



COURT FILE NUMBER B301-163430

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED C10261
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CLEO ENERGY CORP.

APPLICANT CLEO ENERGY CORP.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **DLA PIPER (CANADA) LLP**
1000, 250 - 2nd Street SW
Calgary Alberta T2P 0C1
Attention: Kevin Hoy
Phone: 403.698.8738
Fax: 403.776.8861
Email: kevin.hoy@dlapiper.com
File No.: 035880-00013

AFFIDAVIT OF SHANE SUTHERLAND

Sworn on January 3, 2025

I, Shane Sutherland, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am an officer and director of Battle River Energy Ltd. ("**Battle River**"), and as such, I have personal knowledge of the facts and matters hereinafter deposed to except where stated to be on the basis of information and belief, and, where so stated, I verily believe the same to be true.
2. I make this Affidavit in reply to the December 23, 2024, Affidavit of Christopher Lewis (the "**Lewis Affidavit**") and in opposition to the Applicant, Cleo Energy Corp.'s ("**Cleo**") Application seeking a third-party stay of a claim advanced by Battle River against Christopher Lewis ("**Lewis**") in his personal capacity.

Disputes Between Battle River and Cleo

3. In reply to paragraph 93 of the Lewis Affidavit, I acknowledge that Cleo and Battle River are involved in two separate legal disputes – specifically, arbitral proceedings (the "**BR-Cleo Arbitration**") and an action before this Honourable Court in the matter of Court File No. 2401-13128 (the "**Breach of Trust Action**").
4. In further reply to paragraph 93 of the Lewis Affidavit, I dispute Lewis' characterization of the BR-Cleo Arbitration and the Breach of Trust Action as being "generally related" to each other. In actuality, the two proceedings pertain to separate assets, agreements, and causes of action.

5. The BR-Cleo Arbitration pertains to disputes as between Battle River and Cleo relating to the ownership and operation of a sour gas plant and the use of a natural gas compressor. No claim is advanced by Battle River against Lewis personally in the BR-Cleo Arbitration.
6. The Breach of Trust Action pertains to the misappropriation of oil production, and proceeds from the disposition thereof, belonging to Battle River. A copy of the Statement of Claim in the Breach of Trust Action is attached as **Exhibit "A"** to this Affidavit.
7. Lewis, together with other members of Cleo's current or former management team – namely, Colton Lewis, Andrew Sweerts, and Kellie D'Hondt (collectively with Lewis, the "**Individual Defendants**") – are named as individual Defendants in the Breach of Trust Action. Battle River's claims against the Individual Defendants relate to those persons having knowingly caused Cleo to misappropriate trust property of which Battle River was a beneficiary (i.e., Battle River's oil production and proceeds thereof). Battle River has thus asserted an entitlement to relief against Lewis and the other Individual Defendants arising from the tort of knowing assistance in breach of trust.

Status of the Breach of Trust Action

8. The Breach of Trust Action is in its nascent stages. Battle River filed its Statement of Claim in the Breach of Trust Action on September 23, 2024. No Statements of Defence have yet been filed in the Breach of Trust Action.
9. On October 11, 2024, counsel to Battle River received a letter from Gowling WLG (Canada) LLP advising that that office had been retained to act as counsel to the Individual Defendants in the Breach of Trust Action. A copy of the said letter is attached as **Exhibit "B"** to this Affidavit. On October 11, 2024, counsel to Battle River replied to counsel for the Individual Defendants by email expressly soliciting a target date for service of the Defendant's pleadings in the Breach of Trust Action. A copy of the said email is attached as **Exhibit "C"** to this Affidavit. I am advised by Battle River's counsel at DLA Piper (Canada) LLP, and I believe it to be true, that counsel for the Individual Defendants has never replied to the said October 11, 2024, email.
10. On January 2, 2025, Battle River's counsel sent a follow-up email to counsel for the Individual Defendants advising that Battle River would require them to file a Statement of Defence by not later than January 20, 2025, notwithstanding the stay of proceedings imposed by Battle River with respect to its claims against Cleo by virtue of Cleo's entry into restructuring proceedings pursuant to the *Bankruptcy and Insolvency Act*. A copy of the said email is attached as **Exhibit "D"** to this Affidavit.
11. Battle River wishes to continue to pursue its claims against the Individual Defendants in the ordinary course. At this time, Battle River simply seeks to compel the Individual Defendants' filing of a

