



No. S1910194
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c.57

AND

IN THE MATTER OF ENERGO GOLD DRILLING CORP., CROS-MAN DIRECT
UNDERGROUND LTD., EGD SERVICES LTD., BERTRAM DRILLING CORP., AND
OMNITERRA INTERNATIONAL DRILLING INC.

PETITIONERS

NOTICE OF APPLICATION

Name of Applicants: The Petitioners

On Notice to: The Service List, a copy of which is attached hereto as Schedule "A"

And to: Wellsite Masters Ltd.

TAKE NOTICE that an application will be made by the Applicants to the Honourable Mr. Justice Milman at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on October 25, 2019 at 9am, for an Order as set out in Part I below.

PART I – ORDERS SOUGHT

1. An Order substantially in the form attached as Schedule "B" deeming Wellsite Masters Ltd. ("Wellsite") as a critical supplier in accordance with section 11.4 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and to grant Wellsite a charge (the "Critical Suppliers Charge") over the receivables (the "Charged Receivables") which become owing to Bertram Drilling Corp. ("Bertram Drilling") by Syncrude Canada Ltd. ("Syncrude").

PART II – FACTUAL BASIS

1. Defined terms used in this Application and not otherwise defined have the meaning set out in Affidavit #4 of Mark Berger.

2. On September 13, 2019, the Honourable Mr. Justice Milman granted the Initial Order pursuant to the CCAA, granting, among other things, a stay of proceedings in favour of the Petitioners until the initial Return Date of October 11, 2019. On October 10, 2019, the relief under the Initial Order was extended to November 29, 2019.

Wellsite Masters Ltd.

3. In the ordinary course, Wellsite provides data services to Bertram Drilling that are integral to its operations. Wellsite's services track and monitor Bertram Drilling's projects and result in data that is essential for Bertram Drilling to complete its invoicing to clients for the services provided. Without this data, Bertram Drilling is unable to invoice its clients for the services rendered.
4. Wellsite's services included information tracking for a project completed by Bertram Drilling for Syncrude. Bertram Drilling requires the Syncrude Data from Wellsite in order to invoice Syncrude and collect the amounts owed to Bertram Drilling by Syncrude.
5. Prior to the date of the Initial Order, Wellsite stopped providing the Syncrude Data to Bertram Drilling on the basis that Bertram Drilling had accrued significant accounts payable to Wellsite. The last service period on the invoices rendered by Wellsite ended on September 9, 2019.
6. As of the date of the Initial Order, Wellsite is owed approximately \$75,000 for services it provided to Bertram Drilling prior to the Initial Order (between February 2019 and September 9, 2019). Wellsite has refused to provide the Syncrude Data until Bertram Drilling pays these pre-filing amounts in full or until Wellsite receives the benefit of a charge over the Charged Receivables.
7. The Petitioners will not be able to collect the Charged Receivables unless it receives the Syncrude Data from Wellsite since there are no alternate service providers for this data and Bertram Drilling is not able to create the data retroactively.

The Critical Suppliers Charge

8. The Petitioners submit that the proposed Critical Suppliers Charge will advance their restructuring effort because without the Syncrude Data from Wellsite, Bertram Drilling is not able to invoice Syncrude and collect the amounts owed to Bertram Drilling.

9. The Petitioners expect that the Charged Receivables will exceed the proposed charge amount by a significant margin and that, accordingly, the proposed Critical Suppliers Charge will benefit the Petitioners' restructuring.
10. Accordingly, the Petitioners have determined it is commercially reasonable to request the Critical Suppliers Charge in order to allow Bertram Drilling to invoice Syncrude for its work and to seek payment in an expeditious fashion.

