

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
COMMERCIAL DIVISION

(Sitting as a court designated pursuant to the  
*Companies' Creditors' Arrangement Act*,  
R.S.C. 1985, c. C-36)

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N°: 500-11-047563-149

**IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF:**

**GRADEK ENERGY INC.**

and

**GRADEK ENERGY CANADA INC.**

**Petitioners**

and

**R H S T DEVELOPMENT INC.**

and

**THOMAS GRADEK**

**Mis en cause**

and

**SAMSON BÉLAIR/DELOITTE & TOUCHE INC.**

**Monitor**

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**MOTION FOR A FOURTH ORDER EXTENDING THE STAY PERIOD  
(Sections 9 and 11 of the *Companies' Creditors Arrangement Act*  
(R.S.C. 1985, c. C-36))**

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TO THE HONOURABLE JUDGE JEAN-YVES LALONDE OF THE SUPERIOR COURT,  
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF  
MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

**I. INTRODUCTION**

1. On October 15, 2014, the Honourable Jean-Yves Lalonde issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* in respect of Gradek Energy Inc and Gradek Energy Canada Inc ("**GEI**" and "**GEC**", and, collectively, "**Gradek Energy**"), as appears from the Court record.

2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed monitor of Gradek Energy and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until November 13, 2014 (the “**Stay Period**”), and was extended on November 11, 2014 to December 19, 2014, on December 17, 2014 to January 16, 2015 and on January 16, 2015 to January 27, 2015 (the “**Stay Period**”).
3. In addition to protecting Gradek Energy, the Stay of Proceedings also extends to the Mis en cause R H S T Development Inc. and Thomas Gradek, who are not debtors in these proceedings but who, as holders of the intellectual property rights of the Re-usable Hydrocarbon Sorbent (“**RHS**”) technology, form an integral part of this restructuring effort (collectively with Gradek Energy, the “**Gradek Parties**”).
4. The Gradek Parties respectfully request that this Honourable Court extend the Stay Period until March 19, 2014 for the reasons set forth below.

## II. EXTENSION OF THE STAY OF PROCEEDINGS

5. Since the issuance of the Initial Order, Gradek Energy has acted, and continues to act, in good faith and with due diligence.
6. Gradek Energy has made and continues to make significant efforts to stabilize its business and address the concerns of all stakeholders in accordance with its proposed course of action, which provides for:
  - (a) the completion of the development of the RHS technology so that it can be brought to the market;
  - (b) the identification and attraction of new investors; and
  - (c) the submission of a plan of arrangement acceptable to its creditors.
7. As was reported to the Court in the context of the *Amended Motion for the Issuance of an Initial Order* (“**Motion for an initial order**”) dated October 14, 2014, Gradek Energy’s experience since 2010 has been that its capacity to identify and attract new investors was severely limited, *inter alia*, by its uncertain capital structure.
8. The capital structure of Gradek Energy’s has largely been simplified since an agreement was entered into with Dundee Corporation (“**Dundee**”) on January 23<sup>rd</sup>, 2015, which provides for the settlement of any and all claims of Dundee against Gradek Energy (the “**Dundee settlement**”).
9. At the time of its last appearance before the Court on January 16, 2015, Gradek Energy was engaged in serious discussions to secure additional interim financing with a potential DIP lender for a DIP loan in the amount of 500 000\$.
10. On January 26, 2015, a Commitment Letter for the Interim Financing Credit Facility (the “**Additional DIP Term Sheet**”) providing for additional interim financing in the amount of 500 000\$, communicated herewith as Exhibit **R-1**, to be secured by an additional DIP charge ranking *pari passu* and on the same terms and conditions as the Interim Lenders

Charge provided for by the Initial Order, was entered into by Gradek Energy and Elmag Investments Inc.