Statement of Defence so as that Battle River may finalize its assembly of relevant and material documents and produce its Affidavit of Records. I am advised by Battle River's counsel at DLA Piper (Canada) LLP, and I believe it to be true, that Questionings in the Breach of Trust Action are unlikely to occur in those proceedings until the Spring of 2025 at the earliest.

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12. I make this Affidavit in opposition to Cleo's Application for a third-party stay against Battle River and for no other or improper purpose.

SWORN BEFORE ME at City of Calgary, in the
Province of Alberta, on the 3rd, day of January,
2025

A Commissioner for Oaths in and for the
Province of Alberta

SHANE SUTHERLAND

KEVIN HOY
Barrister and Solicitor

This is **Exhibit "A"** referred to in the Affidavit of
Shane Sutherland, sworn before me at Calgary,
Alberta me this 3rd day of January, 2025.



A Commissioner for Oaths in and for the
Province of Alberta
My Appointment Expires:

KEVIN HOY
Barrister and Solicitor

Clerk's stamp



COURT FILE NUMBER

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

BATTLE RIVER ENERGY LTD.

DEFENDANT

CLEO ENERGY CORP., CHRISTOPHER
LEWIS, COLTON LEWIS, ANDREW
SWEERTS, and KELLIE D'HONDT

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

DLA PIPER (CANADA) LLP
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E: kevin.hoy@dlapiper.com
File no.: 035880-00013

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

The Parties

1. The Plaintiff, Battle River Energy Ltd. ("**Battle River**"), is a corporation incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9 (the "**BCA**") with a registered office sited in Calgary, Alberta.

2. The Defendant, Cleo Energy Corp. ("**Cleo**"), is a corporation incorporated pursuant to the *BCA*, with a registered office sited in Calgary, Alberta.

3. The Defendant, Christopher Lewis ("**Christopher**"), is an individual resident of the province of Alberta. At all material times, Christopher has served as a shareholder, director, and officer of Cleo.

4. The Defendant, Colton Lewis ("**Colton**"), is an individual resident of the province of Alberta. At all material times, Colton has served as a shareholder of Cleo. Colton served as an officer of Cleo between 2019 and January of 2024.

5. The Defendant, Andrew Sweerts ("**Sweerts**"), is an individual resident of the province of Alberta. Sweerts served as an officer of Cleo between November of 2019 and January of 2024.

6. The Defendant, Kellie D'Hondt ("**D'Hondt**" and, collectively with Christopher, Colton, and Sweerts, the "**Cleo Officers**"), is an individual resident of the province of Alberta. D'hondt has served as an officer of Cleo from January of 2024 through to the date of the commencement of these proceedings.

Background

7. Cleo was incorporated in 2016. Following its incorporation, Cleo acquired interests in various oil and gas assets located in Alberta.

8. Battle River was incorporated in 2018. In 2018, Battle River acquired interests in various oil and gas assets located in Alberta.

9. The Cleo Officers have each served as officers of Cleo at various points between March of 2021 and the date of the commencement of these proceedings. Each of the Cleo Officers are experienced businesspersons in the oil and gas industry and, at all material times, each maintained a general familiarity with market-standard agreements regularly used by oil and gas industry participants in Alberta.

