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COURT	COURT OF QUEEN'S BENCH OF ALBERTA	CLERK OF THE COURT FILED JAN 21 2019 JUDICIAL CENTRE OF CALGARY
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 (Stay Extension Order)	
HEARING	January 25, 2019	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Bankers Hall West 888-3rd Street SW Suite 3810 Calgary, Alberta T2P 5C5 Attn: Ryan Jacobs/Joseph Bellissimo/Natalie E. Levine Tel: 403-351-2920 Fax: 403-648-1151 rjacobs@casselsbrock.com jbellissimo@casselsbrock.com nlevine@casselsbrock.com	

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I. PART ONE - INTRODUCTION

1. This Bench Brief is submitted on behalf of Connacher Oil and Gas Limited ("**Connacher**") in support of Connacher's application returnable on January 25, 2019 (the "**Application**") seeking an order (the "**Stay Extension Order**") extending the Stay Period (as defined in the Initial Order granted by the Honourable Madam Justice Dario on May 17, 2016) until the earlier of (i) the filing of the Monitor's certificate (the "**Monitor's Certificate**") confirming the completion of the Plan Transaction (as defined below) and (ii) March 15, 2019.

2. The Monitor, the First Lien Agent and the Consenting First Lien Lenders support this Application.

3. Capitalized terms used in this Bench Brief but not defined shall have the meaning given to them in Connacher's Amended and Restated Plan of Compromise and Arrangement dated August 13, 2018 (the "**Plan**"), as sanctioned by this Honourable Court on October 4, 2018.

II. PART TWO - OVERVIEW

4. On August 2, 2018, Connacher and East River Oil and Gas Ltd. (the "**Plan Sponsor**") entered into definitive transaction agreements to affect a going concern sale of Connacher's business to the Plan Sponsor through (i) the implementation of the Plan (the "**Plan Transaction**") or (ii) in the event of a CCAA Plan Termination Event, as defined in the Plan Sponsorship Agreement (defined below), a sale of substantially all of Connacher's assets (the "**Purchase Transaction**" and collectively with the Plan Transaction, the "**Plan Sponsor Transactions**").

   Affidavit of Jeff Beeston sworn January 21, 2019 (the "**Beeston Affidavit**") at para 5

5. On August 22, 2018, this Honourable Court approved Connacher's entry into the definitive transaction agreements governing the Plan Sponsor Transactions. On October 3, 2018, Connacher's affected creditors voted to approve the Plan and, on October 4, 2018, this Honourable Court sanctioned the Plan pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**").

   Beeston Affidavit at para 6

6. As discussed further below, the Plan Sponsor has not yet received all required regulatory approvals from the People's Republic of China necessary to implement the Plan or close the Purchase Transaction.

Beeston Affidavit at para 7

7. The Stay Period will expire on January 31, 2019. By this Application, Connacher seeks an extension of the Stay Period to provide additional time to complete either one of the Plan Sponsor Transactions or the Credit-Bid Transaction (as defined below).

Beeston Affidavit at para 8

A. The Support Agreement and SISP

8. On March 28, 2018, this Honourable Court approved Connacher's entry into a Support Agreement (the "**Support Agreement**") with the First Lien Agent and the Consenting First Lien Lenders.

Beeston Affidavit at para 9

9. At the same application, the Court approved a renewed sale and investment solicitation process (the "**SISP**"), which set out procedures for Connacher to test the market for a sale of, or investment in, its business or assets.

Beeston Affidavit at para 10

10. The Support Agreement provides that if an alternative transaction identified pursuant to the SISP is not completed by the "Credit Bid Trigger Date", subject to the satisfaction or waiver of various terms and conditions, the Consenting First Lien Lenders will direct the First Lien Agent to complete a transaction (the "**Credit-Bid Transaction**") whereby certain of the first lien lenders (the "**Consenting First Lien Lenders**") holding in excess of 75% of the principal amount of debt outstanding under the First Lien Credit Agreement dated as of May 23, 2014, as amended (the "**First Lien Credit Agreement**") will direct the First Lien Agent to form a new company to credit-bid a portion of the first lien debt in exchange for all or substantially all of Connacher's assets.

