



Court File No.: CV-21-00662483-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CLEARBEACH RESOURCES INC. AND FORBES RESOURCES CORP.**

Applicants

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location:

<https://us02web.zoom.us/j/87131449225?pwd=NFZ5YWdvNFV0NkVpK3hIWktrcEFCdz09>,  
the details of which are more fully set out in Schedule "A" hereto, on May 20, 2021, at 2:00 p.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 18, 2021

Issued by:

\_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 9th Floor  
Toronto, ON M5G 1R7

**TO: THE ATTACHED SERVICE LIST**

## APPLICATION

### THE APPLICANTS MAKE THIS APPLICATION FOR:

1. An order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") substantially in the form attached as Tab 3 of this Application Record (the "**Initial Order**"), *inter alia*:

- (a) abridging the time for service and filing of this Notice of Application and the Application Record and dispensing with further service thereof;
- (b) declaring that Clearbeach Resources Inc. ("**Clearbeach**") and Forbes Resources Corp. ("**Forbes**", and together with Clearbeach, the "**Applicants**") are parties to which the CCAA applies;
- (c) taking up and continuing the proposal proceedings (the "**Proposal Proceedings**") commenced by Clearbeach and Forbes under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), under the CCAA, and declaring that the BIA's proposal provisions shall have no further application to the Applicants;
- (d) appointing MNP Ltd. ("**MNP**" or the "**Proposed Monitor**") as an officer of this Honourable Court to monitor the assets, business, and affairs of the Applicants (as appointed, the "**Monitor**");
- (e) staying, for an initial period of not more than ten (10) days (the "**Stay of Proceedings**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor, or the Directors and Officers (as defined in the

Initial Order) or affecting the Applicants' business or the Property (as defined below), except with the written consent of the Applicant and the Monitor, or with leave of this Honourable Court;

- (f) approving the First Report of Richter Advisory Group Inc. ("**Richter**") in its capacity as proposal trustee in the Proposal Proceedings dated December 11, 2020, the Supplement to the First Report of Richter dated December 16, 2020, and the activities of Richter described therein;
- (g) sealing the confidential appendices to the Pre-Filing Report of the Proposed Monitor, to be filed; and
- (h) granting the following charges (together, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the "**Property**"):
  - (i) an Administration Charge (as defined in the Initial Order) up to a maximum amount of \$100,000; and
  - (ii) a Directors' Charge (as defined in the Initial Order) up to a maximum amount of \$100,000;

2. An order substantially in the form attached as Tab 5 of this Application Record (the "**Settlement Approval Order**") approving the terms of settlement as set out in the Settlement Agreement (the "**Settlement Agreement**") among the Applicants, PACE Savings & Credit Union Limited ("**Pace**"), Oil Patch Services Inc., Jarvis Holdings Inc., 1782767 Ontario Inc., Brookwood

Resources Inc., Peter Budd, Lagasco Inc. and Jane Lowrie (collectively, the “**Settlement Parties**”), and sealing the unredacted Settlement Agreement; and

3. Such further and other relief as this Honourable Court may deem just;

**THE GROUNDS FOR THIS APPLICATION ARE:**

*General*

- (a) Clearbeach and Forbes are privately-owned, affiliated companies incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16;
- (b) the Applicants are insolvent and are companies to which the CCAA applies;
- (c) the current and contingent claims against the Applicants exceed CDN\$5 million;
- (d) the Applicants operate in Ontario’s oil and natural gas sector. As the Applicants’ operating company, Clearbeach is involved in the exploration, development and production of oil and gas deposits in Ontario;
- (e) due to poor financial performance and liquidity issues caused by, among other things, decreasing commodity prices and significant environmental obligations, the Applicants have been unable to meet their ordinary course obligations;
- (f) facing a severe liquidity crisis and enforcement action taken by their senior secured creditor, Pace, the Applicants commenced the Proposal Proceedings under the BIA;
- (g) the time for filing a proposal in the Proposal Proceedings has elapsed and no proposal has been filed. Absent several stays of proceedings (together, the “**NOI**