The Oil and Gas Assets

10. Battle River and Cleo both maintain working interests in certain of the same oil and gas assets in Alberta. Assets relevant to these proceedings include:

- (a) A facility, sited on lands legally described as 14-14-39-10 W4M and 16-10-39 W4M, constructed for the purpose of gathering, separating, treating,

processing, and storing petroleum products (the “**Mont Lake Facility**” or the “**Facility**”); and

- (b) Certain oil wells sited on lands legally described as follows:

100/12-02-039-10W4/00
100/14-02-039-10W4/00
102/14-02-039-10W4/00
100/09-10-039-10W4/00
102/10-10-039-10W4/00
100/13-10-039-10W4/00
102/13-10-039-10W4/00
100/15-10-039-10W4/00
100/16-10-039-10W4/00
100/06-11-039-10W4/00
100/11-11-039-10W4/00
100/14-11-039-10W4/00
102/14-11-039-10W4/00
100/14-14-039-10W4/00
100/03-15-039-10W4/00
103/01-23-039-10W4/00

(collectively, the “**Oil Wells**”)

11. At all material times, all petroleum products produced from the Oil Wells ultimately flowed to the Mont Lake Facility. Upon being processed or stored at the Facility, petroleum products were, at various points, either taken-in kind by Battle River or sold by Cleo.

12. The relationship between Battle River and Cleo with respect to the Mont Lake Facility is governed by a written agreements – specifically, an Agreement for the Construction, Ownership and Operation of the Mont Lake Facility, dated December 1, 1990 (the “**Mont Lake COO**”). The terms and conditions of the Mont Lake COO are generally consistent with the terms used in similar agreements governing the use of jointly owned oil and gas facilities in Alberta.

13. Both Battle River and Cleo became parties to the Mont Lake COO effective at the times that they acquired their respective interests in the assets governed by those agreements.

14. The Mont Lake COO includes, without limitation, the following terms:

- (a) That the owners of the Mont Lake Facility would designate one owner to serve as an operator (the “**Operator**”) of the Facility;
- (b) That the Operator of the Mont Lake Facility would maintain a joint account for the purpose of recording and allocating all proper costs and expenditures incurred by the Operator in connection with the Facility;
- (c) That the Operator would render accounts to owners of the Mont Lake Facility representing the individual owners’ share of costs recorded in the joint accounts by the Operator;
- (d) That each of the owners of the Mont Lake Facility would have the right to take in kind their share of petroleum products delivered to the Facility (the “**TIK Rights**”);
- (e) That, in the event that the owner did not take any of its production in kind, proceeds from any sale of such production facilitated by the Operator would be paid to the said owner;
- (f) That the Operator would maintain a lien (the “**Operator’s Lien**”) against the oil and gas production belonging to any owner in default on obligations to make payment of accounts properly rendered by the Operator to the owner;
- (g) That, in the event of the Operator realized upon an owner’s production subject to the Operator’s Lien, any surplus proceeds derived from a sale of petroleum products delivered to the Mont Lake Facility facilitated by the Operator, over and above the value of the owner’s unpaid accounts, would be paid to the owner by the Operator; and
- (h) Any funds of any owner received or held by the Operator, including the proceeds from the sale of any owner’s petroleum products by the Operator from the Mont Lake Facility, would be held in trust by the Operator for the benefit of the owner, notwithstanding the comingling of any such funds with funds belonging to the Operator (the “**Express Trust Clause**”).

15. At all material times, Cleo served as the sole Operator of the Mont Lake Facility. As such, Cleo would render regular statements of account to Battle River respecting Battle River's share of costs claimed by Cleo as Operator of the Mont Lake Facility.

TIK Revocation and Disposition of Battle River's Production

16. From the date of its acquisition of the Wells up to March of 2021, Battle River exercised its TIK Right to take delivery of its petroleum products processed at the Facilities.

17. In or about February of 2021, Cleo notified Battle River that it intended to revoke Battle River's ability to revoke Battle River's TIK Rights with respect to the Mont Lake Facility. Cleo thereafter ceased to allow Battle River to take delivery of its share of petroleum products delivered to the Mont Lake Facility.

