

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

**AMENDED MOTION FOR AN EIGHT ORDER EXTENDING THE STAY PERIOD AND
FOR AN ADDITIONAL INTERIM LENDERS CHARGE**
**(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 and on April 17, 2015 to May 14, 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 July 10, 2015 and grant an additional Interim Lenders Charge (as defined in the Initial Order) 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. Since the Bar Date, Gradek Energy has focused on securing additional interim financing and has continued negotiating 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 ;
9. As has been reported to the Court, notably in the context of the of the *Amended Motion for the Issuance of an Initial Order* (“**Motion for an Initial Order**”) dated October 14, 2014, one of the conditions identified by Gradek Energy for the successful completion of an investment and/or financing solicitation process was the conclusion of an agreement for the commercialization of the RHS technology;

10. As of today, a letter of interest (the “LOI”) is about to be entered into by Gradek Energy and the ESP it has been negotiating with in the past weeks, said LOI being communicated herewith in draft form, *under seal*, as **Exhibit R-1**;
11. Gradek Energy consequently intends to launch very shortly an investment and/or financing solicitation process (the “**Solicitation Process**”) with the assistance of the Monitor, with the objective of presenting a plan of arrangement to its creditors in the best interest of all its stakeholders;
12. Gradek Energy believes that the investment and/or financing solicitation process is more likely to succeed 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 agreement concluded with Dundee Corporation (“**Dundee**”), Gradek Energy’s main secured creditor, dated January 23rd, 2015, which has largely simplified Gradek Energy’s capital structure and which provides for the settlement of any and all claims of Dundee against Gradek Energy; and
 - (e) the conclusion of the LOI with the ESP;
13. In mid-April, 2015, Investissement Québec (“**IQ**”), Gradek Energy’s second most important secured creditor, received a cheque in the amount of \$700,808.79 from the Canada Revenue Agency (“**CRA**”), addressed to GEI, for the federal portion of the 2013 Tax Credits (as defined in the Motion for an Initial Order), on which IQ holds a first ranking hypothec;
14. On April 29, 2015, Gradek Energy received, by way of direct deposit from Revenu Québec, the sum of \$277,504.63 related to the provincial portion of its 2013 Tax Credits (as defined in the Motion for an Initial Order);
15. Gradek Energy did not, in any way, instruct Revenu Québec to take such action;
16. As Gradek Energy has been unsuccessful, to this day, in securing additional interim financing, it respectfully asks the Court that it be permitted to:
 - (a) endorse the CRA cheque so as to repay a portion of the IQ Loans (as defined in the Motion for an Initial Order); and to
 - (b) use the \$277,504.63 related to the provincial portion of its 2013 Tax Credits (as defined in the Motion for an Initial Order), and received from Revenu Québec, as additional interim financing to be secured by an additional first ranking Interim Lenders Charge;

failing which, Gradek Energy will immediately face the prospect of bankruptcy and liquidation;

17. The Interim Lenders (as defined in the Initial Order) and Dundee have consented to the grant of a first ranking Interim Lenders Charge to IQ;
18. On May 14, 2015, this Honourable Court granted the present motion in part, extending the stay period to July 10, 2015, the whole as appears from the Court record;
19. On May 24, 2015, on consent of Gradek Energy and IQ, this Honourable Court issued an order granting conclusions pursuant to which Gradek Energy endorsed the CRA cheque to repay a portion of the IQ Loans (as defined in the Motion for an initial order) and transferred the amount of \$277,504.63 related to the provincial portion of its 2013 Tax Credits (as defined in the Motion for an Initial Order) to the Monitor, the whole as appears from the Court record;
20. As appears from the Monitor's Eight report filed in support of this motion, Gradek Energy requires additional liquidity in the amount of \$200,000 in order to be able to complete the envisaged Solicitation Process;
21. It is also a condition to IQ's agreement to the use of the sum of \$277,504.63 as additional DIP financing that Gradek Energy obtain such additional liquidity in the amount of \$200,000 by no later than June 5, 2015 at 12:00 p.m.;
22. On May 31st, 2015, two of the existing Interim Lenders (as defined in the Initial Order), Thom Dawson and Alfred Sorensen, confirmed to Gradek Energy that they are willing to each provide an additional DIP Loan in the amount of \$100,000 to Gradek Energy, the whole as appears from a copy of the "Fourth Commitment Letter for the Interim Financing Credit Facility" dated June 2nd, 2015 filed herewith as Exhibit R-2;
23. It is essential that Gradek Energy benefit from the additional liquidity resulting from this additional interim financing credit to launch the envisaged Solicitation Process with a view to maximizing the value of its assets and undertakings;
24. 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;
25. The approval of the envisaged additional DIP Loan to be made available by Thom Dawson and Alfred Sorensen and the granting of an additional Interim Lenders Charge are necessary in order to provide Gradek Energy with the necessary financing and an adequate period of time to launch an investment and/or financing solicitation process in accordance with the timeline proposed by the Monitor and to have a plan of arrangement approved by its creditors and sanctioned by the Court. It is anticipated that the requested extension of the Stay Period to July 10, 2015 will afford Gradek Energy an adequate period of time to make material progress towards that objective;
26. 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;
27. Gradek Energy is of the further view that the prejudice that it, as well as its creditors and stakeholders, would suffer were it to be forced into bankruptcy or liquidation, far exceeds the prejudice, if any, for IQ to provide additional interim financing secured by an additional first ranking Interim Lenders Charge;

