

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**FOURTH REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**July 12, 2023**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**

**FOURTH REPORT OF KPMG INC.**  
**In its capacity as Monitor of the OTE Group**

**July 12, 2023**

## I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants from January 30, 2023, until February 9, 2023 (the “**Initial Stay**”); the appointment of KPMG Inc. (“**KPMG**”) as the monitor in these proceedings (in such capacity, the “**Monitor**”); and other related relief. These proceedings under the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**”) and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. However, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry-on operations that are integral to the business of the Applicants. The term “**OTE Group**” throughout this report refers to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of materials filed with the Court and other materials pertaining to the CCAA Proceedings, including all reports issued by the Monitor in these proceedings, are available on the Monitor’s website (<http://home.kpmg/ca/OTEGroup>) (the “**Monitor’s Website**”). All prior reports issued by the Monitor are attached hereto at **Appendix “A”**.
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items:
  - (i) extending the Initial Stay, as defined in the Initial Order, to April 28, 2023;
  - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
  - (iii) increasing the Directors’ Charge to \$2,250,000.

5. The Amended and Restated Initial Order also extended all protections in favour of the Applicants to the Limited Partnerships. The Monitor filed a report with the Court dated February 9, 2023, in connection with the OTE Group’s application for the Amended and Restated Initial Order (the “**First Report**”).
6. On March 15, 2023, the Honourable Justice Osborne granted a mareva injunction as part of an Order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described in Schedule “A” of the Injunctive Order. On March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements (collectively, the “**Injunctive Endorsements**”) related to the Injunctive Order. In the Injunctive Endorsements, the Honourable Justice Osborne also noted the Applicants’ intention to commence proceedings pursuant to Chapter 15 of the U.S. Bankruptcy Code (the “**Chapter 15 Proceedings**”) in the United States to recognize and enforce orders made by the Ontario Court.
7. On April 28, 2023, the Honourable Justice Osborne granted various relief sought by the OTE Group in the form of the following Orders:
  - (i) an Order (the “**Information Order**”), among other things, authorizing and directing AirSprint Inc. (“**AirSprint**”) to provide the information requested by the Monitor or its counsel in connection with the Amended and Restated Initial Order and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group’s directors or officers (together with the OTE Group, the “**OTE Group Affiliates**”), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates (the “**Information**”), notwithstanding that the Information may include “personal information” as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5;
  - (ii) an Order (the “**Stay Extension Order**”), among other things, extending the Stay Period (as defined in paragraph 16 of the Initial Order) to August 4, 2023; and
  - (iii) an Order (the “**Claims Procedure Order**”) approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing, and empowering the Monitor to administer the Claims Procedure in accordance with the terms of the Claims Procedure Order.

8. Proceedings under Chapter 15 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**US Bankruptcy Code**”) were also commenced by U.S. counsel to the Monitor. On May 15, 2023, the United States Bankruptcy Court Southern District of Florida (Fort Lauderdale Division) (the “**U.S. Court**”) granted a motion for provisional relief under s. 1519 and 1520 of the US Bankruptcy Code which entered an Order for provisional relief to protect assets of the OTE Group and to impose an automatic stay of proceedings in the United States in accordance with the ongoing Canadian proceedings.
9. On May 31, 2023, the U.S. Court granted an Order recognizing the Canadian proceedings as a “foreign main proceeding” within the meaning of 11 U.S.C. § 1502 of the U.S. Bankruptcy Code, and, *inter alia*, certain other relief including recognition of the Initial Order, the Amended and Restated Initial Order, and the Injunctive Order. All Orders granted by the U.S. Court are available on the Monitor’s Website.

## **II. PURPOSE OF REPORT**

10. The purpose of the Fourth Report of the Monitor (the “**Fourth Report**”) is to provide information and the Monitor’s conclusions and/or recommendations to the Court pertaining to:
  - (i) the activities of the OTE Group and the Monitor since the Monitor’s report dated April 25, 2023 (the “**Third Report**”);
  - (ii) the OTE Group’s reported receipts and disbursements for the period of April 17, 2023, to July 2, 2023, including a comparison of reported to forecasted results;
  - (iii) the OTE Group’s motion for an order (the “**Second Stay Extension Order**”), among other things:
    - (a) extending the Stay Period to November 3, 2023;
    - (b) approving the Fourth Report and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings; and
    - (c) authorizing and directing the addition of Original Traders Energy Ltd. “**OTE GP**” as a loss payee on the current Insurance Policy of the Italian Yacht (terms as defined herein);

- (iv) the Mareva Respondents' motion for an Order setting aside the Injunctive Order (as defined below) in its entirety, or in the alternative, extending the time to file a sworn statement as required pursuant to paragraph 6 of the Injunctive Order to a date no less than seven days after the Mareva Respondents' motion to set aside the Injunctive Order is decided by this Court (the "**Mareva Respondents' Order**"); and
- (v) the Monitor's request that this Court authorize and direct the Monitor to conduct a sales process for the Italian Yacht and authorize and direct AirSprint to remit to the Monitor any funds, proceeds of sale or use of any aircraft or fractional ownership or other interests therein in which the OTE Group has claimed an interest (the "**OTE Claimed AirSprint Property**").

### **III. TERMS OF REFERENCE**

- 11. The Fourth Report should be read in conjunction with the Affidavit of Scott Hill sworn July 10, 2023 (the "**Sixth Hill Affidavit**"), filed by the OTE Group in support of the relief sought in its motion for the Second Stay Extension Order for further details relating thereto, as not all information contained in the Sixth Hill Affidavit has been included herein to avoid duplication.
- 12. In preparing the Fourth Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents from third parties that responded to the Monitor's Information Request Letters, which are defined herein (collectively, the "**Information Received**"). In accordance with industry practice, except as otherwise described in the Second Report (as defined herein), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.
- 13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

### **IV. BACKGROUND**

- 14. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Affidavit of Scott Hill sworn January 27, 2023 (the "**Hill Affidavit**") and the Pre-Filing Report.

15. As described in the Pre-Filing Report and the Hill Affidavit, at the time of the application for the Initial Order, the OTE Group was missing a significant amount of their business and financial records and property and funds of the OTE Group are alleged to have been misappropriated, including due to alleged misconduct by Page, the former president of Original Traders Energy Ltd., and certain of his associates and related entities. Accordingly, the Monitor was granted expanded investigatory powers in the Initial Order and the Amended and Restated Initial Order.
16. As described in the report of the Monitor dated March 13, 2023 (the “**Second Report**”) which was filed with the Court for the Injunctive Order, shortly after the Filing Date, in connection with its investigatory powers, the Monitor sent letters (the “**Information Request Letters**”) to certain parties (collectively, the “**Requested Parties**”) who may have been in possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the “**Requested Information**”). The Monitor reserves all rights to continue to request further information from the Requested Parties or to request information from other relevant parties as appropriate, including pursuant to the powers of the Monitor under the Orders of this Court and the CCAA.
17. As detailed further below and in the Second and Third Reports, the Monitor obtained certain Requested Information from both Pride Marine Group (“**Pride Marine**”) and AirSprint, which evidenced OTE Group funds being used by the Mareva Respondents for the purchase of the Italian Yacht and certain fractional aircraft ownership interests, respectively. As discussed further below, the Monitor is seeking direction from this Court to commence a sale process to monetize the Italian Yacht in a commercially reasonable manner and to safeguard the proceeds of the Italian Yacht and the AirSprint proceeds with the Monitor pending judicial determination of the entitlements thereto.

## **V. ACTIVITIES OF THE OTE GROUP**

18. The OTE Group’s activities since the Third Report have included:
  - (i) continuing to manage the business in the ordinary course in accordance with the Amended and Restated Initial Order;
  - (ii) managing relationships with key stakeholders, including the Royal Bank of Canada, employees, customers, and suppliers in coordination with the Monitor;



- (iii) working with the Monitor to implement procedures to monitor cash flows and corresponding with the Monitor related to its review of payments including pre-filing payments in accordance with the Pre-Filing Critical Supplier Payments budget (as defined in the Pre-Filing Report);
- (iv) managing cash flows and making payments in accordance with the Amended and Restated Initial Order;
- (v) working with the Monitor to trace, investigate and review missing books and records of the OTE Group;
- (vi) developing cash flow forecast extensions, including the extended cash flow forecast for the period July 3, 2023 to November 3, 2023 (the “**Second Extended Cash Flow Forecast**”), in coordination with the Monitor;
- (vii) corresponding with the Monitor on two (2) lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order; and
- (viii) corresponding with the Monitor and the OTE Group’s legal counsel on various matters pertaining to the CCAA Proceedings including the Injunctive Order and the Claims Procedure.

## **VI. ACTIVITIES OF THE MONITOR**

19. The Monitor, with the support of its legal advisors, has been working with the OTE Group with respect to the following activities since the Third Report:
- (i) attending Court via videoconference for the hearing of the OTE Group’s motion in respect of the Claims Procedure Order, the Information Order, and the Stay Extension Order;
  - (ii) maintaining the Monitor’s Website where all court materials and other relevant documents pertaining to the CCAA Proceedings are available in electronic form;
  - (iii) supporting the OTE Group in managing relationships with key stakeholders, including employees and suppliers;
  - (iv) working with the OTE Group to implement procedures to monitor cash flows and making payments in accordance with the Initial Order and the Amended and Restated Initial Order;
  - (v) reviewing pre-filing payments in accordance with the budget for Pre-Filing Critical Supplier Payments;

- (vi) responding to calls and enquiries from creditors and other stakeholders in connection with these CCAA Proceedings;
- (vii) reviewing Information received from AirSprint pursuant to the Information Order;
- (viii) assisting the OTE Group in developing cash flow forecast extensions, including the Second Extended Cash Flow Forecast;
- (ix) working with the OTE Group and the Ministry of Finance on an agreement that extended certain time limited gas licenses and fuel licenses until December 31, 2023, based on terms agreeable to both the OTE Group and the Ministry of Finance;
- (x) approving two (2) lease disclaimers pursuant to paragraph 10 of the Amended and Restated Initial Order;
- (xi) corresponding with the OTE Group, its legal counsel, and the Monitor’s legal counsel on various matters pertaining to the CCAA Proceedings including the relief sought at this motion;
- (xii) working with the OTE Group and the Monitor’s counsel in Florida to be appointed as the “Foreign Representative” of the OTE Group in the Chapter 15 Proceedings, in addition to reviewing all relevant filing materials related to the Chapter 15 Proceedings;
- (xiii) reviewing materials filed with the Court in respect of the CCAA Proceedings;
- (xiv) attending to matters in respect of the Claims Procedure, as discussed further below; and
- (xv) preparing this Fourth Report.

20. The Monitor believes that its activities were reasonable and conducted in the best interests of the OTE Group and its stakeholders, and therefore should be approved.

## **VII. CASH RECEIPTS AND DISBURSEMENTS – APRIL 17, 2023 TO JULY 2, 2023**

21. As noted in the Third Report, the OTE Group, in consultation with the Monitor, prepared an extended cash flow forecast (the “**Extended Cash Flow Forecast**”) for the period from April 17, 2023, to August 4, 2023, in support of the requested stay extension, representing a forecast of the OTE Group’s projected receipts and disbursements during that time period.

22. The OTE Group continues to co-operate with the Monitor and provide access to their books and records as requested. The Monitor has implemented procedures for monitoring the OTE Group's receipts and disbursements on a weekly basis and has prepared a forecast-to-actual variance analysis regarding the OTE Group's receipts and disbursements.
23. A comparison of the Extended Cash Flow Forecast to actual results for the 11-week period from April 17, 2023, to July 2, 2023 (the "Comparison Period") is summarized as follows:

<b>Original Traders Energy</b>			
<b>Summary of Actual Receipts and Disbursements</b>			
<i>For the 11-week period from April 17, 2023 - July 2, 2023</i>			
<b>In C\$; unaudited</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b> Fav/(Unfav)
<b>Receipts</b>			
Customer collections	64,368,936	82,885,929	(18,516,993)
Tax refunds	10,446,307	2,704,925	7,741,382
<b>Total receipts</b>	<b>74,815,243</b>	<b>85,590,854</b>	<b>(10,775,611)</b>
<b>Operating disbursements</b>			
Purchases	49,921,899	58,991,962	9,070,063
Pre-filing payments/deposits	42,273	250,000	207,727
Operating expense	3,489,100	3,161,827	(327,273)
Rent and royalties	133,012	336,951	203,939
Payroll	939,315	1,087,841	148,526
Professional fees	668,172	550,000	(118,172)
Tax remittances	13,798,876	20,116,690	6,317,814
Bank payments	272,558	382,164	109,606
<b>Total operating disbursements</b>	<b>69,265,205</b>	<b>84,877,435</b>	<b>15,612,230</b>
Foreign exchange	(4,760)	-	(4,760)
<b>Net cash flow</b>	<b>5,545,278</b>	<b>713,419</b>	<b>4,831,859</b>
<b>Opening cash</b>	<b>4,531,140</b>	<b>4,531,140</b>	<b>-</b>
Net cash flow	5,545,278	713,419	4,831,859
<b>Ending cash</b>	<b>10,076,418</b>	<b>5,244,559</b>	<b>4,831,859</b>

**Note:** "Fav/(unfav)" denotes favourable or unfavourable variances against forecast.

24. As shown in the above table, the OTE Group reported a net cash inflow of approximately \$5.5 million over the Comparison Period resulting in a favourable cash flow variance of approximately \$4.8 million as compared to the Extended Cash Flow Forecast for the same period.
25. The favourable cash flow variance of \$4.8 million is principally the result of the following:
- (i) *Timing Differences:* tax refunds during the Comparison Period were \$7.7 million higher than expected; and

- (ii) *Lower Sales Volume*: sales volume for the OTE Group was lower than forecast which resulted in customer collections being lower by \$18.5 million. However, disbursements related to purchases, operating expenses, rent and royalties, payroll, bank payments and tax remittances were collectively lower than forecast by \$15.5 million, resulting in an unfavourable net cash outflow of \$3.0 million. A portion of the favourable variance related to tax remittance is also the result of timing differences.
26. As the result of the net impact of the above two items, the ending cash balance is higher than forecasted.

### **VIII. OTE GROUP'S REQUEST TO EXTEND STAY PERIOD TO NOVEMBER 3, 2023**

27. The current Stay Period expires on August 4, 2023. The OTE Group is seeking an extension of the Stay Period to November 3, 2023, to, among other things, advance the Claims Procedure and review strategic alternatives with the assistance of the Monitor, including the potential formulation of a plan.
28. In support of the stay extension, the OTE Group, with the assistance of the Monitor, has prepared the Second Extended Cash Flow Forecast, a copy of which is attached hereto as **Appendix "B"** (along with reports of both management and the Monitor on the Second Extended Cash Flow Forecast). The Second Extended Cash Flow Forecast is summarized below:

<b>Original Traders Energy</b>	
<b>Second Extended Cash Flow Forecast</b>	
<i>For the 18-week period from July 3, 2023 - November 5, 2023</i>	
<b>In C\$; unaudited</b>	<b>Total</b>
<b>Receipts</b>	
Customer collections	99,795,997
Tax refunds	4,670,675
<b>Total receipts</b>	<b>104,466,672</b>
<b>Operating disbursements</b>	
Purchases	78,048,103
Pre-filing payments/deposits	215,000
Operating expense	6,031,214
Rent and royalties	161,579
Payroll	1,570,791
Professional fees	1,100,000
Tax remittances	17,737,370
Bank payments	509,552
<b>Total operating disbursements</b>	<b>105,373,609</b>
<b>Net cash flow</b>	<b>(906,936)</b>
<b>Opening cash</b>	<b>10,076,418</b>
Net cash flow	(906,936)
<b>Ending cash</b>	<b>9,169,482</b>

29. The Second Extended Cash Flow Forecast indicates that the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings during the extension of the Stay Period, if granted.
30. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances. The Monitor supports the OTE Group's request for an extension of the Stay Period to November 3, 2023, for the following reasons:
- (i) the OTE Group has acted and continues to act in good faith and with due diligence;
  - (ii) the extension will provide the time necessary for the OTE Group to (a) assess the claims that are submitted or may be submitted as part of the Claims Procedure Order, and (b) continue its review of strategic alternatives with the assistance of the Monitor, including the potential formulation of a plan; and

- (iii) the extension should not materially prejudice any creditor, as the OTE Group is projected to have sufficient funds through its continuing operations to pay post-filing services and supplies, as contemplated in the Second Extended Cash Flow Forecast.

## **IX. ADDITION OF OTE GP AS LOSS PAYEE**

- 31. Pursuant to the Second Stay Extension Order, the OTE Group is also seeking that this Court authorize and direct that OTE GP be added as a loss payee pursuant to the Italian Yacht's insurance policy, policy REF-22GMI00768 (the "**Insurance Policy**"). The Monitor understands that OTE GP has received advice from brokers in Ontario and Florida that OTE GP should be added to the Insurance Policy (which currently lists GPMC Holdings International as the original insured party), as OTE GP is not the registered owner of the Italian Yacht and is not currently listed as the loss payee.
- 32. The Monitor agrees with the OTE Group that OTE GP has insurable interests in the Italian Yacht and, given the risk that Florida is now in the midst of its hurricane season, it is necessary and appropriate that OTE GP be added as a loss payee pursuant to the Insurance Policy.

## **X. MOTION BY THE MAREVA RESPONDENTS**

- 33. At 4:17pm on July 11, 2023, the Monitor received service of the Mareva Respondents' motion for the Mareva Respondents' Order seeking, *inter alia*, to set aside the Injunctive Order. The Monitor notes that in the endorsement of Justice Osborne made on March 28, 2023, in connection with the return of the Mareva relief originally granted on March 15, 2023, Justice Osborne directed that the parties were to agree upon a schedule for the exchange of materials and the return date for the motion to address the Injunctive Order. In that endorsement, Justice Osborne stated that "For greater certainty, my earlier order remains in effect pending the return of the motion and any further order of this Court". Therefore, the Monitor is of the view that the Court should not set aside the Injunctive Order on a summary basis without a full and properly scheduled hearing, since doing so would be inconsistent with Justice Osborne's prior directions. A copy of the Injunctive Order and the endorsements of Justice Osborne dated March 21, 2023, and March 28, 2023 is attached hereto as **Appendix "C"**.
- 34. Moreover, the Monitor is of the view that the continuation of the Injunctive Order is both necessary and appropriate in the meantime in order to protect and secure the Italian Yacht. The mere fact that the Monitor can currently locate the Italian Yacht through GPS is not sufficient, since the GPS could be turned off or malfunction (as was the case previously) or the Italian Yacht could be moved, sold or encumbered without the knowledge or consent of the Monitor. The Injunctive Order prohibits not only

the Mareva Respondents but also any and all persons with notice of the injunction from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with Italian Yacht or instructing, requesting, counselling, demanding or encouraging any other person to do so. The Injunctive Order therefore provides very important protections to help ensure that the Italian Yacht is secured for the benefit of OTE as well as the Mareva Respondents pending judicial determination of entitlements to the Italian Yacht and its proceeds. The Injunctive Order should not be summarily set aside or vacated without a proper hearing scheduled by the Court to give the parties an opportunity to file materials and evidence and respond.

35. The Monitor is continuing to review the Mareva Respondents' motion and is not commenting on the substantive relief sought by the Mareva Respondents at this time other than as set out above regarding the scheduling of the motion and the need for continuation of the Injunctive Order pending a properly scheduled hearing before the Court. The Monitor reserves its right to comment on and respond or seek any directions in respect of the relief sought by the Mareva Respondents when the hearing is scheduled by the Court.

## **XI. CLAIMS PROCEDURE UPDATE<sup>1</sup>**

36. As noted in the Third Report, the Claims Procedure is intended to determine the nature, quantum, and validity of claims against the OTE Group and its current and former Directors and Officers, for the purposes of providing clarity to the OTE Group, its stakeholders, and the Monitor, as to the number, nature, and value of certain Claims against the OTE Group and its Directors and Officers. This information will assist the OTE Group with its restructuring efforts and provide an orderly process for Claims to be identified, quantified, and ultimately resolved in parallel with the OTE Group's advancement of restructuring alternatives, including the potential formulation of a plan. The Monitor notes that the Claims Procedure has been designed to make the process easy and straightforward for potential Claimants to assert and have their Claims resolved in a fair and efficient manner.
37. The Monitor's activities with respect to the Claims Procedure, in accordance with the Claims Procedure Order, have included:

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<sup>1</sup> Capitalized terms used in this section but not otherwise defined have the meanings ascribed in the Claims Procedure Order.

- (i) posting, on the Monitor's Website, a copy of the OTE Group's motion record in respect of (among other things) the Claims Procedure on April 24, 2023, the Claims Procedure Order on April 28, 2023, and the Claims Package on May 4, 2023;
- (ii) publishing the Notice to Claimants in The Globe and Mail (National Edition) on May 4, 2023, and May 11, 2023;
- (iii) sending to each of the Known Claimants, as evidenced by the Books and Records of the OTE Group, at their last known municipal or e-mail address as recorded in the OTE Group's Books and Records, a copy of the Claims Package;
- (iv) providing a copy of the Claims Package to any Person claiming to be a Claimant and requesting such material in writing;
- (v) compiling, logging, and reviewing Proofs of Claim submissions;
- (vi) responding to various correspondence from Claimants with respect to the Claims Procedure; and
- (vii) dealing with other matters in connection to the Claims Procedure not specifically described in the preceding activities.

38. As of the date of this report, a total of 29 Claimants have submitted claims, resulting in fifty-two (52) Claims with a gross value of \$462 million filed prior to the Claims Bar Date. The Claims submissions comprised the following:

- (i) 37 Pre-Filing Claims totalling \$456 million, of which four (4) Claims were D&O Claims;
- (ii) 10 Restructuring Claims totalling \$5.9 million, of which two (2) Claims were D&O Claims; and
- (iii) 5 Claims without indication of whether they were Pre-Filing or Restructuring Claims totalling \$0.1 million, of which three (3) were D&O Claims.

39. The gross value of the Claims is in the amount of \$462 million, which also includes duplicative Claims that were filed under separate categories (i.e. a Claim filed as both a Pre-Filing Claim against the OTE Group and a D&O Claim would be counted twice). The net value of the Claims amounts to \$204 million.



40. The Monitor also notes that as part of the fifty-two (52) submitted Claims, there are seven (7) “placeholder” Claims where the claim amount has either been estimated or no amount has been provided. The amounts related to these claims will be determined at a later date when more information is available.
41. The Monitor notes that no Claims that have been submitted have yet been accepted, revised, or rejected as is later required per the Claims Procedure Order. The Monitor, in consultation with the OTE Group, is in process of reviewing the Claims and will begin the process of accepting, revising, or rejecting Claims to assess the number, nature and value of certain Claims against the OTE Group and its Directors and Officers over the course of the ongoing CCAA Proceedings.
42. Further, the Monitor notes that there may be additional Restructuring Period Claims or Restructuring Period D&O Claims that have not yet been submitted (the “**Future Restructuring Claims**”). As it relates to these Future Restructuring Claims, the Monitor will apply all relevant procedures set out in the Claims Procedure Order if or as they are received.

## **XII. PAGE EMAIL ACCOUNT**

43. Various correspondence has been exchanged between counsel to the Monitor, the OTE Group, and certain of the Mareva Respondents as it relates to outstanding documents of the OTE Group. In specific:
  - (i) On July 5, 2023, counsel to Glenn Page indicated that Page had “located a copy of his email account with the Original Traders Energy domain name”. Page’s counsel indicated that they were open to discussing a review protocol, but that if no objection was received by July 9, 2023, they intended to undertake a review of the email account for responsive documents.
  - (ii) On July 7, 2023, counsel for the Monitor responded to the above correspondence, and advised counsel to Page that, pursuant to the Initial Order and the Amended and Restated Initial Order, the Monitor is to have full and complete access to the books, records and data of the OTE Group and is empowered to compel production from any person in possession, custody or control thereof. Counsel to the Monitor also noted that production from Page had previously been demanded pursuant to a letter dated February 6, 2023, and that all emails and attachments under the Original Traders Energy domain name must be provided to the Monitor forthwith without any alteration. Finally, counsel to the Monitor indicated that the Monitor would not

agree to the review by any person of the emails or attachments prior to their provision to the Monitor.

- (iii) On July 8, 2023, counsel to Page responded with a link to a “.pst file” (the “**Account**”). Counsel indicated that they had not reviewed any of its contents, and given the Monitor’s objection, would not review the contents until the parties come to a resolution or the issues is addressed with the Court.
- (iv) On July 11, 2023, counsel to the Monitor requested that counsel to Page confirm where the Account was located by their client, as the emails contained within the Account are listed as being from and to an OTE Group associated email address. Counsel to the Monitor also formally requested that (the “**Storage Media Demand**”):

“all emails and attachments to or from any email accounts (not just Glenn Page's) under the Original Traders Energy domain name or other domain names that are or were owned by or associated with any of the OTE Group entities (the “**OTE Group Domains**”) be provided to the Monitor forthwith, in their current format and the format in which they existed as at the time of the Initial Order, without editing, redaction or any other alteration or tampering, including delivery to the Monitor of any computer drives or storage devices or media and immediate access to the Monitor to any cloud based or other servers on which such emails may be located (collectively, the “**Storage Media**”). Please provide the Monitor with all such Storage Media forthwith or inform the Monitor where such Storage Media is located and grant access thereto to the Monitor's representatives.”

- 44. A copy of the above email correspondence is attached hereto at **Appendix “D”**, with redactions applied to the personal email of Page and the link to the Account provided by Page’s counsel.
- 45. The Monitor has begun to review the contents of the file at the Account provided by Page’s counsel in connection with its investigation and may seek further directions of the Court if necessary, including in connection with the Storage Media Demand.

### **XIII. ITALIAN YACHT SALES PROCESS**

- 46. As described in the Second Report, during its investigations, the Monitor received information from one of the Requested Parties, Pride Marine, indicating that funds had been transferred from OTE

Group bank accounts to the purchase of the Italian Yacht by 265 from Pride Marine (the “**Italian Yacht Payments**”). The Monitor also independently traced the Italian Yacht Payments to OTE Group bank statements and wire transfer details.

47. After the Injunctive Order was granted by the Court, the Monitor and its counsel engaged in follow-up correspondence with counsel to the Mareva Respondents to obtain specific details as to the location of the Italian Yacht and other information that in the Monitor’s view was necessary in connection with its duties to safeguard the Italian Yacht and investigate the matter further for the benefit of the OTE Group’s creditors (the “**Italian Yacht Information**”). A detailed overview of the related events and correspondence that took place after the Injunctive Order was provided in the Monitor’s supplement to the Second Report dated March 27, 2023.
48. On March 28, 2023, the Court further directed, by way of the Endorsement of Justice Osborne (the “**March 28 Endorsement**”), that the Mareva Respondents provide the Monitor with the Italian Yacht Information and that once it was provided, the Italian Yacht would be moved to a marina located in Hollywood, Florida (the “**Hollywood Marina**”). After the March 28 Endorsement, the Monitor confirmed that all required Italian Yacht Information had been received from the Mareva Respondents, and the Monitor independently confirmed with representatives of the Hollywood Marina that the Italian Yacht was parked there.
49. The Monitor is further of the view that it is necessary to monetize the Italian Yacht in a timely manner to maximize the value that can be achieved through its sale and prevent its dissipation of value. Although the Monitor has engaged in without prejudice discussions in respect of a sale process for the Italian Yacht with the OTE Group and the Mareva Respondents, no agreement on a process has been reached as of the date of this Fourth Report. As set out in the Sixth Hill Affidavit, the OTE Group is seeking to schedule a half-day hearing to resolve issues arising from the Injunctive Order and the Injunctive Endorsements. However, in the meantime, the Monitor is of the view that it is imperative that a sale process in respect of the Italian Yacht be commenced in the near term.
50. As such, the Monitor is requesting that the Court provide a direction that the Monitor commence an orderly sale process for the Italian Yacht. The Monitor is of the view that the process described below is reasonable in the circumstances, and seeks a direction that the following sale process (the “**Yacht Sale Process**”) be commenced by the Monitor, pursuant to which the Italian Yacht to be sold as soon as practicable:

- (i) within 5 business days of the date of this Court's direction in respect of the Yacht Sale Process, the Monitor shall select one or more boat dealers or brokers (the "**Boat Broker**") in Florida to market the Italian Yacht for sale in a prudent and commercially reasonable manner based upon the Boat Broker's experience and advice, and the Monitor shall inform the OTE Group and the Mareva Respondents (together, the "**Affected Parties**") of its selection;
- (ii) the Monitor shall use commercially reasonable judgement in selecting the Boat Broker, and shall consider, among other things, the Boat Broker's experience, commissions charged, and whether the Boat Broker will agree to pay the costs associated with moving, insuring, maintaining and storing the Italian Yacht until it is sold (the "**Interim Costs**");
- (iii) the Affected Parties shall be provided five (5) business days to object to the Monitor's selection by informing the Monitor and other Affected Parties of the objection and reasons therefor. Should the Monitor and the Affected Parties be unable to resolve the objection in a timely manner, the Monitor or any Affected Party may schedule a case conference before this Court on three days' notice;
- (iv) if the Monitor has been informed that there are no objections from the Affected Parties, or if the Monitor has not been informed of any objections more than 5 business days after informing the Affected Parties of its selection of the Boat Broker, the Monitor shall inform the Boat Broker of its selection;
- (v) forthwith following the selection of the Boat Broker, Glenn Page will direct that the Italian Yacht be moved from its current location at Hollywood Marina to the Boat Broker's marina or another marina in Florida agreed upon by the OTE Group, the Monitor, and the Mareva Respondents, where the Italian Yacht shall remain until it is sold or this Court orders otherwise;
- (vi) in the event that the contract with the Boat Broker does not include payment of some or all of the Interim Costs, the costs shall be paid by Glenn Page;
- (vii) the payor of the Interim Costs shall be entitled to reimbursement of such costs supported with receipts (the "**Reimbursable Costs**") out of the proceeds of sale after payment of the Boat Broker's commission;
- (viii) the Boat Broker shall report to the Monitor and the Affected Parties on the status of the marketing and sale process for the Italian Yacht as necessary and no less than once every

fourteen (14) days. The Boat Broker shall promptly disclose any offer received in respect of the Italian Yacht to the Monitor and the Affected Parties;

- (ix) the Monitor, in consultation with the Boat Broker and using commercially reasonable judgement, shall decide whether to proceed with a sale of the Italian Yacht pursuant to any offer received, and shall provide the Affected Parties with notice of its intention to proceed with a sale;
  - (x) the Affected Parties shall be provided 5 business days to object to the Monitor's proposed sale by informing the Monitor and other Affected Parties of the objection. Should the Monitor and the Affected Parties be unable to resolve the objection in a timely manner, the Monitor or any Affected Party may bring a motion on the Commercial List of the Ontario Superior of Justice on 24-hours' notice to seek approval of any offer received in respect of the Italian Yacht;
  - (xi) if the Monitor and the Affected Parties agree in writing on a proposed sale, or if the Monitor has not been informed of any objections more than 5 business days after informing the Affected Parties, the sale may proceed without Court approval, and the Mareva Respondents shall promptly ensure that all necessary documents are executed to accept the offer;
  - (xii) copies of the Insurance Policy shall be provided by the Mareva Respondents forthwith to the OTE Group and the Monitor; and
  - (xiii) the net proceeds from the sale of the Italian Yacht, after payment of the Boat Broker's commission and the Reimbursable Costs, shall be paid to and held by the Monitor in trust pending judicial determination of the claims and entitlements to such proceeds as between the OTE Group entities and the Mareva Respondents or any of them.
51. The Monitor is of the view that the Yacht Sale Process would provide a commercially reasonable process to monetize the Italian Yacht and reduce ongoing storage and operating costs, while effectively providing for the safeguarding of the proceeds with the Monitor pending judicial determination as to the entitlement to those proceeds as between the OTE Group entities and the Mareva Respondents on a subsequent motion to be scheduled with the Court.

