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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF CLEO ENERGY CORP.

DOCUMENT BENCH BRIEF OF CLEO ENERGY CORP.

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
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**APPLICATION BEFORE THE HONOURABLE JUSTICE M.H. BOURQUE
MARCH 25, 2025 AT 11:00 AM ON THE CALGARY COMMERCIAL LIST**

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PART 1 INTRODUCTION

1. Cleo is a private Alberta corporation formed in 2016 and carries on the business of producing medium gravity based oil and gas with operated and non-operated working interests in the Alliance, Atlee, Enchant/Taber, Fabyan, Hayter, Kessler, Neutral Hills, Sedgewick, Shorncliffe and Silver Heights areas of Alberta. Cleo's head office is located in Calgary, Alberta and has a field office in Shorncliffe, Alberta.
2. Since early in 2024, Cleo has been experiencing serious financial difficulties and therefore on December 8, 2024, filed a notice of intention to make a proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**", and the proceedings initiated thereby, the "**Proposal Proceedings**") designating Alvarez & Marsal Canada Inc. ("**A&M**") as its proposal trustee (in such capacity, the "**Proposal Trustee**").
3. The initial 30-day time period within which a proposal was required to be filed under section 50.4(8) of the *BIA* ended on January 7, 2025 and was extended to February 21, 2025 pursuant to an Order of the Honourable Justice Lema pronounced January 6, 2025 (the "**January 6 Order**") and to April 4, 2025 pursuant to a second Order of Justice Lema pronounced February 19, 2025 (the "**February 19 Order**").
4. This Bench Brief is submitted on behalf of Cleo in support of an application (the "**Application**") for the following Orders:
 - (a) an Order (the "**Extension Order**") extending the period within which Cleo is required under section 50.4(8) of the *BIA* to file a proposal, currently ending April 4, 2025, by an additional 45 days to end on May 9, 2025 (such period, as extended from time to time under section 50.4(9) of the *BIA*, being the "**Filing Period**");
 - (b) an Order (the "**IHH SAVO**") approving the sale of certain assets (the "**IHH Assets**") pursuant to an asset purchase agreement dated as of March 14, 2025 (the "**IHH APA**") between CLEO and IHH Energy Corp. ("**IHH**") and vesting all of the right, title and interest of CLEO in and to the IHH Assets, free and clear of any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not

they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Encumbrances**”);

- (c) an Order (the “**Nuova SAVO**”) approving the sale of certain assets (the “**Nuova Assets**”) pursuant to an asset purchase agreement dated as of March 14, 2025 (the “**Nuova APA**”) between CLEO and Nuova Strada Ventures Ltd. (“**Nuova**”) and vesting all of the right, title and interest of CLEO in and to the Nuova Assets, free and clear of any and all Encumbrances;
 - (d) an Order (the “**Surge SAVO**”, and together with the IHH SAVO and the Nuova SAVO, the “**SAVOs**”) approving the sale of certain assets (the “**Surge Assets**”) pursuant to an asset purchase agreement dated as of March 14, 2025 (the “**Surge APA**”, and together with the IHH APA and Nuova APA, the “**APAs**”) between CLEO and Surge Energy Inc. (“**Surge**”) and vesting all of the right, title and interest of CLEO in and to the Surge Assets, free and clear of any and all Encumbrances;
 - (e) an Order (the “**Sealing Order**”) sealing the confidential supplement (the “**Confidential Supplement**”) to the fourth report of the Proposal Trustee (the “**Fourth Report**”); and
 - (f) such other relief as this Honourable Court deems appropriate.
5. This Application is supported by an Affidavit sworn March 17, 2025 by Chris Lewis, the sole Director, Executive Chairman, and Chief Executive Officer of Cleo (the “**March 17 Affidavit**”). The further facts with respect to the Application are more fully set out in, and this Brief will rely upon:
- (a) the March 17 Affidavit;
 - (b) the first report of the Proposal Trustee dated January 6, 2025 (the “**First Report**”);
 - (c) the second report of the Proposal Trustee dated January 20, 2025 (the “**Second Report**”);
 - (d) the Fourth Report; and
 - (e) the Confidential Supplement.

6. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated and capitalized terms not defined herein have the meanings given to them in the March 17 Affidavit.

Background to the Application

7. Under the January 6, 2025 Order, Justice Lema created an administration charge (the “**Administration Charge**”) against the undertaking, properties and assets (the “**Properties**”) securing the professional fees and expenses of the Proposal Trustee and its counsel and counsel to Cleo in the maximum amount of \$700,000, approved a non-revolving interim financing facility in the maximum principal amount of \$750,000 (the “**Interim Facility**”) and created a charge (the “**Interim Financing Charge**”) against the Properties securing the indebtedness, liabilities and obligations of Cleo to the interim lender under the Interim Facility, created charge (the “**D&O Charge**”, and together with the Administration Charge and the Interim Financing Charge, the “**BIA Charges**”) against the Properties securing Cleo’s obligation to indemnify its director and officer against obligations and liabilities incurred after the commencement of the Proposal Proceedings, declared that the *BIA* Charges rank in priority to any other Encumbrances, and declared that as between the *BIA* Charges, the Administration Charge ranks first in priority, the Interim Financing Charge ranks second in priority, and the D&O Charge ranks third in priority.
8. Pursuant to an Order of the Honourable Justice J.T. Nielson pronounced January 22, 2025 (the “**Sale Process Order**”), the Court approved a sale and solicitation process (the “**SSP**”) that provided for the marketing of the business and Properties of Cleo and the manner in which bids to purchase Properties or invest in Cleo are to be made and assessed, and approved Cleo’s engagement of Sayer Energy Advisors as a financial advisor and sale agent (the “**Sale Agent**”).
9. The February 19 Order amended the January 6 Order to approve the increase in the principal amount of the Interim Facility to \$1,000,000 and increase the maximum principal amount secured by of the Interim Financing Charge to \$1,000,000 together with any interest accrued thereon or costs and expenses incurred thereunder.

Marketing and Sale of Properties pursuant to the SSP

10. The SSP was launched immediately after the Sale Process Order was pronounced on January 20, 2025. The SSP provided for a two phase sale and marketing process under which:

First Phase

- (a) In the first phase, the Sale Agent widely marketed the Properties, set up a physical and electronic Data Room containing confidential information relating to the business of Cleo and the Properties, to which Potential Bidders were able to gain access by executing non-disclosure agreements.¹
- (b) Potential Bidders were required to submit Non-Binding LOIs which complied with paragraph 23 of the SSP by the Non-Binding Bid Submission Date, which was February 27, 2025.²
- (c) Under paragraph 24 of the SSP, the Proposal Trustee was required, in consultation with Cleo and the Sale Agent, to determine whether a Potential Bidder had complied with paragraph 23, had a *bona fide* interest in concluding a transaction, and had the financial wherewithal to conclude a transaction, whereupon it was designated as a “Qualified Bidder” for the purposes of participating in the second phase.³
- (d) Under paragraph 25 of the SSP, the Proposal Trustee, upon making the determinations in paragraph 24, was required to notify Potential Bidders whether or not they had been designated as Qualified Bidders.

Second Phase

- (e) In the second phase, Qualified Bidders could carry out additional due diligence and were required to submit a binding bid (a “**Bid**”) which complied with the requirements of paragraph 28 of the SSP together with a deposit by the Binding Bid Submission Date.
- (f) Under paragraph 28 of the SSP, in order to be considered a Binding Bid, a Bid had to satisfy a number of criteria, including that it was based upon a template asset purchase agreement found in the Data Room, it had to clearly set forth the purchase price, it must be irrevocable until closing, it must identify the entities sponsoring the Bid, it must be accompanied by a 15% deposit, and it must be accompanied by evidence of financial wherewithal to complete the Transaction.

¹ Affidavit of Chris Lewis, sworn March 17, 2025 (the “**March 17 Affidavit**”), paras 14(a)(i) and 15(a), (b) & (c).

² March 17 Affidavit, para 14(a)(ii).

