



C10194

COURT FILE NO. B301-163430
 COURT COURT OF KING'S BENCH OF ALBERTA
 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.

APPLICANT CLEO ENERGY CORP.

DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
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 File No. G10010664
Attention: Sam Gabor/ Tom Cumming

NOTICE TO THE RESPONDENTS

This application is made against you.

You have the right to state your side of this matter before the master.

To do so, you must be in Court when the application is heard as shown below:

Date: TBD
~~December 23, 2024~~
 Time: ~~2:00 MST~~
 Where: Calgary Court of King's Bench ~~in Court Room 1002~~
 Before Whom: An Honourable Justice of the Court of King's Bench

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The applicant, Cleo Energy Corp. (“**Cleo**”), in connection with the proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”, and such proceedings, the “**Proposal Proceedings**”), commenced by notice of intention to make a proposal filed on December 8, 2024 (the “**Filing Date**”, and such notice, the “**NOI**”) applies for an Order seeking, *inter alia*, the following relief, which Order is substantially in the form attached hereto as **Schedule “A”**:
 - (a) abridging the time for service of notice of this Application, deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
 - (b) declaring that Trafigura Canada Limited’s (“**Trafigura**”) right to effect set-off is stayed pursuant to section 69(1) of the *BIA* with respect to the following:
 - (i) the aggregate amounts that are owing by Cleo to Trafigura under the Prepayment Agreement (as defined herein) as against the amounts owing by Trafigura to Cleo under the Commercial Agreement (as defined herein) for Cleo’s November 2024 production; and
 - (ii) the aggregate of all amounts that are owing by Cleo to Trafigura under the Prepayment Agreement (as defined herein) as against the ongoing amounts owing by Trafigura to Cleo under the Commercial Agreement (as defined herein) for Cleo’s continuing production under the Commercial Agreement (as defined herein); and
 - (iii) any amounts owed or allegedly owed by Cleo to Trafigura prior to December 8, 2024, including without limitation, those amounts claimed

by Trafigura from Cleo in connection with the Prepayment Agreement (as defined herein);

- ii. declaring that the amounts owing by Cleo to Trafigura under the Prepayment Agreement (as defined herein) are unsecured debts;
- iii. declaring that Trafigura is stayed from exercising a right of acceleration under the Prepayment Agreement during the Stay Period (as defined herein) pursuant to Section 65.1(1) of the *BIA*;
 - (b) directing Trafigura to immediately pay to Cleo the amount of \$757,644.77 owing to Cleo pursuant to the Commercial Agreement (as defined herein) for Cleo's November, 2024 production;
 - (c) ordering that Trafigura continue to pay to Cleo all amounts currently owing or which may become owing by Trafigura to Cleo in connection with the Commercial Agreement (as defined herein);
 - (d) directing that Trafigura pay Cleo's costs on an elevated basis; and
 - (e) such further and other relief as Cleo may request and this Honourable Court may grant.

Grounds for making this application:

Background

- 2. Cleo is a privately owned oil and gas operator of medium gravity oil based in Calgary, Alberta with operations throughout East Central Alberta.
- 2. Cleo's revenue is primarily linked to the productivity of its wells, as well as the market price of oil.
- 3. Cleo has recently experienced a significant reduction in production levels due to several factors. It is unable to meet its obligations as they become due and its liabilities exceed its assets.

4. Cleo currently has total debts of \$24,102,898.00, of which \$6.7 million is secured debt.
5. On December 8, 2024, Cleo filed the NOI pursuant to subsection 50.4(1) of Division 1 of Part III of the *BIA* with the Office of the Superintendent of Bankruptcy and appointed A&M as Proposal Trustee.
6. As a result of the filing of the NOI and Section 69(1) of the *BIA*, for a period of thirty (30) days subsequent to the filing of the NOI:
 - (a) No creditor has any remedy against Cleo or Cleo's Property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim in bankruptcy;
 - (b) No provision of a security agreement between Cleo and a secured creditor that provides, in substance, that on Cleo's insolvency, the default by Cleo of an obligation under the security agreement, or the filing by Cleo of a NOI under section 50.4 of the *BIA*, the insolvent person ceases to have rights to use or deal with assets secured under the agreement as Cleo would otherwise have, has any force or effect; and
 - (c) no person may commence or continue any action against a Director of Cleo on any claim against Directors that arose before the commencement of the Proposal Proceedings and relates to obligations of Cleo where Directors are under any law liable in their capacity as Directors for the payment of such obligations.
7. All proceedings against Cleo and the Property were automatically stayed for an initial period of thirty (30) days (the "**Stay Period**").