PART III – LEGAL BASIS

1. The Petitioners rely on:
 - (a) The CCAA, Section 11.4;
 - (b) The inherent and equitable jurisdiction of this Honourable Court; and,
 - (c) Such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Granting the Critical Suppliers Charge

2. Subsection 11.4(1) of the CCAA provides that the Petitioners may apply for an order declaring a person to be a critical supplier of the Petitioners. The Court may make such order if it is satisfied that the person is a supplier of goods or services to the Petitioners and such goods or services are critical to the Petitioners' continued operation.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended [CCAA], s. 11.4(1).

3. Upon declaring a person to be a critical supplier, the Court may require the critical supplier to supply any goods or services specified by the Court to the Petitioners on any terms and conditions that are consistent with the supply relationship or as the Court considers appropriate. If the Court orders the provision of goods or services by the critical supplier, it may also grant a security charge in favour of the critical supplier in an amount equal to the value of the goods or services supplied under the terms of the order. In so ordering, the Court may also order that the security or charge rank in priority over the claim of any secured creditor of the Petitioners.

CCAA, ss. 11.4(2), (3), (4).

4. In determining whether to authorize payment of certain pre-filing amounts where no charge is sought, courts have considered the following factors:
- a. whether the goods and services were integral to the business of the applicants;
 - b. the applicants' dependency on the uninterrupted supply of the goods or services;
 - c. the fact that no payment would be made without the consent of the Monitor;
 - d. the Monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are minimized;
 - e. whether the applicants had sufficient inventory of the goods on hand to meet their needs; and,
 - f. the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.

The Petitioners submit that these factors are also relevant to the Court's consideration in whether to deem a person as a critical supplier and to grant a security or charge in respect of the proposed critical supplier's goods and services.

Re Cinram International Inc, 2012 ONSC 3767 at para 68
Re Northstar Aerospace Inc, 2012 ONSC 4546 at para 11
Re Index Energy Mills Road Corporation, 2017 ONSC 4944 at para 31

5. Wellsite is a supplier of goods and services that are critical to the Petitioners' continued operation within the scope of subsection 11.4(1) of the CCAA. Bertram Drilling requires the Syncrude Data in order to issue invoices to Syncrude and collect what is owing to Bertram Drilling. Bertram Drilling is unable to invoice Syncrude without this information from Wellsite, and it cannot obtain this information from another source.
6. The Petitioners expect that receiving the Syncrude Data from Bertram Drilling will facilitate their restructuring by generating revenue in excess of the proposed charge amount.
7. The Monitor is supportive of the creation of the proposed Critical Suppliers Charge in favour of Wellsite. Further, the amounts owing by Bertram Drilling to Wellsite relate to the provision of pre-

filing services which generated data that has been withheld by Wellsite. Such amounts are fixed and the pre-filing liabilities relating to Wellsite have been determined.

8. The Petitioners submit that, given the importance of the Syncrude Data to Bertram Drilling's ability to collect amounts owed, Wellsite falls within the contemplation of section 11.4 of the CCAA as a critical supplier and that it is appropriate for the Court to exercise its jurisdiction to create the Critical Suppliers Charge. In particular, the Petitioners submit there is a substantial risk that Wellsite will not provide the Syncrude Data required unless the Critical Supplier Charge is granted and that this will continue to adversely impact the Petitioners' restructuring.

Re Northstar Aerospace Inc, 2012 ONSC 4546 at paras 14-15
Re Brainhunter Inc, [2009] OJ No 5207 at paras 21.

9. The Petitioners submit that limiting the Critical Suppliers Charge to the Charged Receivables is commercially reasonable since it will unlock a significant source of revenue for the Petitioners' stakeholders. The Petitioners further submit the proposed charge minimizes the impact on the Petitioners' creditors. In particular, the Charged Receivables will only be available if Wellsite provides the data and information for which it requests the Critical Suppliers Charge.

PART IV – MATERIALS TO BE RELIED

1. Affidavit #3 of Mark Berger, sworn on October 3, 2019;
2. Affidavit #4 of Mark Berger, sworn on October 14, 2019 (to be filed);
3. The Initial Order made September 13, 2019 in respect of the Petitioners; and,
4. Such further and other materials as counsel may advise and this Honourable Court may allow.

