

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TRIDENT EXPLORATION CORP. ULC, FORT ENERGY CORP. ULC, FENERGY
CORP. ULC, 981384 ALBERTA LTD., 981405 ALBERTA LTD., 981422 ALBERTA
LTD., TRIDENT RESOURCES CORP., TRIDENT CBM CORP., AURORA ENERGY
LLC., NEXGEN ENERGY CANADA, INC. AND TRIDENT USA CORP.**

**FACTUM OF FARALLON CAPITAL MANAGEMENT L.L.C.,
SPECIAL SITUATIONS INVESTING GROUP, INC. AND
MOUNT KELLETT CAPITAL MANAGEMENT LP**

(Motion Returnable January 15, 2010)

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L.L.C., Special Situations Investing Group, Inc.,
Mount Kellett Capital Management LP, the
Required Lenders under the Trident Canada
USD\$500,000,000 Trident Canada Second Lien
Credit Agreement

TO: See attached Service List

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PART I - OVERVIEW

1. This motion is brought by the Petitioners ("**Trident**") to extend the stay of proceedings granted in the Initial Order dated September 8, 2009.
2. Four months into this CCAA proceeding, and after nine months of discussions between Trident and the existing US Security Holders (defined below), Trident has made no concrete progress in recapitalizing its business. At best, it has received two unfinalized proposals with no committed financing.
3. Trident is now requesting that it be granted a further stay extension to continue to advance a solicitation process which:
 - (a) has not been properly disclosed to the major stakeholders;
 - (b) has not been submitted to the Court for approval; and
 - (c) has no defined end date.

4. Moreover, there appears to be an inherent conflict in the fact that the majority of Trident's boards of directors were directly or indirectly appointed by the very parties which submitted the existing proposals.

5. The Required Lenders (defined below) believe it is time to implement a court-approved, open, independent and competitive sales and investor solicitation process with a defined timeline which would bring finality to this proceeding within a reasonable period of time.

6. The Required Lenders therefore request that any order extending the stay of proceedings direct the implementation of a process substantially in the form proposed by the Required Lenders.

PART II - THE FACTS

7. Farallon Capital Management, L.L.C. on behalf of funds and managed accounts to which it serves as advisor ("**Farallon**"), Special Situations Investing Group, Inc. ("**SSIG**") and Mount Kellett Capital Management LP ("**Mount Kellett**" and collectively, the "**Required Lenders**") are a majority of the syndicate of lenders (the "**Canadian Secured Term Lenders**") that provide US\$500,000,000 in secured term credit facilities to Trident Exploration Corp. ("**Trident Canada**").

Affidavit of Reema Kapoor sworn January 12, 2010 ("Kapoor Affidavit"), para. 2

8. Trident Canada is the main operating corporation in the Trident corporate group, owns all of the value generating assets and generates all of Trident's operating revenue. The Canadian Secured Term Lenders are the only secured lenders to Trident Canada and hold security over all of the assets of Trident Canada and its subsidiaries.

Affidavit of Todd Dillabough sworn September 8, 2009 ("Dillabough Initial Affidavit"), para. 9 and 42

9. Trident Resources Corporation ("**Trident US**") is merely a holding company that serves no material function in the operations of Trident. Trident US has no employees and its

assets are limited to owning drilling rights and exploratory lands which are not part of Trident's core operations.

Dillabough Initial Affidavit, para. 7, 9, 12, 26 and 42

Trident's audited consolidated financial statement, Dillabough Initial Affidavit, Exhibit B

10. The composition of the Board of Directors of Trident Canada and Trident US is identical and the majority of these directors were appointed directly or indirectly by the US Security Holders.

Kapoor Affidavit, para. 16

11. Since April of 2009 Trident has been seeking refinancing and/or recapitalization proposals from the existing lenders to, and shareholders of, Trident US (the "US Security Holders").

Kapoor Affidavit, para. 5

12. Trident had a letter of intent with certain of the US Security Holders in respect of a recapitalization plan prior to filing for protection under the *Companies' Creditors Arrangement Act* (the "CCAA"), but no transaction was completed.

