COURT FILE NO.	1601-06131	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	**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 CONNACHER OIL AND GAS LIMITED**	
DOCUMENT	**BENCH BRIEF OF CONNACHER OIL AND GAS LIMITED** **CONNACHER CROSS-APPLICATION (EMKAY LEASE ACCOUNTING)**	
HEARING	**MONDAY, OCTOBER 30, 2017**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Cassels Brock & Blackwell LLP** Suite 1250, Millennium Tower 440 - 2nd Avenue SW Calgary, Alberta T2P 5E9 Attn: Timothy Pinos/Ryan Jacobs/Joseph Bellissimo Tel: 403-351-2920 Fax: 403-648-1151 tpinos@casselsbrock.com rjacobs@casselsbrock.com jbellissimo@casselsbrock.com	

I INTRODUCTION

1. This Bench Brief is submitted on behalf of Connacher Oil and Gas Limited ("**Connacher**") in support of a Cross-Application by Connacher returnable on October 30, 2017 to be heard in conjunction with an Application by Emkay Canada Fleet Services Corp. also returnable on October 30, 2017 (the "**Emkay Application**").[1]

2. The Emkay Application seeks a declaration from this Honourable Court that certain lease agreements[2] between Connacher and Emkay Canada Leasing Corp. ("**Emkay**") are "true leases" and an order requiring Connacher to pay rent under the Emkay Leases for the period following the date of Connacher's filing under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to section 11.01(a) of the CCAA.

3. Connacher opposes the Emkay Application on the basis that the Emkay Leases are, in substance, "finance leases" under the applicable CCAA jurisprudence, and that Connacher is not required to pay rent under the Emkay Leases.

4. However, notwithstanding its opposition to the Emkay Application, Connacher, for business reasons, commenced returning the Leased Trucks (as defined below) to Emkay. That process was completed and all of the Leased Trucks were returned to Emkay by August 8, 2017.[3]

5. Pursuant to section 12 of the Emkay Master Lease Agreement, upon return of the Leased Trucks, Emkay was required to facilitate the sale of the Leased Trucks.

6. Although Emkay has not expressly confirmed whether it has sold the Leased Trucks (despite repeated requests by Connacher), Connacher believes that the Leased Trucks

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[1] This Brief is limited to the issues raised in Connacher's Cross-Application. Connacher will deliver a separate Brief in respect of the Emkay Application in response to Emkay's Brief in support of its application.

[2] The agreement is comprised of an Emkay Canada Vehicle Lease Agreement dated October 4, 2012 (the "**Master Lease Agreement**") and 23 lease schedules thereto (the "**Lease Schedules**", and together with the Master Lease Agreement, the "**Emkay Leases**"). Copies of the Emkay Leases are attached at Exhibit "D" to the Affidavit of Jeff Beeston sworn on July 24, 2017 filed in response to the Emkay Application (the "**July 24th Beeston Affidavit**").

[3] A list of the 23 Leased Trucks is attached at Schedule "A" to Connacher's Cross-Application. As noted therein, two of the Leased Trucks were previously returned by Connacher to Emkay in December 2016.

were all in fact sold at auction following their return because the Leased Trucks were picked up on behalf of Emkay directly by an auction company.

7. Section 12 of the Master Lease Agreement further provides that "[i]f the Net Proceeds of such sale shall exceed the Depreciated Value of the Vehicle, and if Lessee is not in breach or default as provided in paragraph 11, Lessor shall credit, or at its option, pay the excess, less a one and one-half percent disposal fee of gross proceeds to Lessee as a refund of rentals".

8. Despite repeated demand, Emkay has refused to provide Connacher with an accounting of the proceeds of the sale of the Leased Trucks and has taken the position that it is not required to pay the excess proceeds to Connacher. Emkay however continues to assert its claim against Connacher for payment of post-CCAA filing rent.

9. Accordingly, in its Cross-Application, Connacher is seeking a full and detailed accounting of the proceeds of the sale of the Leased Trucks (i) in accordance with its rights under the Master Lease Agreement and (ii) in any event, in order for Connacher, the Monitor (as defined below) and this Honourable Court to know whether Emkay has already recovered all or a portion of the post-CCAA filing rent from the sale of the Leased Trucks.

10. In addition, Connacher is seeking an order requiring Emkay to pay to Connacher any excess proceeds from the sale of the Leased Trucks in accordance with the Master Lease Agreement.

