

THE ALBERTA ENERGY REGULATOR

IN THE MATTER OF
Regulatory Appeals 1928568 and 1928569
to the Alberta Energy Regulator

AER PROCEEDING
VOLUME 1
VIA REMOTE VIDEO

November 2, 2020

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1 Proceedings taken Via Remote Video

2

3 November 2, 2020

Morning Session

4

5 P. Meysami

The Chair

6 C. Chiasson

Hearing Commissioner

7 T. Stock

Hearing Commissioner

8

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For Requesters

21 A. Harvie

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23

24 A. Vidal, CSR(A)

Official Court Reporter

25

26

1 (PROCEEDINGS COMMENCED AT 9:03 AM)

2 Opening Remarks

3 THE CHAIR: Good morning, everybody.

4 Thank you for joining us online and taking the time to
5 participate in this hearing today. My name is Parand
6 Meysami, and I will be chairing this hearing.

7 The other Panel Members in this proceeding are
8 Ms. Cindy Chiasson and Mr. Tracey Stock. Our names
9 should be visible on your screens. I will ask my
10 colleagues on the Panel to say hello and identify
11 themselves.

12 Ms. Chiasson?

13 MS. CHIASSON: Good morning, everybody. My
14 name is Cindy Chiasson.

15 MR. STOCK: Good morning, everybody. My
16 name is Tracey Stock.

17 THE CHAIR: Thank you, Ms. Chiasson.
18 Thank you, Mr. Stock.

19 I would like to acknowledge that, as we are
20 conducting this proceeding from various locations in
21 Alberta, we are located in the traditional territories
22 of First Nations of Treaty 6, Treaty 7, and Treaty 8,
23 and the Métis people of Alberta.

24 I'd like to introduce AER staff that are assisting
25 the Panel in this proceeding, and would you -- and
26 could you please acknowledge yourselves when I state

1 your names.

2 We have Ms. Alana Hall.

3 MS. HALL: Good morning.

4 THE CHAIR: And Mr. --

5 MS. HALL: De Luca.

6 THE CHAIR: Mr. De Luca, yeah. I'm lost
7 on my screen. I apologize.

8 MR. DE LUCA: Good morning, everybody.

9 THE CHAIR: From AER Law Branch. And
10 Ms. Tammy Turner, Ms. Elizabeth McKellar, and Ms. Wanti
11 Handayani from AER Hearing Branch. To help you
12 distinguish ourselves, AER Hearing Services staff will
13 show an AER virtual background, and you notice that the
14 Panel has a dark blue virtual background. If anyone
15 has any question about the proceeding, please feel free
16 to either send a message or an email to Ms. Turner.

17 As this is an electronic hearing, I want to
18 outline a few details before we start. We will have
19 the hearing transcribed by court reporters. Before
20 speaking, I would like you to please -- everyone to
21 first identify themselves and then speak slowly for the
22 benefit of court reporters. Please ensure that the
23 person speaking is in the video frame, and please do
24 not speak over each other to ensure a full transcript.

25 If you need to speak, whether to raise an
26 objection or concern or for some other reason, please

1 interject orally and wait for me to recognize you.
2 Please call me, and use an actual wave, not a Zoom
3 wave, and hopefully that will get my attention. All
4 participants should remain muted when not speaking.

5 During the hearing, the Panel will be making
6 notes, and so we may look away from the cameras from
7 time to time. It will likely also appear that we are
8 not looking at the person who is speaking because, to
9 look at the person who is speaking, we will be looking
10 at their frame on our screens and not directly at our
11 cameras.

12 Please also have -- we also have phones at hand in
13 case we need to have discussions between Panel Members
14 or between counsel and Panel or hearing coordinators
15 and Panel. We will do our best to juggle our various
16 electronic methods of communication in a way that is
17 not disruptive. Please note that we are still very
18 much engaged. This is probably a good time to -- for
19 us to double-check our electronic devices and make sure
20 they're all on silent mode.

21 There may be a technical glitch or two. I'm going
22 to ask for your patience should that happen. You
23 received instruction about what to do if you are
24 disconnected. If you are an active participant and are
25 disconnected, we will pause the proceeding as soon as
26 that fact has come to our attention. As a reminder,

1 you should first try to reconnect using the link that
2 Hearing Services has provided. If that does not work,
3 please text Ms. Turner at the phone number to you --
4 provided to you on the electronic procedures document.
5 If your video freezes or we encounter
6 audio difficulties, you may be asked to repeat portions
7 of what you -- what was said before the video froze or
8 when your audio difficulties started. Please let me
9 know if your video is frozen. During breaks, please
10 mute your audio and turn off your cameras.

11 If you want to have an exhibit shown on the screen
12 as you are speaking, please ask the hearing
13 coordinators to bring up the document and clearly state
14 the exhibit number and the PDF page number. If anyone
15 has any questions, please feel free to send a direct
16 message to either Ms. Turner or Ms. Hall or Mr. De Luca
17 for assistance. As this an in-person hearing, please
18 do not attempt to communicate privately with any of the
19 Panel Members.

20 As set out in the notice of scheduling of hearing
21 on October 9th, 2020, an audio webcast of this
22 proceeding is available to the public through a link on
23 the AER's website. Anyone participating in the hearing
24 will be on the audio webcast. Members of the public
25 accessing that link will be able to listen to the
26 hearing. The audio streaming of the meeting is not an

1 official record of the proceeding. The official
2 transcript will be prepared by the court reporters and
3 available the next day and will be the official record
4 of the hearing.

5 The hearing coordinators provided you the contact
6 information for the court reporting company on
7 October 26th, 2020.

8 Ms. Turner, could you please read out the safety
9 procedures as well as the details of this proceeding
10 and confirm for the record the publication of notice of
11 hearing.

12 Ms. Turner?

13 MS. TURNER: Good morning, everyone.

14 Although this is an electronic hearing, safety is still
15 important. We encourage everyone to carefully review
16 any potential safety hazards in your homes or the
17 location from which you are participating in this
18 hearing.

19 If an alarm sounds at your location or any other
20 safety issue arises, please let me know and we will
21 pause the proceedings. Then calmly collect your things
22 and proceed to the nearest safe exit. In the event of
23 a medical emergency, call 911 and please have someone
24 alert me as to the situation, and we will pause the
25 proceedings. For any other emergency, please notify me
26 immediately.

1 The Panel has for consideration today the
2 regulatory appeals of the AER Compliance and Liability
3 Management Branch's October 9th, 2019, decision, that
4 issued declarations under Section 106.1 of the Oil and
5 Gas Conservation Act naming Darren O'Brien and Jeffrey
6 Young and imposing restrictions on them.

7 The requests for regulatory appeal of the decision
8 were made by Mr. O'Brien and Mr. Young on November 8th,
9 2019, under Part 2, Division 3 of the -- of the
10 Responsible Energy Development Act and Part 3 of the
11 Alberta Energy Regulator Rules of Practice. The AER
12 granted the request for the regulatory appeal on
13 May 4th, 2020, and referred the matter to hearing.

14 The purpose of this hearing is to determine
15 whether the AER should confirm, vary, suspend, or
16 revoke its decision to issue the declarations. The
17 notice of hearing and notice of scheduling of hearing
18 are Exhibits 08.01 and 33.01 respectively. The notice
19 of hearing was advertised in the Daily Oil Bulletin.

20 Madam Chair, I would like to remind participants
21 that the materials filed for the proceeding, the notice
22 of hearing, and other Panel records and correspondence
23 were marked as exhibits prior to the hearing.

24 All parties to the hearing were sent a copy of the
25 exhibit list on October 30th, 2020. If parties wish to
26 make a request to file new documentary evidence during

1 the hearing, I ask that that before you make the
2 request you provide me with an electronic version of
3 the document. This will allow us to proceed quickly if
4 the Panel decides to allow the document into evidence.

5 That's it, Madam Chair.

6 THE CHAIR: Thank you, Ms. Turner.

7 Now, I would like to register the participants in
8 the hearing. Please unmute your microphones as you get
9 called to be registered and mute it when finished.
10 With that, we will now register those appearing today,
11 starting with the requesters of the regulatory appeal.
12 Please speak your name clearly for the record.

13 Who is representing Mr. Darren O'Brien?

14 MR. GORMAN: Howard Gorman, QC, joined by
15 my partner, Alan Harvie.

16 THE CHAIR: Who is representing
17 Mr. Jeffrey Young?

18 MR. GORMAN: Same counsel, Howard Gorman,
19 QC, joined by my partner, Alan Harvie.

20 THE CHAIR: Thank you, Mr. Gorman.

21 Who is representing AER Compliance and Liability
22 Management Branch or "CLM"?

23 MR. DUMANOVSKI: Good morning, Madam Chair,
24 Panel Members. My name is Kiril Dumanovski, legal
25 counsel. I also have with me Ms. Candice Ross, legal
26 counsel. We are representing the Compliance and

1 Liability Management Branch in this proceeding.

2 THE CHAIR: Thank you, Mr. Dumanovski.

3 Thank you, Ms. Ross.

4 To my knowledge, that is all the parties. I will
5 now explain the procedure for this hearing. In
6 accordance with Section 21 of the Alberta Energy
7 Regulators Rules of Practice, all witnesses must give
8 evidence under oath or affirmation. The court reporter
9 will provide for that when it's time for the witnesses
10 to give evidence.

11 First, I will ask the requesters of regulatory
12 appeal to come forward and present their direct
13 evidence. After giving evidence, the witnesses for the
14 requesters will be available for cross-examination by
15 AER Compliance and Liability Management Branch or "CLM"
16 and for questions from Panel counsel and the Panel.
17 Following that, the requesters will be able to conduct
18 re-direct examination of their witnesses on matters
19 arising from the cross-examination.

