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May 12, 2022
Justice Neilson

COURT FILE NUMBER	2001-10261
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PROCEEDING	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF GLENOGLE ENERGY INC., 1651558 ALBERTA LTD. and GLENOGLE ENERGY LP
DOCUMENT	**BRIEF OF LAW AND ARGUMENT OF THE APPLICANT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers & Solicitors 4500, 855 – 2nd Street SW Calgary, AB T2P 4K7 Attention: Chris Simard / Katherine J. Fisher Telephone: (403) 298-4485 / (780) 917-4268 Facsimile: (403) 265-7219 / (780) 421-7951 Email: simardc@bennettjones.com fisherka@bennettjones.com File Number: 61640.13

TABLE OF CONTENTS

I. INTRODUCTION

A. Background

1. Glenogle Energy Inc. ("**GEI**") is in the business of oil and gas exploration and production. Glenogle operates 80 oil wells and 56 gas wells, which are currently producing approximately 1,200 BOEs per day. Its operations are primarily based in the Province of Alberta in the Doe East, Doe West and Sinclair Doe Creek areas, with one well located in the Province of British Columbia.

2. On May 14, 2020, GEI and Glenogle Energy LP ("**GELP**") obtained protection from their creditors through the filing of a Notice of Intention to Make a Proposal (the "**NOI**") under section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "***BIA***").

3. Ernst & Young Inc. ("**E&Y**") was named as Proposal Trustee under the NOI. On July 23, 2020, GEI and GELP were granted a stay extension for 45 days to September 10, 2020.

4. On September 8, 2020, the GEI, GELP and 1651558 Alberta Ltd (collectively, "**Glenogle**") were granted protection and permission to commence proceedings (the "***CCAA* Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c-36 (the "***CCAA***"). E&Y was appointed as Monitor of Glenogle (the "**Monitor**") in the *CCAA* Proceedings. Glenogle were also granted a stay extension pursuant to an Amended and Restated Initial Order (the "**ARIO**") until and including March 31, 2021.

5. On March 15, Gleogle was granted a stay extension through November 30, 2021. On November 29, 2021, Glenogle was granted a further stay extension through February 28, 2022. On February 15, 2022, Glenogle was granted a further stay extension through September 30, 2022.

B. The Sales and Investment Solicitation Process

6. Under the ARIO, Glenogle was authorized to initiate a Sales and Investment Solicitation Process (the "**SISP**") upon obtaining the prior consent of the Monitor and HSBC Bank Canada **("HSBC**"), Genogle's first-ranking secured creditor. Glenogle obtained consent from the Monitor and HSBC.

7. On June 12, 2020, the Court approved the retention of Stifel Nicolaus Canada Inc. (the "**Selling Agent**") by Glenogle. The Selling Agent has extensive experience marketing assets across Western Canada and in the areas in which Glenogle operates. Glenogle, the Selling Agent and the Monitor determined that it would be favorable to commence the SISP in late September, 2021. HSBC supported this timing.

8. On September 29, 2021, the Selling Agent commenced marketing activities under the SISP.

9. Pursuant to the SISP, initial, non-binding bids were due in November 2021 (the "**Initial Bid Deadline**") and a number of bids were submitted in advance of the Initial Bid Deadline. Glenogle and the Selling Agent, in consultation with the Monitor and HSBC, held discussions with certain parties who had submitted non-binding bids. A due diligence phase commenced with one of the bidders (the "**Initial Bidder**") did not result in a binding offer, as Glenogle became aware that the Initial Bidder was unable to meet the terms as outlined in its non-binding letter of intent. Glenogle undertook a refresh of the SISP on the recommendation of the Selling Agent (the "**Refreshed SISP**").

10. The Refreshed SISP resulted in the submission of the two binding term sheets to Glenogle. Glenogle, the Monitor and the Selling Agrent selected the proposal submitted by Astara Energy Corp. (the "**Purchaser**").