II THE FACTS

A. Background to the Emkay Application and Connacher's Cross-Application

11. On May 17, 2016, the Honourable Madam Justice Dario of this Honourable Court granted an Initial Order (the **"Initial Order"**) which provided for, among other things, a stay of proceedings up to and including June 16, 2016 pursuant to the CCAA in favour of Connacher, which has most recently been extended by this Honourable Court to January 31, 2018.[4] A copy of the Initial Order is attached as Exhibit "C" to the Affidavit of

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[4] July 24th Beeston Affidavit, para 3.

Norman S. Lyle sworn on July 4, 2017 and filed in support of the Emkay Application (the "**Lyle Affidavit**").

12. Pursuant to the terms of the Initial Order, Ernst & Young Inc. (the "**Monitor**") was appointed as monitor in this CCAA proceeding.[5]

13. As of the date of the Initial Order, Connacher operated a fleet of pick-up trucks for use in its day-to-day business activities. Twenty-three of those trucks were acquired pursuant to the Emkay Lease (the "**Leased Trucks**").[6]

14. In connection with the commencement of Connacher's CCAA proceedings, Connacher with the assistance of its counsel, and in consultation with the Monitor, reviewed each of Connacher's equipment leases to determine whether they fell within section 11.01(a) of the CCAA.[7]

15. Connacher concluded, following the advice of counsel, that each of the Emkay Leases was a finance lease (not a true lease) and therefore did not fall within section 11.01(a) of the CCAA. As such, Connacher has not paid rent under the Emkay Lease since the Initial Order was granted.[8]

16. As discussed in further detail in the July 24th Beeston Affidavit, the non-payment of post-CCAA filing rent ultimately led to Emkay commencing the Emkay Application seeking an order requiring Connacher to pay the post-CCAA filing rent and accruing monthly rent thereafter.[9]

17. Although Connacher opposes the Emkay Application and takes the position that the Emkay Leases are properly characterized as finance leases, Connacher decided to return the Leased Trucks to Emkay because it could obtain replacements for the Leased Trucks at a lower cost.[10]

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[5] July 24th Beeston Affidavit, para 4.

[6] July 24th Beeston Affidavit, para 3.

[7] July 24th Beeston Affidavit, para 6.

[8] July 24th Beeston Affidavit, para 7.

[9] July 24th Beeston Affidavit, para 8-11.

[10] July 24th Beeston Affidavit, para 12.

18. Two of the Leased Trucks had previously been returned to Emkay in December 2016, and all of the remaining Leased Trucks were picked up by or on behalf of Emkay on August 3 and 8, 2017.[11]

19. Although Emkay has not expressly confirmed (despite repeated requests by Connacher), Connacher believes that all of the remaining Leased Trucks were sold by Emkay because the Leased Trucks were in fact picked up from Connacher by an auction company on behalf of Emkay.[12]

B. Emkay's Contractual Obligations Upon Return of the Leased Trucks

20. Section 12 of the Master Lease Agreement provides that, upon return of the Leased Trucks, Emkay is required to facilitate the sale of the Leased Trucks and account to Connacher for the proceeds. In particular, section 12 provides as follows:

> RETURN OR SURRENDER OF VEHICLES AND FINAL SETTLEMENT. Lessee agrees that, upon expiration of the lease of any Vehicle, or termination of Lessee's rights to the possession of any Vehicle under the terms of this Agreement, Lessee shall at its expense, return such Vehicle to the Lessor at a mutually agreed upon location. Each such Vehicle shall be returned together with all license plates, registration certificates, documents of ownership, warranties and similar documents and with all factory or dealer installed equipment and five useable tires. Any Vehicle returned or surrendered as provided in this Agreement, shall be delivered in good working order condition and repair excepting only reasonable wear and tear caused by normal use. **Lessor will facilitate the sale of the vehicle. If the Net Proceeds of such sale shall exceed the Depreciated Value of the Vehicle, and if Lessee is not in breach or default as provided in Paragraph 11, Lessor shall credit, or at its option, pay the excess, less a one and one-half percent disposal fee of gross proceeds to Lessee as a refund of rentals.** If the Net Proceeds of such sale shall be less than the Depreciated Value of the Vehicle, Lessee shall pay the deficiency plus a one and one-half percent disposal fee of gross proceeds as additional rental to Lessor upon demand. . . . [emphasis added][13]

21. The terms "Net Proceeds" and "Depreciated Value" are defined in section 12 of the Master Lease Agreement as follows:

> "Net Proceeds" shall be defined as the amount received upon the sale of the Vehicle less the following expenses: all direct expenses paid or incurred by Lessor in connection with such Vehicle and the sale thereof from the time of return or surrender of the Vehicle to the completion of the sale, including prorated monthly payments,

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[11] Affidavit of Gregory DePace sworn on October 17, 2017, para 46.

