

Action No.: B201-679073  
E-File No.: CVQ21GREENFIREHANG  
Appeal No.: 2101-0002AC

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF 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 GREENFIRE HANGINGSTONE OPERATING CORPORATION

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF GREENFIRE OIL AND GAS LTD

---

P R O C E E D I N G S

---

Calgary, Alberta

December 14, 2020

December 17, 2020

Transcript Management Services, Calgary  
1901-N, 601 - 5 Street SW  
Calgary, Alberta T2P 5P7

Phone: (403) 297-7392 Fax: (403) 297-7034

This transcript may be subject to a publication ban or other restriction on use, prohibiting the publication or disclosure of the transcript or certain information in the transcript such as the identity of a party, witness, or victim. Persons who order or use transcripts are responsible to know and comply with all publication bans and restrictions. Misuse of the contents of a transcript may result in civil or criminal liability.

## TABLE OF CONTENTS

Description	Page
December 14, 2020                      Afternoon Session	1
Discussion	1
Submissions by Mr. LeGeyt (Adjournment)	6
Submissions by Mr. Zahara (Adjournment)	6
Submissions by Mr. Nishimura (Adjournment)	8
Submissions by Mr. LeGeyt (Sale Approval)	8
Submissions by Mr. Algar (Sale Approval)	20
Submissions by Ms. Wood (Sale Approval)	23
Submissions by Mr. Kashuba (Sale Approval)	25
Submissions by Ms. Fellowes (Sale Approval)	26
Submissions by Mr. Maerov (Sale Approval)	27
Submissions by Mr. Nishimura (Sale Approval)	30
Submissions by Mr. Reid (Sale Approval)	43
Submissions by Mr. Zahara (Sale Approval)	43
Submissions by Ms. Meyer (Sale Approval)	52
Submissions by Mr. Plester (Sale Approval)	60
Submissions by Ms. Lavelle (Sale Approval)	60
Submissions by Mr. Blackett (Sale Approval)	61
Submissions by Mr. Kashuba (Sale Approval) (Reply)	62
Submissions by Mr. LeGeyt (Sale Approval) (Reply)	63
Submissions by Mr. Algar (Sale Approval) (Reply)	65
Submissions by Mr. LeGeyt (Sale Approval) (Reply)	67
Submissions by Mr. Algar (Sale Approval) (Reply)	69
Submissions by Ms. Wood (Sale Approval) (Reply)	70
Submissions by Mr. LeGeyt (Sale Approval) (Reply)	70
Submissions by Mr. Algar (Sale Approval) (Reply)	71
Submissions by Mr. Maerov (Sale Approval) (Reply)	71
Submissions by Ms. Fellowes (Sale Approval) (Reply)	73
Submissions by Mr. Nishimura (Sale Approval) (Reply)	73
Submissions by Mr. LeGeyt (Sale Approval) (Reply)	74
Submissions by Ms. Meyer (Sale Approval) (Reply)	75
Submissions by Mr. Algar (Sale Approval) (Reply)	75
Submissions by Mr. LeGeyt (Stay Extension)	77
Decision (Stay Extension)	77
Certificate of Record	79
Certificate of Transcript	80

## TABLE OF CONTENTS

Description	Page
December 17, 2020                      Afternoon Session	81
Discussion	81
Decision	125
Certificate of Record	138
Certificate of Transcript	139

Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Calgary, Alberta

December 14, 2020

Afternoon Session

The Honourable

Court of Queen's Bench of Alberta

Mr. Justice Nixon (remote appearance)

D. LeGeyt (remote appearance)

For Greenfire Oil and Gas Ltd. and Greenfire  
Hangingstone Operating Corporation

R. Algar (remote appearance)

For Greenfire Oil and Gas Ltd. and Greenfire  
Hangingstone Operating Corporation

N. Wood (remote appearance)

For Greenfire Oil and Gas Ltd. and Greenfire  
Hangingstone Operating Corporation

D.S. Nishimura (remote appearance)

For Taher Shabani-Rab et al

K. Kashuba (remote appearance)

For Greenfire Acquisition Company and  
McIntyre Group

M.E. Lavelle (remote appearance)

For Alberta Energy Regulator

K.L. Fellowes, QC (remote appearance)

For Trafigura Canada LP

A.C. Maerov (remote appearance)

For Alvarez and Marsal Canada Inc.

K. Rylands (remote appearance)

For Alvarez and Marsal Canada Inc.

D. Gibbs (remote appearance)

For Warner Petroleum Corporation and  
Liberator Crude Trading LLP

K.J. Meyer (remote appearance)

For Warner Petroleum Corporation and  
Liberator Crude Trading LLP

J. Reid (remote appearance)

For Summit Partners

R. Zahara (remote appearance)

For Athabasca Workforce Solutions Inc. and  
Excel Oil & Water Hauling Ltd.

G. Plester (remote appearance)

For the Regional Municipality of Wood Buffalo

G.C. Blackett (remote appearance)

For Apex Distribution Inc.

M. Palmer

Court Clerk

## Discussion

THE COURT:

Good afternoon, counsel.

MR. LEGEYT:

Good afternoon, My Lord. David LeGeyt

speaking. Can you hear me all right?

THE COURT:

I can hear you fine, Sir. Just a couple of

preliminary matters before we turn to business. I will just list this as kind of housekeeping

1 for the time being. I am going to hear this in my office just because I have got better  
2 electronics here and I can look at different screens with ease. If there is any communication  
3 problem, let myself or the clerk know. I can always shuffle down to the courtroom quick  
4 enough.

5  
6 Number 2, we are starting at 1 today and I see we are scheduled to go to 4:30. I would just  
7 ask counsel to be mindful of people wanting to take a break. I can sit forever but others  
8 may not be able to and, in particular, madam clerk, I just want to make sure we are being  
9 respectful of that.

10  
11 Third, I have continued to receive materials including in the last hour. While I have  
12 reviewed most everything I will not suggest that I have reviewed all of the materials that I  
13 have received in the last hour or two so just be mindful of that. And I note the adjournment  
14 request and we can speak to that in a minute. Assuming we do go ahead and, again, I am  
15 not -- I have not made any decision in that respect. I want to hear from the parties. I see we  
16 are scheduled for this afternoon and a continuation -- I am assuming it is a continuation for  
17 Thursday afternoon. I would appreciate confirmation of that; if that is the plan, and if this  
18 is effectively a full day hearing that we just split into two in order to accommodate the  
19 parties.

20  
21 That is all I have. Mr. LeGeyt.

22  
23 MR. LEGEYT: Thank you, My Lord, and I'll -- I'll speak to that  
24 final point first. The time we have booked later in the week, Your Lordship is correct. At  
25 the moment there is nothing set for that time and I'm just glancing at my calendar. Yes, for  
26 the record, Thursday the 17th at 2 PM. We had actually booked that about 45 days ago  
27 when the company was first making its first application for extension of the stay. We  
28 booked a date that was about 45 days later thinking that we would come back then. As you  
29 will have noticed from the materials, we did not receive a 45-day extension. We received  
30 a series of shorter extensions.

31  
32 So that date and time is available to us though it will be important to keep in mind that at  
33 the moment Greenfire's stay of proceedings period ends tomorrow. Meaning that unless  
34 the stay is extended for some period of time today, the company will become bankrupt  
35 tomorrow.

36  
37 THE COURT: Noted, sir. That provides enough explanation for  
38 the time being. Thank you, Mr. LeGeyt.

39  
40 Mr. LeGeyt, I can see you are talking but I cannot hear you.  
41

1 MR. LEGEYT: Yes, I was muted and hopefully you can hear  
2 now.

3  
4 THE COURT: I can hear you now, Sir. Thank you.

5  
6 MR. LEGEYT: Yes. So what I was saying was like Your  
7 Lordship, we also have received materials within the last hour or two, and so we don't know  
8 if the adjournment request --

9  
10 THE COURT: Mr. LeGeyt, you have gone faint.

11  
12 MR. LEGEYT: I'll move closer. Is that better, My Lord?

13  
14 THE COURT: Very much so. Thank you.

15  
16 MR. LEGEYT: Okay. That was my fault again.

17  
18 So we do note the adjournment request from Mr. Zahara's clients and we can speak to that.  
19 Perhaps there -- there are a great deal of parties in attendance. I will quickly run through  
20 some introductions for the benefit of the Court and madam clerk.

21  
22 THE COURT: Thank you.

23  
24 MR. LEGEYT: We act on behalf of the two Greenfire entities,  
25 Greenfire Oil and Gas Ltd. which is a parent company, and its wholly owned subsidiary,  
26 Greenfire Hangingstone Operating Corporation. With me today are two of my colleagues,  
27 Mr. Ryan Algar and Ms. Natasha Wood.

28  
29 Also present is Mr. Maerov from the McMillan firm acting on behalf of the proposal trustee  
30 Alvarez and Marsal Canada Inc., and I see his colleague, Ms. Rylands, is present with him.  
31 And the representative of the trustee, Mr. Konowalchuk, is in the courtroom today.

32  
33 In no particular order we have Mr. Kashuba from the Torys firm acting on behalf of the  
34 proposed purchaser under the asset purchase agreement, Greenfire Acquisition Company,  
35 who I may refer to as McIntyre as McIntyre is the entity which is behind Acquisition Co.

36  
37 MR. KASHUBA: Good afternoon, My Lord.

38  
39 MR. LEGEYT: Ms. Fellowes acts on behalf of the proposed debt  
40 lender. The name of her client is Trafigura Canada.

41

1 Then there are two counsel from Bennett Jones, Ms. Meyer and Mr. Gibbs, acting on behalf  
2 of Warner Petroleum and Liberator Crude. Those are related entities, I understand.

3  
4 Ms. Lavelle acts on behalf of the Alberta Energy Regulator.

5  
6 Mr. Nishimura acts on behalf of a creditor group, who are creditors of the parent company,  
7 Greenfire Oil and Gas, and his clients have put in a couple of affidavits proposing - for lack  
8 of a better word - an alternative transaction to that which is before the Court today.

9  
10 We have Mr. Reid from the Blakes firm, who represents Summit Partners who is  
11 Greenfire's senior secured lender.

12  
13 And, Mr. Zahara, I believe I mentioned, is acting on behalf of, I believe it's Athabasca  
14 Workforce Solutions, an unsecured creditor which is proposing the adjournment today, or  
15 perhaps opposition.

16  
17 So I do see that other counsel are on the line. I would propose that they may introduce  
18 themselves if they're going to make submissions today. I -- I know in the past a number of  
19 counsel have appeared only to observe.

20  
21 THE COURT: Further to Mr. LeGeyt's comment, for those that  
22 are going to be making comments or submissions that have not been introduced, if they  
23 could do so for the benefit of the Court and other counsel, please.

24  
25 MR. PLESTER: Good afternoon, My Lord. Gregory Plester of  
26 Brownlee LLP. We act for the Regional Municipality of Wood Buffalo. I may have a  
27 couple of brief comments at some point during this afternoon's application, though we are  
28 taking no position in respect to the application itself. So those -- those comments will be  
29 brief, if I have any.

30  
31 THE COURT: Thank you, Sir.

32  
33 MR. BLACKETT: Good afternoon, My Lord. My name is Glenn  
34 Blackett. I'm with the firm Carscallen LLP. Forgive my name, which shows with  
35 (INDISCERNIBLE). That's not correct. We represent Apex Distribution Inc., a builder's  
36 lien claimant with a lien on the plant, and I may be making submissions today.

37  
38 THE COURT: Okay. Thank you, sir.

39  
40 MR. LEGEYT: Thank you, My Lord. So subject to the  
41 application for an adjournment, it is Greenfire's applications today. Our applications were

1 originally put down before Justice Lema on the Edmonton commercial list one week ago,  
2 and they were adjourned to today given the shortness of service at the time, a week ago,  
3 and also because the debt term sheet, although finalized had not been signed by the lender  
4 and, as a result, the trustee was not in a position to issue a substantive report.  
5

6 So Justice Lema did grant a 1-week extension until tomorrow so that this hearing could  
7 occur today and in Greenfire's view this is very much the main event. As Your Lordship  
8 will have seen, the companies are applying for an approval and vesting order, the approval  
9 of interim financing, and the usual charge that is associated with that financing, and an  
10 extension of the stay for 45 days to allow the transaction to close and to allow the company  
11 to close out these proceedings.  
12

13 We have sent a number of materials to you in support of that, My Lord. The original  
14 application, which was set down before Justice Lema and a more recent application which  
15 really only seeks the stay extension, though we do seek alternative relief that if the APA  
16 and the interim financing are not approved, we respectfully ask the Court to increase the  
17 administration charge from the existing amount of \$500,000 to \$1 million, and I would  
18 propose to only deal with that aspect of the application if the other relief was not granted  
19 today.  
20

21 We sent you several affidavits, some of which go back to the beginning of the proceedings,  
22 all affidavits of Robert Logan. His number 1 affidavit dated October 9th; affidavit of Robert  
23 Logan number 2 dated November 2nd; affidavit number 6 dated December 2nd, and there's  
24 a confidential supplement to that affidavit, which is the un-redacted APA; and we sent you  
25 Robert Logan's affidavit number 7, which is dated the 11th of December. And we sent our  
26 brief and the authorities attached thereto and a number of draft orders, including some  
27 blacklined. Did you receive those materials, My Lord?  
28

29 THE COURT: I did indeed. Thank you very much.  
30

31 MR. LEGEYT: Thank you.  
32

33 And then the trustee Alvarez and Marsal has provided its fifth report dated December 11th,  
34 filed in support of the companies' application. There have been a couple of affidavits from  
35 Mr. Nishimura's clients and I believe one, though possibly two, from the Athabasca  
36 Workforce entity. And so, I am ready to proceed if -- if you would like to hear the main  
37 event now, My Lord, though as you indicated there is, of course, the application for an  
38 adjournment.  
39

40 THE COURT: Yeah, my preference, Mr. LeGeyt, would be to  
41 hear the application for adjournment. So if you could turn to that, counsel, please.



1  
2 Counsel --

3  
4 **Submissions by Mr. LeGeyt (Adjournment)**

5  
6 MR. LEGEYT: That is Mr. Zahara's application. For the record,  
7 the -- the company opposes that, My Lord, as -- as we've indicated. There is no more time  
8 for adjournments. Sorry, I'll turn my camera back on.  
9

10 THE COURT: Thank you.

11  
12 MR. LEGEYT: I'll -- I'll reply to Mr. Zahara once he's made his  
13 application, but the company's position is that it has found its transaction. There is no better  
14 transaction. The DIP is beneficial for all parties and, in particular, given the precarious  
15 state of the plant and the very real potential for damage due to cold weather, we simply  
16 need to move this matter forward and we need to do that today. But I'll -- I'll respond to my  
17 friend. Thank you.  
18

19 THE COURT: Certainly. Thank you very much.  
20

21 **Submissions by Mr. Zahara (Adjournment)**

22  
23 MR. ZAHARA: Thank you, My Lord. Zahara, R, for the record,  
24 on behalf of Athabasca Workforce Solutions and Excel Oil & Water Hauling. We had sent  
25 you a letter today in respect of this.  
26

27 One of the reasons we want to question Mr. Logan on his most recent affidavit is to  
28 understand better the relationship between the APA and the interim financing. Part of the  
29 significant concern of not just, I think, our client but other clients is this isn't a traditional  
30 request for interim financing and a sale approval and vesting order. There's not a purchase  
31 price that we can see that's being paid under the assets that would be available for the  
32 creditors. They're in fact using the funds from the interim financing fund purchase price or  
33 a significant portion thereof, despite the purchaser not being a party to that agreement or a  
34 lender. Those funds would effectively, as I understand it, be used to (INDISCERNIBLE)  
35 all creditors including the Alberta Energy Regulator (INDISCERNIBLE).  
36

37 THE COURT: Mr. Zahara, just -- if I can just pause you, you are  
38 fading in and out from my perspective. I don't know if others can hear you.  
39

40 MR. ZAHARA: Sorry about that. Is that better?  
41

1 THE COURT: Much better, sir. Thank you.

2  
3 MR. ZAHARA: Okay. Thank you. So really, I think, our request  
4 to question Mr. Logan is probably more properly dealt with in our opposition to the  
5 application for the sale approval and vesting order and interim financing today. The reasons  
6 for that, I would outline in detail in -- in those reasons. So I -- I think -- I'm happy to have  
7 Mr. LeGeyt say his piece on why they think this should be approved and then have you  
8 hear from all the parties of why they shouldn't, keeping in mind that part of that is to give  
9 us the opportunity to question Mr. Logan on this because, again, we were served with this  
10 on Friday. There's been no reason why this wasn't provided earlier.

11  
12 This has been a constant theme in this proceeding is the creditors are constantly getting  
13 jammed with materials from the debtor. I appreciate (INDISCERNIBLE) contentious but  
14 it's difficult to respond and get instructions from our client when we're served on Friday  
15 afternoon for an application returnable Monday at 1. And as you can see, we've done our  
16 best to try to get materials back in front of Your Lordship, but our clients and a few of the  
17 other creditors are vehemently opposed to this transaction proceeding. We may also be  
18 opposed to the -- you know, the continuation of these proceedings, but we would submit  
19 we would need more evidence from Mr. Logan to question him on some of this stuff.

20  
21 Outstanding issues, as well, from our side, one of the affidavits we sent was a secretarial  
22 affidavit. It just attaches the corporate search for the Greenfire Acquisition Co. We don't  
23 know who the -- the controlling shareholders of that entity are. It's not clear to us if the  
24 current management and shareholders of Greenfire or Greenfire Hangingstone are taking  
25 an interest in the new entity. The purchase price and everything contemplated under the  
26 APA effectively seems to preclude any distributions to unsecured creditors for sure. Very  
27 little, if any, distributions to secured creditors, who we understand are now opposing this.  
28 As well, there may be some amounts for lienholders and that's about it. And -- and it's a  
29 very unorthodox purchase price and interim financing facility, which I'm happy to get into.

30  
31 So that's the basis for why we say we want to question Mr. Logan on this and in very short  
32 order. We don't expect that questioning to take a significant amount of time, but we need  
33 to understand better how this (INDISCERNIBLE).

34  
35 THE COURT: Mr. Zahara, you are -- you are again fading in  
36 and out. I think I have got the thrust of what you are saying but I am just not sure if it is  
37 where your mouthpiece is or your microphone, but if you can just be conscious of that.  
38 Thank you.

39  
40 MR. ZAHARA: I'll let any other parties speak to this now as well.

41

1 THE COURT: Okay. Any other parties want to speak? Mr.  
2 Zahara, I think, has indicated, by my understanding, that we should proceed with Mr.  
3 LeGeyt's submissions and then he can speak to matters. But if others would like to make  
4 at least an introductory comment, that is certainly welcome.  
5

6 **Submissions by Mr. Nishimura (Adjournment)**  
7

8 MR. NISHIMURA: Sir -- Sir, it's Doug Nishimura from Field Law  
9 representing the group of thirteen investors/creditors. We're supportive of Mr. Zahara's  
10 request, although like him we can get into the reasons for that request in conjunction with  
11 our opposition to the application itself and -- and speak to it at that time. The reasons that  
12 there would need to be an adjournment to question Mr. Logan, which we would participate  
13 in, overlap with the reasons that we would oppose the application in general. So -- so at the  
14 risk of taking two bites at that -- that apple, we take the same position as Mr. Zahara.  
15

16 THE COURT: Okay. Thank you, Mr. Nishimura.  
17

18 Any other parties wish to speak?  
19

20 Hearing none, I'll turn it over to Mr. LeGeyt to speak to matters.  
21

22 **Submissions by Mr. LeGeyt (Sale Approval)**  
23

24 MR. LEGEYT: Thank you again, My Lord. I believe I've been  
25 invited to simply proceed with the merits of the applications which are before you so I will  
26 do that starting with a recitation of the facts.  
27

28 Again, there are the two Greenfire entities. The parent company, Greenfire Oil and Gas, is  
29 a holding company and it owns equity in the operating company. The subsidiary -- and I  
30 will from this point forward likely refer to my clients collectively as Greenfire.  
31

32 THE COURT: Thank you.  
33

34 MR. LEGEYT: The subsidiary owns a SAGD facility near Fort  
35 McMurray capable of producing up to 12,000 BOE per day. Greenfire was previously party  
36 to a marketing agreement with Warner Petroleum whereby Warner would take, market,  
37 and sell Greenfire's production as part of its business. That relationship became very  
38 problematic to say the least. It became quite strained and adversarial. In late 2019, and  
39 spilling over into early this year, a number of disputes arose between the parties with  
40 respect to that marketing agreement and a number of lengthy affidavits have been prepared  
41 in respect of that dispute, which I will not get into, but as a result of that dispute and in

1 addition to the onset of the COVID pandemic early this year and also because the company  
2 was out of liquidity early this year, the company's SAGD operations have been shut-in  
3 since the spring of 2020. That means the company has not had any revenue since that time  
4 and that state of affairs (INDISCERNIBLE) My Lord. So the company had no revenue and  
5 did not operate.

6  
7 In September of this year, Greenfire terminated the Warner marketing agreement alleging  
8 a number of breaches by Warner and asserting its right to terminate that agreement within  
9 (INDISCERNIBLE). Warner disputed that provision. On October 8th of this year, both  
10 companies filed the notices of intention to make a proposal under the *Bankruptcy and*  
11 *Insolvency Act* and these proceedings were commenced. Alvarez & Marcel was appointed  
12 as the proposal trustee. Notwithstanding that Warner was confident -- excuse me -- that  
13 Greenfire was confident that the Warner contract had been validly terminated, out of an  
14 abundance of caution pursuant to the provisions of the *Bankruptcy and Insolvency Act*,  
15 Greenfire disclaimed the Warner contract in October of this year.

16  
17 The Trustee approved of that disclaimer but Warner disputed it, and in November of this  
18 year, the disclaimer dispute was heard by Justice Little on the Edmonton commercial list.  
19 Warner filed its own cross-application seeking to have the disclaimer found to be invalid,  
20 seeking a declaration that its marketing agreement was an eligible financial contract, and  
21 seeking a declaration that it had an interest in the land. That was heard by Justice Little and  
22 in the result Greenfire was entirely successful and Warner's cross-application was  
23 dismissed. So the result of that finding is that the disclaimer of the Warner contract is  
24 approved by this Court and in addition there was a finding that the agreement is not an  
25 eligible financial contract nor is it an interest in land, and that order has been appealed by  
26 Warner.

27  
28 Stepping away from the Warner situation, My Lord, but continuing with the evidence  
29 before you of the history of the companies, as a result of the company being shut-in in the  
30 spring, the company essentially started marketing itself for sale and started, you know,  
31 what we would refer to in this court as a solicitation process in early 2020. The company  
32 engaged an expert by the name of Imperial Capital to oversee that process, and I will get  
33 into the details later, but a thorough process was run, a data room was opened in March of  
34 this year, and ultimately that process identified McIntyre Partners as the lead bidder, and  
35 McIntyre has persisted to today and, as I indicated, McIntyre is the party behind Greenfire  
36 Acquisition Company. I'll get into more details surrounding that when I speak in detail  
37 about the application for the sale approval and vesting order.

38  
39 Skipping now to these proceedings, My Lord, the company has done quite a bit since it's  
40 made its filings, though the proceedings themselves are only about 9 years old, but the  
41 evidence and the record before you will demonstrate that the company has been

extraordinarily busy and diligent, in my respectful submission, to advancing these proceedings to where we are today so that we are in a position to put before the Court the two applications; the main event, as I call it, the applications for the interim financing and the sale approval and vesting order. Along the way, for the record, we did have the two separate *BIA* proceedings of the two companies consolidated into these proceedings and the Court has already granted an administration charge in favour of the professionals in the amount of \$500,000.

The company has gone through considerable efforts, My Lord, to obtain a DIP, the interim financing, contacting many, many multiple parties and ultimately finding the Trafigura party to provide the financing. Most recently, we were before Justice Lema one week ago. Again, we had hoped to be seeking the approval of the interim financing and the asset purchase agreement then. I do take issue with Mr. Zahara's submission that they were only served with materials on Friday. The application before Justice Lema was originally set down for December 8th and if memory serves, it was served on the service list the Friday before, which I believe was December 4th, if I look at my calendar. Yes, so -- so Mr. Zahara and the service list have been aware of the company's application for the sale approval and vesting order and the interim financing since the 4th of December, and the APA and a draft DIP term sheet were sent to the service list then.

Now, there was a late affidavit last Friday but that was in response to the affidavit (INDISCERNIBLE).

THE COURT: Mr. LeGeyt, if I could just pause you. Every once in a while you fade out. It's when you move. If you can just be sensitive of that for the benefit of the Court --

MR. LEGEY: Sure.

THE COURT: -- and your friends.

MR. LEGEYT: I'll reposition my binder so I can face the computer --

THE COURT: Thank you.

MR. LEGEY: -- better.

So, My Lord, in our submission, there has been plenty of notice with respect to the substantive applications which are before the Court. We now have a signed term sheet and a report from the trustee, which indicates the support of the trustee and its views of the

1 (INDISCERNIBLE).  
2

3 So, My Lord, that -- that is all the history so to speak and it brings us to today. As I indicated  
4 - I'll repeat myself - the company does seek an extension of 45 days, the approval of the  
5 asset purchase agreement with Greenfire Acquisition Company and, as part of that, the  
6 company seeks authorization to enter into a marketing agreement, which is a condition of  
7 the DIP financing term sheet. The third aspect of our application is the approval of that  
8 interim financing.  
9

10 And I would be remiss, My Lord, if I did not recount some of the evidence before the Court  
11 relating to the current state of the plant and the risk of damage that is posed to the plant and  
12 hence the company and its stakeholders as a result. As I indicated earlier, My Lord, the  
13 plant was shut-in in the spring and it was shut-in in what is called a wet state, and what that  
14 means, My Lord, because this is a SAGD operation, there are miles of pipes which are used  
15 to pump the steam into the wells to help extract the oil and bitumen and when Greenfire  
16 shut-in its operations, those wells -- excuse me -- those pipes were full of water and they  
17 still are. And so the problem is, as temperatures drop, the possibility of freezing damage is  
18 very real. In fact, is inevitable and has already started and I believe the evidence before you  
19 is that it is presently expected that about \$2 million worth of damage has occurred to the  
20 plant as a result of the cold.  
21

22 Now, this isn't before you in evidence but I understand from my client that it has been  
23 remarkably and unusually warm in the Fort McMurray area -- excuse me -- so we have  
24 been incredibly fortunate with the weather so far. There still has been plenty of below  
25 freezing temperatures but it has not been as bad as it could be. That luck, in my respectful  
26 submission, cannot continue coming into the end of December, January, and February. And  
27 so that situation, in my respectful submission, creates very real business urgency in that we  
28 do have a potentially deteriorating asset and the damage will only increase as we get deeper  
29 into the winter and the temperatures plunge.  
30

31 So, My Lord, that is the background; the facts so to speak. If it pleases the Court, I would  
32 first address the company's application in respect of the interim financing. There's no doubt  
33 that the interim financing and the asset purchase agreement go hand in hand but the two --  
34 the two different aspects of the application do have different tests under the *Bankruptcy*  
35 *and Insolvency Act* so I just thought I would start with the DIP application first.  
36

37 THE COURT: That makes sense to the Court, Mr. LeGeyt.  
38

39 MR. LEGEYT: And so the test, My Lord, is of course set out in  
40 the *BIA*. We have recited that at page 9 of our brief. I will paraphrase those factors, My  
41 Lord, but in doing so, first, I would stress that the factors are expressly not exhaustive and

1 the factor which, in my respectful submission, that is the most important is not found in the  
2 *BIA* but rather is the -- the reality facing the Greenfire companies, that they have made  
3 extraordinary efforts to find these transactions. They are conditional as always on your  
4 approval and the physical reality of the plant is such that without these transactions being  
5 approved, there is just considerable risk to all of the stakeholders.

6  
7 But now turning to the statute itself, it is subsection 50.6(5) and, again, those are set out in  
8 our brief. In my respectful submission, some are a lot more relevant than others. For  
9 example, the first factor for the Court to consider is the period of time within which the  
10 Court -- the -- the company is expected to be in proceedings. I'm not sure that's really  
11 relevant here, My Lord. We -- we've been in the proceedings for about 9 weeks. We're  
12 asking for an extensive of 45 days and we need that time simply to close these transactions  
13 and move on to the next phase. I'm not sure that that is highly relevant today.

14  
15 The second factor is how the debtor's business and financial affairs will be managed during  
16 the proceedings. The answer is that Greenfire's existing management, Mr. Logan and Mr.  
17 Bezanson will be in charge. Of course, management has the benefit of the trustee to assist  
18 as necessary and -- and appropriate in the circumstances, it has its legal counsel, and the  
19 Court may have noticed that in the DIP term sheet there is an attachment called a DIP  
20 budget. And so that allows the proposed interim lender some influence over how the DIP  
21 funds will be spent. And so that is how things would be managed going forward.

22  
23 The next factor is whether the company has the confidence of its major creditors. Most are  
24 here today. We've -- we've heard there is some opposition. I believe that the Alberta Energy  
25 Regulator is in agreement with the applications which are made today of the company, and  
26 I believe the Summit entity may not be taking any position.

27  
28 The next factor is whether the loan would enhance the prospects of a viable proposal. In  
29 my submission that's a -- an incredibly relevant factor and is the driving one for the Court  
30 today. The loan is tied, if you will, to the asset purchase agreement. It provides the company  
31 with up to \$16 million in funding that it simply doesn't have to allow the plant to be  
32 restarted, to allow the repairs to be done, to allow the company to generate revenue and  
33 create value, all of which will assist, of course, the company but also the stakeholders  
34 before the Court today. And there's a constituency of stakeholders that may not be fully  
35 represented here though there are some trade creditors on the line, so to speak.

36  
37 When the company shut-in, My Lord, of course it -- it had to terminate the employment or  
38 the contractual relationships it had with a great number of employees and field contractors,  
39 and if the interim financing is granted and the company -- excuse me, the plant can be  
40 brought back online, the company's intention is to reengage with those employees and with  
41 those contractors, and I believe it is Acquisition Co.'s plan to continue with those

1 agreements as well. So that is a group of stakeholders that the Court ought to be mindful  
2 of and -- and, in my respectful submission, they ought to support the restructuring and the  
3 transaction.

4  
5 The next factor is the nature and the value of the debtor's property. The evidence before  
6 you is clear. I mean, it is a SAGD facility and all the associated infrastructure. It is shut-in.  
7 The DIP financing, proposed DIP financing, will give us the means to restart the operations,  
8 bring value to the entire enterprise for all of its stakeholders and the corporate company  
9 itself.

10  
11 The second last factor is whether any creditor would be materially prejudiced as a result of  
12 the DIP financing. Our respectful submission is that the opposite is true. With this funding  
13 being provided to the company it can restart its operations, it can bring value to its own  
14 estate and therefore to the creditor group, and certainly the contractors and employees who  
15 will be reengaged in the interim and, of course, there will be revenue which, for instance,  
16 could be used to pay the admin charge and therefore bring up more funds for the pre-filing  
17 creditors.

18  
19 And the final factor that the Court is to consider is the trustee's report. I will take you to  
20 some parts of that in detail in a few moments, My Lord, but the trustee has written its report  
21 and it is supporting both transactions today.

22  
23 So again, My Lord, I would stress that is -- the statute says that is a non-exhaustive list of  
24 factors to consider. Obviously, some are more important than others and we also submit  
25 that the simple fact that winter will erode the value of this property is an incredibly  
26 important factor for you to consider and, frankly, this interim financing is needed to avoid  
27 a catastrophe.

28  
29 I will refer to the trustee's report now. In particular, the trustee talked in great detail about  
30 the lengths the company has gone to find a willing DIP lender, and on page 13 --

31  
32 THE COURT: Just bear with me for 2 seconds here. Is it  
33 attached to something? I have certainly looked at it. I just can't locate it.

34  
35 MR. LEGEYT: No, My Lord. I believe that would have been sent  
36 to you as a standalone document from the McMillan firm.

37  
38 THE COURT: Let me just -- I am there. Go ahead. Page 13.

39  
40 MR. LEGEYT: Yeah, and it goes over onto page 14. The primary  
41 reason I've brought this to the Court's attention was at the very bottom of page 13, the



1 trustee reports that the company engaged with at least 31 companies or individuals to try  
2 and find interim financing. So the company has worked incredibly hard. It has done a good  
3 job in finding this financing from a very credible counterparty. In my respectful  
4 submission, I doubt -- I highly doubt that there is another alternative available to this  
5 company. And then through the balance of page 14, I won't regurgitate it, My Lord, but the  
6 trustee sets out the reasons it supports the granting of the interim financing and the  
7 associated charge.

8  
9 I should mention that there is an order, for lack of a better word, from the Alberta Energy  
10 Regulator. It is attached to the trustee's report. It requires the companies to bring the  
11 properties back into compliance, and I believe there's a great deal of overlap between what  
12 the AER wants and what the company would do anyway to bring the operations back on  
13 stream, but make no mistake about it, My Lord, the interim financing will be used to satisfy  
14 those regulatory obligations as well and correct the deficiencies that the AER has  
15 identified, and that is important. And at subparagraph (j), the trustee provides its view that  
16 no creditor would be unduly prejudiced by the granting of the interim financing.

17  
18 So, My Lord, in my respectful submission, all of the statutory criteria for the approval of  
19 the DIP financing are met and satisfied in this case and, in my respectful submission, the  
20 Court should not hesitate to grant the interim financing.

21  
22 Because they are so closely connected, I -- I would now move on to the part of the  
23 application seeking the sale approval and vesting order, and in our brief we start those  
24 arguments on page 12.

25  
26 THE COURT:

I am there, Sir.

27  
28 MR. LEGEY:

And again, there is a test set out in the *BIA*, which  
29 is well known to this Court and is virtually the same or substantially similar to the *Soundair*  
30 test used in receiverships and, again, we've recited the criteria there and again they are non-  
31 exhaustive but they are whether the process leading us to today was reasonable in the  
32 circumstances and, as I've done throughout this submission, I will stress to Your Lordship  
33 the circumstances of this company, and I will go through each of these in term. The second  
34 is whether the trustee has approved the process leading us to today. Third, whether the  
35 trustee has filed a report and what it says. Fourth, the extent to which creditors were  
36 consulted. Fifth, the effect of the proposed sale on creditors and other interested parties.  
37 And, finally, whether the consideration received is reasonable and fair taking into the  
38 market value of the asset.

39  
40 So with respect to the -- and I'll run through those in order -- the process, My Lord, it -- it  
41 is not the typical insolvency solicitation process that the Court is more familiar with where

1 the same is preapproved and there are deadlines and things like that. Nonetheless, in our  
2 respectful submission, the evidence before you is that the company did implement a  
3 process, that the process was fair and reasonable in the circumstances, and the Court should  
4 approve it. And from a legal standpoint, My Lord, that is perfectly acceptable. We will get  
5 there in a moment, but Madam Justice Romaine in the *Sanjel* case did, in fact, approve a  
6 post-filing transaction based on a pre-filing solicitation process. So the process need only  
7 be reasonable and not perfect and, in our respectful submission, that is the case.

8  
9 So the details about the process, My Lord, are as follows, and if you wish to follow along,  
10 they're set out nicely back in the trustee's report starting on page 16 --

11  
12 THE COURT: I am there, Sir.

13  
14 MR. LEGEYT: -- paragraph 32. So the company engaged an  
15 outside expert, a financial advisor named Imperial Capital in February. The data room was  
16 opened in March of 2020. The company and Imperial did set a deadline - admittedly, it was  
17 a soft deadline - for offers of April 28th. That's important because, you know, the parties  
18 knew that there was a process and they were to participate in accordance with the rules and  
19 the deadline that was established.

20  
21 The company and its expert, Imperial, contacted 36 specifically -- specifically targeted,  
22 strategic, or financial parties, provided them with teaser information, and invited them to  
23 execute nondisclosure agreements. Of those, My Lord, six did sign nondisclosure  
24 agreements, which allowed them to enter the data room and formulate bids. And of those  
25 six, one - namely McIntyre - did submit a written proposal. You know, and, My Lord, in  
26 my respectful submission, those numbers are consistent with the types of results seen by  
27 this Court in more formal solicitation processes. You know, 30 or 40 parties are specifically  
28 targeted and perhaps a dozen or half a dozen actually sign NDAs and then, obviously, a  
29 much smaller number actually put forward bids.

30  
31 But -- but clearly, in my submission, there was a process. It's not exactly as the Court might  
32 have prescribed but it does -- it does contain many of the hallmarks of what the Court  
33 would want to see and, in my submission, it is reasonable within the meaning of the  
34 *Soundair* test as modified by *Sanjel* and the Court should be satisfied with respect to that  
35 criteria.

36  
37 The next couple of criteria deal with the trustee. The first is whether the trustee approved  
38 the process leading us to today. Well, it -- it did not at the time, obviously, My Lord. It was  
39 -- it was months before the trustee was engaged, but the trustee has written its report and  
40 has commented upon the process itself and its reasonableness. The trustee also notes that,  
41 you know, because the McIntyre or Acquisition Co. transaction was only signed off about

1 a week ago, the company did continue post-filing its attempts to find other transactions. So  
2 in parallel with finalizing the McIntyre transaction, it was reaching out on its own accord,  
3 if you will, to attempt to try and find other transactions.

4  
5 The third criteria, again, is the trustee's report and again the trustee is supporting and Mr.  
6 Maerov may make more detailed submissions about that.

7  
8 The fourth criteria is the extent to which creditors were consulted. I -- I appreciate there is  
9 some opposition today but the evidence before you indicates that there have been ongoing  
10 discussions with Mr. Zahara's clients -- excuse me, I -- I misspoke there. I meant to say Mr.  
11 Nishimura's clients, since the beginning of these proceedings. I understand that they may  
12 not be satisfied with the results but they, nonetheless, have been consulted, My Lord, and  
13 the same can be said for Summit Partners. They are the senior secured creditor and there  
14 have been regular communications between Greenfire and Summit and the trustee as  
15 necessary since the beginning of these proceedings, and no doubt the same can be said for  
16 the Alberta Energy Regulator, who has been kept apprised of matters throughout. For Mr.  
17 Zahara's client, Athabasca Workforce, I believe there have been some discussions. You  
18 know, they are an unsecured creditor ranking well down the chain and so there would have  
19 been less communication with them.