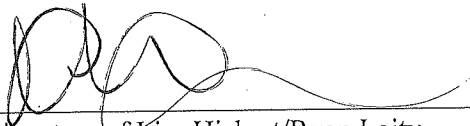
The Applicant estimates that the application will take 30 minutes.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master. Mr. Justice Milman is seized of these proceedings, and the date and time of this application has been confirmed with Court Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 16, 2019



 Signature of Lisa Hiebert/Ryan Laity
 applicant lawyer for applicants

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

Date: _____	_____
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master	

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

Schedule "A"

SERVICE LIST

Please see attached.

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PETITIONERS

SERVICE LIST

[as at October 16, 2019]

<p>Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street Vancouver, BC V7X 1T2 Tel: (604) 687-5744</p> <p>Attn: Lisa C. Hiebert and Ryan Laity</p> <p>Email: lhiebert@blg.com rlaity@blg.com</p> <p>Counsel for the Petitioners</p>	<p>FTI Consulting Canada Inc. 555 Burrard Street Vancouver, BC V7X 1M8 Tel: (604) 484-9525</p> <p>Attn: Tom Powell and Toni Vanderlaan</p> <p>Email: toni.vanderlaan@fticonsulting.com tom.powell@fticonsulting.com robert.kleebaum@fticonsulting.com craig.munro@fticonsulting.com</p> <p>Monitor</p>
<p>Cassels Brock & Blackwell LLP Suite 2200 HSBC Building 885 West Georgia Street Vancouver, BC V6C 3E8 Tel: (604) 691-6100</p> <p>Attn: H. Lance Williams and Mary I.A. Buttery, Q.C.</p> <p>Email: lwilliams@casselsbrock.com mbuttery@casselsbrock.com sdanielisz@casselsbrock.com</p> <p>Counsel for the Monitor</p>	<p>Gowling WLG 550 Burrard Street Suite 2300-Bentall 5 Vancouver, BC V6C 2B5 Tel: (604) 683-3558</p> <p>Attn: Jonathan B. Ross and Jeffrey Bradshaw</p> <p>Email: jonathan.ross@gowlingwlg.com jeffrey.bradshaw@gowlingwlg.com michele.hay@gowlingwlg.com</p> <p>Counsel for Export Development Canada</p>

<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 Tel: (604) 643-3176</p> <p>Attn: Christopher Ramsay and Katie Mak</p> <p>Email: cramsay@cwilson.com kmak@cwilson.com dhamann-trou@cwilson.com</p> <p>Counsel for Extract Advisors LLC as administrative agent to the secured Noteholders</p>	<p>McCarthy Tétrault LLP 421 7th Avenue SW Suite 4000 Calgary, AB T2P 4K9 Tel: (403) 260-3500</p> <p>Attn: Pantelis Kyriakakis</p> <p>Email: pkyriakakis@mccarthy.ca</p> <p>Counsel for Royal Bank of Canada</p>
<p>Stikeman Elliott LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Tel: (416) 869-5500</p> <p>Attn: Ashley Taylor and Marie Garneau</p> <p>Email: ataylor@stikeman.com mgarneau@stikeman.com</p> <p>Counsel for Energold DIP Lender, LLC</p>	<p>Ernst & Young Inc. Pacific Centre, 700 West Georgia Street Vancouver, BC V7Y 1C7 Tel: (604) 891-8200</p> <p>Attn: Mike Bell and Rob Withers</p> <p>Email: mike.bell@ca.ey.com robert.withers@ca.ey.com</p> <p>Financial Advisor for the Petitioners</p>
<p>Portage Point Partners LLC 300 North LaSale, Suite 4925 Chicago, IL 60654</p> <p>Attn: Mark Berger and Ryan Williams</p> <p>Email: mberger@pppllc.com rwilliams@pppllc.com</p> <p>Chief Restructuring Officer</p>	<p>Extract Advisors LLC Suite 423, 379 West Broadway New York, NY 10012</p> <p>Attn: Darin Milmeister</p> <p>Email: darin@extractcapital.com</p> <p>Administrative agent to the secured Noteholders</p>
<p>Downtown Capital Partners, LLC Suite 1110, 360 Hamilton Avenue White Plains, NY 10601</p> <p>Attn: Gary Katz</p> <p>Email: gkatz@downtownlp.com</p>	

Schedule "B"

DRAFT ORDER

Please see attached.