C. The Proposed Transaction

11. Glenogle and the Purchaser entered into an Acquisition Agreement dated April 21, 2022 ("the "**Agreement**"). Pursuant to the Agreement, among other things:

   a) the Purchase Price shall be paid by the Purchaser in satisfaction of the aggregate subscription price for the issuance of the New Common Shares;

   b) Glenogle shall retain all of the Retained Assets and shall remain liable in respect of the Retained Contracts;

   c) Glenogle shall retain all of the Retained Liabilies and shall remain liable in respect ot the Retained Liabilities; and

   d) on the Closing Date, all of the Transferred Assets shall be transferred to and vested in the Creditor Trust immediately prior to the Closing Time, and all of the Transferred Liabilities shall be transferred to and assumed by the Creditor Trust immediately prior to the Closing Time,

   (the "**Transaction**"; all other capitalized terms as defined in the Agreement).

12. In order to facilitate the Transaction, Glenogle seeks approval of the Articles of Reoganization.

13. In all the circumstances, as further addressed herein, the approval of the Transaction is in the best interests of the Applicants and their stakeholders.

II. ISSUES

14. The issues to be considered in this application are:

a) whether the Court should approve the Transaction and grant the proposed Approval and Vesting Order (the "**ARVO**");

b) whether the Court should approve the Articles of Reoganization; and

c) whether the Court should order the temporary sealing of the May 2, 2022 Confidential Supplement (the "**Confidential Supplement**") to the May 2, 2022 Fourth Report of the Monitor.

III. LAW AND ARGUMENT

A. Factors for Approval of a Sale Transaction

15. Subsection 36(3) of the *CCAA* sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale or disposition of assets outside of the ordinary course:

a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

b) whether the monitor approved the process leading to the proposed sale or disposition;

c) whether the monitor filed with the court a report stating that, in its opinion, the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

d) the extent to which the creditors were consulted;

e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Companies' Creditors Arrangement Act, RSC 1985, c C-36, s 36(3)
[*CCAA*] [TAB 1]
Re Sanjel Corp, 2016 ABQB 257 at para 54 [***Sanjel***] **[TAB 2]**

16. In *Sanjel*, Romaine J. noted that in *Re AbitibiBowater, Inc.*, Gascon J. suggested that a court should give due consideration to two further factors:

a) the business judgment rule, in that a court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the monitor in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient; and

b) the weight to be given to the recommendation of the monitor.

Sanjel, supra, at para 57, citing *Re AbitibiBowater, Inc*, 2010 QCCS 1742
at paras 70-72 **[TAB 2]**

17. The following factors developed by the Ontario Court of Appeal in *Royal Bank v Soundair Corp.* for the approval of a sale or disposition by a court-appointed receiver overlap with the factors in subsection 36(3) of the *CCAA* and are frequently considered by *CCAA* courts when considering the statutory test:

a) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently;

b) whether the interests of all parties have been considered;

c) the efficacy and integrity of the process by which offers have been obtained; and

d) whether there has been unfairness in the working out of the process.

Royal Bank v Soundair Corp., (1991), 4 OR (3d) 1 (CA) at para 16
[*Soundair*] [TAB 3]
Sanjel, supra, at para 56 **[TAB 2]**

18. In *Soundair*, the Ontario Court of Appeal cautioned that a court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. The appropriateness of a particular process is dependent on the nature of the asset being

sold and the pool of potential purchasers. Where it is highly unlikely that a commercially viable sale can be made to anyone other than a very limited number of purchasers, the receiver must act wisely and reasonably when it negotiates only with such limited number of purchasers.

Soundair, *supra*, at paras 18 and 46 **[TAB 3]**

B. The Proposed Transaction Meets the Criteria for Court Approval

(a) The Process was Reasonable in the Circumstances

19. Glenogle submits that the SISP was reasonable in the circumstances and involved a fulsome marketing of the business and assets of Glenogle. The Transaction was negotiated in good faith and is commercially reasonable. In particular:

a) the SISP was commenced in the fall of 2021. Introductory letters were sent to approximately 300 distinct companies and over 800 individual contacts. Follow-up correspondence was conducted with 70 counterparties and 37 confidentiality agreements were signed. Glenogle received 11 proposals prior to the Initial Bid Deadine;

b) Glenogle, in consultation with the Monitor, the Selling Agent and HSBC, proceeded into the due diligence phase with the Initial Bidder and was working towards a binding offer. In January 2022, Glenogle was made aware that the Initial Bidder was no longer able to meet the terms outlined in its initial non-binding letter of intent. The Selling Agent recommended that Glenogle undertake the Refreshed SISP;

c) under the Refreshed SISP, the Selling Agent contacted all bidders who originally submitted proposals, as well as certain additional counterparties who expressed interest after the Initial Bid Deadline. The Selling Agent also contacted a number of alternative lenders and debt providers who would potentially inject capital into Glenogle, in the event the Refreshed SISP did not yield satisfactory recoveries; and

d) three parties submitted proposal under the Refreshed SISP. Two of these parties submitted binding term sheets to Glenogle. Glenogle, in consultation with the Monitor, the Selling Agent and HSBC, selected the Purchaser's bid, which Glenogle believed to provide the highest recovery for all stakeholders.