20  
21 The final criteria is the value of the assets, My Lord, and this is quite interesting and the  
22 evidence before you does provide the Court with some data points. Because there were no  
23 other offers received from the pre-filing process, there is nothing like the Court might  
24 expect to see in the form of a confidential supplement to the trustee's report setting out  
25 what the other bids were, because the pre-filing process revealed only the one bid. But the  
26 company's evidence and the trustee's report does provide the Court with a few other data  
27 points. Starting with when Greenfire acquired this property from its previous owner, Japan  
28 Canada Oil Sands Limited, about two and a half years ago, My Lord. That was a dollar  
29 deal plus some adjustments and a royalty and, at that point, the plant was also shut-in. Now,  
30 to the extent that there is any value in the royalty that was kept by Japan Canada Oil Sands  
31 company, that value is also being paid by the prospective purchaser today because today's  
32 purchaser will take the property subject to that same royalty. So that is a data point which,  
33 in my respectful submission, makes the deal before you look good.

34  
35 The second data point from Greenfire's evidence and the trustee's report is the sale of the  
36 MacKay SAGD facility which came out of the Southern Pacific Resources receivership.  
37 Now, admittedly, there were some differences between the two facilities; one had a greater  
38 capacity - that is a daily capacity - than the other but the data point for the Court from the  
39 MacKay transaction was that it was a \$2 million purchase price.

40  
41 And the third data point, other than the one which is before you, is perhaps from Mr.

1 Nishimura's clients and I will not attempt to pronounce the name of that component. The  
2 earlier affidavit, not the one from today, which unfortunately I cannot locate at the moment,  
3 but if memory serves Mr. Nishimura's clients were proposing a transaction in the amount  
4 of \$1 million. So the purchase price described by the trustee in its report is much greater,  
5 My Lord. On page 22, the trustee talks about a purchase price of up to \$20 million. That is  
6 comprised of a \$4 million cash payment and clearly that \$4 million gets reduced by the  
7 amount of repair costs up to \$3 million. That is the reduction could be up to 3. So that \$4  
8 million will be at least a million dollars available to the company and its creditors, and  
9 based on our current understanding of the repair bill, it's expected to be actually about \$1.8  
10 million available for the general creditors.

11  
12 In addition, My Lord, there is a deposit of \$1 million, which if the orders are granted today  
13 should come within the next day or two. That \$1 million is earmarked for the administration  
14 professionals who have not been paid for many months and still have some work to do to  
15 close the deal. Nonetheless, like it or not, the administration professionals are today the  
16 highest ranking secured creditor and so the payment of them in the amount of a million  
17 dollars is beneficial to everyone in that it clears off the first lien and makes more funds  
18 available for the other creditors. And then the purchaser will assume the debt of up to \$16  
19 million. And so, we have that purchase price of approaching \$20 million.

20  
21 Now, the DIP, as we said, will be used to fund operations for -- to get us to closing, pay  
22 contractors, affect repairs, things of that nature, and so clearly there's a benefit to the  
23 purchaser with that spend and the purchaser is getting the benefit of that increased value,  
24 but the purchaser is also assuming the debt. And so we have a situation where the admin  
25 creditors and the DIP creditors will be repaid in full and a residual of \$1 to \$2 million for  
26 the -- the general body of creditor. So clearly superior to the other data points which are  
27 before the Court.

28  
29 THE COURT: So just if I can clarify. So on the top of page 23  
30 of the trustee's report, I am to read -- and this is not a criticism. I just want to make sure I  
31 am understanding your point. A release of up to \$16 million as an assumption of debt up  
32 to 16 million?

33  
34 MR. LEGEY: Sure. So this is the trustee's report.

35  
36 THE COURT: Okay.

37  
38 MR. LEGEY: (INDISCERNIBLE) just read the page before.  
39 Yes. So the DIP term sheet describes two facilities and I'll start with the larger one. That's  
40 \$16 million.  
41

1 THE COURT: Yeah.

2

3 MR. LEGEYT: So that money is -- I will call that true DIP in the  
4 sense that it is loaned to the debtor company. It is used for operations, repairs, employees,  
5 that sort of thing and clearly that money will be spent to improve the value of the property  
6 and whatever amount is advanced, whether it's 8 million or 10 million or 12 million, will  
7 form a super priority charge on the assets, which would need to be paid or taken care of by  
8 any purchaser. And so the proposed purchaser is simply assuming all of the debt and that's  
9 an amount which could be up to \$16 million, and that is real value, Sir, in that it has been  
10 invested in the company.

11

12 Ms. Wood is interjecting.

13

14 MS. WOOD: Good afternoon, My Lord. I just wanted to  
15 clarify that the purchaser will be taking on the entirety of the DIP which, when you include  
16 the escrow funds, that could be up to \$20 million. So the vendor company Greenfire will  
17 be released in its entirety for any obligation under the interim financing.

18

19 THE COURT: Okay. Thank you, Ms. Wood.

20

21 MS. WOOD: Yeah.

22

23 MR. LEGEYT: Absolutely, and I was just about to get there, My  
24 Lord. So the -- the DIP is split into two parts. I've told you about the 16 million, but there  
25 is a second facility in the amount of 4 million and that is then described back on page 23  
26 of the trustee's report, and this is the cash amount which might be available for creditors.  
27 So this is 4 million in cash as opposed to DIP. The nuance is that the purchaser gets to  
28 deduct from the 4 million that which is spent -- spent on repairs. We think that that's going  
29 to be about 2.2 leaving 1.8, and the purchaser has agreed to a maximum deduction of 3 so  
30 there is a floor, if you will, of \$1 million available for the general creditors. So, in our  
31 respectful submission, the value of this transaction is much greater than that which was in  
32 the JACOS transaction, the MacKay transaction, or I'm -- I'm hesitant to call it a  
33 transaction, but the potential transaction described by Mr. Nishimura's clients in their  
34 affidavits.

35

36 So allow me to find my place here, My Lord.

37

38 And I -- I would think it simply goes without saying, My Lord, that it is -- it is in all  
39 stakeholders interest to restart the plant and save an Alberta business. We have seen far too  
40 many of them disappear over the last 12 or 24 months, and so this is an on block transaction  
41 which preserves the asset and the business, albeit transferred to a new company. It is

1 nonetheless beneficial from that perspective.

2  
3 So I will take a moment to anticipate some of the arguments of my friends though --  
4 although I will need to reply as well. In particular, the just filed affidavit of Mr. Nishimura's  
5 client. And, of course, the Court often hears the analogy of the bird in the hand versus the  
6 one in the bush. We have very real transactions before the Court today, My Lord. An APA,  
7 which was the product of lengthy negotiations and is detailed and, you know, contains  
8 commitments from both parties. Similarly, the DIP term sheet is very real and brings much  
9 needed value to these proceedings, and I have just now located the affidavit filed by Mr.  
10 Nishimura's clients and I -- I note that -- I mean, really, it couldn't be further from what is  
11 before the Court. I'm -- I'm just looking at paragraph 4 where the deponent talks about, you  
12 know, what he has and -- and what he has to offer in contrast to what is before the Court.  
13 He does say they have a million dollars cash in paragraph 4(a), either held in trust or -- or  
14 elsewhere, but that's all they really have 'cause when you look at 4(b) he talks about how  
15 in the last few days they have received interest for additional financing from two more  
16 investors. Not a commitment, My Lord, but interest. That's not the same as what is before  
17 you.

18  
19 Similarly, in paragraph 4(d) this deponent says we have entered -- entered into talks with  
20 other investors. Again, no commitments, nothing even close to a commitment, no exhibits  
21 with this affidavit. He simply says we're -- we're talking and we're interested. Compare that  
22 with the executed APA and the executed DIP term sheet and -- and it goes without saying  
23 that, in our respectful submission, the Court should not risk the very real deal that we have  
24 before the Court today for this, which I -- I will not even classify as an offer. And I -- I  
25 think as well, Your Lordship should consider that these are, you know, pre-filing investors.  
26 They're debenture holders at the level of the current (INDISCERNIBLE) that is Greenfire  
27 Oil and Gas.

28  
29 They have known about these proceedings for quite some time and Mr. Logan's evidence  
30 in his seventh affidavit is that they were provided with a DIP term sheet, I believe, it was  
31 late October or early November, and I can double check that date. They have never made  
32 an offer. They have never responded formally. There is nothing in writing from this group  
33 but, rather, we get this affidavit within an hour of the hearing and so, in my respectful  
34 submission, when you're weighing the credibility of Greenfire Acquisition Co. and  
35 Trafigura versus Mr. Nishimura's clients, I think that the scales tip quite easily in favour of  
36 what is formally before the Court today.

37  
38 Similarly, I believe I've already commented on Mr. Zahara's submission that documents  
39 were filed late. In fact, the initial hearing before Justice Lema was a week ago and our  
40 service went out on December 4th. So we've had plenty of notice.

41

1 Finally, I -- I anticipate that there may be opposition from Warner. I would ask the Court  
 2 to bear in mind what Warner has today, My Lord. The contract which creates the legal  
 3 relationships with Greenfire has been disclaimed. It is gone, in my respectful submission.  
 4 That order is appealed. I accept that. But the appeal, in our respectful submission, is without  
 5 merit and I can take you through the details in our brief and our evidence about why there  
 6 is no interest in the land here. Some of the highlights of that, My Lord, include that  
 7 Greenfire was prohibited by its senior debt covenants from giving an interest in land.  
 8 Greenfire pointed that out to Warner in writing and Warner thereafter instructed its counsel,  
 9 Bennett Jones, to revise the marketing agreement to take out the interest in land language.

10  
 11 So in our respectful submission, the Warner's appeal is hopeless and the appeal on the  
 12 interest in land issue should not permit you from granting a sale approval and vesting order  
 13 today. To be clear, we -- we are asking the Court to transfer the assets free and clear of all  
 14 of the claims against Greenfire including those of Warner, notwithstanding the appeal.  
 15 And, again, there is legal authority from that from the Ontario Court of Appeal. In the  
 16 *Dianor* case, the Court expressly said that the Court may vest out an interest in  
 17 (INDISCERNIBLE) in an insolvency proceeding in certain (INDISCERNIBLE).

18  
 19 So subject to any questions and, of course, preserving my rebuttal rights for my friends,  
 20 those are Greenfire's initial submissions. Perhaps I might call on my colleague, Mr. Algar,  
 21 to cleanup anything I may have missed.

22  
 23 THE COURT: Thank you, Mr. LeGeyt. I will hear from your  
 24 colleague, and I may have questions. I would like to hear from your friends first.

25  
 26 Mr. Algar.

27  
 28 **Submissions by Mr. Algar (Sale Approval)**

29  
 30 MR. ALGAR: Thank you, My Lord. So just to confirm, would  
 31 you like me to -- to speak now or would you like to have some questions for my friends?

32  
 33 THE COURT: No, I would like you to speak first.

34  
 35 MR. ALGAR: Okay.

36  
 37 THE COURT: I will hear your -- submissions from your friends  
 38 and then I will turn to questions after I have had the benefit of that input. Thank you.

39  
 40 MR. ALGAR: Certainly.

41

1 THE COURT: Go ahead.

2

3 MR. ALGAR: Certainly, My Lord. Thank you.

4

5 So as Mr. LeGeyt had indicated, just a couple of small cleanup items and I think some of  
6 the rest of it can perhaps be addressed in rebuttal, but I did want to confirm. I think Mr.  
7 LeGeyt was looking at filing dates as opposed to when the materials were served and so  
8 the materials largely in support of this application went out on December 2nd, so 2 days  
9 before the date that Mr. LeGeyt had indicated previously. So with the exception of -- of the  
10 seventh affidavit and this minor application that went in on Friday, the materials in respect  
11 of the transaction with the exception of the actual signed DIP term sheet, I think, have been  
12 before the Court and before Greenfire's creditors for some time.

13

14 Mr. LeGeyt also spoke about the company providing Mr. Nishimura's clients with a copy  
15 of a -- an interim financing term sheet when it was still trying to obtain that, and I can  
16 confirm that was actually October 19th. That's referenced in -- in paragraph 12(f) of Mr.  
17 Logan's seventh affidavit. And there are a couple of additional items that I would like to  
18 highlight from Mr. Logan's seventh affidavit that are in response to the affidavits filed by  
19 Mr. Nishimura's clients but I'm happy to either do that now, My Lord, or to do it in rebuttal  
20 or after a break, whichever you'd prefer.

21

22 THE COURT: All right. I am going to leave it to you, sir, to  
23 determine when it would be appropriate.

24

25 MR. ALGAR: Well, perhaps I'll just get it out of the way then,  
26 My Lord, and --

27

28 THE COURT: Sure.

29

30 MR. ALGAR: -- and then I'll turn it over to my friends.

31

32 So there's -- there's a discussion in the most recent affidavit. I believe it's at paragraph 7 of  
33 Mr. Shabani-Rab where he says: (as read)

34

35 In Robert Logan's seventh affidavit sworn December 11th,  
36 paragraph 16(d) claims -- he claims the required cash necessary to  
37 fix the damage and warm the facility will cost approximately 3.9  
38 million. However, on review, this is the amount required to  
39 prepare the facility for operation, which is for the sole benefit of  
40 Trafigura Greenfire Acquisition Company and the Greenfire  
41 management team. This amount differs from the trustee's fifth



1 report mentioned in paragraph 60, which provides an estimate of  
2 the repair costs at 2.2 million.

3  
4 My Lord, I can confirm that those numbers are different and they're different for a reason.  
5 Mr. Logan first put an estimate (INDISCERNIBLE) of damage to the facility with all the  
6 risks in place in his first affidavit. It's also repeated in the report, the verification report,  
7 that's appended at paragraph -- excuse me -- exhibit K to his seventh affidavit. I don't know  
8 if you have that before you.

9  
10 THE COURT: I do indeed, sir, so let's just flip to it.

11  
12 MR. ALGAR: There's -- the Bates numbering page would be  
13 94, My Lord.

14  
15 THE COURT: And what exhibit is it in?

16  
17 MR. ALGAR: 'K'.

18  
19 THE COURT: 'K'.

20  
21 MR. ALGAR: As in Kilo.

22  
23 THE COURT: Yeah, got it. I am there.

24  
25 MR. ALGAR: So, My Lord, that -- that is a chart that was in Mr.  
26 Logan's first affidavit --

27  
28 THE COURT: M-hm.

29  
30 MR. ALGAR: -- which was sworn in October when he was  
31 doing his -- his level best to project out the risks to the facility and now this has been  
32 repeated in -- in the verification report that the company sought. So at the time there was a  
33 list of all the damages that the company estimated could occur to the facility which is what  
34 has really driven the urgency in this matter and what has become clear is that the \$2.2  
35 million which would be remedied by -- by the purchaser, that is squarely within the sort of  
36 first two rows there between minus 5 and minus 10. As Mr. LeGeyt has referenced, we've  
37 been quite fortunate with the weather. But what is no longer possible is Mr. Logan's  
38 estimate of a \$750,000 to \$1 million cost to dry out the facility. Now that the weather has  
39 turned and the facility has frozen, the facility effectively needs to be turned back on in  
40 order to winterize it. So the costs have gone up significantly and -- and the option to simply  
41 dry it out when the liquid was not frozen of around a million dollars is -- is simply no longer

1 there.

2  
3 And, finally, My Lord, I did just want to speak. My colleague, Ms. Wood, may want to  
4 correct me as she is the one who has largely negotiated the transaction, but Mr. Zahara  
5 made some references to the structure of the APA and the DIP and -- and the company  
6 certainly acknowledges that this is not a standard course transaction, however, these are  
7 without question three arm's length parties. The company has been clear that the purchaser,  
8 Greenfire Acquisition Company, desires to have Mr. Logan and Mr. Bezanson and also  
9 Mr. Fung, who is an unpaid volunteer at the moment but has been doing a lot of heavy  
10 lifting, to come over and be part of -- of the management team, but it is without question  
11 that this is an arm's length transaction.

12  
13 Secondly, you know, with respect to the timeline of this transaction, My Lord, it is truly  
14 driven with the -- the risks to the plant in mind and also the requirement to obtain the  
15 approval of the AER. And so, the companies, the purchaser and the vendor and the DIP  
16 lender have worked to come up with a creative solution that will allow the purchaser to  
17 ensure that they can be licenced and to ensure that the assets can be transferred, which  
18 includes all of Greenfire's AER licenced assets, to the purchaser.

19  
20 And so, that is all I have to add, My Lord. I can see that Ms. Wood has turned her camera  
21 on and given that she is the expert, I'll turn things over to her if she'd like to clarify anything  
22 that I've just said.

23  
24 THE COURT:

Thank you, Mr. Algar.

25  
26 Ms. Wood?

27  
28 **Submissions by Ms. Wood (Sale Approval)**

29  
30 MS. WOOD:

Thank you, My Lord.

31  
32 Ryan's absolutely correct in -- in how he -- he sets things out. I just wanted to add maybe  
33 a few clarifications for how we actually ended up with this, as Ryan said, creative structure,  
34 and I will -- I'll leave it perhaps to Ms. Fellowes and Mr. Kashuba to speak more on the  
35 prospective of their specific clients, but this was presented to the company Greenfire as a  
36 purchase and sale that was going to be financed by Trafigura standing behind the purchaser,  
37 but as discussions progressed with the proposal trustee and with the company, it became  
38 very clear that there was a disconnect between the timeframe that was required to have the  
39 AER licences transferred and to have the purchaser set up as a licensee qualified to hold  
40 the licences pursuant to the AER's regulations, and that timeframe, of course, directly  
41 conflicted with all the evidence that you've heard today of the plant being increasingly at

1 risk for damage as the weather cools down.

2  
3 And so we had these conflicting timeframes and we had Trafigura who is, of course, a  
4 marketer. They are a commodity trader, is my understanding, and they are not characterized  
5 as someone or a company who provides DIP on any regular basis. And so, as a result of  
6 this, we agreed to this creative solution where all of the funds being advanced as part of  
7 this purchase price are, of course, set out under the DIP, but they are set out in separate  
8 categories to try and distinguish between what is going to be escrow funds paid to the  
9 escrow agent to hold while the AER licence transfer process is completed as opposed to  
10 funds that are being advanced on more of an operating expense basis, which includes  
11 payment of the deposit, which will cover the costs of the court proceedings as well as the  
12 costs of capital expenditures to repair the plant and have it be operational, and on top of  
13 that, operating expenses that are incurred as the plant becomes operational.

14  
15 And so, under a normal sale agreement, you would typically see an adjustment provision  
16 that has an effective date and as of that effective date, the purchaser will take on all benefit  
17 and obligation of the assets and so often that is a timeframe far in advance of when closing  
18 actually happens and then an adjustment occurs after the parties actually close. But under  
19 this sale agreement, there's no adjustment provision because all of that adjustment is  
20 actually happening by the purchaser assuming all liability for obligations payable under  
21 the interim financing as of final closing. And so, because Trafigura is not a normal DIP  
22 lender they were given comfort by the fact that they are financing this and -- and if we are  
23 unable to close, then they will have a charge so that they are protected as to what they have  
24 advanced prior to closing.

25  
26 And just perhaps one note on the way the transaction is actually structured. That, of course,  
27 is -- is a little bit different than you might normally see and the escrow concept  
28 contemplates a two-stage closing, which means that as soon as the parties have court  
29 approval and are able to move forward with escrow closing they will provide all of the  
30 closing documents and the cash portion of the purchase price in escrow and then they will  
31 initiate the AER licence transfer process so that they can remain entirely onside with the  
32 AER's regulatory policies and then upon approval by the AER, the escrow agent will  
33 undertake just a mechanical closing and will release the purchase price to the company and  
34 will release the documents to both sides so that the transaction can close.

35  
36 THE COURT: Thank you, Ms. Wood. Anything else?

37  
38 MS. WOOD: No. Those are my submissions subject to any  
39 questions you might have.

40  
41 THE COURT: Okay. Again, I'll reserve questions until I hear

1 from all parties. Thank you.

2  
3 **Submissions by Mr. Kashuba (Sale Approval)**  
4

5 MR. KASHUBA: Good afternoon, My Lord. Good afternoon. It's  
6 Kashuba, initial K, with the Torys firm and counsel to the McIntyre Group, and they are  
7 the proposed purchaser of the Greenfire assets as mentioned through a company that was  
8 incorporated called Greenfire Acquisition Corporation. Now, Sir, as my friends from the  
9 Burnet firm took you through, I think the transaction has been accurately characterized and  
10 described. There's a couple of points of clarity and confirmations that I'll provide and I will  
11 be brief.  
12

13 Now, Sir, I -- I can confirm that McIntyre Group and the Greenfire Acquisition Company  
14 are unrelated parties to the debtor entities. They're an arm's length transaction mode and  
15 that they are also with Trafigura. After many months of negotiations over which my client  
16 was working closely with the company and directly and through counsel, as well as with  
17 the proposal trustee, we worked hard day and night to get this asset purchase agreement  
18 across the line, and that's the state that sits before Your Lordship today.  
19

20 Now Trafigura, which is represented by Ms. Fellowes, has also been very -- working very  
21 closely with McIntyre Group to arrive at financing term with respect to the DIP facility and  
22 the purchase price. Now, Trafigura is a very credible and -- and reputation almost second  
23 to none in this space. They are the second largest physical oil trader in the world and they  
24 have the ability to move forward with this transaction. I'm sure Ms. Fellowes will speak  
25 further on that but there is no question about their ability to proceed as with Mr. -- or with  
26 the McIntyre Group transaction.  
27

28 Now, the current and future winter weather conditions are of serious concern to my client  
29 and they give rise, at least in part, to the urgency of the matter before you today. As the  
30 cold sub-zero conditions continue the risk of serious damage or destruction even potentially  
31 of the Greenfire assets increases. This is a serious concern for my client that's been worked  
32 into the asset purchase agreement. There is a real and palpable need to proceed quickly  
33 with this transaction. As Mr. LeGeyt mentioned, the proposed purchaser will be taking on  
34 the entirety of the DIP, which could be valued up to \$20 million. There's real value here  
35 and we would submit that it's in all stakeholders' interest to have this on block transaction  
36 approved.  
37

38 The sales process has been ran by the company with the assistance of the proposal trustee.  
39 This has spanned many months. My client has come to the table and is here today ready to  
40 proceed. The asset purchase agreement has been carefully and painstakingly negotiated  
41 between the parties. It's been executed. It is subject to this Court's approval. Now, Sir,

1 contrast this with a hugely conditional proposal that has been provided today by Mr.  
2 Nishimura's clients, the noteholder group. There's talk of expression of interest and we do  
3 not have true obligations. There's discussions of further talks that might happen in the  
4 future but we have no commitments. Now, Sir, we would submit that this is fundamentally  
5 and thoroughly different from the asset purchase agreement signed by my client and sitting  
6 before the Court today.

7  
8 I did tell this Court that I would be brief and that does conclude my submissions subject to  
9 any questions arising.

10  
11 THE COURT: Thank you, Sir. Again, I will reserve questions  
12 until I hear from all parties.

13  
14 Next?

15  
16 MR. KASHUBA: Thank you, My Lord.

17  
18 THE COURT: And I again --

19  
20 MS. FELLOWES: Thank you.

21  
22 THE COURT: I will just -- if I can just pause. At some point I  
23 would like to take a break for the benefit of everyone on the line. I am fine for right now  
24 but just bear that in mind.

25  
26 Ms. Fellowes, sorry to cut you off.

27  
28 **Submissions by Ms. Fellowes (Sale Approval)**

29  
30 MS. FELLOWES: Thank you, My Lord, and -- and again, I will be  
31 brief, keeping in mind the requirements and I know there's lots of people who are waiting  
32 their turn anxiously to be heard on this matter.

33  
34 I will simply say that I do -- Trafigura Canada LP is my client and they are the proposed  
35 DIP lender. I echo Mr. Kashuba's comments with respect to the size and credibility of my  
36 client. They are a very credible and well-funded party in this proceeding and they have, in  
37 essence, put their money where their mouth is by signing a highly negotiated DIP lending  
38 term sheet, which you will see exhibited before you in the materials and mentioned in a  
39 very helpful chart by the proposal trustee highlighting the -- the basic term of that  
40 transaction.

41

1 I also echo Ms. Wood's comments that this is a creative solution, Sir, which generally a  
 2 DIP funder comes in, you know, earlier on in the proceeding, but the fact that this company  
 3 was unable to find a DIP lender for many months means that we're now coming to a point  
 4 several months into the proceeding where DIP lending has reached a crisis point. The  
 5 professionals have not been paid. There are urgent repair costs that need to be made and  
 6 this deal will only happen subject to various conditions including, you know, approval of  
 7 the facilities to make sure that they are the -- the necessary repairs have been made and, of  
 8 course, that the AER is satisfied that not only a licence transfer is in order but that the  
 9 company has complied with all the directives in regards to safety.

10  
 11 So, My Lord, this is a creative solution. It was, as Mr. Kashuba says, highly negotiated and  
 12 subject to many, many hours and days of -- of negotiations and we are very pleased to have  
 13 come to the point we are right now, and I echo my friend's comments that it's very important  
 14 that this be approved today and not delayed.

15  
 16 Subject to any other questions, those are my submissions.

17  
 18 THE COURT: Thank you very much, Ms. Fellowes.

19  
 20 Next? Mr. LeGeyt, are you aware of who would speak next?

21  
 22 MR. LEGEYT: Nothing further substantially. I suspect we will  
 23 now hear from the parties who are opposing and if that is the case, perhaps now is a good  
 24 time for a break. I'm prepared to go on but I also see Mr. Maerov has appeared. Perhaps I'll  
 25 defer to him for a moment.

26  
 27 THE COURT: Okay. Any brief comments before -- I think we  
 28 should take a break now but go ahead, sir, before we do that.

29  
 30 MR. MAEROV: My Lord, I'll -- I will be speaking in -- in support  
 31 of the -- the company's application. I'm happy to do that now or after, as often is the case  
 32 with the court officer, after the opposing parties. I'm in your hands as to the timing.

33  
 34 THE COURT: Why don't you speak to it now so the Court has  
 35 the benefit of those thoughts before we turn to the other side.

36  
 37 **Submissions by Mr. Maerov (Sale Approval)**

38  
 39 MR. MAEROV: Certainly, My Lord.

40  
 41 So, My Lord, I believe you have before you and have already been referred to the fifth

1 report of the proposal trustee. I don't intend to go through that before you this afternoon  
2 only to note that it was served on all parties on the service list on Friday, December 12th.  
3 So all parties should have had an opportunity to review that by this time. As I say, the  
4 proposal trustee is supportive of the proposed interim lend -- lending facility and also the  
5 proposed APA that the company is seeking, and the reasons are by and large set out in the  
6 fifth report.

7  
8 But to simplify and to sort of reduce the issue to its essence, the -- the reason for the trustee's  
9 support is -- is singular. The company has no money. It has no money to address the AER's  
10 requirements that it's delivered pursuant to its order. It's got no funding today to prevent  
11 further damage to the plant from the freezing winter weather conditions that are -- we know  
12 are inevitable. They have no money to run a sale process, and without interim financing it  
13 simply cannot fund not only these proceedings but, very importantly, there are no other  
14 proceedings that can be funded without a source of funding. The plant can't be dried, the  
15 risk of release of potential contamination into the environment cannot be mitigated, and  
16 the company, very importantly for the creditors that are going to speak shortly, the  
17 company can't protect and preserve its assets and the value of those assets for the benefit  
18 of its creditors. If it doesn't have funding, it may simply be forced into bankruptcy and its  
19 assets may need to be disclaimed. And if that happens, there's going to be significantly  
20 lower recovery, if any recovery, to the creditors that are concerned about the relief that's  
21 being sought before you today.

22  
23 So what do the proposed transactions offer? They have the potential to generate proceeds  
24 that would pay any priority payables that rank senior to the secured creditors and,  
25 depending on the severity of the winter weather conditions and the damages that result, it  
26 may result in a distribution to one or more of the secured creditors. It will allow the  
27 company to rehire employees and contractors, to purchase goods and supplies from the oil  
28 and gas services sector, and it will benefit the local economy. Finally, as I've said, it will  
29 allow the company to meet its regulatory obligations and to mitigate the risk of  
30 environmental contamination.

31  
32 So you've heard a little bit from my friends, counsel for the company, about how we got  
33 here, but I'd like to just offer a few additional observations on that topic. The proposed  
34 interim lender facility and the proposed asset sale transaction are unique, as you've heard,  
35 and they were the product of unique and very challenging circumstances. The company  
36 couldn't run a post-NOI process to generate bids for a sale of its business. It did run a  
37 process pre-NOI and since the filing, as you've heard, the company and the proposal trustee  
38 have made very significant efforts to obtain interim financing, contacting many parties and  
39 coming close to reaching agreements with some of them and actually reaching agreement  
40 with one of them. As you've heard, the transactions are the product of many, many hours  
41 of negotiation and, ultimately, after all that effort, 2 months, all those -- all those hours, the

1 proposed interim -- interim loan facility is the only interim financing the company was able  
2 to secure.

3  
4 So, My Lord, that's how we got here, and in term of where here is, I don't want to sugar  
5 coat anything. The proposed transactions are not perfect. Not only are they unique but  
6 they've got conditions in them that themselves are unique or perhaps unconventional for  
7 transactions of this -- transactions of this nature. I -- I won't go through them all now for  
8 the Court. Perhaps maybe if -- if you have questions, I'm happy to identify the ones that  
9 are sort of unusual, but they -- they may leap -- leap off the page.

10  
11 So it's clear that there is -- but it's clear, regardless, that there are challenges ahead for the  
12 company and that the company is going to have to overcome those challenges to preserve  
13 its assets and close the transaction. The reality is that if the company had been identify  
14 another interim financing transaction that wasn't conditional upon a purchase. The proposal  
15 trustee would have been very happy to consider supporting approving that transaction, but  
16 the proposal trustee has to consider the facilities, the loans, the transactions that are  
17 available, not the -- not those that it wishes the company could have had, and given the  
18 absence of the other alternatives and the need to address the AER's winter action items that  
19 are described in our report, the trustee sees no alternative but to support these particular  
20 transactions. It supports the relief that's being sought, it supports the approval of the interim  
21 financing, the approval of the APA and the vesting of the assets, and it supports the  
22 extension of the stay.

23  
24 Now, anticipating just briefly some of the submission that might be made by some of the  
25 other parties, judge -- just judging by the -- the materials that have been filed, it's clear from  
26 the affidavit of Mr. Shabani-Rab that was served this morning that the investor group is  
27 not yet in a position to make an acquisition offer or a financing offer, and it's also clear that  
28 it -- it may or may not ever be in a position to make those offers. The proposal trustee  
29 welcomes and has always welcomed the investor group's participation in this process, but  
30 we remain cognizant of the risk to the asset that would foreseeably result if there was a  
31 delay. And on the topic of the delay, the interim financing term sheet allows the proposed  
32 interim lender to walk away from the deal if it's not approved today, and without that  
33 facility there will be no funding to pay the purchase price, the transaction, the acquisition  
34 transaction may be terminated and the estate will have no funding.

35  
36 So time clearly is of the essence and, unfortunately, the proposal that's set out in the  
37 affidavits of Mr. Shabani-Rab that you have seen today doesn't provide anything in the way  
38 of specifics of how much could be funded, when it could be funded, who would be funding  
39 it, under what conditions it would be funded -- funded, and in light of that, it's just simply  
40 not a credible alternative to a signed detailed transaction that is as fully developed, as  
41 imperfect as it might be, that we have -- that you have before you today and that the trustee



1 is recommending.

2  
3 So, My Lord, I think I'll stop there, subject to any questions, and perhaps just ask that if  
4 any of the opponents raise any points regarding our report that I perhaps be given an  
5 opportunity to respond to those.

6  
7 THE COURT: You will be granted that opportunity if you so  
8 choose, sir. Thank you.

9  
10 MR. MAEROV: Thank you, Sir.

11  
12 THE COURT: Perhaps we should just take a break of 10 or 15  
13 minutes now and then reconvene. Does that work for the parties?

14  
15 MR. LEGEYT: It works for me, My Lord.

16  
17 THE COURT: Hearing no objection, let's break for 15 minutes.  
18 I just need to deal with another order and that will give me sufficient time. Thank you.

19  
20 Madam clerk, if we could adjourn.

21  
22 (ADJOURNMENT)

23  
24 THE COURT: Thank you, madam clerk. I will turn it back over  
25 to counsel and in whatever sequence the parties wish to address matters.

26  
27 **Submissions by Mr. Nishimura (Sale Approval)**

28  
29 MR. NISHIMURA: Thank you, My Lord. I guess I will go first since  
30 I was mentioned a fair bit. It's Doug Nishimura from Field Law and I represent a total of  
31 13 individual investors, and I'll say investors 'cause that's how they're defined in -- in some  
32 of the materials. And these are people who advanced money in what they were told by  
33 Green -- Greenfire's management was a very short-term bridge financing while -- while  
34 Greenfire attempted to obtain new financing to take out its original lender. They in fact did  
35 so and Summit, who is represented here today, is -- was the -- was the new loan that they  
36 obtained.

37  
38 The first loan was paid out, and it's interesting because if you'll have seen my client's first  
39 affidavit from back in October, the individuals were supposed to get debentures. They  
40 didn't. They were later told, well, the term sheet plus their subordination agreement equals  
41 your debentures, which -- which I find very -- very difficult to swallow. Under the term

1 sheet they were provided they were also supposed to get security upon payment of the first  
2 loans, and so neither of those things happened. They were then continually told that they  
3 would be repaid shortly. They were in fact told that Summit in its advances had set aside  
4 in trust some \$5 million which would be paid to them upon satisfaction of certain  
5 conditions and that turned out to not be the case. They were misled.

6  
7 So they came into these proceedings with that kind of background, and I just give you that  
8 background so that you have some flavour of one of the reasons that they're taking the  
9 position that they are. All of my client's evidence are in the form of affidavits from Taher  
10 Shabani-Rab. It says Amir and that's -- that's I -- I've come to learn is a -- is a title or  
11 honorific. So there are three affidavits. One October 14th, one December 9th, and one just  
12 today in the early part of today and that last affidavit was simply done in response to the  
13 materials that we received on the Friday.

14  
15 By way of a little bit further background, after these proceedings commenced and even a  
16 little bit before, just before the proceedings commenced, my clients indicated to the  
17 company that they were unhappy, that they were dissatisfied with how things were going.  
18 I -- they had some discussions and they, in fact, encouraged the company to get counsel  
19 and to -- to react to their -- to their demands. Immediately thereafter we were -- we found  
20 ourselves in these proposal proceedings. They have limped along. The company has made  
21 application after application not coming to term with any of the things that they were --  
22 they were saying that they were going to but simply at the end of the day getting further  
23 extensions, which my clients have not opposed despite their -- their concerns with respect  
24 to management, but that those concerns are now -- are now coming to the forefront.

25  
26 So my -- my clients, first of all, support the -- the application that you heard earlier from -  
27 - from Mr. Zahara saying that there's a need to question Mr. Logan on his affidavit. We  
28 agree with that. There are some concerns with respect to how this deal is structured, what  
29 exactly is going to be paid, what needs to happen, the management role in the company,  
30 what is planned going forward but, in addition, there is a lot of evidence that is missing  
31 even in respect of the approval of the sale, what marketing was done, who was contacted,  
32 and so on, and I can take you a little bit further into that as we go along.

33  
34 It's our position that the proposed DIP financing is not necessary in -- in amount and that  
35 my clients don't have confidence in the company to perform properly having obtained any  
36 debt financing. We understand that there is interim financing needed but the -- but our  
37 understanding and our evidence and I'll take you to that is that there's not as much needed  
38 as is being requested and under the current purchase and sale agreement, the more DIP  
39 that's used, the less that's available to other creditors and, as a matter of fact, it just changes  
40 what the DIP financier receives. It makes the purchase and sale agreement appear much  
41 larger than it actually is in value.

1  
2 Secondly, it's our position that the purchase and sale agreement is not proven to be the best  
3 price for the assets. It's not proven to be the -- in the best interest of all creditors and that  
4 will be -- that will be evidenced in part by the fact that every single significant creditor in  
5 this matter is opposed to it and that includes my clients, it includes Athabasca represented  
6 by Mr. Zahara, and my understanding is that it includes the secured creditor Summit as  
7 well, unless something has changed between my last communication with Summit's  
8 counsel.  
9

10 My clients understand that the company is in dire straits and -- and in need of cash and is  
11 in need of interim financing. My clients believe, however, that this particular transaction is  
12 not in the best interests of the creditors and if the company can't move forward in these  
13 proceedings and is forced to move forward in a -- in a bankruptcy, my clients are prepared  
14 to work with a trustee to ensure that the property is preserved in order to advance a better  
15 sale, a better result for creditors.  
16

17 So to begin with -- with respect to DIP financing, the evidence initially and remains the  
18 case if you look at the cash flow projections of the company, which are attached to the  
19 report, that the amount needed to -- in the short term, is around \$1 to \$2 million and there's  
20 -- there's two main components of that. One is to repair and -- and convert the -- the facility  
21 to a dry facility and the other is with respect to admin costs. The remainder of the DIP that's  
22 being asked for is to restart and fire up the facility and, as I'll -- as I'll explain, those steps  
23 are only in the interest of one party and that's the purchaser. So the amount of DIP that's  
24 being requested is not just to preserve the assets pending a sale. It's -- it's not just to ensure  
25 that the property doesn't devalue. It's actually to improve what the purchaser is buying and  
26 has already committed supposedly to buying.  
27

28 So coupled with the purchase and sale agreement, again, the extra DIP financing is only  
29 for the benefit one party, being the purchaser. Maybe two parties if you count current  
30 management who are all being retained by the purchaser. So in -- in the trustee's report, the  
31 repair and preservation of assets and payment of admin costs is estimated to be, I believe,  
32 \$2.2 million. That's borne out in the affidavits, that's supported by the previous evidence  
33 of Mr. Logan, and it's right around where my clients have estimated in -- in their own  
34 materials.  
35

36 We've provided some case law to you, Sir, and the case that we've provided in respect of  
37 interim financing is called *1252206 Alberta Ltd. v. Bank of Montreal*. It's a decision of  
38 Madam Justice Bielby from 2009. And in that case, the test for DIP financing is at  
39 paragraph 17, which is on the fourth page. There are really four factors. Will the benefit  
40 afforded by DIP financing clearly outweigh the prejudice to creditors whose security is being  
41 subordinated? Will the -- secondly, will the benefit afforded by the DIP financing bring

1 greater value to the enterprise as a whole rather than bankrupting and liquidating the assets  
2 and whether there is a demonstrated significant net value in the assets after the security,  
3 and also whether the unsecured creditors would benefit if the DIP financing allows the  
4 business to be continued, rather. The third factor is whether limitations can be placed on  
5 the advancement to minimize its impact such as limiting the amount of drawdowns on the  
6 financing. And, finally, whether the DIP financing is required to permit the applicant's  
7 business to survive the proposal period.

