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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.S. AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF
CLEO ENERGY CORP.



APPLICANT

UCAPITAL – ULOAN SOLUTIONS INC.

RESPONDENT

CLEO ENERGY CORP.

DOCUMENT

BRIEF OF LAW

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

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I. INTRODUCTION

1. This Brief of Law is filed in support of the Application of Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the undertakings, properties and assets of CLEO Energy Corp. (“**CLEO**” or the “**Company**”) for Orders which provide the following relief, among other things:
 - (a) approving a share purchase agreement between the Receiver and 2698902 Alberta Corp. (“**269**” or the “**Purchaser**”) dated October 6, 2025 (the “**SPA**”), for the sale by the Receiver and the purchase by the Purchaser of all of the issued and outstanding shares of CLEO effective as of the Closing Date (as defined in the SPA), and approving the reverse vesting transaction contemplated in the SPA (the “**Transaction**”);
 - (b) approving the Releases;
 - (c) approving and ratifying the actions, activities and conduct of the Receiver, as set out in the Second Report of the Receiver dated November 5, 2025 (the “**Second Report**”); and
 - (d) approving the fees and disbursements of the Receiver and its legal counsel, Miller Thomson LLP (“**Miller Thomson**”), as set out in the Second Report.

II. FACTS

2. The factual background is set out in the Second Report, the First Report of the Receiver dated October 6, 2025 (the “**First Report**”), and the Confidential Appendices to the First Report (the “**Confidential Appendices**”).
3. Unless otherwise indicated, capitalized terms used herein have the meanings ascribed to them in the Second Report.

III. ISSUES

4. The issues to be addressed on this Application are whether:
 - (a) the SPA and the Transaction ought to be approved, and the requested reverse vesting order be granted;
 - (b) the Releases should be granted;

- (c) the Receiver's actions and activities ought to be approved; and
- (d) the fees and disbursements of the Receiver and its legal counsel, Miller Thomson, ought to be approved.

IV. LAW AND ARGUMENT

A. The SPA and the Transaction Should be Approved, and the RVO Granted

Principles Governing Receivership Sales

- 5. Section 243(1)(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") and the Receivership Order at paragraph 3 authorize the Receiver to market and sell the Company's property outside the ordinary course of business, subject to the approval of the Court.¹
- 6. The Court's discretion to approve or decline a proposed transaction in a receivership is guided by the *Soundair* principles, being:
 - (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 are obtained; and
 - (d) whether there has been unfairness in the working out of the process.²
- 7. The *Soundair* principles should be applied flexibly, in a manner that gives deference to a receiver's commercial expertise in a given factual circumstance, including such things as the prevailing economic environment, and the risks or rewards associated with an extended or additional sales process.³

¹ [Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended, s 243\(1\)\(c\)](#) [TAB 1]; Receivership Order pronounced June 2, 2025 at para 3 [TAB 2].

² *Royal Bank v Soundair Corp*, [1991 CanLII 2727 \(ONCA\)](#), [1991] OJ No 1137 [*Soundair*] at para 16 [TAB 3].

³ *Sanjel Corp, Re*, [2016 ABQB 257](#) at para 112 [TAB 4].

8. Courts should exercise “extreme caution” before intervening in a sale transaction supported by a receiver.⁴ It is to be assumed that a receiver’s course of action and recommendation of a transaction are appropriate unless the contrary is clearly shown.⁵
9. The Receiver has determined that the SPA and Transaction are commercially reasonable and fair, and recommends their approval.⁶
10. This is the second time the Receiver is bringing this Transaction before this Court for approval. In the Court’s Reasons for Decision filed October 28, 2025 (“**Reasons for Decision**”), the Court dismissed the Receiver’s application for approval of the Transaction, without prejudice to the Receiver’s ability to reapply for approval of the Transaction with additional supporting materials.⁷ The additional support for the Transaction that is required by the Court pursuant to the Reasons for Decision are set-out extensively in the Second Report and briefly summarized herein.
11. The SPA and the proposed Transaction satisfy the *Soundair* principles, given that:
 - (a) The Receiver made sufficient efforts to obtain the best price for the Company’s shares, and did not act improvidently.

