COURT FILE NO.	1601-06131
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 THE APPLICANT (APPROVAL OF ATB CREDIT FACILITIES)**
HEARING	**FRIDAY, NOVEMBER 10, 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: Shayne Kukulowicz/Ryan Jacobs/Jeffrey Oliver Tel: 403-351-2920 Fax: 403-648-1151 skukulowicz@casselsbrock.com rjacobs@casselsbrock.com joliver@casselsbrock.com

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I INTRODUCTION

1. This Bench Brief is submitted on behalf of Connacher Oil and Gas Limited ("**Connacher**") in support of an application for an Order:

   (a) if necessary, abridging the time for service of this Application and supporting materials and declaring service to be good and sufficient;

   (b) approving the Commitment Letter dated November 3, 2017 (the "**ATB Agreement**") as between Connacher and Alberta Treasury Branches, operating as ATB Financial (the "**Lender**") and authorizing Connacher to enter into and obtain access to credit facilities from the Lender as contemplated by the ATB Agreement;

   (c) authorizing Connacher to execute and deliver the Security Documents and the other Loan Documents (each as defined in the ATB Agreement) and authorizing Connacher to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations under and pursuant to the ATB Agreement, the Security Documents and the other Loan Documents as and when the same become due and are to be performed;

   (d) granting the Lender a first-priority charge (the "**ATB Charge**") on and over all of the Cash Deposits (as defined in the ATB Agreement); and

   (e) sealing Confidential Exhibit "1" to the Affidavit of Jeff Beeston sworn November 3, 2017 (the "**Beeston Affidavit**") on the Court file.

2. The application will be supported by, among other things, the Beeston Affidavit and the Twelfth Report of the Monitor dated November 6, 2017 (the "**Twelfth Report**"). Capitalized terms not defined herein have the meanings given to them in the Beeston Affidavit.

3. The purpose of this Bench Brief is to outline for the Court certain legislation and case law that is relevant to the relief being sought in Connacher's application on November 10, 2017.

II BACKGROUND

4. 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 *Companies' Creditors Arrangement Act* ("**CCAA**") in favour of Connacher, which has most recently been extended by this Honourable Court to January 31, 2018 (the "**Stay Period**").

Beeston Affidavit, at para 5

5. Working with the Monitor and the Interim Lenders (as defined in the Initial Order), Connacher is evaluating potential business optimization strategies, exit strategies, and other restructuring strategies in order to maximize value for stakeholders. It is anticipated that Connacher's CCAA proceedings will continue into 2018 with the continued strong support of the Interim Lenders and the First Lien Lenders.

Beeston Affidavit, at para 8

6. Operating while under CCAA protection has created certain operational and credit challenges for Connacher as it seeks to maintain production, transact with suppliers, and operate in a financially efficient manner.

Beeston Affidavit, at para 9

7. Therefore, with the support of its Interim Lenders and the Monitor, Connacher engaged in discussions with financial institutions in order to identify potential arrangements that would provide Connacher with additional financial and administrative flexibility and efficiencies while it continued to operate under CCAA protection.

Beeston Affidavit, at para 10

8. In particular, Connacher sought to address three critical financial and operational needs:

(a) obtaining corporate credit cards to facilitate day-to-day purchases in the ordinary course of the operation of its business without relying on employees and management using personal credit cards for this purpose;

(b) access to letters of credit to replace the need to provide suppliers with cash deposits or prepayments to secure supply; and

(c) financial credit to support hedging transactions that Connacher may seek to pursue in the operation of its business.

Beeston Affidavit, at para 11

9. With the support and approval of the Interim Lenders and the Monitor, the discussions with third party institutions culminated in the ATB Agreement with the Lender, which is subject to, among other things, approval by this Honourable Court.

Beeston Affidavit, at para 13

III THE ATB AGREEMENT & ATB CHARGE

A. Key Terms

10. The ATB Agreement, and the provision of the Facilities thereunder, are conditional upon certain conditions precedent, including, but not limited to, the Lender's receipt of all Security Documents, all of the fees due in respect of the ATB Agreement, and the approval of this Honourable Court as set out in the proposed form of order attached to Connacher's Application (the "**Approval Order**").

