

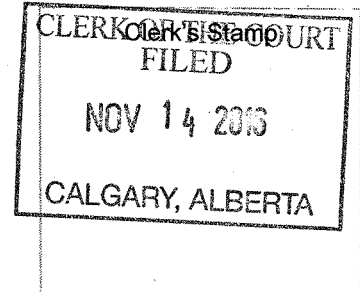
Form 49  
[Rule 13.19]

COURT FILE NUMBER 1601 06765

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

PLAINTIFF(S) IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, as amended

AND IN THE MATTER OF ENDURANCE ENERGY LTD.



DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Thornton Grout Finnigan LLP**  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7  
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Attention: Robert I. Thornton / Leanne Williams / Rachel Bengino  
File No: 1751-001

**AFFIDAVIT OF STEVEN VANSICKLE**

*SV*  
**Sworn (or Affirmed) on November 14, 2016**

I, Steven VanSickle, of Calgary, Alberta, SWEAR/AFFIRM AND SAY THAT:

- I am the acting Chief Executive Officer of Endurance Energy Ltd. (“**Endurance**” or the “**Applicant**”). Through my involvement with the Applicant, I have knowledge of the matters to which I hereinafter depose. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe such information to be true.

2. The purpose of this Affidavit is to support the relief requested by the Applicant for Orders, *inter alia*:
  - (a) approving an interim distribution to Canadian Imperial Bank of Commerce (the “**Agent**”), in its capacity as the Administrative Agent to a syndicate of lenders (collectively, the “**Lenders**”) in the amount of \$100 million;
  - (b) extending the Stay of Proceedings (as defined below) to January 31, 2016 (the “**Stay Extension Period**”); and
  - (c) establishing a claims procedure (the “**Claims Procedure**”) for the submission, evaluation and adjudication of claims against all of the current and former directors and officers of the Applicant (the “**Directors and Officers**”).

## **BACKGROUND**

3. As described in my affidavit sworn in support of the Initial Order (as defined below) (the “**Initial Affidavit**”) and supplementary affidavit sworn on June 6, 2016, the Applicant was engaged in the business of oil and natural gas exploration, development and production. Endurance was experiencing serious liquidity needs and required immediate and continued funding in order to conduct the Sale Process (as defined below) in an attempt to sell substantially all of the assets of Endurance as a going concern for the general benefit of its stakeholders or, in the alternative, complete a safe and proper shutdown of its operations.
4. Any capitalized terms not otherwise defined herein have the meaning attributed to them in the Initial Affidavit or the Initial Order.

5. On May 30, 2016, Endurance was granted an Order, as amended and restated (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”) for relief including, *inter alia*, (i) a stay of proceedings until June 29, 2016 (the “**Stay of Proceedings**”), (ii) the appointment of FTI Consulting Canada Inc. as Monitor (the “**Monitor**”), (iii) approving certain charges including a charge in favour of the Directors and Officers in the amount of \$1 million (the “**Directors’ Charge**”), (iv) approving the Interim Facility Commitment Letter (the “**Commitment Letter**”) between the Applicant and WP Private Equity XI Inc. for interim funding during these CCAA proceedings (the “**Interim Funding**”) and (v) approving the engagement of BMO Nesbitt Burns Inc. as the Applicant’s financial advisor (the “**Financial Advisor**”).
6. Also on May 30, 2016, this Court granted an Order approving a sale process in respect of the assets of the Applicant, which was subsequently revised by way of further Court Order on June 22, 2016 (the “**Sale Process**”).
7. On September 27, 2016, this Court granted an Order extending the Stay of Proceedings until November 25, 2016. Further, on September 2, 2016, the Court granted an order amending the terms of the Commitment Letter, which, amongst other things, extended the maturity date therein to September 30, 2016, which was further extended to October 30, 2016 by court Order on October 6, 2016.

## **SALE PROCESS**

8. As a result of the Sale Process, the Applicant entered into an asset purchase agreement (the “**BC Agreement**”) with Shanghai Energy Corporation (“**Shanghai Energy**”) dated

September 21, 2016 in respect to the Applicant's assets located in British Columbia (the "**BC Transaction**") and an asset purchase agreement (the "**Alta/SK Agreement**") with 1994450 Alberta Inc. ("**1994450**") dated September 21, 2016 in respect of the Applicant's assets located in Alberta and Saskatchewan (the "**Alta/SK Transaction**" and together with the BC Transaction, the "**Sale Transactions**").

