

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended**

**AND IN THE MATTER OF
DARIAN RESOURCES LTD.;**

**AND IN THE MATTER OF
BOWVIEW PETROLEUM INC.**

APPLICANTS

**AFFIDAVIT OF JAMES W. HAMBLIN
(Re: Advice and Directions)**

I, **JAMES W. HAMBLIN**, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Vice-President, Asset Management of Alberta Treasury Branches ("ATB"), a secured creditor of Darian Resources Ltd. ("Darian") and Bowview Petroleum Inc. ("Bowview"), and as such I have personal knowledge of the matters herein deposed to, except where stated to be based on information, in which case I believe the same to be true.

Background

2. ATB and Darian entered into a commitment letter dated as of September 29, 2008 (the "Commitment Letter") pursuant to which ATB agreed to provide Darian with:

- (a) a revolving operating loan facility in the amount of \$4,300,000 (to increase to \$17,000,000 on the satisfaction of certain conditions). This facility is comprised of:
 - (i) prime interest rate loans;
 - (ii) letters of credit/guarantee (\$2,000,000 to increase to \$10,000,000 on satisfaction of conditions precedent); and

- (iii) a corporate MasterCard facility to a maximum of \$50,000;
- (b) a revolving operating loan facility in the amount of \$1,700,000 (to increase to \$5,700,000 on the satisfaction of certain conditions). This facility is comprised of prime interest rate loans; and
- (c) at Darian's request, foreign exchange forward contracts and/or interest rate and commodity derivatives as documented by an ISDA Master Agreement, including Schedules thereto and any documents and other confirming evidence respecting transactions thereunder (the "ISDA"), a copy of which is attached hereto and marked as **Exhibit "1"**.

The conditions required to increase the facilities provided for in the Commitment Letter were satisfied. The terms of the Commitment Letter were accepted by Bowview, in its capacity as guarantor on September 30, 2008. A copy of the Commitment Letter is attached hereto and marked as **Exhibit "A"**.

3. As security for the indebtedness and all obligations of Darian to ATB under the Commitment Letter, the following security was provided to ATB:

- (a) a general security agreement dated as of December 9, 2005 granted by Darian to ATB, charging all of Darian's personal property and real property (the "Darian General Security Agreement") and duly registered in the Personal Property Register (the "PPR") pursuant to the *Personal Property Security Act* (Alberta) (the "PPSA") as a "Security Agreement" on November 23, 2005 and February 12, 2010 and a "Land Charge" on November 23, 2005. A copy of the Darian Security Agreement and related PPSA registrations are attached hereto and collectively marked as **Exhibit "B"**.
- (b) a continuing guarantee of the obligations of Darian to ATB dated as of April 17, 2007 granted by Bowview to ATB (the "Guarantee"). A copy of the Guarantee is attached hereto and marked as **Exhibit "C"**; and

- (c) a general security agreement dated as of April 17, 2007 granted by Bowview to ATB, charging all of Bowview's personal property and real property (the "Bowview Security Agreement") and duly registered in the PPR in accordance with the PPSA as a "Security Agreement" on April 23, 2007, September 30, 2008 and February 12, 2010 and a "Land Charge" on April 23, 2007. A copy of the Bowview Security Agreement and related PPSA registrations are attached hereto and collectively marked as **Exhibit "D"**.
4. On September 29, 2008, SJ Capital Corp., S.P.L.H. Investments Ltd., Julmar Holdings Ltd. and Shawana Estates Ltd. (collectively, the "Shaw Lenders"), Darian, KYAL Energy Inc. and ATB entered into an interlender agreement which addresses certain matters regarding the secured lenders' relationship as lenders to Darian as provided for therein (the "Interlender Agreement"). A copy of the Interlender Agreement is attached hereto and marked as **Exhibit "E"**.
5. Section 5.3 of the Interlender Agreement which is relevant to this application states as follows:
- 5.3 Assignment to Secured Party.** Subject to the respective provisions of the ATB Credit Agreement, the SFG Credit Agreement and the KYAL Credit Agreement, a Secured Party may at any time during the currency of this Agreement pay out the Borrower's Obligations to another Secured Party, and take an assignment of the other Secured Party's security, on the basis that no representations and warranties are given except that such other Secured Party has not assigned or encumbered its indebtedness and security to any other person.
6. On September 30, 2008, ATB provided an irrevocable letter of guarantee to EnCana Corporation ("Encana") in the amount of \$10,000,000 (the "Encana LC"), a copy of which is not attached so as to protect any confidentiality which may exist between EnCana and Darian in respect of it. On October 15, 2009, EnCana confirmed that ATB's liability was limited to \$5,700,857.38 (the "Encana Notice"). On September 29, 2008, Darian agreed to indemnify ATB on demand for any sums ATB may be required to pay under the EnCana LC (the "Indemnity Agreement"). A copy of the Indemnity Agreement and the EnCana Notice are attached hereto and collectively marked as **Exhibit "F"**.