8  
9 With respect to those, again, the benefit afforded by the DIP financing is twofold. One is  
10 to preserve the assets and I would concede that that's in the interest of all creditors but,  
11 secondly, to enhance what the purchaser is buying right now doesn't -- doesn't favour any  
12 -- any existing creditors at all except for maybe Summit to an extent. What and who it  
13 favours is the very DIP financier who is providing the funds because they immediately get  
14 that paid back at -- at an interest rate from the purchaser. It's really money in and money  
15 back out to the DIP financier.

16  
17 Secondly, will it bring great -- greater value to the enterprise as a whole, whether it will  
18 pay out all secured creditors and the DIP lender and whether unsecured creditors will  
19 benefit, well, on their best day on their best estimate in this -- in this transaction, unsecured  
20 creditors are going to be left out. In fact, even the secured creditor looks to be taking a  
21 haircut. There may be some liens that have to be taken care of but, aside from that, every  
22 single unsecured creditor will not be paid including the very significant ones owed millions  
23 of dollars like my clients. Summit will also not be paid in full apparently. In addition, the  
24 large claims that may arise from the Warner litigation, none of that would be paid, and  
25 Athabasca would not be paid either.

26  
27 Whether limitations can be placed on the advancement of DIP financing isn't really before  
28 you because there apparently are no limitations on the financing other than those imposed  
29 by the DIP financier itself. So everything is under its control but there's nothing that's  
30 proposed to be under court control. There's -- there's no -- there is no control by the trustee,  
31 for example. It said the DIP financier will have some control over management with respect  
32 to those disbursements, and that was the case in earlier DIP financing efforts where the  
33 DIP financier was in fact supposed to get equity in the company and management control  
34 as well. The -- it's interesting that -- that what's happening here is the DIP financing is very,  
35 very flexible. It's said to be from 4 to up to \$20 million. So it sounds a lot, \$20 million, but  
36 the -- whether that gets advanced, that's all in the control of the DIP financier and it greatly  
37 affects the purchase and sale agreement, which gives the Court not a lot of -- not a lot of  
38 information regarding the actual value to creditors of this transaction.

39  
40 And, finally, is the DIP financing required to permit the applicant's business to survive the  
41 proposal period, we're in a -- we're in a proposal proceedings, but it's quite evident from

1 this transaction, the proposed transaction, that there won't be a proposal for creditors. There  
2 will be a sale of all the assets and then there will be a straight on distribution in priority to  
3 creditors whether -- and only secured creditors. There will not be a proposal for any  
4 unsecured creditor or secured creditor to vote on at the end of the day here.

5  
6 So, in our submission, while there is a need for interim financing if one is to preserve the  
7 business, that can be -- what's proposed isn't necessary and, secondly, it's not necessary  
8 that the company be the one to handle that interim financing. One of the issues that's  
9 stressed very much to you by the company and the trustee and -- and the -- and the  
10 purchaser is that this company needs cash in order to survive in order to move forward.  
11 Well, that's the case, but it's also the case that the company has to have shown that it's the  
12 party that's best suited and best evidenced to control that cash, to control that interim  
13 financing, and to control the business going forward. My clients have lost all confidence  
14 in the management, partly because of the past treatment, partly because of the  
15 misrepresentations that have occurred in the past, and partly because of the manner in  
16 which they've been sort of pushed to the side and only consulted on a cursory basis in these  
17 full proceedings.

18  
19 Indeed, we -- we, as Mr. Zahara has said, we've continually been given materials. We've  
20 asked for information and then been given materials in response, including court materials.  
21 We had a meeting finally on December 2nd, which we had requested in order to brainstorm,  
22 in order to, you know, give and take input with the company with respect to their  
23 restructuring. We get into the meeting and it's -- we're told, Well, we've got an application  
24 for sale, you're going to get your materials shortly, and -- and we got those materials almost  
25 concurrently with being in the meeting, except for the receiver -- the trustee's report.

26  
27 So when -- when it's said, Well, this company might go bankrupt, there might not be any  
28 proceedings unless they get cash, my clients are perfectly happy to deal with the trustee as  
29 opposed to management of the company. My clients will be there in order to work with the  
30 company in order to preserve the assets, especially on an interim basis in order to move  
31 forward with a more fulsome and proper sales process. The bottom line of it is my clients  
32 don't have a lot of confidence in the company acting properly once this sale is approved or  
33 in dealing with DIP financing.

34  
35 So given that, the company has also proposed a sale and Mr. -- Mr. LeGeyt has taken you  
36 through the factors in section 65.13 of the *Bankruptcy and Insolvency Act*, which really  
37 incorporate the *Soundair* principles, and while those are the correct factors, obviously, we  
38 take a very different view of whether they're met. The -- the first factor is whether the  
39 process leading to the proposed sale or distribution was reasonable in the circumstances,  
40 and both the company and the trustee have relied heavily, because they have to, on the fact  
41 that there was supposedly a process that happened in the spring of 2020, because there was

1 obviously no court appointed sales process. There were no rules to that game. So there is  
2 really a nonexistent court approved process.

3  
4 The -- what happened in the spring, according to the submissions of my friends is that there  
5 was a consultant engaged, there were parties who were contacted, and there were -- there  
6 was only a single bidder. That's reflected in Mr. Logan's affidavit. It's also reflected in the  
7 trustee's report but, of course, the trustee's report limits itself only to the information  
8 provided by the company. That's a major qualification in every trustee's report. Fair  
9 enough, but what it really means is we really only have the evidence of the -- of the  
10 company itself.

11  
12 So what does the company say? It says it did these things but it provides no backup and no  
13 evidence as to what was involved in that process, what was provided to bidders, where was  
14 it marketed, who was it marketed to, what was the description of the assets, how many of  
15 these parties were attracted, who were they, what discussions were had. Just that there was  
16 a certain number of parties that were -- were dealt with in this process. We really don't  
17 know anything, and I can tell you that when -- when court approved processes are brought  
18 to the Court on sale approval applications, the seller, whether it's the company in a -- in a  
19 restructuring or whether it's a receiver or a trustee, they will tell you here's what we sent to  
20 creditors, here's what was in the data room, here's the teaser, here -- here are the materials  
21 that people looked at, here's where we advertised so that we can -- so that the Court can be  
22 satisfied that it was a fulsome process. All you're told is that there was a consultant and  
23 there was a marketing and nothing else.

24  
25 And that's not the fault of the trustee. The trustee just is reporting what the company has  
26 told it and I -- I should say this. That all of this information regarding what marketing was  
27 done wasn't part of the trustee's report in support of the application until we filed our  
28 affidavit on December 9th. Then both Mr. Logan and the trustee provided further materials  
29 on December 11th - so Friday - and that's what got us here. I'd like to take you to the  
30 trustee's report, the fifth -- it's the fifth report and the description of the sales process begins  
31 at paragraph 31 and the pre -- they talk about the pre-filing marketing process overview at  
32 paragraph 32. So they say that the proposal trustee is advised that prior to the 2020 process,  
33 the company had hired three other financial advisors. It doesn't say anything else about  
34 them.

35  
36 Then it talks about the use of Imperial Capital in -- in or around February 21, 2020. It says  
37 that a comprehensive management presentation was assembled. Well, where is it? We don't  
38 know what was presented. We don't know what was in that. It says the proposal trustee is  
39 advised by the company that submission guidelines were communicated. We don't know  
40 what those were. We don't know what the conditions were around that so that parties would  
41 be attracted to and find it -- find it conducive to looking at these assets. There was a soft

1 target date of April 28th. It talks about what kind of transactions were available but, again,  
2 we don't know what the materials were that were provided. There's -- there's nothing in the  
3 evidence either in Mr. Logan's November 2nd affidavit which they refer to, nor in any  
4 materials subsequent thereto. There is no real record of any of the contacts, who they were.  
5 In fact, there's just no backup at all.

6  
7 The trustee, at paragraph 39, acknowledges that it did not institute a formal conventional  
8 sale and investment proceeds and then they say that there were no funds to do any --  
9 following the -- following the start of these proceedings. I -- I should pause to say that there  
10 were attempts to find -- that there were several applications whereby the company said  
11 we'd like to have interim financing approved and in each of those, the company withdrew  
12 its interim financing application. Now, they will say, Well, we just weren't able to find any,  
13 it was very difficult and so on, but we really have no idea what kind of diligence was  
14 performed by the company. That might be something that one would question Mr. Logan  
15 about but we haven't -- that's the subject of the adjournment application.

16  
17 In addition, at paragraph 43, the trustee talks about companies coming into the data room  
18 of the -- of the company in respect of interim financing and then there's some attempt to  
19 merge that into, Well, these parties were also offered the ability to invest or acquire the  
20 company but, again, there was no sales process. My client didn't know, for example, that  
21 their -- that the interim financing efforts of the company included -- included any kind of  
22 other transactions other than interim financing. And then at the end of the day they say,  
23 Well, we have this McIntyre offer. We think we've got the best deal possible.

24  
25 The -- I've provided a case again. It's called *Elleway Acquisitions Limited v. 4358376*  
26 *Canada Inc.* It's a decision of Justice Morawetz. At paragraph 31, Justice Morawetz went  
27 through the usual *Soundair* principles, whether the party made a sufficient effort to obtain  
28 the best price and is not acting improvidently, the interest of all parties, the efficacy and  
29 integrity of the process, and whether the working out of the process was unfair. And the  
30 reason I brought you this case is that in that case, Justice Morawetz was dealing with a  
31 quick flip or immediate sale. So there was no actual process, which is the case here, and he  
32 approved the sale and -- and -- but he considered in paragraph 33 that this should be done  
33 where an immediate sale - under letter (a):

34  
35 (a) is the only realistic way to provide maximum recovery for a  
36 creditor who stands in clear priority of economic interests to all  
37 others, and

38  
39 (b) delay of the transaction will erode the realization of the security  
40 of creditor in sole economic interest.  
41

1 Well here there are really -- there -- there is Summit, who has an economic interest, who's  
2 got first charge security, there are my clients and I should pause to add in light of the fact  
3 that the term sheet for the debentures spoke to a requirement to provide security upon  
4 payment of the first lender, my clients have registered a security interest. They were not  
5 provided security documents but there was an intention to do so, in our submission.

6  
7 And then in paragraph 34, it's stated that:

8  
9 ... the Court should consider the impact on various parties and  
10 assess whether their respective positions and the proposed  
11 treatment that they will receive in the "quick flip" transaction  
12 would realistically be any different if an extended sales process  
13 were followed.

14  
15 Well, my clients are set to receive zero in this transaction. In an extended sales process,  
16 they might receive zero but they might not, and the same can be said for every other  
17 creditor. Summit might receive something in this transaction. Maybe. It's -- if an extended  
18 sales process occurs, they might receive something else, something better.

19  
20 So the other case that I have for you is called *Jaycap Financial v. Snowdon*. This was a  
21 sale by a receiver, and I just bring it to your attention because the Court of Appeal in that  
22 case set aside a sale where there was not transparency in the process, and it's described  
23 generally at paragraphs 24, 25, 26, and 29. At 29 it's stated that:

24  
25 The Receiver's materials on their own do not provide the  
26 evidentiary basis to support the relief it was seeking. It was only  
27 several weeks later, when faced with serious opposition from Mr.  
28 Richardson, that Jaycap filed an affidavit with more, although still  
29 incomplete, information about what transpired.

30  
31 In paragraph 33, the Court of Appeal says:

32  
33 What is missing here is transparency. The process should be  
34 transparent. It should enable the court and interested parties to  
35 make an informed decision as to whether the sale can be  
36 considered fair and reasonable in the circumstances.

37  
38 Well, here there's a reliance on a sales process which occurred sometime in the past  
39 supposedly, but for which there are no materials which have been provided. There is  
40 reliance on a transaction which is opaque, I will -- I will submit, with respect to the  
41 interaction between the DIP financing and the purchase price that's going to be paid.



1  
2 Now, there's been a lot made that there's no other formal or credible offer before -- before  
3 you and there's been reference to my clients' efforts and the fact that it's about a million  
4 dollars in the bank. I can tell you this. There is nothing in Mr. Shabani-Rab's December  
5 9th affidavit or his affidavit of today that says that the transaction that we are proposing is  
6 for a purchase of the -- of the assets for \$1 million, and I was surprised when -- when I saw  
7 reference to that in the report because I had a discussion with the -- the trustee and its  
8 counsel and we never said here's what we're offering for the property. What that -- what  
9 the reference to the million dollars is meant to show is this. We were advised in the middle  
10 of a meeting on December 2nd that there was going to be an application for approval of  
11 the sale.

12  
13 Between that time - and this was in the afternoon - and December 9th when my client swore  
14 the affidavit, they had managed to raise in that very short period of time, \$1 million in cash,  
15 which is in a trust account. They have also been in contact with several other parties who  
16 are very interested in proceeding with some sort of a transaction going forward and this  
17 includes other people that are in the same boat as them. It includes discussions with other  
18 stakeholders in these proceedings and those are the only -- and it also includes discussions  
19 with third parties who otherwise have no interest in these proceedings.

20  
21 So in that short period of time, there is a good start towards -- towards a better transaction  
22 and the fact that a million dollars was raised was not to say we've got a million dollars,  
23 that's what we propose to spend on these assets. It was meant to say our clients are -- are  
24 here. They're willing to work. They're willing to raise cash and here's what we've done in  
25 this very short period of time. Because if my clients had come and simply said this is not a  
26 good enough purchase price, the answer to that in all of these proceedings is always, Well,  
27 where's your money, are you a real participant, are -- are you serious about it. They've  
28 managed to do that in this short period of time.

29  
30 Now, my friends have attempted to contrast that negatively with the sale that's before you.  
31 If you look at the purchase and sale agreement, it's really unclear what exactly the benefit,  
32 the net benefit to creditors is going to be. Whether it's a \$4 million transaction, whether it's  
33 a \$20 million transaction, that variance is really dependent on how much DIP financing is  
34 needed. None of that -- none of the size of that transaction benefits any other creditor. So  
35 what's available to unsecured creditors to -- or to secured creditors who are underneath the  
36 admin charge and the DIP financing that's proposed may be nothing, no more than \$1  
37 million, and that's \$1 million subject to whether the transaction actually closes because it's  
38 a deposit, how much things cost, and the DIP financier has to put forward. The net benefit  
39 to creditors may be negligible.

40  
41 So my clients' proposal, because they already have skin in the game, they've already

1 invested money. So have the other people that they've talked to in large part. My clients'  
2 proposal may be a comparison between a deal that preserves the property, goes through a  
3 sales process, and in which they would participate, with the net result that there are more  
4 funds available to the present creditors. Let's remember that the DIP financier is not a  
5 present creditor. So you might have a deal that is a \$4 or \$5 million deal that actually nets  
6 creditors a lot more. Nets the present creditors a lot more than a deal which on paper is a  
7 \$20 million deal, because the new creditor -- the new owners would be taking on that  
8 liability, but after paying the other creditors, not before.

9  
10 I've said that this -- in going through the chest again, who does this transaction benefit?  
11 Does it benefit any creditor other than perhaps Summit to a small extent? No, it doesn't.  
12 Does it benefit the management of the company? Well, they get to keep their jobs. We  
13 don't know what -- what other kind compensation. It's quite odd, in my view, that there  
14 would be a condition on a sale that present management is still there, especially given the  
15 performance of the company.

16  
17 I want to just respond briefly to some of the things that were submitted in respect of -- in  
18 respect of my clients' position and Mr. Zahara's -- there -- there was reference to the  
19 materials that were provided and Mr. Zahara said, you know, we only got these on Friday.  
20 Mr. Algar took some exception to that, but the key thing is that there were materials that  
21 were served on December 2nd in the afternoon with an unsigned agreement and with no  
22 trustee's report to comment on it. It wasn't until Friday, until after my client filed an  
23 affidavit questioning this deal, and that -- and perhaps proposing an alternative, not until  
24 that Friday that we got Mr. Logan's second affidavit -- or seventh, rather, and the trustee's  
25 fifth report, which are really the materials that are in support of this -- this transaction.

26  
27 One of the -- one of the factors that you are asked to consider by the company in its  
28 submissions, will management remain in charge. That was a submission. And I'm here to  
29 tell you that for my clients and for many of the other creditors that's not a feature. It's -- it's  
30 an issue. It's a problematic issue because there's no confidence in management. Will this  
31 make a -- a viable proposal? More possible, and as I've said, no proposal will be made.  
32 This is an asset transaction within proposal proceedings but the result of it is going to be  
33 simply there's going to be a pile of cash that's going to be distributed among creditors just  
34 like a liquidation. The asset will be gone. The money will be distributed mainly to super  
35 priorities like the DIP financier and -- and rightly to the admin charge. Perhaps to any other  
36 super priorities like GST and whatnot.

37  
38 Now, it was submitted that -- in the trustee's report that the company engaged with creditors  
39 and, with respect, engaged with is doing a lot of work there. My clients do not feel that  
40 they've been engaged with. There's a lot of evidence back and forth, but my clients  
41 indicated that they wanted to be consulted and wanted to be included in the discussions.



1 told pre-filing. There is no -- there is no real evidence about what the value of this company  
2 is. The company has had time. They've not provide you with a valuation of the company  
3 other than in the very first affidavit Mr. Logan said, Well, AER values the company at over  
4 \$100 million. Maybe that's down to 86. It was revised. But the amount is variable. Well,  
5 we should be really looking at some more concrete evidence about value aside from a very  
6 opaque process and where we're not told much about what was offered, what was given to  
7 potential buyers.

8  
9 The -- at the end of the day, whether this proceeds into an extension of the proceedings  
10 financed with interim financing provided by someone, or whether it proceeds into a super  
11 -- court supervised bankruptcy with interim financing provided by someone, and my clients  
12 are here to say they would be there, the property is going to be sold and my clients are very  
13 comfortable as creditors with a trustee they can control. Far more comfortable than they  
14 are with the company managing the process because what's happened so far and what  
15 happened pre-filing is -- is not conducive to my clients having any kind of confidence.

16  
17 So where it's described as a creative solution by Trafigura and its counsel, the question is  
18 who is this a creative solution for. Is it a creative solution for the creditors who all would -  
19 - with every single significant creditor opposes this application? So they feel it's not a  
20 creative solution that works for them. It's a creative solution for the current management  
21 of the company and for the party who wants to acquire the asset.

22  
23 So unless there's further questions and subject to anything new that arises from any other  
24 comments by counsel, those are all my submissions, Sir.

25  
26 THE COURT: Thank you. Thank you, counsel. If the parties  
27 that need to speak or are going to speak, if they could just provide the Court with a bit of  
28 an overview of their timeframe, and that includes Mr. LeGeyt.

29  
30 MR. REID: Hello, Sir. James Reid and I'm counsel for  
31 Summit Partners and I only expect to be 1 to 2 minutes.

32  
33 THE COURT: Okay. Thank you, Mr. Reid. Others?

34  
35 MR. ZAHARA: My Lord, it's Ryan Zahara. I'm counsel to  
36 Athabasca Workforce Solutions and Excel. I expect I'll probably be -- need at least 15 to  
37 25 minutes.

38  
39 THE COURT: Okay. Others?

40  
41 MS. MEYER: Good morning, My Lord -- or good afternoon.

1 Sorry, My Lord. Kelsey Meyer from Bennett Jones on behalf of Warner Petroleum  
2 Corporation and Liberator Crude Trading. I anticipate my submissions will be about 10  
3 minutes.

4  
5 THE COURT: Thanks, Mr. Meyer. Next?

6  
7 MS. MEYER: Thank you.

8  
9 MR. PLESTER: My Lord, Gregory Plester from Brownlee LLP  
10 for the Regional Municipality of Wood Buffalo. I also need only about a minute or 2.

11  
12 THE COURT: Okay. Thank you, sir.

13  
14 MS. LAVELLE: And Maria Lavelle for the Alberta Energy  
15 Regulator. I also need 1 or 2 minutes. Thank you.

16  
17 THE COURT: Thank you.

18  
19 MR. BLACKETT: Glenn Blackett at Carscallen for Apex. I'll only  
20 need a couple of minutes as well.

21  
22 THE COURT: Thank you, Sir.

23  
24 MR. MAEROV: My Lord, it's Adam Maerov again. I'll need no  
25 more than 5 minutes.

26  
27 THE COURT: Okay. Thank you.

28  
29 MR. LEGEYT: And perhaps a little more difficult for me, My  
30 Lord, but I'm hoping that our rebuttal will be 10 to 15 minutes.

31  
32 THE COURT: Okay. So, Mr. LeGeyt, let's say 15 minutes. So  
33 we're at 20, 45, 55... we're at about 65 minutes. So let's say it takes us -- and that's before  
34 I ask questions, and I have got a number of them. Let's continue on. I'd like Mr. LeGeyt  
35 and others to think about and maybe communicate how we are going to deal with this. I do  
36 want to give everyone the opportunity to speak. There is lots of issues here. Mr. Zahara,  
37 should you go first? That's a question not a directive.

38  
39 MR. ZAHARA: My Lord, I think I was going to let Mr. Reid go  
40 next and then I'm happy to go after him.

41

1 THE COURT: That's fine, Sir.

2

3 Mr. Reid?

4

5 **Submissions by Mr. Reid (Sale Approval)**

6

7 MR. REID: Thank you, Sir.

8

9 I'll -- I'll be 1 to 2 minutes. First to respond to Mr. LeGeyt's submissions, he is quite right  
10 that his client has been communicating regularly with my client, Summit Partners, with  
11 updates on these proceedings and, likewise, counsel to the company as well as the proposal  
12 trustee and its counsel have regularly responded to both my questions and my client's  
13 questions. So no concerns in that regard.

14

15 It wasn't until this morning that we saw the affidavit from Mr. Nishimura's clients  
16 indicating that it has been making progress with respect to some of its proposals including  
17 an email from Mr. Nishimura suggesting that his client is willing to put up the million  
18 dollars that it holds as interim financing, subject to certain conditions and, as a result,  
19 Summit Partners is not supportive of the application for the DIP financing and McIntyre  
20 transaction going ahead today. It's curious to see what -- what Mr. Nishimura's client can -  
21 - can do with a little bit more time. Summit Partners is supportive of the stay extension,  
22 however, but it would like to see what the investors propose if it's allowed the time.

23

24 THE COURT: Thank you, sir. Anything else?

25

26 MR. REID: Nothing from me, Sir. Thank you.

27

28 THE COURT: Okay. Thank you.

29

30 Next?

31

32 **Submissions by Mr. Zahara (Sale Approval)**

33

34 MR. ZAHARA: Thank you, My Lord. It's Ryan Zahara. I will  
35 make our submissions next. I will try to stay within my estimated time as best as possible.  
36 So our client, Athabasca Workforce Solutions, for the record, is owed approximately \$3.8  
37 million for services provided to Greenfire Hangingstone. As a number of these creditors  
38 are in a similar position to us, in order to provide services to Greenfire Hangingstone, we  
39 were -- our client was required to purchase shares in Greenfire and so they purchased about  
40 two and half million dollars of shares in Greenfire. And so, they're also a shareholder at  
41 that level and so (INDISCERNIBLE) client's (INDISCERNIBLE) are (INDISCERNIBLE)

1 to this venture.

2  
3 THE COURT:

Mr. Zahara, I'm just going to pause you there.

4 You are fading in and out again.

5  
6 MR. ZAHARA:

Yeah, so I'll try to lean in as close as I can, My

7 Lord. Is that better?

8  
9 THE COURT:

That is much better. Thank you, sir.

10  
11 MR. ZAHARA:

I'll try to stay bent over like this.

12  
13 So our clients have put in over \$5 million, in our submission, towards this. We have  
14 similarly lost all faith in management in respect of them either trying to bring forward a  
15 transaction or to continue to operate these assets. Our client was the one who originally  
16 initiated a bankruptcy application against Greenfire and Greenfire Hanging -- or against  
17 Greenfire Hangingstone pursuant to the amount owed to it. Just so the Court's aware, that  
18 application for bankruptcy was filed August 20th, 2020, and served around the same time.  
19 It was set down for September 20th and 22nd, subsequently adjourned to, I believe, around  
20 October 10th or 15th. I can't remember the exact date. And prior to that application or us  
21 being able to question Mr. Logan, the NOI proceeding was filed by the two Greenfire  
22 entities.

23  
24 So Greenfire's been aware that the -- the creditors have been wanting some sort of a  
25 resolution from them for some time. This just didn't come out of left field. I would say as  
26 well in respect -- and this feeds into some of the submissions I will make in respect of the  
27 interim financing and sale approval, Greenfire itself, as we know, started its process with  
28 Imperial back in February. We would note that our understanding, and this is consistent  
29 with the evidence given in the November 2nd affidavit of Mr. Logan that process was to  
30 find financing for the company or a refinancing. They had primarily paid down their  
31 secured lender Summit through a -- a sale or a collapsing of their hedges, their forward  
32 price provisions and then shortly after that it shut-in their assets.

33  
34 And so, they were looking for a refinancing through this entire period. At paragraph 19 of  
35 the November 2nd affidavit that Mr. Logan swore, he says: (as read)

36  
37 As stated, Greenfire previously executed a term sheet with  
38 McIntyre for a new senior secured loan. From that point until the  
39 filing of the NOI, Greenfire remained focused on commencing a  
40 refinancing transaction with McIntyre.  
41

1 Simply put, there was no purchase and sale agreement ever contemplated with McIntyre  
2 'til, as far as we're aware of, the first time that was advised to the creditors and the parties  
3 was November 2nd. And then, coincidentally, that was the first day that Greenfire --  
4 Greenfield Acquisition Co. was incorporated, November 2nd. And so the DIP  
5 (INDISCERNIBLE) at this stage, as we understand it, they've had troubles trying to find  
6 interim financing. I don't think we're taking issue with their steps but we're taking issue  
7 with the results. And so, after this November 2nd timeframe, we see the McIntyre  
8 transaction flip from a refinancing transaction into a sale transaction with McIntyre.

9  
10 If we look in the November 2nd affidavit and go on further, at paragraph 22 of that  
11 affidavit, Mr. Logan states: (as read)

12  
13 The APA would provide for a material distribution for Greenfire's  
14 creditors. Given the current timing weather window and state of  
15 the Hangingstone facility, I believe the APA is the best outcome  
16 for all stakeholders.

17  
18 So the creditors have a representation in this affidavit on November 2nd that there's going  
19 to be a material distribution to them.

20  
21 We now fast forward this a month on December 2nd when we get additional materials and  
22 a form of -- unsigned form of DIP term sheet and APA where there's no distribution to the  
23 creditors. As I currently understand the present structure of the APA and the DIP term  
24 sheet, there may be a million dollars potentially left but you still have deduct amounts for  
25 the admin charge and restructuring costs incurred from the date of the -- the -- the escrow  
26 closing to the final closing and you have to take priority payables for municipal taxes out  
27 of that.

28  
29 So, in our submission, there's very little under this asset purchase agreement that's going to  
30 be left for the creditors. So we have a substantive change from what the company's been  
31 advising the creditors up to November 2nd, first the refinancing, material distribution to  
32 the creditors. November 2nd -- November 2nd no distribution to the creditors and  
33 (INDISCERNIBLE).

34  
35 THE COURT: Mr. Zahara, again -- sir, just if I can pause you  
36 there. Again, I cannot hear you, and there's some other static on the line. If someone has  
37 their microphone live, maybe they could just mute it.

38  
39 MR. ZAHARA: My Lord. I think I'll just pick up on my  
40 submissions then where I left off.

41



1 THE COURT: Yes.

2  
3 MR. ZAHARA: Effectively, the -- the -- the transaction as  
4 proposed now has continued to morph throughout this proceeding. It hasn't been a static  
5 asset purchase agreement and I want to turn now just to the comments and Mr. Nishimura  
6 has made some of the points and I will try not to duplicate those points, My Lord, but I  
7 think it's important to actually look at how this is laid out. You have a company, a debtor  
8 company, seeking interim financing to pay a purchase price. I've never seen this in my 15  
9 years of doing this. Why would a -- a Court and a -- a competitor company be allowed to  
10 get interim financing on behalf of the purchaser. And I appreciate that the proposal trustee  
11 has acknowledged the uniqueness of the situation, but I -- I just don't understand how this  
12 can be authorized under the statute when the Greenfire Acquisition Co. is not a borrower  
13 under this facility. You're priming all other creditors with it to the tune of \$20 million  
14 purportedly, and there's no amounts flowing back to the creditors.

15  
16 If the Greenfield Acquisition Co. wants to seek financing for its purchase price, it needs to  
17 do that separate and apart from these proceedings and they shouldn't be tied to a priority  
18 charge ahead of all creditors including potentially the secured creditors, the -- Mr.  
19 Nishimura's client, and the AER, 'cause, to my knowledge, the priority of this interim  
20 financing would rank ahead of -- or potentially rank ahead of or it's an unheard of issue,  
21 the (INDISCERNIBLE) reclamation obligations. I'm sure the AER would have a different  
22 view but there's the potential that that exists.

23  
24 Just turning now to the -- the DIP term sheet, My Lord. As I understand, the DIP term sheet  
25 -- this is attached to the proposal trustee's report as appendix -- apologies. Appendix C.  
26 Return to appendix C and page 4 of that interim financing facility. The purpose of facility  
27 A as to page 4, section 9: (as read)

28  
29 The borrower shall use the proceeds of facility A solely to pay a  
30 portion of the purchase price in accordance with the APA, the  
31 escrow agreement, the DIP order and the DIP budget.

32  
33 It goes on to say that: (as read)

34  
35 For the purpose of this section 9 and subject to the satisfaction or  
36 waiver of the conditions precedent, the DIP lender will advance on  
37 the escrow closing date an amount equal to \$4 million less the  
38 aggregate amount of all repair costs incurred by the borrower  
39 between the date of the first advance under facility B and the  
40 escrow closing.  
41

1 And those are the escrowed funds. And the escrow: (as read)

2  
3 The amount of the escrowed funds will be released to the borrower  
4 on final closing as an amount equal to the escrowed funds less the  
5 aggregate amount of all repair costs incurred by the borrower  
6 between the escrow closing and the final closing date.  
7

8 So as I calculate, that \$4 million reduced by the repair costs as well as additional amounts  
9 needed to fund any other costs and their structure, this gets us down to very little  
10 consideration. When I -- when I look at the definition of purchase price in the DIP term  
11 sheet, it appears to contemplate a purchase price of \$5 million but this is only paid for  
12 through the interim financing not of any cash actually paid by the purchaser that we're  
13 aware of. The redacted APA has a reference to a cash purchase price, but we're not aware  
14 of what that is. It may be available to the Court but it's certainly not available to us.  
15

16 I'll just turn quickly to some of the case law we provided to Your Lordship around noon  
17 today with our letter. The first case I wanted to just touch on quickly was the Music  
18 Technics (phonetic) case, and that's a case from the Superior Court. I believe it's from  
19 Quebec and it's again in a bankruptcy and the Court at paragraph 33 of that case, when  
20 analyzing a sale said:

21  
22 The Court is particularly concerned that in bankruptcy matters any  
23 trustee must first and foremost prioritize the interests of the  
24 massive creditors in order to ensure the assets of the bankruptcy  
25 are realized under the best possible conditions and, again, in the  
26 best interests of those creditors not in the best interests of the  
27 debtor or the bankrupt to ensure the --  
28

29 THE COURT: Mr. Zahara, can you just pause for a second. Was  
30 that delivered today, did you say?  
31

32 MR. ZAHARA: Yeah, it was attached enclosed with our letter  
33 that was sent around noon today to your assistant, My Lord.  
34

35 THE COURT: Okay. Let me just... okay. I found your letter. I  
36 am just having difficulty finding the cases. Continue and I will have a look at them  
37 independently. Go ahead.  
38

39 MR. ZAHARA: Yeah, and so I was just going to say in short: (as  
40 read)  
41

1           The *BIA* provides creditors a transparent mechanism whereby  
2           creditors have a certain say in the realization of the bankrupt's  
3           property.  
4

5           I think in this case it's been pretty clear that the debtor's been solely focussed on the  
6           transaction with McIntyre. It's not clear why. It's not clear why in October or shortly  
7           thereafter they didn't commence some form of a process if they knew this transaction was  
8           out there to test the market to see what other further sales transactions could be available  
9           for these assets. We understand that the proposal trustee has commented on some of the  
10          steps that they -- they did take but none of this rises to the level of a formal sales process  
11          or provides any comfort to the creditors that a fully canvassed process has been done to  
12          find purchasers. We think that, you know, the earlier steps were taken to find a financing.  
13          They were not taken to find a purchaser and there could be significant parties out there like  
14          Mr. Nishimura's clients or others that weren't even aware that these assets were being  
15          offered for sale. It wasn't until November 2nd that we ourselves find out -- found out that  
16          they were pursuing a sales process.  
17

18          The other case we provided to Your Lordship is an oral decision from Justice April Grosse  
19          from this year, which is the OEL Projects Ltd. case at 2020 ABQB 365. This case is more  
20          similar to this one in that this was a *BIA* proceeding where there was effectively a quick  
21          flip transaction that was conducted through that process. In that case though, the debtor  
22          company that brought forward that transaction had got independent advice from another  
23          advisory firm, being FTI, who wasn't the proposal trustee, to say this is where the value of  
24          the assets are. They had gotten evidence from the board of directors that it wasn't feasible  
25          to conduct a (INDISCERNIBLE). It wouldn't render any higher transaction. FTI and the  
26          proposal trustee were of the view that the price being paid, which was cash and assumption  
27          of debt was at the high end of the valuations that could have been received  
28          (INDISCERNIBLE).  
29

30       THE COURT:   Sir, again, I cannot hear you.  
31

32       MR. ZAHARA:   Sorry, My Lord. Is that better?  
33

34       THE COURT:   I can hear you now but I missed a portion and I  
35          am getting a bunch of static or feedback.  
36

37       MR. ZAHARA:   I'll -- I will try that again. So in the OEL case,  
38          there were a number of factors where a quick flip was approved that aren't present in this  
39          case and the highlights of those, My Lord, is that an independent valuation  
40          (INDISCERNIBLE) FTI, who was not (INDISCERNIBLE).  
41

1 THE COURT: Again, I've got the gist of it and I did have an  
2 opportunity to review that case before this hearing, Mr. Zahara, but again I cannot hear a  
3 lot of what you are stating.  
4

5 MR. ZAHARA: (INDISCERNIBLE), My Lord. Is that better?  
6 I'm now right over the microphone.  
7

8 THE COURT: I can hear you fine now.  
9

10 MR. ZAHARA: Okay. And so, I submit that no similar process as  
11 -- as was conducted in the OEL case was conducted in this case. The efforts of the company  
12 fall far short of what was conducted in that case where a quick flip was  
13 (INDISCERNIBLE).  
14

15 THE COURT: Again, sir, I cannot hear you.  
16

17 MR. ZAHARA: Sorry, My Lord. I'm doing my best. We have  
18 new technology in our boardroom that is not (INDISCERNIBLE).  
19

20 THE COURT: Yeah, I am just going to pause you.  
21

22 Mr. LeGeyt, just to use you as a reference, can you hear what Mr. Zahara is stating?  
23

24 MR. LEGEYT: He's in and out for me as well, Sir, so I think it's  
25 probably the same for everyone.  
26

27 THE COURT: Okay. I just wanted to make sure it wasn't just  
28 the Court. Thank you for that.  
29

30 MR. ZAHARA: Okay. I'll keep trying to speak up, My Lord. So  
31 the last few points I want to make is the -- the one piece of information that we've requested  
32 that we haven't seen is if you turn to the affidavit of Daniel Christensen (phonetic) that's  
33 enclosed to our letter. This was sworn on November 4th and we thought we would have to  
34 oppose the -- the (INDISCERNIBLE) asset purchase or sale approval and vesting order  
35 transaction being sought by the company (INDISCERNIBLE).  
36

37 THE COURT: Again, I cannot hear you, sir. I did find the  
38 affidavit that you are referring to but I cannot hear your submissions.  
39

40 MR. ZAHARA: Can you hear me now, My Lord?  
41

1 THE COURT: Just that last question to me, yes.  
2  
3 MR. ZAHARA: Okay. (INDISCERNIBLE) understand who the  
4 shareholders behind Greenfield Acquisition Co. are and that's part of the reasons why we  
5 want to question Mr. Logan. (INDISCERNIBLE).  
6  
7 THE COURT: Again, Mr. Zahara, I cannot hear you.  
8  
9 MR. ZAHARA: Can you hear me now, My Lord?  
10  
11 THE COURT: Just that last question to me, yes.  
12  
13 MR. ZAHARA: The last thing I just wanted to say, My Lord, was  
14 (INDISCERNIBLE).  
15  
16 THE COURT: We lost you again, Mr. Zahara.  
17  
18 MR. ZAHARA: Can you hear me now?  
19  
20 THE COURT: I can barely hear your whisper.  
21  
22 MR. NISHIMURA: It's Mr. Nishimura here. Maybe Mr. Zahara  
23 should log out and log back in or something like that 'cause we're really missing the gist of  
24 most of his submissions --  
25  
26 THE COURT: Yeah.  
27  
28 MR. NISHIMURA: -- or a good portion anyway.  
29  
30 THE COURT: I will certainly take that advice, Mr. Nishimura.  
31 Thank you.  
32  
33 Do you want to try that, Mr. Zahara?  
34  
35 MR. ZAHARA: If you give me 2 seconds, I'll just try to dial in  
36 with my phone, My Lord.  
37  
38 THE COURT: Sure. That will work fine.  
39  
40 MR. ZAHARA: Hello, My Lord. Is that better?  
41

1 THE COURT: Yes, I can hear you fine, sir. Thank you.

2  
3 MR. ZAHARA: Oh perfect. Now we're in -- now we're cooking.