(b) The Monitor Approved the Process Leading to the Proposed Transaction

20. Glenogle worked closing with the Monitor and the Selling Agent, and in consultation with HSBC, throughout the SISP, the Refreshed SISP and in finalizing the Agreement. Glenogle understand that the Monitor considers the SISP and the Refreshed SISP to have been carried out in accordance with their terms and that a fulsome marketing of the business and assests of Glenogle was undertaken.

(c) The Proposed Transaction is Beneficial to Creditors

21. Glenogle, in consultation with the Selling Agent and the Monitor, believes that the Transaction will achieve the highest recovery for all stakeholders. Purchaser's Bid was the best overall bid received in the Refreshed SISP, in terms of purchase price, certainty of the Purchaser's ability to close, and other material terms of the Transaction.

(d) Key Creditors were Consulted

22. The proceeds from the Transaction will result in a shortfall of amounts owing to HSBC, the first-ranking secured creditor of Glenogle. HSBC was consulted with respect to the Transaction and Glenogle understand that HSBC supports the Transaction.

(e) The Consideration is Fair and Reasonable in the Circumstances

23. The consideration is fair and reasonable having regard to the nature of the assets and the available market for such assets.

24. For the reasons set out above, the Applicants respectfully submit that the proposed Transaction satisfies the requirements for approval under the subsection 36(3) of the *CCAA*.

C. The Court has Authority to Approve Reverse Vesting Orders

25. The Transaction is predicated on the issuance of a reverse vesting order (an "**RVO**"). Wheras a traditional vesting order transfers the assets of the debtor to a purchaser leaving the liabilities behind, a "reverse" vesting order transfers certain assets and liabilities to a separate entity, while other specified assets and liabilities remain in the corporation. The transferred assets are then made available for distribution to satisfy the transferred liabilities, in the same order and priorty they would have been satisfied in the debtor

corporation, but for the transfer. The benefits associated with an RVO transaction are particularly relevant when there are regulatory licenses and other corporate attributes that are not readily transferrable in an ordinary transaction.

Re Harte Gold Corp., 2022 ONSC 653 at paras 70-71 **[*Harte Gold*]** [**TAB 4**]

26. The Court has jurisdiction under sections 11 and 36 of the *CCAA* to approve RVO structured transactions in appropriate circumstances.

Plasco Energy Group Inc., Settlement Approval Order granted July 17, 2015, Court File No. CV-15-10869-00CL (ONSC) [***Plasco Settlement Approval Order***] **[TAB 5]**
Re Nemaska Lithium Inc., 2020 QCCA 1488 **[*Nemaska*][TAB 6]**

27. In *Nemaska*, the Quebec Superior Court approved an RVO transaction despite creditor opposition. Leave to appeal the decision was refused by the Quebec Court of Appeal and the Supreme Court of Canada. In refusing leave to appeal, the Quebec Court of Appeal noted the *CCAA* judge's determination that:

> The terms 'sell or otherwise dispose of assets outside the ordinary course of business' under subsection 36(1) of the *CCAA* should be broadly interpreted to allow a *CCAA* judge to grant innovative solutions such as RVOs [reverse vesting orders] on a case by case basis, in accordance with the wide discretionary powers afforded the supervising judge pursuant to section 11 *CCAA*, as recognized by the Supreme Court in *Callidus*.

Nemaska, *ibid,* at para 18 **[TAB 6]**
9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 at paras 67 and 70 **[TAB 7]**

28. *CCAA* judges overseeing restructurings should exercise their discretion to approve RVO transactions where the factors set out in section 36 of the *CCAA* are met and the benefits of the transaction are clear, including where the RVO structure preserves tax attributes that generate value and a higher recovery for creditors.

