

From: "Farrugia, Tiffany (MAG)" <Tiffany.Farrugia@ontario.ca>

Date: August 21, 2020 at 9:54:58 AM EDT

To: Richard Swan <SwanR@bennettjones.com>, "swanr@bennettjones.com" <swanr@bennettjones.com>, "rjaipargas@blg.com" <rjaipargas@blg.com>, "renglish@airdberlis.com" <renglish@airdberlis.com>, Raj Sahni <SahniR@bennettjones.com>

Cc: "Anissimova, Alsou (MAG)" <Alsou.Anissimova@ontario.ca>, "Zeldin, Adam" <AZeldin@Richter.ca>

Subject: DIETRICH, J ORDERS CLEARBEACH AND FORBES HEARD AUG 20/2020 AT 1130AM relating to the PACE file court #CV-20-644116-00CL

Attention! Courriel externe | External Email

Good Morning,

Attached are the orders regarding the **Clearbeach and Forbes** matters heard at 11:30AM on August 20, 2020. Moreover, below is the endorsement as well as the attached counsel slip. See for details:

Endorsement

Before the court are two motions in which virtually identical relief is sought. The moving parties are Forbes Resources Corp. ("Forbes") and Clearbeach Resources Inc. ("Clearbeach"), respectively. Each seeks an order: i) to transfer a bankruptcy proceeding commenced in the Superior Court of Justice in London, Ontario to the Commercial List in Toronto; and ii) to stay the bankruptcy proceeding, briefly, pending the return of a motion for a receivership order.

Each of Forbes and Clearbeach is in the oil and gas business and their respective businesses are facing financial difficulty. On July 16, 2020, their lender, PACE Savings & Credit Union ("PACE"), commenced an application on the Commercial List in Toronto, in respect of each of them, seeking the appointment of a receiver. On July 22, 2020, each of Forbes and Clearbeach filed a notice of intention ("NOI") to make a proposal per section 50.4(1) of the *Bankruptcy and Insolvency Act* (the "BIA"). The NOI's were filed in the Superior Court of Justice in London, Ontario. On August 7, 2020, PACE gave notice of a motion in the proceeding commenced in London, Ontario to appoint a receiver of the assets of Forbes and Clearbeach and to terminate the NOI proceedings for both Forbes and Clearbeach.

A consolidation of these proceedings on the Commercial List in Toronto makes sense. The receivership application was brought on the Commercial List. Counsel to the parties are resident in Toronto and PACE has a branch office in Toronto. The transfer is in the interests of justice and judicial economy.

A brief stay of the proposal proceedings (estimated to be 7 – 14 days) is reasonable. It will permit the parties to further discuss an appropriate process going forward. During this time, the status quo will be maintained and the stay does not prevent PACE from advancing its receivership application at any time. See *Dondeb Inc.*, 2012 ONSC 6087, at paras. 23 and 24, where notices of intention to make a proposal were stayed and suspended pending further of the court where a Global Receivership Order was issued.

Each of PACE, Forbes, Clearbeach and the proposal trustee consents to the relief sought.

Orders to go the form of the drafts signed by me today. The Orders are effective as of today's date and it is not necessary that the Orders be entered.