#### **XIV. AIRSPRINT PROCEEDS**

52. As discussed above, on April 28, 2023, the Court issued the Information Order authorizing and directing AirSprint to provide to the Monitor or its counsel any requested information relating to the

OTE Group, the OTE Group Affiliates (as defined in the Information Order) or any third party owned, controlled by, or otherwise related to the OTE Group Affiliates.

53. The Monitor notes that after the Court made the Information Order, the Monitor received further information from AirSprint with respect to the OTE Claimed AirSprint Property, which included details on the proceeds received by AirSprint from the re-sale of certain fractional aircraft ownership interests purchased with the AirSprint Payments that are currently being held in trust by AirSprint.
54. The Monitor believes that it is appropriate for this Court to direct that the OTE Claimed AirSprint Property be paid to the Monitor in trust pending judicial determination of the claims and entitlements to such proceeds as between the OTE Group entities and the Mareva Respondents or any of them. The Monitor is of the view that this is prudent and necessary to ensure that the OTE Claimed AirSprint Property is protected pending judicial determination of such entitlements.
55. Further, the Monitor notes that on July 10, 2023, counsel to the Monitor notified counsel to AirSprint that it would be seeking the above direction from the Court with respect to the above matters. On July 12, 2023, counsel to AirSprint confirmed that AirSprint consented to the above directions, subject to notice being provided to Page's counsel in advance of the hearing scheduled for July 17, 2023. Such notice was provided to counsel for Page via email from the Monitor's counsel on July 12, prior to the service of this Report.

## **XV. MONITOR'S RECOMMENDATIONS**

56. For the reasons set out in this Fourth Report, the Monitor is of the view that the relief requested through the Second Stay Extension Order is reasonable and appropriate in the circumstances. Further, the Monitor is of the view that this Court should provide direction regarding the Yacht Sale Process and the OTE Claimed AirSprint Property to allow the Monitor to maximize the value of the estate of the OTE Group and to protect the property of the OTE Group.
57. Based on the foregoing, the Monitor respectfully recommends that this Court approve the relief sought in the Second Stay Extension Order and provide the direction as requested.

All of which is respectfully submitted this 12th day of July 2023.

**KPMG Inc.**  
**In its capacity as Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



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**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

# **APPENDIX “A”**



Court File No.: CV-21-00XXXX-00CL

**ORIGINAL TRADERS ENERGY LTD. ET AL.  
PRE-FILING REPORT OF KPMG INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR**

**January 30, 2023**

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### APPENDICES

APPENDIX “A” – KPMG’s Consent to Act as Monitor

APPENDIX “B” – Cash Flow Forecast

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.**  
**(collectively the "Applicants")**

Applicants

**PRE-FILING REPORT OF KPMG INC.**  
**In its capacity as Proposed Monitor of the Applicants**

**JANUARY 30, 2023**

## I. INTRODUCTION

1. KPMG Inc. (“**KPMG**” or the “**Proposed Monitor**”) understands that Original Traders Energy Ltd. and 2496750 Ontario Inc. (the “**Applicants**”) intend to make an application (the “**CCAA Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) returnable on January 30, 2023 (the “**Proposed Filing Date**”), seeking an initial order (the “**Proposed Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting the Applicants protection under the CCAA and to seek other related relief, with a view to allowing OTE Group an opportunity to restructure its business and affairs. The Applicants’ CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. While OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**”) are not Applicants in this proceeding, the Applicants seek to have relief sought within the Proposed Initial Order extend to both OTE Logistics and OTE LP (collectively, the “**Limited Partnerships**”), which are related to and carry on operations that are integral to the business of the Applicants. The terms “**OTE Group**” and “**Applicants**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. The Applicants will also be seeking to appoint KPMG as the CCAA monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”).
4. The principal purpose of the CCAA Proceedings is to provide the Applicants with the opportunity to restructure their debt obligations in a stable, Court-supervised environment with the breathing space afforded by filing for protection under the CCAA. The proceedings will provide a forum to allow the OTE Group to develop a plan of compromise or arrangement (the “**Plan**”) that is intended to provide creditors with a better outcome than an immediate liquidation of the Applicants’ assets and business. The Applicants intend to move through the CCAA Proceedings expeditiously, with the goal of emerging as a going-concern business as soon as practicable.
5. At a comeback motion to be scheduled within the initial statutory ten (10) day stay period (the “**Comeback Motion**”), the Applicants intend to return to court for an extension of the initial stay of proceedings sought in the Initial Order, among other relief.

## II. PURPOSE OF REPORT

6. KPMG, in its capacity as Proposed Monitor, has reviewed the Court materials filed by the Applicants in support of the CCAA Application. The purpose of this pre-filing report (the “**Report**”) of the Proposed Monitor is to provide information to this Honourable Court pertaining to:
  - (i) KPMG’s qualifications to act as Monitor;
  - (ii) background on the Applicants, including their corporate structure, current financial situation and creditors;
  - (iii) the Applicants’ decision to commence CCAA Proceedings and to seek a stay of proceedings;
  - (iv) the Applicants’ thirteen-week cash flow forecast (the “**Cash Flow Forecast**”) for the period from January 28, 2023 to April 29, 2025 (the “**Forecast Period**”);
  - (v) the relief proposed in the Initial Order;
  - (vi) an update on the Applicants’ intention to return to the Court for a motion (the “**Comeback Motion**”) seeking various other relief; and
  - (vii) the Proposed Monitor’s conclusions and recommendations.

## III. TERMS OF REFERENCE

7. Capitalized terms used but not defined in this Report are as defined in the Affidavit of Scott Hill sworn January 27, 2023 (the “**Hill Affidavit**”), filed by the Applicants as part of their materials in support of the CCAA Application and the Proposed Initial Order. This Report should be read in conjunction with the Hill Affidavit, as certain information contained in the Hill Affidavit has not been included herein in order to avoid unnecessary duplication.
8. In preparing this Report, the Proposed Monitor has relied solely on information and documents provided by the Applicants and their advisors, including unaudited financial information, declarations and the Hill Affidavit (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

9. Future orientated financial information contained in the Cash Flow Forecast is based on the Applicants' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved.
10. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **IV. KPMG'S QUALIFICATIONS TO ACT AS MONITOR**

11. KPMG is a licensed insolvency trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). KPMG is not subject to any of the restrictions to act as Monitor as set out in section 11.7(2) of the CCAA and, in particular, neither KPMG nor any of its representatives has been at any time in the two preceding years:
  - (i) a director, an officer or an employee of an Applicant;
  - (ii) related to the Applicants or to any director or officer of an Applicant; or
  - (iii) the auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of an Applicant.
12. KPMG was engaged by Original Traders Energy LP on behalf of the OTE Group in October of 2022 to provide advisory services relating to the Applicants' financial situation and to assist the Applicants in reviewing various strategic options. Accordingly, KPMG is familiar with OTE Group's business and financial affairs and is in a position to immediately assist the Applicant in its CCAA Proceedings.
13. Should the Court grant the Applicants' request to make the Initial Order, KPMG has consented to act as Monitor. A copy of KPMG's consent to act as Monitor is attached as **Appendix "A"**. The Proposed Monitor has retained Bennett Jones LLP ("**Bennett Jones**") to act as its legal counsel in the CCAA Proceedings.

#### **V. OBJECTIVES OF THE CCAA PROCEEDINGS**

14. The primary objectives of the CCAA Proceedings are to: (i) stabilize OTE Group's business, including through a Court-ordered stay of proceedings; (ii) create a Court-supervised process to determine the quantum of liabilities and claims; and (iii) provide the OTE Group with the opportunity to explore a Plan.

## VI. BACKGROUND

15. Detailed information with respect to the Applicants’ business, operations, products and causes of insolvency is provided in the Hill Affidavit. The information contained in this Report represents only a summary of that background information as is relevant to the CCAA Proceedings.
16. As noted in the Hill Affidavit, Original Traders Energy Ltd. (“**OTE GP**”) is a corporation incorporated under the *Business Corporations Act* (Ontario), on July 5, 2017. Since August 30, 2017, OTE GP has been the general partner of Original Traders Energy LP (“**OTE LP**”).
17. OTE LP is a limited partnership formed under the *Limited Partnerships Act* (Ontario) on August 30, 2017 and is primarily in the business of purchasing and blending fuel products, when required, in order to supply to petroleum stations and First Nations’ communities across Ontario.
18. OTE Logistics LP (“**OTE Logistics**”) is a limited partnership formed under the *Limited Partnership Acts* (Ontario), on August 24, 2018, and is in the business of providing fuel transportation services and logistics support to OTE LP. Except for OTE LP, OTE Logistics has no other customers. The general partner of OTE Logistics is 2496750 Ontario Inc. (“**249 Ontario**”).
19. OTE Group’s premises include a head office site, and three blending facilities are summarized further below:

Function	Location	Address	Leased/Owned	Number of Employees
Head Office	Six Nations of the Grand River Territory of Tyendinaga, ON	7273 Indian Line, Scotland, Ontario	Leased from related party	13
Six Nations Blending Location	Six Nations of the Grand River Territory, ON	7273 Indian Line, Scotland, Ontario	Leased from related party	17
Tyendinaga Blending Location	Tyendinaga Mohawks of Bay of Quinte of Shannonville, ON	184 Industrial Park Rd., Shannonville, Ontario	Leased from unrelated party	14
Whitefish Blending Location	Atikameksheng Anishnawbek Territory of Naughton, ON	Lots 13, 14 and 15 of Business Park Road, Chi-Zhiingwaak Business Park in Naughton, Ontario	Leased from unrelated party	15

20. Across all the locations, OTE LP and OTE Logistics have approximately 59 employees. OTE LP and OTE Logistics’ employees do not benefit from a company-backed pension plan, are not represented by a union and are not subject to a collective bargaining agreement.

21. An additional blending site is partially constructed in Couchiching First Nation Territory of Fort Frances, Ontario (“**Couchiching Location**”). The Proposed Monitor understands that construction for the Couchiching Location allegedly began on reserve lands without any lease or written contact between any parties. OTE Group does not own the Couchiching Location and the Proposed Monitor further understands that currently there is no intention to complete the construction.

### **Ontario Litigation Against a Former Executive**

22. Glenn Page, until on or about July 14, 2022, was the president at OTE GP. At all material times prior to that, he was also an officer and director, or *de facto* officer and director, and had complete executive and operational control over OTE Group and their businesses. As described in the Hill Affidavit, OTE Group’s financial performance has suffered primarily as a result of the alleged misconduct and alleged misappropriation of funds by Glenn Page and other former employees of OTE LP.
23. As detailed further in the Hill Affidavit, Mr. Scott Hill noticed inconsistencies in the financial reporting related to certain OTE Group’s statements.
24. In July 2022, after a meeting with the Royal Bank of Canada (“**RBC**”), a further investigation was conducted by OTE Group and its legal advisors, which led to the discovery of numerous and significant accounting and operational irregularities, and the subsequent departure of Glenn Page and certain other former employees.
25. As described in the Hill Affidavit, the Proposed Monitor understands that a significant amount of the business and financial records of OTE Group are missing and/or are allegedly being withheld by Mr. Page. As a result, the Applicants are unable to generate accurate and complete financial information concerning their operations and business affairs and have had, and continue to have to, recreate and update their financial position over the past three months, at the same time continue to manage their business, suppliers, customers and employees. Accordingly, the Proposed Monitor has not been able to verify the historical financial information provided to date and is relying upon the limited information provided to it by the Applicants. The lack of such historical financial information further underscores the need for a CCAA proceeding to stabilize the business and create a proper Court-supervised process to establish creditors' claims.
26. The alleged misconduct has apparently resulted in the following issues and liabilities:
  - (i) unpaid liabilities to Canadian regulators, tax authorities, and certain trade suppliers;
  - (ii) potentially missing assets and/or unpaid accounts receivable owing to OTE Group;



- (iii) unfavourable commercial contracts and agreements entered into by the OTE Group;
  - (iv) litigation claims against the Applicants; and
  - (v) other potential claims which are currently unknown and need to be investigated.
27. The above challenges in addition to the incomplete books and records of the Applicants have impeded OTE Group's ability to fully assess their financial situation and operate their business effectively.
28. Litigation relating to the above noted misconduct has been initiated by OTE Group against Glenn Page and certain former employees. The Proposed Monitor further understands that Scott Hill has also sworn a second affidavit on January 27, 2023 (the "**Second Hill Affidavit**") which contains the details of litigation initiated outside of Canada (claim currently under seal) to pursue damages stemming from certain alleged misconduct. The Proposed Monitor further understands that counsel to the OTE Group will be seeking a sealing order over the Second Hill Affidavit due to the sealing order issued over the litigation in the external jurisdiction. The Proposed Monitor is supportive of the sealing order sought, in light of the sealing order made by the court having jurisdiction over the extra-territorial case.

### **Status of Fuel and Gas Licenses**

29. Pursuant to the *Fuel Tax Act*, R.S.O. 1990, c. F. 35, OTE LP holds an exporter license (the "**Exporter License**"), an importer license (the "**Importer License**"), and an interjurisdictional transporter license (the "**IT License**") from the Ontario Ministry of Finance (the "**MOF**") (and collectively the "**Fuel Licenses**"). The Fuel Licenses allow OTE LP to conduct business as an exporter, importer and interjurisdictional transporter of fuel products within and outside of Ontario.
30. Pursuant to the *Gasoline Tax Act*, R.S.O. 1990, c. G. 5, OTE LP holds an importer license (the "**Gas Importer License**"), and an interjurisdictional transporter license (the "**Gas IT License**") from the MOF (collectively the "**Gas Licenses**"). The Gas Licenses allow OTE LP to conduct business as an importer and interjurisdictional transporter of gasoline products in bulk within and outside of Ontario.
31. As indicated in the Hill Affidavit, OTE LP failed to submit their July, August and September 2022 fuel and gas filings, and failed to pay prior amounts outstanding related to fuel and gas remittances.
32. OTE LP has since filed MOF gas and fuel returns without payments for the months of July, August and September of 2022. Returns for October, November and December have been filed and the amounts due have been remitted. The OTE Group files its MOF returns within 30 days of the previous

month-end. However, remittances for prior period returns continue to be outstanding and are part of Applicants' investigation into their incomplete books and records as noted above.

33. On or about December 6, 2022, OTE LP received notice from the MOF advising that the MOF had received a cancellation notice from Zurich Insurance Company Ltd. in respect of Surety Bond No. 6350832 in the amount of \$2.0 million which was initially issued as security for amounts owed to MOF in relation to the Fuel Licenses and the Gas Licenses (the "**Security Cancellation Notice**"). In addition, the Security Cancellation Notice stated that replacement security must be put in place by January 30, 2023 (the "**Security Deadline**").
34. On or about December 22, 2022, despite the Security Cancellation Notice and after OTE LP's negotiation discussion with the MOF, the MOF granted conditional time-limited permits for Gas Licenses and Fuel Licenses until January 31, 2023.
35. The MOF has since advised the Proposed Monitor and the Applicants via email correspondence on January 26, 2023, that the Gas Licenses and the Fuel Licenses could be potentially extended to March 31, 2023, with the discretion of the MOF to suspend or cancel the Gas Licenses at any time, pending the below:
  - (i) The Applicants' intention to provide security of \$2,000,000 to the MOF as cash security, in the following installments:
    - (A) The first installment of \$500,000 delivered no later than the latter of January 30, 2023 or a rescheduled date obtaining Court approval of the CCAA application of the Applicants, with that date to be no later than the week of January 30<sup>th</sup> to February 3<sup>rd</sup>, 2023; and
    - (B) The second installment of \$1,500,000 delivered no later than February 21<sup>st</sup>, 2023 upon obtaining Court approval of the extension of the CCAA application of the Applicants; and
  - (ii) The above security is not to be redeemed for any tax owing by the relevant Applicants for periods prior to the date of providing the security.
36. As at the date of this report, the above agreement between the Applicants and MOF has not been finalized; however, both parties continue to negotiate in good faith with the Proposed Monitor present and participating in such continued discussions. However, in the event that the MOF revoke the Fuel

Licenses and Gas Licenses, the Applicants' ability to operate and generate revenue will be severely hindered and would pose a significant risk to their restructuring efforts in addition to immediately impacting the operations, including resulting in a potential shutdown and lay-off their employees.

37. As a result, while the Applicants continue their above discussions with the MOF and restructure under the CCAA, the Applicants view it as necessary, as discussed below, to stay the MOF from terminating the Gas and Fuel Licenses. This relief is supported by the Proposed Monitor.

## VII. CURRENT FINANCIAL SITUATION

38. Given the lack of audited financial statements and no access to detailed historical financial information, the Proposed Monitor is unable at this point in time, subject to further investigation, to assess the OTE Group's historical financial performance.
39. Based on the information available, and subject to further confirmation through the CCAA process, the OTE Group's estimated assets and liabilities are set out below:

<b>Original Traders Energy</b>	
<b>Estimated assets and liabilities</b>	
<b>In C\$; unaudited</b>	<b>Total</b>
<b>Assets</b>	
Cash	9,000,000
Accounts receivables	13,935,581
U.S. excise duty refunds	34,588,346
Fixed assets and equipment	10,000,000
<b>Total Assets</b>	<b>67,523,927</b>
<b>Liabilities</b>	
Royal Bank of Canada	4,499,428
Accounts payable	12,665,510
Ministry of Finance obligations	38,050,958
Canada Revenue Agency obligations	<b>TBD</b>
Canada Border Services Agency obligations	19,376,773
Export Development Canada claim	1,000,000
Potential litigation claims	15,800,000
<b>Total Liabilities</b>	<b>91,392,669</b>

40. As presented above, the primary assets of the OTE Group relate to the U.S. excise duties and refunds totaling \$34.6 million, with total assets of approximately \$67.5 million. The estimated total liabilities

are approximately \$91.4 million excluding potential Canada Revenue Agency obligations. The majority of the estimated liabilities relate to obligations to the respective tax authorities.

41. As at the date of this report, the Proposed Monitor can conclude that OTE Group is insolvent in that the aggregate value of its property does not appear to be sufficient to enable payment of all of its obligations, due and accruing due.

## **Assets**

### Excise Duty Refund

42. From a review of documentation provided by the OTE Group and its legal advisors, and a financial analysis completed by the Proposed Monitor, the identifiable primary assets of OTE Group as at the date of this Report relate to the U.S. excise duty refunds.
43. In 2021, OTE USA LLC (“**OTE USA**”) was established for the purpose of obtaining exemption on state and federal excise taxes paid on the purchase of bulk fuel from the U.S. on the basis that the purchased fuel would be exported to Canada and not be resold in the U.S. OTE USA received tax exemption licenses from U.S. authorities in or about late 2021 or early 2022.
44. Quarterly excise tax refund claims were completed and submitted to the U.S. taxing authorities for the entirety of 2021 and first half of 2022. OTE Group, along with its legal and tax advisors, are working to complete the outstanding returns.
45. The Applicants are anticipating receiving the refunds relating to the claims already filed and are in the process of claiming excise tax refunds for the remaining periods. The Proposed Monitor understands that the outstanding U.S. tax refund is estimated to be \$34.6 million. However, the timing and certainty of these receipts has not yet been determined.

### Other Assets

46. As at the date of this report, total customer accounts receivable is estimated to be approximately \$13.9 million, of which \$8.5 million relates to Gen7 Fuel Stations (defined below) which has been outstanding since July 2022.
47. Based on OTE Group’s books and records from October 2022, fixed assets and equipment is estimated to be approximately \$10.0 million, the majority of which are located at the blending stations. Additional investigation will be required to assess the nature and value of this property.

48. Based on a preliminary review, there are certain notes receivables on the historic financial statements. Additional investigations will be required to understand the nature of these amounts. Accordingly, these amounts have been excluded for the purpose of this analysis.

## **Liabilities**

### Secured Creditors

49. As detailed in the Hill Affidavit, OTE Group's secured debt relates to a) liability to RBC, b) liability to secured lessors for various real property and equipment leases; and c) liability of 249 Ontario and OTE Logistics to OTE LP and OTE.

#### *Royal Bank of Canada*

50. OTE LP, as borrower, entered into a loan agreement dated April 27, 2021, as amended on July 6, 2021 and on September 22, 2021 and as further amended on February 2, 2022 (the "**RBC Loan Agreement**") with RBC as the lender, for:
- (i) a \$3,000,000 revolving demand facility;
  - (ii) a \$1,375,000 revolving demand facility by way of letters of guarantee;
  - (iii) a \$5,000,000 revolving lease line of credit by way of certain leases; and
  - (iv) other facilities of credit card up to a maximum amount of \$30,000 and certain foreign exchange forward contracts.
51. The Proposed Monitor understands that as at the date of this report, there are no outstanding amounts related to either of the revolving demand facilities, noted above in subparagraphs 50(i) and (ii), and the outstanding balance under the lease line of credit was approximately \$3.5 million.
52. Gen7 Fuel Management Services LP, a prior name of OTE Logistics, entered into a different loan agreement with RBC, dated September 22, 2021 (the "**Second RBC Loan Agreement**") and together with the RBC Loan Agreement, the "**RBC Loan Agreements**") with RBC as lender, for:
- (i) a \$200,000 revolving demand facility;
  - (ii) a \$2,000,000 revolving lease line of credit by way of leases; and
  - (iii) other facilities of credit card up to a maximum amount of \$50,000.

53. The Proposed Monitor understands that as at the date of this report, there are no outstanding amounts related to the revolving demand facility or the credit card facilities and the outstanding balance under the lease line of credit was approximately \$1.0 million.
54. As is further detailed in the Hill Affidavit, on or about January 26, 2023, OTE LP and OTE Logistics entered into a forbearance agreement with RBC (the “**RBC Forbearance Agreement**”). Under the RBC Forbearance Agreement, both OTE LP and OTE Logistics have covenanted with RBC that, in exchange for RBC forbearing from enforcing their rights under their security (“**Security**”) during the CCAA proceedings (or the occurrence of an Intervening Event, as defined within the RBC Forbearance Agreement): (a) RBC shall enjoy the benefit of their security during the Applicants’ anticipated CCAA proceedings such that no charge shall be granted in priority to the Security within the Initial Order or during the pendency of these CCAA proceedings, without the written consent of RBC; (b) the stay period contemplated by the Initial Order or during the pendency of the CCAA proceedings shall not apply to RBC; and (c) RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA.
55. The Proposed Monitor is supportive of this relief negotiated with RBC. The RBC Forbearance Agreement enables and allows a restructuring to occur for the OTE Group. Without the forbearance contemplated in the RBC Forbearance Agreement, RBC could potentially demand on the RBC Loan Agreements, which would hinder the OTE Group’s restructuring prospects.
56. The Proposed Monitor has not yet had an opportunity to review the Security. The Security is currently under review by Bennett Jones LLP, the Proposed Monitor’s independent counsel (“**Monitor’s Counsel**”). If appointed, the Monitor (in such capacity) intends to report to the Court on the results of the security review by Monitor’s Counsel, after it has been completed.

*RBC OTE USA Loan and Export Development Canada*

57. OTE USA was provided with a letter of credit (“**OTE USA Facility**”) in the amount of USD \$1.0 million for the purpose of providing security to Marathon Petroleum Company (“**Marathon**”) who provided petroleum to OTE LP for its fuel blending operations.
58. The OTE USA Facility was subject to an account performance security guarantee certificate of cover executed by the Export Development Canada (“**EDC**”) to RBC in the maximum aggregate liability amount of USD \$2.0 million for OTE LP and OTE USA for the period of May 6, 2022 to May 31, 2023 (the “**EDC Performance Guarantee**”).

59. On or about November 3, 2022, Marathon made a demand under the OTE USA Facility for USD \$1.0 million after which, on or about November 7, 2022, EDC received a claim application from RBC due to a call on the OTE USA Facility. EDC has subsequently requested payment from OTE Group.
60. The Proposed Monitor understands that OTE LP and OTE Logistics have subsequently advised Marathon that OTE USA Facility was obtained under false pretenses by the former executive. Given the limited information currently available, further investigations into this matter will be required to assess this liability.

#### *Lease Obligations (Personal Property)*

61. The Applicants are a party to a number of equipment leases that are used by OTE Group in its operations. These equipment leases are subject to acceleration payments which may be triggered as a result of defaults on payment terms.
62. As at the date of this Report, the Proposed Monitor is not aware of any monetary defaults in respect of the equipment leases. However, the filing of a restructuring proceeding without the protection of the stay contemplated in the Proposed Initial Order could result in a default under many of the equipment leases which may be subject to acceleration as a result of the defaults, and could trigger additional liabilities to each relevant Applicants.

#### Ontario Ministry of Finance

63. As detailed above, remittances for the period of April to September 2022 are outstanding. The Proposed Monitor understands that as at the date of this Report, the following approximate amounts are outstanding to the MOF (inclusive of penalty and interest): i) \$6.5 million relating to fuel tax and ii) \$31.6 million relating to gasoline tax.

#### Canada Border Services Agency Licenses

64. OTE LP received a Notice of Arrears on or about December 6, 2022, authorized under s. 97.22(1) of the *Customs Act*, providing of notice of outstanding payments to the Canada Border Services Agency (the “CBSA”) in the amount of approximately \$19.4 million. Further investigation will be required to understand the nature and quantum of this claim.

### Canada Revenue Agency

65. In line with Canadian tax regulations, upon the sale of fuel and gasoline to customers, OTE LP is required to collect and remit excise tax and federal carbon tax to the Canada Revenue Agency (“**CRA**”). As at the date of this report, filings and remittances for the months of July 2022 to January 2023 are outstanding.
66. OTE LP is currently subject to an ongoing audit by the CRA and as a result, the amount owed relating to the outstanding returns is currently unknown. Further investigation will be required to understand the quantum of the audit and outstanding returns.

### Trade Creditors

67. Based on the Applicants’ books and records, as at January 23, 2023, OTE Group’s unsecured obligations totaled approximately \$12.7 million.

### Litigation Claims Against OTE Group

68. The Proposed Monitor understands that OTE Group has been subject to a number of litigation claims including, *inter alia*:
  - (i) Claybar Claim: Claybar Contracting Inc., a fuel station construction company (“**Claybar**”), initiated a claim against OTE LP and certain other defendants due to outstanding amounts relating to the construction of certain retail gas stations located on First Nation reserves in Ontario. The Claybar Claim also includes allegations relating to construction issues pertaining to the Couchiching Blending Location, previously discussed herein.
  - (ii) McDougall Claim: McDougall Energy Inc. (“**McDougall**”) filed a claim against OTE GP, OTE LP and certain other defendants due to an alleged violation of an exclusive supply agreement between McDougall and certain other defendants resulting from an agreement to supply petroleum products to those defendants by OTE GP and OTE LP.
  - (iii) Employee Claims: OTE Group has received claims from former employees relating to employment issues and anticipates that further issues from other employees may arise in the future.
  - (iv) U.S. Claim: A complaint by OTE USA was filed against OTE LP in the United States District Court for the Eastern District of Michigan regarding amounts owed for the supply of fuel under a certain fuel supply agreement. The Applicants also are aware of other ongoing disputes with



suppliers over the alleged actions of OTE USA and anticipate that additional litigation may arise in the future on these matters.

