



This is the 2nd affidavit
of Melinda McKie in this case
and was made on April 2nd, 2018

No. S174308
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP
WEDGEMOUNT POWER (GP) INC.
WEDGEMOUNT POWER INC.
THE EHRHARDT 2011 FAMILY TRUST
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP
by its general partner POINTS WEST HYDRO (GP) INC.
CALAVIA HOLDINGS LTD.
SWAHEALY HOLDINGS LIMITED
BRENT ALLAN HARDY
DAVID JOHN EHRHARDT
28165 YUKON INC.
PARADISE INVESTMENT TRUST
SUNNY PARADISE INC.

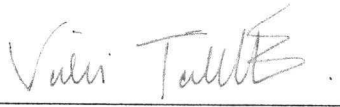
DEFENDANTS

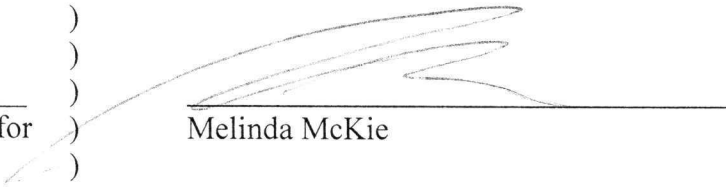
AFFIDAVIT

I, Melinda McKie, of 2800 – 1055 Dunsmuir Street, Vancouver, British Columbia, SWEAR
THAT:

1. I am a Senior Vice President of Deloitte Restructuring Inc., the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. As such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I am authorized to swear this affidavit on behalf of the Receiver.
3. Attached hereto as **Exhibit "A"** is a copy of an email dated March 23, 2018 from Lisa Hiebert, of Borden, Ladner Gervais LLP ("**BLG**"), counsel for British Columbia Hydro and Power Authority, to Colin Brousson, of Gowling WLG (Canada) LLP, counsel for Industrial Alliance Insurance and Financial Services Inc. I was provided with a copy of this email by Vicki Tickle, of McMillan LLP, counsel for the Receiver, who was copied on Ms Hiebert's email.
4. Attached hereto as **Exhibit "B"** is a copy of a letter dated March 29, 2018 from Magnus Verbrugge, of BLG, to Mr. Brousson. I was provided with a copy of this letter by Ms Tickle, who was copied on Mr. Verbrugge's letter.

SWORN BEFORE ME at Vancouver,)
British Columbia,)
on April 2nd, 2018)
)

)
A commissioner for taking affidavits for)
British Columbia)


Melinda McKie

Vicki Tickle

From: Hiebert, Lisa [LHiebert@blg.com]
Sent: Friday, March 23, 2018 4:15 PM
To: Brousson, Colin D.
Cc: Vicki Tickle; Verbrugge, Magnus C.; Wong, Chapmann
Subject: RE: Wedgemount - Lifting the Stay

Colin,

As Magnus mentioned, we are working on our affidavits and getting further instructions, but we can't promise to have them immediately given the number of decision makers presently on holiday for spring break.

Regarding the notice of application delivered today, that dispute, pursuant to the EPA section 7.5, must be resolved at arbitration. Please note that BCH relies on the arbitration clause in the EPA and that the filing of the Application constitutes a further breach of the EPA. We expect to seek to have the Application stayed or dismissed on the basis of the arbitration clause.

Finally, please add me to your service list in this matter.

Please let us know if you have any questions or would like to discuss.

Best,
Lisa

Lisa Hiebert
Partner

T 604.632.3425 | F 604.622.5815 | lhiebert@blg.com

1200 Waterfront Centre, 200 Burrard St, P.O. Box 48600, Vancouver, BC, Canada V7X 1T2
Centennial Place, East Tower, 1900, 520 – 3rd Ave S W, Calgary, AB, Canada T2P 0R3

This is Exhibit "A" referred to in the
affidavit of MELINDA MCKIE
sworn before me at VANCOUVER
this 2nd day of APRIL 2018
Vicki Tickle
A Commissioner for taking affidavits
Within British Columbia

Magnus Verbrugge
T 604-640-4198
F 604-622-5898

Borden Ladner Gervais LLP
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big.com



File No. 544441/001726

March 29, 2018

Delivered by Email

Colin Brousson
Gowling WLG (Canada) LLP
550 Burrard Street, Suite 2300, Bentall 5
Vancouver, BC V6C 2B5

Dear Sirs / Mesdames:

Re: **Re: Industrial Alliance Insurance and Financial Services Inc. v.
Wedgemount Power LP et al, Vancouver Registry Action No. S-174308
(the "Receivership Proceeding")**

This is Exhibit " B " referred to in the
affidavit of MELINDA MCKIE
sworn before me at VANCOUVER
this 2nd day of APRIL 2018
Valeri Tallis
A Commissioner for taking affidavits
Within British Columbia

We write with respect to the following applications scheduled for hearing in the Receivership Proceeding on April 6:

1. The application of British Columbia Hydro and Power Authority ("BC Hydro") filed January 19, 2018 in the Receivership Proceeding (the "BC Hydro Application"), seeking leave of the Court to lift the stay of proceedings created by the Receivership Order of May 12, 2017 (the "Receivership Order"), so that BC Hydro may proceed to exercise its termination rights in connection with the Electricity Purchase Agreement dated March 6, 2016 (the "EPA") with Wedgemount Power Limited Partnership ("Wedgemount"); and
2. The application of Industrial Alliance Insurance and Financial Services Inc. ("IA"), filed March 23, 2018 in the Receivership Proceeding (the "IA Application"), seeking a Declaration that BC Hydro may not terminate the EPA pursuant to Sections 8.1(a) or (f) thereof.

BC Hydro's position on April 6 will be that the IA Application cannot proceed and should be dismissed or struck for the reasons set out below.