4  
5 So I think the last submission I wanted to make was just in the last affidavit of Mr. Pruden  
6 (phonetic) that we provided to the Court today with our letter. Just after our letter which  
7 was sworn on December 14th. Our clients, I think as everybody in this who has a significant  
8 amount of money to lose, have been active in trying to find alternatives for the company  
9 and, you know, we've reached out to the company to try to see if we knew anybody that  
10 could find interim financing. You know, our clients have invested a lot of their money and  
11 time into this matter.

12  
13 One of the things that was troubling for our client is that over the weekend he got a text  
14 message from Mr. Allan Bezanson, who's a director of both Greenfire Hangingstone and -  
15 - and Greenfire effectively telling them -- him not to pursue interim financing 'cause the  
16 federal announcement effectively killed the oil sands. I would not rush to invest. There  
17 would be no -- no capital available for new participants in Canada. He's effectively  
18 discouraging our client's attempts from continuing to find interim financing, and strange  
19 coming from a company who's otherwise said they've been trouble having -- trouble finding  
20 interim financing to get that text message over the weekend. So that was a concern of our  
21 client as well, the reason why we filed that affidavit.

22  
23 But in summary, My Lord, this transaction that's proposed is highly unorthodox. The  
24 interim financing being used to fund the purchase price and leaving effectively nothing for  
25 any of the creditors is something I've just never seen, and I don't know that it satisfies any  
26 of the tests since the funds aren't actually being used by the debtor company but rather by  
27 the purchaser. They're being used by the purchaser to pay the purchase price to restart  
28 operations, to put in place capital development for the assets for the purchaser. We simply  
29 think that Mr. Nishimura's clients should be given the opportunity to put together a term  
30 sheet. That term sheet be proposed to a trustee in bankruptcy as opposed to the other  
31 company. Our clients similarly have no concerns about that as we would rather see the  
32 (INDISCERNIBLE) trustee in bankruptcy obtaining that funding and running a process for  
33 the sale of the assets at this stage. We simply have no faith or no trust with the debtor  
34 company's management.

35  
36 And those are my submissions, My Lord, and I do apologize for the -- the technical  
37 difficulties.

38  
39 THE COURT: Okay. Thank you, Mr. Zahara.

40  
41 We're at 4:14 or 4:15-ish. I just want to pause for a second. I would still like to hear from

1 everyone. We do have time, Mr. LeGeyt, already allocated on Thursday as we mentioned  
2 at the outset in the brief discussion between us. I would like to think how we might be able  
3 to use that in the circumstances so that everyone can speak and I certainly want to hear  
4 your reply to matters and I do have a number of questions. So I will just leave you to think  
5 about that and I will turn it back to the balance and maybe, Ms. Meyer, you had a 10-minute  
6 block that you had asked for. Maybe you should speak next.

7  
8 **Submissions by Ms. Meyer (Sale Approval)**  
9

10 MS. MEYER: Thank you, My Lord.

11  
12 To confirm, we act as legal counsel for Warner Petroleum Corporation and Liberator Crude  
13 Trading LLC. Liberator, which I'll refer to Liberator Crude Trading as throughout my  
14 submissions, is a 7.9 percent voting shareholder of Greenfire. That is, Greenfire Operating  
15 -- or Oil and Gas Limited, I should say. So the parent company.

16  
17 Warner Petroleum Corporation was a party to a marketing agreement which, as Mr. LeGeyt  
18 has noted, was disclaimed by the company. That was the subject of an application before  
19 Mr. Justice Little around a month ago and is also the subject of a pending appeal of Mr.  
20 Justice Little's decision to the Alberta Court of Appeal. The marketing agreement included  
21 an exclusive marketing right whereby Warner had the exclusive right to market Greenfire's  
22 product. It also claimed an interest in land and that an eligible financial contract resulted  
23 from that marketing agreement and that is should not have been disclaimed under section  
24 65.11 of the statute.

25  
26 The two companies, Liberator and Warner, are not actually related but they share the same  
27 principal and Liberator was incorporated by that principal, Mr. Harry Warner, for the  
28 purpose of holding the shares of Greenfire in exchange for a \$5,000 investment as part of  
29 the consideration of a larger transaction which also involved the marketing agreement  
30 being entered into. My clients very strongly support the submissions of the investor group  
31 recounted by Mr. Nishimura and of Mr. Zahara's clients as well. We also echo their  
32 comments that our clients would be more comfortable with a trustee in bankruptcy than the  
33 current directors. Our clients have lost -- also lost all faith in management.

34  
35 We submit that the investor group has shown good faith efforts to preserve the assets  
36 pending a transparent sales process in that they've already secured \$1.5 million in  
37 financing. We also agree with the characterizations that Mr. Zahara has made in his  
38 correspondence to you this morning, My Lord, that this has been a consistent pattern of  
39 stated urgency by Greenfire with applications being brought on short notice. We submit  
40 that this application brought by Greenfire does require a full consideration of the factors  
41 set out in the statute as well as the *Soundair* test and we also submit that those factors have

1 not been met.

2  
3 We submit that there's been no proper marketing of the assets of Greenfire, and I'll get into  
4 that in further detail. Warner and Liberator have raised that point in previous submissions  
5 before the Court as does, of course, the investor group. We submit that Greenfire has been  
6 provide -- been proceeding on sort of a -- a blinder process in that it doesn't seem to have  
7 any appetite for considering alternatives. In that regard, in addition to Mr. Nishimura's  
8 submissions with respect to the investor group's experience with Greenfire, Warner has  
9 previously executed a nondisclosure agreement with Greenfire and in that context, just  
10 recently last week requested certain of Greenfire's historical and actual financial and  
11 operating reports for the purpose of also working toward potentially participating in an  
12 alternative transaction. Greenfire's counsel refused that and that was communicated by  
13 email from their counsel to me last Friday.

14  
15 There are, in our submission, a number of problems with Greenfire's proposal. Mr. Logan's  
16 seventh affidavit at Exhibit A, My Lord, is the signed term sheet with Trafigura. Do you  
17 have that available?

18  
19 THE COURT: I will in a minute. Just bear with me for a second.

20  
21 I am there, Ms. Meyer.

22  
23 MS. MEYER: Thank you. At Exhibit A to that affidavit, and it  
24 is -- if you're looking at the -- the PDF page numbering, Sir, it's page 19 of 106.

25  
26 THE COURT: I am there.

27  
28 MS. MEYER: Okay.

29  
30 THE COURT: Actually, just to be clear, I have page 13 of 106.  
31 Exhibit A, you said, is it not, Ms. Meyer?

32  
33 MS. MEYER: Right. So Exhibit A starts on page 13. I wanted  
34 to draw your attention to page 19 --

35  
36 THE COURT: I am there. Thank you.

37  
38 MS. MEYER: -- which is partway through that.

39  
40 THE COURT: Yes.

41



1 MS. MEYER: Yes.

2  
3 THE COURT: Yeah. Thank you.

4  
5 MS. MEYER: So what Exhibit A is, again, is the term sheet  
6 with Trafigura and what you'll see on page 19 of 106 of the PDF is at the -- midway through  
7 that page, section 13, Conditions Precedent to Each Advance. And so, as is described there  
8 at section 13, there are certain conditions before the interim financier, Trafigura, provides  
9 funding under the DIP facilities.

10  
11 If you scroll down then, Sir, to the next page, page 20 of the PDF.

12  
13 THE COURT: I am there.

14  
15 MS. MEYER: And subparagraph (a), which is the last one on  
16 the bottom of that page, that subparagraph says: (as read)

17  
18 In respect of the advance under facility A only --

19  
20 And I'll come back to that in a moment. (as read)

21  
22 -- any claims, actions, suits, or proceedings, including any appeals  
23 thereof by or on behalf of Warner Petroleum Corporation in  
24 relation to the Warner contract --

25  
26 Which is defined to be the marketing agreement. (as read)

27  
28 -- shall be fully and finally dismissed, confirmed as terminated, or  
29 disclaimed, abandoned, or settled as any and all appeal rights  
30 therefrom shall have expired without any such appeal having been  
31 initiated or shall have been fully determined.

32  
33 My Lord, Warner's appeal is still pending. There is no evidence that Trafigura is waiving  
34 this condition. As such, this condition precedent is not and has not and will not be met until  
35 the appeal is determined or otherwise dispensed with, and the application for leave to  
36 appeal is schedule to be heard on January 20th. My point, My Lord, is that even if you were  
37 inclined to approve this DIP financing and term sheet, unless Trafigura waives this  
38 condition, presumably there will be no interim financing actually advanced with respect to  
39 facility A under this DIP financing term sheet.

40  
41 With respect to what facility A actually is, if you go back to page 16 of the same PDF --

1  
2 THE COURT: I am there.

3  
4 MS. MEYER: All right. You'll see that the purpose of facility A  
5 is clearly set out there at point 9 and it indicates that the purpose of facility A is to pay a  
6 portion of the purchase price in accordance with the APA, the asset purchase agreement.  
7 So in other words, the fact that Warner's appeal is still outstanding essentially then  
8 contemplates a condition precedent that has not been satisfied not only to advances of the  
9 DIP financing but to advances of the DIP financing that actually allow for payment of the  
10 purchase price under the asset purchase agreement.

11  
12 Also, we submit that if Warner's appeal is successful at the Court of Appeal, then Greenfire  
13 will be in breach of the exclusive marketing agreement that it has with Warner, assuming  
14 again that the appeal is successful and that that marketing agreement is not disclaimed.  
15 Greenfire is seeking as part of its application, this Court's approval of Greenfire entering  
16 into a marketing agreement with Trafigura. Our submission is that the Court cannot  
17 approve Greenfire entering into a marketing agreement with a third party when doing so  
18 may be a breach of an existing marketing agreement if Warner's appeal is successful.

19  
20 In that respect, My Lord, if you look at section 12 of this same term sheet, which appears  
21 on page 17 of 106, you'll see there that that sets out conditions precedent to the first advance  
22 under the term sheet, and if you scroll down to subparagraph (i), which is on page 19 of  
23 106, one of those conditions precedent is at subparagraph 12(i): (as read)

24  
25 The DIP lender and the borrower shall have entered into a  
26 marketing agreement in form and substance satisfactory to the DIP  
27 lender with respect to marketing of all production from the assets  
28 and property of the borrower, defined as the marketing agreement.

29  
30 Now, the problem there, My Lord, is as I've stated, Warner had an exclusive marketing  
31 agreement where it had the exclusive right to market all of the product of Greenfire.  
32 Admittedly, that marketing agreement has been disclaimed, but the validity of that  
33 disclaimer is subject to an appeal by the Court of Appeal.

34  
35 I should also note that, as Mr. LeGeyt has mentioned, Greenfire did also purport to  
36 terminate the market -- marketing agreement before disclaiming it. That aspect of  
37 Greenfire's application to have the marketing agreement deemed terminated and that its  
38 termination of the marketing agreement was valid, was never actually heard. It was  
39 adjourned sine die and so that's another point to note is that that application hasn't  
40 proceeded at this time.

41

1 And so, with respect to that, my submission, My Lord, is that if these transactions are  
2 approved for the DIP financing agreement and for the asset purchase agreement, there are  
3 conditions precedent that are problematic and really don't allow for that transaction to  
4 actually give any effect. At least not immediately. So to the extent that my friend, Mr.  
5 LeGeyt, makes the comments, as does Mr. Maerov, about urgency of preserving the assets  
6 of the plant, my submission is that it doesn't appear from these conditions precedent that  
7 these advances are going to be made urgently.

8  
9 My Lord, I wanted to address as well briefly the section 65.13 factors relating to whether  
10 -- the factors that the Court considers in determining whether to approve a sale of the assets.  
11 I will go through this very quickly and try not to repeat what's already been said. With  
12 respect to whether the process leading to the proposed sale or disposition was reasonable  
13 in the circumstances, I echo the comments of Mr. Nishimura that here there is no evidence  
14 of any formal advertised, transparent, or targeted marketing process to market the assets or  
15 the business of Greenfire or sale. There's evidence of seeking refinancing but that's it. There  
16 is no evidence of any marketing efforts to market the sale of the assets or business of  
17 Greenfire. Mr. LeGeyt stated in his submissions this afternoon that the company started  
18 marketing itself for sale in early 2020. I submit, My Lord, that isn't the evidence. There  
19 was evidence that the company started marketing for refinancing but I submit there's no  
20 evidence of marketing for a sale.

21  
22 Mr. LeGeyt referred to the fact that the company had engaged Imperial Capital to assist in  
23 these apparent marketing efforts. In fact, as a result of the application to disclaim the  
24 marketing agreement relating to Warner Petroleum, I had cross-examined Mr. Logan  
25 previously, and in response to a undertaking arising from that cross-examination - that  
26 examination having occurred on November 12th, 2020 - Mr. Logan gave a response to  
27 undertaking number 5, which indicated that in fact that engagement of Imperial Capital  
28 dates back to the spring of 2019. That's the engagement that actually brought in the current  
29 secured party, Summit Partners. And so there's no new refreshed engagement that occurred  
30 in the early 2020. What we have is an engagement dating back from the spring of 2019.  
31 Further, I know you don't have that before you, My Lord, but it certainly is and should be  
32 on the court file. What that undertaking response number 5 actually says is that that  
33 engagement of Imperial Capital was to seek financing, not to seek a marketing of assets or  
34 the business for sale.

35  
36 Mr. LeGeyt also made submissions this afternoon that a data room opened in March of  
37 2020. Again, that was an area that I had questioned Mr. Logan on in his cross-examination.  
38 That transcript has been filed with the Court. I will give you the references to it, My Lord,  
39 as I know you don't have it. The examination occurred on November 12th of 2020, and it  
40 is at pages 84, lines 12 to 13, where Mr. Logan advised that he was the person administering  
41 the data room. This isn't a sales process administered by a third party expert in marketing

1 of assets over the oil and gas industry or -- or businesses in the oil and gas industry, My  
2 Lord. This is a data room set up by the company itself and, as Mr. Nishimura has said, we  
3 have no idea what was in that data room or whether this so-called marketing process was  
4 in any way appropriate to satisfy the factors that the Court is required to consider with  
5 respect to whether this bail transaction put forth by Greenfire should be approved.

6  
7 The trustee's report says that the company engaged at least 31 parties to find interim  
8 financing. Again, that's for financing, not for an asset purchase or a purchase of the  
9 business. As Mr. Nishimura has pointed out, much of the proposal trustee's report relies on  
10 information from the company, Robert Logan, and in that respect and in particular with  
11 regard to the second factor of the statute with respect to whether the Court should approve  
12 the sale, which is whether the trustee approved the process leading to the proposed sale or  
13 disposition, I note that the proposal trustee did not approve any sales process in advance of  
14 it actually happening. The *Sanjel* case that Mr. LeGeyt has referred to admittedly did also  
15 involve the Court approving a sale when a sales process had been undertaken before the  
16 CCAA proceedings in that case had commenced, but there, there were volumes of evidence  
17 put forth before the Court as to what that marketing process looked like. Here, as Mr.  
18 Nishimura has indicated, we don't have that evidence.

19  
20 That all ties into the fact that here we submit that the proposal trustee is at least in part  
21 taking Mr. Logan at his word that he has made efforts to seek financing of Greenfire. We  
22 submit that Mr. Logan has serious credibility issues. In fact, in the transcript of Mr. Justice  
23 Little's decision on the marketing agreement issue, which is included at affidavit number 6  
24 of Mr. Logan, Exhibit K, and I'll give you the -- I won't take you there, My Lord, but I'll  
25 give you the page references. It's page 4, lines 31 to 39. Mr. Justice Little specifically stated  
26 in his decision that Warner Petroleum Corporation made persuasive arguments that in  
27 approving the disclaimer, the proposal trustee was relying on information given to it by  
28 Greenfire without proper independent verification.

29  
30 Turning to the credibility of Mr. Logan, we submit that this is a major issue in these  
31 proceedings. During that cross-examination of Mr. Logan which I've just mentioned, there  
32 was extensive cross-examination on an email from Mr. Logan to my client dated October  
33 5th of 2020, where Mr. Logan stated in the email: (as read)

34  
35 Hi Harry,

36  
37 Greenfire has secured financing where the new lender will be  
38 taking over control of the company.

39  
40 There was extensive cross-examination on that point, My Lord, where Mr. Logan  
41 repeatedly tried to avoid the obvious point that the statement he made in an email to Mr.

1 Warner, who of course was by way of his companies, a counterparty to an exclusive  
2 marketing agreement and a 7.9 percent voting shareholder of Greenfire, was false and that  
3 at the time all he had was a term sheet for financing. There was no signed agreements  
4 whatsoever. The transcript references for that, My Lord, are again that same transcript from  
5 November 12th. It was filed November 13th and it's at page 22, line 19, to page 35, line  
6 19. Incredibly, I submit, Greenfire's counsel took the position at the marketing agreement  
7 application that because the statement in the email wasn't made under oath that that  
8 somehow excused Mr. Logan from making false statements to a counterparty to a  
9 marketing agreement and to one of its own shareholders.

10  
11 Continuing on with the --

12  
13 THE COURT: Ms. Meyer, can I just pause you? I have access  
14 to that affidavit. Just give me a second --

15  
16 MS. MEYER: Sure.

17  
18 THE COURT: -- to load it. I want to have a look at that.

19  
20 MS. MEYER: Certainly. And this is the -- Harry Warner's  
21 affidavit, number 1, Exhibit 6.

22  
23 THE COURT: Just a second here.

24  
25 MS. MEYER: I should mention, My Lord, that the bulk of that  
26 particular email is redacted because it related to without prejudice discussions. We,  
27 however, submit that the statement in question has -- there's nothing without prejudice  
28 about that particular statement.

29  
30 THE COURT: Okay. I may have assumed too quickly that I had  
31 -- I'll have a look at it later.

32  
33 MS. MEYER: Okay.

34  
35 THE COURT: So -- so --

36  
37 MS. MEYER: And again, Sir, I'll give you the reference again.

38  
39 THE COURT: Yeah.

40  
41 MS. MEYER: It's affidavit number 1 of Mr. Warner, Exhibit 6.

1 A couple of pages in there's an email dated October 5th, 2020. And did you want the  
2 transcript references again, My Lord, as well?

3  
4 THE COURT: Please, just to double check.

5  
6 MS. MEYER: Sure. And so that's the transcript filed November  
7 13th of 2020, pages 22, line 19, to page 35, line 19. And so admittedly, My Lord, this  
8 particular evidence in that transcript doesn't bear any relation to the issues we're talking  
9 about today but the point is this. Mr. Logan has some serious credibility issues and the  
10 proposal trustee is relying in part at least on evidence from Mr. Logan or at least advice  
11 from Mr. Logan. That is stated, for example, in the proposal trustee's report at paragraphs  
12 33, 35 and 36 that the proposal trustee is advised by the company that, and so again, My  
13 Lord, my submission is that those, by no fault of the proposal trustee, those statements in  
14 the trustee's report must be taken in consideration with the fact that the source is not  
15 credible in our submission.

16  
17 With respect to the extent to which creditors were consulted, Warner I submit was not. We  
18 submit that there's a lack of transparency and just repeated assertions of immediate  
19 urgency. I've already spoken to the issue of the trustee filing a -- a -- with the Court a report  
20 stating whether the disposition would be more beneficial to the creditors  
21 (INDISCERNIBLE) position under the bankruptcy. Again, my point there being the  
22 credibility of the source of that information. The effects of the proposed sale or disposition  
23 on the creditors and other interested parties, as the investor's group points out, the proposed  
24 transaction only benefits certain service providers and employees and potentially Mr.  
25 Bezanson and Mr. Logan being the current directors of the company.

26  
27 With respect to whether the consideration to be received for the assets is reasonable and  
28 fair taking into account market value, we can't know the answer to that without a valid  
29 marketing process and, again, there's been no evidence put forth of a marketing process to  
30 sell the assets or the business of Greenfire. There's only been evidence with respect to  
31 refinancing.

32  
33 The final point I wanted to make, My Lord, and I had made this before Justice Lema last  
34 week so I won't get into it in detail, but you will have seen from Greenfire's brief that  
35 Greenfire makes a number of assertions that Warner has not acted in good faith and has  
36 brought frivolous and unfounded claims. We take very strong objection to that and submit  
37 that filing an appeal is not an act of bad faith, particularly where Justice Little specifically  
38 found that Warner made persuasive arguments in at least a couple of respects with respect  
39 to its submissions on the marketing agreement. As such, they submit that those statements  
40 are unfounded.

41

1 My Lord, my apologies. I did take longer than I had anticipated I would. Those are my  
2 submissions, subject to any questions you may have.

3  
4 THE COURT: Okay. Again, I will have questions potentially  
5 later. Before the next person speaks, I just want to put the lights down. As it gets darker,  
6 the visual of me darkens also. Just 2 seconds.

7  
8 Okay. Next, please.

9  
10 **Submissions by Mr. Plester (Sale Approval)**

11  
12 MR. PLESTER: My Lord, Gregory Plester of Brownlee LLP. Can  
13 you see and hear me okay?

14  
15 THE COURT: Yes, I can, sir. Thank you.

16  
17 MR. PLESTER: Sir, I will be very quick. Our client is owed  
18 outstanding taxes of approximately \$660,000. We received the application material and  
19 had some concerns about treatment of those taxes, some questions and concerns. In short,  
20 the taxes are both unsecured and secured. There are portions of both and all of the taxes  
21 relate to 2020. Some of them are pre-filing, some of them are post-filing. Our main concern  
22 was in respect to post-filing taxes and how those would be dealt with. And from the trustee's  
23 report we understand -- and from discussions with counsel for the applicant, we understand  
24 that some arrangements have been made to address post-filing tax obligations in the normal  
25 course.

26  
27 Essentially, we understand that that would be a pro rata payment of the outstanding taxes  
28 for 2020, and depending on timelines, possibly 2021 as well. Based on the discussions  
29 we've had, we understand that adequate and appropriate arrangements have been made to  
30 address the taxes, particularly the post-filing taxes, and on that basis we take no position.  
31 We do not oppose the application.

32  
33 THE COURT: Thank you, sir.

34  
35 Next?

36  
37 **Submissions by Ms. Lavelle (Sale Approval)**

38  
39 MS. LAVELLE: Thank you, My Lord. Maria Lavelle for the  
40 Alberta Energy Regulator. I just wanted to clarify for the record that the AER is not taking  
41 a position on today's applications. I can confirm that the company and the proposal trustee

1 have been in regular contact with the AER and, as the regulator, our immediate concern is,  
2 given the absence of protection from winter temperatures at the site, to ensure that  
3 appropriate steps are taken with respect to Greenfire's oil and gas assets to avoid  
4 impairment or damage to the site that could result in the release of substances to the  
5 environment. And to that end, we issued our order on November 17th, 2020, and, My Lord,  
6 you have a copy of that order in the materials before you.

7  
8 So subject to any questions, those are my comments. Thank you.

9  
10 THE COURT: Thank you very much.

11  
12 Next?

13  
14 **Submissions by Mr. Blackett (Sale Approval)**

15  
16 MR. BLACKETT: My Lord, Glenn Blackett with Carscallen, again,  
17 for Apex Distribution Inc. I'll be very brief.

18  
19 THE COURT: Yes.

20  
21 MR. BLACKETT: I would mirror much of what I heard previously.  
22 Our client is secured by a builder's lien on the title to the plant. My expectation had been  
23 that when there was a sale our client would have a claim on the proceeds in accordance  
24 with their priorities. As I understand the application now, the -- the interim lending will  
25 now leapfrog ahead of our security and, as I understand, the problem from our client's  
26 perspective is that the funds would be used, number one, as Mr. Zahara points out, to -- to  
27 actually fund the -- the purchase, which is bizarre. As -- as Mr. Nishimura has pointed out,  
28 the funds would also be used in some measure to fund, you know, post-closing activities  
29 which does not seem appropriate to put those in priority to our client's liens.

30  
31 And so, subject to those concerns, if the order was -- we don't have instructions to oppose  
32 the application per se. We do have instructions to seek a better order, an order that would  
33 leave Apex properly secured with a priority position over that interim lending. So if there  
34 were some amendments made to the order, then I personally -- or our client personally  
35 wouldn't have issues with the application but, as it stands now, our concern is that we're  
36 going to be subordinated to the interim DIP lending and it would not be appropriate in the  
37 circumstances.

38  
39 THE COURT: Thank you.

40  
41 Next party?



**Submissions by Mr. Kashuba (Sale Approval) (Reply)**

MR. KASHUBA: My Lord, Kashuba, initial K, for the record. I only have one point just to clarify for the court record and for my friends. We advised earlier, sir, that Greenfire Acquisition Corporation, the purchaser, is an unrelated arm's length party from the borrower. Meanwhile, certain of my friends have been casting aspersions in respect of my client (INDISCERNIBLE) structure. I can confirm for the Court the shareholders of Greenfire Acquisition Corp. are holding companies of the three principles of McIntyre Group. Julian McIntyre is the ultimate controlling shareholder of GAC, of Greenfire Acquisition Corp. None of these parties are in any way related to the borrower, just to confirm for the Court.

THE COURT: Thank you, sir. Anyone else before I turn to Mr. LeGeyt?

Hearing none, what is your proposed timing today, sir? You gave me 15 minutes earlier. I just -- well, you qualified and I think that was an appropriate qualifier.

MR. LEGEYT: Yeah. I mean, we -- we have some wood to chop so to speak. I -- I would think between the three of us from the BDP firm, it's a 20- to 30-minute exercise. If it pleases the Court, we are happy to do that now. There is time later in the week as you've indicated. If the Court were inclined to use Thursday, we would need an order extending the stay at least until then, but happy to conclude this evening, Sir.

THE COURT: Yeah. I have another matter, another court matter at 5:00. I should at least give the courtesy of an email letting my two colleagues that I was meeting with on a different issue know. What would be the possibility of hearing from yourself and your colleagues, Mr. LeGeyt, and having questions addressed on the Thursday timeslot?

MR. LEGEYT: Acceptable to -- to us, My Lord.

THE COURT: Okay. And I was -- one of the reasons I asked you to give it some thought is because, as you just mentioned, there would be need for a housekeeping order to deal with a bit of bridging here. Are the parties fine with that, that are on the line?

MR. NISHIMURA: It's Doug Nishimura, Sir. I'm fine with any necessary extension that -- so we can -- so we can complete this.

1 THE COURT: Okay. Any opposition?

2

3 MR. ZAHARA: That works from our client's view as well, My  
4 Lord. Mr. Zahara.

5

6 THE COURT: Thank you, sir.

7

8 MS. MEYER: That's also fine with me, My Lord, and my  
9 clients.

10

11 THE COURT: Thank you, Ms. Meyer.

12

13 MS. MEYER: Thank you.

14

15 THE COURT: Okay. Let's deal with it on that basis. Just if you  
16 would give me the courtesy of just emailing a couple of colleagues. I will be 2 seconds  
17 here.

18

19 MR. NISHIMURA: David, what was the time for that on Thursday?

20

21 MR. LEGEYT: I will need to confirm. It is in my calendar for  
22 2:00, which is probably correct.

23

24 MR. NISHIMURA: Okay. My day is empty that day, but I just didn't  
25 have it in for some reason. There will probably have to be a new Webex though, I suppose.

26

27 MR. LEGEYT: Yeah, leave that to us.

28

29 MS. FELLOWES: Hi guys. It's Karen Fellowes. Sorry, I'm just  
30 calling in at this point. I -- I just wanted to make note that the DIP term sheet does have a  
31 condition that the order be granted as of today's date. So we'd have to get instructions to  
32 push that out to Thursday's hearing as well, and I'm trying to seek those instructions right  
33 now, but I don't know if I'll have them in the next 5 minutes.

34

35 THE COURT: Thank you for that accommodation. Mr. LeGeyt,  
36 I will turn it back over to yourself, sir.

37

38 **Submissions by Mr. LeGeyt (Sale Approval) (Reply)**

39

40 MR. LEGEYT: Thank you, My Lord, and -- and so I'm clear on  
41 your expectations, we're to make our rebuttal now and then Thursday will be questions

1 from the bench?

2  
3 THE COURT:

Correct.

4  
5 MR. LEGEY:

Thank you.

6  
7 So I will respond to counsel more or less in the order that they have appeared because that  
8 is the order of my notes. So -- so first was Mr. Nishimura on behalf of his client, and I -- I  
9 simply cannot stress enough the difference between the hypothetical put forward by that  
10 creditor group and what is before the Court today. We have signed documents that take  
11 weeks to negotiate and are very complex. The evidence from Mr. Nishimura's clients is  
12 simply that, you know, they'd like the ability to kick the tires and see if there's a deal to be  
13 done here, and those are certainly my words not anyone else's.

14  
15 I also respectfully submit that Mr. Nishimura is asking you to simply disregard the clear  
16 evidence of Mr. Logan about the processes that have unfolded. You know, he says that  
17 there are no attachments, there are no documents demonstrating what the process was but,  
18 nonetheless, Mr. Logan has given the evidence he has given and there is no contradictory  
19 evidence before the Court. At least not on the points that Mr. Nishimura was talking about.

20  
21 And I think the Court should be awfully mindful about whether questioning will add  
22 anything. If -- if there's to be a questioning, Mr. Logan has given his evidence as to what  
23 the process was. It is before the Court in affidavit form and it may well be that a questioning  
24 simply doesn't add anything. I also note that on behalf of his clients, Mr. Nishimura is -- is  
25 not asking for any sort of a process. He is complaining on behalf of his clients that the  
26 process is lacking but he simply asks for the ability to put in an offer at some point in the  
27 future if it suits his needs. And even if all of that were to go forward and result in a deal,  
28 the Court may well have the same problem that there is no process accompanying the offer  
29 put in by Mr. Nishimura and it also -- or his clients.

30  
31 And it also sounds to me as though he's asking for something like an exclusive. I suppose  
32 the existing purchaser and DIP lender may choose to expand though I don't know that, Sir,  
33 and -- and Ms. Fellowes has pointed out, and I believe as may -- may have been pointed  
34 out earlier in the proceedings today, the DIP term sheet contains a condition that the Court  
35 grant these orders today. And so, we don't know. We don't know whether the existing  
36 parties will extend or not.

37  
38 And again, I -- I do respectfully object to any characterization that people have been short  
39 on time. The -- the APA has been before the parties since December 2nd, and the DIP term  
40 sheet, although not signed, was provided on or about that time.

41

1 I -- I think my -- my final rebuttal to Mr. Nishimura before I -- I potentially pause for my  
2 colleagues is that, you know, he says there's -- there's nothing before the Court about the  
3 information that was provided to potential suitors in the company's pre-filing process or  
4 what the results were. Well, My Lord, those -- those are confidential processes. They  
5 always are, even in court ordered processes. And so, with respect, Mr. Nishimura's clients,  
6 especially as a potential competing bidder, would never be entitled to that information.

7  
8 Now, I -- I see Mr. Algar has turned his screen on and I will defer to him if he has  
9 submissions with respect to Mr. Nishimura's submissions.

10  
11 THE COURT: Okay. Thank you, Mr. LeGeyt.

12  
13 Mr. Algar.

14  
15 **Submissions by Mr. Algar (Sale Approval) (Reply)**

16  
17 MR. ALGAR: Thank you, My Lord, and apologies if I -- if I cut  
18 you short, Mr. LeGeyt.

19  
20 I did just want to provide a bit of clarity with respect to the position of Mr. Nishimura and  
21 his clients. I understand that they've alleged a constructive trust but I think whether they're  
22 -- they're secured or whether they're unsecured, the fact of the matter is they are, in fact, in  
23 the hold co not the op co so that's Greenfire Oil and Gas as opposed to Greenfire  
24 Hangingstone. So before there would be any distribution to the creditors in the -- in the  
25 hold co that would have to satisfy the 17 million or so, I believe, that is in Greenfire  
26 Hangingstone Operating Corporation.

27  
28 I also, My Lord, wanted to address the -- the position of Mr. Nishimura's clients generally  
29 and that's addressed in the seventh affidavit of Mr. Logan that you would have had before  
30 you, and I -- I think the most important piece of that, My Lord, is that on October 19th, Mr.  
31 Nishimura and his clients were sent a form of interim financing term sheet that had been  
32 prepared with our office so that they could consider funding these proceedings. Much has  
33 certainly been made about the short notice that has been affected on the service list for  
34 many of these applications and that largely has been as a result of the fact that, as I think  
35 you heard from Mr. Maerov, there is no money in this estate and the company has been,  
36 since the commencement of these proceedings, incredibly concerned about the state of the  
37 Hangingstone facility which as, I think, has been referenced is about 50 kilometres south  
38 of Fort McMurray.

39  
40 So while we've largely been dealing with temperatures above zero, the company has not  
41 stopped being incredibly concerned about the risks that are posed and I think you heard

1 Ms. Lavelle make mention of the risks that are facing that facility and -- and, frankly,  
2 they're -- they're reference in the AER's orders requiring the company to undertake an  
3 action plan which can only be completed by -- by way of obtaining interim financing.  
4

5 So, My Lord, I -- I think it's somewhat disingenuous for Mr. Nishimura to be here this  
6 afternoon suggesting that we should run a sales process when I think most counsel in the  
7 room would understand that that way to do that is to obtain interim financing, which both  
8 the company and the proposal trustee made significant efforts to do including getting to the  
9 point where they were about to exchange signatures and but we now find ourselves where  
10 we are.  
11

12 And, My Lord, there were some comments with respect to the valuation of the facility. We  
13 fully understand that it is again not what this Court is -- is used to seeing. The probably  
14 most relevant and similar transaction was Greenfire's purchase of this exact asset for \$1. I  
15 understand the proposal trustee's report, it's -- it's referred to 800,001, which was largely  
16 including post-filing adjustment -- or excuse me, post-closing adjustments related to  
17 property taxes and the like.  
18

19 And -- and finally, My Lord, I -- I think what is -- it has to be pointed out with respect to  
20 the value of Mr. Nishimura's potential offer is referred to again in -- in affidavit number 7  
21 of Mr. Logan with respect to the cost to dry the Hangingstone facility. And so those would  
22 be the minimum amount of costs that would require to be injected in order to run a sales  
23 process and to do that safely where the facility was not at risk. In Mr. Logan's first affidavit,  
24 just at paragraph -- excuse me, this is at paragraph 16 of his seventh affidavit where he  
25 references his first affidavit. He referenced a cost to dry the facility of approximately US  
26 \$750,000 to \$1 million, and he details why that is no longer accurate. And in subparagraph  
27 (d) he says: (as read)  
28

29 I estimate the minimum amount required to address the risk and  
30 damage to be approximately 2.7 million Canadian in the first  
31 month and approximately 510,000 per month thereafter. Over a  
32 13-week period, the total cash required is approximately 13.9  
33 million.  
34

35 So, My Lord, I would submit to you that the -- the 1-million or \$2-million range is simply  
36 not enough now that the facility effectively has to be restarted and to use the heat from  
37 restarting that facility in order to then dry it out. So that -- that option is certainly less  
38 attractive.  
39

40 The -- the last comment I had, My Lord, and it was just briefly with respect to the *Jaycap*  
41 decision cited by Mr. Nishimura, is that some of the concerns about disclosure, I think, in

1 that case were that the court officer had negotiated a transaction which was then  
2 subsequently changed and resulted in a -- a deficiency judgment against a guarantor. So I  
3 think it was in a largely different context, but I will turn things back over to Mr. LeGeyt  
4 and only chime in as necessary so we can hopefully get out of here before too long.

5  
6 THE COURT: Thank you.

7  
8 **Submissions by Mr. LeGeyt (Sale Approval) (Reply)**

9  
10 MR. LEGEYT: Thank you. Thank you, My Lord. I -- I don't  
11 believe I have any more in response to Mr. Nishimura but bear with me for one moment.

12  
13 I'll -- I'll perhaps conclude where I started. What is being proposed by that particular  
14 creditor group is certainly no better than what is before the Court today, in my respectful  
15 submission.

16  
17 So moving onto Athabasca Workforce and, I believe, Excel represented by Mr. Zahara.  
18 One of the points that I wanted to respond to was that Mr. Zahara talked at some length  
19 about how the deal changed and he took you through the evidence in respect of that and --  
20 and that evidence is correct. When Mr. Logan's earlier evidence was of course talking about  
21 a transaction that did not come to be and he was describing what that transaction might  
22 have been. So it is not unusual, in my respectful submission, for the transaction to change  
23 as the proceedings evolve. It is also a unique feature of this deal that the interim financing  
24 and the purchase price -- excuse me, that the purchase and sale agreement are really bound  
25 together and so that has driven some results, My Lord, and -- and it is a creative solution  
26 that we have before the Court today.

