

COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER: 1601-0023AC

TRIAL COURT FILE NUMBER: 1501-12220

REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: ALBERTA TREASURY BRANCHES

STATUS ON APPEAL: RESPONDENT

DEFENDANT: CONSERVE OIL 1ST CORPORATION

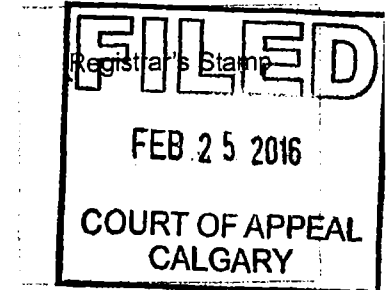
STATUS ON APPEAL: APPELLANT

DEFENDANT: COGI LIMITED PARTNERSHIP,
CANADIAN OIL & GAS INTERNATIONAL INC.,
CONSERVE OIL GROUP INC.

STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

**DOCUMENT: AFFIDAVIT
VOLUME 1 OF 2**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: MacPherson Leslie & Tyerman LLP
Suite 1600, 520 – 3rd Avenue SW
Calgary, AB T2P 0R3
Phone: 403.693.4316/4310
Fax: 403.508.4349
Attention: Ariel Z. Breitman/
Jonathan J. Bouchier
File: 055637-0012



AFFIDAVIT OF DAVID CROMBIE

Sworn on February 16, 2016

I, David Crombie, of Calgary, Alberta, SWEAR AND SAY THAT:

COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER: 1601-0023AC

TRIAL COURT FILE NUMBER: 1501-12220

REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: ALBERTA TREASURY BRANCHES

STATUS ON APPEAL: RESPONDENT

DEFENDANT: CONSERVE OIL 1ST CORPORATION

STATUS ON APPEAL: APPELLANT

DEFENDANT: COGI LIMITED PARTNERSHIP,
CANADIAN OIL & GAS INTERNATIONAL INC.,
CONSERVE OIL GROUP INC.

STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

**DOCUMENT: AFFIDAVIT
VOLUME 1 OF 2**

Registrar's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: MacPherson Leslie & Tyerman LLP
Suite 1600, 520 – 3rd Avenue SW
Calgary, AB T2P 0R3
Phone: 403.693.4316/4310
Fax: 403.508.4349
Attention: Ariel Z. Breitman/
Jonathan J. Bouchier
File: 055637-0012

AFFIDAVIT OF DAVID CROMBIE

Sworn on February 16, 2016

I, David Crombie, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a Director of Conserve Oil 1st Corporation ("**Amalco**"). As such, I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based upon information and belief, in which case I believe the same to be true.

2. I am authorized to make this Affidavit on behalf of Amalco.

A. Amalco

3. Amalco is a company incorporated pursuant to the laws of Alberta. It was created by way of amalgamation of Conserve Oil 1st Corporation ("**COC1**"), Conserve Oil 2nd Corporation ("**COC2**"), Conserve Oil 6th Corporation ("**COC6**") and Conserve Oil 7th Corporation ("**COC7**"). It was registered as a corporate entity on December 20, 2013 and has its registered office in Calgary, Alberta. Attached hereto and marked as **Exhibit "A"** is a copy of a Government of Alberta Corporate Registry search for Amalco.

B. The Amalgamation Predecessors of Amalco

4. As set out above, the amalgamation predecessors of Amalco were COC1, COC2, COC6 and COC7, although only COC1, COC6, and COC7 had any involvement with Alberta Treasury Branches ("**ATB**") prior to the amalgamation.

5. Prior to July 2013, COC1, COC6, and COC7 were the general partners of the following limited partnerships:

(a) COC1 was the general partner of Conserve Oil POC Growth Limited Partnership ("**LP1**");

(b) COC6 was the general partner of Conserve Oil POC Growth II Limited Partnership ("**LP6**");

(c) COC7 was the general partner of Conserve Oil POC Natural Gas I Limited Partnership ("**LP7**").

6. COC1, COC6, and COC7, but not COC2, are collectively referred to herein as the "**Old GPs**".

7. LP1, LP6, and LP7 are collectively referred to herein as the "Old LPs".
8. The Old LPs were generally involved in purchasing, disposing, managing, developing, and exploiting petroleum and natural gas rights, facilities, and transportation infrastructure used in the production of natural gas from the Western Canadian Sedimentary Basin and, in relation to this:
 - (a) LP1 and LP6 were focused on the acquisition of assets with development potential and the development of those assets by drilling new wells; and
 - (b) LP7 focused on the acquisition of natural gas assets.
9. COC2 was not a general partner of any limited partnerships.