18. As of March 25, 2021, Battle River had not made payment towards the credit of several accounts rendered to Battle River by Cleo between 2019 and 2021 in the aggregate amount of \$262,246.04 (the "**2019-21 Costs**") for costs Cleo claimed it was entitled to recover from Battle River. For greater certainty, Battle River does not admit the legitimacy of such costs or accuracy of such accounts.

19. From the period between March 25, 2021, to May 1, 2024, Cleo, as Operator, maintained control over and dealt with petroleum products produced by Battle River from the Oil Wells that had been processed at, or otherwise delivered to, the Mont Lake Facility. As such, Cleo sold Battle River's share of petroleum products upon acquiring control of such products upon their delivery to the Facility in its capacity as the Operator.

Cleo's Refusal to Turn Over Trust Funds

20. Cleo's retention of the net proceeds derived from Cleo's sale of Battle River's petroleum products produced at the Oil Wells for the period between March 25, 2021, and June of 2022 were sufficient to retire any amount claimable by Cleo against Battle River in respect of the 2019-21 Costs.

21. Between June of 2022 and May of 2024, Cleo, acting in its capacity as Operator of the Mont Lake Facility, sold petroleum products produced by Battle River at the Oil Wells for proceeds (net of any and all Battle River's share of applicable costs relating to the Facility

incurred by Cleo as Operator) in the aggregate amount of \$508,626.54 (the “**BR Trust Funds**”).

22. On May 3, 2024, Battle River, by way of its solicitors, issued a demand to Cleo to turn over funds held in trust by Cleo for the benefit of Battle River in accordance with the Express Trust Clause.

23. On June 10, 2024, solicitors for Cleo advised solicitors for Battle River that Cleo would not turn over any funds held in trust by Cleo for the benefit of Battle River. Cleo has neglected or refused to turn over any of the BR Trust Funds to Battle River following Battle River’s May 3, 2024, demand.

24. At all material times, Cleo and the Cleo Officers were aware of the fact that Cleo served as a trustee to Battle River pursuant to the Express Trust Clause.

25. Battle River states that Cleo continues to hold the BR Trust Funds for the benefit of Battle River.

26. Alternatively, in the event that Cleo does not continue to hold the BR Trust Funds, Cleo has dissipated, misappropriated, or otherwise misallocated all or a portion of the BR Trust Funds for Cleo’s own benefit on dates and in amounts known to Cleo but not known to Battle River (the “**Trust Misappropriations**”). Battle River states that the Cleo Officers each had actual knowledge, either subjectively or as a result of their own wilful blindness or recklessness, of the Trust Misappropriations.

Battle River’s Claims Against Cleo

Claims in Contract

27. Battle River states that Cleo’s contractual entitlement to rely upon the Operator’s Lien to allocate surplus net revenues derived from petroleum products produced from the Oil Wells extended only to the value of the 2019-21 Costs. Accordingly, Battle River states that, pursuant to the terms of the Mont Lake COO, as the case may be, Cleo was contractually obligated to remit to Battle River its share of proceeds from the sale of petroleum products produced from the Oil Wells upon Battle River’s demand for the same.

28. Cleo breached the terms of the Mont Lake COO by neglecting or refusing to turn over the BR Trust Funds to Battle River upon Battle River's demand for the same. Battle River, therefore, states that the value of the BR Trust Funds represent a claim for liquidated damages against Cleo and that Battle River is entitled to judgment against Cleo for the full value of the BR Trust Funds.