The SPA and Transaction arose from an extensive marketing process conducted by the Company and its sale advisor in the NOI Proceedings, followed by the Remarketing Process conducted by the Receiver for the assets not sold in the NOI Proceedings.⁸ The Receiver has determined that the SPA represents the highest and best offer for the assets being sold.⁹

The Court concluded the Transaction is the highest and best bid in the Reasons for Decision.¹⁰

⁴ *Soundair* at [paras 21](#) and [46](#).

⁵ *Soundair* at [para 14](#).

⁶ Second Report of Alvarez & Marsal Canada Inc., in its Capacity as Receiver and Manager of Cleo Energy Corp., dated November 5, 2025 [Second Report] at para 29.

⁷ Second Report at para 7 and Appendix A.

⁸ Second Report at para 29.

⁹ Second Report at para 29

¹⁰ *Cleo Energy Cor (Re)*, [2025 ABKB 621](#) [Reasons for Decision] at [para 27](#) [TAB 5].

- (b) The interests of all parties weigh in favour of granting the SPA and proposed Transaction.

The Orphan Well Association (the “**OWA**”) will benefit from the proposed Transaction. All of the Company’s environmental liabilities and abandonment and reclamation obligations will be retained by the Purchaser such that they will not transfer to the OWA. This would not be the case in a bankruptcy or if the Receiver proceeded with a traditional asset purchase transaction.¹¹

The Alberta Energy Regulator (“**AER**”) has expressed that it does not object to the Transaction as long as the Purchaser fulfills certain obligations to the AER, and the Purchaser has expressed that it is prepared to fulfill these obligations;¹²

- (c) The Receiver obtained offers for the assets subject to the Transaction in a fair process, and acted with integrity and efficacy.

The Remarketing Process ran from July 28, 2025 to August 29, 2025, during which time the Receiver received eight non-binding bids from the Bidders.¹³ The Receiver engaged with each of the Bidders regarding their additional due diligence requests, and ultimately selected the Purchaser as the successful Bidder.

The Receiver deemed the marketing process to have been “extensive”.¹⁴ No person has suggested that the initial marketing process, or the Remarketing Process, were not conducted fairly and with integrity; and

- (d) No person has suggested that the SPA or the Transaction were negotiated unfairly. The SPA was negotiated between the Receiver and the Purchaser at arm’s length, and in good faith.¹⁵ No stakeholders are prejudiced by the Transaction, which benefits creditors and other stakeholders.

¹¹ Second Report at paras 29, 31.

¹² Second Report at para 30.

¹³ First Report of Alvarez & Marsal Canada Inc., in its Capacity as Receiver and Manager of Cleo Energy Corp., dated October 6, 2025 [First Report] at para 27.

¹⁴ Second Report at para 29.

¹⁵ Second Report at para 29.

Principles Governing Reverse Vesting Transactions

12. As this Court notes in the Reasons for Decision, RVOs are no longer extraordinary, but are a common way for insolvency and restructuring matters to be resolved.¹⁶ This Court has jurisdiction to approve RVO transactions pursuant to sections 183 and 243 of the BIA.¹⁷
13. The question to be addressed by a court generally when determining whether to approve an RVO transaction is whether the relief sought is appropriate, and whether stakeholders are being treated fairly and reasonably in light of the surrounding circumstances.¹⁸
14. While RVOs should not be the “norm”, courts have found RVOs to be necessary and appropriate in circumstances where the debtor operates in a heavily regulated industry, and the licensing and permitting which are necessary to the debtor’s business would be difficult to transfer or assign.¹⁹
15. Here, the Company operates in the heavily regulated oil and gas industry. The licenses and permits necessary to operate the Company’s business would be difficult to transfer or assign, and would add time, risk and expense to the Transaction if they were required to be transferred to the Purchaser. The Revised RVO structure eliminates the need to seek AER approval for approximately 1,100 licence transfers, a process that, based on the Company’s experience and the Receiver’s experience in insolvency proceedings, could otherwise take between one to four months to complete. Requiring such approvals would introduce regulatory risk, delay closing, increase transaction costs, and deplete the remaining cash available for distribution to creditors.²⁰
16. T factors from *Harte Gold* have been adopted widely, including by this Court, for analyzing RVOs.²¹ These factors are as follows:²²
 - (a) whether the RVO is necessary in the circumstances;

¹⁶ Reasons for Decision at para 10.

