Court File No. M/M114/12

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LANDDRILL INTERNATIONAL INC. (A BRITISH COLUMBIA CORPORATION), LANDDRILL INTERNATIONAL LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL ATLANTIC LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL CONTRACT MINING LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL INTERNATIONAL MEXICO S.A. DE C.V. (A MEXICAN CORPORATION), LANDDRILL INTERNATIONAL LLC (A MONGOLIAN CORPORATION) AND LANDDRILL INTERNATIONAL INC. (A BARBADOS CORPORATION)

(the "**Applicants**")

AFFIDAVIT

I, MICHAEL PISANI, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

Introduction

1. I am the Vice President, Workout Leader with the Workout and Restructuring Group of the GE Capital Canada Group of companies, which includes, among others, GE Canada Equipment Financing G.P. ("**GE Canada**"). As such, I have personal knowledge of the facts and matters to which I hereinafter depose, except where such information is provided to me by others in which case I have identified the source of such information and I do verily believe such facts and matters to be true.

2. I have read the affidavit of Christopher Johnson sworn April 4, 2013 (the "**Johnson Affidavit**") in support of a motion brought by Norrep Credit Opportunities Fund, LP ("**Norrep**") directing Ernst & Young Inc., the Court-appointed Monitor of the Applicants (the

"**Monitor**"), to prepare and file a report setting out the recommendations of the Monitor as to a fair and equitable allocation of the Professional Fees (defined below) among the stakeholders (the "**Norrep Motion**").

3. This Affidavit is sworn in opposition to the Norrep Motion and in response to the Johnson Affidavit, in supplement to the Affidavit of David Meldrum sworn October 25, 2012 filed in these proceedings and attached as **Exhibit "1"** hereto, and in support of GE Canada's motion for, among other things:

(a) an order directing the Monitor to distribute to GE Canada an amount sufficient to satisfy, in full, the claims of GE Canada, from the proceeds held by the Monitor from:

(i) the sale of Landdrill Canada's assets (the "**Canadian Proceeds**");

(ii) the proceeds from the sale of Landdrill Mongolia's assets/shares; and

(iii) the proceeds from the sale of Landdrill Russia's assets,

(b) a determination of the priorities as between Landdrill International Inc. ("**Landdrill Parent**") and Norrep with respect to their respective claims against the assets of Landdrill International LLC ("**Landdrill Mongolia**") and their respective claims against the assets of LLC Landdrill International ("**Landdrill Russia**").

4. In this Affidavit I make reference to certain documents and information which are confidential and which are subject to previous sealing orders in this proceeding. To preserve their confidentiality, I have sworn a second affidavit (the "**Confidential Pisani Affidavit**") to which I have appended as exhibits copies of these confidential documents.

5. As explained in this affidavit, the assets of the Applicant, Landdrill International Ltd. ("**Landdrill Canada**") have been sold. The sale of these assets was completed on November 20, 2012, approximately five (5) months ago. GE Canada seeks to have the Canadian Proceeds distributed in accordance with the prevailing priorities and in a manner consistent with the previous Orders of the Court in these CCAA proceedings. GE Canada also seeks to have the relative priorities of the claims of Landdrill Parent and Norrep against the assets of Landdrill Mongolia and Landdrill Russia determined. There is no dispute

among the stakeholders as to the relative priority of their respective security interests in the Canadian Proceeds. Norrep, however, seeks to have the professional costs of the Monitor, the Monitor's legal counsel and the Applicant's legal counsel (collectively, the "**Professional Fees**") incurred in these proceedings (all of which have already been paid by the Applicants from operations during the course of these proceedings) allocated against and, in effect, reimbursed by GE Canada in a manner beyond which was ever contemplated or agreed by GE Canada and contemplated or provided for in the Initial Order dated August 31, 2012 (the "**Initial Order**") and the Order made on the Comeback Motion dated September 27, 2012 (the "**Comeback Order**").

6. During the course of these CCAA proceedings, certain of the assets of Landdrill Mongolia and Landdrill Russia have also been sold and other assets are in the process of being realized upon by the Monitor. GE Canada is unaware of any party having a perfected security interest in these assets and/or the proceeds of those assets. GE Canada seeks to have the interests of the creditors of Landdrill Russia and Landdrill Mongolia and their respective entitlement in and to the Landdrill Mongolia and Landdrill Russian assets determined and a direction provided to the Monitor to distribute all proceeds from the realization of the Landdrill Mongolian and Landdrill Russian assets in a manner consistent with that determination. Those creditors include Landdrill Parent, the parent company of Landdrill Canada incorporated pursuant to the laws of British Columbia, over whose assets, including inter-company accounts receivable, GE Canada holds a first ranking security interest.

The GE Canada Security

7. In four separate transactions taking place between March, 2011 and March, 2012, GE Canada provided over $4.5 million of financing to Landdrill Canada for purposes of acquiring or refinancing equipment (primarily drilling rigs) utilized by Landdrill Canada in its Canadian operations pursuant to the following agreements:

(a) an Equipment Loan and Security Agreement ("**ELSA**") dated March 30, 2011, as amended, having contract number 150011609070, now 2164552-001, pursuant to which the sum of $2,250,000 was financed;

(b) a Conditional Sale Agreement ("**CSA**") dated July, 2011, as amended, having contract number 868801101 pursuant to which the sum of $377,027.57 was financed;

(c) an ELSA dated September 28, 2011, as amended, having contract number 8698749001 pursuant to which the sum of $707,103.96 was financed; and

(d) an ELSA dated March 23, 2012, as amended, having contract number 8724235001 pursuant to which the sum of $1,200,000 was financed.

Copies of the above agreements (collectively, the "**GE Contracts**") are attached hereto as **Exhibits "2" to "5"**.

8. Each of the GE Contracts creates a purchase money security interest in the specific equipment financed. In addition, as security for the repayment of all amounts owing to it from time to time, including the amounts financed under the GE Contracts, GE Canada holds a General Security Agreement and Moveable Hypothec Agreement dated July 29, 2008 (the "**Landdrill Canada GSA**") granted by Landdrill Canada, a true copy of which is attached hereto as **Exhibit "6"**. GE Canada perfected the security interests created by the GE Contracts and the Landdrill Canada GSA by registrations effected under the *Personal Property Security Act* of Ontario.