69. The Proposed Monitor understands that the total liability of the above litigation claims against the Applicants is approximately \$15.8 million. These litigation claims have not been proven; however, for the purpose of this Report, an estimate has been provided.
70. Based on a preliminary review, there are certain notes payables on the historic financial statements. Additional investigations will be required to understand the nature of these amounts. Accordingly, these amounts have been excluded for the purpose of this analysis.
71. Due to the uncertainty around the OTE Group's books and records and alleged misconduct of the former executive, there may be additional litigation and/or other claims against the Applicants which are currently unknown. A Court-supervised claims process will be required as part of the CCAA Proceedings.

## **VIII. OTHER MATTERS**

72. Glenn Page owned and operated a group of petroleum stations ("**Gen7 Fuel Stations**") which purchased fuel from OTE LP. Since the departure of Glenn Page from OTE GP, the Gen7 Fuel Stations have ceased conducting any business with OTE Group which has reduced sales volumes by approximately 45%.
73. As noted earlier, as of July 2022, there were outstanding receivables from Gen 7 Fuel Stations of \$8.5 million which have not been collected to date. This has further impacted the Applicants' liquidity.
74. It was also uncovered by OTE Group that the profitability and liquidity of the Applicants has been further exacerbated by inadequate invoicing practices and the extension of unfavourable terms to a number of customers, which OTE Group is currently working to correct with KPMG's assistance.
75. OTE Group, with the assistance of KPMG, has taken steps to better understand the financial situation and implement business improvement strategies including, but not limited to:
  - (i) stabilizing the financial functions (i.e., financial reporting, forecasting, liquidity management);
  - (ii) getting access to and updating the accounting records and related systems (i.e., human resources), however as noted above, historical financial information is still largely missing;

- (iii) working to ensure appropriate controls and processing are in place for more accurate and timely reporting;
- (iv) correcting invoicing processes that have, in the past, incorrectly allowed for the invoicing of lower than prescribed tax rates related to fuel sales;
- (v) reviewing and assessing product costing; and
- (vi) revising operating structure and related costs.

## IX. THE APPLICANTS’ CASH FLOW FORECAST

76. OTE Group, in consultation with the Proposed Monitor, has prepared the Cash Flow Forecast for the purpose of projecting the Applicants’ estimated liquidity needs during the Forecast Period. A copy of the Cash Flow Forecast is attached hereto as **Appendix “B”**.

<b>Original Traders Energy 13-Week Cash Flow Forecast In C\$; unaudited</b>		<b>Total</b>
<b>Receipts</b>		
Customer collections	85,708,251	
Tax refunds	2,882,257	
<b>Total receipts</b>	<b>88,590,508</b>	
<b>Operating disbursements</b>		
Purchases	59,190,444	
Pre-filing payments/deposits	6,375,000	
Operating expense	5,342,848	
Rent and royalties	492,771	
Payroll	1,218,674	
Professional fees	875,000	
Tax remittances	19,275,835	
Bank payments	382,164	
<b>Total operating disbursements</b>	<b>93,152,736</b>	
<b>Net cash flow</b>	<b>(4,562,228)</b>	
<b>Opening cash</b>	<b>9,000,000</b>	
Net cash flow	(4,562,228)	
<b>Ending cash</b>	<b>4,437,772</b>	

77. The Cash Flow Forecast projects that the Applicants will experience a net cash outflow of approximately \$4.6 million over the Forecast Period, comprised of:

- (i) cash receipts of approximately \$88.6 million, primarily related to the collection of existing receivables and new sales generated from the sale of goods to customers;

- (ii) cash receipts also include the collection of \$2.9 million of U.S. tax refunds; and
  - (iii) cash disbursements of approximately \$93.2 million, primarily related to the purchase of fuel materials, tax remittances, critical supplier payments, payroll and benefits, bank payments and the costs of the CCAA Proceedings.
78. The Proposed Monitor understands the OTE Group is dependent on continuous and uninterrupted supply of fuel and production related services from certain third-party suppliers. An interruption to the OTE Group's supply chain could have an immediate and adverse impact on the OTE Group's business and ability to restructure. The OTE Group believes that the payment of certain pre-filing amounts to certain suppliers may be necessary to avoid significant disruption to its supply chain.
79. As noted in the Hill Affidavit, the Applicants have proposed in the Initial Order that they be authorized to, in consultation and with consent of the Monitor, pay for amounts owing for goods and services supplied prior to the Filing date by certain third-party suppliers, up to a maximum aggregate amount of \$6.4 million (the "**Pre-Filing Critical Supplier Payments**").
80. The Proposed Monitor is of the view that the uninterrupted, timely supply of fuel and other critical supplies and services is necessary to preserve the OTE Group's business and that payment of certain pre-filing amounts will be necessary. The majority of the Pre-Filing Critical Supplier Payments relate to fuel suppliers. Accordingly, the Proposed Monitor supports the Applicants' request for Initial Order to authorize it to make Pre-Filing Critical Supplier Payments, subject to the Monitor's consent.
81. As outlined in the above chart, the OTE Group is expected to have sufficient liquidity during the Forecast Period. The Applicants' operations are anticipated to be funded by cash on hand, U.S. tax refunds and cash generated from operations.
82. The Cash Flow Forecast has been prepared by the Applicants on a conservative basis using probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast. The Cash Flow Forecast reflects the Applicants' estimates of receipts and disbursements on a weekly basis over the Forecast Period.
83. The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA and the Canadian Association of Insolvency and Restructuring Professionals' standards of professional practice. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals'

standards of professional practice include standards for CCAA monitors in connection with their statutory responsibilities under the CCAA in respect of a monitor's report on the Cash Flow Forecast.

84. The Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to Information supplied to it by the Applicant. Since the probable and hypothetical assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by management of the Applicants for the probable and hypothetical assumptions, and the preparation and presentation of the Cash Flow Forecast. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe that, in all material respects:
- (i) the probable and hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast.
  - (ii) as at the date of this Report, the probable and hypothetical assumptions developed by the Applicants are not suitably supported and consistent with the restructuring plan of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or
  - (iii) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions.
85. The Proposed Monitor notes that the Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

## **X. RELIEF SOUGHT IN THE INITIAL ORDER**

86. As described herein, the Applicants are seeking the following relief within the Initial Order, *inter alia*:
- (i) declaring that OTE GP and 249 are entities to which the CCAA applies;
  - (ii) declaring that the Limited Partnerships enjoy the benefit of the protections provided to the Applicants under the Initial Order;
  - (iii) granting an administration charge and a directors' charge;
  - (iv) granting a stay of proceedings;
  - (v) appointing KPMG Inc. as Monitor with the additional power to compel documents, evidence and witnesses;

- (vi) ordering the stay and suspension of all rights and remedies of any regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry against the OTE Group, or their respective employees and representatives acting in such capacities, or affecting their business or property, except with the written consent of the OTE Group, the Monitor and on notice to the service list, or leave of the Court;
  - (vii) authorizing payments to certain critical suppliers for pre-filing expenses up to a maximum aggregate amount of \$6,375,000, any such payment to be made only with the consent of the Monitor and the Applicants, and as are necessary to facilitate the Applicants' ongoing operations and preserve value during the CCAA proceedings;
  - (viii) sealing the second affidavit of Scott Hill sworn January 27, 2023, which contains information that has been sealed by court order in another jurisdiction; and
  - (ix) such further and other relief as this Court may deem just and equitable.
87. This section of this Report discusses the Proposed Monitor's views on this relief; as noted previously in this Report, the Proposed Monitor is supportive of the sealing order sought, in light of the sealing order made by the court having jurisdiction over the extra-territorial case.

#### **Extension of Protection to the Limited Partnerships**

88. The Initial Order provides that the OTE Group be granted all of the protections and authorizations provided thereunder, including the listed limited partnerships, notwithstanding that OTE LP and OTE Logistics are not "companies" within the meaning of the CCAA.
89. The Proposed Monitor understands that OTE LP and OTE Logistics hold certain licenses that permit the OTE Group to conduct business operations, and that the business operations of the Applicants and OTE LP and OTE Logistics are intertwined on a day-to-day basis.
90. For the above reasons, the Proposed Monitor is of the view that protections and authorizations permitted to the Applicants should be extended to both OTE LP and OTE Logistics under the CCAA.

#### **Stay of Proceedings, including in respect of MOF**

91. The OTE Group is seeking relief that, notwithstanding section 11.1 of the CCAA, the stay of proceedings should apply to MOF as a regulator, except for the written consent of the OTE Group and the Proposed Monitor or leave of the Court.

92. As described further in the Hill Affidavit, the OTE Group believes that an insolvency event or the filing of these CCAA Proceedings may entitle the MOF to enforce certain of their rights and remedies to revoke the Gas Licenses and the Fuel Licenses. Any such enforcement would have material adverse consequences for the OTE Group, including the revocation of OTE Group's operational rights, which would severely harm or shut-down OTE Group's existing operations. If such actions are implemented by the MOF, this could impair the OTE Group's viability to continue as a going concern and would very likely derail any restructuring efforts.
93. As noted above, the OTE Group is continuing constructive discussions with the MOF; however, given the unique circumstances facing the OTE Group, the Proposed Monitor is of the view that the MOF should be temporarily stayed from exercising their rights and remedies in accordance with the Initial Order, provided that they are paid amounts owing to them in the ordinary course post-filing which will provide the OTE Group with a stable environment in which it can seek to restructure.

#### **Expanded Powers of the Monitor**

94. The Proposed Initial Order provides that KPMG be granted additional investigatory powers in addition to the regular powers ordinarily held by the Monitor in a traditional CCAA Proceeding.
95. In light of the lack of reliable historical information limited books and records of the Applicants and the alleged misappropriation of property and/or funds of the Applicants, such additional investigatory powers will aid the Monitor in seeking to identify and potentially recover assets of the Applicants for the benefit of their creditors, in addition to the Monitor's traditional statutory powers pursuant to sections 95 and 96 of the *Bankruptcy and Insolvency Act*, which are incorporated via reference within the CCAA. Accordingly, the Proposed Monitor supports the additional provisions in the Proposed Initial Order in this regard. The Monitor notes that such investigative powers afforded to the Monitor are not unusual in situations where a company's books and records are deficient, the historical financial information is unreliable and there are matters that merit further investigation, as is the case with the OTE Group.

#### **Court-Ordered Charges**

96. The Proposed Initial Order provides for certain charges (collectively, the "**Charges**"), on the current and future assets, undertakings and properties of the Applicants, including all proceeds thereof (the "**Property**"). As noted above, as per the requirements of the RBC Forbearance Agreement, any and all Charges will rank behind RBC's security position.

### **Administration Charge**

97. The proposed Initial Order provides for a priority charge up to a maximum amount of \$500,000 to secure the fees and disbursements incurred in connection with services rendered to the Applicants both before and after the commencement of the CCAA Proceedings in favour of the Monitor, Monitor's Counsel, and legal counsel to the Applicants (the "**Administration Charge**").
98. The quantum of the Administration Charge sought by the Applicants was determined in consultation with the Proposed Monitor.
99. The Proposed Monitor further understands that an increase in the amount of the Administration Charge, if necessary, will be considered in the Comeback Motion.
100. The Proposed Monitor believes that the Administration Charge is reasonable and appropriate in the circumstances given the complexities of the Applicants' business. Accordingly, the professionals require the benefit of the Administration Charge to protect them for their anticipated fees related to both preparing for these proceedings, as well as for their fees and costs during these proceedings. Without such protection, the professionals are not prepared to continue to provide services in these proceedings.

### **Directors' Charge**

101. The proposed Initial Order provides for a priority charge up to the maximum of \$250,000 to indemnify the current directors and officers of the Applicants (the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of these CCAA Proceedings (the "**Directors' Charge**") during the interim period prior to the granting of the Amended and Restated Initial Order.
102. The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent such coverage is insufficient to pay an indemnified amount. The Proposed Monitor understands that the Applicants maintains directors' and officers' liability insurance.
103. The amount of the Directors' Charge was calculated taking into consideration employee payroll and related expenses (including source deductions) as well as other employment-related liabilities that attract potential liability for the Directors and Officers.

104. As the Applicants will require the participation and experience of the Directors and Officers to consider and develop a restructuring plan and facilitate the successful completion of the CCAA Proceedings. The Proposed Monitor believes that the Directors' Charge (both the amount and the priority ranking) is required and reasonable in the circumstances and will advise the Court if a change in the amount or priority ranking is required.

## **XI. SUMMARY AND PROPOSED RANKING OF THE COURT-ORDERED CHARGES**

105. It is contemplated that the priorities of the Charges sought by the Applicants will be as follows, subject to the existing security held by RBC:

- (i) the Administration Charge; and
- (ii) the Directors' Charge.

## **XII. COMEBACK MOTION**

106. Should the Court grant the proposed Initial Order, the Proposed Monitor understands that the Applicants intend to return to the Court on or before February 9, 2023 for the Comeback Motion seeking:

- (i) an extension of the stay of proceedings established by the Initial Order;
- (ii) increases to the Administration Charge and the Directors' Charge as may be necessary; and
- (iii) certain other relief as may be required to advance the Applicants restructuring.

107. Subsequent to the granting of the Initial Order, KPMG (in its then capacity as Monitor) will report to the Court in connection with the Comeback Motion, as well as any other relief sought by the Applicants.

## **XIII. PROPOSED MONITOR'S CONCLUSION AND RECOMMENDATIONS**

108. Without CCAA protection, a shut-down of the Applicants' operations is inevitable, which would have an adverse impact on OTE Group's stakeholders, including employees, customers and First Nation communities located within Southern Ontario. The stay of proceedings and related relief granted under the CCAA will provide the Applicants with an opportunity to restructure their business and affairs for the benefit of their stakeholders.



109. Based on the estimated assets and liabilities as noted above, OTE Group is balance sheet insolvent and does not have sufficient realizable assets and funds required to meet its obligations as they become due, including accrued obligations to certain tax authorities, employee obligations, trade debt, rent and other contractual commitments. Given these circumstances, OTE is seeking protection under the CCAA to afford itself the necessary time under a Court-supervised proceeding to stabilize its business and create a process to understand the quantum of liabilities and claims. The CCAA Proceedings would also provide OTE Group an opportunity to explore a Plan under the CCAA that would seek to maximize creditor recoveries.

110. For the reasons set out in this Report, the Proposed Monitor is of the view that the relief requested by the Applicants is both appropriate and reasonable. The Proposed Monitor is also of the view that granting the relief requested in the Proposed Initial Order will provide the Applicants the best opportunity to restructure under the CCAA, thereby preserving value for the benefit of the Applicants' stakeholders. As such, the Proposed Monitor supports the Applicants' application for CCAA protection and respectfully recommends that the Court grant the relief sought by the Applicants in the Proposed Initial Order.

All of which is respectfully submitted this 30<sup>th</sup> day of January, 2023.

**KPMG Inc.**  
**In its capacity as Proposed Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



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**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

# **Appendix “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**


**CONSENT TO ACT AS MONITOR**

**KPMG INC.** hereby consents to act as the Court-appointed Monitor of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in respect of these proceedings.

Dated at Toronto this 27<sup>th</sup> day of January, 2023.

**KPMG INC.**

**Per:**

  
\_\_\_\_\_  
Name: Paul van Eyk  
Title: President

# **Appendix “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**

**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT  
(paragraph 10(2)(b) of the CCAA)**

The management of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") have developed the assumptions and prepared the attached statement of projected cash flow as of the 30th day of January 2023, consisting of the period from January 30, 2023 to April 30, 2023 (the "**Cash Flow Forecast**").

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow Forecast described in the notes therein, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow Forecast. All such assumptions are disclosed in the notes therein.

Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Cash Flow Forecast has been prepared solely for the purpose described in the notes therein, using the probable and hypothetical assumptions set out therein. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 30th day of January 2023.

**Original Traders Energy Ltd. and 2496750 Ontario  
Inc.**

\_\_\_\_\_  
Scott Hill  
President



Original Traders Energy															
13-Week Cash Flow Forecast															
In C\$; unaudited															
	Notes	1 2/5/22	2 2/12/22	3 2/19/22	4 2/26/22	5 3/5/22	6 3/12/22	7 3/19/22	8 3/26/22	9 4/2/22	10 4/9/22	11 4/16/22	12 4/23/22	13 4/30/22	Total
<b>Receipts</b>	<b>1</b>														
Customer collections	2	5,833,293	5,974,355	5,974,355	5,974,355	6,086,937	6,408,763	6,408,763	6,408,763	6,408,763	6,753,309	7,825,532	7,825,532	7,825,532	85,708,251
Tax refunds	3	-	-	-	-	-	-	-	-	1,441,317	-	1,440,940	-	-	2,882,257
<b>Total receipts</b>		<b>5,833,293</b>	<b>5,974,355</b>	<b>5,974,355</b>	<b>5,974,355</b>	<b>6,086,937</b>	<b>6,408,763</b>	<b>6,408,763</b>	<b>6,408,763</b>	<b>7,850,079</b>	<b>6,753,309</b>	<b>9,266,472</b>	<b>7,825,532</b>	<b>7,825,532</b>	<b>88,590,508</b>
<b>Operating disbursements</b>															
Purchases	4	-	4,358,740	4,358,740	4,358,740	4,663,759	4,663,759	4,663,759	4,663,759	4,663,759	5,698,857	5,698,857	5,698,857	5,698,857	59,190,444
Pre-filing payments/deposits	5	5,500,000	218,750	218,750	218,750	218,750	-	-	-	-	-	-	-	-	6,375,000
Operating expense	6	940,639	186,783	186,783	1,690,494	438,705	183,660	183,660	187,370	183,660	480,550	225,611	225,611	229,322	5,342,848
Rent and royalties	7	144,164	-	-	-	175,767	-	-	-	-	172,840	-	-	-	492,771
Payroll	8	93,620	93,620	93,620	93,620	84,863	84,863	84,863	84,863	84,863	104,970	104,970	104,970	104,970	1,218,674
Professional fees	9	135,000	85,000	65,000	65,000	90,000	45,000	45,000	45,000	100,000	50,000	50,000	50,000	50,000	875,000
Tax remittances	10	100,000	100,000	5,227,557	100,000	100,000	100,000	5,515,719	100,000	100,000	100,000	7,532,559	100,000	100,000	19,275,835
Bank payments	11	127,388	-	-	-	127,388	-	-	-	-	127,388	-	-	-	382,164
<b>Total operating disbursements</b>		<b>7,040,812</b>	<b>5,042,894</b>	<b>10,150,451</b>	<b>6,526,605</b>	<b>5,899,231</b>	<b>5,077,281</b>	<b>10,493,000</b>	<b>5,080,992</b>	<b>5,132,281</b>	<b>6,734,605</b>	<b>13,611,997</b>	<b>6,179,438</b>	<b>6,183,149</b>	<b>93,152,736</b>
<b>Net cash flow</b>		<b>(1,207,518)</b>	<b>931,461</b>	<b>(4,176,096)</b>	<b>(552,250)</b>	<b>187,706</b>	<b>1,331,482</b>	<b>(4,084,237)</b>	<b>1,327,771</b>	<b>2,717,798</b>	<b>18,704</b>	<b>(4,345,525)</b>	<b>1,646,094</b>	<b>1,642,383</b>	<b>(4,562,228)</b>
Opening cash		9,000,000	7,792,482	8,723,943	4,547,847	3,995,597	4,183,303	5,514,785	1,430,547	2,758,318	5,476,116	5,494,820	1,149,295	2,795,389	9,000,000
Net cash flow		(1,207,518)	931,461	(4,176,096)	(552,250)	187,706	1,331,482	(4,084,237)	1,327,771	2,717,798	18,704	(4,345,525)	1,646,094	1,642,383	(4,562,228)
Ending cash		7,792,482	8,723,943	4,547,847	3,995,597	4,183,303	5,514,785	1,430,547	2,758,318	5,476,116	5,494,820	1,149,295	2,795,389	4,437,772	4,437,772

**Original Traders Energy Group  
13-Week Cash Flow Forecast  
Notes and Summary of Assumptions**

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**In the Matter of the CCAA Proceedings of Original Traders Energy Ltd. and 2496750 Ontario Inc.  
(collectively the “Applicants”)**

**Disclaimer**

In preparing this cash flow forecast (the “**Cash Flow Forecast**”), the Applicants have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. Since the Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty, or other assurance that any of the estimates, forecasts or projections will be realized.

The Cash Flow Forecast is presented in Canadian dollars. All defined terms that are not otherwise defined herein are to have the same meaning ascribed to them in the pre-filing report of the Proposed Monitor dated January 30, 2023.

**Note 1 Purpose of the Cash Flow forecast**

The purpose of the Cash Flow Forecast is to present the estimated cash receipts and disbursements of the Applicants for the period from January 30, 2023 to April 30, 2023 (the “**Forecast Period**”), in respect of its proceedings under the CCAA. The Cash Flow Forecast has been prepared by management of OTE Group (“**Management**”), in consultation with the Proposed Monitor based on available financial information at the date of OTE Group’s application for the Initial Order in accordance with Section 10(2)b) of the CCAA. Readers are cautioned that this information may not be appropriate or relied upon for any other purpose.

**Note 2 Customer Collections**

Customer collections are comprised of income earned from the collection of existing receivables and new sales generated from the sale of fuel products to petroleum stations and First Nations’ communities across Southern Ontario.

**Note 3 U.S. Tax Refunds**

These receipts relate to the collection of U.S. tax refunds.

**Note 4 Purchases**

OTE Group purchases inventory from various third-party suppliers. Forecasted purchases are reflective of current operating levels.

**Note 5 Pre-Filing Payments/Deposits**

These disbursements relate to amounts owing for goods and services supplied prior to the filing date by certain third-party suppliers, up to a maximum aggregate amount of \$6.375 million (the “**Pre-Filing Critical Supplier Payments**”), if in the opinion of OTE Group, the supplier is critical to the ongoing operations and OTE Group’s business.

**Note 6 Operating Expenses**

Operating expenses are comprised of production expenses related to blending fuel products and general business expenses, including insurance, utilities, freight, general and administrative, among others.

**Note 7 Rent and Royalties**

These disbursements represent rental payments for the Applicant’s four leased facilities. Rental payments include base rent and other costs provided for in the respective leases. Royalties are payable to the unrelated third parties which OTE Group leases two of its blending sites from and

are based on quantities sold out of each location. Rent and royalties are forecasted based on historical run-rates and paid on the first day of each month.

**Note 8**      **Payroll**

Payroll expenses include salaries and wages, payroll taxes and remittances, accrued vacation, and employee benefits paid to OTE Group Employees. Payroll expenses are forecasted based on current headcount levels and are paid weekly.

**Note 9**      **Professional Fees**

Professional fees include payments to the Applicant's legal counsel, the Proposed Monitor, and the Proposed Monitor's legal counsel.

**Note 10**     **Tax Remittances**

Tax remittances relate to federal and provincial tax payments made on the fifteenth day of each month related to the month prior.

**Note 11**     **Bank Payments**

Bank payments represent lease payments made to the secured lender, Royal Bank of Canada ("RBC"), during the Forecast Period.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**

**MONITOR'S REPORT ON CASH FLOW STATEMENT  
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash flow of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") prepared as of the 30th day of January 2023, consisting of the period from January 30, 2023 to April 30, 2023 (the "**Cash Flow Forecast**"), has been prepared by management of the Applicants, in consultation with the Proposed Monitor for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast.

Our review and consultation consisted of inquiries, analytical procedures and discussions related to information supplied by management and employees of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or
- c) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow Forecast will be achieved.

The Cash Flow Forecast has been prepared solely for the purpose described in the notes thereto and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 30th day of January 2023.

**KPMG Inc.**  
**In its capacity as Proposed Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per: 

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Paul van Eyk  
CPA, CA, CIRP, IFA, Fellow of INSOL

Court File No.: CV-23-00693758-00CL

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**FIRST REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**February 9, 2023**

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**APPENDIX “A” – Notice Published in The Globe and Mail (National Edition) on February 3, 2023**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP, AND  
ORIGINAL TRADERS ENERGY LP  
(collectively the "OTE Group")**

**FIRST REPORT OF KPMG INC.**  
**In its capacity as Monitor of the Applicants**

**FEBRUARY 9, 2023**

## I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), OTE Group was granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants (defined herein) from January 30, 2023, until February 9, 2023 (the “**Initial Stay Period**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants' CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**” and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding, the Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry on operations that are integral to the business of the Applicants. The Applicants similarly seek to have the protections granted in the Amended and Restated Initial Order extend to the Limited Partnerships. The terms “**OTE Group**” and “**Applicants**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of Court and other materials pertaining to the CCAA Proceedings are available on the Monitor’s Website, as defined below.
4. Capitalized terms used but not defined in this report are as defined in the Initial Order.
5. In accordance with the Initial Order, the Court is scheduled to hear a motion by the Applicants for further relief on February 9, 2023 (the “**Comeback Motion**”).
6. The principal purpose of the CCAA Proceedings is to stabilize the Applicants' business and to provide a forum to explore a plan of compromise or arrangement under the CCAA (a “**Plan**”) that would seek to maximize creditor and stakeholder recoveries. The OTE Group intends to move through the CCAA Proceedings expeditiously, with the goal of emerging as a going-concern business as soon as practicable.

## II. PURPOSE OF REPORT

7. The purpose of the First Report of the Monitor (the “**First Report**”) is to provide information to the Court pertaining to:
  - (i) the activities of the OTE Group and the Monitor since the issuance of the Initial Order;
  - (ii) the OTE Group’s request for certain amendments to the Initial Order, as set out in the draft amended and restated initial order, included as part of the Company’s Motion Records for the within motion (the “**Amended and Restated Initial Order**”), including:
    - (a) extending the Stay period, as defined in the Initial Order, to April 28, 2023;
    - (b) amending the breadth of the Initial Stay as applied to regulators which have authority in respect of regulations pertaining to the fuel and/or gasoline industry (“**Regulators**” and each a “**Regulator**”) with certain provisions based upon discussions with the Ministry of Finance (the “**MOF**”); and
    - (c) Increasing the Directors' Charge (as defined below) to \$2,250,000.00.
  - (iii) the Monitor’s conclusions and recommendations.

## III. TERMS OF REFERENCE

8. The First Report should be read in conjunction with the Affidavit of Scott Hill sworn January 27, 2023 (the “**Hill Affidavit**”), filed by the Applicants in support of the relief sought in the within motion, as certain information contained in the Hill Affidavit has not been included herein to avoid duplication.
9. In preparing the First Report, the Monitor has relied solely on information and documents provided by the Applicants and their advisors, including unaudited financial information, declarations and the Hill Affidavit (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the First Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

10. Future orientated financial information contained in the Cash Flow Forecast is based on the Applicants' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **IV. BACKGROUND**

12. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is detailed extensively in the Hill Affidavit, and the Pre-Filing Report.
13. The First Report should also be read in conjunction with the second Affidavit of Scott Hill sworn February 7, 2023 (the "**Hill Comeback Affidavit**"), as certain information contained therein has not been included here in order to avoid unnecessary duplication.

#### **V. MONITORS ACTIVITIES SINCE APPOINTMENT**

14. The Monitor has established a website (<http://home.kpmg/ca/OTEGroup>) (the "**Monitor's Website**") and an email address ([otegroup@kpmg.ca](mailto:otegroup@kpmg.ca)) and hotline (local: 416-468-7000/ toll free: 1-833-665-0666) for stakeholders to obtain information from the Monitor.
15. In accordance with the Initial Order, the following notices and documents have been posted on the Monitor's Website and/or sent to the OTE Group's stakeholders by the Monitor since the date of the Initial Order:
  - (i) the Application Record of OTE Group dated January 27, 2023;
  - (ii) the Report of KPMG in its capacity as Proposed Monitor dated January 30, 2023 (the "**Pre-Filing Report**");
  - (iii) the Service List;
  - (iv) a list showing the names and addresses of creditors of the OTE Group with claims greater than \$1,000 and the estimated amount of those claims; and
  - (v) a copy of the creditor notices.

16. The creditor notices regarding the CCAA Proceedings were also sent to all known creditors of the OTE Group within five days of the issuance of the Initial Order.
17. In accordance with the Initial Order and section 23(1)(a) of the CCAA, the Monitor published a notice in the *Globe and Mail* (National Edition) concerning the CCAA Proceedings, which ran on February 3, 2023 and will run again on February 10, 2023. A copy of the published notice is attached hereto at Appendix "A".
18. The Monitor, with the support of its legal advisors, has been working with the OTE Group, *inter alia*, with respect to the following:
  - (i) supporting OTE Group with managing relationships with key stakeholders, including customers and suppliers and implementing a communication plan to advise of the CCAA Proceedings;
  - (ii) meeting with OTE Group's employees and providing responses to frequently asked questions;
  - (iii) working with the OTE Group to implement procedures to monitor cash flows and making payment in accordance with the Initial Order;
  - (iv) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA Proceedings, including the MOF as noted below;
  - (v) filing prescribed documents with the Office of the Superintendent of Bankruptcy pursuant to the CCAA;
  - (vi) reviewing material filed with the Court in respect of the CCAA Proceedings;
  - (vii) sending letters to former directors, officers and others affiliated with the OTE Group and its directors and officers, based upon lists provided by the OTE Group, requesting that the Monitor be provided copies and/or access to books, record and/or any information pertaining to the OTE group;
  - (viii) reviewing pre-filing payments in accordance with the Pre-Filing Critical Supplier Payments budget; and
  - (ix) preparing this First Report.