Kapoor Affidavit, para. 6

13. Despite the fact that the letter of intent did not lead to a transaction, Trident has continued to seek further proposals from the US Security Holders and repeatedly indicated that it expects to receive proposals in the near future.

Kapoor Affidavit, para. 5 and 7

14. Given that Trident had failed to obtain any binding proposals for a refinancing, by letter dated October 28, 2009, the Required Lenders advised Trident that in their view it was time for Trident Canada to develop and seek Court approval of a sales and investor solicitation process.

Kapoor Affidavit, para. 9

15. Trident responded that it intended "to formulate a draft solicitation process, consult

with Trident stakeholders, including the Required Lenders, on the terms thereof and seek Court approval for such solicitation process at a hearing before the Alberta Court prior to the expiry of the stay on December 4, 2009.”

Kapoor Affidavit, para. 10

Trident November 5, 2009 letter, Kapoor Affidavit, Exhibit D

16. In addition, Trident filed materials prior to the December 3, 2009 hearing, acknowledging that the Required Lenders wanted Trident to “develop and seek court approval of a sale process for a going concern” with an option for a credit bid, and that Trident intended to have “discussions during the extended Stay Period with the goal of attempting to formulate the Solicitation Process with the concurrence of the major stakeholders.” The Monitor’s Report added that “the Applicants and their advisors, with the assistance of the Monitor, will continue the process of consultation with key stake holder groups in an effort to reach consensus on the Solicitation Process before January 15, 2010.”

Affidavit of Todd Dillabough sworn November 30, 2009 (“Dillabough Nov. 30 Affidavit”), para. 50-52

Fourth Report of the Monitor dated December 1, 2009, para. 29

17. Despite these assurances, the Required Lenders were not consulted regarding the development of a sales and investor solicitation process and no process has been brought forward for Court approval.

Kapoor Affidavit, para. 11

18. Instead, Trident has continued closed, private efforts to solicit proposals from the US Security Holders for a transaction to recapitalize Trident upon its emergence from insolvency proceedings (the “RFP”). Under the RFP, binding proposals were required to be submitted by the US Security Holders by no later than 5:00 p.m. EST on December 15, 2009.

Kapoor Affidavit, para. 12

19. In response to this process, the Required Lenders advised Trident that:

- (a) they hoped that any refinancing proposal received in response to the RFP would be satisfactory to them in both form and substance;

- (b) in order to be satisfactory, such proposal must be a credible proposal that is likely to close on a timely basis and that will either repay the Canadian Secured Term Lenders in full in cash, or refinance them on acceptable terms;
- (c) failing timely receipt of a satisfactory binding commitment, the Required Lenders expect a sales and investor solicitation process to be initiated on terms satisfactory to the Required Lenders and approved by the Court;
- (d) the sales and investor solicitation process would, among other things, permit the Canadian Secured Term Lenders to submit, or cause the Agent to submit, a non-cash credit bid for the purchase of all or substantially all of the assets of Trident Canada;
- (e) the Required Lenders wished to work with Trident immediately in the design, on a consensual basis, of the sales and investor solicitation process, including milestones to be met in connection therewith as well as appropriate related arrangements; and
- (f) the sales and investor solicitation process should be organized such that if a satisfactory refinancing proposal is not received, the sales and investor solicitation process could be submitted for Court approval on the return date for the motion to extend the stay beyond January 15, 2010, and, if approved, implemented immediately.

Kapoor Affidavit, para. 13

Required Lender December 15, 2009 letter, Kapoor Affidavit, Exhibit F

20. Counsel for the Required Lenders also requested that a draft of Trident's proposed sales and investor solicitation process procedures be provided as soon as possible, in order to facilitate discussions relating to the design of the procedures.

Kapoor Affidavit, para. 14

21. After December 15, 2009, the Required Lenders continued to request a copy of the proposed sales and investor solicitation process procedures and a copy of any proposals received pursuant to the RFP. Neither was provided.