C. The Relationship Between the Old LPs, the Old GPs and ATB

(i) LP1, COC1, and ATB

10. Pursuant to a Commitment Letter dated December 1, 2011, among ATB, LP1, and COC1, ATB agreed to establish a credit facility for LP1 to draw up to the amount of \$9.5 Million (the "**LP1 Credit Facility**").
11. In conjunction with the LP1 Credit Facility, LP1 executed and delivered to ATB certain collateral security (collectively, the "**LP1 Security Documents**"), including a General Security Agreement providing a floating charge on all LP1 lands and a Demand Debenture providing a floating charge over LP1's property and assets, to secure the obligations of LP1 to ATB under the LP1 Credit Facility.
12. On January 27, 2012, in furtherance of the LP1 Credit Facility, LP1's general partner, COC1, provided ATB with a guarantee (the "**COC1 Guarantee**"), in which COC1 agreed to secure the obligations of LP1 to ATB under the LP1 Credit Facility. A copy of the COC1 Guarantee is attached hereto and marked as **Exhibit "B"**.
13. On January 27, 2012, in furtherance of the LP1 Credit Facility and in order to support the COC1 Guarantee, COC1 executed and delivered to ATB certain collateral security (collectively, the "**COC1 Security Documents**"), including a

General Security Agreement providing a floating charge on all COC1 lands and a Demand Debenture providing a floating charge over COC1's property and assets.

14. On February 7, 2013, the LP1 Commitment Letter dated December 1, 2011 was amended by way of the First Amending Agreement among LP1 and ATB (the "**Amending Agreement**"). The Amending Agreement reduced the amount of the LP1 Credit Facility from \$9.5 Million to \$7.5 Million. A copy of the Amending Agreement is attached hereto and marked as **Exhibit "C"**.
15. The Amending Agreement included a provision by which LP1 ratified the terms of the Commitment Letter and confirmed that each of the LP1 Security Documents would continue in full force and effect and be effective as of the date of the Amending Agreement.
16. As a condition precedent set out in the Amending Agreement, COC1 was required to, and did, execute and deliver to ATB an acknowledgement, in the form attached to the Amending Agreement (the "**Acknowledgement**") by which COC1: (i) consented to the terms of the Amending Agreement; (ii) acknowledged, agreed, and confirmed that the COC1 Guarantee would remain binding upon COC1 and would continue, effective as of the date of the Amending Agreement, in full force and effect as a guarantee of the obligations of LP1 under the amended LP1 Credit Facility; and (iii) acknowledged and agreed that each of the COC1 Security Documents would, effective as of the date of the Amending Agreement, continue in full force and effect, as security for the obligations of COC1 under the COC1 Guarantee. The form of the Acknowledgment is found at page 6 of the Amending Agreement attached hereto and marked as Exhibit "C".
17. This requirement by ATB for the ratification of changes to an existing credit facility by both borrower and guarantor, and the acknowledgement by LP1 and COC1 that their security documents would secure the changed obligations of LP1 to ATB, was consistent with the understanding that it was ATB's usual practice that any change to a borrower's obligation to the ATB, even one that

reduced liabilities, required the consent of both borrower and guarantor, and a concurrent confirmation that their security, given to secure the borrower's original obligations to the ATB, would continue in full force, effective at the date of the ratified changes to the secured obligations, to secure the changed obligations of the borrower to ATB.

(ii) LP6, COC6, and ATB

18. Pursuant to a Commitment Letter date May 30, 2012, among ATB, LP6, and COC6, ATB agreed to establish a revolving operating credit facility for LP6 to draw up to the amount of \$15 Million (the "**LP6 Credit Facility**"). A copy of the LP6 Credit Facility is attached hereto and marked as **Exhibit "D"**.
19. In conjunction with the LP6 Credit Facility, LP6 executed and delivered to ATB certain collateral security (collectively, the "**LP6 Security Documents**"), including a General Security Agreement providing a floating charge on all LP6 lands and a Demand Debenture providing a floating charge over LP6's property and assets, to secure the obligations of LP6 to ATB under the LP6 Credit Facility.
20. On June 21, 2012, in furtherance of the LP6 Credit Facility, LP6's general partner, COC6, provided ATB with a guarantee (the "**COC6 Guarantee**"), in which COC6 agreed to secure the obligations of LP6 to ATB under the LP6 Credit Facility. A copy of the COC6 Guarantee is attached hereto and marked as **Exhibit "E"**.
21. On June 21, 2012, in furtherance of the LP6 Credit Facility and in order to support the COC6 Guarantee, COC6 executed and delivered to ATB certain collateral security (collectively, the "**COC6 Security Documents**"), including a General Security Agreement providing a floating charge on all COC6 lands and a Demand Debenture providing a floating charge over COC6's property and assets.

