a conservative approach to these discretionary payments. I,  
4 therefore, grant the ability but not the obligation to pay certain critical vendor invoices  
5 related to pre-filing goods and services supplied to the applicants up to a maximum of \$2  
6 million US.

7

8 That is my decision.

9

10 MR. PROPHET: Thank you, Your Honour. Given your decision,  
11 the form of order I have with me will need to be altered for the directors' charge point.

12

13 THE COURT: Yes.

14

15 MR. PROPHET: What I should tell you with regard to next steps  
16 is that counsel to the applicants is in waiting in New York to file as soon as possible, as  
17 soon as we can get a certified -- filed and certified copy of an order; but it will have to be  
18 changed. So what I am --

19

20 THE COURT: Can you handwrite on it?

21

22 MR. PROPHET: I can handwrite on it, Your Honour.

23

24 THE COURT: Okay. Because the counter closes at 4.

25

26 MR. PROPHET: We're -- my colleague is --

27

28 MR. GABOR: We're well aware. We're taking a lot of --

29

30 THE COURT: First of all, I will give you leave to file  
31 personally. So madam clerk, if you can tell the court that I have granted that leave;  
32 otherwise, you will not be able to file anything.

33

34 MR. PROPHET: I was advised of that, and we --

35

36 THE COURT: Okay.

37

38 THE COURT CLERK: Yes.

39

40 MR. PROPHET: Thank you.

41

1 THE COURT: Yes, all right.  
2

3 MR. PROPHET: So we would like the leave you've just granted to  
4 file personally. We would also like the clerk to be directed to certify a copy because that is  
5 a requirement under Chapter 15, not just that it be filed, but that --  
6

7 THE COURT: Okay.  
8

9 MR. PROPHET: -- it be certified.  
10

11 THE COURT: I direct the clerk to certify.  
12

13 MR. PROPHET: Thank you. And I think that may be all we need  
14 to deal with. I can take you through the blackline, but I know you have looked at it.  
15

16 THE COURT: Yes. I -- I think -- believe it or not, I think I  
17 jumped in with the questions I had. The question I still have is with respect -- so we are  
18 going to need to take out the -- that charge. I am assuming --  
19

20 MR. PROPHET: Mr. Gabor is attending to that just now.  
21

22 THE COURT: -- Mr. Gabor is doing that as we speak.  
23

24 MR. PROPHET: Yes.  
25

26 THE COURT: The other clarification I had was on paragraph 6.  
27

28 MR. PROPHET: I recall. Can I have a moment to consult -- and I  
29 would like to try to satisfy you concerning how it works, and it may be only a few words  
30 are needed.  
31

32 THE COURT: Yes, I think that is all it is.  
33

34 MR. PROPHET: I do, too.  
35

36 THE COURT: I think -- I think that -- I think the concern I have  
37 is that (d) and (e) are not in addition -- they are not pre-filing amounts in addition to (d)  
38 and (e) --  
39

40 MR. PROPHET: And I --  
41

1 THE COURT: -- and that those are ongoing.  
2  
3 MR. PROPHET: And I understand --  
4  
5 THE COURT: Yes.  
6  
7 MR. PROPHET: And I think if we fix those two subparagraphs --  
8  
9 THE COURT: Yes.  
10  
11 MR. PROPHET: -- the preamble will work. I just need to ensure  
12 that I am not doing anything wrong --  
13  
14 THE COURT: Yes. Please take your time. I will stand by for a  
15 few minutes here and wait.  
16  
17 MR. PROPHET: Thank you, Your Honour. Your Honour, I think  
18 while we're writing on orders, I should address -- having had the opportunity to consult  
19 with Mr. Bednar and he has had the opportunity to consult with others, I want to address  
20 subparagraphs 6(d) and 6(e).  
21  
22 THE COURT: The ones that I asked you about?  
23  
24 MR. PROPHET: Correct.  
25  
26 THE COURT: Yes.  
27  
28 MR. PROPHET: So this is the --  
29  
30 THE COURT: 6(b) or --  
31  
32 MR. PROPHET: 6(d) and --  
33  
34 THE COURT: -- (d) like --  
35  
36 MR. PROPHET: -- (d) as in dog --  
37  
38 THE COURT: Yes, okay, and (e) --  
39  
40 MR. PROPHET: -- and (e) as --  
41

