



COURT/ESTATE FILE NUMBER

24-2823737

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CLL CAPITAL CORP.

COURT/ESTATE FILE NUMBER

24-2823740

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 3MK ENERGY SERVICES LTD.

COURT/ESTATE FILE NUMBER

24-2823718

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LAST CHANCE TRUCKING (1995) LTD.

DOCUMENT

**AFFIDAVIT OF ROBERT LLOYD
(SWORN MAY 12, 2022)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 103603-0004

**AFFIDAVIT OF ROBERT LLOYD
SWORN MAY 12, 2022**

I, ROBERT LLOYD, of the County of Red Deer, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am a director of CLL Capital Corp. ("**CLL**"), 3MK Energy Services Inc. ("**3MK**") and Last Chance Trucking (1995) Ltd. ("**LCT**") (collectively the "**Companies**"). As such I have personal knowledge of the matters hereinafter deposed to except where stated to be based upon information and belief, in which case I believe the same to be true.

Background

2. CLL was incorporated in 2019 for purpose of making strategic acquisitions of corporations. In September of 2020, CLL purchased 100% of the shares of LCT and 75% of the shares of 3MK. Kenneth Carstairs, Jason Lloyd and I are the directors and shareholders of CLL. Kenneth Carstairs and I are the directors of 3MK and LCT.

3. LCT began operations in 1995 providing trucking services, general oilfield construction and temporary portable water storage tanks to companies in the oil and gas and forestry industries. Historically, LCT employed approximately 6 to 8 individuals.

4. In 2011, 3MK was incorporated to focus on the heavy equipment rental business. In the past, 3MK had approximately 5 to 6 employees.

5. At this time, LCT and 3MK together have six employees who work on projects for the clients of LCT. All of the employees have received working notice which will expire at the end of this month.

6. LCT and 3MK both operate out of the same premises in Drayton Valley, Alberta. The lease on the business premises expired on April 30, 2022, however, the Companies continued to utilize the space for the continued storage of the Companies' heavy equipment, vehicles and other assets, with the concurrence of the new tenant and the payment of rent. The Companies' office staff are able to work remotely during the wind-down period of their operations.

Relationship with Canadian Western Bank

7. In or about October 26, 2020, each of the Companies entered into commitment letters with Canadian Western Bank ("**CWB**") to assist in financing the day-to-day operations of their businesses. The Companies each guaranteed the loan obligations of one another to CWB and provided general security agreements to CWB in respect of indebtedness owing by the Companies to CWB. Ken Carstairs,

Jason Lloyd and I (collectively, the “**Guarantors**”) each provided CWB with limited guarantees in respect of the indebtedness owing to CWB. All of the loans were stated to be payable on demand.

8. On or about February 11, 2022, CWB advised the Companies that CWB wished to exit the current lending relationships with the Companies. As a result of receiving this advice, the Companies assessed their financial circumstances and determined that an orderly wind-down of their operations would be the best alternative for repaying the indebtedness owing to CWB.

9. Over the next several weeks, the Companies and CWB worked diligently towards the negotiation of a forbearance agreement which would, among other things, set out the parameters for the orderly wind-down of the Companies’ operations. At the same time, the Companies began to work on the structure of the orderly wind-down which included:

- (a) Obtaining proposals from three auctioneers for the sale of the heavy equipment, vehicles and other assets at their next available auction;
- (b) Entering into a listing agreement with Firing Iron Inc., an independent global sales broker to solicit offers to determine if certain of the heavy equipment and vehicles could be sold at more advantageous prices than what could be obtained at auction;
- (c) Arranging for Teams Auctions to run an auction of the smaller equipment, which was to be held at the Drayton Valley premises on April 24, 2022;
- (d) Completing current work-in-progress and new work with existing clients;
- (e) Expediting the collection of accounts receivable from clients whose jobs had been completed; and
- (f) Providing working notice to the employees of LCT and 3MK which expired at the end of April, 2022.