(iii) LP7, COC7, and ATB

22. Pursuant to a Commitment Letter dated September 13, 2012 among ATB, LP7, and COC7, ATB agreed to establish a revolving operating credit facility for LP7 to draw up to the amount of \$3.15 Million and a non-revolving credit facility for \$3.15 Million, for a total credit facility of up to \$6.3 Million (the "**LP7 Credit Facility**"). A copy of the LP7 Credit Facility is attached hereto and marked as **Exhibit "F"**.
23. In conjunction with the LP7 Credit Facility, LP7 executed and delivered to ATB certain collateral security (collectively, the "**LP7 Security Documents**"), including a General Security Agreement providing a floating charge on all LP7 lands and a Demand Debenture providing a floating charge over LP7's property and assets, to secure the obligations of LP7 to ATB under the LP7 Credit Facility.
24. On September 21, 2012, in furtherance of the LP7 Credit Facility, LP7's general partner, COC7, provided ATB with a guarantee (the "**COC7 Guarantee**"), in which COC7 agreed to secure the obligations of LP7 to ATB under the LP7 Credit Facility. A copy of the COC7 Guarantee is attached hereto and marked as **Exhibit "G"**.
25. On September 21, 2012, in furtherance of the LP7 Credit Facility and in order to support the COC7 Guarantee, COC7 executed and delivered to ATB certain collateral security (collectively, the "**COC7 Security Documents**"), including a General Security Agreement providing a floating charge on all COC7 lands and a Demand Debenture providing a floating charge over COC7's property and assets.
26. The LP1, LP6, and LP7 Security Documents will be collectively referred to herein as the "**Old LPs Security Documents**". The COC1, COC6, and COC7 Security Documents will be collectively referred to herein as the "**Old GPs Security Documents**".

(iv) COC2 Had No Relationship with ATB

27. COC2 did not, at any time, enter into any credit facility with ATB. COC2 did not ever provide any guarantee or security documentation to ATB, nor did COC2 ever have any obligations to ATB.

(v) Conserve LP, Conserve Oil, and ATB

28. Prior to July 2013, Conserve Oil Corporation ("**Conserve Oil**") was the general partner of Conserve Oil POC First Limited Partnership ("**Conserve LP**").
29. On September 14, 2010, Conserve LP, Conserve Oil and ATB entered into a Commitment Letter which established a credit facility for Conserve LP (the "**Conserve LP Credit Facility**"). The Conserve LP Credit Facility was subsequently amended and restated on December 1, 2010 and August 30, 2012. The Conserve LP Credit Facility was secured by certain security documents provided by Conserve LP and by a guarantee and other collateral security documents provided by Conserve Oil and dated September 14, 2010. In conjunction with the amendments to the Conserve LP Credit Facility, both Conserve LP and Conserve Oil were required by ATB to consent to the two amendments and to acknowledge that their security documents, including Conserve Oil's guarantee, would continue, effective as of the dates of the respective amendments, to secure Conserve LP's changed obligations to ATB under the amended Conserve LP Credit Facility.

D. The July 2013 Arrangement

30. On July 21, 2013, the Old LPs, the Old GPs, Conserve LP, Conserve Oil, Conserve Oil POC Second Limited Partnership ("**COPII LP**"), Conserve Oil POC Growth 3 Plus Limited Partnership ("**COPIII LP**"), among others, entered into an arrangement agreement, amended August 23, 2013 (as amended, the "**Arrangement Agreement**"), which, among other things, created a single new limited partnership known as COGI Limited Partnership ("**COGI LP**"). Attached hereto and marked as **Exhibit "H"** is a copy of the Arrangement Agreement.

31. A schematic setting out the relationships between the Old LPs, Old GPs, Conserve LP, Conserve Oil, COPII LP, COPIII LP, COGI LP, and each of their respective relationships to ATB, before and after the Arrangement Agreement, is attached hereto as **Schedule "1"**.
32. Broadly speaking, pursuant to and in furtherance of the Arrangement Agreement, as it related to the Old LPs, the Old GPs, Conserve LP, Conserve Oil, COPII LP, COPIII LP, and COGI LP:
- (a) a new limited partnership, COGI LP, was created, the general partner of which was Canadian Oil & Gas International Inc. ("**COGI GP**");
 - (b) the limited partners of the Old LPs exchanged the partnership units that they held in the Old LPs for partnership units in COGI LP;
 - (c) the limited partners of Conserve LP, COPII LP and COPIII LP exchanged the partnership units that they held in these limited partnerships for partnership units in COGI LP;
 - (d) all interest in the property, assets, and liabilities of the Old LPs, as well as the property, assets and liabilities of Conserve LP, COPII LP, and COPIII LP, were conveyed, transferred, and assigned to COGI LP by way of General Conveyance Agreements (collectively, the "**Conveyance Agreements**");
 - (e) Conserve LP, COPII LP and COPIII LP each had an existing and substantial credit facility with the ATB related to their substantial assets, which include the Crown Leases identified in the Security Notice which was marked as Exhibit "W" to the Affidavit sworn by Clayton Martin on October 22, 2015;
 - (f) each of the Conveyance Agreements for each of the Old LPs contained a provision that COGI LP would pay, discharge, perform, and be responsible for all liabilities accruing, arising out of, or relating to, the Old LPs or their

businesses; copies of the Conveyance Agreements for each of the Old LPs are attached hereto and marked as **Exhibit "I"**;

- (g) the amended LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility were paid out in full and then cancelled;
- (h) the Old LPs, Conserve LP, COPII LP, and COPIII LP were then dissolved.

