

COURT FILE NUMBER 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.

DOCUMENT BENCH BRIEF OF CLEO ENERGY CORP.

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**APPLICATION BEFORE THE HONOURABLE JUSTICE M.J. LEMA
FEBRUARY 19, 2025 AT 10:00 AM ON THE CALGARY COMMERCIAL LIST**

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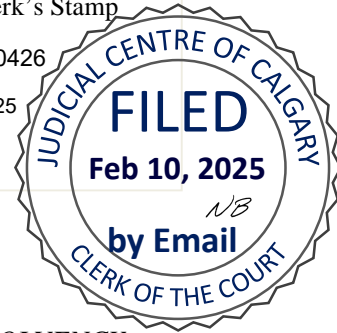


Table of Contents

	Page
I. INTRODUCTION.....	1
II. ISSUES.....	4
III. LAW AND ARGUMENT.....	4
A. Extension of the Filing Period is Appropriate	4
B. Amendment to the uCapital Facility and increase in the uCapital Charge	7
IV. CONCLUSION AND RELIEF SOUGHT.....	9

I. INTRODUCTION

Background

1. Cleo is a private Alberta corporation formed in 2016 and carries on the business of producing medium gravity based oil and gas with operated and non-operated working interests in the Alliance, Atlee, Enchant/Taber, Fabyan, Hayter, Kessler, Neutral Hills, Sedgewick, Shorncliffe and Silver Heights areas of Alberta. Cleo's head office is located in Calgary, Alberta and has a field office in Shorncliffe, Alberta.
2. Since early in 2024, Cleo has been experiencing serious financial difficulties and therefore on December 8, 2024, filed a notice of intention to make a proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") designating Alvarez & Marsal Canada Inc. ("**A&M**") as its proposal trustee (in such capacity, the "**Proposal Trustee**").
3. The following Orders are relevant to the relief being requested in this Application:
 - (a) an Order pronounced on January 6, 2025 (the "**January 6 Order**") by the Honourable Justice M.J. Lema in which the following relief was provided:
 - (i) the time within which Cleo was required to file a proposal was extended to February 21, 2025;
 - (ii) a charge against the property and assets of Cleo (the "**Property**") was granted in favour of the Proposal Trustee, legal counsel to the Proposal Trustee and legal counsel to Cleo for their respective professional fees and disbursements in an amount not to exceed \$700,000 (the "**Administration Charge**");
 - (iii) an interim financing facility in the maximum principal amount of \$750,000 (the "**uCapital Facility**") granted pursuant to a commitment letter dated January 5, 2025 between uCapital – uLoan Solutions Inc. ("**uCapital**") as interim lender and Cleo as borrower was approved;
 - (iv) a charge against the Property in favour of uCapital (the "**uCapital Charge**") was granted to secure Cleo's obligations under the uCapital Facility;

- (v) a charge against the Property was granted to secure Cleo's obligation to indemnify its director and officer against obligations and liabilities incurred after the Filing Date (the "**D&O Charge**"); and
 - (vi) the Administration Charge, the uCapital Charge and the D&O Charge were declared to rank as against the Property ahead of ahead of any and all charges, security interests, liens, trusts, deemed trusts and encumbrances against the Property, including liens and trusts created by federal and provincial legislation (collectively, the "**Encumbrances**"), and as between themselves, the Administration Charge was declared to rank first in priority, the uCapital Charge was declared to rank second in priority and the D&O Charge was declared to rank third in priority; and
 - (b) an Order of the Honourable Justice J.T. Nielson pronounced January 22, 2025 (the "**Sale Process Order**") approving a sale and solicitation process (the "**SSP**") pursuant to which Cleo will seek transactions under which its Property will be sold on a going concern basis or an investment transaction will be sought to restructure its business and affairs.
4. This Bench Brief is submitted on behalf of Cleo in support of an Application seeking from this Honourable Court an Order, among other things:
- (a) extending the period, ending February 21, 2025, within which Cleo is required under section 50.4(8) of the *BIA* to file a proposal by an additional 45 days to April 4, 2025 (such period, as extended from time to time under section 50.4(9) of the *BIA*, being the "**Filing Period**");
 - (b) authorizing an amendment to the uCapital Facility whereby the maximum principal amount available to Cleo will be increased from \$750,000 to \$1,000,000 pursuant to the second amending agreement dated February 10, 2025 (the "**Second Amending Agreement**") between uCapital and Cleo; and
 - (c) increasing the amount of the uCapital Charge created in paragraph 6 of the January 6 Order from the principal amount of \$900,000 to \$1,000,000, together with any interest accrued thereon or costs and expenses incurred thereunder.