## VI. STATUS OF FUEL AND GAS LICENSES

19. At the time of the Initial Order, OTE Group had not come to a formal agreement with the MOF that would prevent the MOF from enforcing on certain of their rights and remedies to revoke the Gas Licenses and the Fuel Licenses. As noted in the Pre-Filing Report, any such enforcement would have material adverse consequences for the OTE Group, including the revocation of OTE Group's operational rights, which would severely harm or shut-down OTE Group's existing operations. If such actions were implemented by the MOF, it would impair the OTE Group's viability to continue as a going concern and would very likely derail any restructuring efforts.
20. Since the Filing Date, OTE Group and the MOF came to an agreement summarized in a letter dated February 1, 2023, from the MOF to OTE Group (the "**MOF Agreement**"). In the MOF Agreement, OTE Group was granted conditional time-limited Gas Licenses and Fuel Licenses for the period of February 1, 2023 to March 31, 2023, subject to the following terms:
  - (i) OTE Group having agreed to provide security in the amount of \$2 million, to be provided in two installments. OTE Group elected to provide security in the form of cash security. This security will be held for the purpose of compliance for the period of time after the date security was provided;
  - (ii) the MOF having received confirmation that the initial security instalment of \$500,00 (the "**Initial Installment**") has been sent via courier;
  - (iii) the second security instalment in the amount of \$1.5 million issued by certified cheque and made payable to the MOF; will be delivered from February 9, 2023, to no later than February 21, 2023, upon obtaining Court approval on the extension of the CCAA; and
  - (iv) OTE Group adheres to the returns and payment schedule for all monthly filings, post the commencement of CCAA Proceedings, in accordance with subsections 3.2(1) and 8(2) of the GTA and subsections 3.2(1) and 10(1) of the FTA.
21. As of the date of this report, the Monitor understands the OTE Group has provided the Initial Installment and has put all necessary procedures in place to comply with the remaining MOF Agreement terms. The Monitor notes that the OTE Group and the MOF have remained in continuing constructive discussions since the date of the Initial Order; however, given the unique circumstances facing the OTE Group, the Monitor is of the view that the MOF should continue to be stayed from exercising their rights and remedies in accordance with the Initial Order, provided that OTE Group

remains in compliance with the MOF Agreement, which will provide the OTE Group with a stable environment in which it can seek to restructure. The Monitor understands that counsel for the OTE Group and the MOF have worked out proposed language for the continuation of the stay in the Amended and Restated Initial Order, as described below.

22. As noted above, the MOF Agreement has extended Gas Licenses and Fuel Licenses to March 31, 2023. This timeline was agreed to by OTE Group and the MOF to align with the requested extension in these CCAA Proceedings, as noted below. It is important to note that the OTE Group, with the support of the Monitor, will continue discussions with the MOF on an appropriate extension past March 31, 2023, and in a manner that aligns with these CCAA Proceedings.
23. The Monitor understands that the OTE Group is proposing revisions to paragraphs 19 and 20 of the Amended and Restated Initial Order following discussions with counsel for the MOF to enable regulatory agencies to seek leave of the Court to vary the stay in relation to revocation of licenses held by any member of the OTE Group on ten days' notice and to clarify that the stay provisions do not prevent any government or regulatory agency or body from taking any action it deems necessary:
  - (i) to protect public or employee health and/or safety;
  - (ii) to address exigent environmental contamination, hazards or other adverse effects; or
  - (iii) to investigate and prosecute criminal and quasi-criminal offences under federal or provincial laws, but enforcement of monetary orders arising therefrom are stayed subject to further order of this Court.
24. The Monitor has reviewed the proposed revisions to paragraphs 19 and 20 of the Amended and Restated Initial Order and is satisfied that they are appropriate in the circumstances.

## **VII. DIRECTOR'S CHARGE**

25. The Initial Order provided for a priority charge up to the maximum of \$250,000 to indemnify the Directors and Officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of these CCAA Proceedings (the “**Directors’ Charge**”) during the interim period prior to the granting of the Amended and Restated Initial Order. OTE Group is seeking an increase of this charge to a maximum of \$2,250,000.

26. The Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent such coverage is insufficient to pay an indemnified amount. The Monitor understands that the Applicants maintains directors' and officers' liability insurance.
27. The amount of the Directors' Charge was calculated taking into consideration employee payroll, vacation pay and related expenses (including source deductions) as well as other employment-related liabilities that could attract potential liability for the Directors and Officers. In addition to employment-related liabilities, the increase in the Directors' Charge of \$2,000,000 is related to potential Directors and Officers liability as a result of currently estimated federal and provincial sales taxes for which the Directors and Officers could potentially have personal liability, depending upon statutory requirements, less any director's and officer's liability insurance coverage.
28. Based on the OTE Group's cash flow projections and as indicated in the chart below, the OTE Group estimates that their monthly revenue will be approximately \$22 million for February through April, 2023, which will result in a forecasted monthly sales tax liability of \$7.1 million during that same period. The increase in the Director's Charge of \$2,000,000 along with any director's and officer's liability insurance will provide partial coverage for potential Directors and Officers liability (subject to statutory requirements of the applicable taxing statutes) related to the estimated gross sales tax amounts.
29. The Applicants require the participation and experience of the Directors and Officers to continue operating the business of the OTE Group to ensure uninterrupted supply of fuel to the First Nations communities and to consider and develop a restructuring plan and facilitate the successful completion of the CCAA Proceedings. The Monitor believes that the Directors' Charge (both the amount and the priority ranking) is required and reasonable in the circumstances and will advise the Court if a change in the amount or priority ranking is required in the future.

## **VIII. EXTENSION OF THE STAY PERIOD**

30. The Stay Period expires on February 9, 2023. OTE Group is seeking an extension of the Stay Period up to and including April 28, 2023.
31. The Monitor supports the Company's request for an extension of the Stay Period from February 9, 2023, up to and including April 28, 2023 for the following reasons:
  - (i) OTE Group has acted and continues to act in good faith and with due diligence;

- (ii) the extension will provide OTE Group with the opportunity to continue its review of its restructuring options with the assistance of counsel and the Monitor, including, among other things, exploring a potential Plan;
- (iii) the extension falls within the timeline provided by in the MOF Agreement;
- (iv) the extension will allow the Company to develop a claims process and obtain Court approval thereof; and
- (v) the granting of the extension should not materially prejudice any creditor. The OTE Group is projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period.

## **IX. MONITOR'S RECOMMENDATIONS**

- 32. For the reasons set out in this First Report, the Monitor is of the view that the relief requested by OTE Group is both appropriate and reasonable. The Monitor is also of the view that granting the relief requested will provide OTE Group the best opportunity to complete a restructuring under the CCAA, thereby preserving value for the benefit of OTE Group's stakeholders.
- 33. Based on the foregoing, the Monitor respectfully recommends that this court approve the relief sought in the Amended and Restated Initial Order.

All of which is respectfully submitted this 9<sup>th</sup> day of February 2023.

**KPMG Inc.**  
**In its capacity as Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



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**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

## **Appendix “A”**

ties about how the technology would work in a cold climate and it will take several years to assess those ahead of a decision to launch any related manufacturing in the region, he said.

Alstom, which took over Bombardier's train plants in La Pocatière, Que., Kingston and Thunder Bay as part of the acquisition, has been flexing its muscle in Canada of late as it tries to position itself as a partner of choice for governments trying to decarbonize their economies. The company is also

achieve carbon neutrality by 2050, is keen to see whether "green hydrogen" generated from its hydroelectric power is a viable way to help reduce greenhouse gas emissions for its transportation sector.

"Hydrogen will become important for heavy transport and for industrial processes," said Pierre Fitzgibbon, Minister of the Economy, Innovation and Energy. He said some 45 per cent of Quebec's greenhouse gas emissions come from transportation and about

Quebec will fund \$3-million of the \$8-million estimated cost of the four-month trial.

## Head of CIBC's innovation banking arm announces plan to step down

**JAMES BRADSHAW**  
INSTITUTIONAL INVESTING  
REPORTER

The head of Canadian Imperial Bank of Commerce's burgeoning innovation banking unit, Mark McQueen, is leaving the bank.

Mr. McQueen announced his plans to step down as president and executive managing director of CIBC Innovation Banking on his personal blog on Thursday. He has been at the bank for five years, and wrote that "it's the appropriate time to chart my next adventure."

"I'm at the right age to still have time for one more great career, and I'm old enough to know what to do this time," Mr. McQueen said in an interview.

He said he has not decided what he will do next, but is interested in opportunities that could include an entrepreneurial ven-

ture, a corporate role or a public-service oriented position. CIBC has not yet revealed who will succeed him at the helm of CIBC Innovation Banking.

Mr. McQueen joined CIBC in 2018 through the bank's acquisition of Wellington Financial, a Toronto-based specialty finance firm he led that specialized in backing early- and mid-stage technology companies through a \$300-million fund.

Wellington served as a cornerstone for the launch of CIBC Innovation Banking, a revamped tech banking division that has ramped up the pace of its investments. It has added key bankers and helped spur rivals to bulk up their own tech banking services - for example, California-based Silicon Valley Bank set up shop in Canada, and Royal Bank of Canada has expanded and merged its tech banking and venture units to create its RBCx platform.

In recent years, CIBC capitalized on a boom for technology companies that attracted ballooning investments and soaring valuations. Over a three-year span, CIBC Innovation Banking expanded its loan book from \$400-million to \$2.9-billion and boosted profits before taxes from \$12-million to \$59-million, according to a presentation to investors last year. It then set a target to triple that profit-before-taxes number by 2025.

But that target was set just before a sharp downturn in tech began late in 2021. Since then, rising interest rates and high inflation have brought sky-high valuations crashing back down and created a drumbeat of layoffs as companies cut costs to conserve cash.

Mr. McQueen said in his blog that CIBC's innovation unit "committed more than \$10-billion in financing" to startups and growth companies over five years.

to make it work, which is not lost on the Legault government. "We're ahead of a lot of other

evaluates the viability of hydro-gen rail propulsion for North America.

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### LEGALS

COURT FILE NO. CV-23-00693758-00CL

IN THE ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C.1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS  
LP AND ORIGINAL TRADERS ENERGY LP (collectively, the "OTE Group")

Take notice that on January 30, 2023, the OTE Group commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").

KPMG Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the "Court") as Monitor (the "Monitor") in the Company's CCAA proceedings pursuant to the Order of the Court dated January 30, 2023 (the "Initial Order").

Notice is hereby given that a copy of the Initial Order and the Company's application materials are posted on the Monitor's website at: <http://home.kpmg.ca/OTEGroup>

The Monitor will post additional relevant information and documentation related to these proceedings on the Monitor's website as they become available. Interested persons may contact the Monitor directly for further information at:

**KPMG Inc.**  
333 Bay Street, Suite 4600  
Toronto, ON, M5H 2S5

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Court File No.: CV-23-00693758-00CL

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**SECOND REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**March 13, 2023**

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Court File No.: CV-23-00693758-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP, AND**  
**ORIGINAL TRADERS ENERGY LP**  
**(collectively the "OTE Group")**

**SECOND REPORT OF KPMG INC.**  
**In its capacity as Monitor of the OTE Group**

**March 13, 2023**

## I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), OTE Group was granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants (defined herein) from January 30, 2023, until February 9, 2023 (the “**Initial Stay Period**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants' CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**” and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. The Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry-on operations that are integral to the business of the Applicants. The Applicants similarly seek to have the protections granted in the Amended and Restated Initial Order extend to the Limited Partnerships. The terms “**OTE Group**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of Court and other materials pertaining to the CCAA Proceedings are available on the Monitor’s website.
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items;
  - (i) extending the Stay Period to April 28, 2023;
  - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
  - (iii) increasing the Directors Charge to \$2,250,000.
5. Capitalized terms used but not defined in this report are as defined in the Amended and Restated Initial Order.

## II. PURPOSE OF REPORT

6. The purpose of the Second Report of the Monitor (the “**Second Report**”) is to provide information to the Court pertaining to:
  - (i) the OTE Group's request for interlocutory injunctive relief (the “**Injunctive Order**”) against Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**” and collectively the “**Mareva Respondents**”), as it relates to the Italian Yacht (defined herein);
  - (ii) the OTE Group's request that they be authorized to commence proceedings under Chapter 15 (“**Chapter 15 Proceedings**”) of the United States Bankruptcy Code (the “**US Code**”) and that the Monitor be authorized to act as foreign representative in those proceedings;
  - (iii) the Monitor’s conclusions and recommendations.

## III. TERMS OF REFERENCE

7. The Second Report should be read in conjunction with the Affidavit of Scott Hill sworn March 12, 2023 (the “**Fourth Hill Affidavit**”), filed by the OTE Group in support of the relief sought in the within motion, as certain information contained in the Fourth Hill Affidavit has not been included herein to avoid duplication.
8. In preparing the Second Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations and the Fourth Hill Affidavit in addition to information and documents from third parties that responded to the Monitor’s Information Requested Letters defined herein (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Second Report, KPMG has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### IV. BACKGROUND

10. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is detailed extensively in the First Affidavit of Scott Hill dated January 27, 2023, and the Pre-Filing Report.
11. As noted in the Initial Order and the Amended and Restated Initial Order, the Monitor has been granted expanded investigative powers. Shortly after the Filing Date, the Monitor sent letters (the "**Information Request Letters**") to certain parties (collectively the "**Requested Parties**") who may have been in possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**"). The Information Request Letters instructed Requested Parties to respond with any of the Requested Information in their possession within thirty (30) days and/or any information the Requested Parties may have on the whereabouts of the Requested Information. Further to the Information Request Letters, the Monitor and its counsel had initial discussions with certain counsel representatives of the Requested Parties about the Monitor's information requests.
12. As at the date of the Second Report, the Monitor has received some Requested Information from certain of the Requested Parties and the Monitor is in process of conducting a detailed review of same. The Monitor intends to be back in front of this Court at a later date to report more fully on the status of the Monitor's review of the Requested Information received and may seek further Court assistance if the Information Request Letters are not complied with and/or the Monitor is not agreeable to the extensions of time that may be sought by any of the Requested Parties.

#### V. ITALIAN YACHT

13. As detailed in the Fourth Hill Affidavit, the Monitor understands that 265 purchased a seventy-foot yacht bearing the name "Cuz We Can" (the "**Italian Yacht**") from Pride Marine Group ("**Pride Marine**") substantially using funds wired directly from the OTE Group's bank accounts, and that 265 caused OTE Logistics to guarantee a chattel mortgage held by Essex Lease Financial Corporation ("**Essex**"), secured on the Italian Yacht. The Monitor also notes that the OTE Group is not in the business of owning and/or managing maritime vessels.
14. The Monitor notes that Pride Marine was one of the Requested Parties that received an Information Request Letter. In response to the Information Request Letter, Pride Marine provided the following items with respect to its sale of the Italian Yacht:

- (i) a copy of a purchase contract (the "**Yacht Purchase Contract**") dated September 20, 2020 and signed by Page as between Pride Marine, Page, and Gen7 Logistics LP ("**Gen7 Logistics**") with a total before tax in the amount of USD \$3,300,000 (the "**Purchase Price**"). Gen7 Logistics is a prior name of OTE Logistics as noted in the Fourth Hill Affidavit. A copy of the Yacht Purchase Contract is appended as Exhibit "J" to the Fourth Hill Affidavit;
  - (ii) a copy of an invoice (the "**Pride Invoice**") containing the breakdown of the payment for the Italian Yacht. A copy of the Pride Invoice is appended as Exhibit "L" to the Fourth Hill Affidavit;
  - (iii) a copy of certain Pride Marine bank statements detailing funds received by Pride Marine from accounts belonging to both OTE Group and 265 during the period of September 22, 2020 to August 12, 2021 (the "**Pride Marine Payments**"); and
  - (iv) a copy of a delivery confirmation signed by Page on August 15, 2021 indicating that the Italian Yacht had passed a pre-delivery inspection.
15. As indicated in the chart below, the Purchase Price of the Italian Yacht was substantially funded by the OTE Group with wire transfers totalling USD \$3,218,500. As the Pride Marine bank statements contain confidential information of Pride Marine that is not specifically related to the OTE Group's payments, the Monitor has not included the bank statements as an appendix in order to protect such confidential information and has instead prepared the below summary based upon the information it received from Pride Marine.

<b>Summary of Italian Yacht Payments</b>				
<b>Date</b>	<b>Payor</b>	<b>Payee</b>	<b>Payment Currency</b>	<b>USD \$</b>
9/22/2020	ORIGINAL TRADERS ENERGY	Pride of Muskoka Marine Limited	USD	500,000.00
10/9/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
11/10/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
11/20/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
12/8/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
12/15/2020	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
1/15/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
1/20/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
2/5/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
2/16/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
3/9/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
3/30/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
4/15/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
4/28/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
5/14/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
5/18/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	118,500.00
6/7/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
6/10/2021	GEN7 FUEL MANAGEMENT	Pride of Muskoka Marine Limited	USD	100,000.00
8/5/2021	ORIGINAL TRADERS ENERGY	Pride of Muskoka Marine Limited	USD	1,000,000.00
<b>Purchase Price Funded by OTE Group</b>			<b>USD</b>	<b>3,218,500.00</b>
8/12/2021	2658658 ONTARIO INC.	Pride of Muskoka Marine Limited	USD	100,000.00
<b>Purchase Price Funded by 265</b>			<b>USD</b>	<b>100,000.00</b>
<b>Total Purchase Price</b>			<b>USD</b>	<b>3,318,500.00</b>
8/26/2021	ORIGINAL TRADERS ENERGY	North Cove Marina	USD	8,400.00
9/20/2021	ORIGINAL TRADERS ENERGY	North Cove Marina	USD	8,400.00
6/9/2022	ORIGINAL TRADERS ENERGY	Azimut Benetti SPA	USD	5,751.00
<b>Other Italian Yacht Related Payments</b>			<b>USD</b>	<b>22,551.00</b>
<b>Grand Total Italian Yacht Payments</b>			<b>USD</b>	<b>3,341,051.00</b>

16. In addition to the above amounts, the Monitor notes that per Exhibit "P" to the Fourth Hill Affidavit, the OTE Group has a copy of an excel spreadsheet excerpt received from its customs broker that indicates payments made by OTE Group entities for duties in the amount of \$374,675.24 and GST of in the amount of \$226,886.67 in respect of the Italian Yacht (the "**Tax Payment**").
17. The Monitor also notes that Essex was another one of the Requested Parties that responded to the Information Request Letter. Essex provided the Monitor with the following information related to the financing it provided on the purchase of the Italian Yacht:
- (i) a copy of a loan and security agreement between Essex and 265 dated July 19, 2021 (the "**Yacht Financing Agreement**");

- (ii) a copy of a letter of direction from 265 instructing Essex to distribute financing proceeds to Gen7 Fuel Management Services LP (“**Gen7 Fuel**”) (the “**265 Direction**”). Gen7 Fuel is a prior name of OTE Logistics as noted in the Fourth Hill Affidavit;
  - (iii) certain wire transfer details confirming that Gen7 Fuel received CAD \$1,230,000 from Essex on August 20, 2021 (the “**Essex Wire Transfer**”). Copies of the Yacht Financing Agreement, 265 Direction and Essex Wire Transfer are appended as Exhibit "N" to the Fourth Hill Affidavit; and
  - (iv) copies of two guarantees of the Italian Yacht chattel mortgage dated July 21, 2021: one purportedly executed by Brian Page as director on behalf of Gen7 Fuel (the previous name of OTE Logistics) (the “**Gen 7 Guarantee**”) and the other purportedly executed by Donald Herbert Miles Hill as director of 2496750 Ontario Inc. (the “**249 Guarantee**”). Copies of the Gen 7 Guarantee and the 249 Guarantee are appended as Exhibit "D" and Exhibit "O", respectively to the Fourth Hill Affidavit.
18. Based on the timing of payments, the Monitor notes that the Essex Wire Transfer appears to have been used to fund a portion of the Pride Marine Payments.
19. Further, as detailed in the Fourth Hill Affidavit and the Affidavit of Donald Herbert Miles Hill sworn March 12, 2023 (the “**Miles Hill Affidavit**”), the Monitor understands it is the OTE Group's position that Brian Page was not actually a director of Gen7 Fuel and therefore had no authority to execute the Gen 7 Guarantee and that Miles Hill did not execute the 249 Guarantee and his signature was forged.
20. Based on these details and the Monitor’s review of the Requested Information received from both Pride Marine and Essex and other available OTE Group information, the Monitor notes that significant OTE Group funds appear to have been misappropriated or paid by the OTE Group without proper authorization to purchase the Italian Yacht.

## **VI. INJUNCTIVE ORDER**

21. The Monitor shares the concerns of the OTE Group that the Italian Yacht is a material asset and that the Italian Yacht and any sale proceeds thereof must not be permitted to disappear, dissipate or be moved beyond the reach of the OTE Group and its creditors. This is of particular concern given the evidence set out in the Fourth Hill Affidavit that the yacht has regularly been moved between international jurisdictions, attempts have been made to hide or obscure its identity, including changing its name, removing it from Transport Canada's registration system and apparently deactivating or

interfering with its maritime tracking devices such that the Italian Yacht cannot be located using its GPS locator. In addition, the Italian Yacht has apparently been put up for sale by multiple boat brokers under apparently suspicious circumstances, including in Bimini and Florida, all as summarized in paragraphs 36-44 of the Fourth Hill Affidavit.

22. In addition to the claims of the OTE Group noted in the Fourth Hill Affidavit, including the claims asserted in the Page Claim (as defined in the Fourth Hill Affidavit), the Monitor continues to review the Pride Marine Payments and whether these wire transfers and transactions connected therewith could potentially constitute preferences or transfers at undervalue pursuant to sections 95 and 96 of the *Bankruptcy and Insolvency Act* or otherwise constitute impugnable transactions pursuant to applicable law. Accordingly, the Monitor is supportive of the Injunctive Order sought by the OTE Group to prevent the Italian Yacht and any proceeds from the sale thereof from dissipating while the Monitor conducts its investigation, after which it will report back to the Court.
23. Since it is contemplated that the Italian Yacht and any proceeds from the sale thereof would simply be frozen and not paid to the OTE Group or any other person pending further Order of the Court, and since the Injunctive Order is narrow in scope in that it deals only with the Italian Yacht, the Monitor believes that the granting of the Injunctive Order would not be prejudicial to the interests of the Mareva Respondents as they would still have the opportunity and entitlement for judicial determination by the Court of any claims they might assert over the Italian Yacht and its proceeds. On the other hand, if the Injunctive Order is not granted, the OTE Group and its creditors could be severely prejudiced if the Italian Yacht is again moved or is sold and its proceeds are dissipated.

## **VII. CHAPTER 15 PROCEEDINGS**

24. The Monitor understands that the OTE Group will be seeking to appoint the Monitor as foreign representative to seek recognition of these proceedings outside of Canada. The Monitor notes that in the event that the Court issues the Injunctive Order, the OTE Group and the Monitor intend to proceed as soon as practicable with commencing Chapter 15 Proceedings under the US Code to recognize and enforce the orders made within these CCAA proceedings.
25. Based on the details provided in the Fourth Hill Affidavit and as noted above, the OTE Group's claimed interest in the Italian Yacht or its proceeds may be a significant source of recovery for the OTE Group and its creditors. Based on the evidence set out in the Fourth Hill Affidavit, the Italian Yacht's last known whereabouts were in Florida, such that recognition of the Injunctive Order in the United States is likely to be necessary and expedient to try and freeze the Italian Yacht and its proceeds.



Furthermore, the Monitor's investigation into the activities of the OTE Group is in its early stages and the Monitor is uncertain as to whether there are additional assets in the United States related to the OTE Group that remain to be identified by the OTE Group and/or the Monitor.

26. Relief under the Injunctive Order coupled with the Chapter 15 proceedings provides the most expedient way to preserve the potential recovery of the Italian Yacht and its proceeds and the potential recovery of assets related to the OTE Group that may be located in Canada or the United States.

## **VIII. OTHER MATTERS**

27. The Monitor is continuing to investigate payments that may have been made by OTE Group entities in respect of other goods and services that appear to be unrelated to the OTE Group's business. Based on its investigation to date, the Monitor understands that between March 2021 and June 2022, approximately USD \$6,864,425 and approximately CAD \$1,057,681 was wired by OTE Group entities to AirSprint Inc. ("**AirSprint**"). The Monitor has sent an Information Request Letter to AirSprint requesting further information and that all remaining funds received by AirSprint from any OTE Group entity be safeguarded and returned and that no further usage of those funds or any fractional aircraft ownership or interests be permitted without the prior written consent of the Monitor or further order of the Court. The Monitor will report further on this matter to the Court and may request further assistance of the Court if necessary.
28. As indicated in paragraph 49(h) of the Fourth Hill Affidavit, the OTE Group received from the CRA: (i) an assessment letter dated February 21, 2023, based on the audit of its Fuel Charge Account for the periods from April 1, 2019, to September 30, 2022, totalling \$91,734,032; and (ii) an assessment letter dated February 21, 2023, based on the audit of its Excise Tax Account for the periods from October 1, 2018, to September 30, 2022, totalling \$82,699,794. Copies of the CRA assessment letters are appended as Exhibit "GG" to the Fourth Hill Affidavit. The Monitor has not yet had an opportunity to review the amounts claimed or discuss them with the CRA and intends to do so and report further to the Court in due course.

## **IX. MONITOR'S RECOMMENDATIONS**

29. For the reasons set out in this Second Report, the Monitor is of the view that the relief requested by the OTE Group is both appropriate and reasonable. The Monitor is also of the view that granting the relief requested will provide the OTE Group the best opportunity to prevent the dissipation of and seek recovery on a significant asset for the benefit of the OTE Group's creditors.

30. Based on the foregoing, the Monitor respectfully recommends that this court approve the relief sought for the Injunctive Order and support the OTE Group's request to commence Chapter 15 Proceedings, with the Monitor being authorized by this Court to act as the foreign representative in connection therewith.

All of which is respectfully submitted this 13 day of March 2023.

**KPMG Inc.**  
**In its capacity as Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



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**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

Court File No.: CV-23-00693758-00CL

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**SUPPLEMENT TO THE SECOND REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**March 27, 2023**

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### APPENDICES

**APPENDIX “A” – Email Correspondence Between Counsel to the Mareva Respondents and Counsel to the Monitor related to the Italian Yacht location**

**APPENDIX “B” – Email Correspondence Between Counsel to the Monitor and Counsel to the Mareva Respondents related to the Italian Yacht**

Court File No.: CV-23-00693758-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**ORIGINAL TRADERS ENERGY LTD., 2496750 ONTARIO INC., OTE LOGISTICS LP, AND**  
**ORIGINAL TRADERS ENERGY LP**  
**(collectively the "OTE Group")**

**SUPPLEMENT TO THE SECOND REPORT OF KPMG INC.**  
**In its capacity as Monitor of the OTE Group**

**March 27, 2023**

## I. INTRODUCTION

1. This supplementary report (the “**Supplemental Second Report**”) supplements the second report of KPMG Inc. in its capacity as Monitor of OTE Group, dated March 13, 2023 (the “**Second Report**”). The purpose of the Supplemental Second Report is to update and inform the Court on the subsequent events and email correspondence that took place pertaining to the Italian Yacht after the Injunctive Order was made by the Court on March 15, 2023 and to request further assistance from the Court in requiring the Mareva Respondents to respond to the further information requests made of the Mareva Respondents by the Monitor, which in the Monitor's view are necessary in connection with its duties to safeguard the Italian Yacht and investigate this matter further for the benefit of the OTE Group's creditors.
2. This Supplemental Second Report should be read in conjunction with the Second Report as information contained in the Second Report has not been repeated in this Supplemental Second Report to avoid duplication. All capitalized terms not defined herein are as defined in the Second Report.

## II. ITALIAN YACHT

3. As outlined in the Second Report, the Injunctive Order was being sought by the OTE Group with the support of the Monitor to ensure that the Italian Yacht and any proceeds from the sale thereof are safeguarded and do not disappear or dissipate pending judicial determination of the entitlements between the OTE Group and the Mareva Respondents. Following the issuance of the Injunctive Order, correspondence ensued between counsel for the Monitor and counsel for one of the Mareva Respondents, Glenn Page in respect of matters relating to the Italian Yacht, as detailed further below.

### Email Correspondence

4. Upon receiving the Injunctive Order from the Court on March 15, 2023, the Monitor's counsel served the Injunctive Order upon counsel for the Mareva Respondents (the “**Mareva Respondents Counsel**”) at approximately 5:22 P.M. on the same day and requested that the Mareva Respondents Counsel immediately send the Injunctive Order to their respective clients to confirm that they would comply.
5. The Monitor did not receive a response from the Mareva Respondents Counsel until the following day (March 16, 2023) at approximately 8:33 A.M., at which time Stockwoods LLP, as counsel to certain of the Mareva Respondents, namely Glenn Page and 2658658 Ontario Inc. (“**Stockwoods**”) sent an email stating:

*"The vessel is currently in the waters of the Bahamas islands. The captain reported that there are 18 knot winds which are creating 10-16 foot swells. I understand that, in such conditions, it is unsafe to operate the vessel at any speed".*

6. The Monitor's counsel responded to that email at approximately 11:20 A.M. on March 16, 2023, requesting additional information as to the specific location of the Italian Yacht, including the name and contact details of the captain in possession and control of the Italian Yacht and requesting that Mr. Page immediately instruct the captain to turn on the AIS and other tracking systems and provide the Monitor with the current coordinates and the required information to enable the Monitor to track the vessel's location. After not receiving a response from the Mareva Respondents Counsel, the Monitor's counsel again followed up with an email at approximately 4:16 P.M. on March 16, 2023 to request an update.

