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COURT FILE NUMBER B301-163430

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
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INFORMATION OF PARTY
FILING THIS DOCUMENT

GOWLING WLG (CANADA) LLP

Suite 1600, 421 – 7th Avenue SW

Calgary, AB T2P 4K9

Telephone: 403-298-1946 / 403-298-1938

Fax: 403-263-9193

Email: sam.gabor@gowlingwlg.com /
tom.cumming@gowlingwlg.com

File No.: G10010664

Attention: Sam Gabor/ Tom Cumming

**APPLICATION BEFORE THE HONOURABLE JUSTICE ARMSTRONG
APRIL 30, 2025 AT 10:00 AM ON THE CALGARY COMMERCIAL LIST**

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PART I. 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. Pursuant to an Order of the Honourable Justice Lema pronounced on January 6, 2025 (the "**January 6 Order**"), the time within which Cleo was required to file a proposal was extended to February 21, 2025. Pursuant to a second Order of the Honourable Justice Lema pronounced on February 19, 2025 (the "**February 19 Order**"), that time period was extended to April 4, 2025. Pursuant to a third Order of the Honourable Justice Bourque pronounced on April 1, 2025 (the "**April 1 Order**"), that time period was extended to May 9, 2025.
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 May 9, 2025, by an additional 30 days to end on June 8, 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 "Sealing Order") sealing the confidential appendix (the "**Confidential Appendix**") to the fifth report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as proposal trustee of Cleo (in such capacity, the "**Proposal Trustee**", and such report, the "**Fifth Report**"); and
 - (c) such other relief as this Honourable Court deems appropriate.

5. This Application is supported by an Affidavit sworn April 22, 2025 by Chris Lewis, the sole Director, Executive Chairman, and Chief Executive Officer of Cleo (the “**April 22 Affidavit**”). The further facts with respect to the Application are more fully set out in, and this Brief will rely upon:

- (a) the April 22 Affidavit;
- (b) the Fourth Report; and
- (c) the Confidential Appendix.

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 April 22 Affidavit.

A. Background to the Application

7. 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 (the “**Properties**”) 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 “**Sales Agent**”).
8. Prior to the April 1 Order, the Proposal Trustee sent an email to remaining Qualified Bidders within the SSP extending the Binding Bid Submission Date to March 27, 2025. Cleo and the Sale Agent have since received several offers from Qualified Bidders and are negotiating with Qualified Bidders. Cleo requires an extension of time until June 8, 2025 in order to negotiate one or more binding transactions, obtain court approval and close one or more transactions prior to June 8, 2025.¹
9. Cleo further requires the extension of time to discuss and further work through the SSP with the AER, which Cleo and the Proposal Trustee are having ongoing discussions with regarding its assets and deemed liabilities.²

¹ Affidavit of Chris Lewis, sworn April 22, 2025 (the “**April 22 Affidavit**”), para. 16.

² *Ibid*, para. 17.

PART II. ISSUES

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

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

PART III. LAW AND ARGUMENT

A. Extension of the Filing Period is Appropriate

- 11. 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; it was further extended from February 19, 2025 to April 4, 2025 pursuant to the February 19 Order; it was further extended from April 4, 2025 to May 9, 2025 pursuant to the April 1 Order.
- 12. If Cleo fails to file a proposal by May 9, 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.
- 13. The six (6) month time period for Cleo to file a proposal to its creditors ends on June 8, 2025, and thereafter on June 9, 2025, Cleo shall be deemed bankrupt in accordance with *the Bankruptcy and Insolvency Act*.³
- 14. 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;

³ *Ibid.*

(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.⁴

15. 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,⁵ although the evidentiary threshold to meet the onus is low.⁶ 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.⁷ 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.⁸
16. Cleo and the Sales Agent have received several offers from qualified Phase 2 bidders under the SSP (“**Qualified Bidders**”) and are negotiating binding transactions with Qualified Bidders. Cleo requires an extension of time until June 8, 2025 in order to negotiate one or more binding transactions, obtain court approval, and close one or more transactions prior to June 8, 2025.⁹
17. 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*.¹⁰
18. Cleo is seeking an extension of the Filing Period to June 8, 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 of proceedings (the “**Stay Period**”); and

⁴ *BIA* [section 50.4\(9\)](#) [Tab 1].

⁵ *Re Heritage Flooring Ltd.*, 2004 NBQB 168, [paras 31, 32](#) and [37](#) [Tab 2].

⁶ *Re Scotian Distribution Services Limited*, 2020 NSSC 131, [para 24](#) [Tab 3]; *Re T & C Steel Ltd*, 2022 SKKB 236, [para 20](#) [Tab 4].