Stay of Setoff

8. Cleo and Trafigura are parties to a Commercial Agreement dated July 12, 2024 (the "**Commercial Agreement**") pursuant to which Cleo sells its oil product (the "**Products**") to Trafigura.

9. The revenue from the sale of Products to Trafigura is paid out to Cleo on the 25th of every month. In December, it is payable on December 24, 2024.
10. In July, 2024, Cleo and Trafigura entered into a Prepayment Agreement (the “**Prepayment Agreement**”) whereby Trafigura agreed to provide Cleo up to three loan tranches of up to \$1,000,000 per tranche. In exchange, Trafigura would have the right to retain certain amounts from the revenues generated by it selling Cleo’s Products.
11. Trafigura has currently extended a single tranche of \$1,000,000 under the Prepayment Agreement, which was made by Trafigura to Cleo on August 1, 2024 (the “**Advance**”). Pursuant to the Prepayment Agreement, the Maturity Date for the Advance is July 31, 2024. The Maturity Date has not been extended pursuant to the terms of the Prepayment Agreement.
12. The total amount that remains outstanding from the Advance is \$750,000. Payments under the loan are approximately \$83,000 each month.
13. Trafigura’s next payment of approximately \$757,644.77 for sales in November 2024 pursuant to the Commercial Agreement is anticipated on December 24, 2024 in accordance with the payment provision as described above (the “**December Payment**”).
14. On December 20, 2024, Trafigura’s counsel advised Cleo’s counsel that Trafigura intended to set-off the total amount outstanding under the Prepayment Agreement against the December Payment.
15. Trafigura advised that, instead of making the anticipated December Payment of \$757,644.77, Trafigura would be setting off \$721,678.99 (being the total owing for the Product sold in November 2024 before tax) and would be paying only \$35,965.78 to Cleo (the “**Intended Set-off**”).

The Intended Set-off is Improper

16. The Intended Set-off would contravene the Stay. Upon filing the NOI, the automatic Stay under section 69(1) of the *BIA* arose and prevents Trafigura or any other party from

commencing or continuing any actions or exercising any remedies against Cleo or its property, including without limitation, exercising any set-off rights.

17. Set-off claims, such as the Intended Set-off, are not exempt from the Stay.

No Acceleration of Debt

18. The Advance is not a mature obligation in accordance with the Prepayment Agreement until July 31, 2025. There has been no default under either the Commercial Agreement or the Prepayment Agreement, and no demand has been made prior to the filing of the NOI causing the aggregate amount of debt under the Prepayment Agreement to accelerate. Trafigura's only basis for claiming an accelerated payment is as a result of Cleo's NOI.
19. Trafigura is prevented from accelerating its total debt and then making the Intended Set-off by Section 65.1(1) of the *BIA*. Section 65.1(1) of the *BIA* prohibits Trafigura from claiming an accelerated payment under the Prepayment Agreement by reason only that (a) Cleo is insolvent; or (b) a notice of intention has been filed in respect of Cleo.
20. Trafigura's Intended Set-off constitutes a breach of section 65.1(1) in that they are claiming accelerated payment without default having occurred and the total indebtedness having not matured.