Beeston Affidavit at para 11

B. The Plan Sponsor Transactions

11. Working with the Monitor and Connacher's court-approved financial advisor, Houlihan Lokey Capital, Inc., Connacher implemented the SISP in accordance with its terms. The SISP attracted interest from several parties including the Plan Sponsor and resulted in a thorough market testing of Connacher's business and assets.

Beeston Affidavit at para 12

12. On August 2, 2018, Connacher entered into two agreements with the Plan Sponsor with respect to the Plan Sponsor Transactions:

(a) a CCAA Acquisition and Plan Sponsorship Agreement, as amended (the "**Plan Sponsorship Agreement**"); and

(b) a Purchase and Sale Agreement, as amended (the "**Purchase Agreement**").

Beeston Affidavit at para 13

13. On August 17, 2018, Connacher and the Plan Sponsor entered into a letter agreement (the "**Extension Agreement**") extending the outside date for implementation of the Plan Transaction (the "**Outside Date**") or the Purchase Transaction (the "**Outside Date for Closing**"), as applicable, from October 31, 2018 to November 15, 2018, and agreed that neither of the Plan Sponsor Transactions would close prior to November 8, 2018.

Beeston Affidavit at para 16

14. Certain approvals from three government agencies in the People's Republic of China (the "**PRC Approvals**") are required for the Plan Sponsor to complete either of the Plan Sponsor Transactions. The Plan Sponsorship Agreement provides that the Plan Sponsor may, on notice to Connacher and the Monitor, extend the Outside Date up to two consecutive times in 30-day increments if the required PRC Approvals or approvals under the *Competition Act*, RSC 1985, c C-34, remain outstanding. Such pre-negotiated extensions were to be effective if the Plan Sponsor delivered the amount of $1.5 million to the Monitor as an additional deposit for each extension (each an "**Additional Deposit**").

Beeston Affidavit at para 17

15. Since not all of the PRC Approvals would be obtained prior to November 15, 2018, the Plan Sponsor paid an Additional Deposit to extend the Outside Date and Outside Date for Closing in one 30-day increment to December 15, 2018.

Beeston Affidavit at para 22

16. After notifying Connacher that it intended to exercise its second and final pre-negotiated extension right on December 12, 2018, the Plan Sponsor notified Connacher that it would not be in a position to deliver a second Additional Deposit to the Monitor by the then current Outside Date and Outside Date for Closing. Following further discussions, the Plan Sponsor requested an extension of the Outside Date and Outside Date for Closing past January 15, 2019 (without the contemporaneous payment of an additional deposit) to allow additional time to obtain all of the PRC Approvals. An amendment of the Outside Date and Outside Date for Closing in this manner was contemplated by the agreements, which included in the definitions of the terms Outside Date and Outside Date for Closing "...such other date(s) and on such other terms as may be agreed by the Plan Sponsor and the Company with the consent of the Consenting First Lien Lenders and in consultation with the Monitor".

Beeston Affidavit at para 23

17. After consulting with the Monitor and obtaining the consent of the Consenting First Lien Lenders, on December 17, 2018, Connacher and the Plan Sponsor executed an Outside Date Amending Agreement (the "**Outside Date Amending Agreement**") which, among other things, amended the definitions of "Outside Date" under the Plan Sponsorship Agreement and "Outside Date for Closing" under the Purchase Agreement to "(i) January 31, 2019 or (ii) such other date(s) and on such other terms as may be agreed to by the Plan Sponsor, the Company with the consent of the Consenting First Lien Lenders and in consultation with the Monitor."

Beeston Affidavit at para 24

C. Extension of the Stay Period

18. In the event that the Plan Sponsor is unable to obtain all PRC Approvals and complete one of the Plan Sponsor Transactions by January 31, 2019, Connacher requires additional time to complete either (i) a Plan Sponsor Transaction by such other date and

on such other terms as may be agreed with the Plan Sponsor with the consent of the Consenting First Lien Lenders and in consultation with the Monitor, or (ii) the Credit-Bid Transaction.

Beeston Affidavit at para 27

19. Connacher is therefore seeking an extension of the Stay Period until the earlier of (i) the filing of the Monitor's Certificate and (ii) March 15, 2019.

