

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

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

**AND IN THE MATTER OF *DARIAN RESOURCES LTD.
AND BOWVIEW PETROLEUM INC.***

**NOTICE OF MOTION
(Re: Creditors' Meeting Order)**

TAKE NOTICE THAT an application will be made on behalf of Darian Resources Ltd. and Bowview Petroleum Inc. (collectively the "Darian Group"), before the Honourable Madam Justice B.E.C. Romaine in Chambers, at the Court House, in the City of Calgary, in the Province of Alberta, on Friday, the 4th day of June, 2010 at 1:15 in the afternoon, or so soon thereafter as counsel may be heard for an Order for the following relief:

1. A Creditors' Meeting Order substantially in the form attached as Schedule "A" hereto (the "Creditors' Meeting Order"):
 - (a) providing that there has been sufficient service and notice of this Application, and the time for service of this Application and materials in support thereof is hereby abridged, if necessary, so that this Application is properly returnable on Friday, June 4, 2010 and any further service of this Application upon any interested party is hereby dispensed with;
 - (b) accepting the filing of a Plan of Compromise and Arrangement concerning affecting and involving the Darian Group, as such plan may be amended, varied or supplemented by the Darian Group from time to time in accordance with the terms thereof and the Creditors' Meeting Order (the "Plan");

- (c) authorizing the establishment of one class of Affected Creditors in the Plan for the purposes of considering and voting on the Plan;
- (d) authorizing the Darian Group, to call, hold and conduct a meeting of certain of its creditors (the “Creditors’ Meeting”) to consider and vote on a resolution to approve the Plan;
- (e) approving the procedures to be followed with respect to the calling and conduct of the Creditors’ Meeting;
- (f) providing such further and other relief as the Darian Group may seek and this Honourable Court deems just.

AND FURTHER TAKE NOTICE the interpretation provisions set out in the Creditors’ Meeting Order shall apply to this Notice of Motion. Unless otherwise defined or in the Creditors’ Meeting Order, capitalized terms used shall have the meanings ascribed to them in the Plan.

AND FURTHER TAKE NOTICE that the grounds of the application are as follows:

Background

1. Darian is a privately held corporation duly incorporated under the *Alberta Business Corporations Act*. Bowview is a wholly owned subsidiary of Darian and is also incorporated under the *Alberta Business Corporations Act*. Darian and Bowview are in the business of exploring for and producing hydrocarbons in the Province of Alberta.
2. Darian was founded in 2005 and initially had three employees. In its first full year of operations, Darian generated \$1.3 million in revenue from hydrocarbon production from oil and gas wells in Alberta, producing approximately 97.3 boe/day. Darian acquired Bowview on March 15, 2007 and since that time the Darian Group’s financial statements have been prepared on a consolidated basis. By the end of 2009, the Darian Group had 19 employees and generated \$12.9 million in revenue from hydrocarbon production from oil and gas wells in Alberta producing approximately 1,049 boe/day. The Darian Group’s holdings of undeveloped lands had

grown to approximately 1,019,476 net acres, largely located in the Vulcan, Robin, Taber, and Lethbridge areas of Alberta. The Darian Group's interest in approximately 1,012,460 gross (983,412 net) acres of those lands (the "EnCana Lands") was acquired via an agreement of purchase and sale dated September 30, 2008 and the EnCana Farm In. The acquisition of the EnCana Lands was financed largely by a loan from ATB, loans from a corporation related to Darian, KYAL, and a loan from SFG.

3. The EnCana Farm In gave Darian access to over 1 million acres of undeveloped land. The tremendous value of this asset also came with tremendous risk because the EnCana Farm In carried with it significant capital expenditure requirements over the next three years. Under the EnCana Farm In, Darian was obligated to drill 46 wells between September 29, 2008 and December 31, 2011, failing which Darian's unearned interest pursuant to the EnCana Farm In would be forfeited. The first ten of these wells were shallow gas wells which had to be drilled by September 30, 2009. Under the EnCana Farm In, the Darian Group was also required to conduct specific seismic acquisition programs testing between September 29, 2008 and December 31, 2010.