Beeston Affidavit, at para 15

11. The ATB Agreement contemplates the provision by the Lender to Connacher of the following credit facilities:

(a) the LC Facility, which contemplates up to CAD$5,000,000.00 of letters of credit which Connacher will utilize to replace certain of its current requirements to provide suppliers with cash deposits or prepayments. Connacher will be required to pledge 110% of the face amount of each letter of credit issued by the Lender from time to time such that the maximum amount to be pledged to the Lender for all letters of credit outstanding at any time will not exceed CAD$5,500,000.00. For certainty, Connacher will only pledge cash collateral to ATB under this LC Facility as and when letters of credit are issued by the Lender;

(b) the Credit Card Facility, which contemplates a corporate Mastercard facility to a maximum of CAD$50,000.00 for day-to-day business purchases. Connacher will be required to pledge CAD$55,000.00 to the Lender as security for Connacher's obligations under this Credit Card Facility, such amount to be held by the Lender at all times; and

(c) the Hedging Facility, under which Connacher may enter into commodity derivatives with the Lender from time to time. For certainty, Connacher's ability to enter into hedge contracts with the Lender is subject to the Lender's discretion. Connacher will be required to pledge CAD$3,000,000.00 to the Lender as security for Connacher's obligations under this Hedging Facility, such amount to be held by the Lender at all times.

Beeston Affidavit, at para 16

12. The Facilities will be fully cash collateralized by Connacher in the form of the Cash Deposits up to a maximum amount of $8,555,000 (as detailed above). As security for Connacher's obligations to the Lender under the Facilities, Connacher is required to provide the Lender with:

(a) the Approval Order, granting the Lender the ATB Charge with a first ranking priority on and over all of the Cash Deposits; and

(b) an Assignment of Cash Deposits up to the aggregate principal amount of $8,555,000.00 to secure the Facilities.

Beeston Affidavit, at para 17

13. Under the ATB Agreement and the proposed Approval Order, the security may be exercised by the Lender upon (a) demand being made under any Facility and (b) expiry of three (3) days' notice to Connacher and the Monitor.

Beeston Affidavit at para 18

14. If any amount due under the ATB Agreement becomes overdue, Connacher shall pay interest on such unpaid amount at a rate per annum 5% greater than the interest rate otherwise payable under the ATB Agreement.

Beeston Affidavit, at para 22

B. The Test for Approving Interim Financing in CCAA Cases

15. Section 11.2 of the CCAA provides statutory jurisdiction to grant an interim financing charge:

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

CCAA, at section 11.2 **[TAB 1]**

16. Subparagraph 11.2(4) of the *CCAA* sets out the factors to be considered by the Court in determining whether to grant an interim financing charge:

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

CCAA, at section 11.2(4) **[TAB 1]**

17. CCAA courts have approved derivative hedging facilities as part of the overall package of interim financing available to a debtor company.

> *Re Pacific Exploration & Production Corporation et al.*, Order of Madam Justice Conway dated July 21, 2016, Court File No. CV-16-11363-00CL **[TAB 2]**

18. Further, while there is no judicial decision directly on point, there have been instances where CCAA courts have approved supplementary interim financing facilities to assist a CCAA debtor in continuing to operate during the course of its proceeding.

> *Re North American Tungsten Corporation et al.,* Order of Mr. Justice Butler dated August 13, 2015, No. S-154746 **[TAB 3]**

19. Pursuant to paragraph 10(b) of the Initial Order, until further Order of this court, Connacher was directed to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of its Property.

> Initial Order, at para 10(b) **[TAB 4]**

20. Further, pursuant to paragraph 44 of the Initial Order, Connacher was ordered not to grant any encumbrances over any Property that rank in priority to, or *pari passu* with, the Court-ordered charges granted therein (the "**Initial Order Charges**"), unless Connacher also obtains the prior written consent of the Monitor, the Interim Financing Agent, and the beneficiaries of the Initial Order Charges, or further order of this Court.

> Initial Order, at para 44 **[TAB 4]**

C. Notice of Connacher's Application

21. Connacher has provided notice of this application to the Service List in its CCAA proceedings, to each secured creditor with a potential interest in the Cash Deposits and to the beneficiaries of the Initial Order Charges. More particularly:

    (a) Connacher has provided notice of this Application to the beneficiaries of the Directors' Charge;

    (b) the beneficiaries of the Administration Charge were served with Connacher's application on November 3, 2017;

    (c) the beneficiaries of the Interim Lenders' Charge were served with Connacher's application on November 3, 2017; and

(d) the LTIP (as defined in the Initial Order) has been paid in full and Connacher has provided notice of this Application to the small number of remaining beneficiaries of the KERP who are the beneficiaries of the KERP/LTIP Charge.

Beeston Affidavit, at paras 36-37

Affidavit of Service of Benjamin Goodis, Sworn November 6, 2017 (the "**Goodis Affidavit**"), at paras 2-3

Affidavit of Service of Suzanne Loov, Sworn November 7, 2017 (the "**Loov Affidavit**"), at paras 2-3

Twelfth Report of Ernst & Young, Inc., dated November 6, 2017 (the "**Twelfth Report**"), at paras 13 (g) - (h)

D. The ATB Agreement and ATB Charge are Appropriate in the Circumstances

22. Connacher believes that the Facilities will be of significant value to its business and operations. Connacher respectfully submits that approval of the ATB Agreement and of the ATB Charge is in the best interests of Connacher and its stakeholders.

