



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 INC.
SWAHEALY HOLDINGS LIMITED
BRENT ALLAN HARDY
DAVID JOHN EHRHARDT
28165 YUKON INC.
PARADISE INVESTMENT TRUST
SUNNY PARADISE INC.

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: Deloitte Restructuring Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc.

To: The Service List attached hereto as **Schedule "A"**.

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on December 12, 2019 at 9:45 a.m. for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order substantially in the form attached hereto as **Schedule “B”** that the Confidential Supplement to the Second Report of the Receiver dated December 5, 2019 (the **“Second Confidential Report”**) be filed under seal pending further order of this Court.

Part 2: FACTUAL BASIS

1. By Order dated May 12, 2017 (the **“Receivership Order”**), made on the application of Industrial Alliance Insurance and Financial Services Inc. (**“IA”**), the Receiver was appointed as receiver, without security, of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (collectively, the **“Wedgemount Entities”**).
2. The Wedgemount Entities are the owner and developer of a partly-constructed independent, run-of-river power project located on Wedgemount Creek, near Whistler, British Columbia (the **“Project”**).
3. Pursuant to the terms of the Receivership Order, and following an extensive sale and marketing process (the **“Sale Process”**), the Receiver has entered into an asset purchase agreement dated November 18, 2019 with Concord Wedgemount Creek General Partnership, as amended by an amending agreement dated December 5, 2019 (as so amended, the **“Amended Concord APA”**).
4. The Receiver has filed a Notice of Application for an order approving the transactions contemplated by the Amended Concord APA (the **“Receiver’s Application”**).
5. In support of the Receiver’s Application, the Receiver has prepared a Second Report of the Receiver dated December 5, 2019, as well as the Second Confidential Report.
6. The Second Confidential Report contains information regarding offers received by the Receiver from various parties in the course of the Sale Process, as well as confidential information pertaining to the Project, which has not yet been sold.

Part 3: LEGAL BASIS

1. The Court has jurisdiction to order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada has held that such orders may be granted where:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41.

- 2. The Second Confidential Report fits squarely within the test established by the *Sierra Club* decision, in that it contains sensitive commercial information, the disclosure of which would be harmful to the commercial interests of the Wedgemount Entities, their stakeholders and the parties that have submitted offers to the Receiver in the course of the Sale Process. Disclosure of the information in the Second Confidential Report also would be prejudicial to the integrity of the Sale Process and may undermine the duty and efforts of the Receiver to maximize realizations from the sale of the Project and related assets.
- 3. The Receiver submits that the salutary effects of sealing the Second Confidential Report outweigh any possible deleterious effects.
- 4. The procedure to be followed in British Columbia when applying for a sealing order is set out in Supreme Court of British Columbia PD-35, *Sealing Orders in Civil and Family Proceedings*. The Receiver has complied with the requirements of the Practice Direction.

Part 4: MATERIAL TO BE RELIED ON

- 1. Second Report of the Court Appointed Receiver and Manager dated December 5, 2019;
- 2. Confidential Supplement to the Second Report of the Court Appointed Receiver and Manager dated December 5, 2019 (to be filed under seal); and
- 3. Such further and other material as counsel may advise and this Honourable Court may permit.

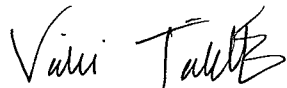
The applicant estimates that the application will take 5 minutes.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: December 5, 2019



Signature of Vicki Tickle
Lawyer for the Receiver

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: [dd/mmm/yyyy]

Signature of Judge Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

SERVICE LIST

<p>Gowling WLG (Canada) LLP 2300 – 550 Burrard Street Vancouver, BC V6C 2B5</p> <p>Colin D. Brousson Tel: 604-891-2286 email: colin.brousson@gowlingwlg.com</p> <p>Jeffrey Bradshaw 604-443-7649 email: Jeffrey.bradshaw@gowlingwlg.com</p> <p>Assistant: michele.hay@gowlingwlg.com Tel: 604-443-7628</p> <p><i>Counsel for the Plaintiff</i></p>	<p>Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Peter J. Roberts Tel: 604.685.3456 Fax: 604.669.1620 proberts@lawsonlundell.com</p> <p><i>Counsel for Wedgemount Power Limited Partnership, Wedgemount Power Inc. and Wedgemount Power (GP) Inc.</i></p>
<p>Miller Thomson LLP #400 - 725 Granville Street Vancouver, BC V7Y 1G5</p> <p>Gordon G. Plottel gplottel@millerthomson.com</p> <p>Amanda Baron abaron@millerthomson.com</p> <p><i>Counsel for Paradise Investment Trust, 28165 Yukon Inc. and Sunny Paradise Inc.</i></p>	<p>Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Magnus C. Verbrugge mverbrugge@blg.com</p> <p>Lisa Hiebert lhiebert@blg.com</p> <p><i>Counsel for British Columbia Hydro and Power Authority</i></p>
<p>Ratcliff & Company LLP 500 - 221 West Esplanade North Vancouver BC V7M 3J3</p> <p>F. Matthew Kirchner mkirchner@ratcliff.com</p> <p>Aaron Bruce abruce@ratcliff.com</p> <p><i>Counsel for Squamish Nation</i></p>	<p>Watson Goepel LLP 1700-1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p>Thomas Keast, QC tkeast@watsongoepel.com</p> <p><i>Counsel for Brent Allan Hardy and David John Ehrhardt</i></p>