4. At the time the EnCana Lands were acquired, Darian believed that it could meet its drilling, seismic, and other obligations under the EnCana Farm In from a combination of cash flow, its existing debt facilities, and bringing in joint venture partners.

5. Following the date of the Encana Farm In, several crucial issues arose:

- (a) a collapse of commodity prices, including those for crude oil and natural gas, throughout late 2008 and much of 2009;
- (b) production delays on existing wells due to Energy Resources Conservation Board hearings and pipeline disruptions;
- (c) changes to drilling obligations under the Encana Farm In; and
- (d) changes to the terms of the lending facilities with ATB.

6. Upon the acquisition of the EnCana Lands, Darian made significant preparations, including extensive capital outlays, to begin drilling the ten shallow gas wells that it was obligated to drill prior to September 30, 2009. At that time, approximately 97% of Darian's revenues were generated from natural gas production, with the remainder coming from crude oil

production. As natural gas prices were extremely depressed while Darian was preparing to drill the required ten shallow gas wells, Darian approached EnCana with a proposal to amend its drilling obligations. While EnCana did ultimately agree to allow Darian to drill four deep oil wells rather than the proposed ten shallow wells, Darian lost most of the benefit of its expenditures for preparatory work for the shallow wells, though it was still more economical for Darian to drill four deep oil wells than ten shallow gas wells.

7. ATB was the Darian Group's senior secured lender. During the latter part of 2009, ATB became increasingly uncomfortable with the Darian Group's financial position and, in December of 2009, requested that the Darian Group partially repay its indebtedness to reduce it to an acceptable level and bring it on-side of all financial covenants to ATB on or before February 1, 2010, which the Darian Group was unable to do.

8. At that time, Darian also owed a total of \$40 million to SFG pursuant to a loan and four convertible secured debentures, one in favour of each member of SFG, in the amount of \$6.25 million each.

9. On January 8, 2010, SFG purported to demand payment of its obligations from Darian. SFG at that time advised the Darian Group that it had obtained a valuation which showed that the value of the Darian Group's assets did not exceed the amount of its liabilities. The Darian Group's management was strongly of the view that SFG's valuation did not reflect the true value of the Darian Group's assets.

10. By early February, some trade creditors had begun to register builders' liens against properties owned by the Darian Group. Other trade creditors were on the verge of initiating legal proceedings against the Darian Group.

11. The Darian Groups' major creditor groups and the approximate amounts of their indebtednesses at that time were as follows:

a) ATB	\$12,500,000
b) SFG (Demand Debenture)	\$15,000,000

c) SFG (Convertible Debenture)	\$25,000,000
d) KYAL (Convertible Debenture)	\$2,500,000
e) trade creditors (approximately)	\$14,000,000

Each of ATB, SFG and KYAL hold security for their indebtedness. While the majority of the trade creditors are unsecured, certain of them had lien rights in respect of work done or services provided to the Darian Group. SFG has since acquired the ATB loan and security.

12. On February 12, 2010, the Darian Group sought and obtained CCAA protection. Hardie & Kelly Inc. were appointed as Monitor. The initial term of the CCAA protection was limited, however, as SFG wished to make application to terminate the CCAA stay of proceedings against creditors and to appoint a receiver and manager over the Darian Group. SFG's application was ultimately adjourned with the consent of SFG, and subsequent extensions of the stay of proceedings were granted, the most recent of which extended the stay of proceedings to June 25, 2010.