Beeston Affidavit, at para 23

23. Connacher's operations have been better than expected for the period since the last cash flow projections were filed with the Court. As a result, Connacher is projected to have sufficient cash available to meet its obligations under the ATB Agreement.

Beeston Affidavit, at para 33

24. Considering the factors to be considered by the Court on an application for the approval of interim financing, Connacher submits that the material facts are as follows:

(a) Working with the Monitor and the Interim Lenders, Connacher continues to evaluate potential business optimization strategies, exit strategies, and other restructuring strategies in order to maximize value for its stakeholders. It is anticipated that Connacher's CCAA proceeding will continue into 2018 with the continued strong support of the Interim Lenders and the First Lien Lenders.

Beeston Affidavit, at para 8

(b) Connacher continues to operate in the ordinary course of its business, subject to the terms of the Initial Order and the previously approved interim financing with the Interim Lenders. The Facilities contemplated by the ATB Agreement are expected to assist Connacher in managing its business and financial affairs, including by increasing efficiency and reducing the credit risk of having significant cash deposits and prepayments in suppliers' hands.

Beeston Affidavit, at paras 7, 26 and 32

Twelfth Report, at paras 13 (a) - (c)

(c) Connacher's CCAA proceeding continues with the strong support of the Interim Lenders and the First Lien Lenders.

Beeston Affidavit, at paras 8 and 36-37

Goodis Affidavit, at paras 2-3

Loov Affidavit, at paras 2-3

(d) Access to the Facilities will enhance Connacher's prospects of making a viable compromise or arrangement with its creditors. The LC Facility will allow Connacher to continue to operate under CCAA protection with increased financial flexibility. The Credit Card Facility will eliminate the need for employees to personally pay for company transactions, and will facilitate Connacher's ordinary course transactions in a more efficient manner. The Hedging Facility will allow Connacher to hedge its commodity price exposure, protecting its cash flow from fluctuations in market prices.

Beeston Affidavit, at paras 23 through 32

Twelfth Report, at paras 13(c) and (e)

(e) The Cash Deposits to be secured by the first-priority ATB Charge is in the amount of $8,555,000.00, approximately $5,000,000.00 of which will be cash that is on deposit with Connacher's suppliers. The Cash Deposits are a small portion of Connacher's overall assets. Therefore, Connacher's creditors, including the beneficiaries of the Initial Order Charges, will not be materially prejudiced by the approval of the ATB Charge. The beneficiaries of the Initial Order Charges have received notice of this application.

Beeston Affidavit, at paras 36-38

Twelfth Report, at para 13(f)

(f) The Monitor supports this application and recommends that this Honourable Court approve the ATB Agreement and the ATB Charge.

Twelfth Report, at para 15

IV SEALING

25. This Honourable Court has the jurisdiction to order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada has stated that such orders can be granted where:

    (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

    (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

    Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 53 **[TAB 5]**

26. The Applicant is requesting that the Court seal on the Court file the Lender's commercial fees and pricing terms (the "**Confidential Materials**") from the ATB Agreement contained in Confidential Exhibit "1" to the Beeston Affidavit. The Confidential Materials are sensitive commercial terms which, if made public, would be harmful to the Lender's commercial interests.

    Beeston Affidavit, at para 41

27. The Monitor supports Connacher's application and recommends that this Honourable Court approve the sealing of the unredacted version of the ATB Agreement.

    Twelfth Report, at para 15

28. Accordingly, it is submitted that the Confidential Materials are of the type covered by the test set out in *Sierra Club* and no parties will be prejudiced by the sealing of the information, and thus it ought to be sealed on the Court file.

V CONCLUSION AND RELIEF SOUGHT

29. The Applicant seeks an Order approving the ATB Agreement and granting the ATB Charge substantially in the form as attached to the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of November, 2017.

CASSELS BROCK & BLACKWELL LLP

Per: ______________________

Joseph J. Bellissimo
Solicitor for the Applicant

Estimated Time for Argument: 30 minutes

TABLE OF AUTHORITIES

Legislation

1. *Companies' Creditors Arrangement Act,* RSC 1985, c C-36, section 11.2

Jurisprudence

2. *Re North American Tungsten Corporation et al.,* Order of Mr. Justice Butler dated August 13, 2015, No. S-154746.

3. *Re Pacific Exploration & Production Corporation et al.*, Order of Madam Justice Conway dated July 21, 2016, Court File No. CV-16-11363-00CL.

4. *Re Connacher Oil & Gas Limited*, Order of Madam Justice Dario dated May 17, 2017, Court File No. 1601-06131.

5. *Sierra Club of Canada v Canada (Minister of Finance),* 2002 SCC 41.