9. Landdrill Parent guaranteed Landdrill Canada's obligations to GE Canada pursuant to unlimited guarantees dated March 30, 2011, July 8, 2011, September 28, 2011 and March 23, 2012, true copies of which are attached hereto as **Exhibit "7"**. Landdrill Parent secured its obligations to GE Canada under those guarantees by a General Security Agreement dated July 20, 2010 (the "**Landdrill Parent GSA**"), a true copy of which is attached hereto as **Exhibit "8"**. GE Canada perfected the security interest created by the Landdrill Parent GSA by the registration of a financing statement under the *Personal Property Security Act* of British Columbia (the "**BC PPSA**") on March 29, 2011 as number 067946G. A true copy of a search of registrations under the BC PPSA on August 2, 2012 showing that registration is attached hereto as **Exhibit "9"**.

10. I have reviewed a copy of the Credit Agreement dated March 21, 2012 (the "**Norrep Credit Agreement**") between Norrep and Landdrill Parent, as borrower, and Landdrill Mongolia, Landdrill Russia and Landdrill Mexico, among others, as guarantors. Pursuant to

the Norrep Credit Agreement, Norrep advanced, by way of term loan, the principal amount of $8,000,000 (the "**Norrep Loan**") to Landdrill Parent.

11. Pursuant to the terms of the Norrep Credit Agreement, absent default, Landdrill Parent was obligated to repay the Norrep Loan on the following terms:

(a) on account of the principal amount, $5,000,000 on April 22, 2013 and the balance, namely, $3,000,000 on March 21, 2015; and

(b) interest at the rate of 12% per annum calculated monthly in arrears on the first day of each month during the term.

Priority

12. Other than the charges created by the Initial Order and the statutory charges and deemed trusts, if any, in favour of Her Majesty, GE Canada has a first ranking security interest in all equipment of Landdrill Canada, other than certain motor vehicles and their proceeds which are subject to purchase money security interest in favour of General Motors Acceptance Corporation of Canada ("**GMAC**"). Norrep has a first ranking security interest over all real property and current assets (inventory and accounts receivable) of Landdrill Canada. I do not understand there to be any dispute between GE Canada, Norrep or the other stakeholders regarding the relative priority of the respective security interests held by GE Canada, Norrep and GMAC in the assets of Landdrill Canada. Attached hereto as **Exhibit "10"** is a copy of the Priorities Agreement dated March 21, 2012.

13. GE Canada has a perfected security interest in the personal property of Landdrill Parent. The relative priority of that security is addressed below under the heading "The Mongolian and Russian Assets".

The Events and Discussions Preceding the Initial Order

14. By the summer of 2012, the Applicants were insolvent and unable to meet their obligations to their creditors, including GE Canada, Norrep and Sprott Resource Lending Partnership ("**Sprott**" and collectively with GE Canada and Norrep, the "**Senior Lenders**") as they came due.

15. In or about July/August 2012, Landdrill Canada and Landdrill Parent retained Clarus Securities Inc. ("**Clarus**") as a consultant to develop and implement a sales process for the

sale of the Applicants' global operations as a going concern (the "**Going Concern Sale Process**").

16. On August 13, 2012, Sprott demanded payment and gave notice to the Applicants under section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA Notice**"). Sprott's primary security covered the assets of the Applicant, Landdrill International Mexico S.A. De C.V. ("**Landdrill Mexico**"). Shortly thereafter on August 17, 2012, GE Canada demanded payment from and issued BIA Notice to Landdrill Canada and the guarantors of the obligations of Landdrill Canada. GE Canada's demand for payment and 10 day notice period set forth in the BIA Notice expired on August 27, 2012.

17. GE Canada was of the view and remains of the view that a going concern sale of Landdrill Canada's assets and undertaking was not required for GE Canada to recover its debt. According to an appraisal prepared for GE Canada by S. Guy Gauthier Évaluateur Inc. dated March 12, 2012 (the "**Gauthier Appraisal**"), a true copy of which is attached hereto as **Exhibit "11"**, the Orderly Liquidation Value and Forced Liquidation Value of the equipment over which GE Canada holds a first ranking security interest were $5,179,000 and $3,673,500, respectively, well in excess of the amount owing by Landdrill Canada to GE Canada in August 2012.

18. During the period leading up to the Initial Order, GE Canada, Norrep and Sprott entered into discussions about how to proceed in light of the Applicants' insolvency. On August 24, 2012, the Senior Lenders collectively agreed that some formal insolvency process was required in which to conduct the Going Concern Sale Process. At that time an "agreeable" CCAA process was advanced by Sprott. Attached hereto as **Exhibit "12"** is an exchange of emails among myself, Mr. Johnson and Andrew Steuter, on behalf of Sprott, over the course of the evening of August 23, 2012 and the afternoon of August 24, 2012 discussing possible alternatives. Norrep made it clear that it supported a going concern sale of the Applicants' operations, presumably to maximize the recovery from a realization of the collateral over which it held security which consisted primarily of the current assets of Landdrill Canada and a second position security interest (behind Sprott) in the assets of Landdrill Mexico.

19. From on or about August 20, 2012 through August 24, 2012, the Senior Lenders attempted to negotiate with the Applicants a form of forbearance agreement to allow the

Applicants a brief (3 week) forbearance period to implement the Going Concern Sale Process and, in particular, solicit letters of intent. Both GE Canada and Norrep supported a three-week marketing process for submission of non-binding letters of intent. Attached hereto as **Exhibit "13"** is a copy of an e-mail sent by David Meldrum, Senior Manager, Workout for GE Canada, to Mr. Johnson on August 22, 2012. GE Canada's counsel took the lead on drafting and incorporating the comments of the other Senior Lenders and the Applicants' counsel into the form of forbearance agreement. During the negotiation of the terms of forbearance, Norrep issued demand and BIA Notice on August 22, 2012 in order to crystallize its position relative to the other Senior Lenders.

20. On or about August 24, 2012 it became apparent that the Applicants would not agree to terms of forbearance supported by the Senior Lenders which provided for the immediate appointment of a receiver upon expiration of the forbearance period. On that date, all further negotiation of forbearance terms ceased.

21. I am advised by Alissa Mitchell, GE Canada's legal counsel in connection with these proceedings, that later in the day on August 24, 2012, Jeff Lee, counsel for Norrep, contacted her by e-mail requesting to speak. I am further advised by Ms. Mitchell that during her telephone discussions of that evening with Mr. Lee, Mr. Lee, on behalf of Norrep, enquired whether GE Canada would support a formal insolvency proceeding to allow the Applicants time to implement the Going Concern Sale Process and, in particular, enquired whether GE Canada was willing to support a CCAA filing. Attached hereto as **Exhibit "14"** is a copy of an e-mail exchange between Mr. Lee and Ms. Mitchell wherein Mr. Lee invites GE Canada's counsel to discuss issues relating to the Applicants.

