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JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF CLEO ENERGY CORP.

DOCUMENT

BENCH BRIEF OF CLEO ENERGY CORP.

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

GOWLING WLG (CANADA) LLP

Suite 1600, 421 – 7th Avenue SW

Calgary, AB T2P 4K9

Telephone: 403-298-1946 / 403-298-1938

Fax: 403-263-9193

Email: sam.gabor@gowlingwlg.com /
tom.cumming@gowlingwlg.com

File No.: G10010664

Attention: Sam Gabor / Tom Cumming

**APPLICATION BEFORE THE HONOURABLE JUSTICE BURNS
DECEMBER 13, 2024 AT 11:30 AM ON THE CALGARY COMMERCIAL LIST**

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I. INTRODUCTION

1. On December 8, 2024 Cleo Energy Corp. (“**Cleo**”) filed a notice of intention to make a proposal (the “**NOI**”) under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and Alvarez & Marsal Canada Inc.(“**A&M**”), a licensed insolvency trustee, was named as the proposal trustee of Cleo (A&M, in such capacity, the “**Proposal Trustee**”) (the “**Proposal Proceedings**”).
2. Cleo is insolvent and filed the NOI in order to protect Cleo’s assets, maintain the value of its business and assets, protect itself and its stakeholders interests, and provide itself an opportunity and breathing space to restructure.¹
3. As a result of the filing of the NOI, all enforcement proceedings against Cleo and its property were automatically stayed for an initial period of thirty (30) days (the “**Stay**”). Further, no new enforcement proceedings may be commenced or continued as against Cleo during the Stay, including the enforcement of garnishee summons.
4. Prior to the filing of the NOI, garnishee proceedings were initiated against Cleo by Morganick Blending Services Corp. (“**Morganick**”). Also prior to the filing of the NOI, Royal Bank of Canada (“**RBC**”) issued a cheque to the Court in accordance with Morganick’s garnishee summons (the “**Garnishee Summons**”) in the amount of \$152,436.18 (the “**Garnished Funds**”).² Cleo requires the return of the Garnished Funds to meet its payroll obligations due on Friday, December 13, 2024 and to continue its operations during the Proposal Proceedings.³
5. This Bench Brief is submitted on behalf of Cleo in support of an Application seeking from this Honourable Court an Order, among other things:

¹ Affidavit of Chris Lewis, sworn December 11, 2024, at para 13 (the “**Lewis Affidavit**”).

² Lewis Affidavit at para 17.

³ Lewis Affidavit at para 24.

- (a) authorizing and directing RBC to cancel any cheques it issued as a result of the Garnishee Summons and to make available the Garnished Funds into Cleo’s bank account with RBC ending in 041 (the “**Account**”); and
 - (b) such further and other relief as Cleo may request and this Honourable Court may grant.
6. This application is supported by an Affidavit sworn by Chris Lewis, a director of Cleo, dated December 11, 2024 (the “**Lewis Affidavit**”). The further facts with respect to this Application are more fully set out in the Lewis Affidavit.
7. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated.

II. ISSUES

8. This Brief addresses whether this Honourable Court should order RBC to cancel any cheques it issued as a result of the Garnishee Summons and to make available the Garnished Funds in the Account.

III. LAW AND ARGUMENT

A. The Garnished Funds Should be Returned to Cleo

9. Sections 69(1) of the *BIA* provides for a stay of proceedings preventing creditors from commencing or continuing any action, execution or other proceedings against a debtor for the recovery of a claim provable in bankruptcy:

Stay of proceedings — notice of intention

69 (1) Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

- (i) the insolvent person's insolvency,
- (ii) the default by the insolvent person of an obligation under the security agreement, or
- (iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,⁴