11. Concurrently with the execution of the Dundee Settlement and the Additional DIP Term Sheet, an Equity Ownership Term Sheet and an Intellectual Property Agreement, communicated herewith respectively as **Exhibit R-2** and **Exhibit R-3**, were entered into with a view of settling both the capital structure and ensuring control of the intellectual property rights of the RHS technology by GEI at the time of emergence, with a view of further facilitating the search for additional capital or investment.
12. In light of the foregoing, Gradek Energy intends to initiate a claims process in early February 2015 and to launch an investment and/or financing solicitation process once the current testing phase is completed, and a letter of interest has been entered into with the major environmental solutions provider it has been negotiating with, with the objective of presenting a plan of arrangement to its creditors in the best interest of all its stakeholders.
13. The extension of the Stay Period is necessary in order to provide Gradek Energy with an adequate period of time to finalize its testing phase, to complete its claim process and to enter into a commercialization agreement. It is anticipated that the requested extension of the Stay Period to March 19, 2015 will afford Gradek Energy an adequate period of time to make material progress towards that objective.
14. Gradek Energy is of the view that no creditor will suffer any undue prejudice from the requested extension of the Stay Period and that the extension sought is appropriate in the present circumstances;
15. The Monitor has indicated that it agrees with Gradek Energy, on the basis of the cash flow forecast to be included in the Monitor's Fifth Report, and that it supports the present request for an extension of the Stay Period;
16. The Gradek Parties respectfully request that this Honourable Court extend the Stay Period to March 19, 2015;

**WHEREFORE, MAY THIS COURT:**

**GRANT** the present Motion;

**EXTEND** the Stay Period to March 19, 2015;

**RATIFY** the Additional DIP Term Sheet, the Equity Ownership Term Sheet, and the Intellectual Property Agreement, communicated herewith respectively as Exhibit R-1, R-2 and R-3;

**ORDERS** and **DECLARES** that the Amended Initial Order is hereby re-amended and restated in the manner described hereinbelow:

(a) Paragraph 16 is amended as follows:

16. **ORDER** that Petitioners be and are hereby authorized to borrow, repay and reborrow from Elmag Investment Inc., Alfred

Sorensen, Robert Andrews and Thom Dawson (the “**Interim Lenders**”) such amounts from time to time as Petitioners may consider necessary or desirable, up to a maximum principal amount of \$1,200,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet attached hereto as Exhibit R-12 (the “**Interim Financing Term Sheet**”) and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the “**Interim Facility**”)

(b) Paragraph 19 is amended as follows

19. **DECLARE** that all of the Property of Petitioners and is hereby subject to a charge and security for an aggregate amount of \$1,300,000 plus interest at the rate of twenty-five percent (25%) thereof (such charge and security is referred to herein as the “**Interim Lenders Charge**”) in favour of the Interim Lenders as security for all obligations of Petitioners to the Interim Lenders with respect to all amounts owing (including principal, interest and the Interim Lenders Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lenders Charge shall have the priority established by paragraphs 36 and 37 of this Order;

**DECLARE** that the notices given of the presentation of the present Motion are proper and sufficient;

**ORDER** the provisional execution of the Order to be rendered notwithstanding any appeal and without the necessity of furnishing any security.

**WITHOUT COSTS**, save and except in case of contestation.

MONTREAL, January 26, 2015



**MCCARTHY TÉTRAUT LLP**

Attorneys for the Petitioners, Gradek Energy Inc. &  
Gradek Energy Canada Inc.

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**AFFIDAVIT**

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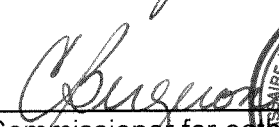
I, the undersigned, STEPHAN GRADEK, having a place of business at 162 blvd. Brunswick, Pointe-Claire, Québec, H9R 5P9, solemnly declare the following:

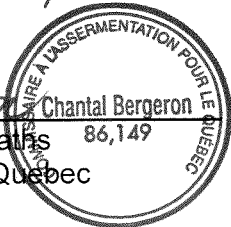
1. I am the Vice President and Chief Operating Officer of Gradek Energy;
2. All the facts alleged in the *Motion for a Fourth Order Extending the Stay Period* under sections 9 and 11 of the *Companies' Creditors Arrangement Act* are true.

AND I HAVE SIGNED

  
\_\_\_\_\_  
STEPHAN GRADEK

Solemnly Declared before me in  
Montreal, on January 26, 2015

  
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Commissioner for oaths  
for the Province of Québec



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**NOTICE OF PRESENTATION**

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TO: the Service List

Take notice that the present *Motion for a Fourth Order Extending the Stay Period* under sections 9 and 11 of the *Companies' Creditors Arrangement Act* will be presented before Justice Jean-Yves Lalonde of the Superior Court, sitting in bankruptcy and insolvency matters, on January 27, 2015, at a place and time to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 26, 2015



**MCCARTHY TÉTRAULT LLP**

Attorneys for the Petitioners, Gradek Energy Inc. &  
Gradek Energy Canada Inc.