



This is the 1st Affidavit
of May Chong in this case and
was made on April 3, 2018

No. S-174308
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 HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

AFFIDAVIT

I, MAY CHONG, of 1200, 200 Burrard Street, in the City of Vancouver, in the Province of British Columbia, SOLEMNLY AFFIRM as follows:

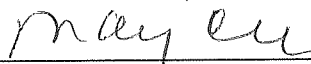
1. I am a legal assistant at Borden Ladner Gervais LLP ("BLG"), counsel to British Columbia Hydro and Power Authority ("BCH") in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true.
2. Attached and marked as **Exhibit "A"** is a true copy of an email dated March 16, 2018 sent by Lisa Hiebert, a lawyer at BLG, to Vicki Tickle and Colin Brousson.

3. I am advised by Lisa Hiebert, and verily believe, that on March 22, 2018, Colin Brousson, counsel for Industrial Alliance Insurance and Financial Services Inc., the Plaintiff in this matter, responded to the email attached as Exhibit A and advised that they were not prepared to consent to the stay being lifted.
4. I am advised by Lisa Hiebert, and verily believe, that on March 23, 2018, she advised Colin Brousson (with a copy to Vicki Tickle, counsel to Deloitte Restructuring Inc.) that BCH relied on the arbitration clause in respect of the Notice of Application filed and served on March 23, 2018 by Industrial Alliance Insurance and Financial Services Inc. in this matter.
5. Attached and marked as **Exhibit “B”** is a true copy of an email and letter dated March 29, 2018 sent by Magnus Verbrugge, a lawyer at BLG, to Colin Brousson and Vicki Tickle.

AFFIRMED BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia, this 3rd day of April 2018)



_____)
A Commissioner for taking oaths in and for the)
Province of British Columbia)



MAY CHONG

CHAPMANN WONG
Articling Student
BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-640-4116

This is **Exhibit "A"** referred to
in the Affidavit of May Chong
made before me on April 3, 2018.



A Commissioner for taking Affidavits
for British Columbia

Chong, May

From: Hiebert, Lisa
Sent: March-16-18 1:05 PM
To: Vicki Tickle; Brousson, Colin D.
Cc: Verbrugge, Magnus C.; Wong, Chapmann
Subject: Wedgemount - Lifting the Stay

Vicki and Colin,

We are writing to ask that the Receiver consent to lifting the stay under the Receivership Order so that the contractual issues can be address at arbitration. It seems certain that issues regarding BC Hydro's right to terminate, including contractual interpretation and likely other issues, will require adjudication. In light of the arbitration clause in the EPA (section 7.5 for ease of reference), those disputes are to be resolved at arbitration with a single arbitrator.

We appreciate the preference to have this matter resolved – one way or another – shortly and are of the view that proceeding through arbitration will allow us to do so in a flexible and efficient manner. Among other things, arbitration may allow for easier scheduling given recent challenges (and, I expect, the continued silence from Scheduling to Vicki's request to have a judge assigned).

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

Borden Ladner Gervais LLP | It begins with service

Calgary | Montréal | Ottawa | Toronto | Vancouver

blg.com To manage your communication preferences or unsubscribe, please click on blg.com/mypreferences/

 Please consider the environment before printing this email

This message is intended only for the named recipients. This message may contain information that is privileged, confidential or exempt from disclosure under applicable law. Any dissemination or copying of this message by anyone other than a named recipient is strictly prohibited. If you are not a named recipient or an employee or agent responsible for delivering this message to a named recipient please notify us immediately, and permanently destroy this message and any copies you may have. Warning: Email may not be secure unless properly encrypted

This is **Exhibit "B"** referred to
in the Affidavit of May Chong
made before me on April 3, 2018.



A Commissioner for taking Affidavits
for British Columbia

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

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
T 604.687.5744
F 604.687.1415
blg.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: Industrial Alliance Insurance and Financial Services Inc. v.
Wedgemount Power LP et al, Vancouver Registry Action No. S-174308
(the "Receivership Proceeding")**

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.

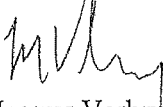
The existence of the Agreement to Arbitrate dictates that the appropriate way to proceed is as follows:

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)

No. S-174308
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 HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

AFFIDAVIT

BORDEN LADNER GERVAIS LLP
1200 - 200 Burrard Street
Vancouver, BC V7X 1T2
Telephone: (604) 687-5744
Attn: Magnus Verbrugge/Lisa Hiebert
544441.001726