7. This application is supported by an Affidavit sworn February 10, 2025 by Chris Lewis (“**Mr. Lewis**”), the sole Director, Executive Chairman, and Chief Executive Officer of Cleo (the “**February Affidavit**”). The further facts with respect to this Application are more fully set out in the February Affidavit and capitalized terms not defined herein have the meanings given to them in the February Affidavit.
8. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated.

Background to Cleo’s Financial Difficulties and Actions taken by Cleo during the Proposal Proceedings

9. Cleo’s financial difficulties arose from multiple shut-ins of its wells and reductions in its production since early 2024 and in reductions in the market prices it was able to obtain for its oil and gas production.¹
10. In the Proposal Proceedings, Cleo is seeking either the sale of all of its Property on a going concern basis or an investment transaction pursuant to which it will be recapitalized.²
11. The SSP was launched immediately after the Sale Process Order was pronounced on January 20, 2025. Under the SSP, a potential bidder is given access to a virtual data room provided that it executes a non-disclosure agreement and must provide to the Proposal Trustee a non-binding letter of intent expressing an interest in a transaction by no later than February 27, 2025 and a binding offer by no later than March 13, 2025. Any sale or restructuring transaction would have to be approved by this Honourable Court. The SSP anticipates a closing of such transactions by March 31, 2025 or three days after Court approval is obtained.³
12. In its first report dated January 6, 2025, the Proposal Trustee advised this Honourable Court that according to the 13-week cash flow forecast ending April 4, 2025, even with the uCapital Facility Cleo would experience a cash flow shortfall by the week of February 21, 2025. Cleo has therefore sought out additional interim financing from uCapital and other potential lenders.⁴

¹ February Affidavit, paras 8-10.

² February Affidavit, para 13.

³ February Affidavit, paras 15-16.

⁴ February Affidavit, paras 18 & 21.

13. Pursuant to the Second Amending Agreement, uCapital agreed to increase the maximum principal amount available under the uCapital Facility from \$750,000 to \$1,000,000.⁵ The increase is conditional on this Honourable Court making an Order extending the Filing Period, approving the increase in the uCapital Facility by \$250,000 and increasing the maximum principal amount secured by the uCapital Charge by that amount.⁶
14. Since the increase in the uCapital Facility will only provide sufficient working capital to March 21, 2025, Cleo is seeking additional interim financing from other parties.⁷
15. Since the beginning of January 2025, Cleo has been carrying out a repair and maintenance program on its wells and facilities in order to increase its production. Since January 15, 2025, this has resulting in an increase in its production of oil from 214 bbl/d to 403 bbl/d, which is projected to increase its oil revenue from \$615,000 for December 2024 to \$1,015,000 for March 2025.⁸

II. ISSUES

16. This Brief addresses whether this Honourable Court should make an Order:
 - (a) extending the Filing Period; and
 - (b) approving the increase in the uCapital Facility and increasing the maximum principal amount secured by the uCapital Charge.

III. LAW AND ARGUMENT

A. Extension of the Filing Period is Appropriate

17. The initial 30-day period within which Cleo was required to file a proposal ended on January 7, 2025. That period was extended by the January 6 Order to February 21, 2025. If Cleo fails to file a proposal by February 21, 2025, or by the date of any extension granted under section 50.4(9) of the *BIA*, under section 50.4(8) Cleo will be deemed to have made an assignment in bankruptcy.
18. Under section 50.4(9) of the *BIA*, Cleo is entitled to apply to the Court for an Order extending the Filing Period:

⁵ February Affidavit, para 19.

⁶ February Affidavit, para 20.

⁷ February Affidavit, para 21.

⁸ February Affidavit, paras 27 & 29.