27  
28 Again, Mr. Zahara seems to ask the Court for some sort of process and, again, the answer  
29 is there are no funds for a process. The company is -- does not have the luxury of the time  
30 or the funding to do a court ordered solicitation process. With all that entails, that would  
31 take a great deal of time and a great deal of funding that we simply don't have.

32  
33 Mr. Zahara's evidence or his client's evidence contains a text from the weekend, which is  
34 interpreted to dissuade the party, the recipient, from continuing to negotiate DIP financing.  
35 Well, the DIP term sheet was signed last week and so by the time the weekend was upon  
36 the parties, of course, Greenfire was bound to its proposed DIP financing that is before the  
37 Court. In my respectful submission, it would not have been appropriate for Greenfire to  
38 continue with soliciting further interim financing or asset transactions at that point 'cause  
39 it was bound to the Trafigura entity for the DIP financing and the Acquisition Co. for the  
40 asset purchase and sale agreement.

41

1 So I'll pause to allow Mr. Algar or Ms. Wood to interject before moving on to Ms. Meyer.

2  
3 MR. ALGAR: Nothing from me.

4  
5 MR. LEGEY: So I don't mean to repeat what I said earlier about  
6 Warner but I think the Court should bear in mind that at the moment it does not have a  
7 marketing agreement. That has been a finding of this court which is subject to appeal but,  
8 in our respectful submission, the -- the appeal is without merit and ought not to be  
9 considered.

10  
11 There is simply no doubt that there -- the matters between Warner and Greenfire are  
12 adversarial. They have been for a long time. And so, Ms. Meyer is aggressively advocating  
13 on behalf of her client and has, frankly, in my submission, dredged up a considerable  
14 amount of evidence which was heard by Justice Little a month or two ago in connection  
15 with the disclaimer but is not relevant today. Mr. Justice Little did not make any findings  
16 about credibility and I couldn't possibly get into all of the details but -- but Ms. Meyer  
17 directed you to an email from Mr. Logan that she says was false and she then correctly  
18 says, Oh, the rest of this email has been redacted because it's without prejudice. But at the  
19 hearing before Justice Little, we needed to get into that and I think it is fair to say that when  
20 we showed the Court the redacted wording, it was clear that Mr. Logan's statement was not  
21 false. He was talking about the possibility of a financing that required some give and take  
22 between Warner and Greenfire and when read in its entirety, it is clear that his statement  
23 was not false at the time.

24  
25 Ms. Meyer mentioned a refusal -- sorry, I'm getting a little ahead of myself. She -- she  
26 indicated that her client, Warner, is interested in an asset transaction as well. The first we  
27 heard of that was last week well after the asset purchase agreement was signed. Ms. Meyer  
28 characterizes my email as a -- a refusal to go forward with Warner and, again, the reasoning  
29 is the same, My Lord. By -- by the time I wrote that email on Friday afternoon, my client  
30 was bound to the purchaser, Acquisition Co., and it would not have been appropriate to  
31 solicit offers or transactions from Warner.

32  
33 You know, I -- Ms. Meyer has identified conditions in the DIP term sheet. Those do need  
34 to be satisfied or waived. We think that the vesting order which is sought will -- I -- I cannot  
35 speak for the interim lender but if the Court were to grant an approval and vesting order  
36 that the assets transfer to the purchaser free and clear of all claims including the Warner  
37 claim, that that may well satisfy the condition or put the interim lender in a position to  
38 waive it. Those are properly submissions to come from Ms. Fellowes, but that would be  
39 the company's response.

40  
41 So Ms. -- Ms. Meyer has also done an admirable job for her client but -- but she really just

1 recited or -- or repeated a lot of what was in a full day hearing before Justice Little a month  
2 or so ago where her client was unsuccessful and much of it is simply not relevant for today.

3  
4 Again, I'll pause for my colleagues to see if either of them would like to interject. Those  
5 are my rebuttal remarks for Warner.

6  
7 **Submissions by Mr. Algar (Sale Approval) (Reply)**

8  
9 MR. ALGAR: Thank you. Again, just -- just a couple of brief  
10 remarks and I think this relates to some of the submissions made by Mr. Nishimura as well  
11 with respect to parties being permitted to participate in this proceedings. You'll see even in  
12 the affidavit number seven of Robert Logan, which was sworn on Friday largely in  
13 response to Mr. -- Mr. Nishimura's clients, but also because the prior extension had only  
14 been granted for 5 days so we were required to -- to submit another affidavit in support of  
15 another short extension, is that -- this is -- starts at paragraph 6. Is that even up to that point  
16 when that affidavit was sworn on December 11th, between December -- his prior affidavit  
17 and that affidavit, we had allowed additional -- at least an additional one party to enter into  
18 the data room and it was not until the point that Greenfire received signature pages on the  
19 -- not just the APA but also the interim financing facility that it did finally consider --  
20 consider itself fully committed to that transaction and it was only at that point where it  
21 turned away from any other potential offers.

22  
23 One other thing, I think, that -- that clearly has been the cause of some misunderstanding,  
24 and Ms. Wood may jump in to correct me, is the distinction between the two facilities that  
25 are provided in the interim financing, My Lord, and facility -- facility A is the amount of  
26 \$4 million and facility B is -- is for \$16 million. And so facility A can largely be -- be  
27 viewed as funding the actual purchase price that will then stand in place instead of the  
28 assets of Greenfire subject to certain deductions for damages that -- that the purchaser is -  
29 - is still going to be expending funds on but it just does not -- it is reducing the purchase  
30 price payable to the estate which, I would submit to Your Lordship is completely  
31 understandable, and that it's facility B in effect that is the interim -- the more standard  
32 interim financing facility.

33  
34 Those were my only submissions directly in response to -- to Ms. Meyer and I think if Ms.  
35 Wood is still available, it may make sense to have her chime in as she was the one that --  
36 that fully understands the -- the breakdown of the different facilities.

37  
38 THE COURT: Thank you, Mr. Algar.

39  
40 Ms. Wood?

41



**Submissions by Ms. Wood (Sale Approval) (Reply)**

MS. WOOD: Thank you, My Lord. Can you hear me?

THE COURT: I can indeed. Thank you.

MS. WOOD: I don't have anything to add on top of how Mr. Algar characterized that. We certainly understand that's a bit of a unique way to frame it, but that is how the financing company, Trafigura, proposed it to us and that's what gave them comfort. Again, just to repeat, so the -- the \$16 million that is the facility B advance, they have the charge that protects them in the event that closing does not occur and, of course, that charge will only be for any amounts that are actually advanced under the -- the interim financing, and the \$4 million under facility A, those amounts will be paid into escrow and if final closing does not occur as a result of the AER licence transfers not going through, then that amount will be repaid to the lender and will not form part of the charge.

THE COURT: Okay.

MS. WOOD: Nothing further from me. Thanks.

**Submissions by Mr. LeGeyt (Sale Approval) (Reply)**

MR. LEGEYT: And I'll make one final comment with respect to the interim lending and the transaction. We indicated that a significant part of the purchase price was the purchaser assuming the liability of Greenfire under the interim financing facility, and there's also a complete release of Greenfire. So the -- the purchase price is not impressed with any sort of claim in favour of the interim financing provider.

So, My Lord, I -- I believe I have come to Mr. Blackett, and I'll be very brief. One of his comments, and I -- I appreciate that it is a -- an unusual deal and a complex deal, but if I heard him correctly he said that the DIP was being used to fund post-closing activities. That is incorrect. The DIP is being used to fund the operations of Greenfire and once the transaction closes and comes out of escrow, then those -- those debts will be assumed by the purchaser. So that's a -- a misconception.

And Mr. Blackett had indicated, you know, his -- his client is opposed to being primed. In other words, he just wants a different order. He wants to take priority. Well, unfortunately, that option is not available to any of us or the Court because it is a condition of the interim financing that the lender get a first priority charge -- excuse me, a priority charge ranking only behind the admin charge. So, unfortunately, that result is -- is not possible based on what is before the Court today.

1  
2 So those were my rebuttal submissions. We heard from Mr. Kashuba. I am not sure -- oh,  
3 I see Mr. Algar has chimed in, but I -- I was just going to say I'm not sure if Ms. Fellowes  
4 or Mr. Maerov wanted to speak as well now, but I'll -- I'll surrender to Mr. Algar.  
5

6 **Submissions by Mr. Algar (Sale Approval) (Reply)**  
7

8 MR. ALGAR: Thank you, Mr. LeGeyt, and -- and I'll try to be  
9 very brief. One other general matter with respect to the purchase price on the DIP generally  
10 is you've seen reference to the funding of the deposit and the fees of the restructuring. I just  
11 - just want to make -- I did want to make clear for the Court that that \$1 million deposit  
12 that is generally -- or directed to -- to fund the costs of the proceedings is in addition to that  
13 \$4 million purchase price and not to be subtracted from it.  
14

15 And, finally, just with respect to the comments from Mr. Reid, I think as he had indicated,  
16 we've been in constant communication with Summit, the company's existing secured  
17 lender, and -- and I don't take any issue with what Mr. Reid has said. I -- I can appreciate  
18 his clients maybe have some interest in seeing what other fruit might be out there. I think  
19 to date it's probably fair to say that -- that Summit has been uninterested in these  
20 proceedings and the company, in addition to multiple other sources, the company has  
21 sought interim financing from Summit, I think, at least on ten occasions. So it has certainly  
22 become clear that they did not have an interest in funding these proceedings any further.  
23

24 And -- and I'll pass things over to Mr. Maerov now.  
25

26 THE COURT: Okay. Mr. Maerov, if I could just pause you. I  
27 just need to grab another pen. I have run out of ink. I will be 2 seconds here.  
28

29 MR. MAEROV: Certainly, My Lord.  
30

31 THE COURT: At your convenience, counsel.  
32

33 **Submissions by Mr. Maerov (Sale Approval) (Reply)**  
34

35 MR. MAEROV: Thank you, My Lord, and I'm pleased to say I'm  
36 -- I'm quite confident that I will be able to stay within the 5-minute limit that I established  
37 for myself.  
38

39 My Lord, first of all, just one -- I wanted to respond to one point raised by my friend, Mr.  
40 Nishimura. I believe Mr. Nishimura put at issue or was -- was mentioning the timing of the  
41 proposal trustee's fifth report relative to the timing of the delivery of his client's affidavit,

1 and I -- I can assure the Court that the timing of the trustee's report was a reflection purely  
2 of the timing of the release of the signature page by the proposed interim lender, Trafigura.  
3 The -- the report was issued forthwith after the receipt of that signature page. There were  
4 no other timing considerations related to that and I would note the report, the body of the  
5 report, is 33 pages long so it certainly was not -- it certainly was not started or even  
6 materially advanced after receipt of that -- Mr. Nishimura's client's affidavit.

7  
8 With regard to my friend Ms. Meyer's submissions, she did refer you to the transcript of  
9 Justice Little's decision and I understand her comments to be related solely to the credibility  
10 of the company's affiant, Mr. Logan, and in no way was intended by Ms. Meyer's, I believe,  
11 to -- to question the proposal trustee's credibility. I will -- I would like to just for the  
12 completeness of the record refer the Court to Mr. Justice Little's finding in that transcript  
13 with regard to the -- the sentence that Ms. Meyer referred you to. So that -- that would be  
14 between line 31 and line 39 of the transcript, at which time Justice Little is dealing with  
15 the question of whether or not it was appropriate for the trustee to have approved the  
16 proposed disclaimer. Mr. Justice Little, as you heard, referenced counsel for Warner again  
17 made a persuasive pitch that the trustee was relying on information given it by Greenfire  
18 without proper independent verification.

19  
20 Justice Little does go on later beginning at line 36 to say, I do not propose to second guess  
21 the financial expertise of the trustee, and notes that the trustee's counsel points out that the  
22 comparison may not have been perfect but the range between the alternatives and the  
23 marketing agreement were insurmountable and I -- I believe in the context of the full  
24 transcript it's relatively clear that Justice Little was not making any kind of finding that the  
25 trustee behaved improperly or did not take steps to properly independently verify the  
26 Greenfire decision. So I just wanted to note that for the record.

27  
28 Finally, just -- just in conclusion, having listened to the submissions of -- of a number of  
29 my friends, I can certainly assure the Court that the proposal trustee is very sensitive to the  
30 concerns of these creditors. It is fully understandable why they are unhappy with the  
31 circumstances in which we find ourselves. The proposal trustee understands this is not a  
32 good situation for anybody, but certainly for the creditors of Greenfire and, unfortunately,  
33 the unfortunate circumstance in which we find ourselves is that the McIntyre and Trafigura  
34 transaction is the only offer we have. There's simply, at this point today, at this moment,  
35 there's no funding for the company to go out and look for another solution. The proposal  
36 trustee would have been very pleased if any of the creditors that we've heard from today  
37 had offered to fund a process. Again, unfortunately, there just hasn't been such an offer. To  
38 the extent that the investor group that -- that Mr. Nishimura represents wants to clarify the  
39 terms of its offer in short order, I'm sure the proposal trustee would be very interested in  
40 understanding those terms.

41

1 THE COURT: Okay. Anyone else?

2

3 **Submissions by Ms. Fellowes (Sale Approval) (Reply)**

4

5 MS. FELLOWES: My Lord, it's Karen Fellowes. I apologize. I can't  
6 turn my video on and I'm speaking to you through my phone right now. But I just briefly  
7 on behalf of the proposed DIP lender want to stress and clarify and emphasize the  
8 differences between the immediate funding and the funding that will occur on closing. The  
9 terms of the DIP sheet -- DIP term sheet, sorry, section 11 say that, you know, the only  
10 condition precedent to the effectiveness is that court approval shall be given by the current  
11 date is December 15th, and I am seeking and trying to get instructions from my clients to  
12 extend that out if this hearing is adjourned over to the 17th.

13

14 And then the condition precedents to the first advance are set out in section 12 and, again,  
15 they're designed so that the -- the money can start flowing immediately basically after court  
16 approval of -- of this DIP facility, and that's going to be to great benefit of all the creditors.  
17 We have the money. It's ready to go and the money can start funding -- start flowing  
18 immediately whereas the other options available or being urged upon the Court right now  
19 would involve some uncertainty and some delay.

20

21 Those are my submissions.

22

23 THE COURT: Thank you very much, Ms. Fellowes.

24

25 **Submissions by Mr. Nishimura (Sale Approval) (Reply)**

26

27 MR. NISHIMURA: Sir, it's Doug Nishimura. I'm not sure if you want  
28 to hear any clarification that arose from the -- the reply submissions either today or -- or  
29 on Thursday. There's only four brief points that I would need to make clear. So I'm --

30

31 THE COURT: Just --

32

33 MR. NISHIMURA: I'm in your hands.

34

35 THE COURT: Yeah. Normally, I just go back to the rebuttal and  
36 certainly Mr. LeGeyt will have the last word --

37

38 MR. NISHIMURA: Sure.

39

40 THE COURT: -- in any event. I will, given the circumstances  
41 and the amount of data, I will let you speak but, again, Mr. LeGeyt will have the last word.

1 Thank you.

2  
3 MR. NISHIMURA: So -- so very briefly. It was suggested that Mr.  
4 Logan's evidence was uncontradicted and -- and again, we -- we did support Mr. Zahara's  
5 request for an adjournment to cross-examine Mr. Logan so we -- we maintain that position.  
6 I do want to make it clear that we don't expect that any -- any proposal that we would make  
7 on behalf of the investor group would be exclusive or there wouldn't be a process. We fully  
8 expect that to happen.  
9

10 And then, finally, Mr. Algar had said that look, there's a constructive trust alleged, there's  
11 security interest registered. To be clear, we -- my clients had expected, first of all, security  
12 against all of the assets and that would have necessarily involved guarantees and -- and  
13 cross-collateralization and the constructive trust that is claimed would be what the Court -  
14 - what the Court permitted and we would certainly have expected our constructive trust  
15 argument and if -- if relief was granted to be effective and not hollow against a shell  
16 company.  
17

18 So those are all the -- those are the only points of clarification I want to make.  
19

20 THE COURT: Okay. Thank you, sir.  
21

22 Mr. LeGeyt, any response?  
23

24 **Submissions by Mr. LeGeyt (Sale Approval) (Reply)**  
25

26 MR. LEGEYT: Very, very briefly, My Lord. You know, we're -  
27 - we're not dealing with creditor issues or priority issues today. There's a real contest as to  
28 whether Mr. Nishimura's clients may have a claim that extends down to the operating  
29 company that owns the assets. Certainly, we don't think a trust is merited here but -- but  
30 none of that is before you today. And -- and, again, a number of the stakeholders are simply  
31 saying we want a process, we want a process, but there is no money for a process nor is  
32 there any time.  
33

34 Those were my submissions. I see Mr. Algar may have something to say.  
35

36 MR. ALGAR: Thank you, Mr. LeGeyt. I -- I did see Mr. Meyer  
37 pop her camera on so I don't know if it makes sense if she had any brief comments similar  
38 to Mr. Nishimura's to have those happen first before the --  
39

40 THE COURT: If Ms. Meyer has anything to say, let's let her  
41 speak first and then I treat Burnet Duckworth as a collective and you gentleman and Ms.

1 Wood can speak at your convenience after Ms. Meyer.

2  
3 Ms. Meyer.

4  
5 **Submissions by Ms. Meyer (Sale Approval) (Reply)**

6  
7 MS. MEYER: My Lord, I just want to respond to Mr. Maerov's  
8 comment on behalf of the proposal trustee about credibility. To be clear, our clients are  
9 concerned with the credibility of Mr. Logan, not with respect to the proposal trustee. Thank  
10 you.

11  
12 THE COURT: Okay. Thank you, Ms. Meyer.

13  
14 Mr. Algar.

15  
16 **Submissions by Mr. Algar (Sale Approval) (Reply)**

17  
18 MR. ALGAR: Thank you, My Lord. And -- and I'm sure what  
19 the next steps will be here. As -- as I think you've indicated there is sort of an outstanding  
20 application to extend the stay given that the company would otherwise be set to go bankrupt  
21 tomorrow, and I fully acknowledge that this is not in evidence but it is on my screen right  
22 now. In the Environment Canada website much has been made about the weather  
23 conditions that are impacting the Hangingstone facility and, you know, certainly the nice  
24 December that we've had to date, but what I'm staring at at the moment, My Lord, are highs  
25 of minus 17, minus 22, 22, 24, and lows of between minus 23 and 29 over the next few  
26 nights. So I think the company's view on the risks to the facility where there are sustained  
27 freezing -- freezing temperatures are clear and I did just want the Court to be informed  
28 about the -- the weather window that does appear to be approaching us and the damage that  
29 may occur to that facility, which certainly I don't think could be addressed by any other  
30 financing proposals.

31  
32 THE COURT: Anything else, Mr. LeGeyt, Mr. Algar, Ms.  
33 Wood?

34  
35 MR. LEGEYT: No, My Lord.

36  
37 THE COURT: Okay. Just on the weather issue. I mean, just  
38 since Mr. Algar has touched on it and it is certainly relevant, we have had, as I recall, and  
39 this is not in evidence but we have had some cold weather over the last couple of months  
40 that has, I think, paralleled what Mr. Algar has raised, and the only reason I want to pause  
41 here is is there a substantive concern over the next 48 hours?

1  
2 MR. LEGEYT: Well, only in the general sense, My Lord, that the  
3 evidence before you is clear that the colder it is and the longer we delay, the more expensive  
4 the repair is. That would be the evidence and the concern.

5  
6 THE COURT: And I acknowledge that.

7  
8 MR. ALGAR: Certainly, My Lord, I think -- I think what you  
9 would hear from the company's representatives is that they're incredibly concerned.  
10 Certainly that was one of the reasons that the NOI was filed when it was because the  
11 company was concerned on October 15th and, as we've discussed there is this sort of  
12 damage summary that was included in Mr. Logan's first affidavit and then is now repeated  
13 in the report of Mr. Illencuda (phonetic). I don't know if I've pronounced that correctly, but  
14 those average temperatures -- it says average temperature for extended period over 3 to 5  
15 days, and certainly the historical trend that we've looked at over the last couple of months  
16 has -- has been relatively favourable but as we are now getting into perhaps the third row  
17 of minus 20 with impacts and damages of split piping, split heat exchanger tubes, ruptured  
18 tanks, vessels, and pipelines that's an estimated USD cost of \$10 to \$20 million. So even if  
19 we were generous and it was another 5, I think it could significantly impact the facility  
20 even over the next 48 hours but I certainly am not an expert, My Lord.

21  
22 THE COURT: I mean, we've had a delay of a week already for  
23 -- from this -- Justice Lema to today.

24  
25 MR. ZAHARA: My Lord, if I could just speak to that quickly. It's  
26 Mr. Zahara.

27  
28 THE COURT: Certainly. Go ahead.

29  
30 MR. ZAHARA: Much hay has been made from my friends about  
31 the weather and certainly they can't, I think, purport to say that when the plant was laid up  
32 wet in March they didn't know it was going to be cold in Fort McMurray in the fall. I -- I  
33 appreciate my friend's attempt to get financing and get other things on line but if the -- the  
34 concerns regarding this plant are that significant -- and I think the words used were it could  
35 be a catastrophe by Mr. LeGeyt in his submissions and other things. The -- the -- like, that  
36 can't be used as a lever or a gun pointed to the head of this Court to approve a deal they  
37 wouldn't otherwise approve in other circumstances. The course of action then to the  
38 company is to write to the AER and say, We don't have funds to have care and control of  
39 our assets and to turn their assets over to their AER as other companies have done in this  
40 province when they've run out of funds. It's not to hang on to the very last minute 'til things  
41 explode. It's impractical and it sets a terrible precedent for this Court to allow a company

1 to put in this position. And so, if they are that concerned about their assets, then they should  
2 be relinquishing control of those to the AER at this stage.

3  
4 Those are my submissions on that, My Lord.

5  
6 THE COURT: Okay. And thank you, Mr. Zahara. I am just  
7 asking from an operational standpoint.

8  
9 Mr. LeGeyt, what do you require as an order in order to bridge between now and the  
10 Thursday hearing that was set down for this matter?

11  
12 **Submissions by Mr. LeGeyt (Stay Extension)**

13  
14 MR. LEGEYT: We need an order extending the stay, My Lord,  
15 and I appreciate that the Court appears to be contemplating a short extension of, you know,  
16 3 or 4 days. If -- if the Court grants that order, we will obviously accept that and -- and act  
17 accordingly, but -- but if the stay is set to expire on Thursday, we will need to file yet  
18 another application and the trustee will be required to write yet another report because we  
19 would need to extend the stay beyond Thursday. So my respectful submission would be to  
20 have an extension to a date in January to be revisited on Thursday so that the Court may  
21 shorten that period if perhaps it doesn't approve the transactions.

22  
23 THE COURT: Is there any opposition to that?

24  
25 What date in January, Mr. LeGeyt?

26  
27 MR. LEGEYT: I believe -- I'm looking for my application, My  
28 Lord. We had asked in our application materials for January 28th, and if the Court were to  
29 see fit to grant that that would be acceptable to the company.

30  
31 THE COURT: To be revisited as you stated on Thursday if  
32 necessary?

33  
34 MR. LEGEYT: If -- if necessary.

35  
36 **Decision (Stay Extension)**

37  
38 THE COURT: The Court will so order that extension to the stay  
39 to that date that you specified and if you forward it to my assistant -- do you need that  
40 tonight?

41



1 MR. LEGEYT: We need it before the close of business  
2 tomorrow.

3  
4 THE COURT: Okay. Send it to my judicial assistant and I will  
5 deal with it first thing in the morning.

6  
7 MR. LEGEYT: Thank you.

8  
9 THE COURT: Okay. Any other business that we need to attend  
10 to before we adjourn until Thursday?

11  
12 Hearing none, madam clerk, if you could adjourn the proceedings, and thank you very  
13 much to all parties.

14  
15  
16  
17 PROCEEDINGS ADJOURNED UNTIL 2:00, DECEMBER 17, 2020  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

---

1   **Certificate of Record**

2  
3   I, Michelle Palmer, certify that this recording is the record made of the evidence in the  
4   proceedings in the Court of Queen's Bench held in courtroom 1104 at Calgary, Alberta on the  
5   14th day of December 2020, and that I was the court official in charge of the sound-recording  
6   machine during the proceedings.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

1 **Certificate of Transcript**

2  
3 I, Marcey Lepka, certify that

4  
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best  
6 of my skill and ability and the foregoing pages are a complete and accurate transcript  
7 of the contents of the record, and

8  
9 (b) the Certificate of Record for these proceedings was included orally on the record and is  
10 transcribed in this transcript.

11  
12 Marcey Lepka, Transcriber

13 Order Number: AL6661

14 Dated: December 28, 2020  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

---

2  
3 December 17, 2020 Afternoon Session  
4  
5 The Honourable Court of Queen's Bench of Alberta  
6 Mr. Justice Nixon (remote appearance)  
7  
8 D. LeGeyt (remote appearance) For Greenfire Oil and Gas Ltd. and Greenfire  
9 Hangingstone Operating Corporation  
10 R. Algar (remote appearance) For Greenfire Oil and Gas Ltd. and Greenfire  
11 Hangingstone Operating Corporation  
12 N. Wood (remote appearance) For Greenfire Oil and Gas Ltd. and Greenfire  
13 Hangingstone Operating Corporation  
14 D.S. Nishimura (remote appearance) For Taher Shabani-Rab et al  
15 K. Kashuba (remote appearance) For Greenfire Acquisition Company and  
16 McIntyre Group  
17 M.E. Lavelle (remote appearance) For Alberta Energy Regulation  
18 K.L. Fellowes, QC (remote appearance) For Trafigura Canada LP  
19 A.C. Maerov (remote appearance) For Alvarez and Marsal Canada Inc.  
20 K. Rylands (remote appearance) For Alvarez and Marsal Canada Inc.  
21 D. Gibbs (remote appearance) For Warner Petroleum Corporation and  
22 Liberator Crude Trader LLP  
23 K.J. Meyer (remote appearance) For Warner Petroleum Corporation and  
24 Liberator Crude Trader LLP  
25 J. Reid (remote appearance) For Summit Partners  
26 R. Zahara (remote appearance) For Athabasca Workforce and Excel Oil  
27 G. Plester (remote appearance) For the Regional Municipality of Wood Buffalo  
28 G.C. Blackett (remote appearance) For Apex Distribution Inc.  
29 M. Palmer Court Clerk

---

30  
31 **Discussion**

32  
33 THE COURT: Madam clerk, can you hear me?

34  
35 THE COURT CLERK: Yes, I can, My Lord.

36  
37 THE COURT: Good afternoon everyone. Just one  
38 housekeeping matter that we should address. I have received additional affidavits since  
39 our last hearing. Any comment on those, Mr. LeGeyt?

40  
41 MR. LEGEYT: Absolutely, My Lord. Starting -- can you hear

1 me all right?

2  
3 THE COURT: I can hear you fine, sir. Thank you.

4  
5 MR. LEGEY: Thank you. I had understood from the  
6 conclusion of Monday's hearing that the case was in, so to speak, and that the  
7 continuance today was not for the purpose of parties adducing more evidence, but rather  
8 so that the Court could make its preliminary deliberations and then ask questions of  
9 parties. So, I'm quite prepared to speak to the affidavits which have been put in, but as a  
10 preliminary matter, our - our initial submission would be that the Court should not  
11 consider them, given Monday's hearing.

12  
13 THE COURT: Thank you for that. Any response from the  
14 relevant parties? Mr. Nishimura?

15  
16 MR. NISHIMURA: Sir, it's Doug Nishimura. I - I'm one of the  
17 parties who provided an additional affidavit. Well, contrary to Mr. LeGeyt I don't know  
18 that anyone -- I don't know that there was any direction whether there was more or no  
19 further evidence. We were where we were at the time. This is simply new information  
20 that updates the Court as to where my clients stand with their fundraising efforts and  
21 supportive of their view that the plant -- of the state of the plant and the cost to - to  
22 address these -- address its conditions. The - the information about the amount of money  
23 is new since the last hearing. The amounts have changed and they will continue to change  
24 as more money is raised and they did have the -- since they'd only had a short period of  
25 time to look at the report that was provided late on Friday by my friends with respect to  
26 the condition of the facility, they then undertook to seek some guidance of their own from  
27 engineers and you see the results of that. As you know, Sir, these - these types of  
28 applications are quite fluid right up until the last minute and what the consideration  
29 should and always has been and always should be is what's in the best interests of  
30 creditors and we not -- ought not to be - be unmindful of that if there's evidence that there  
31 is something better for creditors, there's something better for all the parties, then that  
32 evidence should be considered so we provided the information in that light. It's not my  
33 practice to provide late affidavits and I've done it -- I've had to do it twice now in this  
34 proceeding because things just keep moving along at an unusually disjointed and  
35 sometimes compressed schedule so would that -- Mr. Zahara also provided some  
36 materials I imagine he wants to speak to it as well.

37  
38 THE COURT: Thank you, Mr. Nishimura. Mr. Zahara?

39  
40 MR. ZAHARA: Thank you, My Lord. Can you hear me all right  
41 today?

1  
2 THE COURT: I can hear you fine, sir.

3  
4 MR. ZAHARA: Perfect. Thank you, My Lord. Yeah, further to  
5 Mr. Nishimura's submissions and I think coming out of court, at least we had understood  
6 that the proposal trustee had reached out to Mr. Nishimura certainly asked for any further  
7 information his client could provide on what their funding sources might be and what  
8 funding they could provide in these proceedings. I think part of -- at least the application  
9 that was before you last time was that the time and parties have had to prepare for this.  
10 Our request to question Mr. Logan on his affidavit information and certainly Mr.  
11 Nishimura's clients had advised they hadn't been engaged with them or working hard on  
12 doing this since they'd learned I think that the funding that needed to be provided and the  
13 amount of that from early December, and only getting materials around December 8. So  
14 in that time they've done quite a bit of work which is 9 days and I think it's relevant to  
15 this Court's consideration of whether or not the -- what's put forward by the company is  
16 something that should be approved at this hearing or it could be delayed to allow  
17 additional time for this to see if it yields fruit. We would submit that there's ample  
18 evidence in front of this Court that there's at least 2 and a half million dollars sitting in  
19 Mr. Nishimura's trust account. Mr. Nishimura I think can speak to this further, but that  
20 certainly is willing to be provided in the form of interim financing provided, I believe,  
21 that the proposal trustee has control over those amounts and how they're spent, but those  
22 are readily available now and he's on far better terms than what's being proposed by  
23 Greenfire. Whether the case had to be fully completed by the application on Tuesday or  
24 not, I - I think in this circumstance, you know, (INDISCERNIBLE) late serving materials  
25 throughout this and Greenfire is just as guilty of this as - as our clients, but we're the  
26 creditors that have a distinct interest in this matter. I've been scrambling to try to find a  
27 solution in what should be a debtor (INDISCERNIBLE) proceeding that is better than  
28 what the debtors are putting forward and on the face of the evidence before this Court, we  
29 believe that's there and should be considered by this Court. Those are my submissions.

30  
31 THE COURT: Any comments, Mr. LeGeyt? Thank you, Mr.  
32 Zahara.

33  
34 MR. MAEROV: My Lord, it's Adam Maerov for the proposal  
35 trustee. I think if I might I might just clarify I think something I just heard my friend Mr.  
36 Zahara say. Certainly, my recollection is - is we said to you before court on Monday that  
37 if Mr. Nishimura had clarifications of his client's proposal, the proposal trustee would  
38 consider those. We do not -- we did not solicit a proposal nor did we seek in any way to  
39 alter, you know, the outcome of that proceeding on Monday that those terms we were not  
40 trying to - to change anything about the purpose for today's hearing.

41

1 THE COURT: Okay. Thank you for that clarification. I just  
2 want to note that I had listed that as a question when Mr. Zahara touched on that. So, that  
3 clarification is appreciated, sir. Thank you. Just an administrative matter my image seems  
4 to be frozen at least at my end, but I can hear everyone very well so unless there is any  
5 concern, we will just continue.

6  
7 MR. LEGEYT: And we can hear you just fine, My Lord.

8  
9 THE COURT: Thank you. Comments, Mr. LeGeyt?

10  
11 MR. LEGEYT: Well, just with respect to the idea that - that,  
12 you know, this is happening at a disjointed pace or that my friends clients have not had  
13 time to respond. I believe as Mr. Algar forcefully submitted to you a few days ago, the  
14 company first applied for interim financing in -- I believe the materials were filed in late  
15 October and the hearing was in early November and might have even been earlier than  
16 that. So, the - the search for DIP has been ongoing for quite some time. Mr. Nishimura's  
17 clients have been aware of it for quite some time and we have been engaging with them  
18 for quite some time. And so, I - I do -- I take issue with his statement that they simply  
19 haven't had time to get things together. I can also advise the Court that - that since  
20 Monday we have not been contacted by either Mr. Nishimura's client nor Mr. Zahara's  
21 client group, nor either of those counsel so these supposed providers of interim financing  
22 (INDISCERNIBLE) potentially interested purchasers have not actually engaged with  
23 Greenfire or its counsel and that goes to the merits of what they have put before the Court  
24 which I will get into if the Court allows it. Those are my submissions.

25  
26 THE COURT: Thank you. I just want to put on the record that  
27 when we adjourned on the 14th, I adjourned for the purpose of (a) as I indicated on the  
28 record then and I will indicate on the record again. I had another judicial commitment at  
29 5:00 for which I was late it went a couple of hours. I was speaking at that matter and  
30 therefore had to attend; (b) the intent was simply to adjourn so that I could attend that  
31 with the view that all of the evidence was in at that juncture and I think that was indicated  
32 earlier on during the proceedings that we would continue on until we had completed; (c) I  
33 think we had about 14 counsel on the call that day. That was far more than I think the  
34 Court was expecting. Indeed an earlier letter and this is not a criticism of anyone from the  
35 applicant was -- they did not know this was several days if not weeks ahead of time.  
36 There was an indication this might not be opposed and therefore I don't think the Court  
37 was really expecting all of the participants and again, not a criticism of anyone at all. It is  
38 just that we went over time which the Court accommodated from an evidentiary  
39 perspective. Normally I would exclude those affidavits. I will consider the weight that I  
40 will give them, if any, in the late breaking circumstances. I am not saying they are  
41 irrelevant, but at some point you have to cut off and indeed the practice note speaks to

1 that.

2  
3 Another issue that I will touch on just as a question and I will direct it to Mr. Nishimura,  
4 although others may want to respond to it, in the affidavits I did receive there is what I  
5 consider to be opinion evidence, how do you expect me to deal with that, Mr. Nishimura?

6  
7 MR. NISHIMURA: Well, Sir, this evidence in the affidavit that we  
8 provided with respect to what it takes, I believe you're referring to the engineering  
9 comments about what it will take to - to address the issues at the facility and those are in  
10 response to a similar report that's appended to my friend's affidavit so to the extent that  
11 one is an opinion and my client's appending of a letter is another opinion. Those can --  
12 those would be given the same weight. They haven't been tested. We've asked to  
13 question Mr. Logan it hasn't happened and it would be at that time when - when we  
14 would be able to sort these things out. Really it's - it's there to show that my clients have  
15 contacted an engineer inquired as to what the cost would likely be in a view to securing  
16 the right amount of interim financing whether that be financing through the company  
17 which is not our client's preference or through a trustee in bankruptcy or receiver which  
18 is my client's preference and most other creditors as well simply to show that they've  
19 done some of their homework. They've done as much as they possibly could in the short  
20 period that we've had to address this given that there is not really access to the premises.  
21 So, it's opinion evidence it's not tested in the usual ways under the *Rules of Court*, but  
22 neither is my friends, so to the -- and it's really to address the points that are raised in the  
23 report that's appended to Mr. Logan's last affidavit.

24  
25 THE COURT: Okay. Thank you for that. I am going to ask a  
26 series of questions here. They are in no particular order. Don't take or make any  
27 assumption or take any inference that made my mind up. I do intend to make a ruling  
28 today, but I do want to hear some feedback on matters. Since you are speaking to matters,  
29 Mr. Nishimura, you mention in your materials that the investor group had advanced  
30 funds, but had not received debentures. For purposes of this hearing why is that relevant?