22. I am further advised by Ms. Mitchell that over the course of the August 25 and August 26, 2012 weekend, Mr. Lee and Ms. Mitchell discussed by telephone possible alternatives which would allow Landdrill Canada, alone, to carry out the Going Concern Sale Process with Norrep providing super-priority funding to Landdrill Canada to allow it to continue to operate during the marketing and sales process. A number of options were explored including Landdrill Canada filing a Notice of Intention to Make a Proposal pursuant to the BIA.

23. I am advised by Ms. Mitchell that over the course of the August 25/26, 2012 weekend Mr. Lee was in concurrent discussions with Steve Hutchison, counsel for the Applicants. I

am advised by Ms. Mitchell that Mr. Lee advised her that the Applicants decided that they required a CCAA proceeding to ensure Sprott did not enforce its Share Pledge Agreement in respect of Landdrill Parent which would result in the Board of Directors being reconstituted and management of Landdrill Canada and Landdrill Mexico removed. Despite GE Canada not committing to support a CCAA filing by the Applicants, the Applicants reserved time on Monday, August 27, 2012 in New Brunswick for a hearing of a CCAA application. By e-mail sent August 27, 2012, GE Canada, through its counsel, advised the Applicants and Norrep that GE Canada had insufficient time to properly review all information and consider the issues affecting its interests on an application which the Applicants, with the support of Norrep as DIP lender, proposed to be heard in New Brunswick at 1:30 pm AT that day. Attached hereto as **Exhibit "15"** is a copy of the e-mail dated August 27, 2012.

24. Rather than proceed with a CCAA application on August 27, 2012, the Applicants instead decided to reach out to Sprott and determine its intentions with respect to enforcement of the Sprott security. Attached hereto as **Exhibit "16"** is a copy of the e-mail from Mr. Hutchison to Ms. Mitchell sent August 27, 2013 at 11:54 a.m. EST.

25. Both GE Canada and Sprott, but not Norrep, were in a position to enforce their security prior to the date of the Initial Order.

26. By e-mail dated August 29, 2012, Norrep solicited GE Canada to support an application to be made by the Applicants pursuant to the CCAA on August 31, 2012 which application would be supported by a "Crown DIP". Attached hereto as **Exhibit "17"** is a true copy of the e-mail dated August 29, 2012 sent by Mr. Lee to Ms. Mitchell. Norrep confirmed that of the DIP loan required, approximately seventy percent (70%) would flow to support the operations of Landdrill Mexico. Attached hereto as **Exhibit "18"** is a true copy of e-mail correspondence from Mr. Johnson to Andrew Steuter of Sprott on August 27, 2012 confirming Norrep's position.

27. By e-mail dated August 29, 2012, GE Canada, through its legal counsel, provided its comments on the form of proposed Initial Order and general comments on GE Canada's position with respect to a CCAA filing. Attached hereto as **Exhibit "19"** is a true copy of the e-mail dated August 29, 2012.

28. GE Canada did not consider the Going Concern Sale Process as being necessary to protect its interests but was prepared to support the CCAA proceedings and the Applicants'

efforts to find a going concern purchaser(s) provided the sales process was expedited and GE Canada's exposure to the Professional Fees secured by the Administrative Charge under the Initial Order was limited. Because GE Canada was of the view that the value of the collateral over which it held first ranking security was sufficient to cover its outstanding debt, GE Canada was particularly concerned about the erosion of its security position resulting from costs of a lengthy CCAA proceeding undertaken for the benefit of other stakeholders and, in particular, Norrep.

29. This concern is reflected in GE Canada's negotiation of and comments on the draft Initial Order whereby GE Canada sought to limit the amount of the Administration Charge which would secure unpaid Professional Fees (emphasis added). Attached hereto as **Exhibit "20"** is a true copy of an e-mail dated August 30, 2012 from Ms. Mitchell to proposed Monitor's counsel, Ashley Taylor of Stikeman Elliott LLP, in which Ms. Mitchell asked that the amount of the Administration Charge be limited to the sum of $150,000. Mr. Taylor responded to GE Canada's request by e-mail dated August 30, 2012, copied to, among others, Mr. Lee, a true copy of which is attached hereto as **Exhibit "21"**, reading, in part, as follows:

> "The Admin Charge is relevant in only one situation – where the company has not paid the professionals. If the company does pay the professionals, then this charge secures nothing and has no effect."

30. In reliance upon the Monitor's advice, GE Canada agreed to an Administration Charge (securing unpaid Professional Fees) in the amount of $400,000 on condition that GE Canada receive written confirmation of the Monitor, the Monitor's counsel and the Applicants' counsel to provide weekly reports during the Stay Period with respect to the following:

(a) the status/quantum of WIP to the date of the report;

(b) the status/quantum of invoices rendered to the date of the report;

(c) the status of payment of such invoices;

(d) any material deviation or anticipated material deviation of the quantum of professional costs from the cashflows as filed with the Court.

31. This weekly reporting condition was intended to limit the exposure of the Senior Lenders under the Administration Charge during the CCAA proceedings. Attached hereto as

Exhibit "22" are true copies of the e-mails exchanged between Ms. Mitchell, and Mr. Hutchison and Mr. Taylor dated August 30, 2012 advising of GE Canada's position in this regard and confirming acceptance of the reporting arrangement.

32. I am advised by Ms. Mitchell that retainers paid to the beneficiaries of the Administration Charge prior to the issuance of the Initial Order are as follows:

(a) $100,000 to Ernst & Young Inc.;

(b) $50,000 to Stikeman Elliott LLP; and

(c) $100,000 to Stewart McKelvey LLP,

(collectively, the "**Retainers**").

I am further advised by Ms. Mitchell that she has confirmed with Mr. Hutchison that the Retainers continue to be held and are available to the professionals to satisfy any unpaid Professional Fees secured by the Administration Charge.