Prejudice of Intended Set-off

21. The only cash receipts anticipated by Cleo prior to January 7, 2025 are the amounts to be paid by Trafigura to Cleo pursuant to the Commercial Agreement. Cleo is entirely dependent on the anticipated payment by Trafigura under the Commercial Agreement to sustain its operations during this period.
22. If Trafigura is permitted to unilaterally exercise set-off in contravention of the Stay, Cleo will be forced to immediately cease operations, which will significant prejudice all other stakeholders. The Proposal proceedings will likely end, and Cleo will likely become bankrupt. This will cause irreparable harm, loss and damage to Cleo and its stakeholders.

Material or evidence to be relied on:

23. The Affidavit of Chris Lewis sworn December 22, 2024, to be filed;
24. The Affidavit of Chris Lewis sworn December 23, 2024, to be filed;
25. Bench Brief, to be filed; and
26. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

27. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 6.3(1), 6.9, 11.27 and 13.5 of the *Alberta Rules of Court*, Alta Reg 124/2010;
28. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
29. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

30. None.

How the application is proposed to be heard or considered:

31. Before the presiding Justice in Commercial Chambers via Webex.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"
Draft Order

Clerk's Stamp

COURT FILE NO. B301-163430
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
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DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

Attn: **Sam Gabor/ Tom Cumming**
Phone: 403.298.1946 / 403.298.1938
Fax: 403.263.9193
Email: sam.gabor@gowlingwlg.com /
tom.cumming@gowlingwlg.com
File No.: G10010664

DATE ON WHICH ORDER WAS PRONOUNCED: December 23, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: **An Honourable Justice of the Court of King's Bench**

UPON THE APPLICATION of Cleo Energy Corp. (“Cleo”) filed December 23, 2024; **AND UPON** reading the Affidavit of Chris Lewis, sworn December 22, 2024, and the Affidavit of Chris Lewis sworn December 23, 2024 (collectively, the “**Affidavits**”), and the Affidavit of Service of Sherry Langley, Sworn December •, 2024; **AND UPON** hearing submissions by counsel for Cleo, counsel for Trafigura Canada Limited (“**Trafigura**”), Alvarez & Marsal Canada Inc. as the proposal trustee, and any other counsel or other interested parties present,

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other than those persons served is entitled to service of the notice of application.
2. Trafigura’s right to effect set-off is stayed pursuant to section 69(1) of the BIA with respect to:
 - a) the aggregate of all amounts that are owing by Cleo to Trafigura under the Prepayment Agreement (as defined in the Affidavits, the “**Prepayment Agreement**”) as against the amounts owing by Trafigura to Cleo under the Commercial Agreement (as defined in the Affidavits, the “**Commercial Agreement**”) for Cleo’s November 2024 production; and
 - b) the aggregate of all amounts that are owing by Cleo to Trafigura under the Prepayment Agreement as against the ongoing amounts owing by Trafigura to Cleo under the Commercial Agreement for Cleo’s continuing production under the Commercial Agreement; and
 - c) any amounts owed by Cleo to Trafigura prior to December 8, 2024, including without limitation, those amounts claimed by Trafigura from Cleo in connection with the Prepayment Agreement.
2. Trafigura is stayed from exercising a right of acceleration under the Prepayment Agreement pursuant to Section 65.1(1) of the BIA for the aggregate amount owing by Cleo to Trafigura under the Prepayment Agreement.
3. Trafigura shall by 12:00 p.m. MST on December ●, 2024 pay to Cleo the amount of \$757,644.77 owing by Trafigura to Cleo pursuant to the Commercial Agreement for Cleo’s November, 2024 production.
4. Trafigura shall continue to pay to Cleo all amounts currently owing or which may become owing by Trafigura to Cleo in connection with the Commercial Agreement.

5. Cleo shall have its costs on a solicitor and its own client full indemnity basis.

GENERAL

6. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier to the service list (the “**Service List**”) in the proceedings. Service is deemed to be effected the next business day following transmission or delivery of this Order.
7. This Order shall be posted on the Proposal Trustee’s website for these proceedings at:
<https://www.alvarezandmarsal.com/CLEO>

J.C.K.B.A.

Clerk's Stamp