33. The business plan of COGI LP, through the acquisition of the assets and property (the "**Dissolved LPs' Assets**") of the Old LPs, Conserve LP, COPII LP, and COPIII LP (collectively, the "**Dissolved LPs**") was to only hold the Dissolved LPs' Assets for a period of 4 to 8 years. In that regard, COGI LP's business plan was significantly different from the business plans originally implemented by each of the Dissolved LPs:

- (a) in relation to Conserve LP and COPII, they had originally intended to hold their assets for a period of 20 years;
- (b) the risks associated with the different classes of assets previously held by each of the Dissolved LPs (and now entirely held by COGI LP) created a different aggregate risk profile for COGI LP from that of each of the Dissolved LPs. In particular, the Dissolved LPs had the following risk profiles:
 - (i) the focus of LP1 and LP6 was to hold oil and gas assets with developmental potential, which assets have a higher risk than holding proven developed producing ("**PDP**") oil and gas assets (PDP reserves are typically assigned a 90% probability that the quantities recovered will equal or exceed the estimated recovery amount);
 - (ii) Conserve LP and COPII LP were focused on PDP oil and gas assets that would provide a long term return, at a lower risk than "possible" oil and gas reserve-based assets (a reserve is classified as a possible reserve when there is only a 10% - 50% probability

that the actual quantities recovered will equal or exceed the estimated recovery);

- (iii) LP7 was focused solely on natural gas assets and thus had a different risk profile due to its focus on only one commodity, rather than two or more commodities;
- (iv) COPIII LP had 20% of its portfolio invested in real estate, which resulted in that entity being exposed to less risk, as real estate holdings are usually considered to be lower risk than oil and gas holdings; and
- (v) COGI LP's acquisition of all of the assets of the Dissolved LPs resulted in a significantly different aggregate risk profile than the individual risk profiles of each of the Dissolved LPs.

E. The Arrangement and ATB

34. In furtherance of the Arrangement Agreement, and effective August 30, 2013, the following transactions occurred with ATB:

- (a) COGI LP, COGI GP, and ATB entered into a Credit Agreement pursuant to which ATB established a credit facility for COGI LP to draw up to a maximum principal amount of \$94,500,000 (the "**COGI LP Credit Facility**") and comprised of a revolving credit facility in the amount of \$50,000,000 and a non-revolving credit facility in the amount of \$44,500,000; a copy of the Credit Agreement (the "**COGI LP Credit Agreement**") is attached hereto and marked as **Exhibit "J"**;
- (b) the non-revolving credit facility was to be used solely for the payout of the six ATB credit facilities for the six limited partnerships whose Crown Leases, among other assets, were being acquired by COGI LP; the revolving credit facility was to be used for general business purposes, including the development of the Crown Leases acquired by COGI LP

from the Old LPs, as well as the substantial number of Crown Leases acquired from Conserve LP, COPII LP and COPIII LP;

(c) on August 30, 2013, in furtherance of the COGI LP Credit Agreement, and in conjunction with the COGI LP Credit Facility, COGI LP provided the following security to ATB to secure COGI LP's obligations to ATB under the COGI LP Credit Facility:

- (i) a Floating Charge Demand Debenture, a copy of which is attached hereto and marked as **Exhibit "K"**;
- (ii) a General Security Agreement, a copy of which is attached hereto and marked as **Exhibit "L"**;
- (iii) a Debenture Pledge Agreement, a copy of which is attached hereto and marked as **Exhibit "M"**,

(collectively, the "**COGI LP Security Documents**").

(d) on August 30, 2013, in furtherance of the COGI LP Credit Agreement, and in conjunction with the COGI LP Credit Facility, COGI GP provided the following security to ATB to secure COGI LP's obligations to ATB under the COGI LP Credit Facility:

- (i) a Floating Charge Demand Debenture, a copy of which is attached hereto and marked as **Exhibit "N"**;
- (ii) a General Security Agreement, a copy of which is attached hereto and marked as **Exhibit "O"**;
- (iii) a Debenture Pledge Agreement, a copy of which is attached hereto and marked as **Exhibit "P"**,

(collectively, the "**COGI GP Security Documents**").

- (e) on August 30, 2013, in furtherance of the Credit Agreement, and in conjunction with the COGI LP Credit Facility, COGI GP executed and delivered to ATB a Guarantee (the "**COGI GP Guarantee**") securing the obligations of COGI LP under the COGI LP Credit Facility; a copy of the COGI GP Guarantee is attached hereto and marked as **Exhibit "Q"**.
35. The aggregate maximum amount of the amended LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility was \$28.8 Million, compared to the maximum principal amount of \$94.5 Million of the COGI LP Credit Facility for COGI LP.
36. The COGI LP Credit Agreement contained several key defined terms under Article 1.1:
- (a) the COGI LP Security Documents and the COGI GP Security Documents were defined as the "Security" for the obligations of COGI LP under the COGI LP Credit Facility;
 - (b) the LP1 Commitment Letter, the LP6 Commitment Letter, and the LP7 Commitment Letter were defined as the "Existing Conserve Commitment Letters";
 - (c) the LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility were defined as the "Existing Conserve Credit Facilities"; and
 - (d) the LP1, LP6, and LP7 Security Documents issued by the Old LPs under the LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility, as well as the COC1, COC6, and COC7 Guarantees, were defined in the COGI LP Credit Agreement as the "Existing Conserve Security Documents".
- (i) **The COGI LP Credit Facility Security**
37. The definition for "Security" in the COGI LP Credit Agreement did not reference or incorporate the Existing Conserve Commitment Letters, the Existing Conserve