20 Next, CLM will present its evidence and be
21 available for cross-examination by the requesters and
22 for questions from Panel counsel and the Panel. And
23 then CLM will be able to conduct re-direct examination
24 of its witnesses on new matters arising from
25 cross-examination of their witnesses.

26 As indicated in the schedule that was sent to

1 parties on October 28th, 2020, we will have breaks
2 midmorning, lunch, and afternoon. The exact timing of
3 the breaks and the length of time for different
4 presentations and questions will depend on how the
5 hearing unfolds. We will try to accommodate different
6 needs as they arise as best as we can.

7 While the schedule has been developed to assist
8 the participants and the Panel in planning for the
9 hearing, it is subject to change as the hearing
10 unfolds, and the participants are expected to be ready
11 when their turns come.

12 Let us begin now. Are there any preliminary
13 matters?

14 MR. DUMANOVSKI: Madam Chair, Kiril Dumanovski
15 here. I have one procedural issue. We had a
16 discussion with Ms. Turner in relation to who is able
17 to view the hearing through Zoom as opposed to the
18 audio link on our website, and we see Mr. Vidal here,
19 and we're not sure who that is.

20 THE CHAIR: So from the -- from what I
21 read on Mr. Vidal's name, he is our court reporter,
22 and -- is that correct, Ms. Turner?

23 MS. TURNER: Yes. There's also another
24 court reporter. Her video is hidden, Ms. Longacre. We
25 keep the court reporter's video on so we can see facial
26 reactions if we need to slow down, go too fast, or

1 speak up, or so forth.

2 THE CHAIR: So that's --

3 MR. DUMANOVSKI: Thank you very much.

4 THE CHAIR: That's for me -- to assist me
5 with knowing if the court reporters need a break,
6 et cetera.

7 Any other preliminary matters from counsel of the
8 requesters, Mr. Gorman?

9 MR. GORMAN: No, Madam Chair, other than I
10 understand I was going to be provided an opportunity
11 for brief opening remarks --

12 THE CHAIR: Yes, you are.

13 MR. GORMAN: -- for Mr. O'Brien as the
14 first witness.

15 THE CHAIR: That's correct. So we are all
16 in your hands. With that, I'm going to mute my
17 microphone, and then you can start, Mr. Gorman.

18 Openings Remarks by the Requesters

19 MR. GORMAN: Thank you, Madam Chair and the
20 remainder of the Panel. As Ms. Turner had noted, I'm
21 not looking straight at the camera because I have a big
22 screen with big enough font for me to read which
23 doesn't have a camera on it, so the camera is off to
24 the side. So like the Panel, I'm not ignoring you; I
25 just have a different setup. And as you may note, I
26 have decided to call in from home. Ms. Turner had

1 kindly set up a test from a boardroom last Thursday,
2 and the sound and the video didn't work very well when
3 we have so many faces on the screen, and you'll note I
4 have a very large piece of art behind me that was put
5 on the wall pre-Zoom applications. So there it is.
6 This is my best setup.

7 As previously advised, I, with Mr. Harvie from our
8 offices, are pleased to represent the requesters,
9 Jeffrey Young and Darren O'Brien, in this AER
10 regulatory appeal of a Section 106 order that was
11 registered as against them just over a year ago.

12 Messieurs Young and O'Brien are the former
13 directors of Trident Exploration Corp., which is not a
14 regulated entity and which is not subject to any of the
15 AER orders, and various of its subsidiaries, including
16 Trident Exploration (Alberta) Corp. and Trident
17 Exploration (WX) Corp., which are two regulated
18 entities which are subsidiaries; and the importance of
19 that distinction will arise over the next few days in
20 evidence and argument.

21 Over the next several days, on the requesters'
22 side, you will hear the sworn firsthand evidence of
23 various individuals that were involved in the meetings,
24 that were on the calls, and were involved in the
25 decisions with respect to Trident and its proposed CCAA
26 proceedings which did not proceed and ultimately its

1 receivership and subsequent liquidation under the
2 control of a court-appointed receiver, not Messieurs
3 Young and O'Brien.

4 In addition to the requesters, you're going to
5 hear from four prominent individuals involved in
6 Trident who have no dog in this fight. They are here
7 at my request, perhaps under the threat of a notice to
8 appear from the Panel, but they are attending with no
9 particular personal interest. This will include Gary
10 Gwartney from Veracity, the operations consultant
11 retained first by Trident and subsequently by the
12 court-appointed receiver with respect to field
13 operations, and for several months Veracity was the
14 interim COO and CFO leading up to the receivership.

15 We'll hear from Deryck Helkaa from FTI, a
16 prominent restructuring professional in Calgary who had
17 been engaged by Trident with respect to a potential
18 CCAA which did not proceed.

19 We'll hear from Alex Corbett from the Alberta
20 Treasury Branches, Trident's primary secured lender.

21 And then, finally, we'll hear from Paul Darby at
22 PwC, who is the court-appointed receiver who took
23 control of Trident and its assets shortly after the
24 directors had resigned on an application by the Orphan
25 Well Association as supported by the AER.

26 From the AER, we're going to hear from none of the

1 participants that were involved leading up to April 29
2 and April 30. Mr. Wadsworth, the directing AER mind
3 that refused to accept a proposed financing with ATB,
4 is not a witness. Incredibly, having caused or
5 contributed to Trident's liquidation, the AER tasked
6 Mr. Wadsworth with preparing the Section 106
7 declarations as against O'Brien and Young, no doubt
8 significantly, in part, we would suggest, to deflect
9 his and the AER's involvement in causing Trident's
10 receivership, liquidation, and ultimately the possible
11 transfer of numerous wells and properties to the Orphan
12 Well Association. Instead, the AER presents strangers
13 to the situation, those negotiations, those
14 discussions.

15 The primary documents I'll be referring the
16 witnesses and the Panel to at this hearing are the
17 requesters' September 24 and October 22 submissions and
18 attachments, being AER Exhibits 31.02 and 38.01; and
19 hopefully we've given Ms. Turner and her team
20 sufficient notice that those documents can be shared on
21 screen.

22 I will also from time to time refer to the AER's
23 October 8th reply submissions, which are Exhibit 32.01.
24 I do not believe that those references need be pulled
25 up, just marked in the Panel's notes.

26 Now, contrary to paragraph 43 of the AER's

1 argument at 32.01, the evidence will demonstrate that
2 Mr. Wadsworth did not make his decision based on
3 evidence gathered with the participation and knowledge
4 of the requesters because Mr. Wadsworth did not seek
5 the participation of the requesters, nor did anyone
6 from AER took [sic] any steps to gather evidence from
7 the requesters or the other key participants who will
8 first have the opportunity to provide their evidence to
9 this Panel.

10 In addition, the requesters and this Panel will be
11 somewhat hamstrung in reviewing the AER files that
12 Mr. Wadsworth might or might not have reviewed because,
13 to learn of the allegations against them, the
14 requesters had to make a FOIP request. AER responded,
15 providing 238 documents of which 60 were redacted,
16 which included more than 60 full pages of evidence with
17 respect to the redaction.

18 Now, Section 24 of the legislation provides the
19 head of a public body "may" refuse to disclose
20 information to the applicant if the disclosure -- it
21 talks about advice, recommendations, consultations, or
22 deliberations. "May" is permissive. There's nothing
23 that prevented the AER from providing the complete
24 record to the requesters and the complete record to
25 this Panel, and I'm not talking about legal privilege.
26 That was about 20 of the objections. Most of the

1 objections were under 24.1, which is, Oh, we think it's
2 sensitive. It's internal communications. It's advice
3 and recommendations. That is not in front of the
4 requesters. That is not in front of this Panel.

5 So we have no Wadsworth, no investigation, no
6 firsthand AER witnesses, and redacted internal AER
7 records with respect to a decision that significantly
8 affects Young and O'Brien.

9 Now, remember, the parties agree this is a de novo
10 hearing. This Panel is starting with a blank sheet of
11 paper. At paragraph 47 of its brief, the AER
12 acknowledges the de novo aspect, and it's remarkable
13 the context that they argue it because with respect to
14 the arguments that Wadsworth is tainted and is
15 procedurally unfair for him to have been involved in
16 the decision, they concede: (as read)

17 Furthermore, this hearing is conducted by the
18 AER Panel of hearing commissioners on behalf
19 of and in the name of the AER in accordance
20 with Section 12 of the REDA.

21 Which is the AER's own statute. That is this Panel's
22 own statute as well. As a result, the issue of a
23 potential bias in relation to Mr. Wadsworth is moot at
24 this stage given the de novo nature of this hearing
25 before a new decision-maker as stated by the AER in
26 Pure Environment's [sic] Waste Management and

1 acknowledged by the requesters in paragraph 83 of their
2 submissions. We agree. This is a de novo hearing.
3 There is no weight to be given to Mr. Wadsworth's
4 decision, nor the October 9th, 2019, decision. This is
5 de novo. It starts afresh.

6 Now, contrary to that, the AER tries having it
7 both ways because in paragraph 19 of their brief, they
8 argue that deference should be given to the decision,
9 and CLM's interpretation of Section 106 should be given
10 deference. That's wrong at law, and it's inconsistent
11 with their acknowledgement and the prior findings that
12 this is a de novo hearing.

13 Now, they reference with respect to that the ATA
14 decision, which is completely different than the
15 current case. In ATA, it was a case of a statutory
16 review considering the reasonableness of an appeal.
17 The authority of this Panel is to conduct a de novo
18 hearing as had been discussed.

19 And the deficiencies with respect to the AER's
20 presentation is exacerbated in the present case where
21 Mr. Young and Mr. O'Brien's individual rights are being
22 affected, which requires even greater disclosure,
23 protection, and inferences in their favour.