Re Nemaska Lithium Inc., 2020 QCCS 3218 at paras 71-76 **[TAB 8]**
Nemaska, *supra,* at para 20**[TAB 6]**

29. Similarly in *Quest University Canada Re*, Fitzpatrick J. of the Supreme Court of British Columbia issued a decision approving an RVO transaction after extensive analysis of RVO

transactions previously approved by *CCAA* courts. The Court concluded that it had the authority to grant an RVO under its general statutory authority in section 11 of the *CCAA*. The Court further determined that it was appropriate to exercise its discretion to grant the RVO in the circumstances of that case, as doing so advanced the remedial purposes of the *CCAA*.

Quest University Canada Re, 2020 BCSC 1883 at paras 127 and 170 [*Quest University*] **[TAB 9]**

30. *CCAA* courts, including this Court, have previously approved RVO transactions in which debtor companies were restructured by transferring unwanted assets and liabilities to a "newco" or other residual entity.

Plasco Settlement Approval Order, *supra***[TAB 5]**
JMB Crushing Systems Inc, Amended Reverse Vesting Order granted March 31, 2021, Court File No. 2001-05482 (ABQB) **[TAB 10]**
Bellatrix Exploration Ltd, Approval and Vesting Order granted June 22, 2021, Court File No. 1901-13767 (ABQB) **[TAB 11]**
Nemaska Lithium Inc, Approval and Vesting Order granted October 15, 2020, Court File No. 500-11-057716-199 (QCSC [Commercial Division]) **[TAB 12]**
Wayland Group Corp, Approval and Vesting Order granted April 21, 2020, Court File No: CV-19-00632079-00CL (ONSC [Commercial List]) **[TAB 13]**
ILTA Grain Inc, Approval and Vesting Order granted August 25, 2020, Court File No. S-197582 (BCSC) **[TAB 14]**

31. As a result, the question is not whether the Court has jurisdiction to grant an RVO, but whether it is appropriate to do so in the unique circumstances of this particular proceeding.

D. The *Harte Gold* Criteria are Satisfied

32. Recently, Penny J. in *Harte Gold* provided commentary and guidance regarding the issuance of RVOs. Penny J. noted that approval of the use of an RVO structure should involve close scrutiny, since "the frequency of applications based on court approval of an RVO structure has increased significantly in the past few years", and that most of those applications were "in a context where there was no opposition and no obvious or identified unfairness arising from the use of the RVO structure. Because of the dearth of guidance in the jurisprudence on RVO structures, Penny J. noted the following:

a) neither the *BIA* nor the *CCAA* deal specifically with the use or application of the RVO structure;

b) an RVO should continue to be regarded as an unusual or extraordinary measure and not an approach appropriate merely because it may be more convenient;

c) the court officer and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and constraints of the underlying statute;

d) the approval of the use of an RVO structure should involve close scrutiny; and

e) this is particularly the case where there is no party with a significant stake in the outcome opposing the use of an RVO structure.

Harte Gold, *supra* at paras 25 and 38 **[TAB 4]**

33. Thus, the Court found that the court-appointed officer overseeing the process should be prepared to answer questions such as:

a) Why is the RVO necessary in this case?

b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?

c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable structure? and

d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (and other intangible assets) being preserved under the RVO structure?

34. The Court indicated these questions must be answered in the context of the factors that must be considered on a motion to approve a sale, which largely correspond to the *Soundair* principles already discussed herein.

Harte Gold, *ibid* at paras 20- 21 **[TAB 4]**

35. The Court in *Harte Gold* also builds on prior case law in recognizing that the principal benefit of the RVO structure is the preservation of non-transferable regulatory approvals and licenses.