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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MR. JUSTICE MILMAN) October 25, 2019
)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 25th day of October, 2019; AND ON HEARING Lisa Hiebert, counsel for the Petitioners and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application and supporting materials be and is hereby abridged such that this application is properly returnable today and service thereof upon any interested party other than the parties on the service list maintained by the Monitor in this proceeding is hereby dispensed with.
2. Defined terms used in this Order and not otherwise defined have the meaning set out in the Initial Order made September 13, 2019.
3. Wellsite Masters Ltd. ("**Wellsite**") be and is hereby deemed a critical supplier in accordance with section 11.4 of the CCAA and shall, from and after the date hereof provide goods and services to the Petitioners.

4. Wellsite be and is hereby granted a charge (the “**Critical Suppliers Charge**”) in the amount of \$75,000 over the receivables which currently are or become owing to Bertram Drilling Corp. (“**BDC**”) by Syncrude Canada Ltd. (the “**Charged Receivables**”), which charge shall be security for any amounts which the Petitioners are or become indebted to Wellsite for the supply of goods and services, including amounts for goods and services provided prior to the date of the Initial Order granted in these proceedings on September 13, 2019 (the “**Wellsite Indebtedness**”).
5. The Critical Supplier Charge shall attach only to the Charged Receivables, but in respect of the Charged Receivables, the Critical Supplier Charge shall rank in priority to the Charges, except the Administration Charge and the Financial Advisor Charge.
6. Subject to the approval of the Monitor, BDC shall be at liberty to pay all or some of the Wellsite Indebtedness at any time, either from the proceeds of the Charged Receivables or from such other sources as BDC deems advisable.
7. Any security documentation evidencing, or the filing, registration or perfection of the Critical Suppliers Charge shall not be required and the Critical Suppliers Charge shall be effective as against the Charged Receivables and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Critical Suppliers Charge coming into existence, notwithstanding any failure to file, register or perfect the Critical Suppliers Charge.
8. The Critical Suppliers Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Charged Receivables and shall rank in priority to all Encumbrances in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.
9. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over the Charged Receivables that rank in priority to, or *pari passu* with the Critical Suppliers Charge, unless the Petitioners obtain the prior written consent of the Monitor and Wellsite.
10. The Critical Suppliers Charge shall not be rendered invalid or unenforceable and the rights and remedies of Wellsite thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in this Order; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any

negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any Agreement that binds the Petitioners, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Critical Suppliers Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by any Petitioner of any Agreement to which it is a party;
- (b) Wellsite shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Critical Suppliers Charge; and
- (c) the payments made by the Petitioners pursuant to this Order, and the granting of the Critical Suppliers Charge, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct or other challengeable or voidable transaction under any applicable law.

11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lisa Hiebert

Party Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

List of Counsel

Name of Counsel	Party Represented
Lisa Hiebert	Energold Corp. and the other Petitioners
Lance Williams	The Monitor, FTI Consulting Canada Inc.
Katie Mak	Extract Advisors, LLC, as agent to the Noteholders Local agent to Stikeman Elliott LLP, counsel to the DIP Lender
Jonathan Ross	Export Development Canada
Trevor Batty (by phone)	Wellsite Masters Ltd.

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PETITIONERS

NOTICE OF APPLICATION

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, BC V7X 1T2
Telephone: (604) 632-3544
Attn: Lisa Hiebert
Email: lhiebert@blg.com
File: 035456.000004