

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 CLAIMS PROCEDURE ORDER  
(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, on January 16, 2015 to January 27, 2015 and on January 27 to March 19, 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 render a claims procedure order.

## II. CLAIMS PROCEDURE ORDER

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. The restructuring of Gradek Energy has recently reached a significant milestone, as was reported to the Court in the context of the *Motion for a Fourth Order Extending the Stay Period* on January 27, 2015, when Gradek Energy entered into an agreement on January 23<sup>rd</sup>, 2015 with Dundee Corporation ("**Dundee**"), its main secured creditor, which provides for the settlement of any and all claims of Dundee against Gradek Energy.
8. In the context of its restructuring, Gradek Energy further intends to present a plan of arrangement or compromise to its creditors.
9. Gradek Energy consequently believes that it is in the best interests of all its stakeholders that it initiates a claims process substantially in the form of the conclusions sought in the draft claims process order (the "**Order sought**"), communicated herewith as exhibit **E-1**.
10. The Order sought sets a bar date for claims against Gradek Energy, against its Directors and Officers and against the Mis en cause on March 16, 2015, *inter alia*, so as to allow Gradek Energy and the Monitor to get a complete picture of the structure of Gradek Energy's debt as a first step towards devising an eventual plan of arrangement or compromise.

11. In this respect, the Order sought provides that creditors will be required not only to file their proofs of claim against Gradek Energy, but also to denounce whether their claims against Gradek Energy also apply as against the Mis en cause, as the Mis en cause could potentially be involved in an eventual plan or arrangement or compromise.
12. The Order sought also provides for the denunciation by the creditors of their claims against the directors and officers of Gradek Energy, insofar as these claims stem from or are interconnected with claims against Gradek Energy, since the directors and officers could be affected by an eventual plan of arrangement or compromise.
13. Gradek Energy respectfully asks that the Order sought be rendered so as to permit the presentation of a plan of arrangement or compromise to its creditors in a timely manner while providing over 30 days for the creditors to file their proof of claims.

**WHEREFORE, MAY THIS COURT:**

**RENDER** a claims process order pursuant to the *Companies' Creditors Arrangement Act* substantially in the form of the draft claims procedure order communicated herewith as exhibit E-1;

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

MONTRÉAL, February 4, 2015

  
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**MCCARTHY TÉTRAULT 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 Claims Process Order* 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 \_\_\_\_\_, 2015

\_\_\_\_\_  
Commissioner for oaths  
for the Province of Quebec

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**NOTICE OF PRESENTATION**

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TO: the Service List

Take notice that the present *Motion for a Claims Process Order* 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 February 5, 2015, in room 16.12, at 9:00 or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, February 4, 2015



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**MCCARTHY TÉTRAULT LLP**

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

N° : 500-11-047563-149

## **EXHIBIT E-1**

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PROVINCE OF QUEBEC  
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SUPERIOR COURT  
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**Monitor**

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**CLAIMS PROCEDURE ORDER**

(Sections 9, 11 and following of the *Companies' Creditors Arrangement Act* (R.S.C.  
1985, c. C-36))

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HAVING READ the Petitioners' (the "**Petitioners**") petition for orders establishing a procedure for the identification, filing, resolution and barring of claims against the Petitioners, the attached Schedules thereof, the affidavit in support thereof (the "**Petition**"), and the submissions of counsel for the Petitioners.

## THE COURT:

### Service

1. **DECLARES** that the Petitioners have given sufficient prior notice of the presentation of this Petition to interested parties;

### Definitions

2. **DECLARES** that the following terms in this Order shall, unless otherwise indicated, have the following meanings ascribed thereto:

2.1 **"Business Day"** means a day, other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);

2.2 **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

2.3 **"CCAA Proceedings"** means the proceedings in respect of the Petitioners before the Court commenced pursuant to the CCAA;

2.4 **"Claim"** means any right of any Person against the Petitioners in connection with any indebtedness or obligation of any kind of the Petitioners, present, future, due or accruing due to such Person and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, secured, unsecured, known or unknown, including, *inter alia*, any executory or non-executory guarantee or surety and i) the right or ability of any Person to advance a claim for contribution, indemnity or otherwise with respect to any matter, action or cause, which indebtedness, liability or obligation is based in whole or in part on facts existing as at the Determination Date, ii) any Equity claim and iii) any claim which would constitute a claim under the CCAA as at the Determination Date. A Claim shall include, without limitation, a) any Unaffected Claim, or b) any Restructuring Claim, provided however, that in no case shall a Claim include an Excluded Claim;

2.5 **"Claim against the Directors and Officers"** means a claim as defined in paragraph 11.03(1) of the CCAA;