³ March 17 Affidavit, para 14(a)(v).

- (g) The Proposal Trustee, in consultation with Cleo and the Sale Agent, has the authority under paragraph 30 of the SSP to determine which Bids were Qualified Bids based on the considerations set out in paragraph 29 of the SSP, including the purchase price and net value (including assumed liabilities), whether there is a firm, irrevocable commitment for financing the transaction, the counterparties to the transaction, the terms of the transaction documents, closing conditions and other factors affecting the speed, certainty and value of the transaction, the planned treatment of stakeholders, the assets or liabilities included or excluded from the Bid, the compliance with the Alberta Energy Regulator's requirements, any restructuring costs that would arise from the Bid, the likelihood and timing of consummating the transaction.
 - (h) The Proposal Trustee, in consultation with Cleo and the Sale Agent, is authorized to negotiate the terms of Qualified Bids and may, but is not obligated to, select the highest or best Qualified Bid or Qualified Bids received during the SSP as "Successful Bids", and is entitled to designate "Back Up Bids".⁴
11. In emails sent on March 7, 2025, the Proposal Trustee advised 10 parties who submitted Non-Binding LOIs, including IHH, Surge and Nuova, that they were Qualified Bidders and could participate in the second phase, and 12 parties that they were not Qualified Bidders.⁵
 12. IHH, Surge and Nuova submitted Binding Bids and entered into the APAs dated as of March 14, 2025 with Cleo.⁶
 13. In response to feedback from Qualified Bidders other than IHH, Surge and Nuova that they required additional time to submit Binding Bids, the Proposal Trustee sent an email to those Qualified Bidders on March 13, 2025 extending the Binding Bid Submission Date to 12:00 pm on March 27, 2025.⁷ Paragraph 45 of the Sale Process Order allows the Proposal Trustee, in consultation with the Cleo and Sale Agent, to modify any deadlines in the SSP, if, in the Proposal Trustee's reasonable business judgment such modification will enhance the process or better achieve the objectives of the SSP.

⁴ March 17 Affidavit, Exhibit "A", SSP, paras 31 and 33.

⁵ March 17 Affidavit, para 16.

⁶ March 17 Affidavit, para 17.

⁷ March 17 Affidavit, para 18.

PART 2 ISSUES

14. This Brief addresses whether this Honourable Court should make the following Orders:

- (a) the SAVOs;
- (b) the Extension Order; and
- (c) the Sealing Order.

PART 3 LAW AND ARGUMENT

A. The SAVOs

15. The purchase and sale transactions contemplated by the APAs (collectively, the “**Transactions**”) are described in detail in the March 17 Affidavit and in the Fourth Report. Cleo respectfully submits that the Transactions should be approved, as they are in the best interest of Cleo’s estate and its stakeholders and satisfy the statutory and common law tests for approving sale transactions set out in section 65.13 of the *BIA* and in the decision of the Ontario Court of Appeal in *Royal Bank v Soundair Corp* (“*Soundair*”).⁸

16. Subsections 65.13(1) and (3) of the *BIA* confers this Honourable Court with the jurisdiction to approve a sale outside the ordinary course of business:

“65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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.

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.”⁹

17. Section 65.13(4) of the *BIA* sets out a non-exclusive list of factors to be considered by the Court in determining whether or not to approve a sale:

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

⁸ *Royal Bank v Soundair Corp*, [1991 CanLII 2727](#) [*Soundair*] [Tab 1]

⁹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [section 65.13](#) [*BIA*] [Tab 2].

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee 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.”¹⁰

18. Sections 65.13 of the *BIA* and 36 of the *Companies’ Creditors Arrangement Act* (the “*CCAA*”) are virtually identical and therefore courts have taken a similar approach in applying these provisions.¹¹ Courts have observed that the criteria in section 36(3) of the *CCAA* (the equivalent of section 65.13(4) of the *BIA*) largely correspond to the criteria set out in *Soundair* for approving sales during insolvency processes,¹² namely:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.¹³

19. In *Soundair*, the Court reviewed a sale by a receiver but its comments are generally applicable to sales made during insolvency proceedings by or with the support of its court-appointed officer. The court noted that (a) the court officer’s expertise in arranging a sale is far removed from the Court’s own expertise, (b) the court must place a great deal of confidence in the court officer’s actions and opinions formed by the receiver, (c) the court should assume that the court officer is acting properly unless the contrary is clearly shown, (d) the court should be reluctant to second-

¹⁰ *Ibid.*

¹¹ *Re Komtech Inc*, 2011 ONSC 3230 at [paras 21-23](#) [Tab 3].