Credit Facilities, or the Existing Conserve Security Documents (each as defined in the COGI LP Credit Agreement).

38. The security required to secure the obligations of COGI LP under Article 10 of the COGI LP Credit Agreement was to be the "Security" provided by COGI LP and COGI GP, which makes no reference to any of the Old Guarantees.
39. As no acknowledgement, similar to the Acknowledgement executed by LP1 in conjunction with the Amending Agreement related to the LP1 Credit Facility, or similar to the ratifications and consents of Conserve Oil to the two amendments of Conserve LP's obligations under the Conserve LP Credit Facility, was required by ATB to be executed by the Old GPs, it was reasonable to conclude at the time the COGI LP Credit Agreement was executed by COGI LP and COGI GP that the COGI LP Credit Agreement did not contemplate that the Old Guarantees and Security Documents executed by the Old GPs in respect of the Old LPs' \$28.8 Million Credit Facilities would continue to be in force and effect to secure the \$94.5 Million COGI LP Credit Facility.
40. Furthermore, none of the Old GPs were: (i) parties to the COGI LP Credit Agreement or requested to consent to the terms of the COGI LP Credit Agreement; (ii) requested to confirm and acknowledge that the Old Guarantees would remain binding upon the Old GPs and would secure the obligations of COGI LP to ATB under the COGI LP Credit Agreement; or (iii) requested to acknowledge and agree that the COC1 Security Documents would continue as collateral security for the obligations under the COC1, COC6, and COC7 Old Guarantees.

(ii) The Confirmation and Assumption Agreement

41. In contrast to ATB's decision not to require the Old GPs: (i) to consent to the COGI LP Credit Agreement or the COGI LP Credit Facility; or (ii) to acknowledge that their Old Guarantees and Security Documents would be in full force and effect to secure COGI LP's obligations under the COGI LP Credit Agreement and the COGI LP Credit Facility, as the ATB had previously done consistently to

maintain the enforceability of its existing security by requiring the Old GPs and Conserve Oil to consent to the changes made to the obligations to ATB they had secured and to confirm that their guarantees and other collateral security were in full force and effect securing such changed obligations to ATB, ATB did require COGI LP to confirm in writing that the Old LPs Security Documents remained in force and secured the obligations of COGI LP to ATB by way of a charge against the property and assets that COGI LP had acquired from the Old LPs.

42. Pursuant to a Confirmation and Assumption Agreement dated August 30, 2013, a copy of which is attached hereto as Exhibit "R", COGI LP confirmed that: (i) the Old LPs Security Documents would continue to apply to the property and assets of the Old LPs that had been acquired by COGI LP; and (ii) the Confirmation and Assumption Agreement was in addition to, and did not limit, derogate from, or otherwise effect the provisions of the Old LPs Security Documents.
43. There is no similar Confirmation and Assumption Agreement executed by the Old GPs that confirms that the Old Guarantees and GPs Security Documents remained in force as security for the obligations of COGI LP under the COGI LP Credit Agreement and the COGI LP Credit Facility.

(iii) The Confirmations of Cancellation

44. Further on August 30, 2013, in furtherance of the COGI LP Credit Agreement and COGI LP Credit Facility, by way of Confirmations of Cancellation from ATB to each of LP1, LP6, LP7, COC1, COC6, and COC7, ATB confirmed that all borrowings under the LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility had been repaid in their entirety and that any unused portions of those Facilities had been cancelled. Copies of each of the Confirmations of Cancellation are attached hereto and marked as **Exhibits "S", "T" and "U"**.
45. The purpose of the COGI LP Credit Facility was twofold. First, on the first day of drawdown, the COGI LP Credit Facility was to be used to repay in full any amounts outstanding under the amended LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility, as well as the substantial credit facilities with

ATB related to Conserve LP, COPII LP and COPIII LP. Second, the COGI LP Credit Facility was to allow for the provision of new funds for the exclusive use and benefit of COGI LP.