2.6 **"Claim against the Mis en cause"** of a Creditor means Claims for which either RHST Development Inc. and/or Thomas Gradek are or may be responsible in whole or in part, in their capacity as guarantor of the Petitioners or otherwise, but, for greater clarity, excluding any claim of any Creditor against the RHST Development Inc. and/or Thomas Gradek for any obligation unrelated to Claims;

2.7 **"Claims, Claims against the Directors and Officers and Claims against the mis en cause Bar Date"** means 5:00 p.m. (Montréal time) on March 16, 2015 or, for a Creditor with a Restructuring Claim, the latest of (a) 5:00 pm (Montréal time) on March 27, 2015 and (b) thirty (30) days after the date of receipt by the Creditor of a notice from the Petitioners giving rise to the Restructuring Claim, it being



understood that at no time shall such a notice from the Petitioners be sent to the Creditor less than 30 days before the date of the first Creditors' Meeting;

- 2.8 "**Court**" means the Québec Superior Court;
- 2.9 "**Creditor**" means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person and includes a Known Creditor. A Creditor shall not, however, include an Excluded Creditor in respect of that Person's claim resulting from an Excluded Claim;
- 2.10 "**Creditors' Instructions**" means the instructions for Creditors, including a Proof of Claim, an Instruction Letter explaining how to complete same, and a copy of this Order;
- 2.11 "**Creditors' List**" means a list of all Known Creditors;
- 2.12 "**Creditors' Meeting**" means any meeting of the Petitioners' Creditors to be convened, with leave of the Court, for the purposes of voting on the Plan, and any adjournment or suspension thereof;
- 2.13 "**Designated Newspapers**" means La Presse and The Gazette;
- 2.14 "**Determination Date**" means October 15, 2014;
- 2.15 "**Equity Claim**" has the meaning ascribed thereto in the definition contained in the CCAA;
- 2.16 "**Excluded Claim**" means (i) any claim secured by the Administration Charge, the Interim Lenders Charge (as defined in the Initial Order), and any other claims secured by any other charges that may be ordered by the Court and (ii) any right of any Person against the Petitioners in connection with any indebtedness or obligation of any kind which came into existence on or after the Determination Date and any interest thereon, including any obligation of the Petitioners toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Petitioners after the Determination Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds after the Determination Date and to the extent that such claims are not otherwise affected by the Plan;
- 2.17 "**Excluded Creditor**" means a Person having a Claim in respect of an Excluded Claim but only in respect of such Excluded Claim and to the extent that the Plan does not otherwise affect such Claim;
- 2.18 "**Initial Order**" means the order of this Court made on October 15, 2014 under the CCAA, as amended and extended from time to time;
- 2.19 "**Instruction Letter**" means the notice of this Order and instruction to Creditors in a document substantially in the form of Schedule A hereto;
- 2.20 "**Known Creditor**" means a Creditor whose Claim is included in the books and records of the Petitioners';

- 2.21 "**Monitor**" means Samson Bélair/Deloitte & Touche Inc., acting in its capacity as monitor pursuant to the Initial Order;
- 2.22 "**Newspaper Notice**" means the notice of this Order to be published in the Designated Newspapers on the Publication Date in accordance with paragraph 3, which shall set out the Claims, Claims against the Directors and the Officers and Claims against the Mis en cause Bar Date and the Creditors' Instructions, being substantially in the form of Schedule B hereto;
- 2.23 "**Notice of Revision or Disallowance**" means the notice referred to in subparagraph 7.1 hereof, advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim, Claim against the Directors and the Officers and/or Claim against the Mis en cause as set out in its Proof of Claim and setting out the reasons for such revision or disallowance;
- 2.24 "**Person**" means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization without legal personality, joint venture, governmental body or agency, or any other entity;
- 2.25 "**Plan**" means a plan of compromise or arrangement filed or to be filed by the Petitioners pursuant to the CCAA, as such plan may be amended or supplemented from time to time by the Petitioners;
- 2.26 "**Proof of Claim**" means the form of Proof of Claim for Creditors referred to in paragraphs 6 and 7 hereof, in the form of Schedule C hereto;
- 2.27 "**Proven Claim**" means the amount of any Claim of any Creditor as of the Determination Date, determined in accordance with the provisions of the CCAA and this Order, and proven by delivering a Proof of Claim to the Monitor;
- 2.28 "**Publication Date**" means the date on which the publication of the Newspaper Notice in all of the Designated Newspapers has been completed;
- 2.29 "**Restructuring Claim**" means any right of any Person against the Petitioners in connection with any indebtedness or obligation of any kind owed to such Person arising out of the restructuring, repudiation, or termination of any contract, lease, employment agreement, collective agreement or other agreement, whether written or oral, on or after the Determination Date, including any right of any Person who receives a notice of repudiation or termination from the Petitioners; provided however, that a Restructuring Claim may not include an Excluded Claim;
- 2.30 "**Unaffected Claim**" shall have the meaning ascribed to such term in the Plan;