24 Now, before I leave the AER October 8, 2020,
25 brief, it's impossible not to comment on new,
26 unfounded, baseless allegations that are listed under,

1 incredibly, the heading "Facts" -- they're not facts;
2 they're arguments or opinions -- in paragraphs 8 and
3 11.

4 One day less than a year after the October 9
5 decision as it was issued as against them, the AER's
6 true concerns and consternation, perhaps, were finally
7 revealed. They argue that the ATB is who caused issues
8 with respect to this matter; and, of course, the ATB --
9 the "ATB" being Alberta Treasury Branches -- they
10 argue, somehow involved, conspired, coordinated with
11 Young and O'Brien to take \$5 million on or about
12 April 23rd, 2019.

13 The incredible allegations listed under "Facts"
14 and included for the first time in the allegations as
15 against Young and O'Brien say at paragraph 8:
16 (as read)

17 Unknown to the AER at the time, it appears
18 that it was ATB's goal to avoid the
19 consequences of the Redwater decision by
20 receiving a large repayment debt prior to
21 Trident entering into a formal insolvency
22 process.

23 ATB's goal. Not Young's. Not O'Brien's. That's what
24 the allegation is at 8.

25 To bring Young and O'Brien into it, they say in
26 paragraph 9 the requesters and ATB were working

1 together. They were with respect to potential CCAA.
2 No evidence -- not a document, not a witness, not a
3 shred -- that somehow this was improper or that somehow
4 Young and O'Brien were working with the ATB to defeat
5 the Redwater decision.

6 And then, finally, they talk about, in
7 paragraph 11, the action by ATB. And what the evidence
8 will show is that the ATB continued to maintain the
9 account like they had for the past several years, like
10 every other revolving account in Alberta. (as read)

11 The action by ATB (and with the apparent
12 support [no evidence for support; no evidence
13 why it's apparent] of Trident and the
14 requesters) was viewed by the AER as an act
15 of bad faith by ATB and Trident.

16 They've now imputed bad faith as against the Province's
17 financial arm; but more significantly, with this
18 proceeding, they're alleging bad faith as against
19 Trident and the requesters with no evidence, ignoring
20 the loan documents, and that is why we find ourselves
21 here 13 months later.

22 Now, prior decisions of AER panels have suggested
23 that if a prima facie case is made out, the onus shifts
24 to the requesters, as they possess the best
25 information. We agree the requesters possess the best
26 information, which is why they should have been

1 contacted with respect to the investigation as against
2 them. That did not occur.

3 But we do not agree that there is even a prima
4 facie case to cause that burden to shift; and even if
5 it does exist, it will be fully and conclusively
6 rebutted by the evidence and the documentary records.

7 Section 106 is no doubt well-known for the Panel,
8 and it provides the -- an important part where, in the
9 Regulator's opinion, the directors, officers, agents,
10 or other persons were directly or indirectly in control
11 of the licensee, approval holder, or working-interest
12 participant, and I'm going to emphasize the words of
13 the legislature, at the time of the contravention,
14 failure to comply, or failure to pay.

15 And the reason I suggest there's not even a prima
16 facie case to be rebutted but would be rebutted in any
17 event is it is without doubt Young and O'Brien were not
18 in direct or indirect control of the Trident (Alberta)
19 or Trident (WX), nor Trident Exploration, which isn't a
20 party, at the time of the contravention, failure to
21 comply, or failure to pay because at that time it was
22 under the control of the court-appointed receiver, and
23 Young and O'Brien had resigned.

24 Incredibly, at paragraph 16 of its brief, the CLM
25 and the AER complain that the requesters focus on the
26 strict and literal interpretation of the legislation.

1 That is this Panel's job, is to apply the strict and
2 literal interpretation of the legislation. It's the
3 first law -- rule of statutory interpretation. Read
4 the words and apply them as set out by the legislature.
5 It wasn't for Wadsworth and the AER to rewrite the
6 legislation. That is the legislature's mandate should
7 they decide to do so. Not Wadsworth; not this Panel.
8 This Panel's is apply the legislation on the evidence
9 before it, not amend or extend it.

10 Thank you, Madam Chair and Panel. Those are the
11 requesters' opening submissions.

12 THE CHAIR: Thank you, Mr. Gorman.

13 With that, you can call your witnesses, and the
14 court reporters will do the process for taking them
15 under oath.

16 MR. GORMAN: Thank you, Madam Chair.

17 And perhaps I will outline my anticipated schedule
18 now that we've received directions that the
19 cross-examination by CLM and the Panel are -- and the
20 AER panel are to occur in a hot tub or the -- a panel
21 situation. I will first call Mr. O'Brien, one of the
22 requesters. I will then call Mr. Young. I expect both
23 of them to be completed by the lunch break or shortly
24 after a lunch break.

25 I then made arrangements for Mr. Gwartney from
26 Veracity and Mr. Helkaa to be available later on this

1 afternoon. Mr. Helkaa is tied up until 3:00, but I
2 expect all of the witnesses, since they are not being
3 crossed as each are presented -- the first three
4 witnesses will be done by 3:00.

5 Tomorrow morning, I have Mr. Corbett and Mr. Darby
6 on standby, and then I will update them through
7 scheduling as things occur.

8 I believe all of the direct evidence of the
9 requesters will be in before the lunch break, and I
10 have asked all six of the witnesses to be available
11 after the lunch break tomorrow, time to be confirmed,
12 for the cross-examination, if any, by CLM and the
13 Panel.

14 So, with that, I would first call Darren O'Brien
15 as the requesters' first witness.

16 THE CHAIR: Thank you, Mr. Gorman. That
17 is aligned with the schedule, and I appreciate you
18 being accommodating with that and your witnesses. So
19 with that, please proceed.

20 MR. GORMAN: Okay. Mr. O'Brien is
21 available and unmuted. I would assume someone will be
22 affirming or issuing an oath to him.

23 DARREN O'BRIEN, Affirmed

24 Direct Evidence of the Requesters

25 Q MR. GORMAN: Mr. O'Brien, you just gave an
26 affirmation to tell the truth. Is that affirmation

1 binding on your conscience?

2 A Absolutely.

3 Q And notwithstanding in these COVID times -- we're
4 participating via Zoom from various jurisdictions --
5 you understand that affirmation is as binding as if we
6 were all in a panel hearing room together?

7 A I do.

8 Q Okay. And you are one of the requesters appealing the
9 October 9th, 2019, decision as against Darren O'Brien
10 and Jeffrey Young?

11 A That's correct.

12 Q Sir, can you first briefly give the Panel your
13 professional and educational background?

14 A Sure. I'll try to keep it brief, but I've been an
15 employee of Origami for the past eight years. Before
16 Origami, I worked in various private equity and
17 investment capacities. I worked for a firm, WL Ross,
18 in New York and Brookfield Asset Management, also in
19 New York; and I also have past experiences as an
20 investment banker with Citigroup and an accountant with
21 KPMG in Chicago and New York.

22 My education, I have a BBA, bachelors and business
23 administration, in finance and accounting from Loyola
24 University of Chicago and an MBA in finance and
25 investment from Yale University in Connecticut.

26 Q All right. And can you tell me, prior to Trident, your

1 involvement with oil and gas companies or investments?

2 A None professionally.

3 Q And what about with respect to Canadian companies or
4 investments generally?

5 A No personal prior direct experience investing in
6 Canada.

7 Q Can you briefly give an overview and a description of
8 Origami?

9 A Sure. Origami is a private -- private equity
10 investment manager. We currently manage US 1 billion
11 in -- in assets. We raise discretionary private equity
12 funds from a number of clients, and then we use those
13 funds to help to grow businesses, reposition them for
14 success, and otherwise invest in -- in -- in private
15 companies.

16 Q All right. And other names that we will be discussing
17 within Origami over the next little bit include Jeffrey
18 Young. What is Jeffrey Young's role?

19 A Jeff has been a partner of Origami, and he's currently
20 Origami's managing partner.

21 Q And what about Max Ellis? Who is Mr. Ellis, and what
22 was his role?

23 A Yeah. Max Ellis is a vice president focused on
24 investments of Origami, and we worked closely on
25 Trident.

26 Q Okay. And other than the three of you, were there

1 other Origami employees involved with Trident?

2 A Not -- not directly. Our investment committee would've
3 reviewed activities, but Max, Jeff, and I were the --
4 the primary day-to-day.

5 Q Okay. And in some of the documents there's a reference
6 to the Alberta Investment Management Company or
7 "AIMCo". Which is AIMCo's involvement with Origami or
8 Trident?

9 A AIMCo is and has been Origami's most important client.
10 They've been an investor in various Origami funds and
11 vehicles since 2011, and through their investment in
12 our Fund III, which is the vehicle that made the
13 investment in Trident, they -- they would've been an
14 investor in Trident.

15 Q Okay. And other than through Origami, did AIMCo
16 ultimately have additional investments in Trident?

17 A They did make a debt investment in Trident in 2017.

18 Q And do you roughly remember the size of that
19 investment?

20 A I remember exactly. It was Canadian 60 million.

21 Q Okay. All right. Now, how did a Chicago-based,
22 never-before-in-Canada company end up investing in
23 Trident?

24 A The -- the primary reason is our investment strategy
25 pulls us into sectors that are challenged and lacking
26 capital in oil and gas in 2015 and, arguably, still in

1 2020 is -- is -- has -- it has been very much that; and
2 within the broad oil and gas market, Canada was very
3 interesting to us for a number of reasons, but one of
4 the primary reasons is our client, AIMCo, has a mandate
5 to invest in Alberta. We felt very close to Alberta
6 and felt like we had an edge and -- and a lot of
7 resources to help rehabilitate Alberta oil and gas
8 companies. So, in part, our mandate to search out
9 out-of-favour industries that are starved for capital,
10 and, in part, our -- our client has a mandate to invest
11 in Alberta.