⁷ *Nautican v Dumont*, 2020 PESC 15, [paras 16-18](#) [Tab 5].

⁸ *Baldwin Valley Investors Inc., Re*, [1994 CarswellOnt 254](#) [Tab 6].

⁹ April 22 Affidavit, para. 16.

¹⁰ *Re Colossus Minerals*, 2014 ONSC 514, [para 39](#) [Tab 7].

- (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.
19. 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);
 - (d) communicating with creditors and other stakeholders regarding the Proposal Proceedings;
 - (e) closing the previously court approved transactions with IIH, Nuova Strada and Surge;
 - (f) communicating with the AER regarding the status of its licensed Properties, its operations, the Proposal Proceedings and the SSP;
 - (g) communicating with customers regarding the Proposal Proceedings;
 - (h) through counsel, working with Transalta regarding revised prepayment arrangements for power;
 - (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.¹¹

¹¹ April 22 Affidavit, para. 19.

20. 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.¹²
21. The revised cash flow projections prepared by the Proposal Trustee with the assistance of Cleo for the period beginning with the week of April 19, 2025 and ending with the week of June 8, 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 June 8, 2025.¹³
22. The Proposal Trustee is supportive of the extension of the Filing Period to June 8, 2025.¹⁴

B. Sealing Order

23. Cleo requests a sealing order with respect to the Confidential Appendix, 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.
24. The notice to the media that Cleo was seeking the Sealing Order was given on April 22, 2025.
25. 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.
26. 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)*¹⁵ 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;

¹² April 22 Affidavit, para 25.

¹³ April 22 Affidavit, para 34.

¹⁴ April 22 Affidavit, para 35.

¹⁵ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [para 53](#) [Tab 8].

- (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.”¹⁶

27. The Confidential Appendix attaches a copy of the Confidential Sales Agent Report that contains the Sale Agent’s analysis of the Phase 2 Qualified Bids. It is being submitted to the Court so that the Court has appropriate oversight over the status of the SSP.
28. The disclosure to the public of the Confidential Appendix 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 April 22 Affidavit, include that:
 - (a) Cleo, the Sale Agent and the Proposal Trustee are still attempting to sell the majority of the Properties, and the disclosure of Qualified Bids would hamper their ability to finalize APAs for those Properties with Qualified Bidders;
 - (b) the economic terms of the Qualified Bids 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;
 - (c) the period during which the proposed Sealing Order would operate is limited to the period required to complete the sales of any Properties that Cleo is able to sell pursuant to the SSP.¹⁷
29. One of the fundamental purposes of the *BIA* is to achieve the equitable distribution of assets,¹⁸ 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.

¹⁶ *Sherman Estate v Donovan*, 2021 SCC 25, [para 38](#) [Tab 9].

¹⁷ April 22 Affidavit, para 29.

¹⁸ *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5, [para 67](#) [Tab 10]; *Alberta (Attorney General) v Moloney*, 2015 SCC 51, [para 33](#) [Tab 11].

30. 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 Appendix 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 Appendix 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 Appendix will no longer be sealed. Hence, the limit on the open court principle posed by the Sealing Order is limited in duration.
31. There are no reasonable alternative measures that would protect these sensitive commercial interests of Cleo and its stakeholders, and yet still permit the Confidential Appendix to be available to this Honourable Court for its review in connection with Cleo's Application. Further, during insolvency proceedings, similar limits on sensitive economic data is typically subject to time limited sealing orders while sale processes play out.
32. 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 IV. CONCLUSION AND RELIEF SOUGHT

33. 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 22nd^h day of April, 2025.

GOWLING WLG (CANADA) LLP

Per: _____


Sam Gabor/Tom Cumming
Counsel for Cleo Energy Corp.

TABLE OF AUTHORITIES

Tab	Authority
1.	<u><i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3</u>
2.	<u><i>Re Heritage Flooring Ltd.</i>, 2004 NBQB 168</u>
3.	<u><i>Re Scotian Distribution Services Limited</i>, 2020 NSSC 131</u>
4.	<u><i>Re T & C Steel Ltd</i>, 2022 SKKB 236</u>
5.	<u><i>Nautican v Dumont</i>, 2020 PESC 15</u>
6.	<u><i>Baldwin Valley Investors Inc., Re</i>, 1994 CarswellOnt 254</u>
7.	<u><i>Re Colossus Minerals</i>, 2014 ONSC 514</u>
8.	<u><i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41</u>
9.	<u><i>Sherman Estate v Donovan</i>, 2021 SCC 25</u>
10.	<u><i>Orphan Well Association v Grant Thornton Ltd</i>, 2019 SCC 5</u>
11.	<u><i>Alberta (Attorney General) v Moloney</i>, 2015 SCC 51</u>