¹⁷ *Peakhill Capital Inc v Southview Gardens Limited Partnership*, [2023 BCSC 1476](#) at [paras 21 – 25](#) [*Peakhill*] [TAB 6].

¹⁸ *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at [para 29](#) [*Harte Gold*] [TAB 7].

¹⁹ *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) at [paras 33 – 34](#) [TAB 8].

²⁰ Second Report at para 42.

²¹ Reasons for Decision at para 10.

²² *Harte Gold* at [para 38](#).

- (b) whether the RVO structure produces an economic result at least as favourable as any other alternative;
 - (c) whether the general stakeholders are not worse off under the RVO structure than they would have been under any other viable alternative; and
 - (d) whether the consideration being paid for the debtor's business reflects the importance and value of the intangible assets being preserved under the RVO structure.
17. While *Harte Gold* proceeded under the *Companies' Creditors Arrangement Act* (Canada), courts have applied its principles in the context of RVOs in receivership proceedings.²³ This Court has granted similar RVO relief for the sale of other oil and gas companies in receivership.²⁴
18. The Receiver has addressed each factor of the *Harte Gold* test in detail at paragraphs 47 – 55 of the First Report and, to address the Reasons for Decision, the Receiver has extensively supplemented its views on the *Harte Gold* factors at paragraphs 40 – 56 of the Second Report.
19. In brief, the Transaction and the RVO sought satisfy the *Harte Gold* test as: (i) there is no other viable alternative transaction available, and it is therefore necessary, (ii) it represents the highest and best offer for the assets being sold, and (iii) it provides, by far, the most favourable economic result for CLEO's stakeholders, including the OWA.²⁵
20. The Receiver has consulted with key stakeholders in this proceeding who were in attendance and made submissions at the October 17th Application, including counsel to Alberta Energy, counsel to the AER, counsel to the OWA, the Department of Justice Canada (the "**DoJ**"), and counsel to various municipalities.
21. Although the DoJ has brought a cross-application for what appears to be a distribution order, discussed in Part E below, the Receiver is not aware of parties, including the DoJ, objecting to the SPA, the Transaction, or the proposed from of RVO.

²³ *Peakhill* paras 21 – 25.

²⁴ See for example: the receivership proceedings of Robus Resources Inc. <https://www.alvarezandmarsal.com/content/robus-court-orders> and

²⁵ Second Report at paras 40-56.

B. The Releases Sought in the RVO Should be Granted

22. Courts apply the factors set out in *Lydian International Limited (Re)* when determining whether to approve releases contemplated in RVOs.²⁶ These factors are as follows:
- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
 - (b) whether the claims to be released were rationally connected to the purpose of the transaction and necessary for it;
 - (c) whether the transaction could succeed without the releases;
 - (d) whether the parties being released were contributing to the transaction; and
 - (e) whether the release benefitted the debtors and the creditors generally.²⁷
23. The proposed RVO contemplates at paragraph 17 that after the Closing Time (i) Chris Lewis in his capacity as a former director of the Company; (ii) the Receiver and its legal counsel, Miller Thomson; and (iii) Chris Lewis in his capacity as director of ResidualCo (collectively, the “**Released Parties**”) shall be released from, among other things, any and all present and future claims, liabilities, indebtedness, demands, actions, causes of action, and obligations of any kind based in whole or in part on any act or omissions, transaction, dealing or other occurrence existing or taking place prior to the Closing Time *in connection with the Transaction or contemplated pursuant to the terms of the proposed RVO* (collectively, the “**Released Claims**”).
24. The proposed Release in the RVO is limited to claims in connection with the Transaction and specifies that the Released Parties shall not be released from any claim or liability that is deemed to have constituted actual fraud, gross negligence, or wilful misconduct committed by any Released Party.
25. The Released Claims should be granted as against the Released Parties, as they meet the *Lydian* factors.
26. The Released Parties are all necessary and integral to the restructuring of the Company and the Transaction. The Receiver has stated that each of the Released Parties have

²⁶ *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at [para 54](#) [TAB 9].