¹² *Harte Gold Corp. (Re)*, 2022 ONSC 653 at [para 21](#) [Tab 4]; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 at [para 62](#) [Tab 5].

¹³ *Soundair* at [para 16](#) [Tab 1].

guess, with the benefit of hindsight, the considered business decisions made by the court officer, and (e) the conduct of the court officer should be reviewed in the light of the specific mandate given to it by the Court.¹⁴ Courts have observed that in applying these principles, the Court is not engaged in a perfunctory, rubberstamp exercise, but nor should it reject a court officer's recommendation on a sale absent special circumstances, but rather that advice should be given significant weight.¹⁵ The *Soundair* principles have been applied by courts in Alberta.¹⁶

20. Courts also give effect to the business judgment rule, which affords deference to the exercise of the commercial and business judgment of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.¹⁷
21. For the reasons set out below, Cleo submits that the Transactions satisfy the criteria set out in section 65.13 and in *Soundair*.

Notice to Secured Creditors affected by Transactions (65.13(3))

22. As required under section 65.13(3) of the *BIA*, all secured creditors with an interest in the Properties subject to the Transactions are being provided with notice of the Application and the relief being sought.¹⁸

Whether SSP is reasonable in the circumstances and was approved by the Proposal Trustee (65.13(4)(a) and (b))

23. Both the Proposal Trustee and Sale Agent participated in the preparation of the SSP and in the Second Report, the Proposal Trustee stated that it believed that the implementation of the SSP by Cleo in consultation with the Proposal Trustee and Sale Agent was appropriate in the circumstances. The SSP provides a fair and transparent process which will be conducted in such a manner as to give prospective bidders equal opportunity to express their interest in making a bid. The SSP further provides for an approximate four-week marketing process to sufficiently expose the opportunity to the market and includes an additional two weeks for due diligence. The Proposal

¹⁴ *Soundair* at [para 14](#) [Tab 1].

¹⁵ *1705221 Alberta Ltd. v Three M Mortgages Inc.*, 2021 ABCA 144 at [para 22](#) [*Three M*] [Tab 6].

¹⁶ *PricewaterhouseCoopers Inc v 1905393 Alberta Ltd.*, 2019 ABCA 433 at [paras 10-12](#) [Tab 7]; *Three M* at para 2.

¹⁷ *Re Bloom Lake*, 2015 QCCS 1920 at [para 28](#) [Tab 8]

¹⁸ Those secured parties are listed in paragraph 28 of the First Report and are on the Service List.

Trustee also noted in the Second Report that the Sale Advisor recommended the timelines in the SSP.¹⁹ The Court approved the SSP in the Sale Process Order.²⁰

24. As noted by the Proposal Trustee, the Sale Agent was familiar with Cleo's business and Properties, and as noted by the Proposal Trustee, has significant experience in marketing distressed companies in these types of circumstances.²¹
25. Cleo therefore respectfully submits that the criteria set out in subsections 65.13(4)(a) and (b) are satisfied.

Proposal Trustee opines that a sale is more beneficial to creditors than a sale under a bankruptcy (65.13(4)(c))

26. Cleo anticipates that the Proposal Trustee will state in the Fourth Report that in its opinion, the Transactions are more beneficial to the creditors than a sale or disposition under a bankruptcy.