<u>**Initial Order**</u>

33. On August 31, 2012, the Initial Order was granted by Chief Justice Smith, a true copy of which is attached hereto as **Exhibit "23"**. The Initial Order provided, among other things, as follows:

(a) that the Applicants were to remain in possession and control of their current and future assets;

(b) the enhancement of the Monitor's powers to facilitate an expedited sales process which sales process and timeline for same were embodied in Schedule "B" to the Initial Order;

(c) the creation of the following charges (the "**Charges**"):

(i) a Critical Supplier Charge equal to the value of goods and services supplied by Critical Suppliers post-filing (paragraph 22 of the Initial Order);

(ii) a Directors' Charge not to exceed $1 million as security for an indemnity provided by the Applicants to their directors and officers (paragraph 25 of the Initial Order);

(iii) an Administration Charge not to exceed $400,000 as security for the professional fees of the Monitor, Monitor's counsel and Applicants' counsel (paragraph 37 of the Initial Order); and

(iv) a DIP Lender's Charge not to exceed $1.5 million for amounts actually advanced under the DIP facility (paragraph 41 of the Initial Order).

34. To address GE Canada's concerns regarding the payment of Professional Fees, the Initial Order expressly directed the Applicants to pay the Professional Fees on a weekly basis. In that way, the amount of Professional Fees outstanding and secured by the Administration Charge at any given point in time would be minimal. Paragraph 35 of the Initial Order reads as follows:

> "35. THIS COURT ORDERS that the Monitor, the Monitor's counsel and the Applicants' counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the amounts of the Monitor, the Monitor's counsel and the Applicants' counsel on a weekly basis." (emphasis added)

35. The Senior Lenders were not able to reach agreement prior to the making of the Initial Order on the priority of the Charges relative to each of the Senior Lender's security position or the allocation of those Charges against the Applicants' property. Paragraph 46 of the Initial Order, accordingly, provided that the Charges would rank behind the security held by the Senior Lenders, with the Applicants and beneficiaries of those Charges having the right on the Comeback Motion to seek an order that the Charges rank in priority to the Senior Lenders' security and the right of the Senior Lenders to seek an order on the Comeback Motion allocating the Charges among the Senior Lenders and/or among the property of Landdrill Canada and the Applicants' Mexican assets.

36. GE Canada required the following be added to paragraph 46 of the Initial Order:

> "Notwithstanding the foregoing or any provision of this Order, the priority of the charges held by the Senior Lenders in respect of the Property whether pursuant to their respective security agreements and related documents or

> otherwise at law are hereby expressly reserved and the issuance of this Order is without prejudice to the right of the Senior Lenders, or any of them, to seek an order on the Comeback Motion (as defined below) allocating the Charges or any portion thereof among and between the Senior Lenders and/or among and between the Landdrill Canada Property and the Landdrill Mexico Property, or any portions thereof."

The Comeback Order

37. Subsequent to the issuance of the Initial Order and prior to the hearing of the Comeback Motion, the Senior Lenders negotiated and reached an agreement on the priority and allocation of the Charges among these various collateral pools. Attached hereto as **Exhibit "24"** is a true copy of an e-mail dated September 26, 2012 from Mr. Lee, counsel for Norrep, to, among others, counsel for GE Canada indicating that an agreement on allocation of the Charges had been reached and providing draft language for consideration.

38. The Senior Lenders agreed that,

(a) the Charges would have priority over the Senior Lenders' collective security interests;

(b) with respect to the DIP Lender's Charge, amounts advanced under the DIP facility prior to the closing of the sale of Landdrill Canada's assets and used to fund Landdrill Mexico's operations were to be allocated to Landdrill Mexico's assets with the balance of such amounts advanced under the DIP facility to be allocated to Landdrill Canada's assets;

(c) that the portion of the DIP Lender's Charge allocated to Landdrill Canada's assets was to be further allocated 62% against Landdrill Canada's assets over which Norrep had priority and 38% against Landdrill Canada's assets over which GE Canada had priority;

(d) the portion of the DIP Lender's Charge allocated to Landdrill Mexico's assets was to be allocated equally against the first-ranking collateral of each of Norrep and Sprott;

(e) the Administration Charge, Critical Supplier Charge and Director's Charge were to be allocated among the Senior Lenders in the same proportion and the same manner as the DIP Lender's Charge is allocated; and

(f) the Professional Fees subject to the Administration Charge incurred subsequent to the closing of the sale of Landdrill Canada's assets or relating exclusively to completing the sale of Landdrill Mexico's assets, whensoever incurred, would be borne by Norrep and Sprott and not by GE Canada.

39. The agreement reached by the Senior Lenders on the priority and allocation of the Charges was embodied in paragraph 7 of the Comeback Order, a true copy of which is attached hereto as **Exhibit "25"**.

40. As noted above, because GE Canada wanted to minimize its potential exposure for payment of Professional Fees secured by the Administration Charge, GE Canada required the Monitor, Monitor's counsel and Applicants' counsel to provide weekly reports on the status of their fees.

41. I am advised by Ms. Mitchell that she reviewed the weekly reports and followed up with the professionals in respect of unpaid accounts to ensure that the Professional Fees were kept current in accordance with the Initial Order and to eliminate or reduce GE Canada's exposure in respect of the Administration Charge. By way of example, attached as **Exhibit "26"** is a true copy of an e-mail dated September 10, 2012 to counsel for the Monitor requesting the Monitor and its counsel's reports and related accounts for the week ending September 5, 2012. By way of further example, attached as **Exhibits "27"** and **"28"** are a true copies of an e-mail dated November 19, 2012 to counsel for the Applicants requesting the anticipated timing of payment of outstanding Professional Fees and an e-mail string dated November 27 and 29, 2012 between Ms. Mitchell and Mr. Taylor, wherein Ms. Mitchell requested that Mr. Taylor follow up with Landdrill Canada's counsel in respect of payment of the Monitor's counsel's fees, respectively.

42. To summarize, GE Canada addressed its concerns regarding its exposure for payment of Professional Fees incurred in the CCAA proceedings in four (4) ways:

(a) the Initial Order directed the Applicants to pay the Professional Fees on a weekly basis. To ensure timely payment of the Professional Fees as directed in the Initial Order, GE Canada required the Monitor, its counsel and Applicants' counsel to provide weekly reports on the status of payment and quantum and status of payment of the Professional Fees, which reports were obtained and reviewed;

(b) the Administration Charge was limited to a maximum amount of $400,000;

(c) the Administration Charge was to be allocated among the Senior Lenders to Landdrill Canada's assets and Landdrill Mexico's assets such that GE Canada would, at most, bear the burden of 38% of the Professional Fees incurred for the period prior to the completion of the sale of Landdrill Canada's assets (less Mexican Expenditures (as defined in the Comeback Motion)) and which remained unpaid at the end of the CCAA proceedings; and

(d) Norrep and Sprott would bear the burden of all Professional Fees incurred after the completion of the sale of Landdrill Canada's assets which remained unpaid at the end of the CCAA proceedings, if any.