[12] Affidavit of Jeff Beeston sworn October 16, 2017 (the "**October 16th Beeston Affidavit**"), para 8.

[13] July 24th Beeston Affidavit, Exhibit "D".

> from the date of return or surrender to the time of sale, but not in any event to exceed thirty (30) days in the amount applicable as provided in Paragraph two for the month of return or surrender for sale, and less all sums due and owing to Lessor from the Lessee under this Agreement and less all sums for which the Lessee is liable in connection with this Vehicle or its use or operation, and which, if not paid would constitute a lien on the Vehicle or a liability to Lessor, less the disposal fee, which shall not be set at an amount less than one hundred-fifty dollars.
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> "Depreciated Value" shall mean the capitalized cost of the Vehicle less a sum equal to the percentage of the capitalized cost as show in the Schedule for such Vehicle multiplied by the number of months that the Vehicle has been leased prior to sale.[14]

22. As noted above, despite repeated requests from Connacher, Emkay has refused to provide Connacher with an accounting of the proceeds of the sale of the Leased Trucks and has taken the position that it is not required to pay Connacher any excess proceeds. Emkay however continues to assert its claim against Connacher for payment of post-CCAA filing rent.[15]

III THE LAW

23. Connacher submits that it is entitled to a full and detailed accounting from Emkay of the proceeds of the sale of the Leased Trucks (i) in accordance with its rights under the Master Lease Agreement and (ii) in any event, in order for Connacher and the Monitor (and this Honourable Court) to know whether Emkay has already recovered all or portion of the post-CCAA filing rent from the sale of the Leased Trucks.

24. Further, Emkay is required under the terms of the Master Lease Agreement to pay any excess proceeds from the sale of the Leased Trucks to Connacher.

25. As cited in full above, pursuant to section 12 of the Master Lease Agreement, upon return of the Leased Trucks to Emkay, Emkay was required to facilitate the sale of the Leased Trucks and "If the Net Proceeds of such sale shall exceed the Depreciated Value of the Vehicle, and if Lessee is not in breach or default as provided in Paragraph 11, Lessor shall credit, or at its option, pay the excess, less a one and one-half percent disposal fee of gross proceeds to Lessee as a refund of rentals".

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[14] July 24th Beeston Affidavit, Exhibit "D".

[15] October 16th Beeston Affidavit, paras 10-11 and Exhibit "A".

26. In the Affidavit of Gregory DePace sworn on October 17, 2017 (the "**DePace Affidavit**"), filed by Emkay in response to Connacher's Cross-Application, Emkay takes the position that it is not required to account to Connacher as provided in section 12 of the Master Lease Agreement because Connacher is in "breach or default" of the Emkay Leases.

27. Connacher disputes this position and submits that Emkay is required to account to Connacher for any excess proceeds because:

(a) Connacher is not in breach or default pursuant to section 12; and/or

(b) even if Connacher is in breach or default, such exception to Emkay's obligation is unenforceable as a improper penalty or forfeiture of rights.

A. Connacher is Not in Breach or Default for the Purposes of Section 12

28. The wording of the exception relied upon by Emkay requires Connacher to be "in breach or default as provided in Paragraph 11". Therefore, the breach or default must be one that is provided for in Section 11 of the Master Lease Agreement.[16]

29. Section 11 of the Master Lease Agreement provides as follows:

> BREACH OR DEFAULT. Payments shall be made in accordance with Paragraph 2 herein. In the event a monthly rental payment is not received by the first day of the billing (rental) month, or any other payment due hereunder is not received within fifteen (15) days of invoice due date, Lessor will send Lessee a "Notice of Default" by facsimile and/or by a nationally recognized overnight courier service. In the event that said payment remains outstanding for a period of five (5) days (excluding nationally recognized holidays) after Lessee's receipt of the Notice of Default," Lessee will be considered to be "in default." Default hereunder shall be defined as (1) non-payment of any sums due hereunder within five days after the "Notice of Default" has been received by Lessee; (2) a failure or refusal to comply with any terms or conditions of this Agreement; (3) acts of insolvency or bankruptcy on the part of Lessee or undertaken by Lessee's creditors or (4) an adverse change in Lessee's financial condition which, in the opinion of Lessor, negatively impacts Lessee's ability to perform its financial obligations as stated herein.[17]