10. On April 12, 2022, the Companies received from CWB demand letters and notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) dated April 11, 2022. The aggregate amount owing to CWB by the Companies as set out in the demand letters was \$2,423,195.43 plus further accruing interest, costs and expenses incurred by CWB.

Joint Proposal for the Companies

11. On April 21, 2022, each of the Companies filed a Notice of Intention to Make a Proposal (the “**NOIs**”) with the Official Receiver pursuant to section 50.4(1) of the BIA. MNP Ltd. was appointed as the proposal trustee under each of the NOIs (the “**Proposal Trustee**”).

12. The Companies operate as a single entity. LCT is the principal operating company and the client-facing entity; obtaining work from and providing invoicing to clients. 3MK rents heavy equipment and provides workers to LCT to assist in the completion of jobs for LCT's clients. In many cases, both LCT and 3MK work jointly and contribute equipment to jobs. Once the jobs are completed and the clients remit payment to LCT, 3MK will invoice LCT for the equipment rentals and utilization of 3MK's employees. LCT and 3MK will then undertake an internal accounting and do intercompany transfers to allocate the revenue based on each companies' contribution of manpower and equipment.

13. 3MK owns the majority of the equipment that is utilized by the Companies, however, the equipment loan provided by CWB in relation to this equipment is the responsibility of CLL. Further, while 3MK has the majority of the assets, it has the least debt (both secured and unsecured) of the Companies. On the other hand, LCT and CLL have minimal assets but together account for the majority of the indebtedness owing to the Companies' creditors. CWB is the largest creditor of the Companies and has, through the existence of the guarantees and general security agreements, security over all of the assets of CLL, 3MK and LCT for the indebtedness owing to CWB by the Companies.

14. As a result of the structure of the Companies and the interconnectedness of the indebtedness, none of CLL, 3MK or LCT have the ability to make a standalone proposal to their creditors. In addition, it is not cost-effective or conducive to restructuring the Companies to require each of the companies to file a standalone proposal.

Administration Charge

15. The Companies require the assistance of counsel and the Proposal Trustee to prepare, present and implement a proposal. Without their continued involvement, the Companies will not be able to complete the orderly wind-down of their operations. The Companies therefore request a priority charge be granted in accordance with the section 64.2 of the BIA in respect of the fees and disbursements of those parties, ranking ahead of all other creditors (the "**Administration Charge**").

Sales Process for the Companies' Assets

(a) Small Equipment - Shop and Office Items

16. The Companies have received a number of offers to purchase the smaller equipment, including from the new tenant of the Drayton Valley premises. On May 3, 2022, the Companies requested approval from CWB and the Proposal Trustee to sell some of this equipment and have the proceeds held in trust by the Companies' counsel.

17. On May 4, 2022, CWB and the Proposal Trustee agreed to the sales of the small equipment and shop items provided that (i) the sales proceeds were remitted to CWB within three business days, and (ii) the Companies and the Guarantors swear affidavits attesting to, among other things, that the purchasers were not “related persons” to the Companies or the Guarantors within the meaning on the BIA.

18. The Companies intend to provide CWB and the Proposal Trustee with weekly updates and requests for approval of the sale of more of the smaller equipment. As the value of these items is, in the majority of instances, less than \$5,000, it is not cost-effective, efficient or in the best interests of the Companies’ stakeholders to seek this Honourable Court’s approval of such sales. The Companies will continue to provide CWB, the principal secured creditor, with the net proceeds from these sales and sworn affidavits confirming that, among other things, the sales are not to “related persons” within the meaning of the BIA.

19. To the extent that all of the small items cannot be sold to independent third party purchasers by May 13, 2022, the Companies intend to engage Teams Auctions or Ritchie Brothers to complete the sale of the remaining pieces at the next scheduled auction.