43. Limiting GE Canada's exposure for payment of Professional Fees secured by the Administration Charge was of paramount importance to GE Canada. As mentioned previously, on August 27, 2012 and prior to the making of the Initial Order, GE Canada was in a legal position to enforce its security against the collateral over which it held priority. Had it done so, GE Canada fully expected, based on the appraised value of that collateral, consisting primarily of drilling rigs, that it would be made whole including payment of reasonable costs incurred to repossess, market and sell its collateral.

44. I have reviewed the Monitor's Tenth Report filed in these proceedings (the "**Tenth Report**") and am able to confirm that no Professional Fees incurred for the period prior to the closing of the sale of Landdrill Canada's assets remain unpaid and, furthermore, no amounts have been or expect to be advanced to the Applicants under the DIP facility.

45. No amounts are secured by the DIP Charge and, therefore, subject to allocation under the Comeback Order.

The Sale of the Canadian Assets

46. In accordance with the timeline imposed by the Going Concern Sale Process, Clarus received non-binding proposals to purchase the assets of the Applicants from three parties. Proposals were received from Cabo Drilling Corp. ("**Cabo**"), Energold Drilling Corp. ("**Energold**") and Major Drilling Group International Inc. ("**Major**"). A summary of those proposals was previously filed with the Court as a confidential appendix to the Monitor's

Second Report (the "**Proposal Summary**") and is attached as Exhibit "A" to the Confidential Pisani Affidavit.

47. Cabo submitted a proposal to purchase the assets of Landdrill Canada as a going concern. A copy of the proposal from Cabo dated September 19, 2012 (the "**Original Cabo Offer**") is attached as Exhibit "B" to the Confidential Pisani Affidavit. Cabo also submitted a revised proposal, on substantially the same terms as the Original Cabo Offer, dated September 26, 2012 (the "**Revised Cabo Offer**") for the purchase of the Canadian assets, a true copy of which is attached as Exhibit "C" to the Confidential Pisani Affidavit.

48. The most significant difference between the Original Cabo Offer and the Revised Cabo Offer was rather than the proposed purchase price being paid by way of assumption of debt, the Revised Cabo Offer provided for payment of the purchase price by way of a vendor take back note and an equity stake in Cabo.

49. Energold submitted a proposal for the purchase of Landdrill Mexico's assets. A copy of the proposal from Energold dated September 21, 2012 (the "**Energold Offer**") is attached as Exhibit "D" to the Confidential Pisani Affidavit.

50. Major submitted a proposal for the purchase of the assets of each of Landdrill Canada, Landdrill Mexico and Landdrill Mongolia on a collective and individual basis. A copy of the offer from Major dated September 21, 2012 (the "**Major Offer**") is attached as Exhibit "E" to the Confidential Pisani Affidavit.

51. The purchase price in the Revised Cabo Offer was significantly greater than the purchase price for Landdrill Canada's assets contained in the Major Offer. Moreover, the Major Offer did not contemplate carrying on the business of Landdrill Canada as a going concern.

52. The purchase price for Landdrill Mexico's assets contained in the Major Offer was significantly greater than the purchase price for the assets of Landdrill Mexico contained in the Energold Offer.

53. Based on the proposals received, Norrep and Sprott were prepared to complete a sale of Landdrill Canada's assets to Cabo pursuant to the Revised Cabo Offer and a sale of Landdrill Mexico's assets and Landdrill Mongolia's assets to Major pursuant to the Major Offer. The revised payment terms contained in the Revised Cabo Offer were not acceptable

to GE Canada but were acceptable to Norrep. By letter dated October 3, 2012 (the "**October 3rd Letter**"), Norrep advised the Monitor that, subject only to an internal credit approval anticipated to be obtained within a day or two, Norrep was prepared to acquire GE Canada's position in order to allow the transaction contemplated by the Revised Cabo Offer for Landdrill Canada's assets to be completed. A true copy of said correspondence is attached hereto as **Exhibit "29"**.

54. Following delivery of the October 3rd Letter, Major revised the terms of the original Major Offer and advised the Monitor and Clarus that it was no longer prepared to purchase the assets of each of Landdrill Canada, Landdrill Mexico and Landdrill Mongolia on a collective and individual basis rather the purchase of the assets of Landdrill Mexico was conditional on the purchase of Landdrill Canada's assets for a purchase price of $4.5 million (the "**Revised Major Offer**"). The price offered by Major for Landdrill Canada's assets was well below the purchase price contained in the Revised Cabo Offer.

55. Since the Revised Major Offer for Landdrill Mexico's assets was far superior to the Energold Offer and Major had introduced a new condition to its purchase of the assets of Landdrill Mexico, Norrep rescinded its position contained in the October 3rd Letter and refused to support the Revised Cabo Offer. Norrep (and Sprott) supported the Revised Major Offer for the assets of Landdrill Canada, Landdrill Mexico and Landdrill Mongolia since they would realize the benefit of increased recovery from the assets of Landdrill Mexico, albeit at the expense of a materially reduced recovery from the assets of Landdrill Canada.

56. Ultimately, the Monitor and the Applicants entered into an Agreement of Purchase and Sale with Major dated November 6, 2012 (the "**Major APA**") for the purchase of the assets of Landdrill Canada (the "**Canadian Transaction**"), the purchase of the assets of Landdrill Mexico (the "**Mexican Transaction**"), and the purchase of the assets of Landdrill Mongolia (the "**Mongolian Transaction**" and collectively, the "**Major Transaction**"). A copy of the Major APA is attached as Exhibit "F" to the Confidential Pisani Affidavit.

57. The Monitor applied to the court for approval of the Major APA and the Major Transaction. An Order approving the Major APA and the Major Transaction was granted by Chief Justice Smith on November 14, 2012. Attached hereto as **Exhibit "30"** is a true copy of the Approval Order.

58. GE Canada was prepared to consent to the Approval Order; however, reserved all rights to argue the appropriate allocation of the aggregate purchase price paid by Major pursuant the Major APA.

59. The Canadian Transaction closed on November 20, 2012.

60. The Mongolian Transaction closed on December 21, 2012.

61. As a condition of the Major APA, the Mexican Transaction was to be completed on or before February 15, 2013, which condition was not satisfied or waived by the parties. Accordingly, the Mexican APA was terminated and the sale of Landdrill Mexico's assets remains an outstanding matter to be dealt with in these CCAA proceedings.