<p>Cheakamus Community Forest Society c/o Resort Municipality of Whistler 4325 Blackcomb Way Whistler, BC V0N 1B4 Email: info@cheakamuscommunityforest.com</p> <p>If email address above still bounces back send to the following</p> <p>Heather Beresford at Resort Municipality of Whistler – hberesford@whistler.ca</p>	<p>Ministry of Justice and Attorney General Legal Services Branch Revenue and Taxation Group P.O. Box 9289 Stn Prov Govt 4th Floor – 1675 Douglas Street Victoria, BC V8W 9J7</p> <p>Aaron Welch Tel: 250-356-8589 Fax: 250-387-0700 Email: Aaron.Welch@gov.bc.ca AGLSBRevTax@gov.bc.ca</p> <p><i>Counsel for Her Majesty the Queen in Right of British Columbia</i></p>
<p>Colmac Capital Corp. #514 – 822 5th Ave Calgary, AB T2P 5R4 email: dwdelain@shaw.ca; kmaclean@colmaccapital.com</p>	<p>The Ehrhardt 2011 Family Trust 2011 Family Trust 5403 Buckingham Avenue Burnaby, BC V5E 1Z9</p> <p>David Ehrhardt, as trustee of the Ehrhardt</p>
<p>Travelers Capital Corporation Suite 501 – 4180 Lougheed Hwy. Burnaby, BC V5C 6A7 Mark Bohn Email: mbohn@travelerscapital.com</p>	<p>Eco Flow Energy Corporation 330 – 500 Victoria Street Prince George, BC V2L 2J9 email: pzell@ecoflowenergy.com</p>
<p>Swahealy Holding Limited 1266 Burns Road Gibsons, BC V0N 1V1</p>	<p>Calavia Holdings Ltd. 2511 Lawson Avenue West Vancouver, BC V7Y 2G1</p>
<p>Lil'wat Nation 82 Lr 10 Road, Mount Currie, BC V0N 2K0 Fax: 604-894-1518 Kerry Mehaffey, CEO, Lil'wat Management Services LP email: info@lilwat.ca</p> <p>David W. Dorrans Law Corporation David W. Dorrans email: dorransd@dwdlawcorp.ca</p>	<p>Bank of Montreal First Canadian Place, Mezzanine Level 100 King Street W Toronto, ON M5X 1A3 Marina Wilhelm Fax: (416) 867-2744 Paul Kyte Fax: (416) 867-2744</p>

<p>Points West Hydro Power Limited Partnership by its general partner Points West Hydro (GP) Inc. 2400, 525 – 8th Avenue SW Calgary, AB T2P 1G1</p>	
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SCHEDULE "B"
FORM OF SEALING ORDER

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 INC.
SWAHEALY HOLDINGS LIMITED
BRENT ALLAN HARDY
DAVID JOHN EHRHARDT
28165 YUKON INC.
PARADISE INVESTMENT TRUST
SUNNY PARADISE INC.

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE)
) THE HONOURABLE
))
) December 12,
) 2019
)

ON THE APPLICATION of Deloitte Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”) of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc., dated December 5, 2019 coming on for hearing at Vancouver, British Columbia on Thursday, December 12, 2019 and on hearing Vicki Tickle, counsel for the Receiver, and those counsel listed in Schedule “A” hereto;

THIS COURT ORDERS that:

1. **Access to Sealed Items permitted by:**
- The Receiver and its counsel
 - Parties on Record
 - Further Court Order
 - Others: The Plaintiff and its counsel

Items to be sealed

Document Name:	Date Filed:	Number of copies filed, including any extra copies for the judge.	Duration of sealing order:	Sought	Granted	
					YES	NO
1) <u>Entire File</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) <u>Specific Documents</u> Confidential Supplement to the Second Report of the Court-Appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc. dated December 5, 2019			Until further Court Order	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) <u>Clerk's Notes</u>					<input type="checkbox"/>	<input type="checkbox"/>
4) <u>Order</u>				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Vicki Tickle
Lawyer for Deloitte Restructuring Inc., in its capacity as the Court-appointed receiver and manager of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc.

By the Court.

Registrar

SCHEDULE "A"

List of Counsel

Name of Counsel	Party

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DEFENDANTS

ORDER MADE AFTER APPLICATION

Vicki Tickle
McMILLAN LLP
Suite 1500 - 1055 West Georgia Street, Vancouver, BC V6E 4N7
Phone: (604) 689-9111, File No. 252590 / VLT