9. The Sale Transactions have now closed and on October 31, 2016 the Monitor delivered its Monitor's Certificate (the "**Monitor's Certificate**") to each of Shanghai Energy and 1994450, which vested all of the Applicant's right, title and interest to the assets described in each of the BC Agreement and the Alta/SK Agreement absolutely in Shanghai Energy and 1994450, respectively, free and clear of all interests, liens, charges and encumbrances, other than Permitted Encumbrances (as defined in each of the BC Agreement and the Alta/SK Agreement). A copy of the Monitor's Certificate is attached hereto as Exhibit "A".
10. Subsequent to the closing of the Sale Transactions, the employees of the Applicant were terminated and the directors, with the exception of myself, resigned. Certain employees of the Applicant, including myself, have been rehired on a short-term basis to assist with finalizing the Applicant's estate. It is anticipated that the Applicant will assign itself into bankruptcy at the conclusion of these proceedings.
11. Pursuant to the engagement letter entered into between the Applicant and the Financial Advisor (the "**BMO Engagement Letter**"), which was approved by this Court in the Initial Order, a success fee became payable to the Financial Advisor upon the closing of the Sale Transactions. Pursuant to the terms of the BMO Engagement Letter, the



Applicant has paid the amounts owing to the Financial Advisor from the net sale proceeds of the Sale Transactions (the “**Proceeds**”).

12. Pursuant to the terms of the Commitment Letter, the Applicant has fully and permanently repaid the amounts owing under the Interim Funding, which totaled \$15,585,965 from the Proceeds. As a result, the Interim Lender’s Charge is no longer required.

#### **KEY EMPLOYEE RETENTION PLAN AND KEY EMPLOYEE INCENTIVE PLAN**

13. On August 2, 2016, this Court granted an order approving the Applicant’s proposed key employee retention plan (the “**KERP**”) and key employee incentive plan (the “**KEIP**”) for certain key employees in order to ensure their continued participation in these CCAA proceedings. Further, the Court granted a charge to secure all obligations owing under the KERP and KEIP.
14. The KERP provided that the KERP beneficiaries were to receive the specific cash retention payments on the earlier of (i) the date on which they are terminated without cause or (ii) the date on which there is a sale of all of a material portion of the Applicant’s assets. The KEIP provided that the KEIP beneficiaries were to receive a minimum threshold and amounts payable were based on a sliding scale dependant on the ultimate sale price obtained for the Applicant’s assets in the Sale Process.
15. Pursuant to the terms of the KERP and KEIP, the Applicant has paid all amounts owing under the KERP and KEIP from the Proceeds. As a result, the KERP and KEIP Charge is no longer required.

**PROPOSED INTERIM DISTRIBUTION**

16. As at the date of the Initial Order, Endurance was indebted to the Lenders in the amount of approximately \$221,886,331 under the terms of the credit agreement dated June 27, 2013, as amended and restated, amongst the Applicant and the Lenders (the “**Credit Agreement**”).
17. As security for its obligations under the Credit Agreement, the Applicant granted, *inter alia*, a demand debenture to the Lenders in the amount of \$500 million, which was registered by the Agent under the *Alberta Personal Property Security Act*, R.S.A. 2000, c. P-7 and the *B.C. Personal Property Security Act*, R.S.B.C., Chapter 359.
18. I am advised by the Monitor that its counsel has reviewed the security granted by the Applicant to the Lenders and has confirmed that the security represents a valid and enforceable obligation of the Applicant to the Lenders under the laws of Alberta and B.C., subject to customary qualifications and assumptions. The Monitor and its counsel determined that it was not necessary or practical to obtain an opinion regarding the laws of Saskatchewan, given the value of Endurance's Saskatchewan assets that were sold under the Alta/SK Agreement (which value has been disclosed to the Court in Confidential Exhibit “B” to my September 23, 2016 Affidavit, which has been sealed on the Court file).
19. Because the Applicant operated approximately 900 wells, it was not practical or cost effective to search title to each of these properties. After sufficient inquiries and to my knowledge, no creditor has claimed a greater priority than the Lenders in respect of any of the Applicant’s assets or an entitlement to the Proceeds. Out of an abundance of

caution, the Monitor published a notice in the *Calgary Herald* on November 11, 2016 and in the *Globe and Mail* (National Edition) on November 14, 2016, to provide the public and specifically any potential creditor not on the service list, with notice of the proposed interim distribution.

20. The Applicant proposes to make an interim distribution from the Proceeds to the Agent, in the amount of \$100 million to be distributed to the Lenders in partial satisfaction of the indebtedness of the Applicant to the Lenders.
21. The proposed interim distribution will leave a reserve sufficient to complete the winding up of the Applicant's estate and to deal with any claims arising from the Claims Procedure.