²⁷ *Ibid.*

made critical contributions to the Receivership Proceedings, the negotiation of the SPA, and the implementation of the Remarketing Process, and that the services and expertise of the Released Parties were and are necessary for the ultimate success of the Transaction.²⁸

27. The Released Claims are rationally connected to the purpose of the Transaction.²⁹
28. The proposed releases benefit the Company and the creditors generally, because the Released Parties may not have advanced the Transaction without the understanding that they would be released.³⁰ The Transaction will advance, preserve and protect the business operations of the Company and will provide a greater recovery to stakeholders than would otherwise be available to them.³¹
29. The Releases were fully disclosed to the service list at both the October 17th Application and this application. The Receiver is not aware of any party that objects to the Releases or their limited scope.³²

C. The Receiver's Actions and Activities Should be Approved

30. This Court has jurisdiction to review and approve the activities of a Court-appointed receiver.³³
31. A receiver's conduct is to be assessed objectively, and a Court should approve the activities set out in a receiver's report if the activities are reasonable, prudent, and not arbitrary.³⁴ Further, where a receiver has fulfilled the purpose of obtaining a high value for the debtor's assets, the court should find that the receiver has acted properly and within its mandate.³⁵
32. The Receiver's activities since the First Report, as set out in the Second Report, relate to responding to the matters raised by Alberta Energy and the DoJ at the October 17th

²⁸ Second Report at para 61.

²⁹ Second Report at para 61.

³⁰ Second Report at para 61.

³¹ Second Report at para 61.

³² Second Report at para 61.

³³ *Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd*, [2014 BCSC 1855](#) at [para 54](#) [TAB 10].

³⁴ *Ibid.*

³⁵ *Re Regal Constellation Hotel Ltd*, [\[2004\] OJ No 365, 128 ACWS \(3d\) 646 \(ONCJ\)](#) at para 11 [TAB 11].

Application, and consulting and negotiating with key stakeholders surrounding the Transaction.

33. The Receiver's actions and activities are reasonable and prudent, and are consistent with its mandate. Further, should the Transaction be approved by this Court, the Receiver has obtained a high value for the assets subject to the SPA.
34. The Receiver's actions and activities should be approved together with the Receiver's receipts and disbursements, and those of its counsel, discussed below.

D. The Receiver and its Counsel's Fees and Disbursements Should be Approved

35. In *Bank of Nova Scotia v Diemer*,³⁶ the Ontario Court of Appeal applied the non-exhaustive factors originally set out in *Belyea v Federal Business Development Bank*³⁷ to be considered to determine whether a receiver's fees are fair and reasonable:
 - (a) the nature and extent of the value of the assets handled;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the company, its officers or employees;
 - (d) the time spent;
 - (e) the receiver's knowledge, experience and skill;
 - (f) the diligence and thoroughness displayed by the receiver;
 - (g) the responsibilities assumed;
 - (h) the results of the receiver's efforts; and
 - (i) the cost of comparable services.
36. The Receiver's fees, and those of its counsel, were incurred in connection with the Receiver's activities described in the Second Report. These activities required diligence, thoroughness, significant time expenditure, and for the Receiver to be heavily involved in obtaining stakeholder support for the Transaction.
37. The Receiver's fees, and the fees of its counsel, are fair and reasonable given the substantive tasks required to be performed in connection with the SPA, Transaction and

³⁶ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at [para 33](#) [TAB 12].

³⁷ *Belyea v Federal Business Development Bank*, [\[1983\] NBJ No. 41 \(CA\)](#) at para 9 [TAB 13].

RVO, and the continued operations of the Company and closing requirements of other court approved sales.