(b) Heavy Equipment and Vehicles

(i) Independent Third Party Sale

20. The Companies received a number of offers from independent third parties for certain items of heavy equipment and vehicles prior to the commencement of these proceedings. The Companies evaluated these offers, with conjunction with the Proposal Trustee, based on (i) an appraisal that had been obtained of the heavy equipment, vehicles and certain other assets in conjunction with obtaining financing from CWB in October of 2020, and (ii) the impact of such private sales on the proceeds that could be received in an auction.

21. As a result of that evaluation, the Companies and the Proposal Trustee determined that the offer from IHD Energy Services Ltd. (“**IHD**”) was in the best interest of the Companies’ stakeholders and would provide a better recovery that could be realized in an auction. A redacted copy of the vehicle or equipment sale agreement between LCT and IHD (the “**Sale Agreement**”) is attached hereto as Exhibit “A” and an unredacted copy of Sale Agreement, together with a financial analysis of the offer, is attached as Confidential Exhibit “A”.

(ii) Auction Proposals

22. Although the Companies had already received an auction proposal from Ritchie Brothers which was acceptable to CWB, following the commencement of these proceedings, the Companies solicited

auction proposals from six additional auction companies. As a result of the solicitation, the Companies received two additional auction proposals. While certain auction companies have advised that their proposals will be forthcoming in the next few days, at this time, the auction proposal from Ritchie Brothers still represents the best proposal for realizing on Companies' heavy equipment, vehicles and other large assets.

23. The Companies propose to enter into an Auction Agreement with Ritchie Brothers to sell all heavy equipment and vehicles other than the equipment and vehicles described in paragraph 21 (the "**Sale Items**") at auction on June 22, 2022. Ritchie Brothers has advised that it will commence advertising for the auction on June 1, 2022 and the Companies will deliver the Sale Items to Ritchie Brothers on a delivery schedule to be agreed by the parties.

Extension of Time to Make a Proposal

24. The time to file a proposal expires on May 21, 2022. In order to continue to work towards the orderly wind-down of the Companies and the formulation and filing of a joint proposal to their creditors, the Companies request an extension of the time for filing to July 5, 2022, in accordance with section 50.4(9) of the BIA.

25. Since the NOIs were filed on April 21, 2022, the Companies have taken the following steps:

- (a) worked with the Proposal Trustee on the preparation of the cash flow projections and weekly monitoring for the Companies;
- (b) communicated with CWB regarding the proposal process and the Companies' plan to implement a sales process;
- (c) communicated with clients regarding the completion of ongoing work and the collection of accounts receivable;
- (d) reviewed options for storing the Companies' assets following the expiry of the lease for the Drayton Valley premises and pending the completion of the asset sales and proposed auctions;
- (e) contacted six additional auction companies to obtain auction proposals for the Companies' assets;
- (f) requested an up-to-date appraisal of the Companies' assets;
- (g) received and evaluated offers to purchase the Companies' assets received from independent third parties, and

(h) communicated with CWB and the Proposal Trustee on offers to purchase the small equipment and other assets and proposed a plan for continuing to liquidate such assets.

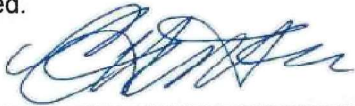
26. The Companies have acted in good faith and with due diligence since the NOIs were filed and will likely be able to make a viable proposal if the extension applied for were granted.

27. To the best of my knowledge, information and belief, none of the Companies' creditors will be materially prejudiced if this Honourable Court grants the extension sought.

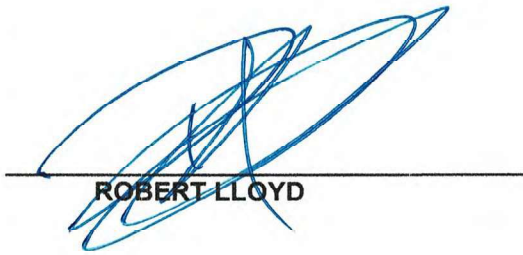
28. I make this Affidavit in support of an application for an Order (i) authorizing the Companies to file a joint proposal with the Official Receiver, (ii) approving the sales process for the Companies' heavy equipment, vehicles and other assets; (iii) approving the Administration Charge, and (iv) extending the time to file a proposal.