12 Q And what was Origami's initial investment in Trident?

13 A So our initial entry into Trident was in 2015. We
14 bought bonds in Trident at about 12 cents on the dollar
15 from a liquidating hedge fund in the United States.

16 Q Right. So those bonds were trading in 2015 well below
17 par?

18 A Well below par. Absolutely.

19 Q And what percentage of bonds did Origami ultimately
20 acquire in Trident?

21 A In the series of transactions, we acquired almost
22 40 percent of the -- the bonds, and that was late 2015
23 to -- to early 2016.

24 Q Okay. And can you tell me what sort of process or
25 restructuring Trident undertook in 2016?

26 A Yeah. There's a -- a number of proposals. But

1 Origami, using our position as to bonds, played an
2 integral role in negotiating between the senior banks
3 and the junior creditors, so the bondholders, and there
4 was another -- another creditor.

5 There was a number of proposals, but ultimately it
6 was a CBCA restructuring. And the core thesis of the
7 restructuring which Origami led was to convert debt of
8 Trident into equity and raise new money to provide
9 liquidity. So our -- our primary thesis was Trident
10 was overlevered [sic] and -- and very unhealthy from a
11 balance sheet standpoint. By acquiring the bonds at an
12 enormous discount, our average entry price was about
13 14 cents on the dollar, so an 86 percent discount to
14 face value. We could use that position to lead a CBCA
15 and reduce the debt of Trident. And we were
16 successful; we -- we reduced the debt by about
17 75 percent, so Trident enter -- exited that CBCA
18 process with much less debt, and then we also
19 backstopped a rights offering. We invested with --
20 with a syndicate Canadian \$20 million, of which we were
21 the lion's share, to provide further liquidity to
22 Trident and -- and help reduce debt and provide
23 liquidity. So Trident was much healthier after our
24 CBCA process than when we first -- first met the
25 company.

26 Q Do you know an approximate amount of debt that was

1 reduced by virtue of the CBCA restructure?

2 A From memory, it would've gone from Canadian -- and
3 these are rough numbers -- Canadian 250 -- two --
4 270 -- Canadian 270 to about Canadian 60.

5 Q Okay. Now, at the time of the CBCA restructuring, did
6 Trident have any nonperforming wells or properties?

7 A They did. They had probably about 2,000 nonperforming
8 inactive wells.

9 Q And that was back in 2016; there were already 2,000
10 nonperforming wells?

11 A Correct.

12 Q Okay. As part of the restructuring, did you and
13 Mr. Young assume new roles in Trident?

14 A We did. We became directors upon the completion of the
15 CBCA process.

16 Q And that would've been of Trident Exploration Corp. and
17 various of its subsidiaries?

18 A Correct.

19 Q Were there other directors of Trident Exploration as at
20 2016 CBCA time?

21 A Yes. There would've been Alan Withey, the CEO and --
22 and president of Trident. There would've been a couple
23 of independent directors, Daryl Gilbert, Gene Davis,
24 and Mark Dworsky; and then from Origami, there was Jeff
25 Young, Darren O'Brien, myself, and Julie Klaff, our --
26 our partner.

1 Q By the end of 2016, how much had Origami invested in
2 Trident?

3 A It was about 47 million US, so I think about 60 million
4 Canadian.

5 Q And how much of that has Origami recovered?

6 A I think we have recovered about Canadian -- just under
7 Canadian 1 million from -- from board fees that -- that
8 we returned to our funds.

9 Q Were there any dividends or loan repayments?

10 A No, not to Origami.

11 Q And let's jump ahead through December 31, 2018. How
12 much had AIMCo invested in Trident?

13 A Canadian 60 million.

14 Q And did they receive any principal repayments of that
15 60 million?

16 A They -- they would have. And I don't have the exact
17 number in front of me, but they would've been paid
18 interest on a -- on a quarterly basis, and that
19 would've been probably about 6 million Canadian over a
20 year and a half.

21 Q Did they receive any principal reductions or just the
22 interest?

23 A Just the interest.

24 Q Okay. And in late 2018, was Trident looking for
25 additional liquidity?

26 A Yes. In 2017, natural gas prices, especially in

1 Canada, collapsed, and so there was a -- a looming
2 liquidity crisis. And in late 2018, Origami had been
3 talking to AIMCo, ATB, and internally about providing
4 additional capital to Trident.

5 Q All right. And did anyone provide additional capital
6 in late 2018?

7 A AIMCo declined. ATB signalled a desire to be repaid
8 and a lack of desire to invest additional funds. So
9 Origami ultimately invested Canadian \$5 million as --
10 as additional liquidity in -- at the very end of 2018.

11 Q So some four months before the receivership, Origami
12 put an additional \$5 million in?

13 A Correct.

14 Q And is it fair to say that has not been repaid?

15 A Yes. That is an investment that we wish we had not
16 made.

17 Q Okay. Now, sir, we're going to hear from Mr. Gwartney
18 from Veracity later in these proceedings. Can you tell
19 me how you were first introduced to Mr. Gwartney or
20 Veracity?

21 A Yeah. We met them in late 2018. As part of Origami's
22 investment, we wanted to make sure that we had a closer
23 view of operations. And so I -- I and Max reached out
24 to a couple of restructuring and operational
25 consultants in December 2018, and Veracity would've
26 been one of those.

1 Q And who from Veracity did you meet with?

2 A I believe initially I -- I talked to Mark and Roger,
3 who are the -- the -- the heads of the firm. And then
4 in January, we met in person in Trident's office for a
5 detailed pitch meeting. At that time, Gary Gwartney
6 and -- and Wendy Woolsey would've joined and -- and
7 became the primary contacts.

8 MR. GORMAN: Now, I'll ask Ms. Turner and
9 her team -- this will be the first document to attempt
10 to pull up on screen. If we could see Exhibit 38.01,
11 PDF page 58.

12 MS. TURNER: One moment, please.
13 Anastasia, do you have it?

14 Q MR. GORMAN: Sir, can you briefly describe
15 this document, the first page of which is available on
16 the screen, for all parties?

17 A Yeah. So this would've been the initial engagement
18 that we signed with Veracity for them to provide an
19 assessment on Trident's operations and assist us with
20 reducing cost both at a field level but also G&A.

21 Q All right. And what sort of services or information
22 did they provide under this engagement?

23 A So they provided a -- a detailed report that outlined
24 the history, some of their initial observations as far
25 as challenges and -- and infrastructure development, an
26 assessment of management, and some areas of potential

1 cost cutting. So we received a detailed report from
2 them at the end of January.

3 Q Okay. And in conjunction with this report, did Trident
4 make any internal changes or amendments?

5 A We did. We -- in part, this, I think, confirmed a lot
6 of what we feared and suspected, but this was one of
7 the primary drivers that forced us to take a more
8 active role, including terminating the CEO, Alan
9 Withey, on -- on January 31st, 2019; and then we also
10 made some additional staff reductions and -- and
11 consultant reviews to try to reduce cost and preserve
12 capital as quickly as possible.

13 Q All right. And I'd ask the AER staff to put up
14 Exhibit 38.01, PDF page 63, and if you could tell me if
15 that's a document you recognize.

16 A Yes. So this would've been Round 2 of the Veracity
17 engagement. This is post terminations. We hired
18 Veracity to act as interim COO, chief operating
19 officer, and CEO, chief financial officer, so to really
20 provide the services that would've arose as gaps based
21 on some of those -- some of those staff reductions.

22 Q And if you look at page 68, does that confirm your
23 recollection as to the new role for Veracity?

24 A Yeah. Absolutely. So, yeah, interim chief operating
25 officer, chief financial officer, technical and
26 professional support, and then also field services.

1 Yes. Veracity was our -- they were the expert on the
2 operations of an oil and gas company.

3 Q And how long did they continue in this role in this
4 engagement?

5 A Veracity continued on in -- in that role until our
6 resignation, and I understand from reading the
7 documents they continued after our resignation, so
8 until -- until April 30th.

9 Q And did your role change in conjunction with Mr. --
10 with these resignation [sic]?

11 A Yes. Someone -- someone needed to step up and find
12 documents and make sure that the planes and trains
13 continued to -- to run on time, and absent -- with all
14 bad choices, I decided that I -- I would be the best
15 person to do this, and I think just -- I mean, it is an
16 example of some of the challenges that we faced at that
17 time. Trident was running out of money extremely
18 quickly because natural gas prices had collapsed, so we
19 didn't have a budget to hire a -- a new CEO. Also, we
20 had a company that was, each day that passed by, at an
21 increasing risk of insolvency. Quite hard to attract
22 an -- an outside executive in those circumstances.
23 And -- and given the urgency, it was the least-bad
24 decision or least-bad choice.

25 Q Now, could I now change to your communications with the
26 Alberta Energy Regulator. What was your first direct

1 communication with the AER?

2 A Email introduction which led to a February 18 meeting
3 with -- with Robert Wadsworth.

4 Q All right. And if the AER could show you
5 Document 31.02, PDF page 57.

6 If we scroll down a bit, is this the email you
7 were just describing?

8 A That's correct. I think initially -- yeah. This is
9 shown in the -- I think -- I reached out to the AER to
10 brief them and advise them on our precarious and dire
11 financial situation. I think the -- the AER suggested
12 to meet after they had formalized their Redwater
13 procedures, but I think I pushed for a more urgent
14 meeting because of the -- the looming liquidity crisis.