Junction Craft Brewing Inc., Re, Endorsement dated November 8, 2021, Court

File No. 31- 2774500 (ONSC [Commercial List]) **[TAB 15]**
Quest University, *supra* at para 138 **[TAB 9]**
Beleave Inc., Re, Endorsement dated September 18, 2020, Court File No. CV-20-00642097-00CL (ONSC [Commercial List]) **[TAB 16]**

36. Glenogle submits that the consideration of the questions posed by the Court in *Harte Gold* demonstrates the appropriateness of the ARVO in the present circumstance:

a) the RVO is necessary in the circumstances. The RVO structure facilitates the acquisition contemplated under the Transaction through its administrative simplicity relative to a traditional vesting of assets. The Transaction will allow Glenogle to continue to carry on business with a new shareholder, with ownership of the Retained Assets and Retained Liabilities. Such structure is of critical importance to the Purchaser and therefore the viability of the Transaction. Further, the RVO structure permits the proposed new owner of Glenogle to seamlessly carry on its business, without having to formally transfer regulatory licenses and other assets, including federally regulated pipeline and facility assets that are non-transferable or not readily transferable in an ordinary transaction;

b) the RVO structure produces an economic result at least as favourable as any other viable alternative. The Transaction provides the best economic result for Glenogle and its stakeholders. The Purchaser's Bid was the superior bid received following the extensive SISP and Refreshed SISP. The Transaction is fair and reasonable and maximizes the value of the business and assets of Glenogle;

c) no stakeholder would be worse off under the RVO structure than they would have been under any other viable structure. The proceeds of the Transaction will result in a large shortfall of amounts owing to HSBC. As such, no other creditor will be worse off because of the RVO structure. If the Transaction is not approved and another transaction structure is adopted, the intangible characteristics and assets could be lost, resulting in a lower purchase price. HSBC would be prejudiced by a lower realization amount. Further, notwithstanding the shortfall, HSBC is supportive the transaction; and

d) the consideration to be paid by the Purchaser reflects the importance and value of the licences, permits and other intangible assets being preserved under the RVO structure. The RVO structure preserves and maximizes the value of tax, regulatory and other attributes. The Purchaser has advised that it would not proceed with a transaction without the RVO structure, as the intangible characteristics and assets are of critical importance to the Purchaser.

37. In *Harte Gold*, the Court articulated that an analysis as to the appropriateness of a reverse vesting order must have regard to the objectives and statutory constraints of the *CCAA*. In general, debtors should not be able to avail themselves of a reverse vesting order structure as a means to circumvent the statutory requirements of the *CCAA*. In assessing whether the reverse vesting order was reasonable and in light of the objectives and requirements of the *CCAA*, Penny J. considered the fact that the purchaser in *Harte Gold* had agreed to pay cure costs for third party trade creditors on top of the DIP financing it had already provided. The purchaser's commitment to fund cure costs notwithstanding that it did not need to seek the assignment of any contracts was evidence that the reverse vesting order structure was not being used to escape the payment of cure costs that would ordinarily be payable in a typical asset sale structure.

Harte Gold, *supra* at paras 70-72 **[TAB 4]**

38. Glenogle respectfully submit that the proposed Transaction is not only appropriate in the unique circumstances of the within proceedings, but is fair and reasonable having regard to the objectives and statutory constraints of the *CCAA*, and provides additional value to Glenogle and their stakeholders that would otherwise not be available.

E. The Court may Approve Articles of Reorganization under the *ABCA*

39. The Alberta *Business Corporations Act* expressly provides for the possibility of reorganizing the share capital of a corporation as part of the approval of an insolvency restructuring.

Business Corporations Act, RSA 2000, c B-9, ss 173 and 192
[*ABCA*] [TAB 17]

40. *CCAA* courts, including this Court, have previously approved articles of reorganization as part of approving a restructuring transaction.

JED Oil Inc., Third Amended and Restated Plan of Arrangement dated September 28, 2009, Court File No. 0801-09492 (ABQB) **[TAB 18]**
JED Oil Inc., Sanction Order granted October 1, 2009, Court File No. 0801-09492 (ABQB) **[TAB 19]**
Gasfrac Energy Services Inc., Stay Extension and Sanction Order granted June 24, 2015, Court File No. 1501-003996 (ABQB) **[TAB 20]**
Gasfrac Energy Services Inc., Plan of Compromise and Arrangement, Court File No. 1501-00396 (ABQB) **[TAB 21]**

41. In approving articles of reorganization, a court must be satisfied that the debtor corporation was subject to an order of reorganization and that the proposed organization was authorized under section 173 of the *ABCA*.