13. The Darian Group immediately began to take steps to put itself in a position to resolve its financial issues and advance this Plan, including:

- (a) conducting an extensive selection process with respect to retaining a financial advisor which involved discussions with a number of financial advisors and which culminated in the engagement of the Financial Advisor;
- (b) with the assistance of the Financial Advisor, beginning a solicitation process to attempt to engage in a transaction which would enable it to repay its creditors in full and preserve value for its shareholders;
- (c) beginning negotiations to extend and amend the terms of the EnCana Farm In to deal with defaults and other adjustments which would be required by a potential purchaser;
- (d) commencing the Claims Process to identify and quantify the Claims against the Darian Group;
- (e) raising approximately \$4,000,000 through the sale of Darian's non-core holding of shares in Scollard Energy Inc.; and

- (f) completing limited capital expenditures to tie in a well which was near completion at the time Darian applied for CCAA protection.

14. Before the Darian Group and the Financial Advisor could finalize the solicitation process and have it approved by the Court, Darian received a pre-emptive bid from the Bidder. Darian's management, in consultation with the Independent Committee and the Monitor, were of the view that the pre-emptive bid was not acceptable and continued the preparation of the solicitation process. However, between March 29, 2010 and March 31, 2010, and after a Notice of Motion had been filed respecting an application for the approval of the solicitation process, the Bidder made an improved and revised bid which contemplated the purchase of all of the shares of Darian and that all creditors of the Darian Group would be paid out in full. It was the view of both the Independent Committee and the Financial Advisor that the revised bid was competitive and that the Darian Group should adjourn its application respecting the approval of the solicitation process in order that the parties might pursue further negotiations. The Monitor was in agreement with this course of action.

15. After an extensive period of negotiations, Darian and the Bidder entered into the Arrangement Agreement. Due to the sensitive and proprietary nature of the information contained in the Arrangement Agreement, its full terms must remain confidential. As part of the completion of the Arrangement Agreement, Darian and EnCana are presently negotiating the EnCana Farm In Amending Agreements.

16. The salient features of the Arrangement Agreement are:

- (a) the Bidder will acquire all of the Darian Shares in exchange for shares of the Bidder;
- (b) Proven Claims of Affected Creditors of the Darian Group will be paid in full, together with simple interest calculated in accordance with the *Judgment Interest Act* (Alberta) on Affected Claims from the Filing Date to the Plan Implementation Date; and
- (c) Darian and Bowview will be amalgamated and continue to carry on business as one corporation under the name Darian Resources Ltd.

The Creditors' Meeting Order

17. The proposed Creditors' Meeting Order authorizes the Darian Group to file and to distribute the Plan to creditors and call the Creditors' Meeting to consider and vote on the Plan;

The Plan and Notice to Affected Creditors

18. The Plan seeks to provide a fair and reasonable compromise amongst the Darian Group's various stakeholders and was developed with the input of the Darian Group's legal counsel, the Monitor and its legal advisors and the Financial Advisor.

19. To allow the Affected Creditors with Eligible Voting Claims to consider and to vote on the Plan, the Darian Group proposes to call, hold a conduct the Creditors' Meeting on June 28, 2010.

20. The Darian Group proposes that the Monitor publish a notice of the Creditors' Meeting (the "Notice to Creditors") on or before June 11, 2010 in the *Calgary Herald*.

21. To distribute the necessary materials to the Affected Creditors with Eligible Voting Claims and to allow such Affected Creditors to consider the Plan, the Darian Group proposes that the Monitor send by regular pre-paid mail the applicable Meeting Materials:

- (a) to each Creditor of the Darian Group that has a Proven Claim or an alleged creditor with a Disputed Claim on or before June 8, 2010; and
- (b) to any person claiming to be a creditor of the Darian Group with three (3) Court Days of receipt of a request from such Person to the address provided by such Person to the Monitor.