Kapoor Affidavit, para. 19

December 21, 2009 letter, Kapoor Affidavit, Exhibit G

22. On December 22, 2009 a conference call was held among representatives of the Required Lenders, Trident, the Monitor and Rothschild. On the call, Neil Augustine

(“**Augustine**”) of Rothschild advised that:

- (a) two proposals were received in the RFP Process - one from the Trident US 2006 Unsecured Lenders and the Trident US 2007 Subordinated Lenders (the “**06/07 Lender Proposal**”) and one from the Trident US preferred shareholders (the “**Pref Proposal**”, and together with the 06/07 Lender Proposal, the “**US Security Holder Proposals**”).
- (b) Trident would not be providing copies of the proposals to the Required Lenders prior to a board meeting to consider the US Security Holder Proposals.

Kapoor Affidavit, para. 17

23. To date, the Required Lenders have not been advised that such a board meeting has occurred.

Kapoor Affidavit, para. 18

24. Once again, the Required Lenders made it clear on the call that they had expected that copies of the US Security Holder Proposals would have been provided to them immediately so that the board of directors could have the benefit of their views. Notwithstanding this, and subsequent requests to be provided with copies of the proposals, Trident has refused to provide them to the Required Lenders.

Kapoor Affidavit, para. 19

25. During a further conference call on January 4, 2010, the Required Lenders were advised, among other things, that:

- (a) neither of the US Security Holder Proposals would be provided to the Required Lenders prior to the January 15, 2010 stay extension hearing because the proposals were subject to confidentiality provisions;
- (b) the negotiations regarding the US Security Holder Proposals were on-going and that Trident would set a deadline of January 22nd for the negotiations to be completed;
- (c) neither of the US Security Holder Proposals had committed financing. While the equity contribution of the 06/07 Lender Proposal was committed, it contained a condition for obtaining sufficient financing to refinance the balance of the Canadian Secured Term Lenders’ term loan and that such condition would likely not be satisfied until close to the plan implementation date; and

- (d) the plan was to finalize the US Security Holder Proposals so that one of them could act as a stalking horse for a continued refinancing search process.

Kapoor Affidavit, para. 20

26. Counsel for Trident provided a letter dated January 7, 2010 to counsel for the Required Lenders indicating that Trident continues to negotiate the US Security Holder Proposals and will not be providing them to the Required Lenders until they are finalized. To date Trident has not provided the Required Lenders with a copy of the US Security Holder Proposals or the proposed solicitation process and bidding procedures.

Kapoor Affidavit, para. 22

27. By letter dated January 12, 2010, the Required Lenders provided Trident with a fully developed open, competitive and independent investor solicitation and sale process (the “**Open Solicitation/Sale Process**”) which would allow any interested party, including the existing US Security Holders who had put forward unfinalized, uncommitted US Security Holder Proposals, to be involved.

Kapoor Affidavit, para. 25

Open Solicitation/Sale Process, Kapoor Affidavit, Exhibit L

28. In response to a request from the Required Lenders regarding who had appointed Trident’s boards of directors, the Monitor advised that:

“In response to your request, the company has provided the following information in respect of the Board appointments:

Gene Davis	Board
Tim Bernlohr	Board
Todd Dillabough	2007 backstop parties, Prefs, McNeil and Aurora (ie the Board at that time)
John Forsgren	2007s (backstop parties)
Ken Ancell	2007s (backstop parties)
Anthony Calouri	2007s (backstop parties)
Todd Overbergen	Prefs
Marc MacAluso	Prefs
Laurie Hunter	Commons (Aurora)
Steve Buchanan	Commons (McNeil)
Gustav Ericson	Commons (Richardson)”

Kapoor Affidavit, para. 16

PART III - ISSUES AND THE LAW

29. The sole issue on this motion is whether the Court will grant Trident an extension of the stay and, if so, should a condition of that extension be that Trident and the Monitor adopt and run an open sales and investor solicitation process in accordance with that proposed by the Required Lenders.