1 THE COURT: -- the ones I questioned.  
2  
3 MR. PROPHET: The ones you questioned.  
4  
5 THE COURT: Yes, okay, fair. Go ahead.  
6  
7 MR. PROPHET: So I have to advise that 6(d), these are the core  
8 licencing payments. They are required under Colombian law. It's a regulatory offence not  
9 to remit these. They're in the cash flows. They're not a discretionary \$2 million pre-filing.  
10 They go to the heart of this enterprise. Mr. Bednar is here and can testify to that, that -- so  
11 this -- for -- this is -- these amounts need to be either both pre and post-filing because  
12 they're mandatory payments.  
13  
14 THE COURT: So they are in addition to the \$2 million?  
15  
16 MR. PROPHET: They're in addition to the 2 million, but they're  
17 not discretionary. There's no -- there's no -- this is not a supplier whose invoice --  
18  
19 THE COURT: But -- but they are still pre-filing amounts?  
20  
21 MR. PROPHET: They are pre-filing amounts, but they're the most  
22 essential.  
23  
24 THE COURT: So how much are we talking about?  
25  
26 MR. PROPHET: Ah, I can find that out as well; but just -- just  
27 before we go on to that from the level of concept, the \$2 million pre-filing amount is a  
28 discretionary amount.  
29  
30 THE COURT: I understand that.  
31  
32 MR. PROPHET: So --  
33  
34 THE COURT: I get that.  
35  
36 MR. PROPHET: And it's --  
37  
38 THE COURT: That is not lost on this Court, and that is what I  
39 directed.  
40  
41 MR. PROPHET: Yes.

- 1  
2 THE COURT: But my question was whether (d) and (e) were in  
3 addition to the 2 million.  
4
- 5 MR. PROPHET: And I know your question. What I just -- I'm  
6 indicating the difference between the (c) \$2 million payment -- and I'm just speaking about  
7 (d) right now. It's not just discretionary in the sense of it's the Monitor's discretion. It's the  
8 company has to make choices and decisions. The company has no choice with (d), none at  
9 all. It's -- it's shut down if it doesn't make the --  
10
- 11 THE COURT: Well, it has a choice. It is just it is shut down if it  
12 does not pay out --  
13
- 14 MR. PROPHET: It's shut down. It's in the cash flows that the  
15 Monitor has put out there.  
16
- 17 THE COURT: Right. But that is prospective. My question  
18 was -- was --  
19
- 20 MR. PROPHET: No, I guess I am making a different point. It will  
21 be shut down if it does not make -- so, for example, there --  
22
- 23 THE COURT: I get that.  
24
- 25 MR. PROPHET: -- there is -- there is scheduled for September  
26 (sic) this week to be a remittance to the ANH in respect of the E&P contracts. It is a  
27 regulatory legal requirement in Colombia.  
28
- 29 THE COURT: That is fine, but you need to be able to crystallize  
30 for the Court is --  
31
- 32 MR. PROPHET: It's in addition.  
33
- 34 THE COURT: -- the 2 million discretionary amount, does that  
35 money come out of the 2 million?  
36
- 37 MR. PROPHET: No, it's in addition.  
38
- 39 THE COURT: Okay. And how much?  
40
- 41 MR. PROPHET: I can tell you that --

1  
2 THE COURT: I mean I --  
3  
4 MR. PROPHET: No, I -- I can do my best on that. The -- we have  
5 some information on that.  
6  
7 THE COURT: Okay.  
8  
9 MR. PROPHET: I will go and get it. It's not in the record. I just --  
10  
11 THE COURT: Because that -- it is somewhat misleading to say  
12 that the pre-filing amount is a maximum of 2 million and then there is additional amounts  
13 without transparency. That is what I just want to make sure that in -- for the sake of  
14 transparency we are crystal clear --  
15  
16 MR. PROPHET: Sure.  
17  
18 THE COURT: -- and that is why I was confused with the order.  
19  
20 MR. PROPHET: Sure. I understand -- I do understand the point.  
21 The rationale for the order being set up this way is that this is not -- one knows how the  
22 payables stack up and you pay some and not others. This is not in that category. You can't  
23 not pay the ANH any amount, or they will just --  
24  
25 THE COURT: Right, but you need to --  
26  
27 MR. PROPHET: I --  
28  
29 THE COURT: -- at least tell the Court -- again, it was not clear  
30 from the order if that was inclusive -- that that was coming out of the 2 million or in addition  
31 to --  
32  
33 MR. PROPHET: Yes. No, I understand your point entirely.  
34  
35 THE COURT: -- and your submissions do not make clear that  
36 there is any in addition.  
37  
38 MR. PROPHET: So it is in addition, so --  
39  
40 THE COURT: Okay.  
41