31  
32 MR. NISHIMURA: It's relevant only to the fact -- to the point that  
33 my clients no longer have confidence or trust in the current management of Greenfire  
34 because they have not been told the truth in the past. They've been - they've been strung  
35 along with respect to not only receipt of the debentures and at one point Mr. Logan said,  
36 well, the term sheet and your - your subordination agreement are the - are the debentures  
37 which manifestly is not the case, that along with the other events that are more fully  
38 described in Mr. Shabani-Rab's first affidavit back in October show the reasons why my  
39 clients no longer have confidence or trust in the management of the company. It's not just  
40 something that they're saying. There's - there's reasons for that so and frankly the -- on  
41 this application part of the Court's consideration is whether the - whether the company



1 has acted in good faith and with diligence in not only securing the - the financing, but  
2 also in the prospects of forming a proposal for the benefit of creditors. At every extension  
3 application that's a consideration and it is at this one as well.  
4

5 THE COURT: Thank you. You have mentioned good faith in  
6 that comment. One of the questions, and I will direct this to Mr. LeGeyt that was touched  
7 on a number of times during the hearing on the 14th was the disclosure of the process in  
8 particular the proposed sale of assets. Comments on that, Mr. LeGeyt?  
9

10 MR. LEGEYT: Yes, My Lord, and I believe that Mr. Logan's  
11 evidence has fairly characterized the nature of the process that was implemented and in  
12 particular I'm looking at page 4, of our brief where we have most certainly summarized  
13 Mr. Logan's affidavit, but he talks about and we recite in our brief the results of the  
14 process. And he talks about how it was a process involving capital providers and what the  
15 results were. He also talks about the types of other transactions Greenfire was exploring,  
16 a royalty sale, transactions where Greenfire would have taken on additional debt, a joint  
17 venture, three forward sale contracts to obtain liquidity, one transaction which would  
18 have seen an equity injection, and a subsequent sale, and one transaction that would have  
19 seen a mix of new equity and additional (INDISCERNIBLE), I've paraphrased a little bit  
20 there. So, clearly My Lord, that is not, expressly not, a solicitation process for the sale of  
21 the assets or at least not for only the sale of the assets, but for any number of different  
22 types of transactions. And in my respectful submission Mr. Logan has been candid in his  
23 evidence on that point.  
24

25 THE COURT: While we are on it, just to touch on one issue  
26 that again was raised. The parties seem to suggest on a fairly consistent basis that they  
27 had understood this to be a process of seeking financing and that at some point it shifted  
28 without their knowledge to be a disposition of an asset. Any particular further comments  
29 on that? (INDISCERNIBLE) go ahead.  
30

31 MR. LEGEYT: I think -- I believe that is a fair characterization.  
32 I see -- I may turn the floor over to Mr. Algar in a moment, but - but clearly the process  
33 from the spring the pre-filing process was predominantly aimed at refinancing. And in  
34 addition, the company pursued the potential transactions which I've just described which  
35 are not strictly sale transactions they are all sorts of transactions. And I think it is fair to  
36 say that it was during the NOI proceedings in the last, say 3 months, that the company did  
37 pivot in its discussions with the McIntyre Group and an asset sale became the focus. Mr.  
38 Algar, I'm not sure if you were intending to interject at this point?  
39

40 MR. ALGAR: Yes, thank you, Mr. LeGeyt. Can you hear me,  
41 My Lord?

1  
2 THE COURT: I can hear you fine, sir, thank you.  
3  
4 MR. ALGAR: My Lord, so you have received, I believe,  
5 copies of Mr. Logan's first affidavit and his second affidavit. Course the meat of it is in  
6 his sixth affidavit and then there's the seventh affidavit where there are some responses to  
7 one of Mr. Nishimura's clients. I think what you see, My Lord, and I don't know if the -  
8 the second affidavit is - is easily accessible by you, but I'm happy to give you a moment  
9 if it is.  
10  
11 THE COURT: I am clicking on it as you speak, sir.  
12  
13 MR. ALGAR: My Lord, so if you turn to page 5, you'll see the  
14 heading there interim financing. So, this affidavit is sworn --  
15  
16 THE COURT: (INDISCERNIBLE) which paragraph?  
17  
18 MR. ALGAR: Oh. It's starts under the --  
19  
20 THE COURT: Go ahead.  
21  
22 MR. ALGAR: -- Roman numeral 3, My Lord, paragraph 15.  
23 So, what you see there, My Lord --  
24  
25 THE COURT: (INDISCERNIBLE).  
26  
27 MR. ALGAR: -- the first paragraph is reference to the Best  
28 Group. That was the initial interim financier that Greenfire had engaged - had engaged  
29 with. Ultimately, the Best Group decided not to proceed with that. In paragraph 17, you  
30 then see a reference to Midstream (phonetic) which is referenced throughout the materials  
31 and that interim financing got to the page, excuse me, to the point where we were  
32 essentially about to exchange signature pages and I think there was a fairly precipitous  
33 drop in oil price and ultimately Rev (phonetic) determined that it wasn't going to  
34 proceed. And so, that's at the start of November and what you see in detailed in the next  
35 page of Mr. Logan's second affidavit is he says, you know, we now have no interim  
36 financing. We are now proceeding to look at asset purchase agreement with the McIntyre  
37 Group. And he then repeats some of the comments with respect to Greenfire's inability to  
38 secure interim financing in his sixth affidavit. And so, I think the point is, My Lord, the  
39 proposal trustee's fifth report, and I believe it's summarized at appendix E, details of the  
40 31 parties which would include Mr. Nishimura's clients and would include Mr. Reid's  
41 clients the senior lender. Greenfire went to all these parties in the middle of October

1 trying to seek interim financing to protect the asset which would have enabled it to  
2 actually run a sales process as we more commonly see, but because of the inability to  
3 secure that interim financing Greenfire took the steps that I believe was reasonable to  
4 enter into an interim financing, excuse me, (INDISCERNIBLE) purchase agreement that  
5 would see a material purchase price for that asset. My Lord, your video has completely  
6 disappeared now. I did just want to make sure that you can still hear me. My Lord, so  
7 perhaps I'll pause my submissions now until I get some indication that you can in fact  
8 hear me.

9  
10 THE COURT: Yes, I can hear you fine, sorry, I see that even  
11 my frozen image has gone. Madam clerk, can you hear? I am going to cancel out and  
12 come back in. I will be right back in a second.

13  
14 MR. ALGAR: I can hear you, My Lord.

15  
16 THE COURT CLERK: I do just ask parties to keep their webcams off  
17 especially with the bandwidth issue.

18  
19 THE COURT: I am back. Can you hear me, Mr. Algar? I  
20 heard you right up until you said -- you asked me whether I could hear you.

21  
22 MR. ALGAR: I can hear you, My Lord.

23  
24 THE COURT: I certainly could hear you very well. I lost your  
25 visual, but I don't think I missed any of your comments.

26  
27 MR. ALGAR: No, I don't think you did, My Lord. The grand  
28 total of it is that on November 2nd Mr. Logan put an affidavit before this Court saying  
29 that the company had failed to obtain interim financing and was then looking at an asset  
30 purchase agreement due to that inability to obtain interim financing although it continued  
31 to seek interim financing up until the finalization of the APA and the DIP term sheet.  
32 And so, my comment to you simply would be that yes it certainly shifted as a result of  
33 being unable to obtain any interim financing, but it was on notice to all creditors and  
34 those parties that are in the courtroom today.

35  
36 THE COURT: Okay. Thank you. I am just going to ask as a  
37 test I can certainly hear Mr. Algar and I gather he can hear me. Mr. Nishimura, using you  
38 as the test person, can you hear me okay?

39  
40 MR. NISHIMURA: I can, Sir.

41

1 THE COURT: Thank you. I just wanted that confirmation. Let  
2 me just continue on. Mr. LeGeyt, you indicated in your submissions on the 14th that the  
3 data room was open back I think you said mid-February I thought I read some place it  
4 was, pardon me, I think you said mid-March I think I read or at least I inferred it was  
5 February, but it was back at about that time. Who had access to the data room at that  
6 juncture just for my benefit I would like that context.

7  
8 MR. LEGEYT: I can only give you a general answer, My Lord.  
9 And that would have been the parties who signed non-disclosure agreements through the  
10 Imperial Capital solicitation process.

11  
12 THE COURT: Okay.

13  
14 MR. LEGEYT: Again that process was implemented by the  
15 company with the assistance of Imperial Capital.

16  
17 THE COURT: Okay.

18  
19 MR. LEGEYT: And I don't believe that a list of such parties is  
20 before the Court. In my submissions I do recall running through the sort of numbers  
21 about how many parties were specifically targeted, how many signed MBA's, and how  
22 many offers resulted.

23  
24 THE COURT: Okay. Mr. Zahara, in the fifth report of the  
25 proposal trustee it indicated that the proposed interim lender financing facility did not  
26 appear to unduly prejudice other creditors. May I have your comments on that statement?

27  
28 MR. ZAHARA: Yeah, for -- certainly, My Lord. I think our  
29 submissions in that would be is that the fact that the interim financing facility is being  
30 used by the purchaser to fund the purchase and is being primarily used by the purchaser  
31 to refurb the assets (INDISCERNIBLE).

32  
33 THE COURT: Mr. Zahara, I have lost you again.

34  
35 MR. ZAHARA: (INDISCERNIBLE) My Lord?

36  
37 THE COURT: That is better, thank you.

38  
39 MR. ZAHARA: Yeah, so what I was saying is that the interim  
40 financing facility it was a normal interim financing facility and wasn't linked to the  
41 purchase and sale agreement and wasn't controlled by the purchaser or being funded for

1 and on behalf of the purchaser. I would not normally be prejudicial to the creditors. In the  
2 present case this interim financing facility in what my submissions were last time, is  
3 affectively a funding of the purchase price for the benefit of the purchaser and it doesn't  
4 in fact in any way benefit the creditors or the debtor for that matter because really it's to  
5 restart the assets for the benefit of the purchaser on, and at the direction and control of the  
6 purchaser. If we look at the interim financing term sheet, the purchaser has to approve  
7 most of the facility (INDISCERNIBLE) distributions. So, in our submission this is in fact  
8 prejudicial to the creditors because it's right now the purchaser who's a non-party who  
9 has no interest in these assets controlling how the interim financing is directed, and we  
10 would submit that, you know, a standard form interim financing term sheet was entered  
11 and wouldn't do that. (INDISCERNIBLE) Trafigura's entered into a marketing  
12 agreement as well and tied that to the term sheet and they're entitled to do that if they're  
13 the only option (INDISCERNIBLE) lending and there's no other option to do it, but  
14 again that's something that beneficial to them (INDISCERNIBLE).  
15

16 THE COURT: I missed the last few words there, Mr. Zahara,  
17 but I certainly got the thrust of your comments. Mr. LeGeyt, any reply to that position by  
18 Mr. Zahara?  
19

20 MR. LEGEYT: Absolutely, absolutely, My Lord. So, there are  
21 the two components to the interim financing. The 16 million dollar component is without  
22 a doubt, in my respectful submission, to the benefit of Greenfire and its stakeholders.  
23 That money will be used to repair the plant and resume operations, rehire employees and  
24 field contractors. That will add value to the estate that is coming in by way of a  
25 traditional type of interim financing loan arrangement and Greenfire and its estate are  
26 liable to repay that. So, there's no doubt that is of benefit to the company and its  
27 creditors. The second tranche the 4 million is the purchase price, My Lord. That is  
28 available to the stakeholders. Again we - we understand that will be reduced by the  
29 capital costs that are paid for out of the DIP. And so, we expect that the actual amount  
30 available to creditors will be 1 to 2 million dollars. So, I respectfully and strongly  
31 disagree with my friend Mr. Zahara on these points.  
32

33 THE COURT: Thank you. Another point that Mr. Zahara  
34 touched on on the 14th, Mr. LeGeyt, that I would appreciate your comments on was the  
35 simple point that he had not seen a sales and financing process of this ilk before. Any  
36 comments on that particular statement and position?  
37

38 MR. LEGEYT: I - I will agree that it is creative and unique, but  
39 I'm certain that if you asked him Mr. Zahara and Mr. Nishimura as well would indicate  
40 that they have seen plenty of cases where a party provides DIP financing and then credit  
41 bids that debt as part of its acquisition and that's because the interim financing as the

1 highest ranking charge against the estate must either be paid in full or assumed. And it is  
2 not unusual, perhaps even common, that a strategic party might provide the interim  
3 financing and with an ultimate goal of becoming the purchaser. And in the big picture of  
4 things I think that that is similar to what is happening here and it is not uncommon.  
5 Thank you.

6  
7 THE COURT: Thank you. I am going to direct this question to  
8 Mr. Nishimura, but certainly if others want to respond I would appreciate that. And the  
9 question is there are certain steps outlined in the proposal trustee's fifth report between  
10 paragraphs 32 to 38 that outline steps taken. Why are those steps not reasonable in the  
11 circumstances, and I will also add the comment that I will be asking Mr. LeGeyt to  
12 respond. Mr. Nishimura, and again I am just using you as the point person.

13  
14 MR. NISHIMURA: And if you'll just give me a moment.

15  
16 THE COURT: Certainly.

17  
18 MR. NISHIMURA: Could you give me those paragraphs again, Sir?

19  
20 THE COURT: Paragraphs 32 to 38.

21  
22 MR. NISHIMURA: So, it's important to keep in mind, Sir, that the -  
23 that the pre-filing steps that were taken were not -- first of all were not a public process,  
24 but more importantly as many of the counsel have pointed out. Ms. Meyer pointed this  
25 out and so did Mr. Zahara this was not a sales process. This was a refinancing process  
26 and with - with a view to obtaining a new lender in and around the spring of 2020. My  
27 clients, by the way, were not advised at all being major creditors that this was going on.  
28 They were -- there apparently was some sort of data room which they were unaware of  
29 and it was in the middle of this process that my clients were informed that they were not  
30 going to be paid on March 23rd as they were supposed to, but rather it was going to have  
31 to wait while they sought additional financing, but the bottom line is that this -- these  
32 steps are - are set out as a justification for not undertaking a court supervised sales  
33 process which is most customary in these - in these types of proceedings. And in the past,  
34 courts have taken pre-filing sales efforts into account when there's been an attempt to  
35 shorten the sales process or perhaps approve a prepackaged sale, but these were not sales.  
36 We don't have, as I said, any indication of what the marketing effort was. Mr. LeGeyt in  
37 the last application took some issue with my saying that there was nothing disclosed  
38 about this marketing process. It's true that you don't -- that we don't see the confidential  
39 materials and what was, you know, the data that's been provided, but typically we see in  
40 these types of applications evidence of where the - where the advertisements were, what  
41 the advertisements generally said, so the teaser that was sent out, as I said the locations

1 where it was advertised. So, they did take steps to obtain financing, but they did not  
2 actually market the assets of the - of the business. And - and you've seen, and Mr.  
3 LeGeyt just described how this morphed into a - into a sale and really it seems like it - it  
4 morphed into a sale that only one interested party that was -- that they chose being  
5 McIntyre even - even when they were looking at the DIP for -- and distributing those  
6 materials, that again morphed into this one individual sale. I might add when I'm  
7 speaking of the DIP, it was stated that Greenfire went to all parties including my client.  
8 Well, as a matter of fact what happened was, my client indicated that they might be  
9 interested. We got an email with the term sheet. We actually had no idea there was a data  
10 room with respect to DIP and we had no idea of any discussions that were under way  
11 with other parties until the court applications actually occur. So, at the end of the day  
12 those steps may have been reasonable at the time. We don't have a whole lot of  
13 information other than the listing of the steps that were taken, but it was not a sales  
14 process, it was not court supervised, and it didn't -- and it can't give a whole lot of  
15 confidence that the best price was - was achieved. Really, the creditors should be the ones  
16 to decide whether - whether this was a good process and in a proposal and typically we  
17 would be voting on either a proposal or - or taking a position with respect to an individual  
18 sale at the end of a court approved process where we could all say yes the process was  
19 followed or no it wasn't. I'll let my other friends chime in if they wish.

20  
21 THE COURT: Thank you, Mr. Nishimura. Other comments?

22  
23 MR. ZAHARA: Mr. Zahara, My Lord. I will try not to retread  
24 the ground of my friend Mr. Nishimura. We would echo and adopt his comments for the  
25 most part, but I think it is important especially in the context of the comments of Mr.  
26 Algar it really is in the November 2nd affidavit of his client Mr. Logan, or any of the  
27 parties learn that an asset purchase agreement is at all contemplated in respect of these  
28 assets. The whole time and the whole point leading up to this was that we had understood  
29 they were in discussions with McIntyre on financing. They were trying to find interim  
30 financing. (INDISCERNIBLE) asset purchase agreement until November and really we  
31 didn't know the terms of that asset purchase agreement despite representations in the  
32 November 2nd affidavit about what -- that there would be a material distribution of  
33 creditors until December 8th when the materials were served.

34  
35 So, in terms of the steps taken, we would submit that these are woefully inadequate in  
36 terms of trying to find what the value of these assets are and the company has presented a  
37 dearth of evidence in what a proper valuation of these assets are. The only thing they've  
38 presented to this Court is that they tried to find interim financing. They tried to find  
39 financing pre-NOI they were unsuccessful. They flip on November 2nd to some form of  
40 an asset purchase agreement with a sole single source purchaser who  
41 (INDISCERNIBLE) in their shoes and had every single point of leverage that have

1 negotiated the best deal possible for myself as well. (INDISCERNIBLE) and I'm not  
 2 faulting the purchaser for doing that. All I'm saying is from the creditor's perspective  
 3 that's an unfair advantage for a purchaser to have in what's supposed to be an open and  
 4 public restructuring proceeding (INDISCERNIBLE) debtor for the benefit of the creditor.  
 5 (INDISCERNIBLE) have a valuation from any certified valuator that I referred to that  
 6 was in the OEL case that they presented in respect of the transaction they were proposing.  
 7 There's just no evidence that value has been obtained in this case. All we've been told is  
 8 that if we don't approve this interim financing (INDISCERNIBLE) going to explode and  
 9 it's not going to be worth anything. (INDISCERNIBLE).

10  
 11 THE COURT: Just, Mr. Zahara, I am just going to interrupt  
 12 you. Again, you are fading in and out. I think I have got about 95 percent, but I am sure  
 13 others are also suffering from the same interference.

14  
 15 MR. ZAHARA: (INDISCERNIBLE) I'll try to make sure I'm  
 16 staying close to the mic. And so, all I was saying is that (INDISCERNIBLE) this process  
 17 and what they propose to have conducted does not determine the value of the assets. And  
 18 there's no ability that I can see of this Court or anyone to determine if this asset purchase  
 19 agreement that's been foisted upon us with the interim financing actually provides proper  
 20 value for the assets. (INDISCERNIBLE) we think it might be worse in a bankruptcy, but  
 21 they've certainly said this isn't what we think is the highest and best realizable value for  
 22 these assets in the circumstances which you could say at the end of a proper sales process  
 23 or if some sort of valuation had been done. So, we would submit that this has been an  
 24 inadequate process (INDISCERNIBLE) that's why we're not supportive of it  
 25 (INDISCERNIBLE).

26  
 27 THE COURT: Again, you faded out there, Mr. Zahara. Can  
 28 you hear me okay? Mr. LeGeyt, can you hear me?

29  
 30 MR. ZAHARA: I can hear you fine, My Lord. I think it's just  
 31 my (INDISCERNIBLE).

32  
 33 THE COURT: You are fading again. I think that is the new  
 34 technology route you referred to the other day. Any other parties wish to speak? Ms.  
 35 Meyer, I saw you light up.

36  
 37 MS. MEYER: Yes, thank you, My Lord. I again don't want to  
 38 repeat anything that Mr. Nishimura or Mr. Zahara have said, but we support the  
 39 submissions that they have both made in response to these questions. With respect to  
 40 paragraphs 32 to 38, the proposal trustee's fifth report I note that paragraph 32, is one I  
 41 had touched on on Monday, in that it indicates that Greenfire initiated a strategic



1 (INDISCERNIBLE) process with the assistance of Imperial Capital on or around  
2 February 21st. My Lord, you may recall that I had pointed out to Your Lordship on  
3 Monday that in fact the engagement letter that is referenced there is an engagement letter  
4 from the previous year the spring of 2019, and that same engagement letter is what led to  
5 Summit Partners providing secured investments into Greenfire in December of 2019. So,  
6 I wanted to point out that the evidence there doesn't describe the fact that this isn't a new  
7 engagement this is just apparently a continuation of an existing engagement for  
8 financing. And again the engagement letter itself says it's for financing not for a sales  
9 process.

10  
11 With respect to paragraph 34, which references the virtual data room I had pointed out to  
12 Your Lordship on Monday as well that Mr. Logan gave evidence on cross-examination  
13 that he himself administered that virtual data room. That certainly is not typical of a  
14 typical typed sales investments solicitation process you would see in an insolvency  
15 proceeding where a director of the debtor company is administering a virtual data room.  
16 That does cause some questions certainly as to what exactly is included in that virtual  
17 data room and to whom it's been made available as per the question Your Lordship had  
18 raised for Mr. LeGeyt.

19  
20 Turning then down to paragraph 35, the paragraph there says the proposal trustee is  
21 advised by the company and Imperial that submission guidelines were communicated to  
22 all interested parties advising a soft target date of April 28th, 2020, for parties to provide  
23 their interest. I'd like to note that one point, again this is a point on which the proposal  
24 trustee is advised by the company which goes to my previous submissions about the  
25 credibility of Mr. Logan, that submission guidelines were given to these parties who  
26 apparently participated in this process yet we don't have any evidence as to what  
27 submission guidelines were actually given to any of those parties. In a typical court  
28 approved sale and investments solicitation process there would be a document setting out  
29 that process so that all parties have a clear and transparent understanding of what the  
30 process actually involves. We don't have that here.

31  
32 The third point is the soft target date of April 28th, 2020. Now, I recognize it as in many  
33 sales processes there may be a final bid deadline and negotiations continue after that  
34 point, but what we appear to be looking at here is a continuation of an engagement or  
35 refinancing of the company not for a sale of assets of the company with a target date of  
36 the end of April 2020, we're now more than 6 or 8 months later we're now looking at a  
37 sale of assets of the company and nothing in these paragraphs 32 to 38, of the proposal  
38 trustee's fifth report speaks to a sale process with respect to a sale of assets of the  
39 company that continued on up to or near the time that this transaction with McIntyre  
40 Partners was brought to the attention of the Court and the service list. Those are my  
41 submissions. Thank you, Sir.

1  
2 THE COURT: Thank you, Ms. Meyer.

3  
4 MR. NISHIMURA: Sir, sorry, to - to re-enter. I - I forgot to mention  
5 one thing, and that is that given that it appears that the - these paragraphs describe a  
6 solicitation for financing. My client says you'll recall were bridge financiers - bridge  
7 lenders, they were supposed to be paid out by -- presumably by the new financing that  
8 this would have resulted in. As a creditor - as creditors and potentially secured creditors  
9 in the same position as a Summit or - or other lenders, a refinancing which would then  
10 see my clients paid out is a lot different than a sale of assets whereby the assets are sold  
11 and maybe my clients get a piece of the proceeds or maybe they don't. And if it had been  
12 announced at that time that there was a sale of assets of being contemplated, and I don't  
13 think there was, but we - we obviously don't have the materials in front of us. My clients  
14 may well have taken a much different approach than the wait and see that they did while  
15 the company was telling them, just hang on you will be repaid as soon as we can get our  
16 new financing. So I just wanted to add that.

17  
18 THE COURT: Thank you, Mr. Nishimura. Next.

19  
20 MR. KASHUBA: Thanks, My Lord. For the record, Kashuba,  
21 initial 'K'. We are counsel to McIntyre Group.

22  
23 Now Sir, as we mentioned in the submissions on Monday over the past many, many  
24 months my client has been working very closely with the company directly and through  
25 counsel, as well as the proposal trustee since their appointment and Trafigura. We have  
26 this asset purchase agreement across the line into the state in which it sits before Your  
27 Lordship today. And which it was in on Monday, and which it is before the Court for  
28 approval.

29  
30 Now, I think it is clear for the record, and if everybody takes exception that I -- we'd like  
31 to hear it, but this is a bid from a arms' length non-related party. McIntyre Group has put  
32 their best foot forward. The company has filed it's NOI under the *Bankruptcy and*  
33 *Insolvency Act* back on October 8th, 2020, more than 2 months ago. Mr. Zahara's and  
34 Mr. Nishimura's clients surely ought to have been aware out of the proceedings and the  
35 identity of the proposal trustee since at least that point in time. Alvares is in  
36 communication with creditors and interested parties, whoever chooses to make that  
37 contact and reach out. McIntyre Group's involvement was reported by the trustee on  
38 November 4th. Someone could have reached out at that point to inquire as to the nature  
39 of the sale, or the transaction, or the financing that was trying to be arranged.

40  
41 Now, Sir, the sales process, you've heard much about it today, it's not been perfect, but

1 the question is whether it's reasonable in the circumstances. So, since November 4th,  
2 now 6 weeks have elapsed and the best alternative that's being proposed to my client's  
3 heavily negotiated and bespoke APA is a very conditional letter of intent. I'm not sure  
4 where the complaining parties are suggesting that the funds come to run a further assist  
5 but the company has suggested that they are out of money. Now, we would submit that  
6 this potential bid is still non-binding. It's conditional, it's no more beneficial to the  
7 creditors of the estate. So, a hope and a prayer as opposed to a bird in the hand which is  
8 what McIntyre Group's bid is. I wanted to make it clear for the record where my client  
9 stands and we are here to close as we were on Monday, Sir.

10  
11 Those are my submissions, subject to any questions from My Lordship.

12  
13 THE COURT: Certainly. Thank you very much, sir.

14  
15 Others? I think the proposed trustee counsel is going to speak to matters.

16  
17 MR. MAEROV: Thank you, My Lord, can you hear me?

18  
19 THE COURT: I can hear you fine, sir. Thank you.

20  
21 MR. MAEROV: Wonderful. I think the - the comments that I  
22 was going to make have been superceded or - or made by others. At some point in  
23 today's -- during today's proceedings, I've been asked to make a few comments on  
24 behalf of the Alberta Energy Regulator who unfortunately was not available to attend. I  
25 don't think they're germane to the questions you've been asking. So, if you have  
26 additional questions, I'm happy to wait or I'm happy to make those now whatever you'd  
27 like.

28  
29 THE COURT: I do have additional questions, but since you're  
30 on the line, sir, please speak to matters.

31  
32 MR. MAEROV: Okay. Thank you, Sir. They will be very brief.

33  
34 Counsel for the AER has requested that we put the following on the record. As the AER  
35 stated in court on December 14th, they take no position on the applications before the  
36 court. They also stated their immediate concern was the lack of winterization at the site,  
37 and for that reason they issued their order on November 17th, and they continue to  
38 engage with the company in relation to that order. Finally, the AER has asked that I  
39 indicate that they would like to see the assets continue to be produced by a responsible  
40 party rather than resulting in unfunded liabilities or stranded assets. Thank you, Sir.

41

1 THE COURT: Thank you very much. Any other parties wish  
2 to speak before I ask Mr. LeGeyt for his input? Hearing none. Mr. LeGeyt?

3  
4 MR. ZAHARA: My Lord, it's Ryan Zahara. If I could just  
5 respond to one thing that Mr. Kashuba said. I think it's important for this Court to keep in  
6 mind, I understand his clients put forward a signed asset purchase agreement, but that  
7 asset purchase agreement according to its terms can't be closed today or tomorrow. And  
8 it's not closing anytime in the future, that we're aware of, at least until for sure the  
9 Warner appeal's dealt with and other matters are dealt with. So, I don't think it's in front  
10 of you that that -- the evidence on the face of it that that asset purchase agreement can  
11 actually be closed in the near future. We just wanted to make sure the Court was aware of  
12 that. Thank you, My Lord.

13  
14 THE COURT: Thank you. Mr. Zahara, that is actually one of  
15 my questions to Mr. LeGeyt. So, I will ask him to speak to that amongst anything else he  
16 would like to touch on. Mr. LeGeyt?

17  
18 MR. LEGEYT: Yes, thank you, My Lord. I - I will perhaps  
19 speak first to counsel's prior submissions about the process and then address the closing  
20 concerns.

21  
22 So, My Lord, there certainly has been a process, in our respectful submission, it has been  
23 reasonable in the circumstances. And with the greatest respect, and in response to my  
24 friends, the Court should rely upon the business judgment of the business people. There is  
25 simply no doubt that the reason for the process and the reason for the NO -- NOI filing  
26 itself was to obtain best possible outcome for Greenfire.

27  
28 Greenfire has worked for months and months to find the best outcome. It has tried all  
29 kinds of different transactions, and in its wisdom it has selected the McIntyre transaction  
30 which is before you today. It is a valuable transaction, My Lord. It brings considerable  
31 value to the estate, and - and I think McIntyre should be given credit. They have been in  
32 the picture for many, many months and they have stepped up and provided the best  
33 transaction, and no other party has done that.

34  
35 Sorry, and before I go to the APA question, My Lord, speaking to Mr. Maerov's  
36 submissions in respect of the AER, clearly I - I hear that AER is not formally taking a  
37 position today, but nonetheless, by granting today's application, the primary goals of the  
38 AER will be accomplished. And that is there will be immediate funding for the work plan  
39 that AER has imposed upon the company. And following along with Mr. Maerov's  
40 second submission on behalf of the AER, the assets will stay with a responsible operator  
41 and will not be forfeit. I don't think either of those things would be true in a - a

1 bankruptcy scenario.

2  
3 Also, in circling back to the process, My Lord, if I may, the parties are all correct.  
4 Greenfire may well have preferred to do a process as is more particularly -- or sorry,  
5 more regularly seen in the court, but there's simply no money to do so and there is no  
6 time to do so. And I respectfully submit that is one of the fundamental flaws of the  
7 proposition that comes forward here at the 11th hour and 59 minutes is that essentially  
8 what Mr. Zahara and Mr. Nishimura's clients are asking for. They were saying they  
9 might fund a process in the new year and they might ultimately make a bid. And there's  
10 simply no comparing that to what we have today because I think the way the Court ought  
11 to interpret that evidence is that equally they might not provide a DIP in the new year and  
12 they might not ultimately make a bid.

13  
14 Now, My Lord, you have asked about the conditions to the asset purchase agreement, and  
15 if you'll bear with me, I've got plenty of papers and I need to find the right ones. So --

16  
17 THE COURT: Certainly, sir.

18  
19 MR. LEGEYT: -- if we go off for moment.

20  
21 THE COURT: Certainly, sir.

22  
23 MR. LEGEYT: Okay, I - I believe I have what I need now. And  
24 sorry, My Lord, might you repeat the question?

25  
26 THE COURT: The question was simply taking off Mr.  
27 Zahara's points that this transaction would not close. Let me just go back to my actual  
28 notes. Yes. His comments were that this deal will not close tomorrow or next week --  
29 these are my notes not necessarily his words, inferring that it is going to be pushed out as  
30 a practical matter in any event, and I suspect Mr. Zahara is referring to his reading of the  
31 document along with the issues that Ms. Meyer did raise the other day in terms of some  
32 inconsistencies between the timeline that was suggested and what the documentation was  
33 providing for.

34  
35 MR. LEGEYT: Sure, sure. And to take a - a bit of a step back  
36 and describe the overall structure of how the interim financing and the asset purchase  
37 agreement fit together. There - there is no doubt that the normal course is the purchaser  
38 provides the purchase price and closes very shortly thereafter and we're done with it.

39  
40 This is different. And in particular, this purchaser imposed a condition that the final --  
41 what I will call the final closing does not occur until the AER has authorized the licence

1 transfers. And that takes some time. So, should Your Lordship grant the order today,  
2 parties would close in escrow and would wait for that condition to be satisfied. I'm sure if  
3 Ms. Lavelle was here, she would say there's no time frame for that, but our - our  
4 experience is that's a 30 or 60 day process. And that's why the interim financing is  
5 needed now to bridge the gap between the approval investing order and the final closing  
6 when the licences are transferred and the deal is complete, and that may be 30 or 60 days.  
7 So, that condition -- the parties do close in escrow fairly quickly.

8  
9 And I see Ms. Wood has turned on her camera, I will defer to her in a moment.

10  
11 There are purchaser's conditions in the APA, and Your Lordship may have seen those.  
12 Purchaser's counsel may be better to speak to those. But, we do not think they are  
13 onerous. We do not think that they will prevent the closing. I -- just looking at the  
14 headings, they are, you know, accuracy of representations and warranties, that is  
15 standard. Performance of agreements, that is standard. Court approval, that is standard.  
16 Key employees have signed agreements for the purchaser. Whether or not that's standard,  
17 I can't say, but it's certainly an achievable condition. There is the facilities inspection  
18 which will happen at the appropriate time and will reduce the cash component available  
19 to creditors. There's a condition about no material adverse effect, no actions or  
20 proceedings and payment. So, in my respectful submission, those conditions are  
21 manageable.

22  
23 I will defer to Ms. Wood for more detailed comments if it pleases the Court.

24  
25 THE COURT: Certainly. Thank you. Ms. Wood?

26  
27 MS. WOOD: Good afternoon, My Lord. I don't have much  
28 more to add and - and I believe that everything that Mr. LeGeyt has said is absolutely  
29 correct. Just maybe a few clarifications though in - in terms of - of timing.

30  
31 So, the way that the - the DIP funding works, as Mr. LeGeyt said, is really to compensate  
32 for two things, first being the requirement to address immediate repair costs, capital costs  
33 that need to be incurred to - to bring the plant back to operations. And that funding would  
34 also be used to cover off operational expenses such as paying bills that have not been  
35 paid since the NOI process started, so that would include things like municipal property  
36 taxes for example. And as a result of that, we have these funds being incurred that will  
37 assist in ensuring that the plant is - is safely restored to a - a position that's acceptable to  
38 the AER.

39  
40 And the timing -- the second timing factor is the AER licence transfer. And so, often in  
41 receivership or other type insolvency transactions, you simply have a - a signing of the

1 agreement, going to court for approval and then an immediate close after which time the  
2 licences are submitted to the AER. And so, after discussions with the AER, our  
3 understanding was that it was the purchaser's strong preference and in align with the  
4 AER's regulatory requirements that the purchaser not take the beneficial interest, and in  
5 part, legal interest to the assets before the licences were approved. And so, that licence  
6 transfer process requires a mandatory 30 day posting period for the public to review and  
7 comment on the transfer.

8  
9 Now normally in a insolvency type transaction my experience is that the licences tend to  
10 transfer on day 31 because the purchaser often is really the only option in the scenario. I -  
11 I doubt that it would be any different in this scenario given the constant and frequent  
12 conversations between the purchaser, Greenfire, and the AER. However, I think that's -  
13 that's important to keep in mind is this funding operates as how a normal adjustment  
14 period would work in a sale agreement where the purchaser would be obligated to pay for  
15 all of the obligations of the company after what's termed the effective date in the  
16 agreement.

17  
18 And in this circumstance, we don't have an effective date because all of the adjustments  
19 are taking place under the interim financing. And that was really done because instead of  
20 just dealing with the purchaser, we are dealing with a purchaser and the purchaser's  
21 financing party which is Trafigura. And as they are not in the business of providing  
22 interim funding, they were entitled -- or felt entitled to protection of - of those funds that  
23 are expended during this time period. And so, we, of course, feel that that is a fair  
24 request, and because particularly the assets will be improved not just by expending  
25 capital amounts to repair the facility to please the AER, but also in terms of paying  
26 operating expenses so that the plant is in - is in good shape when the purchaser takes it  
27 over.

28  
29 And then, maybe just in terms of timing for the escrow closing, and I think it's important  
30 to keep in mind that we can't just speak about closing in the normal sense, because upon  
31 escrow closing, Burnet Duckworth as escrow agent, will have everything in escrow that  
32 is required for closing to actually occur. So, that means not only the - the portion of the  
33 purchase price, the \$4 million going in escrow, that, of course, \$1 million deposit will be  
34 paid to the company right away as soon as these orders are -- if these orders are granted.  
35 And so, that \$4 million purchase price will remain in escrow as well as all documents  
36 undated but executed that are required for closing. And that includes the assignment  
37 assumption and release for the interim financing, meaning that purchaser will be taking  
38 that on and the company will be released so that all of the remaining cash after the final  
39 closing and the licence transfers occur will remain in the company.

40  
41 And so, in order for all of this to come together, you may notice that the definition of

1 permitted encumbrances expressly excludes the Warner contract, and I'm sure you will  
2 have more questions in that vein later on, but the purchaser, as we've seen in - in other  
3 cases such as *Dianor*, is entitled to determine what it wants for permitted encumbrances  
4 and it is very important to this purchaser that the Warner contract be excluded.

5  
6 And therefore, if we are granted an approval and vesting order that allows for the Warner  
7 claims to be litigated within the estate with a claim on the eventual purchase price net  
8 proceeds that end up in the estate for distribution, then that will absolutely allow the  
9 parties to move forward to escrow closing as soon as possible. And the sooner that that  
10 date happens, I will note that the less of an issue that we may have with - with netting the  
11 repair costs off and ultimately the increase in funds that will remain in the estate for  
12 distribution to creditors.

13  
14 So, subject to any further questions, I - I can get into any - any of that in more detail, but I  
15 just wanted to - to ensure you're aware.

16  
17 THE COURT: Thank you for that. One -- I have one question  
18 for you --

19  
20 MS. WOOD: Yeah.

21  
22 THE COURT: -- that you have touched on that you may be  
23 able to assist the Court on. Is there adequate protection in this deal to and for the benefit  
24 of Warner, and notwithstanding Mr. LeGeyt's comments that it has no basis if Warner is  
25 successful?

26  
27 MS. WOOD: So -- and - and I may defer to Mr. LeGeyt and -  
28 and Mr. Algar, as - as --

29  
30 THE COURT: And that is fine.

31  
32 MS. WOOD: -- I'm not - not the litigator here, but my - my  
33 first response would be that my understanding is the Court is entitled to - to vest off a --  
34 an agreement whether it is or is not an interest in land. And so, my understanding is if the  
35 Warner appeal is successful that interest in land piece is - is largely irrelevant and they  
36 would have a claim against the estate. But, I will defer further to Mr. LeGeyt and Mr.  
37 Algar.

38  
39 THE COURT: Yes. I thank you for that Ms. Wood. I just  
40 raised it only because you touched on Warner as part of your explanation. Thank you.

41



1 Any further comments, Mr. LeGeyt, Mr. Algar?

2  
3 MR. LEGEYT: Well, I - I see Ms. Fellowes who acts for the  
4 proposed interim financier has turned her camera on, and I don't know but she may wish  
5 to speak to the condition --  
6

7 THE COURT: Certainly.  
8

9 MR. LEGEYT: -- the condition issue that was raised by Mr.  
10 Zahara.  
11

12 THE COURT: Yes. Ms. Fellowes?  
13

14 MS. FELLOWES: Yes, correct. Thank you, Mr. LeGeyt, and - and  
15 thank you, My Lord.  
16

17 Yes, my (INDISCERNIBLE) is Trafigura Canada LP and is the DIP financier. And, I can  
18 tell you, My Lord, the DIP term sheet is before the Court. It does have certain conditions  
19 attached to it. But, this DIP term sheet has been carefully negotiated in order to assure  
20 that the urgently needed funds start flowing immediately on court ordered approval.  
21 There are some conditions attached to the tranche A, the facility A, which deals with the  
22 purchase price itself. And I should note that, of course, it's a benefit of the estate and the  
23 creditor that the repair costs be as minimal as possible because that will increase the pot  
24 available to creditors.  
25

26 And one thing I do want to encourage -- or sorry, speak to the Court about on behalf of  
27 my client is the urgency here. You know, I - I can tell you that there was a term on the  
28 DIP term sheet that court approval had to be obtained by December 15th. My client was  
29 (INDISCERNIBLE) about the 3 day delay that occurred from Monday's hearing to now  
30 given the extreme cold conditions in Fort McMurray.  
31

32 Nevertheless, they have agreed to extend the term of the DIP term sheet to the end of  
33 today and the end of today's court hearing if your Lordship chooses to give a ruling  
34 today. But, I can -- I wish to emphasize to the Court that we are ready to go and we can  
35 start the money flowing immediately. This company has been cash starved for many  
36 months. The urgency has been apparent to everyone for many months. The professionals  
37 have not been paid. And I think it speaks to all the work that the professionals have been  
38 done -- doing that in the cash flow analysis their fees are substantial at this point.  
39

40 So, my client's funding will not only ensure that the restructuring costs are being paid,  
41 and as Ms. Wood said, the operational costs are being paid, that's to the benefit of many

1 creditors. And finally, the urgency of this matter, Sir. So, we need to minimize those  
2 repair costs and that's going to be the benefit of everyone. And speed is our friend at this  
3 point.