Breach of Trust

29. Battle River states that, pursuant to the Express Trust Clause and other provisions of the Mont Lake COO, Cleo served at all material times as the trustee of a trust pursuant to which Battle River was both the settlor and beneficiary. Battle River states that, with respect to the said trust, there is:

- (a) certainty of intention, due to, without limitation, to the fact Cleo and Battle River intended to create a trust by agreeing to be bound to the Mont Lake COO;
- (b) certainty of subject-matter due to, without limitation, the fact that the Express Trust Clause clearly provides that the petroleum products of Battle River, or proceeds derived from the sale thereof, constitute trust property; and
- (c) certainty of object due to, without limitation, the fact that Battle River is clearly designated as the beneficiary of the said trust pursuant to the terms of the Express Trust Clause.

30. Battle River, therefore, pleads and relies upon section 11 of the *Judicature Act*, RSA 1980, c J-1, (the "**JA**") and states that it is entitled to a declaration that: it is the beneficiary of a trust created by the Mont Lake COO of which Cleo is the trustee.

31. Battle River states that, in its capacity as the beneficiary of a trust administered by Cleo as a trustee, it is entitled to an accounting.

32. Battle River states that, by neglecting or refusing to turn over the BR Trust Funds, or by engaging in the Trust Misappropriations for Cleo's own benefit, Cleo has fraudulently or dishonestly breached its duties owing to Battle River as a beneficiary of an express trust. Battle River, therefore, states that is entitled to the greater of:

- (a) Damages for the full value of the BR Trust Funds; or

- (b) Disgorgement of any gains resulting from Cleo's retention of the BR Trust Funds or the Trust Misappropriations.

Conversion

33. In addition to, or in the alternative of, Battle River's claims in contract and for breach of trust, Battle River states, at all material times, it maintained a beneficial interest in the BR Trust Funds. Battle River states that, by retaining the BR Trust Funds or by engaging in the Trust Misappropriations, Cleo has wrongfully interfered with funds in which Battle River maintains a proprietary interest and, therefore, is liable to Battle River for the tort of conversion. Battle River, therefore, claims an entitlement to damages arising from the tort of conversion quantified at the full value of the BR Trust Funds.

Unjust Enrichment

34. In addition to, or in the further alternative of, its claims in contract, tort, and for breach of trust, Battle River states Cleo's retention of the BR Trust Funds or completion of the Trust Misappropriations constitute a monetary benefit conferred upon Cleo to Battle River's detriment absent a juristic reason. Battle River, therefore, pleads and relies upon the doctrine of unjust enrichment and claims an entitlement to restitution quantified at the full value of the BR Trust Funds.

Battle River's Claims the Cleo Officers

Knowing Assistance in Breach of Trust

35. Battle River states that, at all material times, Cleo served as the trustee of a trust of which Battle River was a beneficiary by operation of the Mont Lake COO.

36. Battle River reiterates paragraph 27 above and states that, in the event that Cleo engaged in the Trust Misappropriations, the commission of such acts constituted fraudulent or dishonest breaches of trust on behalf of Cleo.

37. Battle River states that, during the period in which they were officers of Cleo, each of the Cleo Officers had actual knowledge, derived through subjective knowledge, recklessness, or wilful blindness, of Cleo's breaches of trust by way of the Trust Misappropriations.

38. Battle River further states that each of the Cleo Officers were responsible for managing Cleo's financial affairs during their respective periods of officership. Accordingly, the Cleo Officers each participated in or otherwise assisted Cleo in its commission of breaches of trust obligations owed to Battle River.

39. Battle River, therefore, states that each of the Cleo Officers are personally liable to Battle River for the tort of knowing assistance in breach of trust. Battle River states that it is entitled to recover damages arising from the tort of knowing assistance in breach of trust from each of the Cleo Officers, on a joint and several basis with each other and with Cleo, in an amount to be determined at trial corresponding to the aggregate value of the Trust Misappropriations occurring during the period in which each of the Cleo Officers served as officers of Cleo.

Oppression

40. Battle River is, and has been at all material times, a creditor of Cleo within the meaning of section 242(2) of the *BCA*. Battle River is, therefore, a "complainant" within the meaning of section 242(1) of the *BCA*.