SWORN (OR AFFIRMED) BEFORE ME at)
Calgary, Alberta, this 12th day of May, 2022.)

The deponent was not physically present before)
me, but was linked with me utilizing video)
technology. The process outlined in the Court of)
Queen's Bench of Alberta Notice to the)
Profession and Public for Remote Commissioning)
of Affidavits for use in Civil and Family)
Proceedings During the COVID-19 Pandemic)
(NPP#2020-02), dated March 25, 2020, was)
followed.)



Commissioner for Oaths in and for the Province)
of Alberta)


ROBERT LLOYD

VEHICLE OR EQUIPMENT SALE AGREEMENT

This is Exhibit "A" referred to in the Affidavit of Robert Lloyd sworn before me at Calgary, AB this 12th day of May, 2022



A Commissioner for Oaths in and for Alberta

This Sale Agreement, (the "Agreement") is made and effective **May 10, 2022**,

BETWEEN: **Last Chance Trucking (1995) Ltd.** (the "Seller"), a corporation organized and existing under the laws of the Province of Alberta, with its head office located at:

Address
6217 – 52nd Ave, Drayton Valley, AB T7A 1R6

AND: **IHD Energy Services Ltd.** (the "Buyer"), a corporation organized and existing under the laws of the Province of Alberta, with its head office located at:

Business Address
PO Box 5308, Drayton Valley, AB T7A 1R5

IN CONSIDERATION OF THE SUM OF [REDACTED], CAD, the Seller hereby sells and transfers possession of the following vehicles or equipment in their present condition and location to the Buyer, and its successors and assigns forever, the following described goods;

<u>Item</u>	<u>Year</u>	<u>Make/Model</u>	<u>Serial</u>	<u>Sale Price Net</u>	<u>GST</u>	<u>Total Sale Price</u>
Unit #240	2013	Kenworth T800 Tan/Tridrive	Manitex 4596 45T Crane Truck	1XKDP4TX6DR963133		[REDACTED]
Unit #T-116	1993	Aspen Tridem Scissorsneck	2A9LB6030PS037132			
Unit# T-120	1999	Kaylen Highboy Tridem Flatdeck Trailer 48Ft	2A9SPF9G5XT053601			
2003		Genie Z-45/25-person lift	Z452503-22486			
Unit #19	2014	BHS 1500 Frac Pond (6800m3)	13 019			
Unit #38	2015	BHS 1800 Frac Pond (9200m3)	14 1800 038			
Lifting Spreader Bar						
Manlift Basket						
Liner Recycle Container						
TOTALS:						

Seller warrants and represents that he/she has good title to said property, full authority to sell and transfer same in the normal course of business and that said goods and chattels are being sold free and clear of all liens, encumbrances, liabilities and adverse claims, of every nature and description and said liens, if any, shall be released and removed in a commercially reasonable time period.

Seller further warrants that it shall sully defend, protect, indemnify and save harmless the Buyer and its lawful successors and assigns from any and all adverse claim, that may be made by any party against said goods.

The Buyer acknowledges examining the goods and buying them "as is and where is" completely at the Buyer's risk and promises not to make any claims against the Seller based upon alleged express or implied representations, warranties, or collateral agreements as to the merchantability of the goods or as to their fitness for any particular purpose or as to their safe use.

It is provided, however, that Seller disclaims any implied warranty of condition, merchantability, or fitness for a particular purpose. Said goods being in their present condition "as is" and "where is."

VEHICLE OR EQUIPMENT SALE AGREEMENT

IN WITNESS WHEREOF, this Sale Agreement is executed in duplicate on **May 10, 2022**.

Conditions and Payment Terms:

- 1) Bank Approval of Sale

BUYER

IHD Energy Services Ltd.



Authorized Signature

SELLER

Per: Last Chance Trucking (1995) Ltd.



Authorized Signature