28. 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 Eight Report, and that it supports the conclusions of the present motion;
29. The Gradek Parties respectfully request that this Honourable Court extend the Stay Period to July 10, 2015 and that it grants the additional first ranking Interim Lenders Charge;

WHEREFORE, MAY THIS COURT:

GRANT the present Motion;

[. . .]

ORDER that the letter of interest communicated as Exhibit R-1 in support of the present Motion be kept confidential and under seal with the Court until, as the case may be, further order of this Court or written agreement from the Petitioners and the Monitor. However, all creditors of the Petitioners shall be entitled to obtain disclosure of said exhibit upon written request and provided they have signed a confidentiality agreement in standard form;

DECLARE that the terms and conditions contained in the *Third Commitment Letter for the Interim Financing Credit Facility ("DIP Facility")* dated April 15, 2015, and communicated herewith as Exhibit R-2, apply to the use of the sum of \$277,504.63 received by Gradek Energy from Revenu Québec in respect of the provincial portion of the 2013 Tax Credits (otherwise payable to Investissement Québec), with the following modifications:

- (a) Lender: Elmag and Sorensen are replaced for the entirety of the document by "Investissement Québec", unless otherwise specified in this Order;
- (b) Third DIP Credit Facility: The term "Third DIP Credit Facility" is replaced for the entirety of the document by "Fourth DIP Credit Facility", unless otherwise specified in this Order, and all of the advance made is \$277,504.63;
- (c) Maturity Date: The following is added at the end of sub-paragraph (a): ", the Third DIP Credit Facility and the Fourth DIP Credit Facility";
- (d) Availability and Disbursement: The funds are made immediately available to the Borrower;
- (e) Security: The security is increased to CAD\$1,977,504.63 plus interest at the rate of twenty-five percent (25%) thereof and the Obligations of Gradek Energy towards Investissement Québec secured by the Third DIP Charge include the principal of the Fourth DIP Credit Facility, any interests accrued thereon and the fees and disbursements of Investissement Québec's counsel in connection with the granting and recovery of the Fourth DIP Credit Facility;
- (f) Permitted Encumbrances and Priority: The sums owed to Investissement Québec that are secured by the Interim Lenders Charge will only be subordinate to the "Administrative Charge" created under the Extension Order and applicable deemed trust and statutory charges;

(g) Other Terms and Conditions:

- (i) the security contemplated in the first bullet is "CAD\$1,977,504.63", and the extension of the Initial Order shall be satisfactory to Elmag, Sorensen, the November 2014 DIP Lenders and Investissement Québec;
- (ii) paragraph b) of the eighth bullet is replaced by "the Borrower is considered in Default under the November 2014 DIP Facility, the Additional DIP Credit Facility or the Third DIP Credit Facility";
- (iii) paragraph h) of the eighth bullet is replaced by "if any and all of the DIP Credit Facilities are not fully paid to Elmag, Sorensen, the Additional DIP Lenders and the DIP Lenders on the Maturity Date";
- (iv) at the end of the eighth bullet, the following paragraph (i) is added: "if Gradek Energy fails to file with the relevant tax authorities its 2014 Federal and Provincial R&D tax credit requests at the latest by June 30th, 2015";