Stay”) afforded to Clearbeach and Forbes in the Proposal Proceedings by this Honourable Court, the Applicants would be deemed bankrupt;

- (h) the Applicants are seeking to stabilize their business and ensure that Clearbeach’s significant environmental and stewardship obligations are satisfied by continuing the Proposal Proceedings under the CCAA;
- (i) MNP has consented to act as Monitor in the CCAA proceedings pending approval of this Honourable Court;

### ***The Stay of Proceedings***

- (j) the NOI Stay expires on May 20, 2021 and failing the granting of the Initial Order, each of the Applicants will be deemed bankrupt to the detriment of their stakeholders;
- (k) the Applicants require the Stay of Proceedings under the CCAA to prevent their deemed bankruptcies and prohibit certain enforcement action while they consider their restructuring options;
- (l) it is necessary and in the best interests of the Applicants and their stakeholders that the Applicants be afforded the breathing space provided under the CCAA;

### ***The Charges***

- (m) The Applicants are seeking the Charges as part of the relief granted by the proposed Initial Order in the following priority:

First – Administration Charge (up to the maximum amount of \$100,000); and

Second – Directors’ Charge (up to the maximum amount of \$100,000);

- (n) the quantum of each of the Charges was determined by the Applicants, in consultation with the Proposed Monitor. The Proposed Monitor is supportive of the granting of the Charges;

***The Settlement Agreement***

- (o) during the Proposal Proceedings, the Applicants have engaged in discussions with Pace regarding the resolution of certain issues between the Settlement Parties including, among others, the Applicants’ indebtedness to Pace. These discussions have culminated in the Settlement Agreement;
- (p) the Settlement Agreement provides a full and final settlement of certain issues between the Settlement Parties;
- (q) the effectiveness of the Settlement Agreement is conditional upon, among other things, the granting of the proposed Settlement Approval Order;
- (r) the Proposed Monitor believes that the Settlement Agreement is fair, commercially reasonable, and in the best interests of the Applicants’ and their stakeholders in the circumstances;
- (s) the proposed Settlement Approval Order contemplates the sealing of the unredacted Settlement Agreement as it contains commercially sensitive and confidential information that if disclosed, could be detrimental to the business and operations of

the Applicants and Pace, and limit the Applicants' ability to enter into further settlements during the CCAA proceedings;

- (t) the Proposed Monitor is supportive of the sealing of the unredacted Settlement Agreement;

***Other Grounds***

- (u) the provisions of the CCAA including, without limitation, section 11.6 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
- (v) rules 1.04, 2.03, 3.02, 14.05(2), 16, 38 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and sections 106 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (w) such further and other grounds as counsel may advise and this Honourable Court may permit;

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application for the Initial Order:

- (a) the Affidavit of Jane Lowrie sworn May 17, 2021, and the exhibits and confidential exhibit attached thereto;
- (b) the consent of MNP to act as Monitor;
- (c) the Pre-Filing Report of the Proposed Monitor, to be filed, and the appendices and confidential appendices attached thereto; and



- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 18, 2021

**BENNETT JONES LLP**

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Lawyers for the Applicants

## SCHEDULE "A"

<https://us02web.zoom.us/j/87131449225?pwd=NFZ5YWdvNFVvbkVpK3hIWktrcEFCdz09>

**Meeting ID:** 871 3144 9225

Passcode: 207260

One tap mobile

+16699009128,,87131449225#,,,,\*207260# US (San Jose)

+12532158782,,87131449225#,,,,\*207260# US (Tacoma)

### **Dial by your location**

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

Meeting ID: 871 3144 9225

Passcode: 207260

**Find your local number:** <https://us02web.zoom.us/u/kdQhW67It>

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings Commenced in Toronto

**NOTICE OF APPLICATION**

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