7. Stockwoods replied to the Monitor's counsel at approximately 4:30 P.M. on March 16, 2023, stating:

*"Our client has advised that the vessel is currently moored in Honeymoon Harbour, off the island of Gun Cay, Bahamas. Its current coordinates are 25°35'13.26"N – 79°18'12.73"W. Our client has further informed us that the AIS cannot be turned on because it is currently inoperable as a result of a software problem that has been registered as a warranty issue. We do not see, however, the legitimate need for the Monitor to be provided with the name and contact information of the Captain of the vessel. There is nothing in Justice Osborne's Order that requires our client to provide this information to the Monitor or any other party, though it was open to both OTE and the Monitor to seek such relief if they so wished. Justice Osborne's Order requires that the vessel "be returned to the territorial jurisdiction of the Florida courts forthwith." As Mr. Schumann previously indicated, our client has taken steps to comply with the Order by directing that the vessel return to Florida as soon as it is safe for the Captain and crew to do so, which, weather permitting, we understand will occur tomorrow."*

8. The Monitor's counsel followed-up with an email to the Mareva Respondents Counsel on March 17, 2023, at approximately 9:13 A.M. requesting confirmation that the Italian Yacht had departed the Bahamas and was on its way back to Florida.

9. Stockwoods responded at approximately 11:09 A.M. on March 17, 2023, stating:

*"Our client has directed the Captain of the vessel to return it to Florida as soon as it is safe to do so, as required by Justice Osborne's Order. There is nothing in the Order that requires our client to provide periodic updates to the Monitor or its counsel regarding the location of the vessel, as you appear to be insisting upon; our client is simply required to return the vessel "to the territorial jurisdiction of the Florida courts forthwith," which he is doing. Notwithstanding the above, our client is prepared to disclose that he has been informed by the Captain that the vessel is currently underway back to the territorial waters of Florida, and, weather permitting, is expected to arrive by end of day."*

10. Counsel for the Monitor responded with a further email on the evening of March 17, 2023, noting that the Monitor and its counsel disagreed with the Mareva Respondents' position and that the Monitor is acting as a Court officer in seeking to preserve and safeguard the asset and is entitled to the requested information and that the Mareva Respondents refusal to provide the requested information is interfering with the Monitor's duties and ignores the clear intent of the Order. In that email, counsel for the Monitor made the following requests for information from the Mareva Respondents on behalf of the Monitor (the "**Requested Yacht Information**"):

- (i) the current location of the Italian Yacht and the marina in Florida, including the name, address and contact information for the marina where the Italian Yacht was docked or was headed (if it was not already docked);
- (ii) the name and contact information for the Captain of the Italian Yacht, including both the Captain who sailed it from Florida to the Bahamas and the Captain who sailed it back from the Bahamas to Florida, if they were different;
- (iii) the reactivation of any tracking systems on the Italian Yacht and that the Monitor be provided access to those tracking systems. If the AIS unit is not functional due to a software issue as claimed by the Mareva Respondents, further details were requested, including the model and serial number of the AIS system and the warranty claim, to enable the Monitor to investigate the matter further; and
- (iv) a copy of the insurance policy on the Italian Yacht.



### **Italian Yacht Location**

11. On March 23, 2023, at approximately 1:49 P.M. Stockwoods sent an email to the Monitor's counsel with an update from the Mareva Respondents that the Italian Yacht was docked at Stock Island Yacht Club and Marina located at 6000 Peninsular Avenue, Key West Florida. It was further noted that the slip in which the Italian Yacht was docked was temporary and that the Italian Yacht would be moved to a more permanent docking station at 1400 Marina Drive, Hollywood, Florida by March 30, 2023. Counsel to the Monitor responded to that correspondence on March 27, 2023. That email correspondence is attached as **Appendix "A"** to this Supplemental Second Report.
12. To date, the Mareva Respondents have refused or failed and continue to refuse or fail to provide the remaining Requested Yacht Information to the Monitor despite repeated requests as noted in the email correspondence summarized above and attached as **Appendix "B"** to this Supplemental Second Report.
13. The Monitor requires the Requested Yacht Information in connection with its investigation into the payments and transactions made in connection with the Italian Yacht as well as the circumstances surrounding the alleged attempts to hide, sell or move the yacht, including allegedly after the motion for the Mareva Injunction was served. The Monitor believes it has such powers pursuant to the Initial Order dated January 30, 2023, the Amended & Restated Initial Order dated February 9, 2023 and its statutory powers, including without limitation, those contained in sections 95 and 96 of the *Bankruptcy and Insolvency Act* to review alleged fraudulent preferences and transactions at undervalue. However, as the Mareva Respondents dispute the Monitor's entitlement to this information, the Monitor requests that the Court modify the Injunctive Order or make a further Order directing the Mareva Respondents to provide the Requested Yacht Information forthwith, including any other information the Monitor may request as it relates to the Italian Yacht, and confirming or giving the Monitor the authority to examine and request information from the Captain(s) and crew of the Italian Yacht and any other persons who may have information pertinent to the Italian Yacht.

### **III. MONITOR'S RECOMMENDATIONS**

14. For the reasons set out in this Supplemental Second Report, the Monitor is of the view that the relief requested by the OTE Group is both appropriate and reasonable. The Monitor is also of the view that granting the relief requested will provide the OTE Group the best opportunity to prevent the dissipation of and seek recovery on a significant asset for the benefit of the OTE Group's creditors.

15. Based on the foregoing, the Monitor respectfully recommends that this court approve the relief sought above, namely that the Court modify the Injunctive Order or make a further Order directing the Mareva Respondents to provide the Requested Yacht Information forthwith, including any other information the Monitor may request as it relates to the Italian Yacht, and permitting the Monitor to examine and request information from the Captain(s) and crew of the Italian Yacht and any other persons who may have information pertinent to the Italian Yacht. In addition, the Monitor requests that the Mareva Respondents immediately reactivate any operable marine tracking technology on the Italian Yacht and provide the required information to the Monitor to enable the Monitor to track the Italian Yacht's location.

All of which is respectfully submitted this 27 day of March 2023.

**KPMG Inc.**  
**In its capacity as Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



---

**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



---

**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

# **APPENDIX “A”**

**From:** [Raj Sahni](#)  
**To:** [Dan Goudge](#); [Fredrick Schumann](#); [Mitch Grossell](#); [Jessica Orkin](#); [Natai Shelsen](#); [Samantha Hans](#); [Steve Graff](#); [Martin Henderson](#); [Tamie Dolny](#)  
**Cc:** [Van Eyk, Paul](#); [Lau, Duncan](#); [Lau, Duncan](#); [Thomas Gray](#)  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Thanks Dan. The Monitor will require certainty that OTE and the Monitor can monitor the Yacht's location at all times and have access to the Yacht and the Marina and its staff as needed. The Monitor will be serving and filing a report this afternoon to update the Court and inform the Court of the Monitor's information requests, which will include the email below and the prior email exchanges between us following the issuance of the Court's Injunctive Order.



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation

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E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Dan Goudge <dang@stockwoods.ca>  
**Sent:** Thursday, March 23, 2023 1:49 PM  
**To:** Raj Sahni <SahniR@bennettjones.com>  
**Cc:** Fredrick Schumann <FredrickS@stockwoods.ca>; Mitch Grossell <MGrossell@tgf.ca>; Jessica Orkin <jorkin@goldblattpartners.com>; Natai Shelsen <nshelsen@goldblattpartners.com>; Samantha Hans <shans@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>; Martin Henderson <mhenderson@airdberlis.com>; Tamie Dolny <tdolny@airdberlis.com>  
**Subject:** In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Hi Raj,

We write to advise that we have been informed by our client that the boat is currently docked at Stock Island Yacht Club and Marina, 6000 Peninsular Avenue, Key West, Florida.

Our client has advised, though, that this is a temporary slip and that the boat needs to be moved to a more permanent docking location by March 30, 2023. Our client proposes that the boat be moved to Loggerhead Marina, 1400 Marina Drive, Hollywood, Florida. We intend to raise the issue before His Honour, Justice Osborne, at the March 28, 2023 case conference, and ask for your consent that the Court permit our client to move the boat from Stock Island Yacht Club and Marina to Loggerhead Marina on or before March 30, 2023.

Best,

Dan

# Dan Goudge

Associate



TD North Tower  
Suite 4130 - 77 King Street West  
Toronto, Ontario, Canada M5K 1H1

Direct: [416-593-2497](tel:416-593-2497)

Mobile: [437-995-3956](tel:437-995-3956)

[www.stockwoods.ca](http://www.stockwoods.ca) [dang@stockwoods.ca](mailto:dang@stockwoods.ca)

*Disclaimer: This message is intended only for the persons to whom it is addressed. It should not be read by, or delivered to any other person, as it may contain privileged or confidential information. If you have received this message in error, please notify us immediately by replying to the sender.*

## **APPENDIX “B”**

**From:** [Fredrick Schumann](#)  
**To:** [Raj Sahni](#)  
**Cc:** [Van Eyk, Paul](#); [Lau, Duncan](#); [Gard, Chris](#); [Samantha Hans](#); [Steve Graff](#); [Martin Henderson](#); [Tamie Dolny](#); [nshelsen@goldblattpartners.com](#); [Dan Goudge](#); [Mitch Grossell](#)  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00) [EXTERNAL]  
**Date:** Friday, March 17, 2023 8:35:35 PM  
**Attachments:** [image002.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image733312.png](#)

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We'll consider the requests you've made.

## Fredrick Schumann



Direct: 416-593-2490

Mobile: 647-962-7823

---

**From:** Fredrick Schumann <FredrickS@stockwoods.ca>  
**Sent:** March 17, 2023 8:09 PM  
**To:** Raj Sahni <SahniR@bennettjones.com>  
**Cc:** Paul van Eyk (pvaneyk@kpmg.ca) <pvaneyk@kpmg.ca>; duncanlau@kpmg.ca; cgard@kpmg.ca; Samantha Hans <shans@airdberlis.com>; Steve Graff <sgraff@airdberlis.com>; Martin Henderson <mhenderson@airdberlis.com>; Tamie Dolny <tdolny@airdberlis.com>; nshelsen@goldblattpartners.com; Dan Goudge <dang@stockwoods.ca>; Mitch Grossell <MGrossell@tgf.ca>  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Mr Sahni,

The allegations in your email are unfounded and regrettable. We can advise that the vessel arrived today within the territorial jurisdiction of Florida.

Sincerely,

## Fredrick Schumann



Direct: [416-593-2490](tel:416-593-2490)

Mobile: [647-962-7823](tel:647-962-7823)

---

**From:** Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>  
**Sent:** March 17, 2023 6:50 PM

**To:** Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca); Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Dan, we disagree with the content and tenor of your email.

The Monitor, as an officer of the Court is well within its rights to request the information it has requested, particularly in these circumstances where Justice Osborne made it clear that he was ordering your client to direct the vessel to be turned around and returned to Florida forthwith and yet the vessel continued its journey to the Bahamas and we were only informed of that fact afterward when we followed-up with you.

If in fact it was unsafe to return the vessel to Florida on Wednesday upon the Judge making his order, the Court, the Applicants and the Monitor should have been informed of that fact as soon as your client was so informed by the vessel's crew, not the next day after the vessel had already been sailed to the Bahamas in contravention of the Injunctive Order.

Moreover, the Injunctive Order issued yesterday is clear that it is binding upon the employees, servants and agents of the Mareva Respondents, which would include the vessel's captain and crew and prevents them from removing or transferring the vessel (see paragraph 3(a) of the Order). The Monitor is acting as a Court officer in seeking to preserve and safeguard the asset and your client's refusal to provide the requested information, including the name and contact information for the captain who is in possession of the vessel, is not at all helpful and is interfering with the Monitor's duties and ignores the clear intent of the Order.

On behalf of the Monitor, we request that:

1. Your client provide the current location of the vessel and the marina in Florida, including the name, address and contact information for the marina where the vessel is docked or is headed (if it has not already docked).
2. Your client provide the Monitor with the name and contact information for the Captain of the vessel, including both the Captain who sailed it from Florida to the Bahamas and the Captain who sailed back from the Bahamas to Florida, if they are different.
3. Any tracking systems on the vessel be reactivated and the Monitor be provided access to those tracking systems. If the AIS unit is not functional due to a software issue as your client claims, please provide the Monitor with further details, including the model and serial number of the AIS system and the warranty claim, to enable the Monitor to investigate that matter further.
4. Your client provide a copy of the insurance policy on the vessel.



Thank you



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation

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E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>

**Sent:** Friday, March 17, 2023 11:09 AM

**To:** Raj Sahni <[Sahnir@bennettjones.com](mailto:Sahnir@bennettjones.com)>; Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk (<[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)> <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca); Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Raj,

As we advised yesterday, our client has directed the Captain of the vessel to return it to Florida as soon as it is safe to do so, as required by Justice Osborne's Order. There is nothing in the Order that requires our client to provide periodic updates to the Monitor or its counsel regarding the location of the vessel, as you appear to be insisting upon; our client is simply required to return the vessel "to the territorial jurisdiction of the Florida courts forthwith," which he is doing.

Notwithstanding the above, our client is prepared to disclose that he has been informed by the Captain that the vessel is currently underway back to the territorial waters of Florida, and, weather permitting, is expected to arrive by end of day.

Best,

Dan

**Dan Goudge**

**STOCKWOODS**  
barristers

Direct: [416-593-2497](tel:4165932497)

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---

**From:** Raj Sahni <[Sahnir@bennettjones.com](mailto:Sahnir@bennettjones.com)>

**Sent:** Friday, March 17, 2023 9:13 AM

**To:** Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca); Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Dan,

Please confirm that the vessel has departed Bahamas and is on its way back to Florida.

Thank you



**Raj Sahni**  
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E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>

**Sent:** Thursday, March 16, 2023 4:30 PM

**To:** Raj Sahni <[Sahnir@bennettjones.com](mailto:Sahnir@bennettjones.com)>; Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca); Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Mr. Sahni,

We have passed your request on behalf of the Monitor, as well as the request from Mr. Graff, on to our client. While our client is not required to do so under the terms of Justice Osborne's Order, he is prepared to provide you with the following information:

Our client has advised that the vessel is currently moored in Honeymoon Harbour, off the island of Gun Cay, Bahamas. Its current coordinates are 25°35'13.26"N – 79°18'12.73"W.

Our client has further informed us that the AIS cannot be turned on because it is currently inoperable as a result of a software problem that has been registered as a warranty issue.

We do not see, however, the legitimate need for the Monitor to be provided with the name and contact information of the Captain of the vessel. There is nothing in Justice Osborne's Order that requires our client to provide this information to the Monitor or any other party, though it was open to both OTE and the Monitor to seek such relief if they so wished.

Justice Osborne's Order requires that the vessel "be returned to the territorial jurisdiction of the Florida courts forthwith." As Mr. Schumann previously indicated, our client has taken steps to comply with the Order by directing that the vessel return to Florida as soon as it is safe for the Captain and crew to do so, which, weather permitting, we understand will occur tomorrow.

We trust the above is satisfactory.

Best,

Dan

## Dan Goudge

**STOCKWOODS**  
barristers

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Mobile: [437-995-3956](tel:437-995-3956)

---

**From:** Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>

**Sent:** Thursday, March 16, 2023 4:16 PM

**To:** Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca); Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Fred/Mitch,

May we please hear back from you on this?

Thanks



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
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E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)

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---

**From:** Raj Sahni

**Sent:** Thursday, March 16, 2023 11:20 AM

**To:** 'Fredrick Schumann' <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com); Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and

2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

**Importance:** High

Thank you Mr. Schumann.

The Monitor requests that your client provide the name and contact details of the captain of the vessel and that your client immediately instruct the captain to turn on the AIS and other tracking systems and provide the Monitor with the current coordinates and the required information to enable the Monitor to track the vessel's location. Please provide the name and current contact details of the captain who will be sailing the vessel back to Florida – we assume that this is the same captain that is currently operating the vessel, but please confirm.



**Raj Sahni**

**Partner\*, Bennett Jones LLP**

\*Denotes Professional Corporation

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---

**From:** Fredrick Schumann <[Fredricks@stockwoods.ca](mailto:Fredricks@stockwoods.ca)>

**Sent:** Thursday, March 16, 2023 8:33 AM

**To:** Raj Sahni <[Sahnir@bennettjones.com](mailto:Sahnir@bennettjones.com)>; Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com); Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Mr Sahni,

Mr Page has conveyed the court's direction to the vessel's captain, namely that he take the vessel to Florida as soon as possible. The vessel is currently in the waters of the Bahamas islands. The captain reported that there are 18 knot winds which are creating 10-16 foot swells. I understand that, in such conditions, it is unsafe to operate the vessel at any speed. You can verify the wind conditions on an internet resource such as [windy.com](http://windy.com).

I understand that, according to the weather forecast, the winds are expected to reduce late Thursday night. If this forecast holds, the vessel will be able to depart for Florida on Friday at first light and be in Florida by Friday afternoon.

I will keep you updated if anything changes.

Sincerely,

## Fredrick Schumann

Partner



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**From:** Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>

**Sent:** March 15, 2023 5:22 PM

**To:** Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>; [Peter.Osborne@scj-csj.ca](mailto:Peter.Osborne@scj-csj.ca); Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; Fredrick Schumann <[FredrickS@stockwoods.ca](mailto:FredrickS@stockwoods.ca)>; Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com); Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; [duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca); [cgard@kpmg.ca](mailto:cgard@kpmg.ca)

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

**Importance:** High

Attached is the signed order issued by Justice Osborne, which he has instructed the Monitor to distribute and which the Judge has noted is effective immediately and without the necessity of issuing and entering.

Counsel for the Respondents, please immediately send the Order to your respective clients and confirm they will comply.

We will also send the Order to the Service List under separate cover.

Thank you.



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation

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---

**From:** Samantha Hans <[shans@airdberlis.com](mailto:shans@airdberlis.com)>

**Sent:** Wednesday, March 15, 2023 4:56 PM

**To:** [Peter.Osborne@scj-csj.ca](mailto:Peter.Osborne@scj-csj.ca)

**Cc:** Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Martin Henderson <[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>; Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>; Fredrick Schumann <[fredricks@stockwoods.ca](mailto:fredricks@stockwoods.ca)>; Dan Goudge <[dang@stockwoods.ca](mailto:dang@stockwoods.ca)>; [nshelsen@goldblattpartners.com](mailto:nshelsen@goldblattpartners.com); Mitch Grossell <[MGrossell@tgf.ca](mailto:MGrossell@tgf.ca)>

**Subject:** In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. (Court File No. CV-23-00693758-00)

Good afternoon Your Honour,

Further to today's motion, please find attached:

- i. a clean copy of the revised Injunctive Order as discussed; and
- ii. a blackline to the version provided at Tab 143 on Caselines.

Please note that we have copied counsel to the Monitor and counsel to each of the Mareva Respondents to this email.

Please let us know if you require anything further.

Thank you,  
Samantha

### **Samantha Hans**

T 437.880.6105

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E [shans@airdberlis.com](mailto:shans@airdberlis.com)

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Court File No.: CV-23-00693758-00CL

**ORIGINAL TRADERS ENERGY LTD. ET AL.**

**THIRD REPORT OF KPMG INC.,  
IN ITS CAPACITY AS MONITOR**

**April 25, 2023**



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### APPENDICES

APPENDIX “A” – Prior Reports of the Monitor

APPENDIX “B” – Extended Cash Flow Forecast

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**ORIGINAL TRADERS ENERGY LTD. 2496750 ONTARIO INC., OTE LOGISTICS LP, AND**  
**ORIGINAL TRADERS ENERGY LP**  
**(collectively the "OTE Group")**

**THIRD REPORT OF KPMG INC.**  
**In its capacity as Monitor of the OTE Group**

**April 25, 2023**

## I. INTRODUCTION

1. On January 30, 2023 (the “**Filing Date**”), Original Traders Energy Ltd. and 2496750 Ontario Inc. (together, the “**Applicants**”) were granted relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) by Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The relief granted under the Initial Order included a stay of proceedings in favour of the Applicants from January 30, 2023, until February 9, 2023 (the “**Initial Stay**”); the appointment of KPMG Inc. as Monitor (“**KPMG**” or the “**Monitor**”); and other related relief. The Applicants’ CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.
2. OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**” and together with OTE Logistics, the “**Limited Partnerships**”) are not Applicants in this proceeding. The Initial Order extended the same protections granted to the Applicants to the Limited Partnerships, on the grounds that the Limited Partnerships are related to and carry-on operations that are integral to the business of the Applicants. The terms “**OTE Group**” throughout this report refer to the Applicants and Limited Partnerships collectively.
3. KPMG, in its capacity at that time as proposed Monitor, filed a report with the Court dated January 30, 2023 (the “**Pre-Filing Report**”) in support of the OTE Group’s application for the Initial Order. Copies of Court and other materials pertaining to the CCAA Proceedings are available on the Monitor’s website.
4. On February 9, 2023, the OTE Group was granted additional relief under the CCAA by Order of the Court (the “**Amended and Restated Initial Order**”). The relief granted under the Amended and Restated Initial Order included, among other items;
  - (i) extending the Initial Stay, as defined in the Initial Order, to April 28, 2023;
  - (ii) amending the breadth of the Initial Stay to require regulatory agencies to provide no less than ten (10) days notice if seeking leave of the Court to vary the stay in relation to the possible revocation of licenses; and
  - (iii) increasing the Directors’ Charge to \$2,250,000.
5. The Amended and Restated Initial Order also extended all protections in favour of the Applicants to the Limited Partnerships. The Monitor filed a report with the Court dated February 9, 2023 in

connection with the OTE Group’s application for the Amended and Restated Initial Order (the “**First Report**”).

6. On March 15, 2023, the Honourable Justice Osborne granted an injunctive order (the “**Injunctive Order**”) which restrained Glenn Page (“**Page**”), Mandy Cox (“**Cox**”) and 2658658 Ontario Inc. (“**265**”, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy foot yacht from the Italian shipbuilder Azimut Benetti, named “Cuz We Can” (the “**Italian Yacht**”), more particularly described at Schedule “A” to the Injunctive Order, and on March 21, 2023 and March 28, 2023, the Honourable Justice Osborne granted certain endorsements (collectively, the “**Injunctive Endorsements**”) related to the Injunctive Order.

## **II. PURPOSE OF REPORT**

7. The purpose of the Third Report of the Monitor (the “**Third Report**”) is to provide information to the Court pertaining to:
  - (i) the activities of the OTE Group and the Monitor since the issuance of the Amended and Restated Initial Order;
  - (ii) the OTE Group’s reported receipts and disbursements for the period of January 30, 2023, to April 16, 2023, including a comparison of reported to forecasted results;
  - (iii) the OTE Group’s request for an order (the “**Stay Extension Order**”), inter alia, extending the Stay Period to August 4, 2023, including the OTE Group’s extended cash flow forecast for the period April 17, 2023, to August 6, 2023 (the “**Extended Cash Flow Forecast**”) and approval for the past activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings;
  - (iv) increasing the maximum amount of the Pre-Filing Critical Supplier Payments (as defined in the Pre-Filing Report) by \$250,000 to the maximum aggregate amount of \$6,625,000 (the “**Pre-Filing Critical Supplier Payments Increase**”);
  - (v) the OTE Group’s request for an order (the “**Claims Procedure Order**”) approving and authorizing the Monitor to conduct a claims procedure (the “**Claims Procedure**”) to call for, assess and determine claims against the OTE Group, and authorizing, directing and

empowering the Monitor to administer the Claims Procedure in accordance with the terms of the proposed Claims Procedure Order.

- (vi) the Monitor's request for an order (the "**Information Order**"), among other things, authorizing and directing AirSprint Inc. ("**AirSprint**") to provide the information requested by the Monitor or its counsel in connection with the Amended and Restated Initial Order and any other Order of this Court, related to: (a) the OTE Group, (b) any of the OTE Group's directors or officers (together with the OTE Group, the "**OTE Group Affiliates**"), or (c) any third party owned, controlled by, or otherwise related to the OTE Group Affiliates (the "**Information**"), but excluding information subject to legal privilege, including solicitor-client privilege and litigation privilege, notwithstanding that the Information may include "personal information" as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (the "**Personal Information Protection Act**"); and
- (vii) the Monitor's conclusions and recommendations.

### **III. TERMS OF REFERENCE**

- 8. The Third Report should be read in conjunction with the Affidavit of Scott Hill sworn April 20, 2023 (the "**Fifth Hill Affidavit**"), filed by the OTE Group in support of the relief sought in the within motion, as certain information contained in the Fifth Hill Affidavit has not been included herein to avoid duplication.
- 9. In preparing the Third Report, the Monitor has relied solely on information and documents provided by the OTE Group and their advisors, including unaudited financial information, declarations, in addition to information and documents from third parties that responded to the Monitor's Information Request Letters, which are defined herein (collectively, the "**Information Received**"). In accordance with industry practice, except as otherwise described in the Second Report (term as defined herein), KPMG has reviewed the Information Received for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information Received in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information Received.

10. Future orientated financial information contained in the Extended Cash Flow Forecast is based on the Applicants' estimates and assumptions regarding future events. Actual results will vary from the information presented even if the hypothetical assumptions occur, and variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Extended Cash Flow Forecast will be achieved.
11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

#### **IV. BACKGROUND**

12. Detailed information with respect to the OTE Group's business, operations, products and causes of insolvency is provided in the Affidavit of Scott Hill sworn January 27, 2023 (the "**Hill Affidavit**") and the Pre-Filing Report.
13. As described in the Pre-Filing Report and the Hill Affidavit, at the time of the application for the Initial Order, the OTE Group were missing a significant amount of their business and financial records and property and funds of the OTE Group are alleged to have been misappropriated, including due to alleged misconduct by Page, the former president of Original Traders Energy Ltd., and certain of his associates and related entities. Accordingly, the Monitor was granted expanded investigatory powers in the Initial Order and the Amended and Restated Initial Order.
14. As described in the Second Report of the Monitor dated March 13, 2023 (the "**Second Report**") which was filed with the Court for the Injunctive Order, shortly after the Filing Date, the Monitor sent letters to certain parties (collectively, the "**Requested Parties**") who may have been in possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the OTE Group (the "**Requested Information**").
15. As also described in the Second Report, in the course of its investigations, the Monitor received information from one of the Requested Parties, Pride Marine Group ("**Pride Marine**"), indicating that approximately USD \$3,218,500 had been transferred from OTE Group bank accounts to fund the purchase of the Italian Yacht by 265 from Pride Marine.
16. As discussed above, on March 15, 2023, following an application by the OTE Group, the Court granted the Injunctive Order against the Mareva Respondents, restraining the Mareva Respondents from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the Italian Yacht.

17. Additionally, on March 15, 2023, the Court also authorized and empowered the Monitor and the OTE Group to apply to any court outside of Canada for recognition and/or enforcement of any order within these CCAA Proceedings, and for assistance in carrying out the terms and/or intent of all such orders. Further to this, the Court also authorized and empowered the Monitor and the OTE Group to apply: (i) to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States' Bankruptcy Code; (ii) to Florida State and/or Federal Courts in connection with any dispute between any of the OTE Group and the Mareva Respondents; and (iii) to obtain relief in connection with the Italian Yacht.
18. After the Injunctive Order was granted by the Court, the Monitor and its counsel engaged in follow up correspondence with counsel to the Mareva Respondents to obtain specific details as to the location of the Italian Yacht and other information that in the Monitor's view was necessary in connection with its duties to safeguard the Italian Yacht and investigate the matter further for the benefit of the OTE Group's creditors. A detailed overview of the related events and correspondence that took place after the Injunctive Order was provided in the Monitor's supplement to the Second Report dated March 27, 2023.
19. In the Monitor's continuing efforts to obtain and investigate information and records pertaining to the OTE Group, including the amounts claimed to be owing to OTE Group's creditors and any payments and transactions involving the OTE Group or its property or funds that occurred prior to the Filing Date, the Monitor requires the Court's assistance in establishing a Claims Procedure and ordering the disclosure of additional information by AirSprint, all as detailed further below.

## **V. ACTIVITIES OF THE OTE GROUP**

20. The OTE Group's activities, since the Filing Date, have included:
  - (i) continuing to manage the business in the ordinary course in accordance with the Amended and Restated Initial Order;
  - (ii) managing relationships with key stakeholders, including the Royal Bank of Canada ("RBC"), employees, customers, and suppliers in coordination with the Monitor;
  - (iii) working with the Monitor to implement procedures to monitor cash flows and corresponding with the Monitor related to its review of payments including pre-filing payments in accordance with the Pre-Filing Critical Supplier Payments budget;

- (iv) managing cash flows and making payments in accordance with the Amended and Restated Initial Order;
- (v) working with the Monitor to trace, investigate and review missing books and records of the OTE Group;
- (vi) developing the Extended Cash Flow Forecast in coordination with the Monitor;
- (vii) corresponding with the Monitor on one lease disclaimer pursuant to paragraph 10 of the Amended and Restated Initial Order; and
- (viii) corresponding with the Monitor and the OTE Group's legal counsel on various matters pertaining to the CCAA Proceedings including the Injunctive Order and the Claims Procedure.