The Allocation of the Proceeds of the Canadian Transaction

62. From my review of the Monitor's Proposed Allocation (defined below), I understand that Canadian Proceeds of $4,058,151, after adjustments, were realized from the sale of Landdrill Canada's assets to Major pursuant to the Major APA. I further understand that the assets included in the Canadian Transaction consisted of the following:

(a) equipment and vehicles over which GE Canada has priority;

(b) inventory over which Norrep has priority; and

(c) vehicles over which GMAC has priority.

63. At the request of GE Canada, the purchase price paid by Major in connection with the Canadian Transaction was not allocated in the Major APA or on the closing of the Canadian Transaction.

64. The Monitor circulated a proposed allocation of the Canadian Proceeds among the various asset groups included in that transaction by e-mail dated January 10, 2013, a true copy of which is attached hereto as **Exhibit "31"**.

65. The Monitor proposed allocating the Canadian Proceeds as follows:

(a) $3,252,975 to the GE Canada priority collateral;

(b) $598,153 to the Norrep priority collateral; and

(c) $207,023 to the GMAC priority collateral,

(the "**Monitor's Proposed Allocation**").

The Monitor's Proposed Allocation is based on the net book value of the assets included in the Canadian Transaction.

66. Ms. Mitchell responded on behalf of GE Canada to the Monitor's Proposed Allocation by correspondence dated February 21, 2013 (the "**February 21 Letter**"), a true copy of Ms. Mitchell's letter is attached as Exhibit "G" to the Confidential Pisani Affidavit. As set out in said correspondence, having regard to the appraised value of the assets of Landdrill Canada subject to GE Canada's first-ranking security interest (the "**GE Collateral**"), GE Canada disagrees with the Monitor's Proposed Allocation based on a net book value. Rather, it is GE Canada's position that the allocation of the Canadian Proceeds should be based on the forced liquidation value of the GE Collateral. Accordingly, the minimum amount of the Canadian Proceeds to be allocated to the GE Collateral is $3,673,500. GE Canada should not be penalized by the fact that the Major Transaction, which offered less for the Canadian assets, was completed rather than the Revised Cabo Offer, which offered far more for the Canadian assets.

<u>The Mongolian and Russian Assets</u>

67. I understand from a review of the Monitor's Sixth Report filed in these proceedings that gross proceeds of $918,929 were received by the Monitor on closing of the Mongolian Transaction (the "**Mongolian Proceeds**").

68. GE Canada is not aware of any party having valid and enforceable security against the assets which were the subject matter of the Mongolian Transaction.

69. GE Canada recently learned that Landdrill Mongolia owes monies to Landdrill Parent by way of an inter-company receivable. Attached as **Exhibit "32"** to this Affidavit is a true copy of an e-mail dated February 14, 2013 from the Monitor which discloses various inter-company receivables owing to Landdrill Parent. Particulars of these inter-company receivables (as at July 31, 2012) are as follows:

(a) an inter-company receivable in the amount of $5,418,500 owing by Landdrill Mongolia to Landdrill Parent; and

(b) an inter-company receivable in the amount of $2,966,165 owing by Landdrill Russia to Landdrill Parent.

Attached hereto as **Exhibit "33"** is a true copy of the e-mail dated February 22, 2013 sent by the Monitor to counsel for the Senior Lenders and the counsel for the Applicants attaching a schedule of inter-company accounts receivable/payable as at July 31, 2012.

70. As mentioned at the outset of this Affidavit, GE Canada takes the position that it holds a perfected first-ranking security interest in the assets of Landdrill Parent. That security interest extends to the unsecured inter-company receivables owing by Landdrill Mongolia and Landdrill Russia to Landdrill Parent.

71. As shown in the BC PPSA searches against Landdrill Parent under the BC PPSA attached as Exhibit "9" to this Affidavit, there are no registrations against Landdrill Parent prior in time to the registration effected by GE Canada. Norrep has not effected a registration against Landdrill Parent pursuant to the BC PPSA. GE Canada has obtained a legal opinion confirming, subject to the usual assumptions and qualifications, that pursuant to the BC PPSA, GE Canada has priority over the other creditors of Landdrill Parent, including Sprott, CIBC and Norrep, to the accounts receivable and other intangible personal property of Landdrill Parent. As such, it is my belief that GE Canada holds a first ranking security interest in and to the inter-company accounts receivable owing by Landdrill Mongolia and Landdrill Russia to Landdrill Parent.

72. By letter dated February 21, 2013 to the Monitor, Ms. Mitchell advised, among other things, that GE Canada holds a first ranking security interest in the inter-company amounts owing by Landdrill Mongolia and Landdrill Russia to Landdrill Parent as well as the other intangible property identified by the Monitor in the Monitor's e-mail dated January 10, 2013. A true copy of Ms. Mitchell's letter is attached as Exhibit "G" to the Confidential Pisani Affidavit.

73. By letter dated February 27, 2013, counsel for Norrep objected to GE Canada's claim to a first ranking priority position with respect to the inter-company amounts owing by Landdrill Mongolia to Landdrill Parent. A true copy of that letter is attached hereto as **Exhibit "34"**.

74. I am advised by Ms. Mitchell that she has requested copies of the opinions of the Mongolian and Russian counsel retained by Norrep as referred to in Mr. Lee's letter dated February 27, 2013. Despite that request, copies of such opinions have not yet been provided. Attached hereto as **Exhibit "35"** is a copy of an e-mail dated March 12, 2013 from Ms. Mitchell to Mr. Lee wherein she requested copies of the opinions of Mongolian and Russian counsel commissioned by Norrep at the time it advanced its loan in March, 2012, along with Mr. Lee's e-mail response dated March 13, 2013 wherein he advised that he would be back to her in due course. I am advised by Ms. Mitchell that no response has been provided to date.

75. GE Canada is not a signatory to the Norrep Credit Agreement and accordingly is not bound by its terms. Moreover, GE Canada is not a party to a priorities agreement with Norrep with respect to Landdrill Parent nor did Norrep at any time request a subordination or waiver of the security interest held by GE Canada in and to the accounts receivable of Landdrill Parent.

76. GE Canada has concerns that Norrep has failed to properly perfect its security interest in the assets of Landdrill Russia and Landdrill Mongolia in the same manner as it failed to properly perfect its security interest in the assets of Landdrill Mexico. Unlike the agreement between Sprott and Norrep with respect to their respective security interests in the assets of Landdrill Mexico and upon which Norrep relied to obtain an Order dated March 6, 2013, GE Canada is not a party to any priorities agreement with Norrep with respect to Landdrill Parent.

