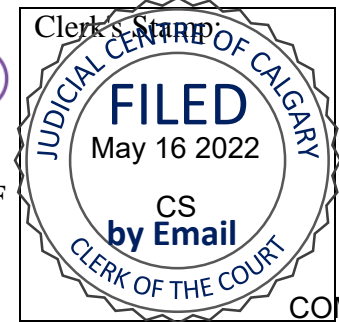


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ESTATE NUMBER 25-2802560

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERTEX DOWNHOLE LTD.

DOCUMENT **Bench Brief of the Applicant**

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**APPLICATION BEFORE JUSTICE K. FETH
MAY 27, 2022 AT 2:00 PM ON THE COMMERCIAL LIST**

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I. INTRODUCTION

1. This is the Bench Brief of the Applicant, Vertex Downhole Ltd. ("**Vertex**" or the "**Applicant**") in support of its application (the "**Application**") seeking an Order, among other things, extending the period of time within which Vertex is required to file a proposal (the "**Proposal**") to its creditors (the "**Proposal Period**") up to and including July 14, 2022 (the "**Third Stay Extension**") pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*.¹

II. BACKGROUND

2. On February 4, 2022, Vertex filed a Notice of Intention to Make a Proposal (the "**NOI**") with the Office of the Superintendent of Bankruptcy pursuant to section 50.4(1) of the *BIA*,² commencing these NOI Proceedings.

3. Vertex is a Canadian Controlled Private Corporation, incorporated pursuant to the laws of the Province of Alberta with its registered office located in Calgary, Alberta. Vertex is the parent entity of a group of vertically-held Delaware corporations (collectively, the "**Vertex Group**").

4. Vertex, as part of the Vertex Group, is an integrated oil and gas service company with a product base uniquely designed to support downhole drilling.

5. HSBC Bank of Canada ("**HSBC**") is Vertex's senior-secured creditor. As of the date of the filing of the NOI, Vertex's books and records indicated that it owes HSBC approximately \$8,519,828.³

6. On April 14, 2022, by Order granted by Justice Feth, Vertex received a stay extension that extended the stay of proceedings to May 30, 2022 (the "**Second Stay Extension**").

7. Since the granting of the Second Stay Extension, Vertex has pursued numerous activities with a view to advancing the NOI Proceedings, restructuring its affairs, and working towards its goal of presenting a Proposal. These steps have included, but are not limited to:

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**") at s. 50.4(9) [**Authorities, Tab 1**]

² *BIA* at s.50.4(1) [**Authorities, Tab 1**].

³ Affidavit No. 3 of Craig Flint sworn May 16, 2022 ("**Affidavit No.3**"), at para 11.

- (a) providing MNP Ltd. in its capacity as the proposal trustee of Vertex (the "**Proposal Trustee**") with access to Vertex's books and records;
- (b) collaborating with the Proposal Trustee to implement the Sales and Investment Solicitation Process (the "**SISP**"), which has included assisting the Proposal Trustee with the preparation of the SISP teaser documentation, confidential information memorandum, confidentiality agreement, letter of intent, and other SISP-related matters;
- (c) continuing to work with its counsel, the Proposal Trustee and the Proposal Trustee's counsel generally, and in particular with respect to:
 - (i) exploring and considering the various exit strategies available to Vertex in the context of these proceedings, including the structure and financing of any Proposal; and
 - (ii) preparing cash flow projections and identifying issues with respect to Vertex's financial conditions; and
- (d) continuing to communicate and engage with stakeholders, including HSBC, employees, contractors, and vendors;
- (e) continuing to make sales and carry on business in the normal course, in the circumstances; and
- (f) continuing to review its operating expenses, pursuing the collection of accounts receivable, and taking steps to ensure Vertex remains financial viable without recourse to interim financing during the NOI Proceedings.⁴

III. FACTS

8. The facts in support of Vertex's Application are set forth in Affidavit No. 3 of Craig Flint, sworn May 16, 2022 ("**Affidavit No. 3**"). Capitalized terms not otherwise defined herein have

⁴ Affidavit No. 3, at para 13.

the meaning set forth in Affidavit No.3., Vertex's Application, or the Second Report of the Proposal Trustee.

9. The Second Stay Extension is set to expire on May 30, 2022. Vertex is seeking the Third Stay Extension for a period of 45 days to July 14, 2022, which would provide it with the time needed to, among other things:

- (a) continue restructuring of its business and affairs and pursuing strategic alternatives;
- (b) continue the implementation of the SISP, which is anticipated to include reaching the Phase 2 bid deadline of May 24, 2022;⁵ and
- (c) continue operations and generate revenue.

10. The Third Stay Extension is critical to Vertex's ability to preserve and enhance the value of Vertex's business, for the benefit of all of Vertex's creditors.

IV. ISSUES

11. There is one issue to be determined at the Application, namely whether this Honourable Court should grant the Third Stay Extension.

V. LAW AND ARGUMENT

12. Pursuant to section 50.4(9) of the *BIA*, before the expiry of a Proposal Period, a debtor in a proposal proceeding may apply to the court for an order to extend the time to file a proposal by a maximum of 45 days and the court may extend the Proposal Period if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

⁵ Affidavit No. 3, at para 14.