22. The Darian Group also proposes that electronic copies of the applicable Notice to Creditors and the Meeting Materials including any amendments and variations thereto, be posted on the Monitor's website until the Court Day following the Plan Implementation Date;

Delivery of the Proxies

23. The Darian Group proposes that any Instrument of Proxy in respect of the Creditors' Meeting (or any adjournment thereof) shall be provided to the Monitor on or before 5:00 p.m. on the Court Day immediately prior to the day on which the Creditors' Meeting (or any

adjournment thereof) is to be held, provided that any Instrument of Proxy may also be deposited with the Chair at the Creditors' Meeting (or any adjournment thereof) prior to the commencement of the Creditors' Meeting;

Conduct at the Canadian Creditors' Meeting

24. Pursuant to the proposed Creditors' Meeting Order and the Plan, for the purpose of voting to approve the Plan (a) there shall be one class of Affected Creditors in the Plan, and (b) the value of the Eligible Voting Claims shall be as established in accordance with the provisions of the Creditors' Meeting Order, the Claims Procedure Order, the Plan and any further order of this Honourable Court.

25. The proposed quorum required at the Creditors' Meeting is one (1) Affected Creditor present in person or by proxy;

Voting Procedure

26. The Darian Group proposes that the only Persons entitled to vote at the Creditors' Meeting, in person or by proxy, on a resolution to approve the Plan are Affected Creditors with Eligible Voting Claims.

27. Creditors with Unaffected Claims shall not be entitled to vote at the Creditors' Meeting.

28. It is proposed that each of the Affected Creditors entitled to vote on the Plan is entitled to one vote.

29. The weight provided to a Proven Claim is equal to the value of such Creditor's Proven Claims.

30. The weight provided to a Creditors' Disputed Claim for voting purposes will either be the amount set out in any applicable Notice of Revision or Disallowance or the full amount of such Disputed Claim, as more particularly described in and set out in the Creditors' Meeting Order.

31. The results of the vote conducted at the proposed Creditors' Meeting are proposed to be binding on all of the Darian Group's Affected Creditors.

32. The proposed voting procedures for the Creditors' Meeting are fair and reasonable and afford the Affected Creditors eligible to vote at the Creditors' Meeting with an adequate opportunity to express their opinions on the Plans.

Sanctioning of the Plan

33. The proposed Creditors' Meeting Order requires the Monitor to provide a report to this Honourable Court no later than one Court Day after the Creditors' Meeting with respect to:

- (a) the results of the voting at the Creditors' Meeting on the resolutions to approve the Plan;
- (b) whether the required majority of Affected Creditors have approved the Plan; and
- (c) the effect on the results of the voting had all of the alleged Creditors with Disputed Claims also voted the full amount of their Disputed Claims.

34. If the Plan receives the requisite approval of the Affected Creditors, the Darian Group expects to bring an application before this Honourable Court on July 2, 2010 at 1:15 pm, or such other date as is set by this Honourable Court, seeking an order sanctioning the Plan pursuant to the CCAA.

35. If the Plan is sanctioned by this Honourable Court, the Darian Group expects to implement the Plan on or about July 5, 2010.

Late Claims

36. Eleven Claims filed in the Claims Process after the Claims Bar Date, that are otherwise accepted as valid claims by the Darian Group, do not prejudice the Darian Group and should be allowed into the Claims Process:

Conclusion

37. The Darian Group has acted and will continue to act in good faith and with due diligence in pursuing its restructuring efforts.

38. The Creditors' Meeting Order sets out a fair and efficient process for Affected Creditors to consider and vote on the Plan.

39. Such further and other grounds as counsel may advise.

AND FURTHER TAKE NOTICE that the Darian Group will rely upon the Affidavit of Grant Aulden Bartlett sworn on June 1, 2010; the reports of the Monitor filed in these proceedings, the pleadings in the within proceedings; the CCAA; the *Alberta Rules of Court*; the inherent jurisdiction of this Honourable Court; and such further and other materials as counsel to the Darian Group may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 1st day of June, 2010.

BORDEN LADNER GERV AIS LLP

Per: _____

JOSEF G.A. KRÜGER
Solicitors for the Darian Group

TO: The Clerk of the Court
AND TO: See List attached as Schedule "B"

SCHEDULE "A"

SCHEDULE "B"