Raymor Industries Inc., Re, 2010 QCCS 376 at paras 49-53 **[*Raymor*] [TAB 22]**

42. Shareholder approval is not a relevant consideration for a court in approving articles of incorporation. Given the company's insolvent circumstances, shareholders do not have an economic interest in the insolvent corporation. Pursuant to section 192(7) of the *ABCA*, shareholders are not entitled to dissent in the case of a reorganization and cannot defeat a proposal or an arrangement contemplating the reorganization of share capital that is beneficial to the corporation and all the stakeholders.

Raymor, ibid at paras 68-70 **[TAB 22]**

43. Furthermore, a court's authority under the *CCAA* to grant reorganizations without shareholder approval ensures that shareholders, who have the lowest priority amongst stakeholders, cannot block a proposed reorganization.

CCAA Plan of Arrangement – Clearbeach and Forbes, 2021 ONSC 5564 at para 27 **[TAB 23]**

44. This Court has held that the architects of the business corporation model which the *ABCA* follows expressly contemplated reorganization in which an insolvent corporation would eliminate the interest of common shareholders. The rationale for allowing such was that the corporation is insolvent, such that the shareholders will receive nothing on liquidation. There is, therefore, nothing unfair or unreasonable in a court effecting changes without shareholder approval. Rather, it would be unfair to the creditors and other stakeholders to permit the shareholders, who have no economic interest in the insolvent corporation and the lowest priority among stakeholders, to have any ability to block a reorganization.

Re Canadian Airlines Corp., 2000, ABQB 442 at paras 75 and 76 **[TAB 24]**

45. Glenogle respectfully submits that this Court has jurisdiction to approve the Articles of Reorganization and requests that the same be approved in order to facilitate the conclusion of the Transaction.

F. Sealing of the Confidential Supplement

46. The Court has broad discretion to grant a sealing order, notwithstanding the provisions of

Division 4 of Part 6 of the *Rules of Court*.

Alberta Rules of Court, Alta Reg 124/2010, r 6.28 **[TAB 25]**

47. A temporary sealing order may be granted when:

a) an order is required to prevent serious risk to an important interest because reasonable alternative measures will not prevent the risk; and

b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at para 45 **[TAB 26]**

48. The Supreme Court of Canada recently restated the test an applicant must satisfy in seeking a temporary sealing order. An applicant must demonstrate:

a) court openness poses a serious risk to an important public interest;

b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v Donovan, 21 SCC 25 at para 38 **[TAB 27]**

49. Where information is commercially sensitive and assets are being sold pursuant to a Court process, it is common to seal commercially sensitive information. Such step is necessary in the event a further bidding or sale process is required, should the transaction being considered fail to close, and ensures fair play so that competitors and potential purchasers do not obtain an unfair advantage by obtaining such information.

Alberta Treasury Branches v Elaborate Homes Ltd., 2014 ABQB 350 at para 54 **[TAB 28]**
Look Communications Inc. v Look Mobile Corp., 2009 CanLII 71005 (Ont SCJ) ("*Look Communications*") at para 17 **[TAB 29]**
Nortel Networks Corp. (Re), 2009 CarswellOnt 4838 at para 39 **[TAB 30]**
Maxtech Manufacturing Inc. (Re), 2010 ONSC 1161 at para 30 **[TAB 31]**
887574 Ontario Inc. v Pizza Pizza Ltd., 1994 CarswellOnt 1214 at para 6 **[TAB 32]**

50. It is rare that an interested party will request that a sealing order be set aside, as typically all of the assets that are bid on during the court sale process are sold and approved by Court order. No further interest in the confidential information arises once the transaction has closed.

Look Communications, *supra* at para 17 **[TAB 29]**
Elaborate Homes, *supra* at para 54 **[TAB 28]**

51. The Confidential Supplement contains significant commercial information regarding the purchase price under the Transaction. Therefore, Glenogle submits that the Confidential Supplement, if not temporarily sealed, poses a serious risk to the commercial interests at issue in these proceedings.

52. In the event that Glenogle's application for approval of the Agreement is dismissed, or the Transaction does not close, Glenogle may be required to again market its assets and business. If the information in the Confidential Supplement is made public and placed on the Court record, it may prejudice Glenogle's ability to obtain the best offers possible and to negotiate with third parties.

53. It is also respectfully submitted that the public has an interest in the fairness and efficacy of Court-supervised liquidations, and the publication of this information prior to the Transaction closing could undermine public confidence of sales processes administered in court proceedings.