15 Q Okay. So the sentence at the bottom says: (as read)

16 Tristan, nice to speak earlier and thank you
17 for connecting us.

18 Who is Tristan? And I see there's an email recipient
19 "Tristan Goodman".

20 A Yeah. Tristan Goodman is -- he was based -- albeit I'm
21 not a hundred percent sure. He was at the time the
22 chief executive or -- or person in charge of the EPAC
23 advocacy group of the -- the lower middle market
24 producers in -- in Canada, and my understanding was
25 that he had past experience with the AER and was a
26 window in and a way to get to the AER quickly, who I

1 think was very, very busy and difficult to reach at the
2 time, as they were still digesting Redwater which had
3 been announced 11 days earlier.

4 Q Okay. And did Mr. Goodman give you Mr. Wadsworth's
5 contact information?

6 A I don't believe so. I think I would've been able to
7 get that from the website.

8 Q Did he tell you Mr. Wadsworth was the person to
9 contact?

10 A He did, yeah.

11 Q Okay. Now, I'd like to quickly look to Exhibit 31.02
12 again, page 39. And this and the following pages, do
13 you recognize what these reference? And you can ask
14 for the pages to be flipped consecutively, if
15 necessary.

16 A Yes. So this was the document filed by Trident
17 notifying the AER of the change in directors.

18 Q And one more page, please. Perhaps 2. One more,
19 please. And again. We're looking for a page with --
20 the directors at the top of page 47 are listed as --

21 A Yeah, only Darren O'Brien and Jeff Young.

22 Q And there was no Alberta director as at February 15th
23 when you advised the AER?

24 A Correct.

25 Q All right. So did a meeting with the AER occur?

26 A Yes, on February 18.

1 Q And if we could look at Exhibit 31.02, PDF page 24.

2 Sorry. I poked a hole through it in my copy.

3 Do you recognize this document, sir?

4 A I do.

5 Q And can you briefly describe who prepared it?

6 A Yes. So this would've been a presentation that was put
7 together by Trident's former executives which Max Ellis
8 and I would have updated, and the whole point of this
9 document was to try to highlight that the operating
10 costs of Trident and probably all legacy natural gas
11 producers exceeded the revenue in the current
12 environment and created a -- a very unsustainable
13 situation and that had very dire financial
14 circumstances.

15 Q Okay. And do you recall who from the AER attended that
16 meeting?

17 A I -- I remember Robert Wadsworth being there. I also
18 remember two to three others; and, unfortunately, I
19 just -- I just don't have the business cards or I
20 couldn't remember the names, but there was probably two
21 to three other staff of the AER in that meeting.

22 Q Okay. Did Trident make any requests of the AER at this
23 meeting?

24 A No specific requests at this meeting. It was intended
25 to be an update meeting, and I believe I would've
26 told -- from memory, I would've told the AER staff that

1 our -- our team -- our operations team and Veracity
2 would be approaching them to make a formal request in a
3 few weeks.

4 Q Okay. And did Mr. Wadsworth express any knowledge or
5 understanding of Trident?

6 A He did. I think one of my worries at the time also was
7 our compliance rating and -- and how we would fare, and
8 my understanding at the time was that the -- the AER
9 was moving from a strict liability management system to
10 take into account some softer factors or a more
11 multifaceted factor. So in the meeting, as I inquired
12 about Trident standing with the Regulator, Wadsworth
13 commended Trident and its long history of safe and --
14 and sound practices, its -- its safety record, its
15 compliance record, and described Trident as a very good
16 corporate citizen.

17 Q Now, if I could ask to bring up Exhibit 38.01, page 71.

18 Is this an email you recognize, sir?

19 A Yeah. This -- this is the report from -- it was
20 written by Gary, but, really, it's recounting the --
21 the -- the follow-up meeting that I referenced, which
22 occurred on March 14. And so this is a summary of that
23 follow-up meeting where the specific proposal to the
24 AER was -- was -- was made.

25 Q Okay. And did you attend that meeting either in-person
26 or by Zoom or phone?

1 A I did not attend that meeting.

2 Q And this was Mr. Gwartney, the interim COO and CFO,
3 reporting to you and others?

4 A Correct.

5 Q And, sir, can you turn to page 72, and could you read
6 for the record the sentence starting with "Trevor and
7 Chris" starting in the third line down in the second
8 bullet point?

9 A Sure. (as read)

10 Trevor and Chris were very clear that the
11 board does not look to punish management or
12 directors from corporations that fail unless,
13 in their minds, the management did not act
14 with integrity with respect to the public
15 interest.

16 Trevor went on to further indicate a
17 potential director could protect him or
18 herself from potential retribution from the
19 AER by outlining the situation to the AER,
20 him specifically, prior to taking on the
21 duties of a director of a company that
22 ultimately became insolvent.

23 Q Is this something that resonated with you with respect
24 to your dealing with the AER going forward?

25 A Yeah. Absolutely. I think my logic and understanding
26 at the time was we were working openly and in good

1 faith with the AER to tell them of the financial
2 problems that we faced, which were, in my opinion,
3 external and -- and industry-wide in trying to be as
4 open and transparent as possible to land a plane with
5 no engines very safely.

6 Q Sir, in March of 2019, did Origami consider obtaining
7 yet another additional liquidity funding?

8 A It -- sorry. March of -- of 2019?

9 Q Yes.

10 A We had -- we had engaged Peters to explore strategic
11 alternatives, and part of that was potentially trying
12 to merge or sell the company, but part of that was also
13 considering the possibility of additional financing.
14 There -- there was no appetite for -- for financing,
15 and -- I think at Origami. But -- but much more
16 importantly, there was no virtually no interest from
17 the market to -- to invest in a Canadian oil and gas
18 company.

19 Q Did you ask AIMCo?

20 A We asked them in December, and then we asked them again
21 later, probably more in the April time frame, but their
22 answer was no.

23 Q And did you ask ATB?

24 A We did ask ATB specifically until April. I think
25 between, I guess, over 2018 and until April of 2019, it
26 was very clear that they wanted less exposure, not more

1 exposure to Trident. So it seemed like a pointless
2 ask, so we didn't ask them specifically until April.

3 Q Did you ask Origami?

4 A We did in April. We made a formal investment committee
5 request, and that was rejected.

6 Q Now, through Q1 in 2019 -- so let's stop that -- in
7 essence, March 31st, what type of discussions were you
8 having with the ATB?

9 A So one of our first moves after we reduced staff was to
10 open -- in general, we were trying to open
11 constructive, open, transparent dialogue with all of
12 our counterparties. So we talked about the AER, but we
13 reached out to ATB to let them know what we knew and --
14 and start talking to them. So we reached out to our
15 relationship anchors in early February to talk about
16 the CEO change, give them a picture of the liquidity
17 and some of the challenges that we faced, but then also
18 to try to advise them and update them on the efforts to
19 sell the company or merge the company.

20 Q And how did they respond to those inquiries?

21 A They asked for a lot more information and I think
22 were -- yeah. They just sought for more information.
23 I -- I think they were skeptical of -- of the plan to
24 sell the company, but I -- other than that, I think
25 they were just seeking as much information as possible.

26 Q Did your contacts at ATB change at some point in Q1

1 2019?

2 A Yeah. In late February, we were advised that our
3 relationship had transitioned into the -- the special
4 assets group or the special loans group, and so we met
5 Greg Steidl and Muhammad Ashraf in -- in late February.

6 Q Okay. And another name from ATB that we'll be hearing
7 from at some point is Alex Corbett. When did you first
8 meet or learn of Mr. Corbett's involvement?

9 A So Alex was unknown to us until, I guess, mid- to
10 late-April when the CCA -- CCAA filing became imminent.
11 So we didn't meet Alex until about the same time that
12 we were engaging with the AER in -- in late April.

13 Q Okay.

14 MR. GORMAN: If I could ask the -- the AER
15 to put up Document 31.02, PDF page 62. If we could go
16 to ...

17 Q MR. GORMAN: This is the email chain that
18 you've reviewed before today, sir?

19 A Correct.

20 Q And you weren't copied on it. So do you understand
21 that this was received through the request for
22 disclosure by the AER? And you might note that there's
23 a redacted portion partway down page 62, which is how
24 we could tell AER document production efficiently on
25 occasion?

26 A Yeah. This was one of the FOIP documents.

1 Q Okay. And if we turn to page 63, there is a third
2 bullet. Could you read that bullet for the record?

3 A Starting on "To Trevor's points"?

4 Q Please.

5 A (as read)

6 To Trevor's points in his Friday email, they
7 do not appear to be a danger to public health
8 or the environment at this time, nor do they
9 appear to be squandering the resource.

10 Q Would you agree with Trevor's assessment in that
11 regard?

12 A I would agree we were doing everything that we could to
13 be a good corporate citizen and a -- and a good Alberta
14 company at that time.

15 Q Okay. Perhaps, if you're still good, sir, I'm going to
16 refer to one more document and then propose we take the
17 morning break, and that document is starting at page 65
18 of the same exhibit.

19 A M-hm.

20 Q And it references a Trident Exploration meeting
21 April 18th. Do you recall attending that meeting, sir?

22 A Vividly, I do.

23 Q Okay. And are the list of attendees consistent with
24 your recollection of who attended?

25 A Yes.

26 Q And from the AER, it's Chris S., Laura C., Maria L.,

1 Melissa B., Candice R., and Nathan R. Do you see that
2 reference, sir?

3 A Yeah.

4 Q Does that meet your recollection of who attended the
5 April 18th meeting?

6 A Yes.

7 Q Okay. And that doesn't include Mr. Gosselin or
8 Mr. Wadsworth. Do you recall that they did not attend?

9 A Yes. I -- I recall them not being there.

10 Q Okay. And looking to the bottom of page 65, do you
11 recall there was a discussion about a CCAA and the --
12 starting from the third bullet from the bottom looking
13 at the point "seeking comfort"? Do you recall this
14 being discussed?