<u>Allocation of the Charges and Professional Costs already paid by the Applicants to the Proceeds of the Canadian Transaction and Mongolian Transaction</u>

77. The allocation of the Charges has already been agreed by the Senior Lenders. The Senior Lenders' agreement in this regard is embodied in the Comeback Order. Norrep is bound by the terms of this Order and its agreement.

78. These CCAA proceedings were not undertaken for the benefit of GE Canada. As mentioned previously, at the date of the Initial Order, GE Canada was in a position to enforce its security and, had it done so, GE Canada fully expected, based on the Gauthier Appraisal, that it would have been paid in full with surplus proceeds available to Norrep.

79. Because it was concerned about the Professional Fees incurred during the course of the CCAA proceedings, which GE Canada perceived as being undertaken for the benefit of stakeholders other than GE Canada, GE Canada sought protection in the Initial Order from having exposure under any Administration Charge ranking in priority to GE Canada's security. The Initial Order directed the Applicants to pay the professional fees on a weekly basis. GE Canada required weekly reports to be provided by the professionals on the status of their fees to minimize any potential exposure for unpaid Professional Fees secured by the Administration Charge. The amount of the Administration Charge for professional fees was limited to $400,000, with only a very limited portion of that amount actually capable of being allocated to Landdrill Canada's assets over which GE Canada had priority under the allocation formula provided for in the Comeback Order.

80. Pursuant to the Initial Order, Landdrill Canada maintained possession of its assets and continued operations while its assets were marketed as a going concern pursuant to the Going Concern Sale Process abiding by the short time line associated with such process. GE Canada relied upon Landdrill Canada's ability to cashflow its operations during the CCAA proceedings, including the payment of Professional Fees, as evidenced by the 13-week cashflow projections filed in support of the Initial Order.

81. During these CCAA proceedings and as required by the Initial Order, Landdrill Canada and Landdrill Parent continued in operations and used their receipts for payment of ongoing operational expenses including the payment of the Professional Fees which the Initial Order directed the Applicants to pay on a weekly basis.

82. At no time did GE Canada ever contemplate that it might be called upon to reimburse the Applicants any portion of the Professional Fees already paid by them during the course of the CCAA proceedings from the proceeds of the GE Collateral. GE Canada understood that its exposure for the Professional Fees was limited to a portion of any unpaid fees which would be secured by the Administration Charge based on the formula contained in the Comeback Order. The copy of the e-mail from Monitor's counsel attached as Exhibit "21" suggests that he shared that understanding.

83. At no time prior to the making of the Initial Order did Norrep ever suggest that GE Canada and Sprott would be responsible for a portion of the Professional Fees paid for by the Applicants during the CCAA proceedings or advise GE Canada that it intended to seek

an allocation of such fees against the GE Collateral. Norrep's intention to do so was communicated only recently through the communication issued by the Monitor on January 10, 2013 a copy of which is attached as Exhibit "31" and after the closing of the Canadian Transaction. Had GE Canada been advised of Norrep's intention to do so, it would not have supported the CCAA proceedings or would have asked the Court to address the issue on the Comeback Motion and long before the majority of the Professional Fees were incurred.

84. At all times GE Canada has relied on the terms of the Comeback Order (and the agreement among the Secured Lenders regarding the priority and allocation of the Administration Charge as reflected in the Comeback Order). In reliance upon the terms of the Comeback Order and the conduct and communications of Norrep to date, GE Canada: (i) did not oppose the Major Transaction; (ii) did not object to the various extensions of the stay of proceedings; (iii) did not object to the steps taken by the Monitor in these proceedings including supporting the Major Transaction; (iv) did not object to the previous approvals given by the Court of the Professional Fees incurred; and (v) did not seek to enforce its security when it became evident that the Revised Cabo Offer was no longer acceptable to Sprott and Norrep.

85. On the Norrep Motion, Norrep takes the position that the Applicants' assets over which Norrep has priority have been utilized exclusively to pay the Professional Fees. The Johnson Affidavit refers to the payment of the Professional Fees by the Applicants during the course of these proceedings from the Applicants' current assets. What the Johnson Affidavit does not state, and I do not know, is whether the amount of the current assets over which Norrep had priority actually decreased between the date of the Initial Order and the completion of the Canadian Transaction. After the Initial Order was made, the Applicants continued operations. So while it is true that the Applicants' current assets would have been used by the Applicants to fund their ongoing operations, including the payment of the Professional Fees, new current assets over which Norrep has priority would also have been generated during the course of these proceedings. I also note that those new current assets were generated through the use of the GE Collateral without any compensation being paid during the course of these proceedings to GE Canada. Moreover, receipts of Landdrill Canada were advanced and the head office's services of Landdrill Parent were provided to the other Applicants, including Landdrill Mexico, during these proceedings with no benefit to GE Canada.

Distribution

86. GE Canada seeks to have the Canadian Proceeds and the Mongolian Proceeds distributed at this time. It is my understanding that there are no amounts secured by the Critical Supplier Charge or DIP Lender's Charge and that all Professional Fees up to the closing of the Canadian Transaction have been paid by the Applicants, in full. To the extent that there are presently unpaid Professional Fees secured by the Administration Charge, it is my understanding that those costs relate to the period after the closing of the Canadian Transaction and, as such, in accordance with the Comeback Order, are to be borne by Norrep and Sprott. As such, even though the CCAA proceedings are still ongoing, under the terms of the Comeback Order any further Professional Fees, even if not paid by the Applicants, cannot be charged against the Canadian Proceeds or the Mongolian Proceeds.

87. Pursuant to the Order of Chief Justice Smith dated March 21, 2013, a claims procedure was established for the solicitation of claims against the Applicants' directors and officers (the "**D&O Claims Solicitation Procedure Order**"). A true copy of the D&O Claims Solicitation Procedure Order is attached hereto as **Exhibit "36"**.

88. Pursuant to the D&O Claims Solicitation Procedure Order, the claims bar date is April 15, 2013. Accordingly, by the return of the motion in respect of which this affidavit is sworn, the maximum quantum of any claims secured by the Directors' Charge will be known and an adequate holdback for same can be maintained.

Other Assets

89. As set out in the Monitor's previous reports filed with the Court, the Applicants' remaining assets include assets of Landdrill Mongolia which were not included in the Major Transaction and assets of Landdrill Russia. From a review of the Tenth Report, I understand that the Monitor is attempting to realize on the Landdrill Mongolia assets through a sale of the shares of Landdrill Mongolia and that a sale of the assets of Landdrill Mongolia, themselves, is seemingly not possible. The Monitor has previously applied to the Court for approval of a transaction for the sale of the shares of Landdrill Mongolia (the **"Mongolian Share Transaction"**). By Order of the Honourable Mr. Justice Ouellette dated February 15, 2013, approval for the Mongolian Share Transaction was obtained. As noted in the Tenth Report, the Mongolian Share Transaction has not yet been completed.