4  
5 THE COURT: Thank you, Ms. Fellowes. Mr. LeGeyt, any  
6 further comments?

7  
8 MR. LEGEYT: With respect to the conditions, no, My Lord,  
9 they are standard or - or for the most part very standard for this type of transaction and  
10 they are manageable.

11  
12 You had asked about Warner, and in my respectful submission, Warner is being treated  
13 as all of the creditors of Greenfire are being treated, and it is being treated in the way that  
14 a party with an onerous contract may be treated in insolvency proceedings. And - and  
15 what I mean by that, My Lord, I - I harken back to the contest before Justice Little, where  
16 Justice Little decided it was appropriate for the Warner marketing contract to be  
17 disclaimed.

18  
19 And I certainly won't get into the details, but some of the submissions that I made and I  
20 believe were accepted by the Court, were along the lines that the insolvency statutes in  
21 Canada, both the BIA and the CCAA expressly allow for these disclaimers. And that is  
22 because in order to have any hope of restructuring the struggling companies, they need to  
23 be able to rid themselves of these onerous contracts. Whether it's an office lease, or a  
24 transportation agreement or something else, the statute allows it.

25  
26 And the court doesn't need to inquire into the conduct of either party. In other words,  
27 contracts which are in good standing can be disclaimed. There's no need for a breach or  
28 anything like that. It - it goes to the restructuring itself, so that the business can go  
29 forward without these onerous contracts attached, just as the assets can go forward  
30 without the secured claims or any claims attached.

31  
32 And so, Warner finds itself in the position of someone with a contract -- oh sorry, and  
33 before I go on, the - the statute expressly says if a contract is disclaimed, the counter  
34 party is entitled to prove a claim in the proceeding, and we accept that.

35  
36 And so, going back to where I started, when I say that Warner is being treated as - as all  
37 of Greenfire's other creditors are being treated, Greenfire may prove a claim in the  
38 insolvency and its claim is limited to the sales proceeds. That is the same for all service  
39 providers or the secured creditors for the municipalities. And so, from that perspective,  
40 Warner is really being treated the same as all of the other parties, and the Court should  
41 not hesitate to approve of that.

To follow up on some of the submissions of Ms. Wood, I mean we - we strongly, strongly take the position that Warner does not have (INDISCERNIBLE), and there is no hope of their appeal succeeding. But even if they do, the Court can nonetheless grant the approval investing order and the authority for that is the *Dianor* case in the Court of Appeal, and we have personal awareness of Justice Horner vesting off a proprietary royalty interest in the *Petrocapita* receivership in the summer of this year.

So, it can be done and it has been done, My Lord, and in circumstances of this case where it is frankly absolutely crystal clear that Warner does not have (INDISCERNIBLE) you should not hesitate to do so. So, Warner, like all claimants, its claim will be confined to Greenfire and acquisition (INDISCERNIBLE) the applications before you today, is entitled to go forward with the assets free and clear of all claims against Greenfire, except of course, for any permitted claims (INDISCERNIBLE).

So, those were my submissions about Warner, My Lord.

THE COURT: Thank you. I asked the question in the fashion I did because I wanted to spark some discussion. I am certainly familiar with Justice Horner's comments on vesting off, but I appreciate all of the input, Mr. LeGeyt.

Next question. As I read all of the evidence before me, the creditors are taking a position here have no firm deal. Is that correct? Am I missing something?

MR. LEGEYT: No, you're absolutely correct, and it's probably easiest to demonstrate that in the most recent affidavit of Mr. Shabani-Rab, and I can be quite brief in my submissions about that, My Lord. When you have today's affidavit let me know.

THE COURT: I have actually read it and that is why I am asking the question. So --

MR. LEGEYT: (INDISCERNIBLE) or --

THE COURT: -- I will hear from you first and then I would like to hear from your friends. Thank you.

MR. LEGEYT: Oh, sure, sure. So, in - in paragraph 3 -- and - and these the exact words of Mr. Shabani-Rab's affidavit, he said: (as read)

The Investor Group has entered into "meaningful conversations

1 with existing creditors” and “conversations with potential  
2 investors”.

3  
4 So, we’re talking about conversations not commitments. And that is absolutely crystal  
5 clear in Exhibit A to Mr. Shabani-Rab’s most recent affidavit.

6  
7 The second full paragraph in the second line -- and - and this is from, you know, one of  
8 the sources of money, the Alberta numbered company, it’s very important. The second  
9 paragraph says: (as read)

10  
11 The numbered company’s cash contribution to the alternative  
12 offer, which is in support of the alternative offer, is in the form of  
13 a non-binding conditional offer of 2.5 million.

14  
15 And the author then lists seven conditions below all of which are highly problematic for  
16 Mr. Nishimura’s client, in my respectful submission. Each and every one of those seven  
17 conditions gives this party an out. There’s absolutely no commitment from this party, and  
18 - and that harkens back to one of the submissions I made earlier. The best Mr. Nishimura  
19 and Mr. Zahara can say to you is their - their clients might make an offer and they might  
20 provide a DIP. And my respectful submission is that that evidence can be equally  
21 interpreted to say that they might not make an offer and they might not provide a DIP.

22  
23 Next is Exhibit B to Mr. Shabani-Rab’s affidavit, and the last paragraph on the first page  
24 says and I quote: (as read)

25  
26 This letter is simply an indication of interest. It is not intended to  
27 be all inclusive and is not a commitment to lend or invest.

28  
29 So, that’s where the other creditors are, My Lord. I - I simply cannot stress enough that  
30 there is no comparing the alternative to what is really before the Court today from  
31 McIntyre and Trafigura.

32  
33 Thank you. Those are my submissions.

34  
35 THE COURT: Thank you, sir. Mr. Nishimura, I see you are on  
36 the screen. You can certainly reply to that.

37  
38 MR. NISHIMURA: Thank you, Sir. And before I -- well, there are a  
39 number of - of parts to this. Firstly -- and it’s partially in response to earlier things that  
40 were - that were said about, for example, where the funds for a further assist would come  
41 from. My client -- and I can say this on the record and - and on behalf of my client, is

1 committed to not only funding DIP, or - or interim financing depending on who it's to,  
2 and doing that right away. But, they are also committed to taking part of as a bidder in a  
3 sales process, and Mr. Shabani-Rab says that in paragraph 7 of his affidavit.

4  
5 So, we have \$2.5 million in trust which we would flow immediately as soon as a  
6 mechanism is established to do so. On normal DIP conditions which would be no - no  
7 different than the conditions proposed by my friends except that they're not going to fund  
8 a purchaser. They would go to fund the immediate requirements of the facility and to  
9 fund the professionals for their past obligations and to fund the - the sales process going  
10 forward. Our estimate is that the 2 thousand -- \$2.5 million, which - which we hold right  
11 now and is ready to go, would be sufficient for those two purposes alone.

12  
13 We have provided evidence of the other efforts my clients have been make - been making  
14 in a single week to obtain other financing to address what may happen in the future and  
15 it's important to remember that the - the proposed DIP financing is going to be doled out  
16 over a period of several months. This urgency that - that's stated and - and in our  
17 submission it's overstated, is limited in amount.

18  
19 So - so the amounts required, according to the materials that my friends have provided,  
20 on an immediate basis are 750,000 to \$1 million to address the concerns of the facility  
21 right now. And that's all that's needed in the very, very short period -- short time frame  
22 that we're talking about, a time frame that would also go to a - a sales process. The sales  
23 process itself would likely cost another - another \$500,000 or so. There's, I understand,  
24 about 500,000 in professional fees that have been incurred so far. But, my client, on its  
25 own without its partners, is prepared to advance all of its funds. It's ready to go right  
26 now.

27  
28 We have also contacted this - this engineering firm, Propak, which is referred to in the  
29 affidavit, and they are ready to go right away. They would be able to enter the facility and  
30 do -- and effect the repairs within 1 or 2 days. They've given us that confirmation. So,  
31 remember too, that it's also their evidence that the damage that's been done is likely all  
32 that's going to happen. It's not going to get worse, but there would be repairs that can be  
33 done to it to ensure that.

34  
35 So, my clients -- it's not a question of, as Mr. LeGeyt put - put it, my clients might fund  
36 and they might participate in a - in the sale. My clients, on the record, are committing to  
37 participating in the sales process, and if the Court sees fit, they are committing to  
38 providing interim funding.

39  
40 Now, the one other thing that I heard one of my friends say is that we should defer to the  
41 business judgment of - of the professional -- of the people involved. It - it bears noting

1 that this is a proposal proceeding and what the courts have said in proposal proceedings  
2 or CCAAs is that the business judgment of the creditors is what's at stake. This is an  
3 interesting proposal that my friends are making. They're saying that notwithstanding the  
4 fact that every single creditor that's spoken up is opposed to this transaction. It should go  
5 ahead and these proceedings should go ahead.

6  
7 The - the creditors are the ones who are taking the risk here, and their -- in their business  
8 judgment, and my - my client's business judgment, and Athabasca's business judgment,  
9 indeed and Warner's who - who has been spoken of. They are willing to take the risk that  
10 they -- a - a transaction other than the one that's proposed will - will occur. So, my  
11 clients, and Athabasca's, and Warner's counsel can speak for themselves. My clients,  
12 again, are willing to take the risk that the transaction that ultimately occurs in - in an  
13 extended process, or if the company simply goes into bankruptcy, which they are --  
14 again, are not afraid of. They will fund the re -- they will fund a receiver or trustee the  
15 same way as they would fund during these pro - proceedings. They're willing to take that  
16 - take that proposition over proceeding in this manner.

17  
18 My - my - my friends did make note of the fact that they have not been contacted in the  
19 last week or so. My clients, if I haven't made it clear enough, have lost faith in Mr.  
20 LeGeyt's client's principles, so it's not surprising that they have not engaged them since  
21 they were abruptly told on December 2nd, no there's a sale that we've been working on,  
22 apparently for quite a while without any notice to anyone. So - so that's my client's  
23 position.

24  
25 Unless you have further questions, I will defer to Mr. Zahara, who I see is waiting, or Mr.  
26 Plester.

27  
28 THE COURT: Mr. Zahara, first. Thank you, Mr. Nishimura.  
29 Mr. Zahara, first.

30  
31 MR. ZAHARA: Thank you, My Lord. I'll - I'll just try to cover  
32 quickly I think what I understand to be the thrust of Mr. LeGeyt's submissions on this. I  
33 think what gets stuck in my craw on all of this, My Lord, is I appreciate that they're  
34 advocating for their client, and I appreciate Greenfire's done some work, but they keep  
35 saying that our deal and what we've brought forward isn't sufficient. Notwithstanding the  
36 fact that the evidence that was before you on Monday was that they've actually  
37 discouraged our client from submitting an interim financing bid as early as this weekend.  
38 They've taken steps to not engage with Mr. Nishimura's clients. They've only engaged  
39 with the proposed purchaser, so it stands to reason and without a doubt becomes a self-  
40 fulfilling prophecy if you don't have a full, open and transparent process, the other parties  
41 aren't going to be able to put their best foot forward. There's simply not the opportunity.

1  
2 And it's completely unfair for Greenfire to sit there and go, well, you guys didn't get this  
3 as far along as we did, when we've been given no access to information, materials or  
4 anything of that nature similar to what McIntyre's been given. And certainly our clients  
5 have worked diligently in the time given to them to try to bring something forward. Mr.  
6 Nishimura's just said there's two and a half million dollars that can be moved out quite  
7 readily. That - that is a material amount of money sitting in a trust account. That is  
8 enough to fund under the company's own cash flows whatever needs to be done in the  
9 next 30 to 60 days. And so, the - the - the urgency and the reason that we're all being  
10 driven off this cliff right now is that we don't have interim financing. This was the  
11 proposal trustee's submission on Monday. (INDISCERNIBLE).

12  
13 THE COURT: Mr. Zahara, you are -- you have gone static  
14 again. Mr. Zahara, can you hear me?

15  
16 MR. ZAHARA: Hello?

17  
18 THE COURT: You are -- I could hear the - I could hear the  
19 hello, but I couldn't hear much else.

20  
21 MR. ZAHARA: Hold - hold on, My Lord, I'll just dial in  
22 through my cell phone again because that's going to be easier.

23  
24 THE COURT: Okay.

25  
26 MR. ZAHARA: One second, My Lord.

27  
28 THE COURT: Thank you. Mr. LeGeyt, can you hear me, just  
29 to test?

30  
31 MR. LEGEYT: Yes, My Lord.

32  
33 THE COURT: Thank you.

34  
35 Mr. LeGeyt, can you hear me, just to test?

36  
37 MR. LEGEYT: Yes, My Lord.

38  
39 THE COURT: Thank you. We will wait Mr. Zahara to dial in.

40  
41 MR. ZAHARA: Is that better, My Lord?

1  
2 THE COURT: Yes, I can hear you fine, sir. Continue.

3  
4 MR. ZAHARA: Perfect. Thank you. Sorry, and so, all I was  
5 saying is -- in my submissions is that the - the criticism of our clients not being able to  
6 move this or haven't moved this forward in the time given to us, I think rings hollow.  
7 And it - it was a self-fulfilling prophecy if we're not engaged with, and there's been no  
8 sales process run. There's no sanctity of the sales process to protect here, cause there  
9 hasn't been one. And so, we would submit in - in this case, My Lord, if there's an  
10 opportunity for this company to get interim financing from Mr. Nishimura's clients on  
11 more normal standard terms, not tied or linked to some asset purchase agreement, that  
12 that should be given time to be explored, even if it's a few days or a week, because  
13 nothing is going to change between now and then either on an operational level, or in  
14 respect to the asset purchase agreement, cause we know it's not closing any time soon,  
15 whether in escrow or otherwise.

16  
17 And so, our submissions are, take -- the Court to allow the time for that to happen, the  
18 proposal trustee on one they submitted that the singular reason that they were supporting  
19 us is cause there was no other offer for financing. And we now have one of those on the  
20 table with -- they're backed by sitting in a trust account. So, the only thing that's stopping  
21 that is the mechanism of how to get those near the hands of the proposal trustee, and use  
22 those for the purposes to preserve the assets of the company. And in our submission,  
23 driving ahead with an asset purchase agreement now in the face of that erodes all value --  
24 potential value for creditors, and leaves little opportunity for anyone to participate in this  
25 process further, and (INDISCERNIBLE) this is done intentionally by Greenfire to get to  
26 the - the transactions that they wanted. And if there is a real transaction there with the  
27 (INDISCERNIBLE) and McIntyre Group, they can participate in the sales process, put  
28 that transaction forward. So, if there's another option here that gives the creditors some  
29 chance, we would submit that this should be given time to be pursued in this Court.

30  
31 Thank you, My Lord.

32  
33 THE COURT: Thank you, Mr. Zahara. Next?

34  
35 MR. PLESTER: Good afternoon, My Lord. This is Gregory  
36 Plester of Brownlee LLP, counsel for the Regional Municipality of Wood Buffalo. I had  
37 planned on making some general comments sort of after you after you concluded your  
38 comments, but I -- there is an opportunity to respond to some comments of Mr.  
39 Nishimura and also put some comments on the record for the benefit of everybody, so I -  
40 I think now might be a good time, but of course, that's up to Your Lordship.

41



1 THE COURT: Go ahead, Sir.

2

3 MR. PLESTER: So Sir, just to back up. On Monday, we had  
4 sketched out the -- Wood Buffalo's interests here, and they are essentially three parts. We  
5 are owed pre-filing taxes, those amount to about \$500,000. We're also owed post-filing  
6 taxes, that portion is about 169,000, which would bring the total tax balance up to about  
7 \$660,000. But as a municipality, the municipality itself is concerned also with the  
8 ongoing viability of this business and the facility, both because of potential for future tax  
9 revenues, but also because it's - it's important to the community generally. So, those  
10 three interests sort of all intersect in this application.

11

12 We had said on Monday that we were neutral in respect to the application. I would say  
13 today that based on everything that we heard on Monday, the material that's been filed  
14 since, and the submissions today, we are less neutral than we previous were, and on  
15 balance, we would support the application, so long as that is the continued position of the  
16 trustee. So essentially, we follow the guidance and the direction -- the recommendations  
17 of the trustee in supporting this application.

18

19 And our concerns are essentially as follows. As it stands right now, there is a proposal on  
20 the table that would see the pre -- the post-filing taxes paid, which is a significant concern  
21 to us, particularly if this matter were to grind on for several months. Those post-filing  
22 taxes continue to accrue, penalties will continue to accrue. We also see an opportunity for  
23 at least some of the pre-filing taxes to be paid, at least the secured portion, there being an  
24 opportunity for some distribution to the municipality. As it stands, we believe that we are  
25 the highest ranking secured creditor, in respect to Greenfire, so there'd be some  
26 opportunity, depending on the math for some payment towards those pre-filing taxes.

27

28 And also, there is a certainty that if - if this proposal -- if this application is granted, the -  
29 the facility will remain in operation, and that's a major concern for the municipality for  
30 the reasons I mentioned previously, both ongoing tax revenues, but also as a business in  
31 the community provides jobs and economic opportunities for the community.

32

33 So, we see those as that is the bird in the hand, and as Kashuba's comment, there is much  
34 to be said about the bird in the hand, from our perspective. There's much less risk with  
35 what is on the table than what is being proposed by the respondents that oppose the  
36 application. We share the concerns of Mr. LeGeyt that there is very little certainty about a  
37 viable transaction coming to fruition if this application today is not granted, and that  
38 could put in jeopardy all of the things that we would stand to benefit from, that Wood  
39 Buffalo would see to gain if this application is granted.

40

41 And so, from our prospective, while we appreciate that secured creditors are scrambling

1 to - to get a transaction together that would be better for them, for the broader pool of  
2 creditors, it comes at significant risks that aren't, I think, necessarily the focus of today's  
3 application. And so, that's the main thrust of my point is that by giving up this high level  
4 of certainty for a much lower level of certainty of a transaction coming to fruition, there  
5 are significant risks to our client that they will not see any benefit from this. And we're a  
6 little gun shy, in that there's been many similar insolvencies in this province that have  
7 seen assets go unsold. That's a significant risk, both in terms of viability of collecting  
8 debts, such as the taxes owed to Wood Buffalo, but also in terms of stranded assets  
9 become a public liability. That's a major concern to our client, but also to, I think,  
10 Albertans generally, and I don't know that that risk is really being voiced quite a loudly  
11 as maybe it should be. There would be significant risk here, I think, that this facility  
12 doesn't necessarily return to operation. And those are based on the comments, the trustee,  
13 of - of counsel for Greenfire, and we just don't see that they've been fully addressed. Our  
14 concerns remain as they - as they were.

15  
16 So, subject to any comments Your Lordship has, that's the position of the Regional  
17 Municipality of Wood Buffalo. Thank --

18  
19 THE COURT: Thank you very much, sir. Next?

20  
21 MR. REID: Good afternoon, Sir. James Reid. I'm counsel  
22 for Summit Partners, whose (INDISCERNIBLE) is the senior secured creditor. And  
23 Summit, in the proposal trustee's report had not taken a position, which is noted. On  
24 Monday, I did advise that Summit was not in support of the application, and that still  
25 stands.

26  
27 It wasn't until we reviewed the trustee's report that we actually found out that there were  
28 municipal taxes outstanding and didn't find out until Monday the extent of those  
29 municipal taxes, which may or may not have a priority charge in respect of the non-linear  
30 municipal taxes that are pre-filing and might be owing.

31  
32 But in light of finding out that there may be municipal taxes owing, as well as builder's  
33 liens owing, the - the transaction that's before the Court, it's - it's creating a significant  
34 amount of uncertainty that there won't be any recovery to even the senior secured  
35 creditor, being Summit Partners, and for that reason, we support Mr. Nishimura's  
36 proposal and position that time is required to see if something better can be developed  
37 that - that can see payout to - to creditors in the circumstances.

38  
39 So, I just want to echo that, and make it - make it clear again.

40  
41 THE COURT: Thank you, Sir. You have actually addressed

1 one of my questions, so I appreciate that input. Anything else from any of the parties?

2  
3 MS. MEYER: Good afternoon, My Lord. Kelsey Meyer. I see  
4 that Mr. Algar has popped up as well. I did want to address the question that Your  
5 Lordship had raised to Mr. LeGeyt -- or rather, Ms. Wood, as to whether there is  
6 adequate protection to Warner, if Warner is successful with its appeal, if I may?

7  
8 THE COURT: Certainly. I did qualify that, but go ahead, Ms.  
9 Meyer.

10  
11 MS. MEYER: Yes. Yes, certainly. My Lord, Mr. LeGeyt, in  
12 response to that question noted that disclaimers are permitted under the statute, but that  
13 doesn't change Warner's position, of course, that you still do have to meet the  
14 requirements of the statute in order to disclaim an agreement, and that is the subject of  
15 the appeal that was before the Court of Appeal.

16  
17 With respect to Greenfire's position that Warner's marketing agreement, even if it does  
18 constitute an interest in land, if the Court of Appeal determines that to be the case, that it  
19 can still be vested off. And in that regard, I wanted to address Greenfire's brief in that  
20 respect. This is their brief, dated December 3rd in relation to this application. Do you  
21 have that?

22  
23 THE COURT: Just bear with me for a second. Who provided  
24 that again?

25  
26 MS. MEYER: That was from Greenfire, so Burnet Duckworth  
27 and Palmer.

28  
29 THE COURT: Okay. Paragraph?

30  
31 MS. MEYER: The paragraph of the brief I'm look at is  
32 paragraph 73.

33  
34 THE COURT: Just bear with me. I'm there.

35  
36 MS. MEYER: Thank you, My Lord. And what Greenfire  
37 speaks about at paragraph 73 of its brief is the *Third Eye Capital Corp v. Dianor*  
38 *Ressources* decision of the Ontario Court of Appeal. At paragraph 73, it sets out: (as  
39 read)

40  
41 The framework provided by the Court for an analysis to

1 determine if a third party interest should be extinguished.

2  
3 What I think is important to note though, My Lord, is that in the copy of the case that is  
4 included at tab 7 of Greenfire's brief, they actually include excerpts of the decision, but  
5 they don't include the Court's ultimate conclusion in that case, that in that case, a  
6 property based interest generally cannot be vested off.

7  
8 And that's at paragraphs 113 and 115 of the decision. Again, My Lord, I note that those  
9 paragraphs aren't actually in the copy of the case that is before you. So, I will tell you  
10 what they say. Paragraph 113 says: (as read)

11  
12 The interest represented by the GOR (Gross Overriding Royalty)  
13 is an ownership in the product of the mining claim, either  
14 payable by a share of the physical product or a share of revenues.  
15 In other words, the GOR, G-O-R carves out an overriding  
16 entitlement to an amount of the property interest held by the  
17 owner of the mining claims.

18  
19 At paragraph 115 then, the Court says: (as read)

20  
21 Given the nature of 235 Co.'s interest and the absence of any  
22 agreement that allows for any competing priority, there is no  
23 need to resort to a consideration of the equities. The motion  
24 judge erred in granting an order extinguishing 235 Co.'s GORs.,  
25 (Gross Overriding Royalties).

26  
27 So, that was the finding in that case, and it touches, in part, on the test which is addressed  
28 at paragraph 73 of Greenfire's brief, which you have before you, My Lord.

29  
30 THE COURT: M-hm.

31  
32 MS. MEYER: You'll see there that their (INDISCERNIBLE)  
33 from day 3 states that: (as read)

34  
35 The Ontario Court of Appeal provided a framework for analysis  
36 to determine if a third party interest should be extinguished.

37  
38 And the Court said: (as read)

39  
40 In considering whether an interest in land should be  
41 extinguished, a Court should consider 1) the nature of the interest

1 in land, and; 2) whether the interest holder has consented to the  
2 vesting out of their interest, either in the insolvency process itself  
3 or in agreements reached prior to the insolvency.  
4

5 With respect to the first part of that test, My Lord, I submit that that is part of the issue  
6 that is before the Court of Appeal. With respect to the second part of the test though, with  
7 respect to what Greenfire has actually inserted -- or asserted, I should say, that continues  
8 on at page 7 -- or pardon me, paragraph 77 on page 20 of Greenfire's brief, if you have  
9 that?  
10

11 THE COURT: I do, I am there.

12  
13 MS. MEYER: Okay. At paragraph 77, Greenfire speaks to the  
14 second factor, being the impact of a prior agreement, where the Ontario Court of Appeal  
15 stated that: (as read)  
16

17 Another factor to consider is whether the parties have consented  
18 to the vesting of the interest, either at the time of the sale before  
19 the Court, or through prior agreements.  
20

21 And then goes on at paragraph 78 to speak to the concept of subordination.  
22

23 At paragraph 79, in support of their assertion that Warner has consented to the vesting off  
24 of its interest, Greenfire refers to confidential Exhibit number 3 to the affidavit number 2  
25 of Harry Warner, which is subject to a sealing order. This is something that was  
26 addressed at the application before Justice Little regarding the marketing agreement.  
27 What that document is, is a consent and acknowledgement agreement between Greenfire,  
28 Warner, and Greenfire's senior secured lender. And you'll see there that Greenfire has set  
29 out certain assertions with respect to what that agreement says in that Greenfire has  
30 transferred a security interest and that Warner consented to that assignment and creation  
31 of a security interest and that at paragraph 80 of the brief: (as read)  
32

33 It is clear from the agreement that Warner has suborted  
34 (phonetic) you of its interest to that of Greenfire's true secured  
35 lenders.  
36

37 The point though, My Lord, is that in this case, Warner agreed to subordinate to Summit  
38 Partners, but did so in the context of an agreed -- an -- a credit agreement that expressly  
39 required the marketing agreement with Warner and Greenfire to persist. And so, with  
40 respect to that point, the credit agreement between Summit Partners and Greenfire is  
41 included in a response to undertaking number 4, given by Mr. Logan after being cross-

1 examined, I believe, it was November 12th. And that -- a copy of that credit agreement is  
2 included in that response to undertaking.

3  
4 What that credit agreement includes is a definition of material contracts, of section 6.12,  
5 that includes as a material contract, the marketing agreement between Warner and  
6 Greenfire. And it requires that: (as read)

7  
8 All of the material contracts must be in full force and effect, in  
9 accordance with the terms thereof.

10  
11 So in other words, this credit agreement between Greenfire and its secured creditor  
12 specifically contemplates that the marketing agreement must be in place. It also requires,  
13 under section 7.3(g) that: (as read)

14  
15 Prompt notice be given to the secured creditor of any default or  
16 event of default under any material contract.

17  
18 So, that includes the Warner marketing agreement.

19  
20 It also specifically includes, at section 7.3(j) compliance with agreements. And so, the  
21 credit agreement that Greenfire had with its secured lender, and this is Summit Partners,  
22 required Greenfire to comply in all material respects with any material contract, including  
23 the marketing agreement.

24  
25 And so, My Lord, I submit that it is a stretch, at best, to say that Warner consented to  
26 having its interest vested off title based on it entering into a - a consented  
27 acknowledgement agreement whereby Warner acknowledged the subordination of its  
28 interest to that of Summit in the circumstances where the agreement -- the credit  
29 agreement between Greenfire and Summit specifically required that marketing agreement  
30 to be in existence and to continue and not to be in default.

31  
32 I submit that there isn't -- it isn't a given that the interest of Warner, if it does constitute  
33 an interest in land, if the Court of Appeal determines that it is an instrument that gives  
34 rise to an interest in land can be vested off.

35  
36 And so to your question, My Lord, as to whether there is adequate protection to Warner if  
37 Warner is successful on its appeal, my submission is that the submission of my friends,  
38 Ms. Wood and Mr. LeGeyt, that the answer to that question is that the marketing  
39 agreement interest in land can, in fact, be vested off, is not actually -- well, in our  
40 submission, is not actually the case, and certainly that point hasn't been determined, nor  
41 can it be determined until there is a finding by the Court of Appeal as to whether Warner

1 is - is successful with it appeal.

2  
3 Subject to any questions you have on that, My Lord, those were my submissions on that  
4 point.

5  
6 I did have just one other point with respect to Mr. Plester's comments just now about the  
7 risk to them if there are stranded assets. Again, as I've said, our clients support the  
8 submissions of Mr. Nishimura and Mr. Zahara, and I submit that here, we're not talking  
9 about stranded assets. What those parties, the investor group and AWS are seeking to do,  
10 is raise funds to allow for a proper marketing of the assets so that there can be a sale and  
11 continued operation of those assets to the benefit of all creditors, including the  
12 municipality. It - it's not a matter of the alternative being either the marketing -- or  
13 pardon me, either the McIntyre partner's deal is approved or it's an abandoned stranded  
14 asset. The alternative that is being proposed here is to avoid that situation as well, My  
15 Lord.

16  
17 Those are my submissions, subject to any questions. Thank you.

18  
19 THE COURT: Thank you. I would like Mr. LeGeyt to respond  
20 to both of those points raised by Ms. Meyer. I first -- the -- it doesn't have to be in this  
21 order, but the two issues, being the Warner matter and second, again, the proper sales  
22 process.

23  
24 Just as a matter of reference, I am going to cut discussion off in about 15 minutes. I am  
25 going to adjourn for about 10 or 15, and then I am going to give a decision on this matter,  
26 is my plan. Mr. LeGeyt?

27  
28 MR. LEGEYT: Thank you. I - I see my colleague, Mr. Algar,  
29 has started his camera. I - I'll allow him to go, and if - if he hasn't answered your specific  
30 questions, then I will.

31  
32 THE COURT: Certainly. Thank you, sir. Mr. Algar?

33  
34 MR. ALGAR: Thank you, My Lord. I did have a few  
35 comments in respect to the numerous submissions of my friends. So, the - the Warner  
36 matter is addressed in that list. It's - it's a little bit lower down, but if you permit me the  
37 indulgence, I might just address all the comments of my friends as we've been sitting  
38 here.

39  
40 THE COURT: Certainly.

41

1 MR. ALGAR:

2 Okay. Thank you, My Lord. My Lord, firstly, I  
3 think this is sort of an overarching comment, and I indicated it on a number of occasions,  
4 I think, on Monday and I'll say it again. Mr. Nishimura's clients were sent an interim  
5 financing term sheet when the company was desperate to find that in October. So, while I  
6 can appreciate that he may have two and a half million dollars in his trust account, and I  
7 understand that - that our clients clearly do not see eye to eye perhaps anymore, I'm not  
8 sure it's fair to the company to have gone to these lengths now that -- particularly with  
9 the purchaser, when Mr. Nishimura's clients could have, and in fact were sent a term  
10 sheet to provide that interim financing. But they've now waited, and as I think we've  
11 indicated, that purchase agreement has been -- at least the concept of it has been on the  
12 record for some time, as has the company's desperate need for interim financing. So,  
13 again, that is -- that's referenced at -- in Mr. Logan's seventh affidavit at paragraph 12(e)  
14 and (f), I believe.

15 My next point, My Lord, is - is some of the complaints that you're hearing from -- some  
16 of them are Greenfire's creditors, but I think it is important to remember that this is an  
17 asset sale. It's Greenfire's only material asset, it is in the operations company, so that's  
18 Greenfire Hangingstone. I know Mr. Nishimura has made some comments with respect to  
19 a trust claim or other security, but as I understand it, the ventures that they -- the  
20 agreements that they entered into were with the - the parent company, Greenfire Oil and  
21 Gas. So, to the extent there isn't, I believe, it's 30 or \$17 million that the - the hold -- the  
22 operations company, Greenfire Hangingstone, its creditors, until those are satisfied,  
23 there'll be nothing flowing up to the parent company. And that's also the case for one of  
24 Ms. Meyer's clients, Liberator, as well as part of the debt owed to Mr. Zahara's clients,  
25 or one of them, Athabasca Workforce.

26  
27 The next point, My Lord, relates specifically to the amount of - of financing that Mr.  
28 Nishimura is proposing. There's clearly a distinction. Mr. Logan provided his estimate as  
29 to what the damages would be, and Mr. Nishimura has provided some conflicting  
30 numbers. With respect to what the company is suggesting, is - is that that number has  
31 gone up significantly, and we're looking at about \$2.7 million. That's at paragraph 16(d)  
32 of Mr. Logan's seventh affidavit. So, I suppose what I'm suggesting to My Lord is - is,  
33 depending on who is right and who is wrong, we could be throwing out an offer here for  
34 an asset that may not actually be able to be winterized properly, which is currently  
35 required by the AER's order. So, I don't intend, you know, and I don't think we're going  
36 to get a resolution with respect to sort of pseudo-expert reports here, but I think it's at  
37 least a question as to what the amount of money that's going to be required, and certainly  
38 the company's estimate is - is higher than the entire amount that Mr. Nishimura is  
39 prepared to release.

40  
41 You know, there was a comment, I believe it was from Mr. Zahara that nothing would



1 change if there was a further adjournment. I think Ms. Fellowes has said on a couple of  
2 occasions, I mean, there's no indication that her client is going to continue to be around  
3 past today. I think perhaps that was questionable even after Monday, so in the very real  
4 sense, we've all heard the - the bird in the hand versus in the bush analogy, and I think  
5 that's equally applicable for the commitment of the DIP lender, who is unquestionably, I  
6 would suggest, a well-heeled party.

7  
8 Obviously, appreciated the comments from my friend, Mr. Plester. I think it's at least  
9 arguable at this stage, I understand Mr. Reid might take issue with that, that with respect  
10 to the pre-filing, non-linear taxes, that they are in effect, the senior secured lender, so I  
11 think their - their submissions carry a lot of weight, and I think the other thing that's  
12 important to note is that Mr. Nishimura's proposal, while I would potentially have  
13 enough money to lay up the plant, it doesn't have the ability necessarily to fund any of  
14 these ongoing costs, and then those are simply going to increase over the course of time  
15 until, you know, if a - if a sales process was ultimately run.

16  
17 And turning, I suppose to the Warner matter, My Lord, and I apologize if I went a little  
18 bit longer, Ms. Meyer took you to our brief, and I'd like to take you back there if I can.

19  
20 THE COURT: I am there, sir.

21  
22 MR. ALGAR: Okay. So, I'll flip back, it was to paragraphs 73  
23 and 74, where Ms. Meyer had you previously. And the bolded portion in paragraph 74  
24 indicates: (as read)

25  
26 First, the Court should assess the nature and strength of the  
27 interest that is proposed to be extinguished.

28  
29 Now, Ms. Meyer has pointed out that in that case, they declined to vest off that interest,  
30 but I think clearly, is within the Court's authority to do so. And so, the question for you, I  
31 think, My Lord, is determined -- is to determine what is the strength of this interest?  
32 We've obviously already convinced Justice Little successfully that this was not an  
33 interest in land, and if I could flip you back, My Lord, to paragraph 65 and -- of our brief,  
34 you will see some of the negotiations that were in the context of that agreement, in  
35 particular at paragraph 65(a), and Justice Little did note that he - he didn't necessarily  
36 agree with Mr. Logan's understanding of this agreement, but he -- Greenfire's, it  
37 certainly stated intention that it didn't have even an ability to grant an interest in land.

38  
39 And then I think quite critically, in paragraph 65(c), we've - we've referenced this on a  
40 few occasions, is - is there's a clear statement from Warner's own counsel at the time,  
41 which continues to be its counsel, that says: (as read)

1  
2 After discussions with Warner yesterday, we have - we have  
3 deleted the interest in land language.  
4

5 And then you have the - the struck out provisions, where they've struck out: (as read)  
6

7 It is the express intention of the parties that this is an interest in  
8 land.  
9

10 So My Lord, I think to that first point, it's quite clear, and I understand that there is a  
11 right to appeal there, but it's quite clear that this is not an interest in land. You know, the  
12 only evidence is that the parties agreed that it was not to be in there. So, it's either -- it's  
13 at best, it's ambiguous, but I would suggest to you that there was quite convincing  
14 evidence before the Court that it's not.  
15

16 And with respect to the subordination concept, I - I don't intend to - to set up a discussion  
17 between Mr. Reid and Ms. Meyer on the record right now, but I'm not sure Summit  
18 would - would agree that if there's a distribution to be had, that part of that has to be  
19 carved out for an interest in land that was granted to Warner.  
20

21 So My Lord, in closing, I would submit to you that on that - that Warner issue, there are  
22 adequate protections insofar as Warner can claim against the estate, and the proceeds, and  
23 should it wish to advance a claim that some of those funds belong to it, it should be  
24 carved out of a distribution to other creditors. It would be free to do so. And I can see Mr.  
25 LeGeyt has turned his camera on, and so I will turn things over to him. Thank you.  
26

27 THE COURT: Thank you, Mr. Algar.  
28

29 MR. LEGEYT: Thank you. And yes -- and Mr. Algar has taken  
30 you to paragraph 65 of our brief, and I would simply reiterate an earlier submission that -  
31 that in our submission, there is no way Warner has an interest in land. The contract  
32 simply doesn't support that position, and that, in our respectful submission, allows you to  
33 grant all of the orders which have been sought today.  
34

35 I do want to make some submissions which - which may be my final submission, subject  
36 to further questions from the Court, about some of the things Mr. Nishimura said about  
37 how he very glibly said that they've got \$2.5 million, and it's ready to flow, and we'll  
38 just, you know, ship it over, perhaps implying to the Court that that might happen in the  
39 very short term. He also mentioned, of course, it would be subject to the usual conditions,  
40 so even - even today, counsel recognizes that the -- you know, the type of transaction he's  
41 talking about would be conditional.