15 A Yeah. I think the -- the whole purpose of the meeting
16 and the primary objective was to advise the AER early
17 but also seek some clarity so that we would have enough
18 liquidity to enter into a CCAA process to position the
19 company for sale.

20 Q And do you recall discussions with respect to what the
21 ATB wanted with respect to the accounts and the funding
22 of the CCAA?

23 A Yeah. I think ATB's -- ATB was basically willing to
24 put in the liquidity if they could clarity over -- if
25 they could get clarity over sales proceeds. They just
26 wanted to make sure that that was protected.

1 Q Okay. And what about the money that would be coming
2 into the account on the 25th of the settlement date of
3 each month?

4 A I don't think that was discussed at that time. I think
5 it was only the -- the next week that that was
6 discussed.

7 Q Okay. And if we turn to the next page, 66.

8 A M-hm.

9 Q Looking near the bottom, the sentence that starts "No
10 environmental"?

11 A Yeah.

12 Q And do you agree with that assessment? And please read
13 it for the record, and tell me if you agree with it.

14 A (as read)

15 No environmental or safety concerns with
16 assets have retained employees needed to
17 address safety.

18 I a hundred percent agree with that.

19 Q And that was the discussions on April 18th with the AER
20 representatives and the ATB representatives and the
21 various counsel listed as attendees?

22 A Yes.

23 Q Okay. On page 67, there is a reference to
24 "post-meeting discussions", and it starts with:

25 (as read)

26 As Melissa pointed out, this will force our

1 hand in terms of how we deal with CCA
2 insolvencies going forward.

3 Was this a discussion at the meeting, or did this occur
4 later where they were talking about how they're dealing
5 with CCAA matters going forward?

6 A This was -- this was not part of our meeting.

7 Q What about the first white bullet: (as read)
8 If we agree to administrative charges and DIP
9 financing as super priority above Redwater
10 claims, may prejudice our position with
11 respect over actual sales proceeds from
12 Redwater that Grant Thornton is seeking.

13 Were there any discussions about the Redwater file and
14 how your funding would affect Grant Thornton and
15 Redwater receivership?

16 A No. We only talked about the Trident file in the
17 meeting.

18 MR. GORMAN: Madam Chair, I'm going on to a
19 separate topic now. We've been going just short of an
20 hour and a half. Would now be an appropriate time for
21 the 10- or 15-minute morning break? I see your lips
22 moving but can't hear you.

23 THE CHAIR: I'm sorry. Yes. That would
24 be a good time for a break, and how much break would
25 everybody need? Mr. Gorman? And then I'll ask our
26 court reporter how much break would you need or would

1 you like?

2 THE COURT REPORTER: Ten minutes is fine with me,
3 but really I'm okay with anything.

4 MR. GORMAN: Ten minutes would work for me
5 as well, My Lady, and I'm pleased to note that I'm
6 inadvertently where I thought I would be in this time
7 frame, so our estimates as to time may be closer than
8 historically has proven true.

9 THE CHAIR: That's good to hear.

10 So why don't we reconvene at 10:35?

11 MR. GORMAN: And, Mr. O'Brien, please don't
12 discuss your evidence electronically or over the phone
13 with anyone. You're still under oath.

14 MR. O'BRIEN: Sure.

15 THE CHAIR: And I would like to remind
16 everybody to turn off your cameras and mute yourself,
17 because if you have any discussions, it could be heard.
18 We are not shutting down the Zoom meeting. Thank you.
19 See you at 10:35.

20 (ADJOURNMENT)

21 THE CHAIR: Counsel brought to our
22 attention a point that they will need to clarify.
23 Before you proceed, Mr. Gorman, Mr. De Luca or Ms. Hall
24 have something to ask you.

25 Please go --

26 MR. DE LUCA: Thank you, Madam Chair.

1 THE CHAIR: -- ahead.

2 MR. DE LUCA: Yeah, thanks, Madam Chair.

3 Mr. Gorman, briefly, it's typical at AER
4 proceedings for a party to adopt -- a party's witness,
5 more specifically -- to adopt the evidence filed in the
6 proceeding officially on the record, and we note that
7 you haven't done that. Is it your intention to do so?
8 Can you just clarify that for the record, please?

9 MR. GORMAN: I will do that with both
10 requesters at the end. I want to make sure that none
11 of their answers clarified or amended anything that was
12 in the two submissions that the -- that we're going
13 through.

14 MR. DE LUCA: Thank you for that.

15 THE CHAIR: Thank you, Mr. De Luca.

16 Thank you, Mr. Gorman. Please proceed.

17 MR. GORMAN: Thank you.

18 Q MR. GORMAN: Now, before the break,
19 Mr. O'Brien -- and you're muted, so please unmute
20 yourself. Thank you. We talked about the concept of a
21 CCAA. Can you tell me when Trident began having
22 discussions with respect to a potential CCAA?

23 A Yeah. So we started discussing the possibility of a
24 CCA internally in March, but we really thought that we
25 had liquidity to last until the end of -- of May. So
26 April 14th was the first time that we realized that we

1 might need to file before that, and really the -- the
2 key driver and I think what changed was it's -- I mean,
3 I remember this vividly, but for those who don't who
4 weren't living the prices every day, I think in -- in
5 March and April natural gas prices were -- AIMCo was
6 below a dollar for much of the -- the period and -- and
7 even negative on certain days. And so I think the
8 surprising unexpected low natural gas environment
9 really shortened that liquidity runway.

10 Q Okay. And what steps did you take with respect to a
11 potential CCAA?

12 A So we began working with counsel of Norton Rose in
13 early February. And we were working on a couple of
14 paths, but one of the paths that we always acknowledge
15 might be a possibility of a CCAA. So we hired counsel
16 first, and then on counsel's advice we started talking
17 to monitors in early April.

18 Q All right. And had you previously been involved in a
19 CCAA proceeding?

20 A No.

21 Q And did you talk to one or more potential monitors?

22 A We did. I know that we interviewed FTI and Deloitte.
23 I think we also interviewed Alvarez and Marsal and
24 maybe other.

25 Q Okay. And what did you do with respect to anything
26 those proposed monitors may have told you?

1 A I think one of the -- the key outcomes of those
2 meetings was to start working on -- I knew we had been
3 working on this, but really refine our -- our 13-week
4 cash flows and liquidity projections. And I think one
5 of the other pieces of advice was to make sure that the
6 AER was up to speed when this became a real
7 possibility.

8 Q Okay. Now, I'd ask you to look at Exhibit 31.02,
9 page 32. It's the cover page. Is this a document that
10 you recognize?

11 A Yes.

12 Q And what is this?

13 A So this is a document prepared by FTI talking about
14 cash flow forecasts and liquidity and -- and how we
15 would get to a sales through a CCAA process.

16 Q Okay. And who was this document provided to?

17 A FTI prepared this. This would've been provided to ATB
18 and also AIMCo and the AER.

19 Q And, sir, if you look at the next page in, page 33, is
20 this the 13-week cash flow forecast you had just
21 referenced?

22 A Yes. Correct.

23 Q And what did you understand it showed as the opening
24 cash balance?

25 A So this was prepared understanding that there would be
26 a zero cash balance, that we'd start from scratch.

1 Q Okay. And how much funding would be required during
2 the 13-week --

3 A So those number --

4 Q -- cash flow?

5 A Sorry. The numbers circled on the -- the bottom are
6 really the -- the shortfalls. So about 6 million,
7 the -- the middle circle number, was the peak shortfall
8 number.

9 Q Okay. And I'll have the panel -- or the document
10 available, but I'd like to look to page 37, which is
11 described as the "decision tree". This page, you
12 reviewed, sir?

13 A Yeah.

14 Q And the heading "AER to Allow Priming" -- "AER to Allow
15 Priming DIP Charge". I saw the universe for a moment
16 there. I don't know if that picked up on everyone
17 else's screen. Who did you understand had to make that
18 determination as to whether there would be an AER
19 priming DIP chart?

20 A So this was the ask made of the AER in the April 18th
21 meeting as -- it's basically this yes/no question.

22 Q Okay. And the event of the answer "no" was what to
23 your understanding?

24 A Cease operations.

25 Q Okay. And "yes", what would the outcome have been?

26 A "Yes" was we offered ourself as stewards to continue a

1 sales process and try to find a home for Trident's
2 assets because we would have liquidity to maintain
3 employees and -- and fund the CCAA process.

4 Q And, ultimately, did the AER give an answer as to "yes"
5 or "no"?

6 A They never actually answered the question. No. They
7 never answered the question.

8 Q Did they ever allow a priming DIP charge to your
9 knowledge?

10 A No.

11 Q And, sir, if you look to Document 38.01, the document
12 starts at page 40, but I'd refer you initially to
13 page 50. It's just -- it doesn't include the cover
14 email. Did you understand this to be an update of the
15 cash flow and restructuring alternatives?

16 A Yeah. So this was a document that they were continuing
17 to work on.

18 Q And it still showed an opening cash balance of zero and
19 a requirement for funding to have the 13-week cash flow
20 proceed?

21 A Correct.

22 Q And if we go back a couple of pages to page 48, do you
23 understand that FTI had provided this to the various
24 individuals at the AER on April 25th?

25 A Yes.

26 Q Now, during this period of time, ATB was Trident's

1 first secured lender?

2 A Correct.

3 Q And that was pursuant to a 2017 amended and restated
4 loan agreement?

5 A Yes.

6 Q And for the record, that agreement is at 38.01
7 commencing at page 127. Do you recognize the cover
8 page to that loan agreement?