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.⁹

19. Under section 50.4(9) of the *BIA*, the burden of proof is on the debtor to show on the balance of probabilities that an extension is justified,¹⁰ although the evidentiary threshold to meet the onus is low.¹¹ The Court assesses the likelihood of a debtor making a viable proposal on an objective basis, considering what a reasonable creditor might expect to happen or what might reasonably be expected to occur, rather than what a specific creditor would do.¹² The test requires a dispassionate evaluation by the Court to consider what a reasonable creditor might expect to happen or what might reasonably be expected to occur.¹³
20. While Cleo's efforts during the Proposal Proceedings are focussed on increasing production and carrying out the SSP, the intent is to preserve the business either through one or more sales on a going concern basis or a restructuring through an investment transaction. Courts have indicated that seeking a sale of assets is evidence of good faith for the purposes of section 50.4(9) of the *BIA*.¹⁴
21. In *Pacific Shores Resort & Spa Ltd., Re*, a stay extension was granted in the *CCAA* proceedings notwithstanding that the interim financing was less than what the cash flow projections indicated was required for the debtor to meet the next stay extension.¹⁵

⁹ *BIA* section 50.4(9) [Tab 1].

¹⁰ *Re Heritage Flooring Ltd.* (2004), 46 CBR (3d) 280 at paras 31, 32 and 37 [Tab 2].

¹¹ *Re Scotian Distribution Services Limited*, 2020 NSSC 131 at para 24 [Tab 3]; *Re T & C Steel Ltd*, 2022 SKKB 236 at para 20 [Tab 4].

¹² *Nautican v Dumont*, 2020 PESC 15 at paras 16-18 [Tab 5].

¹³ *Baldwin Valley Investors Inc., Re*, 1994 CarswellOnt 254 [Tab 6].

¹⁴ *Re Colossus Minerals*, 2014 ONSC 514 at para 39 [Tab 7].

¹⁵ *Pacific Shores Resort & Spa Ltd., Re* 2011 BCSC 1775 at para 45, 60 [TAB 9].

22. Cleo is seeking an extension of the Filing Period to April 4, 2025. Cleo respectfully submits that the extension is appropriate for the following reasons:
- (a) Cleo has acted and continues to act in good faith and with due diligence;
 - (b) no creditor will be materially prejudiced by the requested extension of the Stay Period; and
 - (c) the extension of the Stay Period is necessary to allow Cleo sufficient time and opportunity to continue the restructuring of its business and affairs and pursue strategic alternatives.
23. Since the NOI was filed, Cleo has worked diligently and in good faith to advance these Proposal Proceedings and to comply with the various requirements under the *BIA*. These steps have included, among other things:
- (a) preparing and analysing a list of creditors and identifying issues specific to certain creditors;
 - (b) providing the Proposal Trustee with access to its books and records;
 - (c) working with the Proposal Trustee on the preparation of the Cash Flow Forecast;
 - (d) communicating with stakeholders and customers regarding the proposal process;
 - (e) communicating with the AER regarding the status of its operations and the proposal process;
 - (f) carrying out discussions with uCapital and other potential interim lenders in order to secure the additional financing required to continue operating during the Proposal Proceedings, carry out the SSP, and complete any sale or restructuring transactions arising from the SSP;
 - (g) reviewing its operating expenses, pursuing the collection of accounts receivable and taking other steps to permit Cleo to be financially viable during these Proposal Proceedings; and
 - (h) preparing this Application.¹⁶

¹⁶ February Affidavit at para 26.

24. Cleo's creditors will not be prejudiced by the extension of the Filing Period. Rather, the extension is critical to permitting Cleo to carry out the SSP and potentially sell its assets on going concern basis or recapitalize pursuant to a restructuring transaction.¹⁷

II. The Proposal Trustee is supportive of the extension of the Filing Period to April 4, 2025.¹⁸

B. Amendment to the uCapital Facility and increase in the uCapital Charge

25. Section 50.6 of the *BIA* confers this Honourable Court with the jurisdiction to approve an interim facility and grant a prior ranking charge to secure a debtor's obligations thereunder:

50.6(1) *Interim Financing*: On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) 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 debtor'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 debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.¹⁹

26. Section 50.6(5) of the *BIA* provides a non-exhaustive list of factors to be considered by this Honourable Court in deciding whether to declare Cleo's Property subject to the Interim Lender's Charge:

50.6(5) *Factors to be considered*: In deciding whether to make an order, the court is to consider, among other things,

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

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

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

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

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

¹⁷ February Affidavit at para 34.