Extent to which creditors were consulted (65.13(4)(d))

27. Cleo has kept its principal secured creditors advised of the progress of the SSP and of the Transactions, and none of them have objected.²²

Efficacy and integrity of the process by which offers have been obtained and whether there has been unfairness in the working out of the process (*Soundair*)

28. The SSP has been designed to ensure that the marketing and sale process is carried out with integrity and in a fair and reasonable manner. Under the SSP, the Proposal Trustee is empowered, in consultation with the Sale Agent and Cleo, to determine whether a Non-Binding LOI was a Qualified LOI and the party submitting it was a Qualified Bidder,²³ whether a binding Bid was a Qualified Bid for the purposes of paragraph 28 of the SSP,²⁴ and determine whether or not Qualified Bids are Successful Bids.²⁵ Hence, the Proposal Trustee has been and continues to be closely involved in the SSP and will make the ultimate determination of whether or not a Qualified Bid is a Successful Bid whose approval will be sought from this Honourable Court. As a court officer

¹⁹ Second Report, para 33.

²⁰ March 17 Affidavit, para 13.

²¹ Second Report, para 33.

²² March 17 Affidavit, para 24.

²³ March 17 Affidavit, para 14(a)(v), Exhibit "A", SSP, para 24.

²⁴ March 17 Affidavit, para 14(b)(ii), Exhibit "A", SSP, para 30.

²⁵ March 17 Affidavit, para 14(c), Exhibit "A", SSP, paras 30 & 33.

with a duty to all stakeholders of Cleo, the Proposal Trustee's participation ensures the integrity of the SSP.

29. There is no evidence of any unfairness in how the SSP has worked out.

Whether sufficient effort has been made to obtain the best price (*Soundair*)

30. The marketing and sale of the Properties subject to the Transactions has been carried out in accordance with the SSP and the SSP has been professionally administered by the Sale Agent in a commercially reasonable manner. The marketing of the Properties was carried out over a four week period, during which the Sale Agent distributed the Teaser to approximately 2,250 parties by email and 400 parties by mail and placed advertisements in the *BOE Report*, *Daily Oil Bulletin*, the Sale Agent's *Canadian Oil Industry Asset Sale Listing* and with A&D Watch and Energy Advisors Group. The Data Room was available throughout the first phase to parties who executed NDA and management of Cleo was available to answer questions arising from their due diligence. Ultimately, 22 Bidders submitted 26 Phase I LOIs by the Phase I Bid Deadline.²⁶
31. Based on the report of the Sale Agent, a copy of which is attached to the Confidential Supplement, Cleo submits that the Sale Agent's marketing process has been comprehensive and has broadly canvassed a wide network of potential purchasers.

Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value (65.13(4)(f)) , and effects of Transactions on creditors and other interested parties (65.13(4)(e))

32. It is anticipated that the Proposal Trustee in the Confidential Supplement will confirm that the consideration to be received under the APAs is reasonable and fair in the circumstances, taking into account the fair market value of the Properties subject to the APAs.
33. Because the consideration to be received under the APAs is reasonable, the highest available realization for the Properties subject thereto in the circumstances, and the principal secured creditors are supportive of the Transactions, Cleo respectfully submits that the Transactions are in the best interests of the creditors and other stakeholders.
34. It is anticipated in the Fourth Report that the Proposal Trustee will:

²⁶ March 17 Affidavit, para 15(h).

- (a) advise this Honourable Court that the SSP was carried out in a fair and reasonable manner;
- (b) confirm to this Honourable Court that the Proposal Trustee participated in the preparation of and approved the form of the SSP;
- (c) state that in its opinion the sales pursuant to the Transactions are more beneficial to the creditors of Cleo than a sale or disposition under a bankruptcy; and
- (d) recommend to this Honourable that it approve the Transactions and grant the SAVOs.

Form of SAVOs

35. Under paragraph 7 of each of the SAVOs, the Properties subject thereto will be conveyed free and clear of any Encumbrances. Under section 65.13(7) of the *BIA*, this Honourable Court has the discretion to make this order provided that either the proceeds of sale are subject to a security or charge in favour of a creditor whose security is affected thereby, or alternative security is provided.

