



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00693758-00CL DATE: 28 April 2023

Registrar: Dawa Sangyal

NO. ON LIST: 1

TITLE OF PROCEEDING: ORIGINAL TRADERS ENERGY LTD et al
BEFORE JUSTICE OSBORNE

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicants move for various relief today, including a stay extension through to August 4, 2023, approval of the Third Report of the Monitor and the activities described therein, an increase in the maximum aggregate amount of critical supplier payment authorization for pre-filing expenses to \$6,625,000, and an Information Order relating to the provision of certain information from a third party.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials, the Third Report of the Monitor, and/or my earlier Endorsements made in this proceeding.
3. As a preliminary matter, certain of the principal Respondents have, since the last Court appearance in this matter, retained new counsel who practised with my former firm. This was disclosed to the Court by the Applicants on notice to all other parties. All parties confirmed their consent to this matter being returnable before me today.
4. At the outset of the hearing today, those Respondents represented by my former firm confirmed to that they were not opposing any of the relief sought. More importantly, I canvassed with all parties any potential issue, and there was no opposition from any party to my hearing the motions returnable today.
5. At the conclusion of the hearing, I canvassed with all counsel my suggestion that I would continue to manage this proceeding to maximize efficiency, but that if there were any substantive issue in respect of which those Respondents represented by my former firm were taking a contested position, the parties, preferably through the offices of the Court-appointed Monitor, should advise the Commercial List office well in advance, in order that appropriate steps could be taken, such as scheduling another judge of the Commercial List to deal with any matter or aspect of this matter as may be necessary.
6. With that preliminary matter addressed, I turn now to the merits of the relief being sought today. None of the relief sought by the Applicants is opposed, and it is supported and recommended by the Monitor.
7. Since I made the Initial Order, the OTE Group has continued business operations, largely in the ordinary course while, at the same time, investigations with respect to those matters addressed in the Initial Order in my Endorsement of the same date, remain ongoing.
8. With respect to the extension of the stay of proceedings which currently expires tomorrow, April 28, I am satisfied that an extension is appropriate as requested to August 4, 2023. This will afford a continuation of the stabilized environment within which the operations of the Applicants and the OTE Group can operate while the various ongoing issues continue to be addressed. The projected cash flows appended to the Third Report of the Monitor reflect that cash flow should afford the Applicants sufficient liquidity to continue operations through the proposed stay extension period.
9. The Applicants also seek today a Claims Procedure Order (“CPO”). I am satisfied that this is appropriate at this time. Continued progress in this restructuring requires a call for claims in order that the Applicants, assisted by the Monitor and for the benefit of all stakeholders, can understand the universe of claims and potential claims to be advanced.
10. The draft CPO contemplates a call for claims in four categories: pre-filing claims, restructuring period claims, pre-filing D&O claims and restructuring period D&O claims.
11. The CPO also contemplates a claims bar date of June 27, 2023 (or, for Restructuring Claims, 30 days after the Monitor sends a Claims Package) and the appointment of claims officers, if required, on a motion by the OTE Group or the Monitor.

12. I am satisfied that the proposed CPO can and should be made here pursuant to section 11 of the CCAA. It very closely follows the procedure implemented by Justice McEwen in *Just Energy Group Inc.*, CV-21-00658423-00CL.
13. I observe with respect to the CPO that The Ministry of Finance reserves all rights to argue, if necessary, that the appeal process provided under the *Gas Tax Act* and the *Fuel Tax Act* must be followed in the event that a Notice of Assessment is disputed. The Monitor and the OTE Group reserve all rights to respond accordingly.
14. The CRA reserves all rights to argue, if necessary, that the appeal process provided under the *Income Tax Act (Canada)*, *Excise Tax Act (Canada)* and *Tax Court of Canada Act (Canada)* must be followed in the event that a Notice of Assessment is disputed. The Monitor and the OTE Group reserve all rights to respond accordingly.
15. I am also satisfied that the proposed information order ought to be made, to authorize and direct Airsprint to provide information requested by the Monitor or its counsel. I am satisfied that this information is important to enable the Monitor to understand the current financial position of the OTE Group for the benefit of stakeholders.
16. The increase in the maximum authorized amount for critical supplier payments is largely for fuel and tax, and is also appropriate here.
17. Finally, it is also appropriate to approve the Monitor's reports and activities: *Re Target Canada Co.*, 2015 ONSC 7574 and *Laurentian University of Sudbury*, 2022 ONSC 2927. This allows any concerns of stakeholders to be addressed and permit the Court an opportunity to consider whether the activities of the Monitor have been conducted in a prudent manner.
18. By way of housekeeping, affidavits referred to in paragraph 6 of the injunctive order dated March 15, 2023 (the "Injunctive Order") shall be delivered within 30 days of this endorsement, or such other date as the Mareva Respondents (as defined in the Injunctive Order), the OTE Group and the Monitor agree in writing.
19. For all of the above reasons, orders to go in the form signed by me today which are effective immediately and without the necessity of issuing and entering.

Oleew, J.