#### **PROPOSED CLAIMS PROCESS<sup>1</sup>**

22. The Applicant is seeking Court approval of the Claims Procedure to ascertain Claims (as defined below) that exist against the Directors and Officers in order to assess amounts payable, if any, under the Directors' Charge. The Applicant has developed the proposed Claims Procedure with input from its counsel and the Monitor.
23. As previously mentioned, the Initial Order creates a Directors' Charge for obligations and liabilities incurred after the commencement of the CCAA proceedings to the extent not otherwise covered under any directors' and officers' insurance policy. Prior to the discharge of the Director's Charge, it is necessary to ascertain and adjudicate any potential claims against the Directors and Officers.

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<sup>1</sup> Capitalized terms used in this section of this Affidavit but not otherwise defined are used as defined in the draft Claims Procedure Order, filed concurrently with this Affidavit.



24. The proposed Claims Procedure contemplates the identification and final determination of all “**Claims**”, which include the following:

(a) Any right or claim of any Person against one or more of the Directors or Officers of the Applicant or any of them, howsoever arising and whether:

(i) based on facts that existed prior to the Filing Date; or

(ii) based on facts that arose in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicant on or after the Filing Date of any contract, lease, other agreement or obligation, whether written or oral,

for which the Directors or Officers are by statute or otherwise by law liable to pay in their capacity as Directors or Officers or in any other capacity (each, a “**Claim**”);

provided, however, that in any case “**Claim**” shall not include an Excluded Claim.

25. Any Claim that cannot be compromised due to the provision of subsection 5.1(2) of the CCAA is an “Excluded Claim” under the Claims Procedure.

***Notices and Claims Bar Dates***

26. The Monitor shall cause to be published, for at least one (1) Business Day, a Notice to Claimants, substantially in the form attached as Schedule “A” to the draft Claims Procedure Order included with the Motion Record, in *The Globe and Mail* (National Edition) as outlined in the Claims Procedure Order, by no later than 5:00 p.m. on November 23, 2016. The Applicant has chosen this publication because it is a national publication with large circulations that cover substantially all of Canada.



27. The Notice to Claimants will advise of the Claims Procedure, will call for Claims against the Directors and Officers, and will advise of the proposed Claims Bar Date.
28. In addition, the Monitor shall cause the Notice to Claimants, Claims Package and Claims Procedure Order to be posted on the Monitor's Website as soon as practicable and cause it to remain posted until the Monitor's discharge as Monitor of the Applicant.
29. Upon request by a Claimant for a Claims Package or documents or information relating to the Claims Procedure prior to the Claims Bar Date the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.
30. The proposed Claims Procedure Order provides that any Person who does not file a Claim with the Monitor by 5:00 p.m. (Mountain Time) on December 30, 2016 (the "**Claims Bar Date**") will not be entitled to receive further notice with respect to the Claims Procedure or these proceedings and shall be forever barred from asserting or enforcing such Claim against the Directors and Officers, the Directors and Officers shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicant.
31. The Applicant believes that the Claims Bar Date is reasonable and a sufficient amount of time for Claimants to file Proofs of Claim.

***Proving Claims***

32. All Persons wishing to assert a Claim, other than the Excluded Claims, must deliver to the Monitor, on or before the Claims Bar Date a Proof of Claim, including all relevant

supporting documentation in respect of such Claim, in the manner set out in the Claims Procedure Order.

33. The Monitor, in consultation with the Applicant, is authorized under the proposed Claims Procedure Order to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Claims are filed. Where the Monitor is satisfied that a Claim has been adequately proven, the Monitor, in consultation with the Applicant, may waive strict compliance with the requirements of the Claims Procedure Order as to the completion and execution of such forms.

#### ***Adjudication of Claims***

34. Under the proposed Claims Procedure Order, the Monitor, in consultation with the Applicant, will review each Proof of Claim filed on or before the Claims Bar Date and shall accept, revise or disallow the amount of each Claim set out therein for distribution purposes. In accepting, revising or disallowing any Claim, the Monitor, with the assistance of the Applicant, shall take account of and determine the presence and amount, if any, of any set-off or counterclaim relating to such Claim. If the Monitor, with the assistance of the Applicant, determines to revise or disallow a Claim, a Notice of Revision or Disallowance will be sent to the Claimant in the manner set forth in the Claims Procedure Order.
35. Any Claimant asserting a Claim who intends to dispute a Notice of Revision or Disallowance may, under the proposed Claims Procedure Order, dispute such revision or disallowance by delivering a Notice of Dispute to the Applicant, with a copy to the Monitor, by no later than 5:00 p.m. (Mountain Time) on January 27, 2017.