10. Courts have granted orders in insolvency proceedings pursuant to section 69(1) of the *BIA* requiring that creditors return property to the debtor company when a remedy is enforced upon by the creditor post filing of the insolvency proceeding on the basis of pre-filing claim provable in bankruptcy. Courts have also determined that it is a violation of the stay to exercise a remedy even if the creditor is not aware of the stay of proceedings and accordingly, and any property received by the creditor by the exercise of a remedy must be returned.⁵
11. In *Chaulk Air Inc., Re*⁶, the New Brunswick Court of Queen's Bench (as it then was) granted an Order for the benefit of a debtor in an NOI proceeding declaring that the stay of proceedings automatically imposed by section 69(1) of the *BIA* included actions under a garnishing order and directed a garnishee to pay funds owed by the garnishee to the debtor directly as it had been unwilling to do so without such an order.⁷
12. In *Accel Energy Canada Limited Re*⁸, garnished funds were held by the Court of King's Bench of Alberta when the NOI was filed. Those funds were subsequently ordered to be returned to the debtor.⁹
13. In this case, the Garnishee Summons is stayed as a result of the filing of the NOI and section 69(1) of the *BIA*.

⁴ *BIA* section 69(1) [**Tab 1**]

⁵ *Startek Computer Inc. (Trustee of) v. Samtack Computer Inc.*, 2000 BCSC 1316 at paras 9 to 13 [**Tab 2**]

⁶ *Chaulk Air Inc., Re*, 2012 CarswellNB 204 [**Tab 3**].

⁷ *Ibid* at para 8-10 [**Tab 3**].

⁸ *Accel Energy Canada Limited (Re)*, 2020 ABQB 652 [**Tab 4**].

⁹ *Ibid* at para 38 [**Tab 4**].

14. RBC sent the cheque to the Court representing the Garnished Funds prior to the filing of the NOI and the cheque representing the Garnished Funds has not yet reached the Court.¹⁰
15. The Garnished Funds are needed by Cleo to meet its payroll obligations due this Friday, December 13, 2024 and to maintain business operations during the Stay.¹¹
16. Cleo has twelve employees and nine consultants which fall under its payroll calculations. Cleo's payroll obligations are approximately \$132,000.¹²
17. RBC has requested that a court order be provided to it directing that it can cancel the cheque representing the Garnished Funds and provide the amount of the Garnished Funds into Cleo's Account with RBC. RBC will follow a court order directing same.¹³
18. If Cleo is unable to meet its payroll obligations and continue its operations during the Stay, its oil and gas assets will be placed into jeopardy creating potential environmental issues and risk of significant loss to Cleo and its creditors which are owed in excess of \$23,000,000.¹⁴
19. Cleo currently has no other confirmed adequate sources of available funds this week to meet its payroll obligations other than the Garnished Funds.¹⁵
20. Cleo needs to make payroll to be in a position to maintain its oil and gas assets, and needs to continue carrying on business during the Stay to be able to proceed forward with the NOI proceeding for the benefit of its stakeholders.¹⁶

¹⁰ Lewis Affidavit at para 22.

¹¹ Lewis Affidavit at para 24.

¹² Lewis Affidavit at para 24.

¹³ Lewis Affidavit at para 25.

¹⁴ Lewis Affidavit at para 26.

¹⁵ Lewis Affidavit at para 26.

¹⁶ Lewis Affidavit at para 27.

IV. CONCLUSION AND RELIEF SOUGHT

21. For the reasons above, it is appropriate for this Honourable Court to Order that RBC cancel any cheques it issued to the Court as a result of the Garnishee Summons and to thereafter make available the Garnished Funds into Cleo's Account with RBC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of December, 2024.

GOWLING WLG (CANADA) LLP

Per: _____


Sam Gabor
Counsel for Cleo Energy Corp.

TABLE OF AUTHORITIES

Tab	Authority
1.	<u>Bankruptcy and Insolvency Act, RSC 1985, c B-3</u>
2.	<u>Startek Computer Inc. (Trustee of) v. Samtack Computer Inc., 2000 BCSC 1316</u>
3.	<u>Chaulk Air Inc., Re, 2012 CarswellNB 204</u>
4.	<u>Accel Energy Canada Limited (Re), 2020 ABQB 652</u>