

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)

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

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

TO THE HONOURABLE JUDGE 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, as amended and restated from time to time, (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") 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, and was extended on November 11, 2014 to December 19, 2014, on December 17, 2014 to January 16, 2015, on January 16, 2015 to January 27, 2015, on January 27, 2015 to March 19, 2015, on March 19, 2015 to April 2, 2015, on April 2, 2015 to April 17, 2015, on April 17, 2015 to May 14, 2015, on May 14, 2015 to July 10, 2015 and on July 6, 2015 to August 21, 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. On February 4, 2015, the Honourable Jean-Yves Lalonde issued a Claims Procedure Order soliciting the filing of claims against Gradek Energy, the Mis en cause and their officers and directors before 5 p.m. on March 16, 2015 (the “**Bar Date**”);
5. The Gradek Parties respectfully request that this Honourable Court extend the Stay Period until September 1, 2015 for the reasons set forth below;

II. EXTENSION OF THE STAY OF PROCEEDINGS

6. Since the issuance of the Initial Order, Gradek Energy has acted, and continues to act, in good faith and with due diligence;
7. 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;
8. Having secured both an agreement with its main secured creditor, Dundee Corporation, in respect of its capital structure (the “**Dundee Settlement**”), and having more recently concluded a letter of interest (“**LOI**”) with a major environmental solution provider operating, *inter alia*, in the oil industry (the “**ESP**”), in an effort to bring the RHS technology to market, Gradek Energy launched an investment and financing solicitation process on June 8, 2015, with the assistance of the Monitor (the “**Solicitation Process**”);
9. Gradek Energy had good reasons to believe that the investment and/or financing solicitation process would fare better than the spring 2013 and spring 2014 attempts made prior to the commencement of these CCAA proceedings, considering:
 - (a) the presence of a new management team;
 - (b) the existence of a new business model;

- (c) the support of the Interim Lenders (as defined in the Initial Order which have agreed to convert debt owed into equity;
 - (d) the Dundee Settlement; and
 - (e) the conclusion of the LOI with the ESP;
10. In the context of the Solicitation Process, Gradek Energy and the Monitor identified 82 potential investors, and managed to reach over 90% of them;
11. Unfortunately given the current state of the oil industry the Solicitation Process has been unsuccessful and Gradek Energy thus immediately thereafter entered into serious discussions with a manufacturer of equipment operating within the industry (the "**Manufacturer**") with the objective of forming a partnership to reduce its capital cost, thereby reducing both the delay expected to turn a positive cash flow and the amount of capital that needs to be raised;
12. In the context of the above, on August 14, 2015, Gradek Energy received an Expression of Interest ("**EOI**") from the Manufacturer wherein the Manufacturer offers:
- (a) To fund the activity of Gradek Energy for the next six months;
 - (b) If results of the project to be undertaken with the Manufacturer are positive to acquire the business currently operated by Gradek Energy and thus fund a plan of arrangement for the benefit of all stakeholders;
13. In parallel to the discussions undertaken with the Manufacturer, Gradek Energy and the Monitor contacted a certain number of auctioneers to provide for the contingency of a liquidation at the end of the current Stay Period;
14. Gradek Energy is now facing two possible scenarios, namely that:
- (a) A deal is entered into with the Manufacturer at the end of the requested Stay Period such that a plan of arrangement can be submitted to the creditors; or
 - (b) Assets are sold to the auctioneers;
15. In order to determine whether the Manufacturer would be ready to invest into Gradek Energy and allow it to submit a plan of arrangement acceptable to its creditors, Gradek Energy and the Manufacturer require a period of six months to:
- (a) make modifications to the existing equipment or redesign new equipment;
 - (b) determine the appropriate project for the processing units and deployment timelines;
 - (c) proceed with due diligence of each other's business to confirm their respective market value; and
 - (d) negotiate the terms of the investment required to allow a submission of a plan of arrangement that can be approved by the creditors and sanctioned by the Court;

16. Gradek Energy and the Manufacturer are having ongoing discussion to finalize the terms of an agreement based upon the EOI but require an additional week to finalize same;
17. It is anticipated that the requested extension of the Stay Period to September 1, 2015 will afford Gradek Energy an adequate period of time to finalize an agreement with the Manufacturer which would be agreeable to all stakeholders;
18. The Monitor has indicated that it is of the opinion that no dividend would be available to unsecured creditors in the context of bankruptcy and liquidation;
19. 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;
20. 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 Eleventh Report, and that it supports the conclusions of the present motion;
21. The Gradek Parties respectfully request that this Honourable Court extend the Stay Period to September 1, 2015;

WHEREFORE, MAY THIS COURT:

GRANT the present Motion;

EXTEND the Stay Period to September 1, 2015;

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, August 19, 2015



MCCARTHY TÉTRAULT LLP

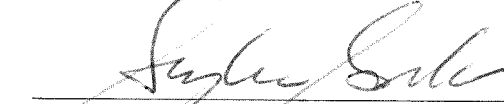
Attorneys for the Petitioners, Gradek Energy Inc. &
Gradek Energy Canada Inc.

AFFIDAVIT

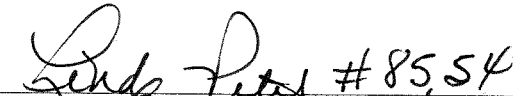
I, the undersigned, STEPHAN T. GRADEK, having a place of business at 162 Brunswick Blvd., Pointe-Claire, Québec, H9R 5P9, solemnly declare the following:

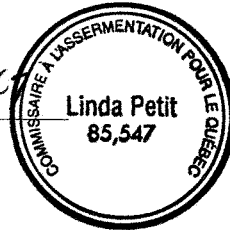
1. I am an authorized representative of Gradek Energy;
2. All the facts alleged in the *Motion for an Tenth Order Extending the Stay Period* under sections 9 and 11 of the *Companies' Creditors Arrangement Act* are true.

AND I HAVE SIGNED


STEPHAN T. GRADEK

Solemnly Affirmed before me in
Montreal, on August 19, 2015


Commissioner for oaths for Québec



NOTICE OF PRESENTATION

TO: the Service List

Take notice that the present *Motion for a Tenth Order Extending the Stay Period* under sections 9 and 11 of the *Companies' Creditors Arrangement Act* will be presented before the Superior Court, sitting in bankruptcy and insolvency matters, at the Montréal Courthouse, located at 1 Notre-Dame St. W., Montréal, Quebec, H2Y 1B6, on August 20, 2015, in room 16.12 at 9:00 a.m. or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, August 19, 2015

McCarthy Tétrault LLP

MCCARTHY TÉTRAULT LLP

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

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ORIGINAL

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