9 A Yes.

10 Q And generally it included a revolving credit facility?

11 A Yeah. A reserve base lending facility.

12 Q And this agreement was entered into years before
13 Redwater and years before your CCAA proceeded?

14 A Yeah. So this was a modified agreement. ATB had been
15 a lender -- a senior secured lender to the company well
16 before our initial involvement in 2015. So it would've
17 been severely modified in 2016 on the CCAA, and then
18 this version, the 2017 version, would've been further
19 modified when AIMCo lent additional money.

20 Q Correct. Can you describe how -- from at least 2017
21 when the agreement was amended and extended, how your
22 revolving credit facility worked?

23 A Yeah. So it's effectively a form of a margin loan. So
24 the -- the banks will look at the value of your assets,
25 they'll make an assessment, and then they'll advance a
26 percentage that they determine appropriate against

1 those assets. It's intended to be a revolving loan.
2 So it's intended to be paid down and then reborrowed
3 to fund working capital shortfalls. So it's really --
4 it's almost like a credit card, if you will, a secured
5 form of credit card. Yeah. That's the basics. I can
6 go into more detail if that's helpful, Howard.

7 Q When do oil and gas companies generally receive
8 revenues?

9 A So my understanding is they get paid once at the end of
10 the month. They get it from their marketer.

11 Q And where, for the Trident group, did those monies get
12 deposited?

13 A So there would've been a -- a bank account that
14 was pledged as collateral to ATB's loan. So there
15 would be a -- a receipt account that those revenues go
16 into.

17 Q And what happens when those revenues are received?

18 A ATB automatically -- and this is just the way it was
19 always done. ATB automatically applied them against
20 the borrowing, so it pays down the credit card balance
21 with the revenue. It's like wages being garnished in a
22 way.

23 Q Okay. And had this occurred before April of 2019?

24 A Every -- every month it's the way it would've worked.

25 Q Okay. Now, sir, can you please have pulled up on the
26 screen Exhibit 38.01, PDF page 39. It's a two-page

1 document, sir. Do you recognize this document?

2 A Yes. This is a notice of a default that ATB sent to
3 Trident.

4 Q And when did you receive that?

5 A April 23rd.

6 Q Okay. Did you ask ATB to send this notice of default?

7 A No.

8 Q Did you negotiate with ATB, then providing this notice
9 of default?

10 A No.

11 Q Did you have any discussions after providing this
12 notice of default you could beat Redwater to the
13 benefit of ATB?

14 A No. No. They called us to give us -- to advise us
15 this was coming, but it wasn't -- it was just a -- a
16 heads-up before we got the letter.

17 Q Okay. Did they ask you if you wanted to receive such a
18 letter?

19 A It wasn't a choice, no.

20 Q Okay. Who moved the April 23rd or 24th revenues? Did
21 you take any positive steps or Mr. Young take any
22 positive steps to move that money?

23 A There's nothing that we could've done, no. We didn't
24 do anything. There's nothing we could've done to
25 prevent that sweep from happening. It was a
26 contractual sweep.

1 Q Okay. If you could refer to Exhibit 31.02, page 80.
2 Now, you're not copied on this. Is this an email from
3 Mr. Ellis that you saw at some point?

4 A Yes. I would've seen this.

5 Q And what did you understand the purpose of this email
6 was?

7 A This email was a back-and-forth that followed after our
8 second meeting with the AER basically explaining the
9 concept that I just described, which is that the bank
10 accounts are pledged and there's an automatic sweep,
11 and there's a -- a contractual agreement for the
12 revenue to be applied against ATB's loan balance.

13 Q Okay. If you could take a moment to review Mr. Ellis's
14 email to Melissa Barg and others at the AER. Can you
15 confirm that his description is consistent with your
16 understanding as to what occurred?

17 A Yes. It's consistent with what I just described.

18 Q Okay. And did you or Mr. Young have any direction with
19 respect to the sweep occurring?

20 A No.

21 Q Okay. What happened generally following April 25th?
22 Who were you talking to, and what was being discussed?

23 A So I probably -- after April 25th, in my mind, it was
24 effectively the AER and ATB negotiating on the terms of
25 financing for a CCAA. And so what we were working on
26 was the documents for a CCAA, the -- the initial

1 application, and -- and trying to make sure the
2 negotiations between the AER and ATB were -- were
3 occurring in good faith.

4 Q And for your benefit and the Panel's benefit, if you're
5 looking at a calendar, April 27th was a Saturday, to my
6 understanding, and in that regard, I'll refer you to
7 Exhibit 31.02, PDF page 143. Is this an email you
8 recall sending, sir?

9 A Absolutely.

10 Q Okay. And what was -- what discussions were occurring
11 in conjunction with you sending a Saturday at 7:18 PM
12 email?

13 A So I had talked -- I had talked to ATB, and ATB had
14 advised that they wouldn't be able to make a DIP loan
15 if there is no assurances on receipt of a sales
16 process, which is consistent with what they had
17 described to the AER, what they had described to
18 everyone. So that was not a surprising fact. And
19 based on that call, it was my feeling that the AER and
20 the ATB were not going to reach a compromise that would
21 allow funding.

22 Q And with respect to the second paragraph where you
23 write: (as read)

24 From Trident's perspective, we have tried to
25 be a good steward of our assets --
26 had anyone from AER ever suggested that you had not

1 been a good steward of Trident's assets?

2 A It was nothing but positive indications of our
3 stewardship of the assets, so no.

4 Q Okay. And you then go on to say that: (as read)

5 If there isn't a solution, the directors may
6 have to resign by April 30th as we won't have
7 a way to pay our employees.

8 Was Trident's financial situation so dire that without
9 a funding solution, they couldn't pay their employees?

10 A Correct.

11 Q Okay. And at 7:18 on April 27th, had you spoken to
12 Mr. Gosselin or anyone else that there may be an order
13 as against Trident (Alberta) or Trident (WX) being
14 issued on the Monday?

15 A No.

16 Q Was your suggestion with respect to the potential of
17 resigning in any way related to a potential order?

18 A No.

19 Q Okay. You then continue: (as read)

20 In the unfortunate instance where this
21 happens, I would hope to get guidance from
22 the AER on the right way to transfer the
23 licences and operations of the company.

24 Did you ever get any specific guidance?

25 A From memory, I think I had been asking for this for
26 weeks. I -- I think I got a one-page form document

1 maybe at some point on Monday, but it -- it -- no, I
2 never got any guidance until very late in the process,
3 maybe Monday the -- the 29th.

4 Q And if we could look to Exhibit 31.02, PDF page 153.
5 Is this, again, an email you recognize having sent on
6 Monday the 29th about 2:25 PM?

7 A Yeah. I remember sending this.

8 Q Okay. And what is the reference in the fourth
9 paragraph -- and you can read it for the record -- "we
10 need to enact this plan"?

11 A Sure. (as read)

12 We will need to enact this plan --
13 "This plan" referring to a handover of the wells to the
14 AER. (as read)

15 We'll need to enact this plan at the end of
16 business today in order to address as much as
17 possible tomorrow. As previously requested
18 in my email on Saturday and our phone call on
19 Sunday, I would greatly appreciate -- [sorry]
20 I would appreciate guidance from the AER on
21 how to do this the right way, given our
22 limited financial resources. Who is the
23 appropriate person for this discussion?

24 Q And did anybody contact you for that discussion?

25 A No.

26 Q And at 2:25 on the 29th, did you understand that an

1 order as against Trident (WX) and Trident (Alberta) was
2 imminent?

3 A No. In fact, this email was sent seeking feedback
4 on -- on financing.

5 Q Okay. And if we look, then, to 31.02, PDF page 155, is
6 this an email you recall reviewing?

7 A Yes.

8 Q Okay. And when approximately did you first learn that
9 a draft order as against Trident (Alberta) and Trident
10 (WX) might occur?

11 A I think Chris -- Chris Schacher called my cell phone
12 probably minutes after this was sent to ask if I had
13 received this email.

14 Q Okay. And had you?

15 A I had not until I -- he called me on my cell phone. It
16 was not an email I had seen.

17 Q Okay. And there's a reference that the draft order
18 from Trevor Gosselin -- had you ever met Mr. Gosselin?

19 A This was the first time that I had heard his name.

20 Q Okay. He didn't ask for any information or details
21 with respect to a potential order from you?

22 A No.

23 Q And if we turn to page 160, it references: (as read)

24 The licensee's eligibility is limited and
25 will not be permitted to hold any additional
26 licences.

1 Did you seek to have additional licences held by the
2 Trident entities?

3 A No.

4 Q Okay. The licensee has until June 1, 2019, to appoint
5 an agent. After April 30th, were you in any position
6 to appoint an agent?

7 A No.

8 Q And that you had until June 14th, 2019, between the two
9 entities, to post approximately \$260 million as
10 security? Did you have any ability to cause the
11 Trident entities to post \$260 million?

12 A On -- on June 14th?

13 Q On any date.

14 A On any date, no, but especially not on June 14th.

15 Q If we could then flip to page 174. Again, the same
16 exhibit. You reference Gary Gwartney and Wendy Woolsey
17 are CC'd and briefed on the situation. What was the
18 situation that they were briefed on at April 29th at
19 5:54 in the evening or afternoon?

20 A So the situation was we had been seeking feedback from
21 the AER and really just an answer on an ability to --
22 to finance a DIP in CCAA, and we never received that.
23 And so at this point, we had to move forward with the
24 plan to shut down wells and terminate employees in the
25 next 24 hours.

26 Q And who was directing the field operations and the

1 shutdown of wells?