41. In its capacity as a creditor of Cleo and a beneficiary of a trust administered by Cleo, Battle River maintained the reasonable expectation that the Cleo Officers would not cause Cleo to misappropriate or refuse to turn over trust property in which Battle River maintained a beneficial interest.

42. By causing Cleo to commit breaches of trust, the Cleo Officers unfairly prejudiced and unfairly disregarded the interests of Battle River in a manner that is oppressive within the meaning of section 242(2) of the *BCA*.

43. In addition to its separate claims against Cleo, Battle River, therefore, pleads and relies upon section 242(3) of the *BCA* and claims that it is entitled to:

- (a) an order requiring Cleo to turn over the BR Trust Funds, or any portion thereof, to Battle River; and
- (b) an order requiring the Cleo Officers, jointly and severally, to provide monetary compensation to Battle River for the full value of any Trust Misappropriations occurring while the Cleo Officers served as officers of Cleo.

Battle River's Entitlement to Punitive Damages and Solicitor-Client Costs

44. Battle River states that the actions of Cleo and the Cleo Officers as outlined herein are malicious, high-handed, repugnant, representative of a marked departure from the ordinary standards of decent behavior, and are deserving of sanction by this Honourable Court. Battle River, therefore, claims an entitlement to punitive damages in the amount of not less than \$50,000.00 from Cleo and the Cleo Officers, jointly and severally.

45. Battle River further states that Cleo's pre-pleadings gross misconduct in engaging in dishonest and fraudulent breaches of trust entitles Battle River to recover its costs in these proceedings on a full-indemnity, solicitor and own client basis.

Trial of the Action

46. Battle proposes that the trial of this action be held at the Calgary Court Centre in Calgary Alberta. It is not presently anticipated that the trial of this action will exceed 25 days of trial time.

Remedy sought:

47. Battle claims an entitlement to the following relief as against Cleo:

- (a) A declaration that Cleo serves as the trustee of a trust of which Battle River is a beneficiary arising pursuant to the Mont Lake COO;
- (b) Judgment or, alternatively, damages in the amount of \$508,626.54;
- (c) In the alternative, disgorgement of any gains realized by Cleo resulting from Cleo's retention of the BR Trust Funds or the Trust Misappropriations;
- (d) In the further alternative, restitution in the amount of \$508,626.54;
- (e) An Order pursuant to section 242(3) of the *BCA* requiring Cleo to turn over to turn over the BR Trust Funds, or any portion thereof, to Battle River;
- (f) Interest on all amounts awarded calculated in accordance with the *Judgment Interest Act*, RSA 2000, c.J-1 (the "**JIA**");
- (g) Costs of this action on a solicitor and own client, full-indemnity basis; and

- (h) Such further and other relief as Counsel may advise or that this Honourable Court deems just and appropriate.

48. Battle River claims an entitlement to the following relief as against the Cleo Officers, jointly and severally as amongst each other and as between the Cleo Officers and Cleo:

- (a) Damages, in amounts to be proven at trial, for the value of Trust Misappropriations occurring while each individual Cleo Officer served as an officer of Cleo;
- (b) An Order pursuant to section 242(3) of the *BCA* requiring the Cleo Officers to provide monetary compensation to Battle River for the full value of any Trust Misappropriations occurring while the Cleo Officers served as officers of Cleo;
- (c) Interest on all amounts awarded calculated in accordance with the *JIA*;
- (d) Costs of this action on a solicitor and own client, full-indemnity basis; and
- (e) Punitive damages in the amount of \$50,000.00, or such other amount to be determined at trial; and
- (f) Such further and other relief as Counsel may advise or that this Honourable Court deems just and appropriate.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "B"** referred to in the Affidavit of
Shane Sutherland, sworn before me at Calgary,
Alberta on this 3rd day of January, 2025.