30. Therefore, the only breaches or defaults provided for in section 11 are the following:

(1) non-payment of any sums due hereunder within five days after the "Notice of Default" has been received by Lessee;

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[16] July 24th Beeston Affidavit, Exhibit "D"

[17] July 24th Beeston Affidavit, Exhibit "D"

(2) a failure or refusal to comply with any terms or conditions of this Agreement;

(3) acts of insolvency or bankruptcy on the part of Lessee or undertaken by Lessee's creditors; or

(4) an adverse change in Lessee's financial condition which, in the opinion of Lessor, negatively impacts Lessee's ability to perform its financial obligations as stated herein.

31. In paragraph 52 of the DePace Affidavit, Emkay takes the position that Connacher is in breach or default for the following reasons:

(a) Connacher failed to affirm or reject the Lease before the 60th day after bankruptcy;

(b) Connacher failed to make the lease payments from June 1, 2016 to September 1, 2017 (being the post-CCAA filing period); and

(c) Connacher failed to maintain the Leased Vehicles in good and efficient working order, condition and repair.

32. Connacher denies each of those assertions for the following reasons.

(a) Affirmation/Rejection of the Lease

33. The specific provision that Emkay seeks to rely on is contained in section 11 of the Master Lease Agreement and states that: "In the event Lessee seeks relief under the provisions of the Canadian bankruptcy code, Lessee shall affirm or reject lease on or before the 60th day after bankruptcy".[18]

34. That provision is presumably based on the US *Bankruptcy Code* which contains a specific provision requiring a Chapter 11 debtor to elect to affirm or reject leases within 60 days of filing. The CCAA however has a different regime for dealing with leases of this type of equipment – namely, section 11.01 of the CCAA and the debtor's general disclaimer powers.

35. This requirement of the Master Lease Agreement is therefore completely meaningless in Canada. At the very least, the provision – and its application in this case -- is ambiguous.

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[18] July 24th Beeston Affidavit, Exhibit "D"

36. In accordance with the well established principle of *contra proferentum*, "any ambiguity in a term of a contract must be resolved against the author [in this case, Emkay] if the choice is between him and the other party to the contract [in this case, Connacher] who did not participate in its drafting".[19]

37. This Honourable Court should not therefore read-in words or concepts into this provision in favour of Emkay to make it apply to Connacher's filing under the CCAA.

38. Instead, the provision should be applied strictly, and unfavourably to Emkay, in which case it does not apply because Connacher has not sought "relief under the Canadian bankruptcy code" and has not filed for "bankruptcy".

(b) Non-Payment of Rent

39. While Connacher has not paid rent since its CCAA filing, section 11 of the Master Lease Agreement is clear that non-payment is not itself a default. Instead, section 11 articulates very specific steps that must first occur in order for there to be a payment default. In particular, section 11 states that:

> In the event a monthly rental payment is not received by the first day of the billing (rental) month, or any other payment due hereunder is not received within fifteen (15) days of invoice due date, Lessor will send Lessee a "Notice of Default" by facsimile and/or by a nationally recognized overnight courier service. In the event that said payment remains outstanding for a period of five (5) days (excluding nationally recognized holidays) after Lessee's receipt of the Notice of Default," Lessee will be considered to be "in default."[20]

40. In addition, the payment-related default thereafter listed in section 11 requires "non-payment of any sums due hereunder within five days after the 'Notice of Default' has been received by Lessee" in order for there to be a default.[21]

41. As indicated in the Affidavit of Jeff Beeston sworn on October 16, 2017, Connacher did not receive a "Notice of Default" in accordance with section 11 of the Master Lease Agreement. This fact is not denied in the DePace Affidavit.[22]

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[19] *Hillis Oil and Sales Ltd.* v. *Wynn's Canada Ltd.*, 1986 CarswellNS 147 (S.C.C.), para 17.

[20] July 24th Beeston Affidavit, Exhibit "D".

[21] July 24th Beeston Affidavit, Exhibit "D".

[22] October 16th Beeston Affidavit, para 11.