(iv) The Repayment and Cancellation of the Old Credit Facilities

46. Prior to the repayment and cancellation of the old Credit Facilities, ATB was to provide payout statements in relation to the LP1 Credit Facility, the LP6 Credit Facility, the LP7 Credit Facility, and the Conserve LP Credit Facility. Attached hereto and marked as **Exhibit "V"** is a copy of the Closing Agenda for the COGI LP Credit Facility, closing August 23, 2013.
47. Effective as at August 30, 2013, the LP1 Credit Facility, the LP6 Credit Facility, the LP7 Credit Facility, and the Conserve LP Credit Facility were repaid in their entirety and were concurrently cancelled.
48. It was my understanding that the repayment and cancellation of the amended LP1 Credit Facility, the LP6 Credit Facility, and the LP7 Credit Facility (collectively, the "**Cancelled Credit Facilities**"), as well as the decision of ATB not to require the Old GPs to consent to the new credit facility and to confirm that the Old Guarantee and GPs Security Documents would secure the new facilities, rendered all of the obligations of the Old GPs under the Old Guarantees and the GPs Security Documents discharged and cancelled and that, accordingly, there was no need for their formal cancellation.
49. The Old Guarantees, prior to the repayment and cancellation of the Cancelled Credit Facilities and the cancellation of the Old Guarantees, guaranteed obligations to ATB to a total amount of up to \$28,800,000. ATB did not request the Old GPs, as they had done a number of times before when the secured obligations had changed, to confirm that the Old Guarantees would secure obligations to ATB that had increased to \$94.5 Million.

(v) **The Amendment of the COGI LP Credit Agreement**

50. The COGI LP Credit Agreement was amended and restated as of December 23, 2014 (the "**Amended COGI LP Credit Agreement**"). Attached hereto and marked as **Exhibit "W"** is a copy of the Amended COGI LP Credit Agreement.
51. One of the amendments to the Amended COGI LP Credit Agreement was to require the amalgamated successor to Conserve Oil to provide a new guarantee. Although Conserve Oil, as the general partner of Conserve LP, had previously given ATB a guarantee and other collateral security documents to secure the Conserve LP Credit Facility, ATB expressly required that Conserve Oil provide a new guarantee and other collateral security documents to secure COGI LP's obligations to ATB. To that end, a further amendment added a specific reference to Conserve Oil in Articles 10.1 and 10.2 of the Amended COGI LP Credit Agreement, the effect of which was to explicitly require Conserve Oil to provide the following security to secure the obligations of COGI LP under the Amended COGI LP Credit Agreement: a guarantee, a floating charge demand debenture, a debenture pledge agreement, and general security agreement.
52. In relation to the Amended COGI LP Credit Agreement, Conserve Oil provided a guarantee, made as of December 23, 2014 (the "**New Conserve Guarantee**"), a copy of which is attached hereto and marked as **Exhibit "X"**.
53. ATB did not make a similar request of the Old GPs either before or after their amalgamation with each other and with COC2, which was consistent with my understanding, as confirmed by ATB's actions, that the Old Guarantees and the Old GPs Security Documents were no longer in force following the repayment and cancellation of the LP1, LP6, and LP7 Credit Facilities and the dissolution of the Old LPs.
54. The Amended COGI LP Credit Agreement also required that COGI LP and COGI GP execute a Confirmation of Guarantee and Security (the "**COGI Confirmation of Guarantee**") by which: (i) COGI LP and COGI GP consented to the amendments to the Amended COGI LP Credit Facility; (ii) COGI LP confirmed

that its new security documents continued to apply to its obligations under the Amended COGI LP Credit Facility; and (iii) COGI GP confirmed that its guarantee and the other COGI GP Security Documents, executed by COGI GP in 2013 in respect of the COGI LP Credit Facility, would be binding and in full force and effect to secure COGI LP's obligations under the Amended COGI LP Credit Facility. A copy of the COGI LP Confirmation of Guarantee is attached hereto as **Exhibit "Y"**.

55. No consent or acknowledgement to the Amended New Credit Facility Agreement was ever requested of or provided by the Old GPs. From such conduct and circumstances, it was further confirmation that ATB did not expect or consider the Old Guarantees or the Old GPs Security Documents to still be enforceable.
56. Throughout its dealings with the Old LPs, the Old GPs, COGI LP, and COGI GP from 2011 to 2014, ATB consistently required every entity that had guaranteed or otherwise secured a credit facility to consent to any changes to the secured obligations to confirm that their guarantees or other collateral security were in full force and effect to secure the changed secured obligations. This was reflected and evidenced by:
 - (a) ATB having required COC1 to execute, in February 2013, the Acknowledgement in which COC1 consented to the amendments in the Amending Agreement and confirmed that the COC1 Guarantee and the COC1 Security Documents would secure the changed obligations of LP1 under the Amending Agreement, even though the amendments were to the benefit of COC1;
 - (b) ATB having required Conserve Oil to provide written consents, in 2010 and 2012, to amendments to the Conserve LP Credit Facility and to provide confirmation that the Conserve Oil Guarantee and collateral security documents would secure the changed obligations of Conserve LP under the amended Conserve LP Credit Facility;