A Commissioner for Oaths in and for the
Province of Alberta
My Appointment Expires:

KEVIN HOY
Barrister and Solicitor

October 11, 2024

Via E-mail: kevin.hoy@dlapiper.com

Kevin Pedersen
Direct +1 403 298 1036
kevin.pedersen@gowlingwlg.com
File no. A165327

DLA Piper (Canada) LLP
250 2 St SW #1000
Calgary, AB T2P 0C1

Attention: Kevin Hoy

Dear Sir:

Re: Battle River Energy Ltd. v Cleo Energy Corp. et al
Court of King's Bench Action No.: 2401-13128

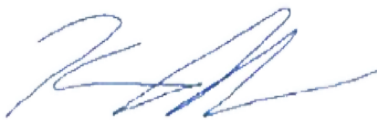
Further to the above-noted matter, please be advised that we have been retained by the Defendants, Cleo Energy Corp., Christopher Lewis, Colton Lewis, Andrew Sweerts and Kellie D'Hondt. We understand Cleo was served with the Statement of Claim on October 3, 2024. We are not aware of whether the individual defendants have been personally served to date and, at this time, we do not have instructions to accept service on their behalf. Please advise if you would like us to seek those instructions.

Notwithstanding the above regarding proper service of the individual defendants, we are in the process of reviewing the matter with our clients and ask that you take no steps adverse to our clients, including any steps to note them in default, without providing us with reasonable prior written notice.

We trust the above to be satisfactory.

Sincerely,

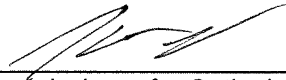
Gowling WLG (Canada) LLP



Kevin Pedersen

KP:ok

This is **Exhibit "C"** referred to in the Affidavit of
Shane Sutherland, sworn before me at Calgary,
Alberta me this 3rd day of January, 2025.



A Commissioner for Oaths in and for the
Province of Alberta
My Appointment Expires:

KEVIN HO
Barrister and Solicitor

Nakogee, Emily

From: Hoy, Kevin
Sent: Friday, October 11, 2024 8:02 AM
To: 'Pedersen, Kevin'
Cc: 'Foley, Warren'; 'hasith.andrahennadi@gowlingwlg.com'; 'Cross, Olya'
Subject: RE: [EXTERNAL] Battle River Energy Ltd. v Cleo Energy Corp. et al - Court of King's Bench Action No.: 2401-13128

Good morning, Kevin.

This will confirm our undertaking to refrain from noting in default in these proceedings without reasonable advance notice to your office of our intention to do the same.

None of the individual defendants have been personally served yet. We kindly ask that you seek instructions to accept service on behalf of those persons.

Once you have had the opportunity to complete your preliminary review, we ask that you advise as to your target date for service of the Defendants' pleadings.

Best,
Kevin Hoy
Associate

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E kevin.hoy@dlapiper.com

From: Cross, Olya <Olya.Cross@gowlingwlg.com>
Sent: Friday, October 11, 2024 7:53 AM
To: Hoy, Kevin <kevin.hoy@ca.dlapiper.com>
Cc: Foley, Warren <Warren.Foley@gowlingwlg.com>; Pedersen, Kevin <Kevin.Pedersen@gowlingwlg.com>; hasith.andrahennadi@gowlingwlg.com
Subject: [EXTERNAL] Battle River Energy Ltd. v Cleo Energy Corp. et al - Court of King's Bench Action No.: 2401-13128

DLA Piper (Canada) LLP ALERT: This is an external email. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Good morning,

Please find enclosed correspondence sent on behalf of Kevin Pedersen.

Kind regards,
Olya Cross (she/her)
Legal Administrative Assistant
T +1 403 298 1070
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This is **Exhibit "D"** referred to in the Affidavit of
Shane Sutherland, sworn before me at Calgary,
Alberta me this 3rd day of January, 2025.