42. Therefore, Connacher is not actually in breach or default for non-payment "as provided in Paragraph 11" which is a strict requirement for the exception in section 12 to apply.

43. Connacher further submits that reliance by Emkay upon a payment default (even if one technically existed, which is not the case) to deny Connacher's entitlement to excess proceeds from the sale of the Leased Trucks is inherently illogical under the terms of the Master Lease Agreement itself.

44. Under section 12 of the Master Lease Agreement, Connacher is entitled to the excess of the "Net Proceeds" from the sale of a Leased Truck over the Depreciated Value of the Leased Truck. The definition of "Net Proceeds" (cited in full at paragraph [20] above) however provides that "all sums due and owing to Lessor from the Lessee under this Agreement" are deducted from the gross proceeds of sale in order to arrive at such "Net Proceeds".[23]

45. Therefore, in order for Connacher to even be entitled to any excess proceeds, Emkay must have first deducted all amounts owing to it from the gross proceeds.

46. Therefore, Emkay being able to thereafter rely on non-payment to refuse to pay the excess proceeds is technically flawed (and unfair) since at that point there is actually no longer any rent owing to Emkay because it has already been recovered from the gross proceeds of sale.

(c) Condition and Repair of the Leased Vehicles

47. The DePace Affidavit claims that Connacher is in breach or default because it failed to maintain the Leased Trucks in "good and efficient working order, condition and repair."[24]

48. The only evidence that Emkay has put forward in support of its contention is a copy of an email from an employee of Connacher stating that "one of the trucks is not running and two others are not highway drivable".[25]

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[23] July 24th Beeston Affidavit, Exhibit "D".

[24] DePace Affidavit, para 52.

[25] DePace Affidavit, Exhibit "G"

49. Emkay has proffered no evidence: (i) to confirm the actual condition of such trucks upon return, (ii) that the state of the trucks was not "reasonable wear and tear from normal use" (which is permitted under the Master Lease Agreement), or (iii) to advise whether those trucks were repaired prior to sale and the costs deducted from the proceeds of sale.

50. Connacher therefore respectfully submits that Emkay has failed sufficiently prove a breach or default of such provision of the Master Lease Agreement by Connacher.

51. In the alternative, Connacher submits that only three of the Leased Trucks are not "good and efficient working order, condition and repair", which would mean that Emkay is still required to account for the other Leased Trucks that were sold.

(d) Other Potential "Defaults"

52. Finally, while the DePace Affidavit does not take the position that Connacher is in default pursuant to items (3) or (4) in Section 11 of the Master Lease Agreement, Connacher respectfully submits that, in accordance with established case law, Emkay could not rely on such "defaults" based on Connacher having filed for CCAA protection or being insolvent.[26]

B. Exception Contained in Section 12 is an Improper Penalty or Forfeiture of Rights

53. Connacher further submits that, even if it is "in breach or default as provided in Paragraph 11" of the Master Lease Agreement such that the exception to Emkay's requirement to account for the excess proceeds is engaged (which is denied for the reasons noted above), that exception should not be enforced by this Honourable Court because it is an improper penalty of forfeiture of rights.

54. As recently summarized by this Honourable Court in *Funk v Wawanesa Mutual Insurance Co.,* 2017 ABQB 308:[27]

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[26] *Aircell Communications Inc. (Trustee of)* v. *Bell Mobility Cellular Inc.*, 2013 ONCA 95; *Canadian Imperial Bank of Commerce* v. *Bramalea Inc.*, 1995 CarswellOnt 2253

[27] *Funk v Wawanesa Mutual Insurance Co.,* 2017 ABQB 308, paras 81-82 and 84; see also *Kozel v. Personal Insurance Co.*, 2014 ONCA 130, paras 28-31 and *869163 Ontario Ltd. v. Torrey Springs II Associates Ltd. Partnership*, 2005 CarswellOnt 2782 (Ont. C.A.), paras 23-25.