## **VI. ACTIVITIES OF THE MONITOR**

21. The Monitor, with the support of its legal advisors, has been working with the OTE Group, *inter alia*, with respect to the following:
- (i) attending Court via videoconference for the hearing of the OTE Group's motions in respect of the Amended and Restated Initial Order, the Injunctive Order and providing the Court with a status update on the Italian Yacht;
  - (ii) maintaining the Monitor's website at: <http://home.kpmg/ca/OTEGroup> (the "**Monitor's Website**"), where all court materials and other relevant documents pertaining to the CCAA Proceedings are available in electronic form;
  - (iii) supporting the OTE Group in managing relationships with key stakeholders, including employees and suppliers;
  - (iv) working with the OTE Group to implement procedures to monitor cash flows and making payments in accordance with the Initial Order and the Amended and Restated Initial Order;
  - (v) reviewing pre-filing payments in accordance with the budget for Pre-Filing Critical Supplier Payments as defined in the Pre-Filing Report;
  - (vi) responding to calls and enquiries from creditors and other stakeholders in connection with these CCAA Proceedings;



- (vii) sending letters to, and engaging in related correspondence with, former and current directors, officers and others affiliated with the OTE Group as well as sending information requests to Requested Parties, based upon lists provided by the OTE Group and reviewing and further investigating the information received to date and corresponding with Requested Parties for follow-up information;
  - (viii) assisting the OTE Group in developing the Extended Cash Flow Forecast;
  - (ix) working with the OTE Group and the Ministry of Finance (the “**MOF**”) on an agreement to extend certain time limited gas licenses and fuel licenses (the “**Permits**”);
  - (x) approving one (1) lease disclaimer pursuant to paragraph 10 of the Amended and Restated Initial Order;
  - (xi) corresponding with the OTE Group, its legal counsel, and the Monitor’s legal counsel on various matters pertaining to the CCAA Proceedings including the relief sought at this motion;
  - (xii) reviewing material filed with the Court in respect of the CCAA Proceedings; and
  - (xiii) preparing the various Monitor reports, including this Third Report.
22. In addition to the above, the Monitor has been reviewing relevant filing materials and notes that Chapter 15 proceedings under the US Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**Chapter 15 Proceedings**”) are expected to be commenced shortly. Further, the Monitor notes that the OTE Group has engaged counsel in Florida (the “**Florida Counsel**”) to work along with the Monitor and the OTE Group to seek recognition of and aid in enforcing the Injunctive Order. The Monitor is working with both Florida Counsel and counsel to the OTE Group to be appointed as the "Foreign Representative" of the OTE Group in the Chapter 15 Proceedings.
23. As part of the requested Stay Extension Order, approval is sought for the past activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings in this Third Report as well as all prior reports of the Monitor submitted to the Court (collectively, the “**Reports**”). Accordingly, the Monitor has provided the above summary of its activities as well as setting out further details of its previous activities in the Reports and will be attending before the Court on April 27, 2023, to answer any questions the Court may have. For ease of reference, copies of the Pre-Filing Report, the First Report and the Second Report are also attached hereto as **Appendix "A"**.

## **VII. STATUS OF FUEL AND GAS LICENSES**

24. As noted in the First Report, the OTE Group and the MOF came to an agreement dated February 1, 2023 (the “**First MOF Agreement**”) in which the OTE Group was granted time limited Permits for the period of February 1, 2023, to March 31, 2023, subject to certain terms that the Monitor understands the OTE Group has complied with.
25. Since the First MOF Agreement, the OTE Group and the MOF have been in constructive discussions on a longer-term extension of the Permits. On March 30, 2023, the MOF granted the OTE Group an extension of the Permits to April 30, 2023, to provide additional time to complete these discussions.
26. As at the date of this report, the Monitor understands that the OTE Group and the MOF are in the process of finalizing an updated agreement that would grant the OTE Group an extension of the Permits until December 31, 2023.
27. The Monitor notes that the extension of the Permits to December 31, 2023, is critical in providing the OTE Group and its stakeholders the benefit of knowing that there is appropriate go-forward stability in the OTE Group’s business.

## **VIII. CASH RECEIPTS AND DISBURSEMENTS – JANUARY 30, 2023 TO APRIL 16, 2023**

28. As noted in the Pre-Filing Report, the OTE Group, in consultation with the Monitor, prepared a thirteen-week cash flow forecast (the “**Cash Flow Forecast**”) for the period from January 30, 2023, to April 29, 2023 (the “**Forecast Period**”) in support of its application for the Initial Order.
29. The Monitor has implemented procedures for monitoring the OTE Group’s receipts and disbursements on a weekly basis and has prepared a forecast-to-actual variance analysis regarding the OTE Group’s receipts and disbursements.
30. A comparison of the Cash Flow Forecast to actual results for the 11-week period from January 30, 2023 to April 16, 2023 (the “**Comparison Period**”) is summarized as follows:

**Original Traders Energy**  
**Summary of Actual Receipts and Disbursements**  
*For the 11-week period ended April 16, 2023*  
**In C\$; unaudited**

	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b> Fav/(Unfav)
<b>Receipts</b>			
Customer collections	59,263,981	70,057,187	(10,793,206)
Tax refunds	4,271,894	2,882,257	1,389,637
<b>Total receipts</b>	<b>63,535,875</b>	<b>72,939,444</b>	<b>(9,403,569)</b>
<b>Operating disbursements</b>			
Purchases	49,686,625	47,792,730	(1,893,895)
Pre-filing payments/deposits	6,367,219	6,375,000	7,781
Operating expense	3,629,648	4,887,915	1,258,267
Rent and royalties	81,521	492,771	411,250
Payroll	967,946	1,008,734	40,788
Professional fees	259,529	775,000	515,471
Tax remittances	7,502,221	19,075,835	11,573,614
Bank payments	383,768	382,164	(1,604)
<b>Total operating disbursements</b>	<b>68,878,477</b>	<b>80,790,149</b>	<b>11,911,672</b>
Foreign exchange	42,641	-	42,641
<b>Net cash flow</b>	<b>(5,299,961)</b>	<b>(7,850,705)</b>	<b>2,550,744</b>
<b>Opening cash</b>	<b>9,831,101</b>	<b>9,000,000</b>	<b>831,101</b>
Net cash flow	(5,299,962)	(7,850,705)	2,550,743
<b>Ending cash</b>	<b>4,531,139</b>	<b>1,149,295</b>	<b>3,381,844</b>

**Note:** "Fav/(unfav)" denotes favourable or unfavourable variances against forecast.

31. As shown in the above table, the OTE Group reported a net cash outflow of approximately \$5.3 million over the Comparison Period and an ending cash balance of \$4.5 million which is \$3.4 million higher than forecasted.
32. The higher ending cash balance is the result of favourable variances related to the opening balance and the net cash outflow. At the Filing Date, the opening balance was conservatively estimated resulting in a favourable variance of \$0.8 million.
33. The favourable cash flow variance of \$2.6 million is principally the result of the following:
  - (i) lower sales volume / tax remittances – sales volumes for the OTE Group were lower than forecasted which resulted in customer collections being lower by \$10.8 million. However, disbursements related to operating expenses, rent and royalties and tax remittances were collectively lower by \$13.2 million resulting in a favourable net cash inflow of \$2.6 million.

The favourable variance related to tax remittance is the result of both lower sales volume and timing differences;

- (ii) cash on delivery (“COD”) payment terms – certain suppliers have required the OTE Group to pay for certain fuel supplies on a COD basis as the result of the short-term nature of the Permits. This requirement has resulted in an unfavourable variance of \$1.9 million related to purchases. As indicated above, the OTE Group and the MOF are in the process of finalizing an agreement to extend the Permits to December 31, 2023. Once the agreement is finalized, the OTE Group may have an opportunity to work with its suppliers to obtain payment terms that should be more favourable than COD; and
- (iii) other timing differences – tax refunds during the Comparison Period were \$1.4 million higher than expected, while professional fees were lower \$0.5 million lower than forecasted.

#### **IX. OTE GROUP’S REQUEST TO EXTEND STAY PERIOD TO AUGUST 4, 2023**

- 34. The current Stay Period expires on April 28, 2023. The OTE Group is seeking an extension of the Stay Period to August 4, 2023, to, among other things, advance the Claims Procedure.
- 35. In support of the stay extension, the OTE Group, with the assistance of the Monitor, has prepared an Extended Cash Flow Forecast, a copy of which, including Reports of both Management and the Monitor on the Extended Cash Flow Forecast, is attached hereto as **Appendix “B”**, and is summarized below:

<b>Original Traders Energy Cash Flow Forecast In C\$; unaudited</b>		<b>Total</b>
<b>Receipts</b>		
Customer collections		126,294,282
Tax refunds		4,100,107
<b>Total receipts</b>		<b>130,394,389</b>
<b>Operating disbursements</b>		
Purchases		89,142,280
Pre-filing payments/deposits		250,000
Operating expense		4,585,783
Rent and royalties		441,801
Payroll		1,615,376
Professional fees		800,000
Tax remittances		29,165,545
Bank payments		509,552
<b>Total operating disbursement</b>		<b>126,510,337</b>
<b>Net cash flow</b>		<b>3,884,052</b>
<b>Opening cash</b>		<b>4,531,139</b>
Net cash flow		3,884,052
<b>Ending cash</b>		<b>8,415,191</b>

36. The Extended Cash Flow Forecast indicates that the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings during the extension of the Stay Period, if granted.
37. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances and supports the OTE Group's request for an extension of the Stay Period to August 4, 2023 for the following reasons:
- (i) the OTE Group has acted and continues to act in good faith and with due diligence;
  - (ii) the extension will provide the time necessary for the OTE Group to (a) assess the claims that are submitted or may be submitted, as part of the proposed Claims Procedure Order, if approved by the Court, and (b) continue its review of strategic alternatives with the assistance of the Monitor, including the potential formulation of a plan; and

- (iii) the extension should not materially prejudice any creditor, as the OTE Group is projected to have sufficient funds through its continuing operations to pay post-filing services and supplies, as contemplated in the Extended Cash Flow Forecast.

### **Pre-Filing Critical Supplier Payments**

- 38. As part of its anticipated cashflow requirements at the time of its CCAA Filing and as provided for in paragraph 7(c) of the Amended and Restated Initial Order, the OTE Group was provided with a maximum aggregate budget in the amount of \$6.375 million for Pre-Filing Critical Supplier Payments (defined in the Pre-Filing Report) to pay for amounts owing for goods and services supplied prior to the CCAA filing date by certain third-party suppliers. The budget of \$6.375 million was based on information available at the Filing Date.
- 39. Since the Filing Date, the OTE Group, through discussions with critical suppliers, understands that there are additional invoices in respect of Pre-Filing Critical Supplier Payments that were not previously budgeted for in the cashflow requirements. Accordingly, the Monitor notes that the OTE Group has proposed that the authorized budget for Pre-Filing Critical Supplier Payments be increased by \$250,000 to a maximum aggregate amount of \$6,625,000.
- 40. The Monitor is of the view that the uninterrupted, timely supply of fuel and other critical supplies and services is necessary to preserve the OTE Group's business and that payment of certain pre-filing amounts continues to be necessary. Accordingly, the Monitor supports the OTE Group's request for the Pre-Filing Critical Supplier Payments Increase.

## **X. CLAIMS PROCEDURE**

- 41. Capitalized terms used herein but undefined are as referred to in the Claims Procedure Order.

### **General**

- 42. The Claims Procedure is intended to determine the nature, quantum, and validity of claims against the OTE Group and its current and former Directors and Officers, for the purposes of providing clarity to the OTE Group, its stakeholders, and the Monitor, as to the number, nature and value of certain Claims against the OTE Group and its Directors and Officers. This information will assist the OTE Group with its restructuring efforts and provide an orderly process for Claims to be identified, quantified, and ultimately resolved, in parallel with the OTE Group's advancement of restructuring alternatives, including the potential formulation of a plan. The Monitor notes that the Claims Procedure has been

designed to make the process as easy as possible for potential Claimants to assert and have their Claims resolved in a fair and efficient manner.

43. All stakeholders are strongly encouraged to read the proposed Claims Procedure Order. The information contained in this Third Report regarding the Claims Procedure is a summary of certain aspects of the proposed Claims Procedure Order. Following the service of the OTE Group's motion materials on April 20, 2023, counsel for certain stakeholders have reached out to counsel for the OTE Group and the Monitor to discuss the Claims Procedure. The Monitor understands that the OTE Group intends to serve a slightly revised version of the Claims Procedure Order in advance of the hearing on April 27, 2023, containing minor amendments to reflect those discussions.
44. The Claims Procedure seeks to deal with various claims against the OTE Group and/or the Directors and Officers, or any of them, as amended or supplemented by further order of the Court. The Monitor notes that the OTE Group is soliciting the following Claim types in the Claims Procedure Order:
  - (i) Pre-Filing Claims;
  - (ii) Restructuring Period Claims;
  - (iii) Pre-Filing D&O Claims; and
  - (iv) Restructuring Period D&O Claims.
45. The Claims Procedure does not seek to solicit the following claims (each an “**Excluded Claims**”):
  - (i) claims secured by any of the Court-ordered charges in these CCAA Proceedings or any future Court-ordered charge;
  - (ii) claims that may be asserted by any beneficiary of the RBC Security, terms as defined in the Amended and Restated Initial Order;
  - (iii) Intercompany Claims; and
  - (iv) claims that may be asserted by any of the OTE Group entities or by the Monitor, including, without limitation, pursuant to section 36.1 of the CCAA and sections 95 and 96 of the *Bankruptcy and Insolvency Act*, and against any Directors and/or Officers.

## Claims Bar Date

46. All Claimants making a claim against the OTE Group or its Directors and Officers, other than Restructuring Period Claims, will be required to file Claims with the Monitor by 5 P.M. (Eastern Standard Time) on June 27, 2023 (the “**Claims Bar Date**”), unless ordered otherwise by the Court.
47. All Claimants making a Restructuring Period Claim or Restructuring Period D&O Claim will be required to file Claims with the Monitor by the later of:
  - (i) the Claims Bar Date; and
  - (ii) 5 P.M. (Eastern Standard Time) on the date that is thirty (30) days after the date on which the Monitor send a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant (the “**Restructuring Period Claims Bar Date**”).

## *Pre-Filing Claims and Pre-Filing D&O Claims*

48. Any Claimant that does not file a Proof of Claim related to a Pre-Filing Claim or a Pre-Filing D&O Claim, as applicable, with the Monitor on or before the Claims Bar Date, or such later date as the Monitor, in consultation with the OTE Group, may agree in writing or the Court may otherwise direct:
  - (i) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s) against the OTE Group, the OTE Group shall not have any liability whatsoever in respect of any such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s), and all such Pre-Filing Claims or Pre-Filing D&O Claims shall be forever extinguished without any further act or notification by the OTE Group or the Monitor;
  - (ii) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s);
  - (iii) will not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or these CCAA Proceedings with respect to such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s); and
  - (iv) will not be permitted to participate in any distribution under any plan or otherwise on account of such Pre-Filing Claim(s) or Pre-Filing D&O Claim(s).



*Restructuring Period Claims and Restructuring Period D&O Claims*

49. Any Claimant that intends to assert a Restructuring Period Claim or Restructuring Period D&O Claim, that does not file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor, in consultation with the OTE Group, may agree in writing or the Court may otherwise direct:
- (i) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s), the OTE Group shall not have any liability whatsoever in respect of any such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s), and all such Restructuring Period Claims or Restructuring Period D&O Claims shall be forever extinguished without any further act or notification by the OTE Group or the Monitor;
  - (ii) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s);
  - (iii) will not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or these CCAA Proceedings with respect to such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s); and
  - (iv) will not be permitted to participate in any distribution under any plan or otherwise on account of such Restructuring Period Claim(s) or Restructuring Period D&O Claim(s).

**Notice Provisions**

50. In accordance with the Claims Procedure Order, the Monitor will:
- (i) post a copy of the Claims Procedure Order and the Claims Package on the Monitor's Website as soon as practicable after the date of the Claims Procedure Order, but no later than five (5) Business Days following the granting of this order;
  - (ii) as soon as practicable, but no later than ten (10) Business Days following the granting of the Claims Procedure Order, send a copy of the Claims Package to each of the Known Claimants, as evidenced by the Books and Records of the OTE Group, at their last known municipal or e-mail address as recorded in the OTE Group's Books and Records;

- (iii) publish the Notice to Claimants in *The Globe and Mail* (National Edition) for at least two (2) Business Days in consecutive weeks as soon as practicable after the date of the Claims Procedure Order but no later than five (5) Business Days following the granting of this order; and
- (iv) deliver a Claims Package to any Person claiming to be a Claimant and requesting such material in writing, as soon as reasonably possible following receipt of a request provided it is received prior to the Claims Bar Date.

51. A summary of key dates in the proposed Claims Procedure is also included in the Fifth Hill Affidavit.

<b>Timeframe</b>	<b>Activity</b>
April 27, 2023	Motion for approval of Claims Procedure Order
May 4, 2023	Monitor to cause the Notice to Claimants and the General Claims Package to be posted on the Monitor's Website and sent to Known Claimants
May 8, 2023	Notice to Claimants to be published in required newspaper
June 27, 2023	Claims Bar Date
June 27, 2023 or 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim or a Restructuring Period D&O Claim to a Claimant	Restructuring Period Claims Bar Date

### **Adjudication of Claims**

52. The Monitor, in consultation with the OTE Group and, in the case of a D&O Claim, the relevant Directors and Officers of the OTE Group, shall review and record all Proofs of Claim and D&O Proofs of Claim that are received on or before the Claims Bar Date and the Restructuring Period Claims Bar Date, and will accept, revise, or disallow such Proofs of Claims, in consultation with and on behalf of the OTE Group. With respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor, in consultation with and on behalf of the OTE Group and the applicable Directors and Officers named in respect of such D&O Claim, shall accept, revise or reject such D&O Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Director(s) and Officer(s) or further Order of the Court. If the Monitor, in consultation with the OTE Group, agrees

with the amount and Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed and intend to accept the Claim, the Monitor shall notify such Claimant of the acceptance of its Claim by the OTE Group. If a decision is made to revise or disallow a Claim, the Monitor will send a Notice of Revision or Disallowance to the Claimant.

53. If the Monitor, in consultation with the OTE Group, disagrees with the amount or Characterization of the Claim as set out in any Proof of Claim or D&O Proof of Claim filed, the Monitor shall, in consultation with the OTE Group and any applicable Directors or Officers, attempt to resolve such dispute and settle the purported Claim with the Claimant for voting and/or distribution purposes. The Monitor notes that if the OTE Group and the Monitor intend to revise or reject a Claim that has been filed with the Monitor, the Monitor shall notify the applicable Claimant that its Claim has been revised or rejected for voting and/or distribution purposes, and the reasons therefor, by sending a Notice of Revision or Disallowance. The Monitor, in consultation with the OTE Group, may allow a Claim for voting purposes and may revise or disallow the Claim for distribution purposes provided it does so in the Notice of Revision or Disallowance.
54. The Monitor notes that any Claimant who intends to dispute a Notice of Revision or Disallowance received from the Monitor shall deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor such that it is received by the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor, in consultation with the OTE Group, in writing. Where a Claimant who receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance within thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, then such Claimant's Claim shall be deemed to be as determined in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.
55. The Monitor also notes that upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a Claim, the Monitor, the OTE Group and any applicable Directors or Officers, shall attempt to resolve such dispute and settle the purported Claim with the Claimant, and in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the OTE Group and any applicable Directors or Officers, the Monitor shall, at its election, refer the dispute raised in the Notice of Dispute of

Revision or Disallowance to the Court or a Claims Officer appointed by the Court for adjudication, and the Monitor shall send written notice of such referral to the Claimant.

56. The Claims Procedure allows the appointment of one or more Persons on a motion by the OTE Group or the Monitor to act as Claims Officer for the Claims Procedure. Any decision as to whether a disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the discretion of the OTE Group, in consultation with the Monitor.
57. If a Claim is referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (a) determine the amount and characterization of the disputed Claim in accordance with the Claims Procedure Order; (b) determine whether any Claim or part thereof constitutes an Excluded Claim; (c) provide written reasons for its determination of the matter; and (d) determine all procedural matters which may arise in respect of his or her determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. In addition, the Claims Procedure Order provides the Claims Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. Each party to the dispute and the Monitor may appeal any determination by the Claims Officer to the Court within ten (10) days of such party receiving notice of the Claims Officer's determination.

## **XI. AIRSPRINT**

58. As noted above, pursuant to its investigatory powers in the Initial Order and the Amended and Restated Initial Order, the Monitor sent letters (the "**Information Request Letters**") to Requested Parties seeking Requested Information.
59. The Monitor is continuing to investigate payments that may have been made by OTE Group entities in respect of other goods and services that appear to be unrelated to the OTE Group's business. Based on its investigation to date, the Monitor understands that between March 2021 and June 2022, approximately USD \$6,864,425 and approximately CAD \$1,057,681 was wired by OTE Group entities to AirSprint. The Monitor sent an Information Request Letter to AirSprint on February 23, 2023, requesting further information and that all remaining funds received by AirSprint from any OTE Group entity be safeguarded and returned and that no further usage of those funds or any fractional aircraft ownership or interests be permitted without the prior written consent of the Monitor or further order of the Court.

60. After the Information Request Letter was sent to AirSprint, the Monitor engaged in discussions with counsel to AirSprint (“**AirSprint Counsel**”) and received certain of the Requested Information sought, which included summaries of payments received by AirSprint from OTE Group bank accounts, OTE Group account fractional aircraft ownership interests sold and listed for sale, as well as a breakdown of OTE Group related funds being held in trust by AirSprint.
61. The Monitor notes that AirSprint was unwilling to share all of the information it had (the “**AirSprint Information**”), due to concerns it had that this information may include information relating to third parties that could constitute "personal information" as defined in the Personal Information Protection Act. In its discussions with the Monitor, AirSprint Counsel noted that AirSprint was prepared to cooperate but would require Court authorization to share all of the AirSprint Information.
62. To that effect, the Information Order was prepared authorizing and directing AirSprint to provide the Information, and specifically authorizing the provision of the Information pursuant to the Personal Information Protection Act and any related applicable legislation. The Information Order also specifies that the Monitor and its counsel shall protect the privacy and confidentiality of the Information, which may only be used by the Monitor and its counsel in connection with the Monitor’s roles and duties. The Information may also be shared with OTE Group, Page, 265 and their respective counsel (collectively, the “**Additional Recipients**”), which shall also protect the privacy and confidentiality of the Information. The Information Order was prepared with input from AirSprint Counsel and, at the request of counsel for Page and 265, they were added as Additional Recipients so that they will receive the same AirSprint Information as is shared by the Monitor with the OTE Group and its counsel. The Monitor understands that the Information Order is consented to by AirSprint, Page, and 265.
63. The Monitor is of the view that the Information (including the AirSprint Information) is crucial to the Monitor’s ongoing investigation into the alleged misappropriation of OTE Group funds and property, and does not believe that the Information Order will prejudice any stakeholder.

## **XII. MONITOR’S RECOMMENDATIONS**

64. The Monitor is of the view that the process contemplated by the Claims Procedure Order to deal with the identification, quantification, and resolution of the Claims of Claimants against the OTE Group and the OTE Group’s Directors and Officers is reasonable in the circumstances and necessary to advance the OTE Group’s restructuring efforts. The Claims Procedure will be an important step to enable the OTE Group to understand the nature and extent of the Claims for the purposes of

formulating any plan. The Monitor therefore supports the proposed Claims Procedure, as set out in the Claims Procedure Order.

65. For the reasons set out in this Third Report, the Monitor is also of the view that the relief requested through the Information Order is both appropriate and reasonable and that granting the relief requested will allow the Monitor and the OTE Group to continue its investigation and help aid asset recovery efforts for the benefit of the OTE Group's creditors. Further, the Monitor and its counsel will make every effort to maintain and protect the privacy and confidentiality of the AirSprint Information and shall only use the AirSprint Information in connection with the performance of the Monitor's roles and duties pursuant to the to the CCAA, the Amended and Restated Initial Order, and any other Order of the Court.
66. Based on the foregoing, the Monitor respectfully recommends that this Court approve the relief sought in the Stay Extension Order, the Claims Procedure Order, and the Information Order.

All of which is respectfully submitted this 25 day of April 2023.

**KPMG Inc.**  
**In its capacity as Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per:



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**Paul van Eyk**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
President



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**Duncan Lau**  
**CPA, CMA, CIRP**  
Senior Vice President

# **APPENDIX “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**

**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT  
(paragraph 10(2)(b) of the CCAA)**

The management of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") have developed the assumptions and prepared the attached statement of projected cash flow as of the 24th day of April 2023, consisting of the period from April 17, 2023 to August 6, 2023 (the "**Extended Cash Flow Forecast**").


The hypothetical assumptions are reasonable and consistent with the purpose of the Extended Cash Flow Forecast described in the notes therein, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Extended Cash Flow Forecast. All such assumptions are disclosed in the notes therein.

Since the Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes therein, using the probable and hypothetical assumptions set out therein. Consequently, readers are cautioned that the Extended Cash Flow Forecast may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 24th day of April 2023.

**Original Traders Energy Ltd. and 2496750 Ontario  
Inc.**



Scott Hill  
President



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**

**MONITOR'S REPORT ON CASH FLOW STATEMENT  
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash flow of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") prepared as of the 24th day of April 2023, consisting of the period from April 17, 2023 to August 6, 2023 (the "**Extended Cash Flow Forecast**"), has been prepared by management of the Applicants, in consultation with the Monitor for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Extended Cash Flow Forecast.

Our review and consultation consisted of inquiries, analytical procedures and discussions related to information supplied by management and employees of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Extended Cash Flow Forecast. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Extended Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Extended Cash Flow Forecast;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Extended Cash Flow Forecast, given the hypothetical assumptions; or
- c) the Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

Since the Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Extended Cash Flow Forecast will be achieved.

The Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes thereto and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 24th day of April 2023.

**KPMG Inc.**  
**In its capacity as Proposed Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

**Per:**



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Paul van Eyk  
CPA, CA, CIRP, IFA, Fellow of INSOL

Original Traders Energy																		
Cash Flow Forecast																		
In CS; unaudited	Notes	1 4/23/22	2 4/30/22	1 5/7/22	2 5/14/22	3 5/21/22	4 5/28/22	5 6/4/22	6 6/11/22	7 6/18/22	8 6/25/22	9 7/2/22	10 7/9/22	11 7/16/22	12 7/23/22	13 7/30/22	14 8/6/22	Total
<b>Receipts</b>	<b>1</b>																	
Customer collections	2	7,042,979	7,042,979	6,970,402	6,759,060	6,759,060	6,759,060	6,759,060	7,348,898	9,148,144	9,148,144	9,148,144	9,045,148	8,718,808	8,718,808	8,718,808	8,206,781	126,294,282
Tax refunds	3	-	-	-	1,340,530	-	-	-	1,364,395	-	-	-	1,395,182	-	-	-	-	4,100,107
<b>Total receipts</b>		<b>7,042,979</b>	<b>7,042,979</b>	<b>6,970,402</b>	<b>8,099,590</b>	<b>6,759,060</b>	<b>6,759,060</b>	<b>6,759,060</b>	<b>8,713,293</b>	<b>9,148,144</b>	<b>9,148,144</b>	<b>9,148,144</b>	<b>10,440,329</b>	<b>8,718,808</b>	<b>8,718,808</b>	<b>8,718,808</b>	<b>8,206,781</b>	<b>130,394,389</b>
<b>Operating disbursements</b>																		
Purchases	4	5,128,971	5,128,971	4,425,410	4,425,410	4,425,410	4,425,410	4,425,410	6,651,742	6,651,742	6,651,742	6,651,742	6,340,680	6,340,680	6,340,680	6,340,680	4,787,600	89,142,280
Pre-filing payments/deposits	5	100,000	100,000	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	250,000
Operating expense	6	209,316	213,027	445,926	190,617	190,617	190,617	450,037	253,125	253,125	253,125	512,294	244,249	244,249	244,249	244,249	446,960	4,585,783
Rent and royalties	7	-	-	107,188	-	-	-	118,159	-	-	-	111,604	-	-	-	-	104,850	441,801
Payroll	8	100,144	100,144	87,079	87,079	87,079	87,079	87,079	113,040	113,040	113,040	113,040	110,406	110,406	110,406	110,406	85,911	1,615,376
Professional fees	9	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	800,000
Tax remittances	10	2,000,000	3,000,000	100,000	100,000	6,479,811	100,000	100,000	100,000	7,936,879	100,000	100,000	100,000	8,648,855	100,000	100,000	100,000	29,165,545
Bank payments	11	-	-	127,388	-	-	-	127,388	-	-	-	127,388	-	-	-	-	127,388	509,552
<b>Total operating disbursements</b>		<b>7,588,431</b>	<b>8,592,142</b>	<b>5,392,990</b>	<b>4,853,105</b>	<b>11,232,917</b>	<b>4,853,105</b>	<b>5,358,073</b>	<b>7,167,908</b>	<b>15,004,787</b>	<b>7,167,908</b>	<b>7,666,069</b>	<b>6,845,334</b>	<b>15,394,189</b>	<b>6,845,334</b>	<b>6,845,334</b>	<b>5,702,709</b>	<b>126,510,337</b>
<b>Net cash flow</b>		<b>(545,452)</b>	<b>(1,549,163)</b>	<b>1,577,412</b>	<b>3,246,485</b>	<b>(4,473,856)</b>	<b>1,905,955</b>	<b>1,400,987</b>	<b>1,545,386</b>	<b>(5,856,643)</b>	<b>1,980,236</b>	<b>1,482,075</b>	<b>3,594,995</b>	<b>(6,675,381)</b>	<b>1,873,474</b>	<b>1,873,474</b>	<b>2,504,072</b>	<b>3,884,052</b>
<b>Opening cash</b>		<b>4,531,139</b>	<b>3,985,687</b>	<b>2,436,523</b>	<b>4,013,935</b>	<b>7,260,419</b>	<b>2,786,563</b>	<b>4,692,518</b>	<b>6,093,505</b>	<b>7,638,890</b>	<b>1,782,247</b>	<b>3,762,483</b>	<b>5,244,557</b>	<b>8,839,552</b>	<b>2,164,171</b>	<b>4,037,645</b>	<b>5,911,119</b>	<b>4,531,139</b>
<b>Net cash flow</b>		<b>(545,452)</b>	<b>(1,549,163)</b>	<b>1,577,412</b>	<b>3,246,485</b>	<b>(4,473,856)</b>	<b>1,905,955</b>	<b>1,400,987</b>	<b>1,545,386</b>	<b>(5,856,643)</b>	<b>1,980,236</b>	<b>1,482,075</b>	<b>3,594,995</b>	<b>(6,675,381)</b>	<b>1,873,474</b>	<b>1,873,474</b>	<b>2,504,072</b>	<b>3,884,052</b>
<b>Ending cash</b>		<b>3,985,687</b>	<b>2,436,523</b>	<b>4,013,935</b>	<b>7,260,419</b>	<b>2,786,563</b>	<b>4,692,518</b>	<b>6,093,505</b>	<b>7,638,890</b>	<b>1,782,247</b>	<b>3,762,483</b>	<b>5,244,557</b>	<b>8,839,552</b>	<b>2,164,171</b>	<b>4,037,645</b>	<b>5,911,119</b>	<b>8,415,191</b>	<b>8,415,191</b>

**Original Traders Energy Group  
Extended Cash Flow Forecast  
Notes and Summary of Assumptions**

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**In the Matter of the CCAA Proceedings of Original Traders Energy Ltd. and 2496750 Ontario Inc.  
(collectively the “Applicants”)**

**Disclaimer**

In preparing this cash flow forecast (the “**Extended Cash Flow Forecast**”), the Applicants have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. Since the Extended Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Extended Cash Flow Forecast period will vary from the Extended Cash Flow forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty, or other assurance that any of the estimates, forecasts or projections will be realized.