- (c) ATB having required COGI LP to confirm in the Confirmation and Assumption Agreement that the Old LPs Security Documents would secure these new obligations and that the Old LPs' property and assets that had been acquired by COGI LP would continue to be charged as security for COGI LP's obligations under the COGI LP Credit Facility;
 - (d) the repayment and cancellation of the \$28.8 Million LP1, LP6, and LP7 Credit Facilities, compared to the \$94.5 Million COGI LP Credit Facility;
 - (e) ATB having required COGI GP, as the guarantor of COGI LP's obligations under the COGI Credit Facility, to consent to the amendments to the COGI LP Credit Facility and to confirm that COGI GP's guarantee and collateral security would remain in force to secure COGI LP's obligations under the Amended COGI LP Credit Facility;
 - (f) ATB having required Conserve Oil to provide a new guarantee in 2014 to secure COGI LP's obligations under the Amended COGI LP Credit Facility.
57. Such consistent conduct was confirmation that had ATB intended or expected the Old Guarantees to secure the obligations of COGI LP under the COGI LP Credit Facility and the Amended COGI LP Credit Facility, ATB would have required the Old GPs to execute a consent to both the \$94.5 Million COGI LP Credit Facility and the Amended COGI LP Credit Facility and an acknowledgement that the Old Guarantees and the Old GPs Security Documents were in force to secure COGI LP's obligations under the COGI LP Credit Facility and the Amended COGI LP Credit Facility. The absence of any requests by ATB for such confirmations and consents from the Old GPs clearly evidenced and confirmed to the Old GPs an intention of ATB that the Old Guarantees did not secure COGI LP's obligations to ATB.
58. Based on such actions of and confirmations by ATB, the Old GPs proceeded with their December 20, 2013 amalgamation with each other and with COC2, without concern that their aggregate assets, including the oil and gas and real estate

assets of COC2 which had never been charged with securing any obligations to ATB, were charged with securing COGI LP's new and future obligations to ATB.

F. The Receivership Proceedings

59. On June 11, 2015, in relation to the repayment of credit extended under the COGI LP Credit Facility and the Amended COGI LP Credit Facility, counsel for ATB sent demands for payment to: (i) COGI LP, in its capacity as the borrower under the COGI LP Credit Facility; (ii) COGI GP, in its capacity as a guarantor of the COGI LP Credit Facility; and (iii) Conserve Oil, in its capacity as guarantor of the COGI LP Credit Facility (collectively, the "**Demands**"). Attached hereto and marked as **Exhibit "Z"** are copies of the Demands.
60. ATB did not deliver to Amalco a concurrent demand for payment pursuant to the Old Guarantees. Clearly, ATB did not consider that the Old Guarantees were enforceable.
61. On October 26, 2015, ATB was granted an Order (the "**First Receivership Order**") in Court of Queen's Bench Action No. 1501-12220 (the "**Action**") appointing a receiver over the assets, undertakings, and properties of COGI LP, COGI GP, and Conserve Oil Group. A copy of the First Receivership Order is attached hereto as **Exhibit "AA"**.
62. On November 16, 2015, five months after the first Demand, ATB's counsel sent a letter to Amalco demanding payment from Amalco in relation to the indebtedness of COGI LP that had arisen under the COGI LP Credit Facility. ATB purported to seek repayment of COGI LP's debts under the COGI LP Credit Agreement from Amalco as the amalgamation successor of the Old GPs, on the basis that the Old Guarantees granted in connection with the Cancelled Credit Facilities applied to guarantee the obligations under the COGI LP Credit Facility. Attached hereto and marked as **Exhibit "BB"** is a copy of the letter from ATB's counsel to Amalco dated November 16, 2015.

63. On November 23, 2015, ATB applied to add Amalco as a respondent in the Action and for a second receivership Order (the "**Second Receivership Order**") over the current and future assets, undertakings, and properties of Amalco.
64. On November 27, 2015, in anticipation of the determination as to whether a receiver should be appointed over Amalco, the Honourable Justice G.C. Hawco granted an Order (the "**November 27 Order**") that, among other things, limited the steps that Amalco could take in relation to its assets and liabilities. Attached hereto and marked as **Exhibit "CC"** is a copy of the November 27 Order.
65. On January 6, 2016, the Honourable Madam Justice K.M. Horner granted the Second Receivership Order over the current and future assets, undertakings, and properties of Amalco. Attached hereto and marked as **Exhibits "DD"** and **"EE"** are copies of the Second Receivership Order, and the Reasons for Judgment of the Honourable Madam Justice K.M Horner.
66. Amalco has appealed the Second Receivership Order.

G. Intention to Appeal

67. At approximately 9:30 a.m. on January 8, 2016, Alexander Gramatzki, Director of the sole shareholder of Amalco, and I had a conference call (the "**January 8, 2016 Conference Call**") with three partners from BJ to discuss the Second Receivership Order and the Amalco Appeal. I am advised by my counsel, Jonathan Bouchier, that the contents of the January 8, 2016 Conference Call are protected by solicitor-client privilege.
68. During the January 8, 2016 Conference Call, BJ advised Mr. Gramatzki and I that Amalco had 30 days within which to file its Civil Notice of Appeal of the Second Receivership Order (the "**BJ Advice**"). I and Amalco have no intention to waive and do not waive, the solicitor-client privilege which protects the contents of the January 8, 2016 Conference Call beyond the BJ Advice set out herein.
69. At no time following BJ providing Mr. Gramatzki and I the BJ Advice, and until January 29, 2016, did BJ or anyone else advise us that Amalco actually had only

10 days under Rule 31(1) of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368 (the "**BIA Rules**") within which to file the Amalco Appeal.