“(7) 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 insolvent person 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.”²⁷

36. Each of the APAs are conditional on the Properties subject thereto being vested free and clear of any Encumbrances. The proceeds of sale under paragraph 7 of the SAVOs will be paid to the Proposal Trustee and will initially be applied to pay necessary professional fees secured by the Administration Charge and amounts payable to Cleo’s interim lender as secured by the Interim Financing Charge, which are the first ranking security interests against the Properties. Proceeds in excess thereof will be held in trust by the Proposal Trustee and pursuant to paragraph 7 of the SAVOs will be subject to any security, charges or other restrictions discharged as against the Properties by the SAVOs.

Other issues under 65.13

37. Under section 65.13(8) of the *BIA*, a court may only authorize a sale under section 65.13 if the court is satisfied that the insolvent person can and will make the payments that would have been required under sections 60(1.3)(a) and 60(1.5)(a) of the *BIA*, which in the first case are payments to employees and former employees that they would be entitled to under section 136(1)(d) of the *BIA*,

²⁷ *BIA* [section 65.13\(7\)](#) [Tab 2].

and in the second case any arrears of pension contributions. Cleo has confirmed that no arrears are owing to any employees or former employees and it does not participate in a pension plan.²⁸

38. Finally, neither IHH, Surge nor Nuova is a person related to Cleo for the purposes of sections 65.13(5) and (6) of the *BIA*.²⁹
39. For forgoing reasons, Cleo respectfully submits that the SAVOs should be approved and are necessary and appropriate in the circumstances.

B. Extension of the Filing Period is Appropriate

40. The initial 30-day period within which Cleo was required to file a proposal ended on January 7, 2025. That period was extended by the January 6 Order to February 21, 2025, and thereafter extend again from February 19, 2025 to April 4, 2025. If Cleo fails to file a proposal by April 4, 2025, or by the date of any extension granted under section 50.4(9) of the *BIA*, under section 50.4(8) Cleo will be deemed to have made an assignment in bankruptcy.
41. Under section 50.4(9) of the *BIA*, Cleo is entitled to apply to the Court for an Order extending the Filing Period:

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.³⁰

42. Under section 50.4(9) of the *BIA*, the burden of proof is on the debtor to show on the balance of probabilities that an extension is justified,³¹ although the evidentiary threshold to meet the onus is

²⁸ March 17 Affidavit, para 25.

²⁹ March 17 Affidavit, para 26.

³⁰ *BIA* [section 50.4\(9\)](#) [Tab 2].

³¹ *Re Heritage Flooring Ltd.*, 2004 NBQB 168 at [paras 31, 32](#) and [37](#) [Tab 9].

low.³² The Court assesses the likelihood of a debtor making a viable proposal on an objective basis, considering what a reasonable creditor might expect to happen or what might reasonably be expected to occur, rather than what a specific creditor would do.³³ The test requires a dispassionate evaluation by the Court to consider what a reasonable creditor might expect to happen or what might reasonably be expected to occur.³⁴

43. Cleo's efforts during the Proposal Proceedings are now focussed on carrying out the SSP. Courts have indicated that seeking a sale of assets is evidence of good faith for the purposes of section 50.4(9) of the *BIA*.³⁵
44. Cleo is seeking an extension of the Filing Period to May 9, 2025. Cleo respectfully submits that the extension is appropriate for the following reasons:
 - (a) Cleo has acted and continues to act in good faith and with due diligence;
 - (b) no creditor will be materially prejudiced by the requested extension of the Stay Period; and
 - (c) the extension of the Stay Period is necessary to allow Cleo sufficient time and opportunity to continue the restructuring of its business and affairs and continue forward with the SSP.
45. Since the NOI was filed, Cleo has worked diligently and in good faith to advance these Proposal Proceedings and to comply with the various requirements under the *BIA*. These steps have included the following since Cleo's last extension hearing, among other things:
 - (a) working with the Sale Agent and the Proposal Trustee to advance the SSP including addressing questions of Bidders and providing information for the Data Room and to the Sale Agent and Bidders;
 - (b) providing the Proposal Trustee with continuing access to its books and records;
 - (c) working with the Proposal Trustee on the preparation of the Revised Cash Flow Projections (as defined below);

³² *Re Scotian Distribution Services Limited*, 2020 NSSC 131 at [para 24](#) [Tab 10]; *Re T & C Steel Ltd*, 2022 SKKB 236 at [para 20](#) [Tab 11].