54. Glenogle further respectfully submits that the salutary effects of sealing of the Confidential Supplement outweigh any deleterious effects that may be caused by the temporary sealing.

55. Glenogle submits that in these circumstances it is necessary to seal the Confidential Supplement to prevent a real and substantial risk of harm to the commercial interests of the stakeholders of Glenogle.

IV. RELIEF SOUGHT

46. The Applicants respectfully request that this Honourable Court grant the following relief:

a) approval of the Transaction;

b) vesting in the Purchaser the New Common Shares free and clear of all Claims and Encumbrances;

c) approval of the Articles of Reoganization;

d) vesting the Transferred Assets and the Transferred Liabilities to the Monitor in trust for the benefit of the Trust Creditor; and

e) the temporary sealing on the Court file of the Confidential Supplement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2ND DAY OF MAY, 2022.

BENNETT JONES LLP

Per: ________________________________
Chris Simard and Katherine J. Fisher
Counsel for Glenogle Energy Inc., 1651558 Alberta Ltd. and Glenogle Energy LP

V. TABLE OF AUTHORITIES

TAB

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

2. *Re Sanjel Corp*, 2016 ABQB 257

3. *Royal Bank v Soundair Corp*., (1991), 4 OR (3d) 1 (CA)

4. *Re Harte Gold Corp*., 2022 ONSC 653

5. *Plasco Energy Group Inc*., Settlement Approval Order granted July 17, 2015, Court File No. CV-15-10869-00CL (ONSC)

6. *Re Nemaska Lithium Inc.*, 2020 QCCA 1488

7. *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10

8. *Re Nemaska Lithium Inc.*, 2020 QCCS 3218

9. *Quest University Canada Re*, 2020 BCSC 1883

10. *JMB Crushing Systems Inc,* Amended Reverse Vesting Order granted March 31, 2021, Court File No. 2001-05482 (ABQB)

11. *Bellatrix Exploration Ltd*, Approval and Vesting Order granted June 22, 2021, Court File No. 1901-13767 (ABQB)

12. *Nemaska Lithium Inc*, Approval and Vesting Order granted October 15, 2020, Court File No. 500-11-057716-199 (QCSC [Commercial Division])

13. *Wayland Group Corp,* Approval and Vesting Order granted April 21, 2020, Court File No: CV-19-00632079-00CL (ONSC [Commercial List])

14. *ILTA Grain Inc*, Approval and Vesting Order granted August 25, 2020, Court File No. S-197582 (BCSC)

15. *Junction Craft Brewing Inc., Re*, Endorsement dated November 8, 2021, Court File No. 31- 2774500 (ONSC [Commercial List])

16. *Beleave Inc., Re*, Endorsement dated September 18, 2020, Court File No. CV-20-00642097-00CL (ONSC [Commercial List])

17. *Business Corporations Act*, RSA 2000, c B-9

18. *JED Oil Inc.*, Third Amended and Restated Plan of Arrangement dated September 28, 2009, Court File No. 0801-09492 (ABQB)

19. *JED Oil Inc.*, Sanction Order granted October 1, 2009, Court File No. 0801-09492 (ABQB)

20. *Gasfrac Energy Services Inc.*, Stay Extension and Sanction Order granted June 24, 2015, Court File No. 1501-003996 (ABQB)

21. *Gasfrac Energy Services Inc.*, Plan of Compromise and Arrangement, Court File No. 1501-00396 (ABQB)

22. *Raymor Industries Inc., Re*, 2010 QCCS 376

23. *CCAA Plan of Arrangement – Clearbeach and Forbes*, 2021 ONSC 5564

24. *Re Canadian Airlines Corp.,* 2000, ABQB 442

25. *Alberta Rules of Court*, Alta Reg 124/2010

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

27. *Sherman Estate v Donovan,* 21 SCC 25

28. *Elaborate Homes,* 2014 ABQB 350

29. *Look Communications Inc. v Look Mobile Corp.*, 2009 CanLII 71005 (Ont SCJ)

30. *Nortel Networks Corp. (Re)*, 2009 CarswellOnt 4838

31. *Maxtech Manufacturing Inc. (Re)*, 2010 ONSC 1161

32. *887574 Ontario Inc. v Pizza Pizza Ltd.*, 1994 CarswellOnt 1214