13. The insolvent debtor bears the onus to prove that it has satisfied all three elements required for the extension to be granted.⁶ Where those prerequisites have been met, this Court has the authority to grant a stay extension.⁷

Good Faith

14. In *Convergix*, Justice Glennie found the following actions by the insolvent debtor demonstrated good faith and diligence:

- (a) The Insolvent Corporations have retained the professional service of Grant Thornton Limited to assist them in their restructuring;
- (b) The Insolvent Corporations have completed a business plan;
- (c) The Insolvent Corporations are diligently working on the Restructuring;
- (d) Since the filing of the five Notices of Intention to Make a Proposal, representatives of the Insolvent Corporations and Grant Thornton Limited have met with the representatives of ACOA, the principal outside creditor of the insolvent Corporations, to advise them of these proceedings; and
- (e) Representatives of the Insolvent Corporations have met with outside investors.⁸

Ability to make a Viable Proposal

15. In *Cantrail Coach*, Master Groves held that even where a proposal has not been formulated, it can still constitute a "viable proposal" on the basis of the insolvent debtor's good faith actions:

I note the words in the legislation are "a viable proposal". According to the *Concise Oxford Dictionary* viable means feasible. Viable also means practicable from an economic standpoint.

I am impressed thus far with the efforts of Cantrail and with the efforts of the trustee, Patty Wood, in trying to get this matter resolved. I am satisfied that the insolvent company, in my view, would likely be able to make a viable proposal, a proposal that is at least feasible, a proposal that

⁶ *H&H Fisheries Ltd., Re*, 2005 NSSC 346 ("***H&H Fisheries***"), at para 12 [**Authorities, Tab 2**].

⁷ *Colossus Minerals Inc., Re*, 2014 ONSC 514 ("***Colossus Minerals***"), at para 38 [**Authorities, Tab 3**].

⁸ *Convergix Inc., Re*, 2006 NBBR 288, [***Convergix***] at para 39 [**Authorities, Tab 4**].

would be practicable from an economic standpoint, I the extension being applied for were granted.⁹

Material Prejudice

16. In *H&H Fisheries*, Justice Goodfellow characterized material prejudice as that which raises significant concern to a level that it would be unreasonable for creditors to accept. Similarly, in *Cantrail Coach*, Master Groves held that a creditor must be *substantially* or *considerably* prejudiced if the extension being applied for is granted.¹⁰

17. Vertex respectfully submits that the Third Stay Extension ought to be approved for, among others, the following reasons:

- (a) Vertex has acted and is continuing to act in good faith and with due diligence and has engaged with the Proposal Trustee and its stakeholders, including HSBC;
- (b) Vertex will likely be able to make a viable proposal if the Third Stay Extension is granted. Since the Second Stay Extension, Vertex has continued to work diligently on the restructuring of its affairs and the implementation of a SISP with the ultimate goal of presenting a viable Proposal;
- (c) there is no evidence that creditors will be prejudiced, let alone materially prejudiced, if the Third Stay Extension is granted. Further, both the Proposal Trustee and HSBC support the Third Stay Extension;
- (d) the Third Stay Extension is required to allow Vertex to continue the restructuring of its business and affairs and pursue strategic alternatives;
- (e) the Third Stay Extension is necessary for Vertex to continue to implement the SISP, which is anticipated to reach the Phase 2 Bid deadline of May 24, 2022; and
- (f) absent the Third Stay Extension, Vertex will have no ability to make a viable Proposal to its creditors and will become bankrupt to the detriment of its stakeholders.

⁹ *Cantrail Coach Lines Ltd., Re*, 2005 BCSC 351 ("*Cantrail Coach*"), at paras 19 and 20 [Authorities, Tab 5].

¹⁰ *Cantrail Coach*, at para 21 [Authorities, Tab 5].

18. In order to continue the restructuring of its business and affairs and work towards making a viable proposal to its creditors, Vertex respectfully submits that this Honourable Court should exercise its discretion to grant the Third Stay Extension.

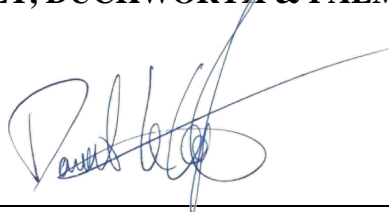
VI. CONCLUSION

19. For the reasons above, Vertex respectfully requests this Honourable Court:

- (a) grant the Third Stay Extension; and
- (b) grant such other ancillary relief as may be sought by Vertex at the hearing of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF MAY, 2022

BURNET, DUCKWORTH & PALMER LLP



Per:

David LeGeyt / Ryan Algar
Solicitors for Vertex Downhole Ltd.

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<u><i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3</u>
2.	<u><i>H&H Fisheries Ltd., Re</i>, 2005 NSSC 346</u>
3.	<u><i>Colossus Minerals Inc., Re</i>, 2014 ONSC 514</u>
4.	<u><i>Convergix Inc., Re</i>, 2006 NBBR 288</u>
5.	<u><i>Cantrail Coach Lines Ltd., Re</i>, 2005 BCSC 351</u>