- 1 MR. PROPHET: It is in addition. I will give you the quantum. I  
2 will consult with the Monitor and with -- with the CFO, and we will come up with -- we  
3 will give the Court guidance about how much this is.  
4
- 5 THE COURT: Okay. It is -- the 2 million relates to pre-filing  
6 just to be clear?  
7
- 8 MR. PROPHET: Yeah, absolutely.  
9
- 10 THE COURT: Okay.  
11
- 12 MR. PROPHET: The 2 million is pre-filing. There is a pre-filing  
13 amount indeed. So I am -- I wanted to directly answer.  
14
- 15 THE COURT: Can you include this amount in the pre-filing in  
16 the ten days?  
17
- 18 MR. PROPHET: Yes, it -- it's -- this -- 6(d) is in addition to the 2  
19 million of pre-filing to all -- all other vendors, right?  
20
- 21 THE COURT: My question is can you pay it out of the 2 million  
22 in the ten-day period?  
23
- 24 MR. PROPHET: Sorry, I didn't hear you properly. I do not think  
25 so, but I will ask.  
26
- 27 THE COURT: Okay. All right. If -- I am hearing parties  
28 speaking all at once, so maybe when we are addressing the Court, if we could --  
29
- 30 MR. PROPHET: I'm sorry.  
31
- 32 THE COURT: Thank you.  
33
- 34 MR. PROPHET: We'll perhaps go a little further from the  
35 microphones, Your Honour.  
36
- 37 THE COURT: That is -- that --  
38
- 39 MR. PROPHET: That will be good for all.  
40
- 41 THE COURT: All right. I note you have got not a lot of time

1 before the counter closes. So --

2

3 MR. PROPHET:

I know, yes. So if I can take you to the cash

4 flow --

5

6 THE COURT:

Yes, yes.

7

8 MR. PROPHET:

-- with --

9

10 THE COURT:

It is included in cash flow?

11

12 MR. PROPHET:

It's in the cash flow for sure and --

13

14 THE COURT:

Prospectively?

15

16 MR. PROPHET:

So I want to -- I want to address what it's for.

17

18 THE COURT:

Yes.

19

20 MR. PROPHET:

Let's just go to the cash flow because the

21 numbers are clear.

22

23 THE COURT:

Okay.

24

25 MR. PROPHET:

It's, of course, at the pre-filing report. So if we

26 look at the line items under operating disbursements --

27

28 THE COURT:

Yes.

29

30 MR. PROPHET:

-- so if you look at the weeks of November 22nd

31 and November 29th --

32

33 THE COURT:

Yes.

34

35 MR. PROPHET:

-- you will see the very first line pre-filing

36 expenses, 1 million and 1 million --

37

38 THE COURT:

Yes.

39

40 MR. PROPHET:

-- those are conservative estimates of the

41 discretionary pre-filing \$2 million that's in paragraph 6(c).

1  
2 THE COURT: Okay.  
3  
4 MR. PROPHET: If we look at royalties in the week of November  
5 29th, \$1,657,000, that -- sorry, do you have that --  
6  
7 THE COURT: 1 million -- I am just writing it down --  
8  
9 MR. PROPHET: \$1,657,000 are listed as a line -- the third line  
10 item in the operating disbursements in the cash flow. That is for a pre-filing amount that is  
11 a mandatory amount that has to be paid to the ANH. So that is in addition. That is all  
12 the -- that is all that's going to be paid in this initial stay period. It's the only pre-  
13 file -- additional pre-filing that. So in effect, (c) is 2 million, (d) is 1 million --  
14  
15 THE COURT: Sorry, slow down, (c) is 2 million, yes?  
16  
17 MR. PROPHET: And paragraph 6(d) is \$1,657,000; and it is a  
18 mandatory payment --  
19  
20 THE COURT: Okay.  
21  
22 MR. PROPHET: -- to be made, and it relates to a pre-filing claim --  
23  
24 THE COURT: Okay.  
25  
26 MR. PROPHET: -- of the regulatory authority that will close --  
27  
28 THE COURT: Okay.  
29  
30 MR. PROPHET: -- the company down if it is not paid.  
31  
32 THE COURT: Yes, you have made that point, yes.  
33  
34 MR. PROPHET: I'm sorry, I just --  
35  
36 THE COURT: Yes.  
37  
38 MR. PROPHET: -- my client has told me to make that point  
39 clear --  
40  
41 THE COURT: Yes. I have heard it five times. I have heard you.