7. On February 12, 2010, ATB issued to Darian and Bowview a demand letter and Notice of Intention to Enforce Security under section 244(1) of the Bankruptcy and Insolvency Act to Darian and Bowview (collectively, the "Demand"). A copy of the Demand is attached hereto and marked as **Exhibit "G"**. Receipt of the Demand was acknowledged on behalf of Darian and Bowview.

8. The Demand states that the principal amount owing by Darian to ATB as at February 12, 2010 was \$17,843,515.62. In fact, Darian was indebted to ATB in the amount of \$17,918,211.62 which includes principal (including the EnCana LC liability and the net amounts owed by Darian to ATB and by ATB to Darian pursuant to one or more transactions under the ISDA) and interest accrued to February 12, 2010 plus interest and costs continuing to accrue thereafter. A copy of a statement outlining the amounts owing as at February 12, 2010 is attached hereto and marked as **Exhibit "H"**.

The CCAA Proceedings

9. On February 12, 2010, Darian and Bowview applied for, and were granted, protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to an Initial Order granted February 12, 2010 (the "Initial Order").

10. Pursuant to and as provided for in paragraph 40 of the Initial Order, the MCC Fund Management Inc. ("MCC") was authorized and directed to pay the monies held by MCC pursuant to a Declaration of Trust dated December 29, 2009 (the "MCC Funds"), to Hardie & Kelly Inc., court-appointed monitor of Darian and Bowview (the "Monitor"). Pursuant to paragraph 41 of the Initial Order, the Monitor was directed to hold the MCC Funds in trust for Darian and to release such money to Darian up to a maximum of \$500,000. In addition, if Darian and ATB are able to reach an agreement which will allow Darian to operate a banking account at ATB into which the MCC Funds can be deposited and used by Darian and Bowview during the restructuring, the Monitor is required to pay the MCC Funds into such account, provided the Monitor approves of the terms of the agreement between Darian and ATB. Attached hereto and marked as **Exhibit "I"** is a copy of the proposed account agreement

between Darian and ATB dealing with the bank account at ATB into which the MCC Funds can be deposited (the “Account Agreement”).

Demand for Assignment by the Shaw Lenders

11. On February 16, 2010, the Shaw Lenders, by their counsel Fraser Milner Casgrain LLP (“FMC”), sent a letter (the “Assignment Demand”) to Osler, Hoskin & Harcourt LLP (“Osler”), counsel for ATB, inter alia, requiring that ATB accept from the Shaw Lenders a pay out of the amounts owing by Darian to ATB under the Commitment Letter and grant an assignment of the Security Documents to the Shaw Lenders (collectively, the “Assignment”). The Shaw Lenders stated in the Assignment Demand that their right to compel the Assignment by ATB was referenced in section 5.3 of the Interlender Agreement (which is set out in paragraph 5 above) and was a matter of law as the Shaw Lenders are subordinate creditors to ATB. A copy of the Assignment Demand is attached hereto as **Exhibit “J”**.