### **Notification Procedure**

3. **ORDERS** that the form of Newspaper Notice shall be published by the Monitor in the Designated Newspapers as soon as possible following the issuance of this Order, but in any event no later than February 13, 2015;

4. **ORDERS** that the Monitor shall publish on its website at on or before 5:00 p.m. on February 13, 2015 (Montréal time), a copy of the Creditors' List, of the Creditors' Instructions and of the present Order;
5. **ORDERS** that, in addition to the publication referred to in paragraph 3, the Monitor shall send, by regular mail, a copy of the Creditors' Instructions to each Known Creditor no later than 5:00 p.m. (Montréal time) on February 13, 2015;

#### **Claims and Claims against the Directors and Officers Bar Date**

6. **ORDERS** that, unless otherwise authorized by this Court, a Creditor who does not file a Proof of Claim by the Claims, Claims against the Directors and Officers and Claims against the Mis en cause Bar Date i) shall not be entitled to any further notice, ii) shall be forever barred from pursuing a Claim against the Petitioners, a Claim against the Directors and Officers and/or a Claim against the Mis en cause, iii) shall not be entitled to participate as a Creditor in these proceedings, iv) shall not be entitled to vote on any matter in these Proceedings, including the Plan, v) shall not be entitled to file a Claim against the Petitioners, a Claim against the Directors and Officers and/or a Claim against the Mis en cause, or vi) shall not be entitled to receive a distribution under the Plan;
- 6.1 **DECLARES** that the effects provided for at paragraph 6 of this Order on a Creditor holding a Claim against the Mis en cause which failed to file its Proof of Claim at the Claims, Claims against the Directors and Officers and Claims against the Mis en Cause Bar Date will not be applicable to its Claim against the Mis en cause in the event that the CCAA proceedings of all the Petitioners end without the approval of the applicable Creditors and of the Court of a plan of arrangement providing for the compromise or release of the Claims against the Mis en cause;

#### **Procedure for Claims and Claims against the Directors and Officers**

7. **ORDERS** that the following procedure shall apply where a Creditor files a Proof of Claim before the Claims, Claims against the Directors and Officers and Claims against the Mis en cause Bar Date:
  - 7.1 the Monitor, together with the Petitioners, shall review the Proof of Claim to value the amounts and terms set out therein for voting and distribution purposes. Where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance by mail, fax, courier or other means of electronic communication;
  - 7.2 the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within ten (10) days of the Notice of Revision or Disallowance, file an appeal motion with the Court and serve a copy of such appeal motion to the Petitioners and the Monitor;
  - 7.3 unless otherwise authorized by this Court, if the Creditor does not file an appeal motion within the delay provided for above, such Creditor shall be deemed to have accepted the value of its Claim, its Claim against the Directors and Officers and/or its Claim against the Mis en cause as set out in the Notice of Revision or Disallowance;

## Notices and Communications

8. **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioners shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, fax, courier or other means of electronic communication addressed to:

Alain N. Tardif and Nicolas Deslandres  
**McCARTHY TÉTRAULT LLP.**  
1000, De La Gauchetière Street West, suite 2500  
Montréal, QC, Canada H3B 0A2  
Emails : [atardif@mccarthy.ca](mailto:atardif@mccarthy.ca) and [ndeslandres@mccarthy.ca](mailto:ndeslandres@mccarthy.ca)  
Fax : 514-875-6246  
*Attorneys for the Petitioners and the Mis en Cause*

Jean-François Nadon  
**SAMSON BÉLAIR/DELOITTE & TOUCHE INC.**  
1, Place Ville-Marie, suite 3000  
Montréal, QC, H3B 2B6  
Email : [jnadon@deloitte.ca](mailto:jnadon@deloitte.ca)  
Fax : 514-390-4103  
*Monitor*

9. **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application;

## Aid and Assistance of Other Courts

10. **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

## General Provisions

11. **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date;
12. **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;

13. **DECLARES** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order;
14. **ORDERS** the provisional execution of this Order notwithstanding appeal;

**THE WHOLE** without costs.

MONTREAL, February 5, 2015

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**THE HONOURABLE JEAN-YVES  
LALONDE, J.C.S.**

No.: 500-11-047563-149  
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and

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

Monitor

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**EXHIBIT E-1**

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**ORIGINAL**

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Mtre Nicolas Deslandres/ 514-397-4126 / 211821-468124

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BC0847

**McCarthy Tétraut LLP**

Avocats • Agents de brevets et marques de commerce  
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**O R I G I N A L**

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Mtre Nicolas Deslandres/ 514-397-4126 / 211821-468124

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