36. If a Claimant who receives notification of a revision or disallowance does not dispute the revision or disallowance by the deadline and in the manner set forth above, the Claim shall be deemed to be as set out in the Notice of Revision or Disallowance for voting and distribution purposes and the Claimant will be barred from disputing or appealing the same.
37. In recognition of the fact that the Monitor, with the assistance of the Applicant, may not be able to resolve all Claims without adjudication, the proposed Claims Procedure provides that in the event that the Monitor, upon notification of the Applicant, is unable to resolve a dispute in respect of a Claim, the Monitor, in consultation with the Applicant and with the consent of the applicable Director and Officers, if necessary, may refer the dispute to the Court for adjudication.

#### **STAY EXTENSION**

38. The current Stay of Proceedings expires on November 25, 2016. The Applicant requires an extension of the Stay of Proceedings up to and including January 31, 2016, in order to allow the Applicant sufficient time to run the Claims Procedure described herein and deal with any ancillary issues.
39. The Applicant has acted, and is continuing to act, in good faith and with due diligence in these proceedings.
40. The Applicant, with the assistance of the Monitor, has prepared an updated cash flow forecast in respect of the proposed Stay Extension Period. The updated cash flow forecast (the “**Cash Flow Forecast**”) demonstrates that the Applicant has sufficient liquidity to fund its operations through the proposed Stay Extension Period. Further, no creditors will be materially prejudiced by the proposed extension of the Stay of Proceedings. I

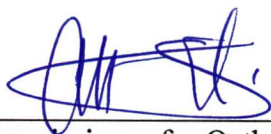


understand that the Cash Flow Forecast will be appended to the Monitor's Eighth Report, to be filed.

**PURPOSE OF THE AFFIDAVIT**

41. I hereby swear this Affidavit in support of the relief sought herein and for no other or improper purpose.

SWORN (OR AFFIRMED) BEFORE ME at Calgary, Alberta, this 14<sup>th</sup> day of November, 2016.



\_\_\_\_\_  
(Commissioner for Oaths in and for the Province of Alberta)

*Alison L. Scott.*

\_\_\_\_\_  
PRINT NAME AND EXPIRY/LAWYER /STUDENT-AT-LAW



\_\_\_\_\_  
(Signature)

*Steven R. VanSickle*

\_\_\_\_\_  
(Print Name)

Alison Scott  
Barrister and Solicitor  
A Commissioner for Oaths/Notary Public  
in and for the Province of Alberta

This is Exhibit "A" referred to in the affidavit of Steven VanSickle sworn before me on  
November 14, 2016.



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A Commission of Oaths for  
the Province of Alberta

Alison Scott

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PRINT NAME AND EXPIRY/LAWYER  
/STUDENT-AT-LAW

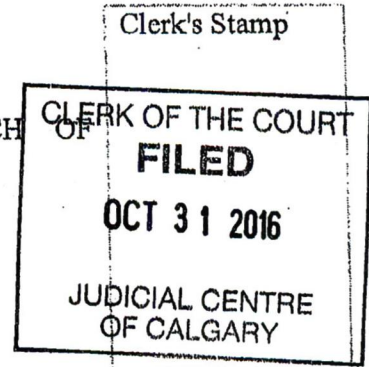
Alison Scott  
Barrister and Solicitor  
A Commissioner for Oaths/Notary Public  
in and for the Province of Alberta

**Monitor's Certificate**

COURT FILE NUMBER 1601-06765

COURT COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF  
ENDURANCE ENERGY LTD.

DOCUMENT MONITOR'S CERTIFICATE

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

**Thornton Grout Finnigan LLP**  
100 Wellington Street West, Suite 3200  
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CANADA

Phone: (416) 304-1616

Fax: (416) 304-1313

**Attention: Robert I. Thornton /  
Leanne Williams / Rachel Bengino**



**RECITALS**

- A. Pursuant to an Order of the Honourable Justice K.M Horner of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated May 30, 2016, as amended and restated, FTI Consulting Canada Inc. was appointed as monitor (the "**Monitor**") of Endurance Energy Ltd. (the "**Applicant**").
- B. Pursuant to an Order of the Court dated September 27, 2016, the Court approved the agreement of purchase and sale made as of September 21, 2016 (the "**Sale Agreement**") between the Applicant and Shanghai Energy Corporation and 1994450 Alberta Inc. (collectively, the "**Purchasers**") and provided for the vesting in the Purchasers of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES** the following:

1. The Purchasers (or its nominee) have paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Monitor.

4. This Certificate was delivered by the Monitor at 12:11 pm on October 31, 2016.

**FTI Consulting Canada Inc., in its  
capacity as Court-appointed  
Monitor of Endurance Energy  
Ltd., and not in its personal  
capacity.**

Per: 

**Name: Deryck Helkaa**

**Title: Senior Managing Director**