Darian’s Position on the Assignment Demand

12. On February 16, 2010, counsel for Darian and Bowview indicated to ATB’s counsel their clients’ opposition to the Assignment, including that no such Assignment could take place unless the stay of proceedings was lifted because of paragraphs 13 and 14 of the Initial Order, which provide as follows:

13. Until and including February 19, 2010 or such later date as this Court may order (the “Stay Period”), no proceeding or enforcement process in any court (each, a “Proceeding”) shall be commenced or continued *against or in respect of the Applicants or the Monitor, or affecting the Business or the Property*, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property as hereby stayed and suspended pending further order of this Court. [*emphasis added*]

14. During the Stay Period, *all rights and remedies of any individual, firm, corporation...whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor or affecting the Business or Property*, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court... [*emphasis added*]

ATB's Position on the Assignment Demand

13. The Monitor has been kept apprised of the Assignment issue by ATB's counsel and ATB notified the parties of its intention to seek advice and directions by email dated February 16, 2010, a copy of which is attached hereto and marked as **Exhibit "K"**.

14. ATB finds itself in the middle of a dispute between Darian and Bowview and the Shaw Lenders and seeks the Court's assistance as to whether or not the Assignment Demand was stayed by the Initial Order and therefore is ineffective and whether or not the Assignment is also stayed by the Initial Order and therefore need not be effected. ATB, itself, does not take a position on these issues in light of the arguments presented by both Darian and Bowview on the one hand, and the Shaw Lenders on the other, and will be governed by and implement what the Court determines. ATB is of the view that an application for advice and directions is an appropriate manner in which to proceed in the circumstances since it is not clear to ATB which course of action is proper in light of the provisions of the Interlender Agreement and the provisions of the Initial Order and bearing in mind that this Honourable Court is currently overseeing the affairs of Darian and Bowview.

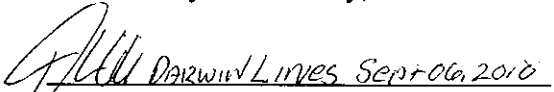
15. If this Honourable Court finds that the Initial Order did not operate to stay the making of the Assignment Demand and does not stay the Assignment, ATB's current intention is to proceed with the Assignment and in that regard, ATB is in the process of negotiating a form of assignment agreement with the Shaw Lenders, which ATB proposes will address all of the issues, including the Account Agreement regarding the MCC Funds, the EnCana LC and the ISDA which is currently proposed to be terminated.

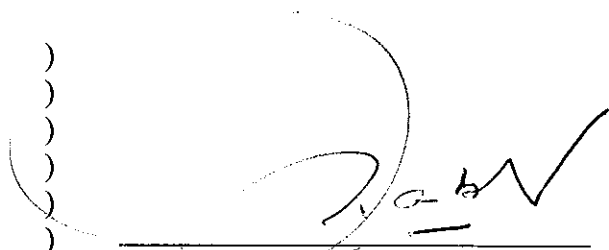
16. If this Honourable Court finds that the Initial Order did operate to stay the making of the Assignment Demand and stays the Assignment, provided that Darian and Bowview make unconditionally available to ATB sufficient funds to pay debtor-in-possession financing ("DIP Financing") fees and legal costs relating to preparation of a binding DIP Financing term sheet and the application for court approval of the DIP Financing, regardless of whether or not the DIP Financing is approved by the Court, ATB is prepared to continue negotiations with Darian and Bowview which began last week relating to the provision by ATB of DIP Financing.

The Shaw Receivership Application and ATB's Request for an Adjournment

17. On February 17, 2010, the Shaw Lenders brought an application returnable on February 19, 2010 for, *inter alia*, the appointment of a receiver of Darian (the "Shaw Receivership Application"). ATB seeks the adjournment of the Shaw Receivership Application to a date subsequent to the determination of the within application. This is because if this Honourable Court finds that the Assignment Demand and the Assignment are stayed, ATB will need time to consider its position with respect to the Shaw Receivership Application and determine, *inter alia*, whether to file evidence and/or cross-examine on the evidence filed to date and/or bring its own application for the appointment of a receiver, having regard to, *inter alia*, the terms of the Interlender Agreement. Further, if the Assignment Demand and the Assignment are not stayed, and provided ATB is fully paid out and it assigns to the Shaw Lenders its Security, ATB will have no interest in whether a receiver is thereafter appointed, but would not want a receiver to be appointed prior to the completion of such pay out and assignment.

SWORN BEFORE ME at the City
of Edmonton, in the Province of Alberta,
this 18th day of February, 2010.


A Commissioner for Oaths in and for
the Province of Alberta

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