The Extended Cash Flow Forecast is presented in Canadian dollars. All defined terms that are not otherwise defined herein are to have the same meaning ascribed to them in the third report of the Monitor dated April 25, 2023 (the “**Third Report**”).

**Note 1 Purpose of the Extended Cash Flow forecast**

The purpose of the Extended Cash Flow Forecast is to present the estimated cash receipts and disbursements of the Applicants for the period from April 17, 2023 to August 6, 2023 (the “**Forecast Period**”), in respect of its proceedings under the CCAA. The Extended Cash Flow Forecast has been prepared by management of OTE Group (“**Management**”), in consultation with the Monitor based on available financial information at the date of the Third Report. Readers are cautioned that this information may not be appropriate or relied upon for any other purpose.

**Note 2 Customer Collections**

Customer collections are comprised of income earned from the collection of existing receivables and new sales generated from the sale of fuel products to petroleum stations and First Nations’ communities across Southern Ontario.

**Note 3 U.S. Tax Refunds**

These receipts relate to the collection of U.S. tax refunds.

**Note 4 Purchases**

OTE Group purchases inventory from various third-party suppliers. Forecasted purchases are reflective of current operating levels.

**Note 5 Pre-Filing Payments/Deposits**

These disbursements relate to amounts owing for goods and services supplied prior to the filing date by certain third-party suppliers, up to a maximum aggregate amount of \$6.625 million (the “**Pre-Filing Critical Supplier Payments**”), if in the opinion of OTE Group, the supplier is critical to the ongoing operations and OTE Group’s business.

**Note 6 Operating Expenses**

Operating expenses are comprised of production expenses related to blending fuel products and general business expenses, including insurance, utilities, freight, general and administrative, among others.

**Note 7 Rent and Royalties**

These disbursements represent rental payments for the Applicant's four leased facilities. Rental payments include base rent and other costs provided for in the respective leases. Royalties are payable to the unrelated third parties which OTE Group leases two of its blending sites from and are based on quantities sold out of each location. Rent and royalties are forecasted based on historical run-rates and paid on the first day of each month.

**Note 8**      **Payroll**

Payroll expenses include salaries and wages, payroll taxes and remittances, accrued vacation, and employee benefits paid to OTE Group Employees. Payroll expenses are forecasted based on current headcount levels and are paid weekly.

**Note 9**      **Professional Fees**

Professional fees include payments to the Applicant's legal counsel, the Proposed Monitor, and the Proposed Monitor's legal counsel.

**Note 10**     **Tax Remittances**

Tax remittances relate to federal and provincial tax payments made on the fifteenth day of each month related to the month prior.

**Note 11**     **Bank Payments**

Bank payments represent lease payments made to the secured lender, Royal Bank of Canada ("RBC"), during the Forecast Period.

# **APPENDIX “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")**

**MONITOR'S REPORT ON CASH FLOW STATEMENT  
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash flow of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") prepared as of the 11th day of July 2023, consisting of the period from July 3, 2023 to November 3, 2023 (the "**Second Extended Cash Flow Forecast**"), has been prepared by management of the Applicants, in consultation with the Monitor for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Second Extended Cash Flow Forecast.

Our review and consultation consisted of inquiries, analytical procedures and discussions related to information supplied by management and employees of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Second Extended Cash Flow Forecast. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Second Extended Cash Flow Forecast.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Second Extended Cash Flow Forecast;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Second Extended Cash Flow Forecast, given the hypothetical assumptions; or
- c) the Second Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.

Since the Second Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Second Extended Cash Flow Forecast will be achieved.

The Second Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes thereto and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 11th day of July 2023.

**KPMG Inc.**  
**In its capacity as Proposed Monitor of**  
**Original Traders Energy Group**  
**And not in its personal or corporate capacity**

Per: 

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Paul van Eyk  
CPA, CA, CIRP, IFA, Fellow of INSOL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO INC.  
(collectively the "Applicants")

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT  
(paragraph 10(2)(b) of the CCAA)

The management of Original Traders Energy Ltd. and 2496750 Ontario Inc. (collectively referred to herein as "**OTE Group**" or the "**Applicants**") have developed the assumptions and prepared the attached statement of projected cash flow as of the 11th day of July 2023, consisting of the period from July 3, 2023, to November 3, 2023 (the "**Second Extended Cash Flow Forecast**").

The hypothetical assumptions are reasonable and consistent with the purpose of the Second Extended Cash Flow Forecast described in the notes therein, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Second Extended Cash Flow Forecast. All such assumptions are disclosed in the notes therein.

Since the Second Extended Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The Second Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes therein, using the probable and hypothetical assumptions set out therein. Consequently, readers are cautioned that the Second Extended Cash Flow Forecast may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 11th day of July 2023.

**Original Traders Energy Ltd. and 2496750 Ontario  
Inc.**



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Scott Hill  
President

**Original Traders Energy Group  
Second Extended Cash Flow Forecast  
Notes and Summary of Assumptions**

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**In the Matter of the CCAA Proceedings of Original Traders Energy Ltd. and 2496750 Ontario Inc.  
(collectively the “Applicants”)**

**Disclaimer**

In preparing this cash flow forecast (the “**Second Extended Cash Flow Forecast**”), the Applicants have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. Since the Second Extended Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Second Extended Cash Flow Forecast period will vary from the Second Extended Cash Flow forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty, or other assurance that any of the estimates, forecasts or projections will be realized.

The Second Extended Cash Flow Forecast is presented in Canadian dollars. All defined terms that are not otherwise defined herein are to have the same meaning ascribed to them in the fourth report of the Monitor dated July 12, 2023 (the “**Fourth Report**”).

- Note 1            Purpose of the Second Extended Cash Flow forecast**  
The purpose of the Second Extended Cash Flow Forecast is to present the estimated cash receipts and disbursements of the Applicants for the period from July 3, 2023 to November 3, 2023 (the “**Forecast Period**”), in respect of its proceedings under the CCAA. The Second Extended Cash Flow Forecast has been prepared by management of OTE Group (“**Management**”), in consultation with the Monitor based on available financial information at the date of the Fourth Report. Readers are cautioned that this information may not be appropriate or relied upon for any other purpose.
- Note 2            Customer Collections**  
Customer collections are comprised of income earned from the collection of existing receivables and new sales generated from the sale of fuel products to petroleum stations and First Nations’ communities across Southern Ontario.
- Note 3            U.S. Tax Refunds**  
These receipts relate to the collection of U.S. tax refunds.
- Note 4            Purchases**  
OTE Group purchases inventory from various third-party suppliers. Forecasted purchases are reflective of current operating levels.
- Note 5            Pre-Filing Payments/Deposits**  
These disbursements relate to amounts owing for goods and services supplied prior to the filing date by certain third-party suppliers, up to a maximum aggregate amount of \$6.625 million (the “**Pre-Filing Critical Supplier Payments**”), if in the opinion of OTE Group, the supplier is critical to the ongoing operations and OTE Group's business.
- Note 6            Operating Expenses**  
Operating expenses are comprised of production expenses related to blending fuel products and general business expenses, including insurance, utilities, freight, general and administrative, among others.
- Note 7            Rent and Royalties**



These disbursements represent rental payments for the Applicant's four leased facilities. Rental payments include base rent and other costs provided for in the respective leases. Royalties are payable to the unrelated third parties which OTE Group leases two of its blending sites from and are based on quantities sold out of each location. Rent and royalties are forecasted based on historical run-rates and paid on the first day of each month.

**Note 8**      **Payroll**

Payroll expenses include salaries and wages, payroll taxes and remittances, accrued vacation, and employee benefits paid to OTE Group Employees. Payroll expenses are forecasted based on current headcount levels and are paid weekly.

**Note 9**      **Professional Fees**

Professional fees include payments to the Applicant's legal counsel, the Proposed Monitor, and the Proposed Monitor's legal counsel.

**Note 10**     **Tax Remittances**

Tax remittances relate to federal and provincial tax payments made on the fifteenth day of each month related to the month prior.

**Note 11**     **Bank Payments**

Bank payments represent lease payments made to the secured lender, Royal Bank of Canada ("RBC"), during the Forecast Period.

Original Traders Energy  
Second Extended Cash Flow Forecast  
For the 18-week period from July 3, 2023 - November 5, 2023

In CS; unaudited	Notes	1 7/9/23	2 7/16/23	3 7/23/23	4 7/30/23	5 8/6/23	6 8/13/23	7 8/20/23	8 8/27/23	9 9/3/23	10 9/10/23	11 9/17/23	12 9/24/23	13 10/1/23	14 10/8/23	15 10/15/23	16 10/22/23	17 10/29/23	18 11/5/23	Total
<b>Receipts</b>	<b>1</b>																			
Customer collections	2	6,785,143	6,540,664	6,540,664	6,540,664	6,156,141	4,948,908	4,948,908	4,948,908	4,948,908	5,097,431	5,597,691	5,597,691	5,597,691	5,453,209	5,023,344	5,023,344	5,023,344	5,023,344	99,795,997
Tax refunds	3	-	-	-	-	-	1,364,395	-	-	-	-	1,395,182	-	-	-	1,911,098	-	-	-	4,670,675
<b>Total receipts</b>		<b>6,785,143</b>	<b>6,540,664</b>	<b>6,540,664</b>	<b>6,540,664</b>	<b>6,156,141</b>	<b>6,313,303</b>	<b>4,948,908</b>	<b>4,948,908</b>	<b>4,948,908</b>	<b>5,097,431</b>	<b>6,992,873</b>	<b>5,597,691</b>	<b>5,597,691</b>	<b>5,453,209</b>	<b>6,934,442</b>	<b>5,023,344</b>	<b>5,023,344</b>	<b>5,023,344</b>	<b>104,466,672</b>
<b>Operating disbursements</b>																				
Purchases	4	4,758,796	4,758,796	4,758,796	4,758,796	4,590,820	4,590,820	4,590,820	4,390,820	4,390,820	4,177,539	4,177,539	4,127,539	4,127,539	3,994,732	3,994,732	3,969,732	3,944,732	3,944,732	78,048,103
Pre-filing payments/deposits	5	65,000	50,000	50,000	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	215,000
Operating expense	6	303,798	303,798	303,798	307,509	512,449	258,488	258,488	258,488	515,827	283,933	283,933	283,933	287,644	525,111	271,812	271,812	271,812	528,580	6,031,214
Rent and royalties	7	-	-	-	-	44,375	-	-	-	41,510	-	-	-	-	38,825	-	-	-	-	36,869
Payroll	8	97,008	97,008	97,008	97,008	75,776	75,776	75,776	75,776	75,776	91,239	91,239	91,239	91,239	87,785	87,785	87,785	87,785	87,785	1,570,791
Professional fees	9	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	1,100,000
Tax remittances	10	-	4,828,732	-	-	-	-	4,606,954	-	-	-	4,374,410	-	-	-	-	3,927,274	-	-	17,737,370
Bank payments	11	-	-	-	127,388	-	-	-	-	127,388	-	-	127,388	-	-	-	-	-	127,388	509,552
<b>Total operating disbursements</b>		<b>5,299,602</b>	<b>10,113,334</b>	<b>5,284,602</b>	<b>5,415,701</b>	<b>5,298,420</b>	<b>5,000,084</b>	<b>9,607,039</b>	<b>4,800,084</b>	<b>5,201,322</b>	<b>4,602,711</b>	<b>8,977,121</b>	<b>4,552,711</b>	<b>4,683,810</b>	<b>4,696,452</b>	<b>4,404,329</b>	<b>8,306,602</b>	<b>4,354,329</b>	<b>4,775,353</b>	<b>105,373,609</b>
<b>Net cash flow</b>		<b>1,485,541</b>	<b>(3,572,670)</b>	<b>1,256,062</b>	<b>1,124,963</b>	<b>857,721</b>	<b>1,313,219</b>	<b>(4,658,131)</b>	<b>148,824</b>	<b>(252,414)</b>	<b>494,719</b>	<b>(1,984,248)</b>	<b>1,044,980</b>	<b>913,881</b>	<b>756,757</b>	<b>2,530,113</b>	<b>(3,283,258)</b>	<b>669,015</b>	<b>247,991</b>	<b>(906,936)</b>
<b>Opening cash</b>		<b>10,076,418</b>	<b>11,561,959</b>	<b>7,989,289</b>	<b>9,245,351</b>	<b>10,370,314</b>	<b>11,228,035</b>	<b>12,541,253</b>	<b>7,883,122</b>	<b>8,031,946</b>	<b>7,779,532</b>	<b>8,274,252</b>	<b>6,290,003</b>	<b>7,334,983</b>	<b>8,248,864</b>	<b>9,005,621</b>	<b>11,535,734</b>	<b>8,252,476</b>	<b>8,921,491</b>	<b>10,076,418</b>
<b>Net cash flow</b>		<b>1,485,541</b>	<b>(3,572,670)</b>	<b>1,256,062</b>	<b>1,124,963</b>	<b>857,721</b>	<b>1,313,219</b>	<b>(4,658,131)</b>	<b>148,824</b>	<b>(252,414)</b>	<b>494,719</b>	<b>(1,984,248)</b>	<b>1,044,980</b>	<b>913,881</b>	<b>756,757</b>	<b>2,530,113</b>	<b>(3,283,258)</b>	<b>669,015</b>	<b>247,991</b>	<b>(906,936)</b>
<b>Ending cash</b>		<b>11,561,959</b>	<b>7,989,289</b>	<b>9,245,351</b>	<b>10,370,314</b>	<b>11,228,035</b>	<b>12,541,253</b>	<b>7,883,122</b>	<b>8,031,946</b>	<b>7,779,532</b>	<b>8,274,252</b>	<b>6,290,003</b>	<b>7,334,983</b>	<b>8,248,864</b>	<b>9,005,621</b>	<b>11,535,734</b>	<b>8,252,476</b>	<b>8,921,491</b>	<b>9,169,482</b>	<b>9,169,482</b>

# APPENDIX “C”



Court File No. CV-23-00693758-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 15TH  
JUSTICE OSBORNE ) DAY OF MARCH, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **ORIGINAL TRADERS ENERGY LTD.**  
**AND 2496750 ONTARIO INC.** (each, an "Applicant" and  
collectively, the "Applicants")

**INJUNCTIVE ORDER**

**NOTICE**

If you, the Mareva Respondents, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Applicants and the Monitor (as defined herein), for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Mareva Respondents to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

**THIS MOTION**, made by the Applicants, Original Traders Energy LP and Original Logistics LP (collectively, the "**OTE Group**") for an interim Order in the form of a *Mareva* injunction restraining Glenn Page, Mandy Cox and 2658658 Ontario Inc. (the "**Mareva Respondents**"), from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the assets identified at Schedule "A" to this Order and certain other relief against third parties who may be in possession of or have records relating to the assets identified at Schedule "A" to this Order, was heard this day via videoconference.

ON READING the affidavit of Scott Hill sworn March 12, 2023 and the Exhibits thereto (the “**Fourth Hill Affidavit**”), the affidavit of Miles Hill sworn March 12, 2023 and the Exhibits thereto (the “**Miles Affidavit**”), the second report of KPMG Inc. (in such capacity, the “**Monitor**”) dated March 13, 2023 (the “**Second Report**”) and on hearing the submissions of counsel for the OTE Group and counsel for the Monitor, along with all additional parties in attendance and represented per the counsel slip,

### **Service**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **Defined Terms**

2. **THIS COURT ORDERS** that capitalized terms used within this Order shall have the meanings ascribed to them in the Fourth Hill Affidavit, as applicable, if they are not otherwise defined herein.

### **Mareva Injunction**

3. **THIS COURT ORDERS** that the Mareva Respondents, and their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with the assets identified at Schedule “A” to this Order, wherever situated;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

4. **THIS COURT ORDERS** that this Order applies to the assets identified at Schedule “A” to this Order, whether or not they are in the possession or control of any of the Mareva Respondents and whether they are solely or jointly owned by any other party. The Mareva Respondents are to be regarded as having such power if a third party holds or controls the assets in accordance with any of their direct or indirect instructions.

5. **THIS COURT ORDERS** that the assets identified in Schedule “A” to this Order, being the vessel bearing VIN number XAXS704F122 and the three (3) Volvo Engines with identification numbers 20132060472, 20132060504, and 2013060470, respectively, shall be returned to the territorial jurisdiction of the Florida courts forthwith.

### **Disclosure of Information**

6. **THIS COURT ORDERS** that the Mareva Respondents prepare and provide to the OTE Group and the Monitor within thirty (30) business days of the date of service of this Order, a sworn statement describing the nature, value, and location worldwide, of the assets identified at Schedule “A” to this Order, whether in their own name or not and whether solely or jointly owned, as well as an explanation for where all funds used to purchase the assets identified at Schedule “A” to this Order originated from.

7. **THIS COURT ORDERS** that the Mareva Respondents submit to examinations under oath within fifteen (15) days of the delivery by the Mareva Respondents of the aforementioned sworn statements.

8. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate the Mareva Respondents, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraphs 6 and 7 herein is contempt of court and may render the Mareva Respondents liable to be imprisoned, fined, or have their assets seized.

### **Third Parties**

9. **THIS COURT ORDERS** Allied Marine, Inc., American Yacht Group LLC, Brewer Yacht Sales, LLC, or any other boat broker who may hold, be assigned or be transferred the assets listed on Schedule “A” to this Order (collectively, the “**Boat Brokers**”) to forthwith freeze

and prevent any removal or transfer of the assets listed on Schedule “A” to this Order, held physically by the Boat Brokers, in any account or on credit on behalf of the Mareva Respondents or any third party, with the Boat Brokers, until further Order of the Court.

10. **THIS COURT ORDERS** that the Boat Brokers forthwith disclose and deliver up to the OTE Group and the Monitor any and all records held by the Boat Brokers concerning the assets listed on Schedule “A” to this Order, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Mareva Respondents by the Boat Brokers relating to the assets listed on Schedule “A” to this Order, including but not limited to: (a) copies of vehicle/vessel registration details; (b) copies of any relevant financial records; and (c) location details.

11. **THIS COURT ORDERS** that the Boat Brokers may only sell or transfer any of the assets listed on Schedule “A” to this Order upon receipt of express written consent by both the OTE Group and the Monitor, and if consent is received, that any funds received by the Boat Brokers will be held in trust on behalf of the OTE Group. Upon receipt of written demand by the Monitor on the OTE Group’s behalf post-sale of any asset, the Boat Brokers will transfer any funds held in trust to the attention of the Monitor.

#### **Variation, Discharge or Extension of Order**

12. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to both the OTE Group and the Monitor.

13. **THIS COURT ORDERS** that the OTE Group and the Mareva Respondents shall attend at a case conference in the next ten (10) business days, or at another time agreed upon by the OTE Group, the Monitor and the Mareva Respondents, to set a timetable for: (i) the exchange of the following materials; and (ii) the eventual motion, if requested by the Mareva Respondents, to argue the reversal of this Order within the ongoing *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”) proceedings of the OTE Group:

- (a) Responding materials of the Mareva Respondents;
- (b) Reply materials of the OTE Group, if necessary;

- (c) Cross-examinations of the Mareva Respondents, per paragraph 7 of this Order;
- (d) Factum of the OTE Group of the Mareva Respondents;
- (e) Reply factum of the OTE Group, if necessary;
- (f) Motion for reversal of this Order, if sought by Mareva Respondents; and
- (g) Cost assessment hearing.

### **General**

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the OTE Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the OTE Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the OTE Group and the Monitor and their respective agents in carrying out the terms of this Order.

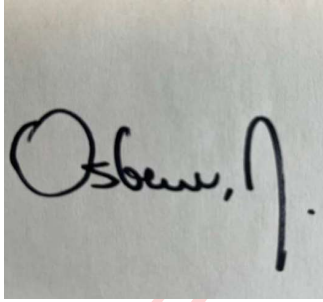
15. **THIS COURT ORDERS** that the Monitor and the Applicants are each authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition and/or enforcement of this Order, the Initial Order dated January 30, 2023, the Amended and Restated Initial Order dated February 9, 2023 and any further orders issued in these proceedings, and for assistance in carrying out the terms and/or intent of all such orders. Without limiting the foregoing, the Monitor and the Applicants are each authorized and empowered to apply: (i) to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the United States' Bankruptcy Code; (ii) to Florida State and/or Federal Courts in connection with any dispute between any of the OTE Group and the Mareva Respondents; and (iii) to obtain relief in connection with the assets listed on Schedule "A" to this Order.



16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

**COSTS**

17. **THIS COURT ORDERS** that the costs of this motion shall be determined by the Court upon further attendance before the Court.



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## SCHEDULE "A"

### Assets:

#### COLLATERAL DESCRIPTION

2022	AZIMUT	S7	XAXS7047F122	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060472	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060504	MV
2022	VOLVO	PENTA D13-IPS 1050	20132060470	MV

#### COMMON DESCRIPTION

Motor Vehicle / Boat under name "CUZ WE CAN", and all ENGINES, TACKLES, FURNITURE and APPAREL, also may be named as "HOME SOUTH", or any other name that Motor Vehicle / Boat may be changed or assigned under VIN XAXS7047F122, formerly registered under Canada Official Number 844825

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND 2496750 ONTARIO  
INC.

Court File No. CV-23-00693758-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**Proceedings commenced at Toronto**

**INJUNCTIVE ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
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**Steven Graff (LSO# 31871V)**  
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Tel: 416.863.1500  
Fax: 416.863.1515

*Lawyers for the OTE Group*

**CITATION:** Original Traders Energy Ltd., 2023 ONSC 1887  
**COURT FILE NO.:** CV-23-693758-00CL  
**DATE:** 20230321

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)**

**RE:** Original Traders Energy Ltd., Applicant

**BEFORE:** Osborne J.

**COUNSEL:** *Steven Graff, Samantha Hans and Martin Henderson*, on behalf of Original Traders Energy Ltd.

*Fredrick Schumann, Dan Goudge and Mitch Grossell*, on behalf of 2658658 Ontario Inc.

*Natai Shelsen*, on behalf of Mandy Cox

*Raj Sahni*, on behalf of KPMG Inc., Court-appointed Monitor

*Melanie Fishbein*, on behalf of Essex Financial

*Doug Smith*, on behalf of Royal Bank of Canada

*Steven Groeneveld*, on behalf of Ministry of Finance

**HEARD:** March 15, 2023

**ENDORSEMENT**

[1] On March 15, 2023, I heard a motion by the OTE Group for a *Mareva* injunction over certain assets and related relief, at the conclusion of which I granted the order, with minor amendments, with reasons to follow. These are those reasons.

[2] Unless otherwise indicated, defined terms in this Endorsement have the meaning given to them in my Initial Order Endorsement dated January 30, 2023, the motion materials, and/or the Second Report of the Court-appointed Monitor.

[3] On January 30, 2023, I granted the Applicants protection from their creditors pursuant to the CCAA. I appointed KPMG as Monitor, with certain investigatory powers in the circumstances, given that the Applicants were unable to locate all books and records, said to be as a result of

alleged misconduct of certain former executives, including Mr. Glenn Page. On February 9, 2023, I granted an amended and restated initial order.

[4] On this motion, the OTE Group seeks an interlocutory injunction restraining Mr. Page, his spouse Ms. Mandy Cox, and 2658658 Ontario Inc. (“265”) (collectively for the purposes of this motion and this Endorsement, the “Respondents”), and those acting on their behalf or in conjunction with them, from directly or indirectly selling, transferring encumbering or dealing with a 70 foot yacht bearing the name “Cuz We Can” or “Home South”, together with its engines, all as further described in the motion materials (the “Yacht”).

[5] 265 is an entity owned and/or controlled by Page and Cox. They are both directors of 265.

[6] The OTE Group also seeks ancillary relief requiring the Respondents to deliver a sworn statement providing particulars with respect to the Yacht as set out in the motion material, and directing the Boat Brokers who may have possession of the Yacht to not remove or transfer the Yacht, and other relief.

[7] The motion did not proceed *ex parte* or without notice. The Respondents were given advance notice of this motion by the OTE Group and were served with the Notice of Motion and materials on Monday, March 15, 2023.

[8] The hearing of this motion was scheduled to proceed at 12 PM noon on Wednesday, March 17, 2023. As further discussed below, the Respondents were represented by counsel today who opposed the granting of any relief for a number of reasons, including but not limited to the fact that they had received only two days’ notice. At the outset of the hearing, counsel for the Respondents indicated that a brief adjournment of the matter might allow the parties to agree to consensual interim terms of an order. I granted that request for a brief adjournment to allow the parties and their counsel to have discussions, in fact twice, and the parties advised that they were unable to agree to terms, with the result that the motion was argued on the merits beginning at 1:30 PM.

[9] Prior to filing for CCAA protection, the OTE Group and others commenced a claim in this Court against Page, Cox and others asserting unjust enrichment, fraud, breach of fiduciary duty and other causes of action.

[10] Among other things, that claim alleges that Page and Cox purchased, in 2021, and through a corporate entity (265) the Yacht using funds wire transferred from OTE LP accounts, and caused OTE Logistics to guarantee chattel mortgage secured by the vessel (both entities are defined in my Endorsement of January 30, 2023).

[11] Today, the OTE Group relies upon the Affidavit of Scott Hill sworn March 12, 2023 with exhibits thereto, the Affidavit of Miles Hill sworn March 12, 2023 and exhibits thereto, and the Second Report of the Monitor.

[12] As set out in the Affidavit of Scott Hill, the position of the OTE Group is that at least USD \$3,675,687.05 of OTE Group funds were used to purchase the Yacht, currently owned by 265.

[13] At the time of filing the Notice of Motion, OTE Group was unaware of the exact whereabouts of the Yacht, although filed evidence confirming that it was listed for sale by various Boat Brokers in Hollywood, Florida without the permission of the OTE Group which maintains the security interest registered over the Yacht.

[14] At the outset of the hearing of this motion, Mr. Martin as counsel for the OTE Group advised the Court that the Applicants had just been advised, although had no sworn evidence, that subsequent to the service and filing of the Notice of Motion, the Yacht had in fact left port at Hollywood, Florida, and was believed to be bound for the Bahamas.

[15] Mr. Schumann, as counsel for the Respondents advised, in fairness and with candor, that while he had just recently been retained and could not advise the Court with certainty when the Yacht had left port, it was at the time of the hearing at sea and, he believed, headed for the Bahamas.

[16] The Respondents control the Yacht, and the evidence on this motion was to the effect that it was up for sale with multiple Boat Brokers (with active listings at the time of the hearing of the motion).

[17] Moreover, the evidence of the OTE Group is that the Respondents have caused a deregistration of the Yacht from Canada, changed its name and taken other steps all in an attempt to remove the asset from the control or reach of the OTE Group, have forged certain documents to fund the purchase of the Yacht, and are otherwise acting in an attempt to frustrate the efforts of the OTE Group and the Monitor to investigate the use of OTE Group funds, the purchase of the Yacht and the whereabouts of the Yacht.

[18] As a result of the above, the OTE Group brought this motion for *Mareva* relief to freeze the Yacht and direct the Respondents to order its return to Florida pending a determination of the origin and ownership of funds used to purchase it and guarantee payment of the balance of the purchase price, and the determination of rights to the Yacht or any proceeds of sale thereof.

[19] As stated above, at the conclusion of the hearing and having heard from counsel for all parties who wished to make submissions, I granted the order freezing the Yacht and directing the Respondents to order its return to port in Florida.