90. GE Canada is not aware of any party holding a perfected security interest in the assets of Landdrill Mongolia. It is GE Canada's position that once the Mongolian Share Transaction is completed, the proceeds of that sale ought to be distributed by the Monitor to the creditors of Landdrill Mongolia, including Landdrill Parent, in the same manner as the Mongolian Proceeds are to be distributed and in the same manner as if the distribution involved proceeds from a sale of assets.

Statement of Account

91. Pursuant to paragraph 9 of the Initial Order, the Applicants have not made any payments on account of principal, interest thereon or otherwise on account of amounts owing to GE Canada since the date of the Initial Order.

92. As at April 11, 2013, the amount owing by Landdrill Canada to GE Canada totals $3,488,453.85, which amount is comprised as follows:

Contract	Principal	Accrued Interest	Prepayment Amount	Late Charges	Amount
2164552-001	$1,064,896.41	$68,783.94	$71,813.81	$7,430.35	$1,212,924.51
8688011-011	252,359.77	14,791.43	18,610.09	826.27	286,587.56
8698749-001	527,539.86	30,015.14	42,080.39	3,044.22	602,679.61
8724235-001	1,030,241.72	64,742.20	95,774.94	6,987.72	1,197,746.58
	$2,875,037.76	$178,332.71	$228,279.23	$18,288.56	$3,299,938.26

Legal fees invoiced as at April 11, 2013 (including HST):	
Miller Thomson LLP	162,189.03
McInnes Cooper	14,519.85
Other costs (before taxes)	11,806.71
TOTAL:	$3,488,453.85

93. The aggregate per diem rate of interest on the GE Contracts is $696.52.

94. The standard terms and conditions forming part of the GE Contracts obligates Landdrill Canada to pay a prepayment amount in the event of default.

95. Section 2.2 of the standard terms and conditions of the ELSA states:

> "2.2 Client may at any time prepay the Financed Amount in whole or in part upon payment to Lender of a Prepayment Bonus determined as follows:
>
> (a) if the Financing Rate is a variable rate based on Prime Rate, the bonus shall be three months' interest on the amount prepaid calculated at the Financing Rate in effect at the time of prepayment, or
>
> (b) if the Financing Rate is a fixed rate, the bonus shall be either (i) three months' interest on the amount prepaid calculated at the Financing Rate (the "Minimum Bonus") if the Financing Rate does not exceed the Prime Rate in effect at the time of prepayment ("Current Prime"), or (ii) the greater of (A) the Minimum Bonus or (B) the amount determined as the product of (x) the Financing Rate less Current Prime times (y) the amount prepaid times (z) the fraction of the number of days to elapse until the final instalment date, disregarding prepayments, divided by 365, if the Financing Rate exceeds Current Prime.
>
> Any portion of the Financed Amount prepaid shall be applied to the remaining instalments in inverse order of maturity. No part of the Prepayment Bonus shall be applied in reduction of said remaining instalments, if a Default or a Loss of Equipment occurs, the Prepayment Bonus shall also be payable by Client and shall be calculated by reference to the outstanding balance of the Financed Amount at the time of such Default or Loss of Equipment, as applicable."

96. Section 1 of the ELSA standard terms defines "Obligations" as including all obligations payable under the ELSA and not just the Financed Amount and the Overdue Payments (both defined terms):

> "Obligations" means any obligation by Client to pay any amount owing hereunder, including the Financed Amount, Overdue Payments and all other amounts owing hereunder, or to perform any other obligation of Client hereunder or which is secured hereunder."

97. Section 2.2 of the standard terms and conditions of the CSA states:

> "2.2 Purchaser may at any time prepay the Financed Amount in whole or in part upon payment to Seller of a prepayment bonus determined as follows:
>
> (a) if the Financing Rate is a variable rate based on Prime Rate, the bonus shall be three months' interest on the amount prepaid calculated at the Financing Rate in effect at the time of prepayment; or
>
> (b) if the Financing Rate is a fixed rate, the bonus shall be either (i) three months' interest on the amount prepaid calculated at the Financing Rate (the "Minimum Bonus"), if the Financing Rate does not exceed the Prime Rate in effect at the time of prepayment

> ("Current Prime"), or (ii) the greater of (A) the Minimum Bonus or (B) the amount determined as the product of (x) the Financing Rate less Current Prime times (y) the amount prepaid times (z) the fraction of the number of days to elapse until the final instalment date, disregarding prepayments, divided by 365, if the Financing Rate exceeds Current Prime.
>
> Any portion of the Financed Amount prepaid shall satisfy the Purchaser's obligation to pay the remaining instalments to the extent of the amount prepaid in inverse order of maturity, if a Default or a Loss of Goods occurs, the Prepayment Bonus shall also be payable by Purchaser and shall be calculated by reference to the outstanding balance of the Financed Amount at the time of such Default or Loss of Goods as applicable."

98. Section 1 of the CSA Standard Terms defines "Obligations" as including all obligations payable under the ELSA:

> "Obligations" means any obligation to pay any amount owing by Purchaser hereunder or to perform any other obligation of Purchaser hereunder."

99. Accordingly, the prepayment amount forms part of the "Obligations" under the GE Contracts which GE Canada is entitled to collect from Landdrill Canada and Landdrill Parent, as guarantor.

100. Attached hereto as **Exhibit "37"** is a copy of a Statement of Account for each of the GE Contracts.

101. There is no reason to postpone a distribution from the Canadian Proceeds and the Mongolian Proceeds to GE Canada at this time. To do so is in the interests of all stakeholders as it will stop further interest and legal costs from accruing.

102. Subject to maintaining an adequate holdback for the Directors Charge and the Administration Charge which might attach to the Mongolian Proceeds, it is GE Canada's position that the Mongolian Proceeds should also be distributed at this time and direction given by the Court with respect to distribution of any further proceeds realized by the Monitor from the sale or disposition of the assets of the Applicants including the assets of Landdrill Mongolia and Landdrill Russia.

SWORN BEFORE ME at the City of Toronto in the Province of Ontario, on April 12, 2013. Commissioner for Taking Affidavits	Michael Pisani

Lara Fitzgerald-Husek, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 29, 2014.