Agreement to Arbitrate in EPA

As you know, Section 7.5 of the EPA (the "Agreement to Arbitrate") provides as follows:

7.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre (“**BCICAC**”) pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.

The BC Hydro Application seeks a lifting of the stay of proceedings under the Receivership Order so that BC Hydro may exercise its termination rights thereunder.

Contrary to the assertion in IA’s application response, BC Hydro does not seek any declaration or other relief from the Court under the EPA. The right, if any, of the Receiver or IA to object to the termination of the EPA will not be prejudiced by the Order that BC Hydro seeks in the BC Hydro Application.

BC Hydro acknowledges that if the stay is lifted and BC Hydro issues a notice of termination of the EPA, the Receiver and/or IA intend to dispute BC Hydro’s right to do so. Based on the Agreement to Arbitrate, any dispute in relation to the EPA must be resolved by arbitration. The Court has no jurisdiction to render any decision in relation to disputed rights and obligations under the EPA.

Lender Consent Agreement

The Lender Consent Agreement dated June 16, 2016 (the “**Lender Consent Agreement**”) between IA, by its agent Travelers Capital Corporation (“**Travelers**”), among other things, permits Travelers (as agent for IA) to assume the EPA as the Seller by delivering an “**Assumption Notice**” to BC Hydro. This has not occurred to date. Upon delivery of an Assumption Notice, Travelers / IA is subject to all terms and conditions of the EPA as if it were the original Seller thereunder, including pursuant to Section 9 of the Lender Consent Agreement:

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Agent acknowledges that upon an Assumption Notice being given, the Agent shall become party to, and bound by, the agreements to arbitrate contained in section 7.5 of the EPA.

Accordingly, to the extent that IA establishes a basis to seek relief related to the EPA, it is bound by the Arbitration Agreement.

IA Application

IA's Application should therefore be struck, dismissed or otherwise deferred on April 6, 2018:

1. IA is not a party to the EPA. It has no standing to seek a Declaration that BC Hydro has no right to terminate the EPA. If the Court granted such relief, doing so would result in a non-party defeating BC Hydro's right to arbitrate a dispute arising under and related to the EPA. Unless and until IA delivers an Assumption Notice and becomes a party to the EPA, it is a stranger to that contract. IA's position as a creditor of Wedgemount does not give it a basis to seek this relief and, in effect, seek to defeat BC Hydro's contractual rights pursuant to its agreement with Wedgemount.
2. If IA were to deliver an Assumption Notice to make itself a party to the EPA, it would immediately become subject to the Agreement to Arbitrate.
3. The IA Application is an attempt by IA to achieve indirectly what Wedgemount (or the Receiver) cannot accomplish directly; that is, litigate disputes under the EPA in the Receivership Proceeding instead of in an arbitration. A secured creditor cannot stand in a better position than its debtor with respect to the debtor's contracts with third parties.
4. IA's estoppel argument on the basis of alleged promises and assurances given by BC Hydro to IA is unfounded. IA cannot make such claims against BC Hydro in the Receivership Proceeding; BC Hydro is not a Defendant. Whatever allegations IA may assert, those do not make IA a party to the EPA so as to seek an Order in the Receivership Proceeding affecting BC Hydro's contractual rights vis-à-vis Wedgemount. If IA believes that it has a separate cause of action against BC Hydro, it will need to pursue that in the appropriate forum under the applicable rules.

BC Hydro Asserts the Agreement to Arbitrate

BC Hydro agrees with IA and the Receiver that any disputes under and in relation to the EPA should be resolved. The forum for resolving such disputes is arbitration; no Court has jurisdiction over such disputes. The BC Hydro Application deals only with the stay of proceedings under the Receivership Order and is consistent with the Agreement to Arbitrate, and no action that BC Hydro takes before the Court in the Receivership Proceedings should be considered otherwise.

On March 16, 2018, BC Hydro requested that IA and the Receiver consent to lift the stay of proceedings under the Receivership Order so that any disputes under or in relation to the EPA could be resolved by arbitration as required.

On March 22 (copying the Receiver), IA advised that IA (presumably with the Receiver's concurrence) is "not prepared to consent to the stay being lifted in this instance". Accordingly, the BC Hydro application will have to proceed on April 6.

The IA Application contains a number of legal arguments, and your client's supporting affidavits include voluminous evidence, all of which BC Hydro will respond to in due course if the IA Application is to be heard.

Given the Agreement to Arbitrate, BC Hydro will not engage on the merits of IA's arguments and evidence in the IA Application, which could be construed as being a step inconsistent with the Agreement to Arbitrate. Accordingly, BC Hydro will not file any affidavit evidence responding to the merits of the IA Application at this time.

The existence of the Agreement to Arbitrate dictates that the appropriate way to proceed is as follows:

1. The stay of proceedings under the Receivership Order should be lifted either by consent or by Court Order.
2. BC Hydro would then issue a termination notice to the Receiver pursuant to the EPA, and to IA pursuant to the Lender Consent Agreement.
3. If it chooses to do so, the Receiver would object to the termination notice.
4. Should it choose to do so, IA would issue a Notice of Assumption and become party to the EPA.
5. The dispute over the termination notice, and any other related issues that may arise in connection with the EPA, would then be resolved by arbitration under the Agreement to Arbitrate.

On April 6, 2018, BC Hydro intends to object to the IA Application proceeding on the basis that IA has no standing and the Court has no jurisdiction to make a declaration that would effectively determine a dispute arising under or related to the EPA, and will ask that IA's application be struck, dismissed or stayed.

Yours Truly,

Borden Ladner Gervais LLP


Magnus Verbrugge

Cc: Vicki Tickle (counsel for the Receiver)