A Commissioner for Oaths in and for the
Province of Alberta
My Appointment Expires:

KEVIN HOY
Barrister and Solicitor

Nakogee, Emily

From: Hoy, Kevin
Sent: Thursday, January 02, 2025 7:50 PM
To: 'Pedersen, Kevin'
Cc: 'Foley, Warren'; 'hasith.andrahennadi@gowlingwlg.com'; 'Cross, Olya'
Subject: RE: [EXTERNAL] Battle River Energy Ltd. v Cleo Energy Corp. et al - Court of King's Bench Action No.: 2401-13128

Kevin,

We note that we have not heard from your office respecting this matter since October 11, 2024, despite my express request for you to advise as to your targeted date for the Statement of Defence.

We understand from your express representation that you act for each of the individual Defendants in these proceedings – namely, Christopher Lewis, Colton Lewis, Andrew Sweerts and Kellie D'Hondt (collectively, the “**Individual Defendants**”). Given your lack of reply to our previous correspondence, we understand there to have been no issue in your receipt of instruction to accept service on behalf of the clients who have retained your office to act as their counsel in these proceedings. Accordingly, we understand that the Individual Defendants have been served.

This will confirm that we require a Statement of Defence from the Individual Defendants by not later than January 20, 2025. Given that you have already had 83 days to review the Statement of Claim from the date of your retainer, we trust that you will have sufficient time to prepare the pleadings of the Individual Defendants.

This will confirm that we are mindful of the automatic stay of proceedings imposed upon all claimants against Cleo Energy Corp. (“**Cleo**”) in the connection with its proceedings under the *Bankruptcy and Insolvency Act* in the matter of Court File No. B301-163430. This will further confirm that we acknowledge that Battle River Energy Ltd. will not be in a position to note Cleo in default of defence until the stay imposed upon claimants against Cleo is lifted.

Notwithstanding the foregoing, take note that nothing in the *Bankruptcy and Insolvency Act* imposes a stay upon any of the Individual Defendants. Thus, the pendency of Cleo's restructuring proceedings cannot stand in the way of Battle River prosecuting its claims against the Individual Defendants.

I am happy to discuss any of the above points should you wish to schedule a call.

Best,
Kevin Hoy
Associate

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F +1 403.776.8861
E kevin.hoy@dlapiper.com

From: Hoy, Kevin
Sent: Friday, October 11, 2024 8:02 AM
To: Pedersen, Kevin <Kevin.Pedersen@gowlingwlg.com>
Cc: Foley, Warren <Warren.Foley@gowlingwlg.com>; hasith.andrahennadi@gowlingwlg.com; Cross, Olya <Olya.Cross@gowlingwlg.com>
Subject: RE: [EXTERNAL] Battle River Energy Ltd. v Cleo Energy Corp. et al - Court of King's Bench Action No.: 2401-13128

Good morning, Kevin.

This will confirm our undertaking to refrain from noting in default in these proceedings without reasonable advance notice to your office of our intention to do the same.

None of the individual defendants have been personally served yet. We kindly ask that you seek instructions to accept service on behalf of those persons.

Once you have had the opportunity to complete your preliminary review, we ask that you advise as to your target date for service of the Defendants' pleadings.

Best,
Kevin Hoy
Associate

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E kevin.hoy@dlapiper.com

From: Cross, Olya <Olya.Cross@gowlingwlg.com>
Sent: Friday, October 11, 2024 7:53 AM
To: Hoy, Kevin <kevin.hoy@ca.dlapiper.com>
Cc: Foley, Warren <Warren.Foley@gowlingwlg.com>; Pedersen, Kevin <Kevin.Pedersen@gowlingwlg.com>;
hasith.andrahennadi@gowlingwlg.com
Subject: [EXTERNAL] Battle River Energy Ltd. v Cleo Energy Corp. et al - Court of King's Bench Action No.: 2401-13128

DLA Piper (Canada) LLP ALERT: This is an external email. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Good morning,

Please find enclosed correspondence sent on behalf of Kevin Pedersen.

Kind regards,

Olya Cross (she/her)
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