³³ *Nautican v Dumont*, 2020 PESC 15 at [paras 16-18](#) [Tab 12].

³⁴ *Baldwin Valley Investors Inc., Re*, [1994 CarswellOnt 254](#) [Tab 13].

³⁵ *Re Colossus Minerals*, 2014 ONSC 514 at [para 39](#) [Tab 14].

- (d) communicating with creditors and other stakeholders regarding the Proposal Proceedings;
 - (e) entering into discussions with parties to obtain additional interim financing;
 - (f) communicating with the AER regarding the status of its licensed Properties, its operations and the Proposal Proceedings;
 - (g) communicating with customers regarding the Proposal Proceedings;
 - (h) settling the issue of costs with Trafigura regarding the decision of Justice Hollins dated December 26, 2024;
 - (i) continuing to review its operating expenses, pursue the collection of accounts receivable and take other steps to ensure Cleo remains financially viable during these Proposal Proceedings; and
 - (j) preparing this Application.³⁶
46. Cleo's creditors will not be prejudiced by the extension of the Filing Period. Rather, the extension is critical to permitting Cleo to carry out the SSP.³⁷
47. The revised cash flow projections prepared by the Proposal Trustee with the assistance of Cleo for the period beginning with the week of March 14, 2025 and ending with the week of May 9, 2025 (the "**Revised Cash Flow Projections**") confirm that Cleo will have sufficient working capital to continue the Proposal Proceedings and the SSP until the week of May 9, 2025.³⁸
48. The Proposal Trustee is supportive of the extension of the Filing Period to May 9, 2025.³⁹
- C. Sealing Order**
49. Cleo requests a sealing order with respect to the Confidential Supplement, until the filing by the Proposal Trustee of a certificate confirming that no further sales under the SSP are pending or further order of the court.
50. The notice to the media that Cleo was seeking the Sealing Order was given on March 17, 2025.

³⁶ March 17 Affidavit, para 28.

³⁷ March 17 Affidavit, para 33.

³⁸ March 17 Affidavit, para 34.

³⁹ March 17 Affidavit, para 35.

51. Part 6 of Division 4 of the *Alberta Rules of Court* and in particular Rules 6.28 to 6.30, provide that the Court may order that a document filed in a civil proceeding is confidential, may sealed and not form part of the public record of the proceedings.
52. The test to obtain a sealing order was set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*⁴⁰ and revised by the Supreme Court in *Sherman Estate v Donovan*:

“The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments.”⁴¹

53. The Confidential Supplement attaches unredacted copies of the APAs, a copy of the Confidential Sales Agent Report (that contains the Sale Agent’s analysis of the Phase I LOIs and attaches copies thereof) and provides an analysis of the economic terms of the Transactions and other other confidential information relating to Cleo and the SSP.
54. The disclosure to the public of the Confidential Supplement or the Confidential Sale Agent Report would be highly prejudicial to the SSP and Cleo’s ability to maximize the value of its Properties. The reasons, which are outlined in the March 17 Affidavit, include that:

⁴⁰ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, at [para 53](#) [Tab 15].

⁴¹ *Sherman Estate v Donovan*, 2021 SCC 25, at [para 38](#) [Tab 16].