1  
2 MR. PROPHET: Yeah. So if we think -- if we think about it, the  
3 money just comes straight into a trust. Okay. I think we can take that out and not reference  
4 it.  
5  
6 THE COURT: So take it out, okay. So I will -- then in terms of  
7 my order, it needs to be clarified that it is the 2 million plus 1.675 --  
8  
9 MR. PROPHET: 1.657.  
10  
11 THE COURT: 1.657 --  
12  
13 MR. PROPHET: Correct.  
14  
15 THE COURT: -- in pre-filing amounts due pursuant to (d)?  
16  
17 MR. PROPHET: Correct.  
18  
19 THE COURT: Okay.  
20  
21 MR. PROPHET: Very good.  
22  
23 THE COURT: The order needs to say that then.  
24  
25 MR. PROPHET: We will say that.  
26  
27 THE COURT: Okay. All right.  
28  
29 MR. PROPHET: Based on the cash flow.  
30  
31 THE COURT: Right, yes.  
32  
33 MR. PROPHET: Okay.  
34  
35 THE COURT: Okay?  
36  
37 MR. PROPHET: Yes, Your Honour. Thank you for that.  
38  
39 THE COURT CLERK: So the counter is closed. He will have to go to --  
40  
41 THE COURT: The counter is closed?

1  
2 THE COURT CLERK: Yeah, in ten minutes. So --  
3  
4 THE COURT: Yes. Well, will it be open -- can you tell them  
5 that we have an order coming down imminently.  
6  
7 THE COURT CLERK: Okay.  
8  
9 THE COURT: Yes. Tell them not to close before 4.  
10  
11 THE COURT CLERK: Okay, all right.  
12  
13 THE COURT: Just message them.  
14  
15 THE COURT CLERK: Okay.  
16  
17 THE COURT: We had best hurry.  
18  
19 MS. MEYER: Thank you.  
20  
21 THE COURT: It has to be filed today, tell them.  
22  
23 MR. PROPHET: Your Honour, the added words to (d) if you have  
24 it in front of you --  
25  
26 THE COURT: Yes.  
27  
28 MR. PROPHET: -- are for royalties arising prior to the date of this  
29 order in the amount of US \$1,657,000.  
30  
31 THE COURT: Perfect.  
32  
33 MR. PROPHET: And I am deleting (e) --  
34  
35 THE COURT: Perfect.  
36  
37 MR. PROPHET: -- because --  
38  
39 THE COURT: Yes, you do not have to explain that.  
40  
41 MR. PROPHET: Right.

1  
2 THE COURT: You need to get to the counter. I have the point.  
3  
4 MR. PROPHET: We are -- we are going, Your Honour. My  
5 colleague is running quickly. Thank you.  
6  
7 THE COURT CLERK: Amanda said she is -- she has to leave right away,  
8 but she's -- she's (INDISCERNIBLE).  
9  
10 THE COURT: Well, the counter is not to close until 4:00.  
11  
12 THE COURT CLERK: I told her that.  
13  
14 THE COURT: Yes.  
15  
16 THE COURT CLERK: She's the only one working right now. So if you  
17 can just rush up there --  
18  
19 THE COURT: Yes, quick.  
20  
21 THE COURT CLERK: -- within, like, eight minutes --  
22  
23 THE COURT: You have -- and they are -- I am trying to get --  
24  
25 MR. GABOR: There are two copies.  
26  
27 THE COURT: Pardon?  
28  
29 MR. GABOR: There are two copies.  
30  
31 THE COURT: That is fine, okay. Now, tell them -- tell them  
32 they are on their way. That is what we will tell them, okay? And Justice Johnston says it is  
33 urgent that it be filed, so please, they will be right there. You made lot of changes here. I  
34 am going to have to initial every one of them. Do you need me to sign both of them?  
35  
36 MR. PROPHET: They --  
37  
38 THE COURT: They can make a certified copy I think, right?  
39  
40 MR. GABOR: If we had printing there --  
41

1 THE COURT CLERK: I can -- I can (INDISCERNIBLE).  
2  
3 THE COURT: Okay. I have signed the one. Is that going to do  
4 it?  
5  
6 MR. GABOR: If we can --  
7  
8 THE COURT: Okay. All right. Thank you very much. Good  
9 luck getting it filed.  
10  
11 MR. PROPHET: Thank you, Your Honour.  
12  
13 THE COURT: You had better run fast, please.  
14  
15 THE COURT CLERK: (INDISCERNIBLE) right now.  
16  
17 THE COURT: Okay.  
18  
19 MR. PROPHET: We're on our way.  
20  
21 THE COURT: Okay. Thank you. Thank you, madam clerk.  
22 Thank you, everyone.  
23  
24 MS. MEYER: Thank you.

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27  
28 PROCEEDINGS CONCLUDED  
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1 **Certificate of Record**

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I, Jana Makle, certify that this recording is the record made of the proceedings in the Court of King's Bench in courtroom 1702 in Calgary, Alberta, and I was the court official in charge of the sound machine proceedings.

1 **Certificate of Transcript**

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I, Charlene Hodge, certify that

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

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

Charlene Hodge, Transcriber  
Order Number: TDS-1098050  
Dated: November 23, 2025