A. ONUS ON TRIDENT TO JUSTIFY STAY EXTENSION

30. Pursuant to section 11 of the *Companies' Creditors Arrangement Act*, the Court has the jurisdiction to extend a stay on such terms as it may impose. The Court shall not grant a stay extension unless it is satisfied by the moving party that circumstances exist that make such an order appropriate. The moving party must also demonstrate that it is acting in good faith and with due diligence.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, ss. 11.02(2) and (3)
(formerly ss. 11(4) and 11(6))

SLMSoft Inc. (Re), 2003 CarswellOnt 4402 at para. 1 (S.C.J.)

B. IF THE COURT EXTENDS THE STAY, IT SHOULD DIRECT AN OPEN, COMPETITIVE AND INDEPENDENT SOLICITATION/SALE PROCESS

31. This proceeding is not an operational restructuring or a downsizing of the business owned or operated by Trident Canada. The sole purpose of the stay is to provide Trident with the time necessary to address its balance sheet problems by either refinancing the company or selling the business.

32. Trident has now had four months under the protection of the CCAA stay of proceeding, in addition to the five months prior to the filing, to obtain a binding, fully committed refinancing proposal from the US Security Holders. It has failed to do so.

33. For several months the Required Lenders have been asking Trident to design and implement an open, competitive and independent investor solicitation and sale process. Despite assurances that it would do so, it has not, and has shown no willingness to even discuss such a process.

34. Prior to the filing, Trident had entered into a letter of intent with certain of the US Security Holders in respect of a recapitalization plan. That proposal did not proceed. Now, almost five months later, it has two other proposals from the US Security Holders and wants even more time to further develop those proposals.

35. It should be noted that:

- (a) Trident has run a closed, private process with the US Security Holders;
- (b) the only offers Trident has managed to obtain from the US Security Holders are uncommitted and unfinalized;
- (c) despite the fact that Trident originally set a deadline of December 15, 2009 for proposals, it now requires at least an additional five weeks to finalize these proposals;
- (d) Trident is not willing to develop a solicitation process, or even discuss one, with the Required Lenders, until the US Security Holders Proposals are finalized;
- (e) Trident US's estimated timeline for the undeveloped stalking horse process has no end date and the dates which were provided are described as only "estimates of what the Company believes it can achieve"; and
- (f) there is no guarantee of a transaction as neither of the proposed stalking horse bids has committed financing.

Trident Proposed Estimated Timeline for Stalking Horse Process, Kapoor Affidavit, Exhibit I

January 7, 2010 letter, Kapoor Affidavit, Exhibit J

36. In addition to the above, the process which Trident is developing appears to provide break and completion fees for the US Security Holder whose proposal is chosen as the stalking horse. The Required Lenders would oppose such fees as they would further deteriorate the Required Lenders' collateral position to the benefit of the US Security Holder stalking horse bidder.

Trident Proposed Estimated Timeline for Stalking Horse Process, Kapoor Affidavit, Exhibit I

37. To the extent that Trident has outlined any process for moving forward in these proceedings, the process is fundamentally flawed in that:

- (a) it has been developed without meaningful input from Trident Canada's only secured creditor, the Canadian Secured Term Lenders;
- (b) it is not being conducted in a fair and open manner where major stakeholders are given access to relevant information;
- (c) it does not contemplate a firm and reasonable time frame for an end to these proceedings;
- (d) it does not contemplate an alternative way to bring this proceeding to completion in the event that committed financing is not obtained;
- (e) it has not been submitted to the Court for approval; and
- (f) it is being run by a board of directors, the majority of whom were directly or indirectly appointed by US Security Holders who have submitted proposals which Trident proposes to negotiate.

38. It is respectfully submitted that, if this proceeding is to continue, this Court should direct that there be an open, competitive and independent investor solicitation and sale process which will bring finality to this proceeding.