¹⁸ February Affidavit at para 35.

¹⁹ *BIA* section 50.6(1) [**Tab 1**].

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

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.²⁰

27. This Honourable Court approved the uCapital Facility and granted the uCapital Charge as security therefor in the January 6 Order. At the time that Order was granted, the Proposal Trustee in the First Report disclosed to this Honourable Court that without additional interim financing, there would be a cash flow shortfall starting in the week of February 21, 2025.²¹
28. All of the secured creditors of Cleo are on the service list for these Proposal Proceedings and will be given notice of this Application and the relief being sought.
29. The Proposal Trustee has recommended that this Court approve the increase in the uCapital Facility and the uCapital Charge.²²
30. The increase in the uCapital Facility will provide the necessary working capital to fund Cleo's operations and activities under the SSP to the week of March 21, 2025 and therefore will enhance the prospects of one or more viable going concern sale transactions or a restructuring transaction pursuant to a proposal.
31. Under the Second Amending Agreement, the increase in the uCapital Charge is a condition precedent to the increase in the uCapital Facility.²³ While this will mean that the amount secured by the uCapital Charge will increase, this Honourable Court has already granted prior ranking security for the original amount of the uCapital Facility. The grant of such priority has been found by courts to be within their discretion and to be appropriate:

In *Canada North*, the Supreme Court of Canada endorsed prior authority stating that the granting of super-priority charges is critical as a “key aspect of the debtor's ability to attempt a workout”, although it noted that a Canadian Court in granting a charge with priority over Crown interests should do so only when necessary. The Supreme Court did not determine in *Canada North* whether the Crown's deemed trust for employee withholdings renders it a “secured creditor” for the purposes of determining whether the Crown can be primed by charges created by ss. 50.6(1), 50.6(3) and 50.6(5) of the *BIA*...²⁴

²⁰ *BIA* section 50.6(5) [Tab 1].

²¹ February Affidavit at para 18.

²² February Affidavit at para 22.

²³ February Affidavit at para 20.

²⁴ *Canada v. Canada North Group Inc.*, 2021 SCC 30 [Tab 8] at paras 67 and 72.

32. Cleo has in consultation with the Proposal Trustee reduced its expenditures so as to conserve cash and is only incurring costs that will preserve its operations and increase its production, thereby enhancing the marketability of its Property and business for the purposes of the SSP.
33. Rather than any creditor being prejudiced by the increase in the uCapital Facility, were this Honourable Court not to approve the increase, Cleo would have to cease operating and abandon the SSP. In such a circumstance, the potential recoveries of Cleo's creditors would be prejudiced.²⁵
34. For all of these reasons, Cleo respectfully submits that an Order approving the amended Interim Financing Facility to be entered into by Cleo, approving the amended uCapital Facility and declaring that the Property is subject to the priority of the amended uCapital Charge will be necessary and appropriate in the circumstances.

IV. CONCLUSION AND RELIEF SOUGHT

35. For the reasons above, Cleo requests the Orders sought be granted as they are fair, necessary and reasonable in the circumstances and represent the best option to permit Cleo to present a proposal to the benefit of its creditors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of February, 2025.

GOWLING WLG (CANADA) LLP

Per: 

Sam Gabor/Tom Cumming
Counsel for Cleo Energy Corp.

²⁵ February Affidavit at para 24

TABLE OF AUTHORITIES

Tab	Authority
1.	<u>Bankruptcy and Insolvency Act, RSC 1985, c B-3</u>
2.	<u>Re Heritage Flooring Ltd. (2004), 46 CBR (3d) 280</u>
3.	<u>Re Scotian Distribution Services Limited, 2020 NSSC 131</u>
4.	<u>Re T & C Steel Ltd, 2022 SKKB 236</u>
5.	<u>Nautican v Dumont, 2020 PESC 15</u>
6.	<u>Baldwin Valley Investors Inc., Re, 1994 CarswellOnt 254</u>
7.	<u>Re Colossus Minerals, 2014 ONSC 514</u>
8.	<u>Canada v. Canada North Group Inc., 2021 SCC 30</u>
9.	<u>Pacific Shores Resort & Spa Ltd., Re 2011 BCSC 1775</u>