Beeston Affidavit at para 28

III. PART THREE - LAW AND ARGUMENT

A. The Test for an Extension of the Stay Period

20. Section 11.02(2) of the CCAA gives the Court discretion to grant or extend a stay of proceedings:

> (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
>
> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph 1(a);
>
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> (c) prohibiting until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, s 11.02(2) [TAB 1]

21. Pursuant to section 11.02(3) of the CCAA, in order to exercise its discretion to extend the stay of proceedings, the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence during the CCAA proceedings.

CCAA, s 11.02(3) [TAB 1]

22. In *Re Canada North Group Inc.*, the Honourable Justice S.D. Hillier stated that the role of the Court on an application to extend the stay of proceedings is:

> to consider whether the applicant has established that the current circumstances support an extension as being appropriate and that the applicant has acted, and is acting, in good faith and with due diligence., as required under s. 11.02(3).

Re Canada North Group, 2017 ABQB 508 at para 33 [TAB 2]

23. Extensions of stays of proceedings are routinely granted in CCAA proceedings where the debtor company is making progress towards a restructuring. The Court has broad inherent jurisdiction to impose a stay of proceedings where it is "just and reasonable" to do so.

Re Cinram International Inc, 2012 ONSC 3767, Schedule C at para 63 [TAB 3]

B. Extension of the Stay Period is Appropriate

24. The Stay Period is currently set to expire by the earlier of (i) the filing of the Monitor's Certificate and (ii) January 31, 2019. Connacher is seeking an extension of the Stay Period until the earlier of (i) the filing of the Monitor's Certificate and (ii) March 15, 2019.

Beeston Affidavit at paras 26 and 28

25. At present, the Plan Sponsor has until January 31, 2019 to obtain all PRC Approvals and complete a transaction. It is not certain that a Plan Sponsor Transaction can be completed prior to such date.

Beeston Affidavit at para 27

26. If the Plan Sponsor Transactions cannot be completed by January 31, 2019, the amended definitions of Outside Date and Outside Date for Closing contemplate the ability for Connacher and the Plan Sponsor to agree to a further extension of the Outside Date and Outside Date for Closing. The terms of any further extension, however, would require the consent of the Consenting First Lien Lenders.

Beeston Affidavit at para 27

27. If Connacher and the Consenting First Lien Lenders determine instead to consummate the Credit-Bid Transaction, an extension of the Stay Period will be required to permit the necessary steps in respect of that transaction.

Beeston Affidavit at para 27

28. Based on Connacher's current cash on hand and cash flow projections, Connacher will have sufficient liquidity though the proposed extension of the Stay Period. An updated cash flow projection for the period covering the proposed extension of the Stay Period is attached to the Nineteenth Report of the Monitor dated January 21, 2019 (the "**Nineteenth Report**").

Beeston Affidavit at para 29
Nineteenth Report at para 38

29. Connacher has acted, and continues to act, in good faith and with due diligence in all respects. Moreover, Connacher has the support of the Monitor, the First Lien Agent and the Consenting First Lien Lenders as it continues to work towards completing a restructuring transaction.

Beeston Affidavit at paras 3 and 30
Nineteenth Report at paras 37 and 39

30. The Monitor supports Connacher's requested extension of the Stay Period. In the Monitor's view, Connacher has acted and is acting in good faith and with due diligence.

Nineteenth Report at paras 39 and 40

31. Connacher respectfully submits that, under the circumstances, the requested extension is well within the discretion of the Court and is just and reasonable in the circumstances.

IV. PART FOUR - CONCLUSION AND RELIEF SOUGHT

32. Connacher respectfully requests that this Honourable Court grant the requested relief substantially in the form of the Stay Extension Order attached to the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of January, 2019.

CASSELS BROCK & BLACKWELL LLP

Per: ______________________________
Ryan Jacobs/ Joseph Bellissimo/
Natalie E. Levine
Solicitors for the Applicant

TABLE OF AUTHORITIES

Legislation

1. *Companies' Creditors Arrangement Act,* RSC 1985, c C-36, section 11.02.

Jurisprudence

2. *Re Canada North Group*, 2017 ABQB 508.

3. *Re Cinram International Inc*, 2012 ONSC 3767, Schedule C.