(h) Decision/Majority Lenders: The clause is removed; and

- (i) Right of DIP Lender to Credit Bid: The clause is replaced by "Nothing in this DIP term sheet or any DIP Facility documentation shall prevent Investissement Québec from offering to purchase some or all of the Collateral in consideration of the satisfaction, in whole or in part, of any obligations of the Borrower under the Additional DIP Facility, the November 2014 DIP Facility, the Third DIP Credit Facility and the Fourth DIP Facility (a "Credit Bid"), and the Borrower shall not restrict the right to do a Credit Bid.";
- (j) Encumbrances and Priority: The third bullet is replaced by "the portion of the Third DIP Charge securing the repayment of the November 2014 DIP Facility, the Additional DIP Credit Facility and the Third DIP Credit Facility will be subordinated to the portion of the Third DIP Charge securing the repayment of the fourth DIP Credit Facility";

ORDER and DECLARE that the Initial Order, as amended and restated from time to time, is hereby re-amended and restated ("**Fourth Amendment and Restatement of the Initial Order**") in the manner described hereinbelow:

(k) Paragraph 16 is amended as follows:

16. **ORDER** that Petitioners be and are hereby authorized to borrow, repay and reborrow from Investissement Québec, 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 \$1,877,504.63 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), as well as in the Commitment Letter for the Interim Financing Credit Facility dated January 26, 2015 and in the Third Commitment Letter for the Interim Financing Credit Facility dated April 15, 2015 and in the

Fourth Commitment Letter for the Interim Financing Credit Facility dated June 2nd, 2015 (Exhibit R-2), 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**”);

(l) 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 \$2,027,504.63 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;

(m) Paragraph 36 is amended as follows:

36. **DECLARE** that the priorities of the Administration Charge and the Interim Lenders Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:

(a) first, the Administrative Charge;

(b) second, the sums owed to Investissement Québec that are secured by the Interim Lenders Charge; and

(c) third, the Interim Lenders Charge.

ORDER that the letter of interest communicated as Exhibit R-1 in support of the present Motion be kept confidential and under seal with the Court until, as the case may be, further order of this Court or written agreement from the Petitioners and the Monitor. However, all creditors of the Petitioners shall be entitled to obtain disclosure of said exhibit upon written request and provided they have signed a confidentiality agreement in standard form;

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, JUNE 2ND, 2015

McCarthy Tétrault

MCCARTHY TÉTRAULT LLP

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

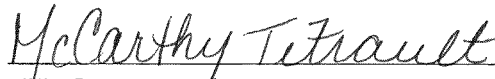
NOTICE OF PRESENTATION

TO: the Service List

Take notice that the present *Motion for a Eight Order Extending the Stay Period and for an Additional Interim Lenders Charge* under sections 9 and 11 of the *Companies' Creditors Arrangement Act* will be presented before the Superior Court, sitting in bankruptcy and insolvency matters, on June 4, 2015 at 9:00 a.m. in room 16.12 of the Montréal Courthouse, located at 1 Notre-Dame St. East, Montréal, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, JUNE 2ND, 2015



MCCARTHY TÉTRAULT LLP

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

Bergeron, Chantal

From: Bergeron, Chantal on behalf of Belanger, Philippe H.
Sent: Tuesday, June 02, 2015 3:02 PM
To: 'nodroggiles@yahoo.com'; 'normand.berube@revenuquebec.ca';
'gkandestin@kklex.com'; 'jcuttler@kklex.com'; 'Patrice.Benoit@Gowlings.com';
'mmikelberg@luger.com'; 'williamd.kennedy@bnc.ca'; 'Sylvie.Paquette@cat.com';
'estpierre@deloitte.ca'; 'alexander.bayus@gowlings.com'; 'jfcarpentier@kklex.com';
'rthorburn@thorburnflex.com'
Cc: 'jnadon@deloitte.ca'; Tardif, Alain N.; Fortier, Philippe
Subject: GRADEK / Amended motion for an Eight Order Extending the Stay Period and for an Additional Interim Lenders charge
Attachments: Amended motion for an eight order.pdf

Dear All:

Please see attached Amended motion for an Eight Order Extending the Stay Period and for an Additional Interim Lenders Charge.

Yours truly,

mccarthy
tetrault

Philippe H. Bélanger

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SVP, pensez à l'environnement avant d'imprimer ce message.
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