#### *Mareva* Injunction

[20] The test for a *Mareva* injunction is well established. This Court has jurisdiction to grant an interlocutory injunction, including a *Mareva* injunction, pursuant to section 101 of the *Courts of Justice Act*, where it appears just or convenient to do so. Pursuant to Rule 40.01, an interlocutory injunction or mandatory order under section 101 may be obtained on motion to a judge. The order may include such terms as are just, and may be sought on motion made without notice for a period not exceeding 10 days.

[21] That said, the relief is extraordinary. As numerous courts have observed, the harshness of such relief, usually issued *ex parte*, is mitigated or justified in part by the requirement that the defendant have an opportunity to move against the injunction immediately. The relief remains

extraordinary even in circumstances such as are present here, where the relief was not sought *ex parte*, but rather on notice to the Respondents, albeit brief.

[22] The factors to be considered in determining whether to grant *Mareva* relief include whether the moving party has established the following:

- (a) a strong *prima facie* case;
- (b) particulars of its claim against the defendant, setting out the grounds of its claim and the amount thereof, and fairly stating the points that could be made against it by the defendant;
- (c) some grounds for believing that the defendant has assets in Ontario (although this requirement has been modified by more recent jurisprudence discussed below, such that it is perhaps better expressed as: some grounds for believing that the defendant has assets within the jurisdiction of the Ontario Court);
- (d) some grounds for believing that there is a serious risk of defendant's assets being removed from the jurisdiction or dissipated or disposed of before the judgment or award is satisfied;
- (e) proof of irreparable harm if the injunctive relief is not granted;
- (f) the balance of convenience favours the granting of the relief; and
- (g) an undertaking as to damages.

(See *Aetna Financial Services Ltd. v Feigelman*, [1985] 1 S.C.R. 2 (“Aetna”) at paras. 26, 30; *Chitel v. Rothbart*, 1982 CANLII 1956 (ONCA) at para. 60; and *Lakhani et al v. Gilla Enterprises Inc. et al*, 2019 ONSC 1727 at para. 31).

[23] A strong case that a defendant has committed fraud against the plaintiff can be important evidence in support of the relief sought. The “reluctance” of the common law toward allowing execution before judgment has recognized exceptions, including circumstances where the relief is necessary for the preservation of assets, the very subject matter in dispute, or where to allow the adversarial process to proceed unguided would see their destruction before the resolution of the dispute. (See *Aetna*, at para. 9).

[24] The test as to whether a strong *prima facie* case exists has been expressed by the courts as the question of whether the Plaintiff would succeed “if the court had to decide the matter on the merits on the basis of the material before it” (See *Petro-Diamond Inc. v. Verdeo Inc.*, 2014 ONSC 2917 at para. 25).

[25] The following elements are required for the tort of civil fraud: a false representation by the defendant; some level of knowledge of the falsehood of the representation by the defendant (i.e., knowledge or recklessness); the false representation caused the plaintiff to act; and, the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8 at paras. 17-21.

[26] Applying the test to this case, I am satisfied that the *Mareva* injunction should be granted.

[27] At the outset I observe two obvious factors relevant here.

[28] First, the injunction is extremely limited in scope and applies only to the Yacht (and its engines which have distinct serial numbers and are separately registered although obviously affixed to the vessel itself) or to proceeds of sale therefrom. The order has no application to any other assets of the Respondents. It follows that issues that are in some circumstances relevant to the granting and scope of *Mareva* relief, such as access to funds for living and/or legal expenses, are not relevant here and were not argued as an issue by any party.

[29] Second, as noted, this injunction was brought on notice, and I heard submissions from counsel to the Respondents. The fact that notice was given is relevant to my analysis of the serious risk of the assets being removed from the jurisdiction and the balance of convenience.

[30] The purpose of a *Mareva* injunction is to freeze exigible assets when found within the jurisdiction of the Court. Such assets include personal property such as a vessel: *Total Traffic Services Inc. v. Kone*, 2020 ONSC 4402.

[31] The basis for *Mareva* relief will be more readily justified where the rights of the moving party are specifically related to a physical asset in question – in this case, the Yacht.

[32] The evidence relied upon by the OTE Group as to the underlying allegations of fraud are found in the two affidavits on which they rely (Affidavit of Scott Hill sworn March 12, 2023, principally at paras. 21-30, and Affidavit of Miles Hill also sworn March 12, 2023 at paras. 4-5).

[33] That evidence is to the effect that the Respondents transferred funds or permitted and authorized the transfer of funds from OTE accounts, inappropriately and without the right to do so, and used those funds to purchase the Yacht, in part through the alleged misuse of the signing authority of Page at OTE Logistics. The OTE Group received no benefit or consideration for these fund transfers. It appears the Respondents further fraudulently executed and forged signatures on documents to Essex, the party that provided financing for the Yacht.

[34] The Respondents filed no evidence on this motion, perhaps not surprisingly given that they had received only two days-notice. In submissions, counsel for the Respondents submitted not that the transfers of funds did not occur, but rather that they were not improper, or at least they did not constitute *prima facie* evidence of fraud, since they could be said to be distributions of profits to which the Respondents were entitled.

[35] I cannot accept the submission, however, in the complete absence of any evidence to corroborate the suggestion. The books and records of the OTE Group are incomplete and lacking. There is no evidence before me of resolutions, meeting minutes, correspondence or any documents demonstrating or even suggesting that these transfers were in fact, or were even intended to be, distributions of profit or income. There is also no evidence of any corresponding distributions, at the same time or in the same amount, to the other partners who presumably would have been entitled to the same distribution.



[36] Finally, there is no evidence that the partnership had, at the time of the impugned transfers, sufficient profits to fund such distributions in any event.

[37] Even if the Respondents were entitled to distributions of profit at the relevant time, it does not follow that they are somehow entitled to simply take funds and apply them for their own uses.

[38] In short, I am satisfied that the moving parties have established, with sufficient particulars, a strong *prima facie* case.

[39] I am also satisfied as to the requirement for jurisdiction. The individual Respondents are residents of Ontario and this Court has *in personam* jurisdiction over them. Moreover, the earlier requirement that a moving party establish that a respondent have assets in Ontario before *Mareva* relief could be granted (whether restricted to Ontario or beyond) no longer exists. Rather, this Court has discretionary jurisdiction to grant a *Mareva* injunction where circumstances merit, even absent any evidence of assets in Ontario: *Associated Foreign Exchange Inc. et al v. MBM Trading*, 2020 ONSC 4188 at para. 54.

[40] As observed by the Divisional Court in *SFC Litigation Trust (Trustee of) v. Chan*, 137 O.R. (3d) 382, 2017 ONSC 1815:

[26] I do not accept the appellant's assertion. I recognize that in *Chitel* the injunction was sought to restrain the dissipation of assets in Ontario. Similarly, in virtually all of the cases referenced by counsel on this appeal, the assets which were at the risk of dissipation existed in Ontario.

[27] However, a court's *in personam* jurisdiction over a defendant justifying the issuance of a *Mareva* injunction is not dependent, related to or "tied to" a requirement that a defendant has some assets in the jurisdiction.

[28] Section 101(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides the court with jurisdiction to grant an interlocutory injunction or mandatory order "where it appears to a judge of the court to be just or convenient to do so".

[29] A *Mareva* injunction is an equitable remedy and as such I agree with the respondent's submission that this remedy evolves as facts and circumstances merit.

[30] The availability of the equitable remedy of a *Mareva* injunction in England has evolved. This evolution was commented on by Sharpe J.A. in *Injunctions and Specific Performance*, looseleaf (Toronto: Canada Law Book, 2015), where he observed, at para. 2.910, the following:

The strict rule requiring assets in the jurisdiction has now been abandoned and, in special circumstances the English courts will grant *Mareva* Orders to restrain disposition of assets elsewhere. The basis upon which "world-wide" *Mareva* Orders are made is that the English courts assert "unlimited [page390] jurisdiction ...*in personam* against any person, whether an individual or a corporation, who is, under English procedure, properly made a party to proceedings pending before the English court".

[31] Sharpe J.A. also observed that "orders of this kind have also been made by Canadian courts", referencing, amongst other cases, *Mooney v. Orr* [[1994] B.C.J. No. 2652, 100 B.C.L.R. (2d) 335 (S.C.)], a case considered by Weiler J.A. in *R. v. Consolidated Fastfrate Transport Inc.* (1995), 24 O.R. (3d) 564, [1995] O.J. No. 1855 (C.A.), as set out below.

[32] The English evolution was described in the U.K. Court of Appeal decision in *Derby & Co. v. Weldon (No. 2)*, [1989] 2 W.L.R. 276, [1989] 1 All E.R. 1002 (C.A.), at para. 6, as follows:

It seems to me that the time has come to state unequivocally that in an appropriate case the court has power to grant an interlocutory injunction even on a worldwide basis against any person who is properly before the court, so as to prevent that person by the transfer of his property frustrating a future judgment of the court. The jurisdiction to grant such injunctions is one which the court requires and it seems to me that it is consistent with the wide words of section 37(1) of the Act of 1981.

In matters of this kind it is essential that the court should adapt the guidelines for the exercise of a discretion to meet changing circumstances and new conditions provided always the court does not exceed the jurisdiction which is conferred on it by Parliament or by subordinate legislation.

It remains true of course that the jurisdiction must be exercised with care.

[33] The concept of a *Mareva* injunction being an evolving remedy was also commented on by Weiler J.A. in *Consolidated Fastfrate Transport Inc.*, at para. 142, as follows:

The practice with respect to the granting of *Mareva* injunctions is still in the process of evolving. The early *Mareva* cases involving foreigners were simply concerned with the fact that the assets might be removed from England and that any judgment granted would be unenforceable. However, in *Barclay-Johnson v. Yuill*, [1980] 3 All E.R. 190, [1980] 1 W.L.R. 1259 (Ch. D.) and *Prince Abdul Ralman bin Turki Al Sudairy v. Abu-Taha*, [1980] 3 All E.R. 409 (C.A.), injunctions were granted against English nationals as opposed to foreigners. In *Derby & Co. Ltd. v. Weldon [(No. 1)]* (1988), [1989] 1 All E.R. 469 (C.A.) a *Mareva* injunction was granted on a worldwide basis on the condition that certain undertakings were given by the applicant which would protect the defendant from oppression and misuse of information and protect the position of third parties. Most recently, *Mooney v. Orr*, B.C.S.C., November 24, 1994 (unreported, Vancouver Registry No. C908539) [now reported 100 B.C.L.R. (2d) 335, [1995] 3 W.W.R. 116], Huddart J. granted a worldwide *Mareva* injunction against Mooney, who, prior to entering into business dealings with the Orrs, had so arranged his affairs as to protect any offshore property he might have from execution. Huddart J. cited the decision of the British Columbia Court of Appeal in *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at p. 346, [1987] 2 W.W.R. 331 (C.A.), where McLachlin J.A. said: [page391]

...the judge must not allow himself to become the prisoner of a formula. The fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case.

[34] These observations set out above were noted by Weiler J.A. in relation to her finding that in order to obtain a *Mareva* injunction it is unnecessary to incorporate a requirement that a dissipation or transfer of assets was pursued for an improper purpose.

[35] In relation to *Chitel*, Weiler J.A. made the following observation, at para. 147:

In commenting as he did on the fourth guideline, I am of the opinion that MacKinnon A.C.J.O. was attempting to encapsulate the essence of the English authorities he had just reviewed and to give guidance as to when the requirements for granting a *Mareva* injunction would be met. I do not think that in recognizing the availability of the remedy in Ontario he meant to foresee and to foreclose all of the kinds of situations where a *Mareva* injunction could be granted.

[36] Therefore, I think it is clear that when an equitable remedy is sought the court ought to consider the guidelines set out in *Chitel*, but ultimately the court must consider what is just or convenient.

[37] Furthermore, I note also that, at para. 154, Weiler J.A. observed that "the threatened removal of assets outside of Canada is more likely to lead to the granting of a *Mareva* injunction because, generally, it is more difficult to enforce a judgment outside the jurisdiction". These are the very circumstances before the court.

[38] The usual case is that a party seeks a *Mareva* injunction to prevent assets from leaving the jurisdiction. However, *Mareva* injunctions have been granted on a worldwide basis with increasing frequency in our global economy. The purpose of the injunction in both circumstances is to ensure that a judgment can be enforced in the exceptional circumstances where the plaintiff, after making the required full and frank disclosure, establishes a strong *prima facie* case on the merits.

[41] In this case, the individual Respondents are, as noted, Ontario residents. The Yacht was originally owned by 256, the company owned or controlled by them. The evidence before me is to the effect that the exact whereabouts of the Yacht at the time of the hearing is unknown, although the evidence is clear that it was in Florida recently, and counsel for the Respondents admitted, as noted above, that it has recently left Florida and is apparently en route to the Bahamas.

[42] In the circumstances, I conclude that the Yacht is reasonably connected to this jurisdiction and the injunctive relief should be granted in respect of it.

[43] As noted above, while there is no clear evidence in the record before me as to when the Yacht left port in Florida as against when on Monday two days prior to the hearing, the Respondents received notice of this motion, all parties are in agreement that the Yacht did in fact leave port in Florida and was at the time of the hearing believed to be headed for the Bahamas.

That fact serves to heighten dramatically the concern and urgency of the moving parties and their fear that attempts are being made to place the asset beyond the reach of this Court.

[44] The Respondents submit that nothing can or should be taken from the fact that the Yacht has left port and specifically, no inference should be drawn as to any intent or effort to hide the asset.

[45] In my view, and as submitted by the OTE Group, the objective facts support my conclusion that there is a serious risk that the asset will be removed from the jurisdiction (in the sense of the jurisdiction and reach of this Court) and/or will be dissipated.

[46] The Yacht was, and apparently still is, listed for sale although it has been listed for sale in at least two locations (Palm Beach, Florida and Bimini, Bahamas. It has been delisted from Canadian registries. It has been renamed, and listed on the websites of the Boat Brokers as being for sale in Hollywood, Florida. Its GPS locator, whether intentionally disabled or simply malfunctioning, is not active, with the result that the exact location of the vessel cannot be determined.

[47] I am satisfied there is a risk of dissipation of assets. Different jurisdictions are, on the face of the evidence, involved. Proof of the risk of removal/dissipation may be inferred from the surrounding circumstances of the responding parties' misconduct. (See *Ontario Professional Fire Fighters Association v. Atkinson et al*, 2019 ONSC 3877 at para. 6-8, quoting with approval from *Sibley v. Ross*, 2011 ONSC 2951 at paras. 63, 64 and *Amphenol Canada Corp. v. Sunadrum*, 2019 ONSC 849).

[48] In my view, and notwithstanding the able submissions of counsel for the Respondents, I have little difficulty in concluding that there is a risk of removal or dissipation of the asset here and such is easily inferable from the circumstances.

[49] I similarly conclude that the moving parties have established irreparable harm for the purposes of this motion and if the Yacht cannot be located or attached, or if it is sold and proceeds cannot be traced, any judgment that may be made will likely be frustrated. The probability of irreparable harm increases as the probability of recovering damages decreases: *Christian-Philip v. Rajalingam*, 2020 ONSC 1925 at para. 33.

[50] In the same way, I am satisfied that the balance of convenience overwhelmingly favours the moving parties. The harm to them if the injunctive relief is not granted would likely be irreparable, but the harm to the Respondents if this relief is granted, on an interim and very limited basis, is minimal. The Yacht is for sale anyway. The injunctive relief is limited in scope to the Yacht (and the engines) and does not extend to other assets of the Respondent.

[51] Finally, pursuant to Rule 40.03, I am persuaded that the requirement for an undertaking, although provided by the moving parties here, should be dispensed with in the circumstances. The case put forward by the OTE Group is strong, and the OTE group is insolvent and in ongoing CCAA protection from its creditors. In my view, it is appropriate to dispense with the requirement for an undertaking as to damages where, as here, the case of the moving parties is strong and they are insolvent: *Sabourin & Sun Group of Cos. v. Laiken*, [2006] OJ No. 3847 at para. 16.

[52] While it is not determinative of the test as to whether the injunctive relief sought should be granted, I draw additional comfort from the Second Report of the Court-appointed Monitor dated March 13, 2023.

[53] The Monitor, independent of the parties and, as has often been described, the “eyes and ears of the Court”, fully supports the relief requested by the OTE Group, for the benefit of stakeholders including creditors.

[54] The Monitor’s own review of the evidence of the OTE Group supports the conclusion that the Yacht was purchased substantially using funds wired directly from the bank accounts of the OTE Group and further that 265 caused OTE Logistics to guarantee a chattel mortgage held by Essex, secured on the Yacht (para. 13).

[55] The third party entity from which the Yacht was purchased, Pride Marine Group, was one of the parties from whom the Monitor sought information and documentation pursuant to its investigatory powers granted by this Court. In response to that request, Pride provided a copy of the purchase contract for the Yacht, signed by Page, together with a breakdown of the payments for the Yacht as well as Pride bank statements showing funds received by Pride from accounts belonging to both OTE Group and 265 during the period from September 22, 2022 August 12, 2021. The Monitor concludes at paragraph 15 that the purchase price of the Yacht was substantially funded by the OTE Group with wire transfers totaling USD \$3,218,500.

[56] I observe that as reported by the Monitor, it is the intention of the OTE Group to seek to appoint the Monitor as foreign representative to seek recognition of these proceedings outside Canada and particularly to commence Chapter 15 Proceedings in the United States to recognize and enforce orders made by this Court. The Monitor observes that the Yacht, or proceeds of sale with respect thereto, may be a significant source of recovery for the OTE Group and its Creditors.

[57] The scope of the injunctive relief sought has been described above. The moving parties have provided a draft order, blacklined as against the Model Order of the Commercial List. The relief, though narrow in scope, is consistent with the nature and scope of relief granted by this Court in circumstances such as I have found are present here.

[58] The draft order contains the usual comeback clause, such that any party may return to this Court to vary or rescind the order on notice at any time.

[59] For all of the above reasons, I granted the order at the conclusion of the hearing of this motion, and directed the Respondents to, in turn, direct and facilitate the return of the Yacht to Florida forthwith.

[60] As to a return date of this motion before me, I offered to the parties alternative dates well within 10 days of the date of the order I have made. Due to personal and professional commitments of counsel, and the collective desire between and among them to have ongoing discussions with a view to having all or part of this matter possibly proceed on consent, they requested that they be given an opportunity to caucus amongst themselves and agree on the next return date. I agreed.

[61] Subsequent to the hearing of the motion and the granting of the order, the Commercial List Office advised me that the parties have scheduled a hearing before me on Tuesday, March 28.

A handwritten signature in black ink that reads "Osborne, J.". The signature is written in a cursive style with a large, looped "O" at the beginning.

Osborne J.

**Date:** March 21, 2023



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**ENDORSEMENT**

COURT FILE NO.: CV-23-00693758-00CL DATE: March 28, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: *ORIGINAL TRADERS ENERGY LTD et al*

BEFORE: **MR JUSTICE OSBORNE**

**PARTICIPANT INFORMATION**

**For Applicant:**

Name of Person Appearing	Name of Party	Contact Info
Tamie Dolny	OTE Group	647-426-2306 / tdolny@airdberlis.com
Samantha Hans	OTE Group	416-837-3260 / shans@airdberlis.com

**For Respondent:**

Name of Person Appearing	Name of Party	Contact Info
Fredrick Schumann	2658658 Ontario Inc. & Glenn Page	416-593-2490 / Fredricks@stockwoods.ca
Dan Goudge	2658658 Ontario Inc. & Glenn Page	416-593-2497 / dang@stockwoods.ca

**Others in Attendance:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
Adam Mortimer	Ministry of Finance	416-559-0216 / adam.mortimer@ontario.ca
Steven Groeneveld	Ministry of Finance	905-431-8380 / s.groeneveld@ontario.ca
Natai Shelsen	Mandy Cox	416-979-4384 / nshelsen@goldblattpartners.com
Raj Sahni	Counsel for the Monitor KPMG Inc.	416-777-4804 / sahnir@bennettjones.com
Chris Gard	KPMG Inc. (Monitor)	416-777-8214 / cgard@kpmg.ca
Duncan Lau	KPMG Inc. (Monitor)	416-476-2184 / duncanlau@kpmg.ca
Paul Van Eyk	KPMG Inc. (Monitor)	647-622-6586 / pvaneyk@kpmg.ca
Edward Park	Canada Revenue Agency	647-292-9368 / Edward.park@justice.gc.ca

**ENDORSEMENT OF JUSTICE OSBORNE:**

[1] The parties attended today for the return of *Mareva* relief I granted by order dated March 15, 2023. Today's date was scheduled on the consent of all counsel to accommodate personal and other commitments.

[2] Defined terms in this Endorsement have the meaning given to them in my Endorsement of March 22 by which I gave reasons for my March 15 order.

[3] There were two main issues before me today: a request for additional information relating to the Yacht, and the setting of a schedule for the return of this motion.

[4] Counsel for the Respondents confirmed that, subsequent to my March 15 order, the Yacht returned from the Bahamas to Florida where it is today. It is, however, moored at a temporary slip and the Respondents propose to move it to the marina located at Hollywood, Florida from which it departed a few days prior to the March 15 motion. Before it is moved, however, the OTE Group and the Monitor want certain information.

[5] Counsel for the Respondents will provide to counsel for the OTE Group and the Monitor as soon as possible but in any event within 48 hours the name and contact information for the Captain of the Yacht and a copy of the insurance policy on the Yacht. The GPS locator system onboard the Yacht is not functioning. It is unclear when it will be repaired. If it cannot be repaired immediately, the Respondents will obtain a portable GPS locator unit, and undertake that it will remain on board the Yacht and operational so that its location can be tracked at any time and continuously.

[6] Once that information has been provided, the Yacht will be moved to the marina at Hollywood, Florida and will remain there unmoved until further order of this Court.



[7] The parties will advise me via email from the Court-appointed Monitor no later than 4:30 PM on Friday, March 30, whether the above noted information and GPS operational capability has been provided and confirmed. If it has not been, the parties may if necessary schedule a brief attendance before me to discuss the timing of next steps. Counsel for the Respondents has undertaken to provide the material and information as soon as possible and all parties are in agreement that the Yacht will not be moved until it is provided.

[8] The parties wish collectively to agree among themselves on a schedule for the exchange of materials and the return date for this motion, which is agreeable to me. They will agree upon a schedule and the Monitor will provide that to me as soon as possible, preferably with two alternative hearing return dates for the motion. I will then schedule the return of the motion and advise the parties via email to the Monitor, or if that cannot be done, I will schedule a brief case conference.

[9] For greater certainty, my earlier order remains in effect pending the return of the motion and any further order of this Court.

A handwritten signature in black ink, appearing to read "Osborne, J.", written in a cursive style.

---

Justice Osborne

# APPENDIX “D”

**From:** [Raj Sahni](#)  
**To:** [Jonathan Chen](#)  
**Cc:** [Paul van Eyk \(pvaneyk@kpmg.ca\)](#); [Lau, Duncan](#); [Steve Graff](#); [mhenderson@airdberlis.com](#); [Monique Jilesen](#); [Keely Kinley](#); [Tamie Dolny](#); [Gard, Chris](#); [Jim Patterson](#); [Thomas Gray](#); [Gard, Chris](#)  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00 [DM-LSDOCS.FID1022184]  
**Date:** Tuesday, July 11, 2023 1:59:55 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Thank you Jonathan. Could you please confirm where this email account was located by your client? The Monitor has started its review of the emails and notes that they are from and to an OTE email address [REDACTED].

As noted in our email below, and pursuant to the previous demands for Requested Information made by the Monitor, the Monitor requires that all emails and attachments to or from any email accounts (not just Glenn Page's) under the Original Traders Energy domain name or other domain names that are or were owned by or associated with any of the OTE Group entities (the "**OTE Group Domains**") be provided to the Monitor forthwith, in their current format and the format in which they existed as at the time of the Initial Order, without editing, redaction or any other alteration or tampering, including delivery to the Monitor of any computer drives or storage devices or media and immediate access to the Monitor to any cloud based or other servers on which such emails may be located (collectively, the "**Storage Media**"). Please provide the Monitor with all such Storage Media forthwith or inform the Monitor where such Storage Media is located and grant access thereto to the Monitor's representatives.

Thank you



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 4804](tel:4167774804) | F. [416 863 1716](tel:4168631716) | M. [416 618 4804](tel:4166184804)  
E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Jonathan Chen <jchen@litigate.com>  
**Sent:** Saturday, July 8, 2023 1:53 PM  
**To:** Raj Sahni <Sahnir@bennettjones.com>  
**Cc:** Paul van Eyk (pvaneyk@kpmg.ca) <pvaneyk@kpmg.ca>; Lau, Duncan <duncanlau@kpmg.ca>; Steve Graff <sgraff@airdberlis.com>; mhenderson@airdberlis.com; Monique Jilesen <mjilesen@litigate.com>; Keely Kinley <kkinley@litigate.com>; Tamie Dolny <tdolny@airdberlis.com>; Gard, Chris <cgard@kpmg.ca>; Jim Patterson <PattersonJ@bennettjones.com>; Thomas Gray <GrayT@bennettjones.com>  
**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00 [DM-LSDOCS.FID1022184]

Hello Raj,

Below is a link to access the .pst file:

[REDACTED]

To be clear, we have not loaded the .pst file on our end and have not reviewed any of its contents.

Given your objection, we will not review the contents until and unless we come to a resolution or the issue is addressed by the Court.

Jonathan

---

**From:** Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>

**Sent:** Friday, July 7, 2023 11:39 AM

**To:** Jonathan Chen <[jchen@litigate.com](mailto:jchen@litigate.com)>; Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; [mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com); Monique Jilesen <[mjilesen@litigate.com](mailto:mjilesen@litigate.com)>; Keely Kinley <[kkinley@litigate.com](mailto:kkinley@litigate.com)>; Tamie Dolny <[tdolny@airdberlis.com](mailto:tdolny@airdberlis.com)>

**Cc:** Paul van Eyk ([pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)) <[pvaneyk@kpmg.ca](mailto:pvaneyk@kpmg.ca)>; Lau, Duncan <[duncanlau@kpmg.ca](mailto:duncanlau@kpmg.ca)>; Gard, Chris <[cgard@kpmg.ca](mailto:cgard@kpmg.ca)>; Jim Patterson <[PattersonJ@bennettjones.com](mailto:PattersonJ@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00 [DM-LSDOCS.FID1022184]

**EXTERNAL MESSAGE**

Jonathan,

Pursuant to the Initial Order dated January 30, 2023 and the Amended & Restated Initial Order of the OTE Group dated February 9, 2023 (the "**ARIO**"), the Monitor is to have full and complete access to the books, records and data of the OTE Group and is empowered to compel the production from any Person who has possession, custody or control thereof (see paragraphs 29(e) and (f) of the ARIO). The Monitor previously demanded production from Glenn Page of all such Requested Information, including via a letter dated February 6, 2023 (attached hereto for your convenience).

Pursuant to the ARIO and the previous demands for Requested Information made by the Monitor, the Monitor requires that all emails and attachments to or from any email accounts under the Original Traders Energy domain name or other domain names that are or were owned by or associated with any of the OTE Group entities (the "**OTE Group Domains**") be provided to the Monitor forthwith, in their current format and the format in which they existed as at the time of the Initial Order, without editing, redaction or any other alteration or tampering, including delivery to the Monitor of any computer drives or storage devices or media and immediate access to the Monitor to any cloud based or other servers on which such emails may be located.

Furthermore, the Monitor does not agree to the review by any person, including Mr. Page or his counsel or advisors, of the emails or any attachments thereto prior to them being provided to the Monitor. All information and data on OTE Group Domains and any emails received or sent by Glenn Page in his capacity as a former director and/or officer of any OTE Group entity are property of the

OTE Group. In addition, such emails and/or attachments could be subject to privilege in favour of the OTE Group or contain confidential or proprietary information belonging to the OTE Group.

If Mr. Page fails to comply with the above requests, the Monitor intends to raise this issue before the Court and seek any further directions or orders it deems necessary or appropriate.



**Raj Sahni**  
*Partner\**, Bennett Jones LLP  
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E. [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)  
[BennettJones.com](http://BennettJones.com)

---

**From:** Jonathan Chen <[jchen@litigate.com](mailto:jchen@litigate.com)>

**Sent:** Wednesday, July 5, 2023 11:03 PM

**To:** Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Raj Sahni <[SahniR@bennettjones.com](mailto:SahniR@bennettjones.com)>;  
[mhenderson@airdberlis.com](mailto:mhenderson@airdberlis.com)

**Cc:** Monique Jilesen <[mjilesen@litigate.com](mailto:mjilesen@litigate.com)>; Keely Kinley <[kkinley@litigate.com](mailto:kkinley@litigate.com)>

**Subject:** RE: In the Matter of the Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc. - Court File No. CV-23-00693758-00 [DM-LSDOCS.FID1022184]

Counsel,

As you know, we are counsel to Glenn Page and 2658658 Ontario Inc.

Our client continues to make efforts to locate the Requested Information as defined in the Monitor's letter dated February 6, 2023. In the course of those efforts, Mr. Page located a copy of his email account with the Original Traders Energy domain name. At this time, we do not have any particulars about the email account. We intend to undertake a review of the email account for responsive documents as early as July 10, 2023. We appreciate that there may be privileged information contained in that email account. For that reason, we are open to discussing a review protocol should you believe that to be necessary. However, if you do not raise any objection by July 9, 2023, we will commence our review.

Regards,

Jonathan



[Jonathan Chen\\*](#)

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. AND  
2496750 ONTARIO INC.

Court File No. CV-23-00693758-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**Proceedings commenced at Toronto**

**FOURTH REPORT OF THE MONITOR**

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Lawyers for the Monitor