70. Had Mr. Gramatzki and I not been provided the BJ Advice on January 8, 2016, or had Amalco been advised of the 10-day appeal period under Rule 31(1) of the *BIA Rules* prior to January 16, 2016, Amalco would have filed the Amalco Appeal within the prescribed 10-day time period.

H. Amalco Will Suffer Irreparable Harm

71. Pursuant to the Second Receivership Order, it is my understanding that the Receiver has the ability to manage Amalco and its operations in any manner that it sees fit, including in relation to the collection of all monies and accounts owing to Amalco.
72. In the Notice and Statement of the Receiver, dated January 15, 2016, a copy of which is attached hereto and marked as **Exhibit "FF"**, the Receiver indicates that:
- (a) as of January 6, 2016, the known assets of Amalco, excluding the Treeosco Receivable (as defined below), had an aggregate value of \$3,118,493 and known liabilities of \$3,176,510, which excludes an additional liability of \$2 Million to Drumlin Energy Corporation;
 - (b) there was a substantial amount owing from Treeosco Inc. ("**Treeosco**") to Amalco in the millions of dollars; and
 - (c) "[t]he Receiver is in the process of determining an appropriate and orderly realization plan with regards to the receivables and shareholding in [Treeosco]".

(i) **The Relationship Between Amalco, Treeosco, and Mustus Energy Ltd.**

73. Amalco is a shareholder of Treeosco. A copy of a Government of Alberta Corporate Registry search for Treeosco, dated February 4, 2016, is attached hereto and marked as **Exhibit "GG"**.
74. Treeosco is the parent company of Mustus Energy Ltd. ("**Mustus**"). A copy of a Government of Alberta Corporate Registry search for Mustus, dated February 4, 2016, is attached hereto and marked as **Exhibit "HH"**.

(ii) **The Treeosco Debt**

75. There is a significant debt in the millions of dollars owing from Treeosco to Amalco (the "**Treeosco Debt**").
76. The Treeosco Debt is secured by the following:
- (a) a guarantee provided by Mustus to Amalco, dated December 1, 2013 (the "**Mustus Guarantee**"); and
- (b) a demand mortgage between Mustus and COC (the "**Mustus Mortgage**"), the default upon which entitles Conserve 1, among other things, to sell lands legally described as:

Plan 1423396
Block 3
Lot 7
Excepting thereout all mines and minerals
Consisting of 18.98 hectares, more or less

Plan 1423396
Block 3
Lot 6
Excepting thereout all mines and minerals
Consisting of 4.47 hectares, more or less

(collectively, the "**Project Lands**").

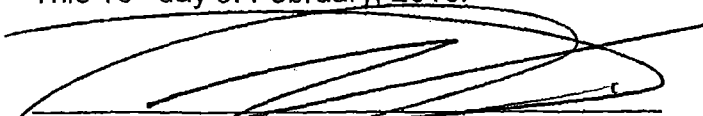
77. As Treeosco does not own any assets, any realization of the Treeosco Debt would come from the enforcement of either or both of the Mustus Guarantee or the Mustus Mortgage.

78. The details of the irreparable harm that Amalco would potentially suffer as a result of the Receiver's management of Amalco's affairs and the decisions that the Receiver may make regarding the repayment of the Treeosco Debt is set out in a subsequent Affidavit (the "Second Affidavit"). This information is contained in the Second Affidavit, as it is commercially sensitive information and is confidential to Amalco. A copy of my Second Affidavit will be presented to the Court at the hearing of Amalco's stay application. The Court will be requested that the Second Affidavit be sealed.

I. There Will Be No Harm To ATB If A Stay Is Granted

79. Should the requested stay of the Second Receivership Order be granted, Amalco is agreeable to abiding by the terms of the November 27 Order until its appeal of the Second Receivership Order has been determined. The November 27 Order ensures that any material changes to the status quo of Amalco's affairs have to be approved by the Receiver or Court Order. Continuing the November 27 Order would ensure that any stay of the Second Receivership Order would not prejudice ATB.

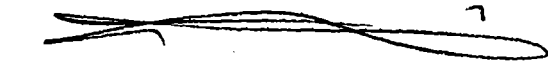
SWORN BEFORE ME at Calgary, Alberta,
This 16th day of February, 2016.



Commissioner for Oaths in and for the Province
of Alberta

Jonathan J. Bouchier
Barrister & Solicitor

Print name and expiry or Lawyer/Student-at-law



DAVID CROMBIE