- (a) the economic terms of the Transactions are confidential and extremely sensitive because their disclosure would hamper the ability of the Sale Agent, Cleo and the Proposal Trustee to re-market the Properties subject to the APAs if they fail to close;
 - (b) Cleo, the Sale Agent and the Proposal Trustee are still attempting to sell the majority of the Properties, which are not within the scope of the Transactions, and the disclosure of the economic terms of the Transactions, and of the Non-Binding LOIs submitted in respect of those remaining Properties, would hamper their ability to finalize APAs for those Properties with other Qualified Bidders; and
 - (c) the economic terms of the Transactions and proposed by the Bidders were provided on a confidential basis and if disclosed, would undermine the integrity of the sale process and be a “chill” on the willingness of parties to submit further bids.⁴²
55. One of the fundamental purposes of the *BIA* is to achieve the equitable distribution of assets,⁴³ and an important mechanism for achieving an equitable distribution through maximizing the value of a debtor’s estate in sales out of the ordinary course of business under section 65.13 of the *BIA*. Maintaining the confidentiality of the bidding process, and of information on the value of a debtor’s assets, protects the integrity of a sale process.
56. It is submitted that the integrity of a sale process contemplated by section 65.13 is an important public interest which is put at risk by the Confidential Supplement being on the public record. Further, the only reasonable way to protect that interest is pursuant to the Sealing Order, which for a limited period of time keeps the Confidential Supplement sealed. Once the Proposal Trustee files a certificate stating that all sales under the SSP have been completed and the SSP has been terminated, or a further Order of this Honourable Court is made, the Confidential Supplement will no longer be sealed. Hence, the limit on the open court principle posed by the Sealing Order is limited in duration.
57. There are no reasonable alternative measures that would protect these sensitive commercial interests of Cleo and its stakeholders, and yet still permit the Confidential Supplement to be available to this Honourable Court for its review in connection with the Application for the SAVOs.

⁴² March 17 Affidavit, paras 38(a)-38(c).

⁴³ *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, at [para 67](#) [Tab 17]; *Alberta (Attorney General) v Moloney*, 2015 SCC 51, at [para 33](#) [Tab 18].

Further, during insolvency proceedings, similar limits on sensitive economic data is typically subject to time limited sealing orders while sale processes play out.

58. Because of the importance of the SSP to these Proposal Proceedings, Cleo submits that the salutary effects of the Sealing Order outweigh any negative the temporary limits on any public access to that information pursuant to the open court principle.

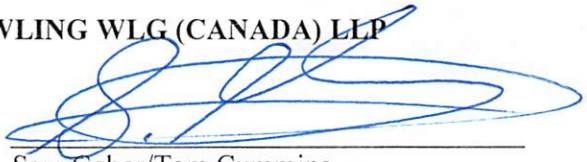
PART 4 CONCLUSION AND RELIEF SOUGHT

59. For the reasons above, Cleo requests the Orders sought be granted as they are fair, necessary and reasonable in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of March, 2025.

GOWLING WLG (CANADA) LLP

Per:



Sam Gabor/Tom Cumming
Counsel for Cleo Energy Corp.

TABLE OF AUTHORITIES

Tab	Authority
1.	<u>Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA)</u>
2.	<u>Bankruptcy and Insolvency Act, RSC 1985, c B-3</u>
3.	<u>Re Komtech Inc., 2011 ONSC 3230</u>
4.	<u>Harte Gold Corp. (Re), 2022 ONSC 653</u>
5.	<u>Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al, 2022 ONSC 6354</u>
6.	<u>1705221 Alberta Ltd v Three M Mortgages Inc, 2021 ABCA 144</u>
7.	<u>Pricewaterhousecoopers Inc. v 1905393 Alberta Ltd., 2019 ABCA 433</u>
8.	<u>Re Bloom Lake, 2015 QCCS 1920</u>
9.	<u>Re Heritage Flooring Ltd., 2004 NBQB 168</u>
10.	<u>Re Scotian Distribution Services Limited, 2020 NSSC 131</u>
11.	<u>Re T & C Steel Ltd, 2022 SKKB 236</u>
12.	<u>Nautican v Dumont, 2020 PESC 15</u>
13.	<u>Baldwin Valley Investors Inc., Re, 1994 CarswellOnt 254</u>
14.	<u>Re Colossus Minerals, 2014 ONSC 514</u>
15.	<u>Sierra Club of Canada v Cafnada (Minister of Finance), 2002 SCC 41</u>
16.	<u>Sherman Estate v Donovan, 2021 SCC 25</u>
17.	<u>Orphan Well Association v Grant Thornton Ltd, 2019 SCC 5</u>
18.	<u>Alberta (Attorney General) v Moloney, 2015 SCC 51</u>