1  
2 And I see, without a doubt, two significant hurdles to getting interim financing from Mr.  
3 Nishimura's point. First, he has said in no uncertain terms, that his client have lost faith  
4 in the Greenfire management. Well My Lord, there can be no interim financing until an  
5 interim financing term sheet is negotiated between Mr. Nishimura's clients, and Mr.  
6 Logan. And I suspect, in fact, I - I would submit to the Court, it will be extremely  
7 difficult for that to happen when the parties have lost faith and trust in each other.  
8

9 So, that is a significant hurdle, because there is no interim financing without a deal, and it  
10 will be difficult for these parties to come to a deal.  
11

12 Secondly, there is no interim financing without a Court order, which would require an  
13 application to be made by Greenfire. The Courts are effectively closed as of tomorrow,  
14 and our - our best case is to perhaps obtain a court in the first week or two of January.  
15 That's not good enough, and it pales in comparison with the Trafigura transaction where  
16 funds could flow this week, or Monday at the latest.  
17

18 So, those are two significant hurdles that may never be overcome, My Lord. Again, it just  
19 shows that when you weigh the risk of the two transactions, or - or the - the transaction  
20 before the Court and this potential which is offered, there's simply no doubt that the  
21 scales tip in favour of the existing transactions.  
22

23 And perhaps in closing, I would be remiss if I didn't say this. Greenfire has signed the  
24 contracts, the purchase and sale agreement, and the interim financing term sheet. It  
25 cannot, in good faith, engage with any other parties, and - and it would be precluded from  
26 having done so since the time it signed those agreements. And I should know what date it  
27 was signed, but it was quite some time ago, My Lord. Bear with me for a moment.  
28 December 1st. So, when - when parties say, well, we haven't been engaged with, we - we  
29 haven't been given an opportunity, my client would have been precluded, at least on the  
30 APA front, from engaging with other parties as of December 1st.  
31

32 Subject to any questions, My Lord, I believe those are my submissions.  
33

34 THE COURT: Thank you, Mr. LeGeyt. I am going to let Mr.  
35 Nishimura speak, and subject to anything that flows from that, I am going to adjourn and  
36 -- for a few minutes, gather my thoughts, and my plan is, as I indicated, to make a  
37 determination here. Mr. Nishimura?  
38

39 MR. NISHIMURA: Yes, Sir. Thank you. Just with respect to that  
40 last point, yes, my client is ready to go, but there obviously would have to be some sort of  
41 borrowing facility in place and Mr. LeGeyt is correct when he says that -- and - and that

1 there has been bad blood since at least December 2nd, and well, a little bit of distrust and  
2 maybe more than a little bit since March of - of this year.

3  
4 Now, I take that to mean that notwithstanding the fact that this might be a better DIP  
5 financing arrangement that his client is not willing to go ahead with it, having a) signed a  
6 contract, and; b) not wanting to engage.

7  
8 I will say this. My client is ready to advance DIP financing, on terms at least as  
9 favourable, if not more, than what's - what's there. But in the absence of that, as I've said  
10 several times, my client is fully prepared to advance funds to a trustee in bankruptcy and  
11 - and the trustee in bankruptcy has borrowing powers under the *Bankruptcy and*  
12 *Insolvency Act*. So, that can happen just as quickly, if not more quickly.

13  
14 I should also mention that with respect to Mr. Plester's comments, he may be operating,  
15 and - and -- under a misapprehension. The DIP financing that's proposed will take  
16 priority over any of his client's claims. So, if this transaction somehow doesn't close  
17 between now and February, the DIP financing will eliminate any claims of his client,  
18 whether they're secured or unsecured, or in priory to Summit or not. And the purchase  
19 and sale agreement in it does not leave his client as a permitted encumbrance, except for  
20 the right to levy taxes. So, the tax arrears are not included in the permitted encumbrance,  
21 only the right to levy taxes, and you really can't get rid of that. It - it's just like an  
22 easement or - or any other right at law. So, while I take -- while his client is perfectly  
23 entitled to support or not support the transaction, this -- the bird in the hand might not be  
24 as - as attractive as - as one might think.

25  
26 What - what this whole thing comes down to, there's two components. One is DIP, and  
27 there's a -- there's your urge to find that there's urgency around that, and we've spoken  
28 about that. But the DIP is in inevitably tied to this - this purchase and sale agreement, and  
29 at the end of the day, you have to consider whether the *Soundair* principles have been -  
30 have been met, whether this is the best price under the circumstances, and you don't --  
31 you just don't have the usual evidence that one might have before you. You don't have  
32 the end result of a Court approved sales process, and you don't have appraisals. What you  
33 have is a single deal that's been negotiated according to Mr. Kashuba for some time  
34 without any other parties negotiating it, and with this spectre of imminent damage to - to  
35 the facilities driving - driving you. So, they're trying to tell you that you need to approve  
36 DIP right now and in order to approve DIP, you also have to prove -- approve what  
37 would ordinarily be a sale without meeting the *Soundair* conditions.

38  
39 My client, again, is prepared to advance interim financing to whoever is - is going to be  
40 running this show. We would urge that it might be a trustee in bankruptcy, and we would  
41 fully cooperate with that. My client also is committed to, as I've said, participating in a

1 sales process and in the course of that, it - it will either be the winning bidder or it won't  
2 but there will be a winning bidder, and that should also address some of the concerns of -  
3 of Wood Buffalo. Because there will be a party who is taking over this plant, whether it's  
4 my client because they will be the winning bidder, or if it's someone who can outbid  
5 them. At the end of the day, what's being proposed to you is a sale that now, the vast  
6 majority not counting Wood Buffalo, is opposed to, including the senior secured creditor,  
7 including the largest creditors by - by amount, and it is in my view, extremely unusual  
8 where you would approve a sale in a process that's supposed to be for the benefit of  
9 creditors when that sale will not actually benefit those creditors. It will only address the  
10 needs of the management of the company and the purchaser, who will now be getting an  
11 asset funded with a super-priority. It's - it's not just creative, it's - it's not in accordance  
12 with what the goals of the NOI procedures are.

13  
14 Those are all my submissions, Sir, unless you have questions.

15  
16 THE COURT: You have advanced an argument, and yet why  
17 didn't your clients take the initiative in October, just to pick a month that is relevant  
18 here?

19  
20 MR. NISHIMURA: In October -- sorry, Sir. In October, two things.  
21 First of all, we were told that the company was negotiating interim financing. We  
22 assumed, I think naturally so, that the - that the type of interim financing was going to be  
23 more typical. So, there would be a DIP lender, they would - they would take a position in  
24 order to preserve the company. We were told that they were imminent -- there was an  
25 imminent deal in place. We did request participation, we did receive the term sheet.  
26 We're not -- my clients are not looking to outbid someone to do DIP. My clients were  
27 looking to cooperate in a process which would preserve value for all of the creditors. So,  
28 when we were told, yes there's a DIP term sheet, but we're in the midst of negotiating  
29 this DIP, and you've been told that there were at least two parties, my clients were  
30 prepared to cooperate with that, even though they were going to be (INDISCERNIBLE).  
31 Because the ultimate goal, they believed, in this NOI proceedings, and this is what we  
32 were told all along, was that the company was obtaining interim financing, in order to  
33 carry out its NOI proposal and they were told that the outcome would be that the  
34 company would carry on, and then one day, like they have been told many times, their  
35 claims would be satisfied. Because the company would carry on in business. What they  
36 were not told that in October, or any time until December 2nd, was that there was a  
37 purchase and sale agreement whereby all of the assets would be vested out and whatever  
38 claim they had would only be against the proceeds, and by the way, the proceeds are  
39 going to be such that no creditors will be - will be paid. Just the numbers add up that way.  
40 So, when December 2nd came along, and then we received those materials, not only is --  
41 did the landscape change that this was no longer a restructuring, it's just a liquidation

1 sale, it's been tied to DIP financing, which is not DIP financing, it's financing of a  
2 purchaser, it's just that the closing date takes place later on, so, we're characterizing it as  
3 DIP financing.  
4

5 So, my clients would have -- again, they were not interested in - in competing to provide  
6 DIP financing. They wanted to be part of a solution. But - but really, it wasn't - it wasn't  
7 a situation where they were drawn into talks, they weren't invited to participate. They  
8 were simply provided a term sheet and if ordinary DIP financing was going to be  
9 provided, my clients were prepared to stay out of the way of that. They - they were taking  
10 no position on the various DIP financing applications that were before the Court, which  
11 were typically withdrawn until this one came along.  
12

13 THE COURT: Any further comments, sir?  
14

15 MR. PLESTER: My Lord, Gregory Plester again here. May I  
16 borrow a moment or two, maybe 2 minutes to respond to a couple points?  
17

18 THE COURT: You will have 2 minutes, and then Mr. LeGeyt  
19 or his colleagues will have the final word insofar as the applicants. Go ahead, sir.  
20

21 MR. PLESTER: So, in respect to the question raised by Mr.  
22 Nishimura, certainly we appreciate that all DIP financing would rank preferentially to - to  
23 all claims, we are aware of that. And that's essentially our concern, is that the longer  
24 these proceeding go on, the more DIP -- the higher the DIP claim will be, and the closer  
25 to the cusp our unpaid taxes will become. And on the - the point of taxes, a couple parties  
26 have raised a question as to whether non-linear property taxes are a first ranking claim.  
27 Certainly, I am not aware of any case in this province where non-linear property taxes  
28 have been pushed to any lower priority than the top-ranking non-Crown claim. So,  
29 anything to the -- anything different than that would be a novel proposition in my mind.  
30 It's a clearly worded statutory charge that puts those taxes in preference to all those --  
31 certainly all those before the Court in this matter.  
32

33 Thank you, Sir.  
34

35 THE COURT: Thank you. Again, the last word goes to Mr.  
36 LeGeyt or his colleagues.  
37

38 MR. LEGEYT: Thank you, My Lord. And I apologize, I meant  
39 to say this when I last spoke, and I'm not sure if I did. But one of the very important  
40 timing differences between the Trafigura interim financing, and the potential mid-January  
41 interim financing that other parties urge upon the Court, is the AER order, My Lord. That

1 needs to be addressed as soon as possible, and Trafigura can fund that very, very soon.  
2 Mr. Nishimura, with respect, cannot.

3  
4 My comments will be at a high level, then I'll allow Mr. Algar to go.

5  
6 We have the support now of the senior secured creditor, and that is the municipality. The  
7 creditors who are objecting are far, far down the chain, so to speak, and in fact a number  
8 of the creditors are, in fact, equity holders or creditors of the parent company. And so,  
9 they are far removed from the assets of value.

10  
11 One of the things that Mr. Nishimura just said, which I take exception to, is that if - if  
12 there's a process in the new year, there will be a winner. If it's not his client, it will be  
13 someone else. Well, the Court -- that may well not be the case, but we know there are  
14 regulatory hurdles to get over, and - and it is entirely possible that these assets will be  
15 orphaned. If they are not transferred now, there may be more damage such that there are  
16 no purchasers, or the AER may not approve.

17  
18 So, those were my submissions in summary, My Lord. I will turn it over to Mr. Algar for  
19 his closing submissions.

20  
21 THE COURT: Thank you. Mr. Algar?

22  
23 MR. ALGAR: Thank you, My Lord. One very brief comment.  
24 I -- just you had asked about the discussions between Greenfire and Mr. Nishimura's  
25 clients, that's Exhibit E to Mr. Logan's seventh affidavit, should you wish to look at that.  
26 Those are my submissions.

27  
28 THE COURT: Sorry. Let's just go to that again. Just let me --

29  
30 MR. ALGAR: It's - it's just the email, My Lord, where the  
31 interim financing proposal is provided, and Mr. Logan says: (as read)

32  
33 As you know, Greenfire is in need of interim bridge financing in  
34 the near term, and we were hopeful related parties such as  
35 yourself are open to helping.

36  
37 It's - it's Bates number page 69.

38  
39 THE COURT: Just bear with me. My computer is slow at  
40 loading. I will go to Bates number 69.

41

1 MR. ALGAR: I would just quickly note that that is dated  
2 October 29th, My Lord -- or October 19th, My Lord.

3  
4 THE COURT: Thank you. Bear with me. Thank you for that  
5 accommodation. Noted, I had reviewed this before, now that I read it. I just wanted to  
6 refresh my ... thank you. Anything else?

7  
8 MR. ALGAR: No, that was it, My Lord.

9  
10 THE COURT: Okay. Madam clerk, if we could adjourn for  
11 about -- let's say 15 minutes, and then I will log back in. Thank you.

12  
13 (ADJOURNMENT)

14  
15 **Decision**

16  
17 THE COURT: Thank you. I apologize. I took a little longer  
18 than I anticipated. I just wanted to review matters.

19  
20 This concerns an oral decision by myself, Justice Blair Nixon, in respect of the  
21 application In The Matter of the Notice of Intention ("NOI") to make a Proposal of  
22 Greenfire Hangingstone Operating Corporation ("Greenfire").

23  
24 UNIDENTIFIED SPEAKER: Hello?

25  
26 THE COURT: Can you hear me?

27  
28 MR. ALGAR: My Lord, it's Ryan Algar.

29  
30 THE COURT: Yes.

31  
32 MR. ALGAR: I think we had a -- perhaps one of the call-in  
33 users was not on mute. I don't know if madam clerk can - can mute everybody for the  
34 time being, but it looks like that call-in user has muted themselves anyway, but that may  
35 be helpful if she can do that.

36  
37 THE COURT: Madam clerk, do you have that capability?

38  
39 THE COURT CLERK: Yes, I do, My Lord. If I do mute people, I don't  
40 have the capability of unmuting them. But I did mute the caller.

41



1 THE COURT: Okay. Thank you.

2

3 This concerns an oral judgment. I retain the right to review and add citations and case  
4 names, review the transcript and add citations and case names.

5

6 In oral judgments, it is not my practice to refer to legislation, Rules of Court, or  
7 jurisprudence in any detail, notwithstanding that all have been considered.

8

9 In this particular application, Greenfire seeks orders.

10

11 First of all, granting a stay of execution to January 22, 2021. I will address that today,  
12 notwithstanding that we did that as a part of a housekeeping on December the 14th.

13

14 Second, it also seeks that Greenfire shall be authorized and empowered to obtain and  
15 borrow under a credit facility (which I will refer to sometimes as the “Interim Lender”)   
16 with Trafigura Canada General Partnership. This is in order to finance Greenfire’s  
17 working capital requirements and other general corporate purposes, and capital  
18 expenditures, provided that the borrowing under that credit facility should not exceed \$20  
19 million, unless permitted by further court order.

20

21 Third, declaring that the Interim Lender shall be entitled to the benefit of a charge on  
22 property to a maximum amount of the interim financing facility to secure all obligations  
23 to the interim lender, ranking subordinate only to the administrative charge previously  
24 granted in these proceedings. (I will refer to that as the “Interim Lender Charge”).

25

26 Fourth, authorizing Greenfire to enter into a marketing agreement contemplated by the  
27 interim financing facility with the interim lender for the purpose of marketing and selling  
28 its production, and to take all steps necessary and incidental to completing and fulfilling  
29 its obligations under the marketing agreement. This may be determinate of its discretion  
30 on terms acceptable to Greenfire and the Interim Lender.

31

32 Fifth, approving the transaction contemplated by the asset purchase agreement, dated  
33 December 1st, 2020, entered into between Greenfire, as vendor, and Greenfire  
34 Acquisition Corporation, as purchaser. (I will refer to the “Greenfire Acquisition  
35 Corporation” by its name or “GAC” from time to time, and the agreement itself as  
36 “APA”).

37

38 Sixth, vesting the assets as defined in the APA in the Greenfire Acquisition Corporation.

39

40 Alveras and Marcell Canada Inc is the proposal trustee of Greenfire (I will refer to them  
41 as the “Proposed Trustee”).

1  
2 I note for the record that the proposed transaction and elements connected to it have been  
3 negotiated without any Court approved sales process. Accordingly, it is subject to  
4 heightened scrutiny from the Court.  
5

6 Although Greenfire has been unable to conduct a formal sales process in these  
7 proceedings, I find that the assets have been thoroughly exposed to the market via  
8 Greenfire's strategic processes undertaken prior to the NOI proceedings.  
9

10 In February, 2020, the company engaged Imperial Capital ("Imperial"), an established  
11 international investment bank to lead a strategic process, which included seeking all  
12 strategic alternatives from a refinancing to an asset sale. This was all in order to  
13 maximize the value for all stakeholders.  
14

15 In aggregate, Greenfire and Imperial contacted upwards of 40 different parties, or at least  
16 in that range, consisting of both financial and strategic buyers. Their efforts yielded only  
17 one potential viable transaction involving McIntyre partners (I will refer to them as  
18 "McIntyre").  
19

20 Throughout the entirety of the strategic process, there was no indication of any interest  
21 from other capital providers. In addition to McIntyre, Greenfire also explored numerous  
22 transactions, including a royalty sale, three transactions whereby Greenfire would have  
23 taken on additional debt, a joint venture, three forward sales contracts to obtain liquidity,  
24 whereby Greenfire would obtain a loan leveraged against its future and near term  
25 production. One transaction would have seen an equity injection into Greenfire, followed  
26 by a subsequent sale. Another transaction that would have seen a mix of new equity  
27 injected into Greenfire, coupled with Greenfire taking on additional debt.  
28

29 After filing the NOI, Greenfire shifted its focus to securing interim financing to fund its  
30 operations, while it worked towards creating and presenting a viable proposal to its  
31 creditors.  
32

33 The evidence is that freezing temperatures could result in significant damage to the  
34 Hangingstone facility, thereby drastically reducing its value. Importantly, the cost of  
35 repairing any freezing damage, and the time spent restarting operations, will likely  
36 exponentially increase as temperatures decrease.  
37

38 The sale of assets is a time sensitive matter. And any potential benefit of completing a  
39 formal sales process is outweighed by the detrimental effects to the Hangingstone facility  
40 if the sale is delayed and temperatures continue to drop.  
41

1 The strategic process conducted in February adequately tested the market. Despite  
2 significant efforts of Greenfire and the Proposal Trustee, there have been no offers of an  
3 interim financing, absent that of the Interim Lender. There are grave concerns that any  
4 further delay will eliminate any recoveries to the stakeholders.

5  
6 I make this observation based on the evidence that I have reviewed. I acknowledge that  
7 certain creditors have been advancing evidence before the Court over the last week which  
8 suggest that they have a proposal in mind. However, I find that that proposal has not  
9 crystalized into an actual commitment.

10  
11 I also note that although the AER indicates that it takes no position, I infer from the  
12 conditions that it has outlined in the letters that it has issued, and the comments that were  
13 made by the Proposal Trustee today, that it is supportive of this transaction.

14  
15 I also note that the Proposal Trustee supports this transaction. Indeed, it stated in its  
16 report that it approved the proposed interim lender facility, and approved the proposed  
17 interim lender's charge. The Proposal Trustee also approved the proposed asset sale  
18 transaction, and extensions to late January 2021.

19  
20 Significantly, the Municipality of Wood Buffalo has shifted since the hearing on  
21 December 14, 2020. It now indicates as of today's hearing in response to questions raised  
22 in a general matter, that it is in favour of the applicant's proposed transaction.

23  
24 I note for the record, as a general comment, that no deal is perfect. The parties need to  
25 deal with the facts and challenges before them. Indeed, the Court is obligated to do so.

26  
27 For the record, I want to touch on the issues. They are threefold. First, should the stay of  
28 execution be granted? Second, should the interim financing facility and interim lender  
29 charge be approved? Third, should the transaction be approved?

30  
31 As I mentioned a moment ago, I will touch on the stay extension, notwithstanding that I  
32 granted it on December 14th as part of a procedural housekeeping matter. Turning to the  
33 analysis of the stay extension, a stay extension may be granted if the Court is satisfied  
34 that first, the insolvent person has acted and is acting in good faith and with due  
35 diligence; second, the insolvent person would likely be able to make a viable proposal if  
36 the extension being applied for were granted, and; third, no creditor would be materially  
37 prejudiced if the extension being applied for were granted.

38  
39 Based on my review of the evidence that was before me, I find, on the balance of  
40 probabilities, that:

41

1 First, Greenfire is acting in good faith and with due diligence;

2  
3 Second, the stay extension is required in order to advance and possibly finalize a proposal  
4 for the benefit of the Greenfire stakeholders;

5  
6 Third, without the extension, Greenfire may be unable to restart the Hangingstone  
7 facility, and will have no ability to make a viable proposal to its creditors, and will  
8 become bankrupt to the detriment of all stakeholders. In contrast, no creditor will be  
9 materially prejudiced any further if the stay extension is granted;

10  
11 Fourth, Greenfire has engaged with the Proposal Trustee and its stakeholders;

12  
13 Fifth, Greenfire has entered into the interim facility and the transaction which will deliver  
14 significant value to the stakeholders, and form the basis for a proposal and;

15  
16 Last, the Proposal Trustee supports the stay extension.

17  
18 Based on my review of the facts and analysis, I exercise my discretion to grant the stay  
19 extension.

20  
21 Turning to the interim financing facility and the interim lender charge.

22  
23 Greenfire seeks approval of the interim financing facility and the interim lender charge,  
24 which would rank ahead of all of the charges in the security interest, except the  
25 administrative charge.

26  
27 The BIA codifies the availability of interim financing during proposal proceedings. The  
28 BIA confers on the Court the statutory jurisdiction to grant an interim financing charge.  
29 The BIA sets out a non-exhaustive list of factors to be considered by the Court in  
30 deciding whether to grant the interim lender charge. Those factors include, among others,  
31 first, the period during which the debtor is expected to be subject to proceedings under  
32 this Act; second, how the debtor's business and financial affairs are to be managed during  
33 the proceedings; third, whether the debtor's management has the confidence of its major  
34 creditors; fourth, whether the loan would enhance the prospects of a viable proposal  
35 being made in respect of the debtor; fifth, the nature and value of the debtor's property;  
36 sixth, whether any creditor would be materially prejudiced as a result of the security  
37 charge, and; seventh, the trustee's report.

38  
39 Based on my review of the facts and the associated analysis, I find that the interim  
40 financing facility and interim lender charge are essential to provide Greenfire with the  
41 financing it requires to continue the operation of its business and make a viable proposal

1 to its creditors.

2  
3 The following factors have been reviewed.

4  
5 First question: What is the period during which the debtor is expected to be subject to  
6 proceedings under this Act?

7  
8 Greenfire now seeks to extend its stay to January 22nd, 2021. Failure to obtain the  
9 interim financing facility would almost certainly result in Greenfire making an  
10 assignment in bankruptcy. That is the timeframe that is relevant here.

11  
12 Second question: How the debtor's business and financial affairs are to be managed  
13 during the proceedings?

14  
15 I note in respect of that question that Greenfire's current and future management has  
16 extensive experience in the oil and gas industry, and will be of great assistance through  
17 the proposal proceedings and indeed, thereafter. It will put Greenfire in a position where  
18 it will be able to generate revenue for the first time in these proceedings. The Proposal  
19 Trustee will monitor Greenfire's cash flow and financial affairs, and indeed, will report  
20 any material adverse changes. The term sheet provides that Greenfire is to operate with  
21 established cash flows and capital expenditure budget, and to make regular reports to the  
22 interim lender.

23  
24 Third question: Whether the debtor's management has the confidence of its major  
25 creditors?

26  
27 In respect of that question, Greenfire has continued to engage its primary secured  
28 creditor, and crucially, AER. They have been part of these proceedings. As I indicated  
29 earlier, the AER was effectively taking no position, but I infer from their comments that  
30 have been on the record over the last couple of days, that it is in agreement.

31  
32 Importantly, the municipality has indicated in today's hearing that it supports the  
33 position, and they are the senior secured creditor.

34  
35 Fourth question: Whether the loan would enhance the prospects of a viable proposal  
36 being made in respect of the debtor?

37  
38 Based on my review, absent the interim financing facility, Greenfire would have no cash  
39 flow and no ability to generate revenue. The necessity of the interim financing facility is  
40 clearly demonstrated by the evidence and supported by the cash flow statement.

41

1 In the absence of the interim financing facility, Greenfire is exposed to bankruptcy.  
2 Critically, the transaction is conditional on the interim financing being approved, which  
3 can form the basis for the proposal. I acknowledge that certain creditors have advanced  
4 the prospect of having some financing available, but again, there is nothing certain about  
5 the proposal.

6  
7 Fifth question: The nature and value of the debtor's property.

8  
9 In this circumstance, the nature of the Hangingstone facility has risks associated with it.  
10 They are environment and also restart risks.

11  
12 The restart risks become an increasing issue in terms of the weather, and the weather in  
13 that location can change radically. We are in December. We are quickly approaching  
14 January and February, when the temperatures can drop radically.

15  
16 Failure to approve the interim financing facility could have a dramatic negative impact on  
17 the value of that facility. We are dealing with the site 'D' operation, and the infrastructure  
18 is currently shut in. The financing will allow that the restarting and the drying out of that  
19 facility, thereby reducing the risk.

20  
21 Sixth question: Whether any creditor would be materially prejudiced as the result of the  
22 security or the charge?

23  
24 Based on my analysis of the facts in evidence, none of the Greenfire's creditors will be  
25 materially prejudiced or any further prejudiced as a result of the interim financing  
26 facility, or the interim lender charge. To the contrary, Greenfire and its creditors will  
27 benefit, to the extent that is appropriate in the circumstances, given the financial burden  
28 that confronts the company.

29  
30 I note, with some significance, that if this is not approved, the most likely outcome in that  
31 event would be transfer of the assets to the Orphan Well Association that were previously  
32 held by the Hangingstone facility. That would be highly prejudicial to all stakeholders,  
33 including the citizens of Alberta.

34  
35 Seventh question: Do we have a trustee's report?

36  
37 In respect of that question, we have trustee's report from the Proposal Trustee that has  
38 detailed the need and sets forth the proposal trustee's support for the interim financing.

39  
40 Finally, and importantly, the availability of the interim financing facility is contingent on  
41 this Court granting the order approving the interim financing facility and the interim

1 lender charge in order to secure the advances thereunder. Based on my review of the facts  
2 and the related analysis, I exercise my discretion to approve the interim financing facility,  
3 and grant the interim lender charge.  
4

5 I turn to the transaction.  
6

7 This Court has the authority and jurisdiction to authorize an insolvent person to dispose  
8 of assets outside the ordinary course of business on notice to secured creditors who are  
9 likely to be affected by the proposed sale. The BIA provides a non-exhaustive list of  
10 criteria for the Court to consider.  
11

12 This criteria includes: first, whether the process leading to the proposed sale or  
13 disposition was reasonable in the circumstances; second, whether the trustee approved the  
14 process leading to the proposed sale or disposition; third, whether the trustee filed with  
15 the Court a report stating that in its opinion, the sale or disposition would be more  
16 beneficial to the creditors than a sale or disposition under bankruptcy; fourth, the extent  
17 to which the creditors were consulted; fifth, the effects of the proposed sale or disposition  
18 on the creditors and other interested parties, and; sixth, whether the consideration to be  
19 received for the assets is reasonable and fair, taking into account their market value.  
20

21 Greenfire argues that in these unique circumstances, it has satisfied their requirements. I  
22 will touch on each of them briefly.  
23

24 First, the sales process.  
25

26 Greenfire undertook a pre-filing process to expose the assets to the market and did so in a  
27 manner that was agnostic to the type of transaction that Greenfire was willing to enter  
28 into.  
29

30 Second and third, concerning the trustee's position on the sales process. The report of the  
31 Proposal Trustee provides support for the transaction:  
32

33 Fourth, consulting creditors. Greenfire's senior secured creditors, Summit Partners were  
34 consulted. That was acknowledged during the hearing.  
35

36 Fifth question: Effects on creditors and interested parties.  
37

38 Importantly, after obtaining interim financing and restarting production at the  
39 Hangingstone facility, Greenfire intends to rehire a number of its former employees and  
40 consultants. As well, it will retain a number of its existing trade creditors, which will  
41 likely continue under the ownership of the Greenfire Acquisition entity.

1  
2 Sixth. Reasonable consideration in the circumstances.  
3

4 Based on the facts and analysis, I find the consideration payable under the APA to be fair  
5 and reasonable, taking into account the parties involved. I acknowledge the *Soundair*  
6 principles.  
7

8 *Soundair* does not suggest that a formal auction process was necessary or advisable in  
9 every case. The uniqueness of an asset may bear on the appropriateness of the sales  
10 process. I also note that Alberta courts have acknowledged that the pre-pack sales  
11 resulting from processes conducted prior to the insolvency proceedings may satisfy the  
12 *Soundair* requirements.  
13

14 The Courts have considered a number of factors including the following, which are  
15 relevant in the present case. First, the deteriorating financial condition of the debtor may  
16 militate against running a further sales process. Second, while the sale would only  
17 provide returns to the debtor's primary secured creditors, other options were considered.  
18 There was a prospect that there will be an opportunity for employment of certain  
19 employees, and that should be taken into consideration. Third, the evidence demonstrated  
20 the consideration was reasonable.  
21

22 When I consider those factors in the context of this case, I note that we have: first, a  
23 deteriorating condition of the Hangingstone facility; second, Greenfire and ultimately  
24 GAC's intention to rehire Greenfire's previously terminated employees and consultants,  
25 and to utilize a number of Greenfire's existing trade creditors; and third, the purchase  
26 price being fair and reasonable, in light of among other things: (i) the price paid by  
27 Greenfire to acquire the Hangingstone facility less than 3 years ago, at a time when oil  
28 prices are higher; (ii), the site damage issue; and (iii), when compared to the price paid  
29 for the McKay facility, which was part of the comparative analysis advanced by the  
30 applicant.  
31

32 In aggregate, I am satisfied that the proposed sale is reasonable. I accept the view of the  
33 Proposal Trustee that there is a risk if there is a delay in the process. All in, the proposed  
34 transaction is in the best interest of the stakeholders in the circumstances.  
35

36 I acknowledge in making this determination that this transaction is not the usual  
37 transaction. But in the circumstances, in noting that the other parties, although objecting  
38 to the transaction, have not put anything definitive before the Court. As it was referred to  
39 many times, the deal here is a bird in hand. That is much better than speculation, in terms  
40 of other alternatives.  
41



1 Greenfire does not have the ability or the luxury of conducting, based on the evidence  
2 that is before me, even an expedited sale process, due to the significant risks that are  
3 facing the facility, coupled with its current lack of revenue. Again, the application of the  
4 *Soundair* principles depends on the circumstances.

5  
6 In this case, we have a unique asset. That unique asset is in jeopardy because of  
7 temperatures. We have a deteriorating financial position of the debtor, and we have no  
8 realistic alternatives that have come to any type of finality.

9  
10 While again, there has been an indication, especially today, based on late filed affidavits  
11 that there may be another route, I am not satisfied that in the circumstances, there should  
12 be a deferral. In aggregate, the stakeholders are better served by the proposed sales.

13  
14 I will touch briefly on Warner Petroleum, Liberator, and the Warner appeal. The *BIA*  
15 stipulates that any interested person in proceedings shall act in good faith with respect to  
16 those proceedings. While I certainly understand the Warner issue, and acknowledge that  
17 they have the right of appeal, I have been called upon for purposes of this transaction  
18 only, to assess whether there should be a delay, based on the merits of the Warner matter.

19  
20 There are two requirements for an interest to constitute an interest in land.

21  
22 First, that the language describing the interest is sufficiently precise to show that that  
23 parties intended the interest to be a grant of an interest in land, rather than merely a  
24 contractual right.

25  
26 Second, the interest out of which the secondary interest is carved is itself an interest in  
27 land.

28  
29 Based on my review of the evidence before me, and again, only for purposes of this  
30 transaction that is embedded in the application, I find that the likelihood of the Warner  
31 appeal succeeding to be remote. In other words, having been asked to consider the issue  
32 and being specifically asked and directed that the Court should assess the nature and  
33 strength of the interest in land, I would find that there is none. The Warner argument is, at  
34 best, speculation.

35  
36 To conclude, with respect to the transaction, based on my review of the facts, and my  
37 analysis, I find that the transaction is commercially reasonable and satisfies the *BIA* test,  
38 and the *Soundair* principles for the following reasons.

39  
40 First, I am entitled to rely on the process undertaken prior to the NOI proceedings, and  
41 the engagement of the Proposal Trustee. Second, based on my assessment of matters,

1 Greenfire negotiated the APA in a fair, reasonable, and thorough manner to ensure the  
2 fairness and efficacy of the process, and that the final sale would represent market value  
3 for the assets. Third, the transaction represents the best possible offer within the time  
4 restraints applicable as a result of the characteristics of these assets. In making that  
5 statement, I note the time of year. There is risk of freezing, which could have significant  
6 harm in impacting the assets. Fourth, if the transaction is not approved, it is likely that the  
7 assets, the estate, and indeed the stakeholders will be irreparably harmed. Fifth, the  
8 proposed transaction was only entered into after numerous attempts by Greenfire to  
9 source interim financing to fund its operation. The viability of a proposal in these  
10 proceedings is dependent on Greenfire's ability to continue its operations for the  
11 foreseeable future.

12  
13 Greenfire has had excessive discussions regarding the transaction with both a senior  
14 lender and the AER.

15  
16 The only alternative to the transaction involves an exposure to a material decrease in the  
17 value of and potential irreparable damage to the assets and the bankruptcy of Greenfire.

18  
19 And last, there is no evidence that there has been any unfairness in the process, nor any  
20 evidence that Greenfire has acted improvidently in the circumstances.

21  
22 In conclusion, the orders requested in all three circumstances will be granted. And again,  
23 just to reiterate those:

24  
25 First, this Court has granted a stay extension, and subject to the input from counsel, I  
26 don't think any amendments are necessary.

27  
28 Second, this Court will grant the interim financing and interim lender charge.

29  
30 And last, this Court will grant approval to the transaction.

31  
32 Is there any other business that we need to attend to today?

33  
34 MR. LEGEYT: My Lord, David LeGeyt speaking. Just with  
35 respect to the forms of order. You of course granted an extension of the stay on Monday  
36 this week to the 28th of January, and we have that order. And so, we will leave that as it  
37 is. The two other forms of order relate to the interim financing first and the  
38 (INDISCERNIBLE) investing order second. Those were set by Mr. Algar on Monday,  
39 and so they will have the date of December 14th on them. They should be updated to  
40 today's date, the 17th. We are happy to do that, and send you new forms of order, or if it  
41 pleases the Court, you could handwrite in the 17th on the first page of these orders. Or if

1 it pleases the Court, you could give us leave to simply slip the first sheet of each order  
2 with today's date on them.

3  
4 THE COURT: My preference, counsel, would be for you to  
5 send me new orders, just to make sure I am -- because I am working remote and my  
6 assistant is not likely available tonight. What I would like you to do, and I will give you  
7 leave to do this, send it to me directly, the two orders, and copy my judicial assistant, as  
8 always, on that. I will do a quick review with the appropriate dates inserted by  
9 yourselves, and I will turn those around and return them to you this evening, barring any  
10 technical problems, and I will copy my judicial assistant and then I would just simply ask  
11 that you ensure that those orders are dealt with in the ordinary course, in the appropriate  
12 manner.

13  
14 MR. LEGEYT: That - that is perfect, and thank you, My Lord. I  
15 - I doubt I have your email address. Would you like to email me to provide that?

16  
17 THE COURT: Certainly. I can do that.

18  
19 MR. LEGEYT: Thank you. I - I believe those are all our matters  
20 then, My Lord.

21  
22 THE COURT: Okay. Hearing -- is there any - anyone else who  
23 have any business just for completeness?

24  
25 MR. ALGAR: My Lord, Ryan Algar. I did just want to make  
26 sure that you -- I think you can probably see Mr. LeGeyt's email on our materials, but I  
27 wanted to make sure that you did, in fact, have that?

28  
29 THE COURT: Well, I am sure I do. Let me just do a test here.  
30 Yes, it is not coming up automatically. I will tell you what. You -- why don't you email  
31 me and I will just email you back. It is Blair, B-L-A-I-R dot Nixon, N-I-X-O-  
32 N@albertacourts.ca. If you give me an email right now before we are offline, I will  
33 confirm it and then --

34  
35 MR. ALGAR: (INDISCERNIBLE) now, My Lord?

36  
37 THE COURT: Okay. I am just being cautious to make sure we  
38 are connected.

39  
40 MR. ALGAR: Is it Alberta Courts all spelled out?

41

1 THE COURT: Yes. Albertacourts, all one word, dot ca. I have  
2 got it.

3  
4 MR. ALGAR: All right. Thank you.  
5

6 THE COURT: I will write right back, and that way, we are  
7 confirmed. And again, I look forward to the receipt of that. And I will deal with it  
8 tonight.  
9

10 MR. ALGAR: Thank you, My Lord.  
11

12 THE COURT: Thank you.  
13

14 MR. ALGAR: And those are all our matters.  
15

16 THE COURT: That being the case, madam clerk, if we could  
17 adjourn please? Thank you, and thank you all parties.  
18

19 MR. ALGAR: Thank you, My Lord.  
20

21 \_\_\_\_\_  
22  
23 PROCEEDINGS CONCLUDED  
24

25 \_\_\_\_\_  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

**Certificate of Record**

I, Michelle Palmer, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 1103, at Calgary, Alberta, on the 17th day of December, 2020, and that I was the court official in charge of the sound-recording machine during the proceedings.

**Certificate of Transcript**

I, Jayne Stolz, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Jayne Stolz, Transcriber

Order No.: AL6663

Dated: January 15, 2021