E. The DoJ Application

38. Subsequent to the Receiver filing the application for approval of the SPA and Transaction, the DoJ on behalf of the Canada Revenue Agency, filed its own application (the “**DoJ Application**”).
39. The DoJ Application was filed without notice to the Receiver. The DoJ Application appears to be a distribution application. Notably, the Receiver understands the DoJ is not opposing the Transaction, the RVO or any of the relief sought by the Receiver.
40. The Receiver has previously negotiated and incorporated into the RVO additional language at paragraph 10(a), which language clarifies that all proceeds of sale of CLEO from previous transactions and the Transaction will transfer to ResidualCo subject to the rights, priorities and claims, including deemed trust claims, that existed as against the Company. This language was added to the RVO at the request of the DoJ to preserve any deemed trust claims the Canada Revenue Agency may have in any sale proceeds from the realization of CLEO’s assets. The DoJ Application should therefore not impact the Receiver’s application for approval of the Transaction or the RVO.³⁸
41. With respect to the DoJ Application, the Receiver notes the following:
 - (a) The Receiver has not reviewed the claims of the Canada Revenue Agency or the amounts allegedly owing to it by CLEO, nor has the Receiver completed a security review or priority opinion with respect to the validity and enforceability of any alleged claim the Canada Revenue Agency may have against CLEO pursuant to a deemed trust or otherwise;³⁹
 - (b) In filing the DoJ Application, the DoJ and the Canada Revenue Agency have not sought to lift the stay of proceedings in place over the property of CLEO, including the proceeds of sale of its assets, pursuant to paragraphs 8 and 9 of the Receivership Order;⁴⁰

³⁸ Supplement to the Second Report dated November 12, 2025 [Supplemental Report] at paras 17-20.

³⁹ Supplemental Report at para 12.

⁴⁰ Supplemental Report at para 10.

- (c) The payments made by the Receiver, which the DoJ Application defines as “Priority Payments” from proceeds of sale of the assets of CLEO, was done pursuant to the express terms of the Approval and Vesting Orders of this Court, which Orders were granted on notice to, and in the presence of, the DoJ;⁴¹ and
- (d) The Receiver or its counsel have consulted with other creditors and their counsel, which includes other parties with statutory priority claims, and the Receiver understands that these other Crown stakeholders are not supportive of the DoJ Application.⁴²

42. For the reasons set out in paragraph 41 above, the Receiver cannot not support the DoJ Application. The Receiver is of the view the DoJ Application is stayed by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF NOVEMBER, 2025.

MILLER THOMSON LLP

Per: _____



James W. Reid
Counsel for the Applicant, Alvarez
& Marsal Canada Inc., in its
capacity as Receiver of CLEO
Energy Corp. and not in its
personal or corporate capacity

⁴¹ Supplemental Report at para 23.

⁴² Supplemental Report at para 13, Appendix A.

TABLE OF AUTHORITIES

Tab No.	Authority
1.	<i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3, as amended
2.	Receivership Order pronounced June 2, 2025
3.	<i>Royal Bank v Soundair Corp</i>, 1991 CanLII 2727 (ONCA), [1991] OJ No 1137
4.	<i>Sanjel Corp, Re</i>, 2016 ABQB 257
5.	<i>Peakhill Capital Inc v Southview Gardens Limited Partnership</i>, 2023 BCSC 1476
6.	<i>Cleo Energy Cor (Re)</i>, 2025 ABKB 621
7.	<i>Harte Gold Corp (Re)</i>, 2022 ONSC 653
8.	<i>Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al</i>, 2022 ONSC 6354
9.	<i>Lydian International Limited (Re)</i>, 2020 ONSC 4006
10.	<i>Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd</i>, 2014 BCSC 1855
11.	<i>Re Regal Constellation Hotel Ltd</i>, [2004] OJ No 365, 128 ACWS (3d) 646 (ONCJ)
12.	<i>Bank of Nova Scotia v Diemer</i>, 2014 ONCA 851
13.	<i>Belyea v Federal Business Development Bank</i>, [1983] NBJ No. 41 (CA)