39. The Court's power to approve and supervise a sales and investor solicitation process under the CCAA, which is clear from earlier case law, was recently codified in the CCAA amendments.

Calpine Canada Energy Ltd. (Re) (2007), 28 C.B.R. (5th) 187 (Alta. Q.B.).

Consumers Packaging Inc. (Re) (2001), 27 C.B.R. (4th) 197 (Ont. C.A.) at para. 9.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 36

40. In deciding the propriety of a CCAA sale process the Court should consider:

- (a) whether there has been a sufficient effort to get the best price and if there have been any improvident actions.
- (b) the interests of all parties.
- (c) the efficacy and integrity of the process by which offers are obtained.
- (d) whether there has been unfairness in the working out of the process.

Calpine Canada Energy Ltd. (Re) (2007), 28 C.B.R. (5th) 187 (Alta. Q.B.) at para. 29.

41. When the Court is involved in a public sale of assets under the CCAA, the sale process must be transparent and involve open disclosure to stakeholders. The nature of court-supervision demands a sale process that meets at least the minimal requirements of fairness and openness. A process that emphasizes control of information and confidentiality for the primary benefit of companies under CCAA protection, such as that proposed by Trident, will not pass the test.

***Calpine Canada Energy Ltd. (Re)* (2007), 28 C.B.R. (5th) 187 (Alta. Q.B.) at paras. 31, 33 and 48.**

42. A sale process where different bidders are privy to different information and bound by different constraints, such as here, does not have the degree of integrity and fairness required in CCAA proceedings. Unequal restrictions on disclosure of information in a sale process cannot be sanctioned in the context of a public CCAA proceeding with many stakeholders.

***Calpine Canada Energy Ltd. (Re)* (2007), 28 C.B.R. (5th) 187 (Alta. Q.B.) at paras. 31, 33 and 48.**

43. In addition, a closed process which is controlled by some of the stakeholders is unlikely to produce the best and highest offer available. Potential bidders will not want to be involved in a process which is controlled by other potential bidders. They will want an open, independent process to ensure that their bid is fairly treated.

44. Given Trident's lack of progress and unwillingness to develop a solicitation and sale process as requested by the Required Lenders, the Required Lenders have developed their own open, competitive and independent solicitation and sale process (the "**Open Solicitation/Sale Process**") to bring certainty and finality to this process.

45. The Open Solicitation/Sale Process should be approved by this Honourable Court as:

- (a) it is an open process by which all potential investors/purchasers will have the same level of information;
- (b) it is a competitive process which will ensure that the best recapitalization/purchase offers are achieved;
- (c) it is a fair process as it balances the interests of all parties by allowing any of the existing US Security Holders to submit offers;

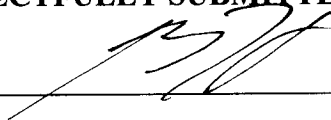
- (d) it is a certain process as it is fully developed, has a defined end date and provides that offers cannot be conditional on financing;
- (e) it is an independent process with a higher level of integrity as it would be run by an independent officer of the Court rather than by board members who have been appointed by some of the bidders; and
- (f) it will allow for a full canvassing of the market which will ensure that the highest and best offer is obtained.

ORDERS SOUGHT

46. The Required Lenders request an order directing Trident and the Monitor to adopt and run an open sales process in accordance with that proposed by the Required Lenders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 12, 2010



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *SLMSoft Inc. (Re)*, 2003 CarswellOnt 4402 (S.C.J.)
2. *Calpine Canada Energy Ltd. (Re)* (2007), 28 C.B.R. (5th) 187 (Alta. Q.B.).
3. *Consumers Packaging Inc. (Re)* (2001), 27 C.B.R. (4th) 197 (Ont. C.A.)

SCHEDULE "B"
STATUTES, RULES AND REGULATIONS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36,

Section 11.02

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Section 36

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

Action No. 0901-13483

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FACTUM OF FARALLON CAPITAL MANAGEMENT L.L.C.,
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(MOTION RETURNABLE OCTOBER 6, 2009)

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