> 81 Relief against penalties and forfeitures is an established equitable doctrine or rule of equity. This Court is statutorily empowered "to relieve against all penalties and forfeitures and, in granting relief, to impose any terms as to costs, expenses, damages, compensation and all other matters that the Court sees fit": *Judicature Act*, s 10.
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> 82 Relief from forfeiture simply refers to the power of a court to protect a person against the loss of an interest or a right because of a failure to perform a covenant or condition in an agreement or contract: *Kozel v. Personal Insurance Co.*, 2014 ONCA 130 (Ont. C.A.) at para 28, (2014), 119 O.R. (3d) 55 (Ont. C.A.) (*Kozel*). In the present matter, Mr. Funk runs the risk of losing his insurance coverage interest because of his failure to make physical contact with the unidentified automobile that he claims caused the injuries he suffered from the rollover, as required by the Endorsement.
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> . . .
>
> 84 The Supreme Court directs that in exercising its discretion to grant relief from forfeiture, a court must consider three factors: (i) the conduct of the applicant, (ii) the gravity of the breach, and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490 (S.C.C.) at para 32, *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.* (1994), 115 D.L.R. (4th) 478 (S.C.C.) (WL) (*Saskatchewan Bungalows); Kozel* at para 31.

55. In determining whether a penal forfeiture should not be enforced, the Court will consider whether the sum forfeited is out of proportion to the damage suffered by the non-defaulting party and whether it would be inequitable and unconscionable for the non-defaulting party to retain the right, property of money forfeited.[28]

56. Emkay has repeatedly refused Connacher's requests for information on the proceeds received from the sale of the Leased Trucks.[29] Therefore, absent the Court ordering Emkay to provide such information (which relief is requested in Connacher's Cross-Application), Connacher cannot at this point determine the potential quantum of the excess proceeds that it would be forfeiting.

57. However, in any event, as discussed above, under the definition of "Net Proceeds", Emkay is entitled to deduct amounts owed to it by Connacher from the gross proceeds of sale. Therefore, any damages suffered by Emkay (in this case, the unpaid post-filing rent) will have been fully and entirely recouped by Emkay prior to Connacher being potentially entitled to any excess proceeds.

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[28] *869163 Ontario Ltd. v. Torrey Springs II Associates Ltd. Partnership*, 2005 CarswellOnt 2782 (Ont. C.A.), paras 23-25. *See also Kozel v. Personal Insurance Co.*, 2014 ONCA 130, paras 28-31.

[29] October 16th Beeston Affidavit, paras 10-11 and Exhibit "A".

58. Based on Emkay's position, Connacher would be required to forfeit its entitlement to the excess proceeds because of its breach or default even though Emkay has no actual damages from such breach or default.

59. That is, in Connacher's respectful submission, unconscionable and should not be enforced by this Honourable Court.

IV RELIEF SOUGHT

60. Connacher respectfully requests that this Honourable Court grant Connacher's Cross-Application and, in particular, grant an order:

(a) directing Emkay to forthwith provide a full and detailed accounting to Connacher and the Monitor of the proceeds of the sale of the Leased Trucks;

(b) declaring that Emkay is required to pay to Connacher any Net Proceeds from the sale of the Leased Trucks in excess of the Depreciated Value of such Leased Trucks in accordance with section 12 of the Emkay Master Lease Agreement;

(c) in addition or in the alternative to clause (b) above, declaring that the proceeds from the sale of the Leased Trucks shall be set-off against or applied to reduce any claims of Emkay against Connacher, including without limitation the Outstanding Funds (as such term is defined in the Emkay Application); and

(d) requiring Emkay to pay Connacher's costs of the Cross-Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of October, 2017.

CASSELS BROCK & BLACKWELL LLP

Per: ______________________

Timothy Pinos / Ryan Jacobs / Joseph Bellissimo
Solicitors for Connacher Oil and Gas Limited

Estimated Time for Argument: 30 minutes

TABLE OF AUTHORITIES

Legislation

1. *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended, section 11.01.

2. *Judicature Act*, R.S.A. 2000, c. J-2, as amended, section 10.

Jurisprudence

1. *Hillis Oil and Sales Ltd.* v. *Wynn's Canada Ltd.*, 1986 CarswellNS 147 (S.C.C.).

2. *Aircell Communications Inc. (Trustee of)* v. *Bell Mobility Cellular Inc.*, 2013 ONCA 95.

3. *Canadian Imperial Bank of Commerce* v. *Bramalea Inc.*, 1995 CarswellOnt 2253.

4. *Funk v Wawanesa Mutual Insurance Co.,* 2017 ABQB 308.

5. *Kozel v. Personal Insurance Co.*, 2014 ONCA 130.

6. *869163 Ontario Ltd. v. Torrey Springs II Associates Ltd. Partnership,* 2005 CarswellOnt 2782 (Ont. C.A.).