2 A Gary Gwartney from Veracity would've been leading that.

3 Q And did you understand he prioritized the most pressing
4 items to be dealt with?

5 A Yes.

6 Q And did you instruct him to do whatever was possible
7 with respect to those pressing items?

8 A Yes.

9 Q And at page 175, there is an email, and -- oh, on --
10 MR. GORMAN: Panel and -- and Counsel,
11 there are references from time to time to "Jonathan
12 Dueck". He is an associate who was assisting with
13 respect to this matter, so when he printed documents,
14 his name sometimes shows up on them. He had nothing to
15 do with Trident at -- at the time. If you look in your
16 notes and wonder who Mr. Dueck is, he was -- he was
17 assisting me in -- in assembling various documents. So
18 you'll note he's not copied, et cetera.

19 Did you understand this to be an update that
20 Mr. Gwartney was providing to the AER staff and to
21 others?

22 A Yup.

23 Q If we turn to the next page, there's an update from
24 Gary Gwartney at 176 to you and Wendy Woolsey. Did you
25 understand this to be a 3 PM April 30th update to you?

26 A Yes.

1 Q Okay. And would this be the last email you ever
2 received in your capacity as an officer and director of
3 Trident or its subsidiaries?

4 A Yeah. I believe I took these -- this email and a
5 similar one from Wendy on -- on more financial matters
6 and passed this along to the AER, and that would've
7 been my last correspondence.

8 Q And did you understand the bold update to be accurate,
9 that: (as read)

10 It should be noted that despite being
11 informed that contractors would not be paid
12 for April invoices, not a single contractor
13 refused to work, and some even came on their
14 days off to assist with shutting in wells and
15 facilities.

16 A That's my understanding, and that -- that's entirely
17 consistent with the past commendations of -- of Trident
18 as -- as a -- a safe operator.

19 Q Okay. And if we turn to the next page, 177, there's a
20 virtually identical update from Mr. Gwartney to the --
21 the AER, including confirming that contractors
22 continued to work?

23 A Yeah.

24 Q And then at the next page, 178, you were copied with an
25 email approximately at 6 PM from Mr. Schacher. Can you
26 read that email into the record, please?

1 A Sure. So the email from Chris Schacher says in
2 response to Gary's email: (as read)

3 Thank you for the update, Gary. The guys in
4 the field went above and beyond. It is a
5 refreshing and admirable act during an
6 unfortunate situation. Please pass on my
7 thanks to them and also on behalf of the AER.

8 Q Now, on April 30th, did you have an understanding that
9 there would be an application by the AER to appoint a
10 receiver the next day, May 1st?

11 A I -- I didn't know that. I was contacted by Chris
12 Schacher. I think he texted me probably sometime after
13 this email.

14 Q And did they ask you to consent to an AER receivership
15 on May 1st?

16 A They did.

17 Q And what did you advise in response?

18 A I believe my response was something along the lines of,
19 We're no longer directors. We can't help.

20 Q And if you look to exhibit -- page 180 in 31.02, you
21 see it's resignations of yourself and Mr. Young as
22 directors of Trident Exploration Corp.?

23 A Yeah.

24 Q And Trident Exploration Corp. did not have any orders
25 as against it?

26 A Not at the time that we signed this.

1 Q I'm asking about Exploration Corp., not Alberta and not
2 (WX).

3 A I'm sorry. Exploration Corp. had no orders.

4 Q Okay. And it was a CBCA company not an ABCA company?

5 A Yes.

6 Q And you understood that I had to attend in court to get
7 a fiat so that the CBCA director would accept this
8 form?

9 A Yes.

10 Q Okay. If we turn to Exhibit 182 and onward, there's a
11 series of -- pardon me. 182, Trident Exploration.
12 Please go to page 185. That's a resignation at the
13 ABCA with respect to Trident Exploration (WX)?

14 A Yes.

15 Q And being ABCA rather than CBCA companies, no fiat was
16 required?

17 A Yes.

18 Q Okay. Sir, if you could turn to page 187, there's an
19 email at 4:39 from yourself to the AER and others. Do
20 you recall sending that email?

21 A I do.

22 Q And this -- this is where you note in the third
23 paragraph down that you can't execute the receivership
24 order because you had resigned and that it had affected
25 various third parties.

26 A Yeah.

1 Q And with respect to operational issues, you sent some
2 information by Mr. Gwartney, who I'd assume Gary is?

3 A Yeah.

4 Q And with respect to corporate issues, you listed
5 various corporate issues that you had dealt with prior
6 to your resignation?

7 A Correct.

8 Q And what state did you leave Trident's records with
9 respect to?

10 A We left them, I mean, virtually untouched. They were
11 all in -- in good, organized order in Trident's
12 offices.

13 Q And did you later learn that the OWA and not the AER
14 had applied to appoint a receiver?

15 A I did.

16 Q And that that receivership order was granted not May 1
17 when the AER was discussing but two days later on
18 May 3rd?

19 A Yes.

20 Q And at some point, did you receive a copy of the
21 receivership order?

22 A Yeah, I -- I did. I think through the -- yeah, through
23 the receivership portal.

24 Q Okay. And if you could refer to 31.02 starting at
25 page 202. Do you recognize that as a copy of the
26 May 3rd receivership order?

1 A Yes.

2 Q Do you understand that, on behalf of you and Mr. Young,
3 I attended at the receivership application before
4 Justice Jones?

5 A Yes.

6 Q And that I provided no opposition but confirmed, as you
7 had resigned as directors, you are not in a position to
8 consent?

9 A Yes.

10 Q And did you understand, pursuant to paragraph 3 of the
11 orders, PricewaterhouseCoopers were granted various
12 powers?

13 A Yes, I did.

14 Q And did you understand that was to the exclusion of
15 Trident's former factors, including yourself?

16 A Yes.

17 Q And paragraphs 4 and 5 on page 206 deal with duty to
18 provide access to records and cooperation to the
19 receiver?

20 A Yes.

21 Q Did the receiver ever reach out and complain that they
22 needed information or records to -- records access from
23 you?

24 A No. We never heard from the receiver.

25 Q Did you ever speak to Mr. Darby with respect to the
26 Trident receivership or anyone from his team?

1 A No.

2 Q Okay. Did the receiver ask your input or approval
3 to disclaim any properties or sell any properties?

4 A No.

5 Q Since May 1, 2019, what control or input did you or
6 Mr. Young have with respect to Trident's assets,
7 accounts, or operation?

8 A Absolutely none.

9 Q Did you sign any Trident cheques after April 30th?

10 A No.

11 Q Did you direct any money to be transferred after
12 April 30th?

13 A No.

14 Q Could you submit an application to transfer a well
15 facility or pipeline licence?

16 A No.

17 Q Could you direct Trident to pay money or post security?

18 A No.

19 Q Could you submit a compliance plan?

20 A No.

21 Q Did you have custody or control over any Trident
22 assets?

23 A No.

24 Q Could you direct abandonment or reclamation efforts?

25 A There's no way to do that.

26 Q Did you have access or control over working-interest

1 records or licences?

2 A No.

3 Q Could you attend on any sites to remove fluids?

4 A No.

5 Q At Exhibit 31.02, can you please turn to page 228. Is
6 this correspondence you received by registered mail
7 from the AER?

8 A Yes.

9 Q Okay. And between April 30 and June 24th, had anyone
10 from the AER reached out to you?

11 A We had no contact with the AER.

12 Q If we turn to page 229, there is reference to an
13 invoice dated May 3rd to Trident (Alberta) in the sum
14 of 544,000 and to Trident (WX) in the sum of \$29,459.
15 Did you ever receive those invoices?

16 A No.

17 Q There is a reference that an agent had to be appointed
18 by June 1, 2019. Did you or could you appoint an
19 agent?

20 A There's no way we could've done that.

21 Q Okay. And that by June 14th, 2019, you were to either
22 transfer well facility and pipeline licences to an
23 eligible person. Did you have any authority or ability
24 to do that?

25 A No.

26 Q Prior to October 8th, 2020, had you ever heard a

1 suggestion that you conspired with or took actions to
2 prefer ATB through the April 24th sweep of the ATB
3 accounts?

4 A That was the first time I had ever heard anything even
5 remotely close to that suggestion.

6 Q Okay. Have you provided any offer or inducement to any
7 of the additional witnesses who the requesters will be
8 calling over the next two days?

9 A Not at all.

10 Q Sir, having reviewed the documents and questions we
11 have reviewed thus far this morning, do you confirm and
12 adopt the submissions that you've provided to this
13 Panel as Exhibits 31.02 and 38.01 that we have been
14 reviewing this morning?

15 A I do.

16 Q Sir, thank you for your cooperation. I understand that
17 you will have to re-attend at some time to be chosen,
18 likely after lunch tomorrow, depending on scheduling,
19 to answer any questions from CLM or the Panel. And
20 you'll participate in that regard?

21 A I look forward to it.

22 MR. GORMAN: Thank you, Madam Chair. Those
23 are my questions to Mr. O'Brien.

24 THE CHAIR: Thank you, Mr. Gorman.

25 Thank you, Mr. O'Brien.

26 (WITNESS STANDS DOWN)

1 THE CHAIR: Mr. Gorman, how would you like
2 to proceed? Would you like to call your next witness,
3 or would you like to start lunch early -- early lunch
4 break? It's up to you.

5 MR. GORMAN: I believe I can finish
6 Mr. Young before a regular lunch break. As you will
7 learn, he was much less directly involved than -- than
8 Mr. O'Brien, so his questioning will not be as
9 expansive. He just doesn't appear on as many meetings
10 or emails.

11 THE CHAIR: That would be fine. I'm just
12 going to excuse myself and shut the blinds because
13 there's this dramatic effect happening in my office,
14 and then you can get started.

15 MR. GORMAN: Thank you.

16 THE CHAIR: Please proceed.

17 MR. GORMAN: Thank you.

18 If Mr. Young could turn on his camera and unmute
19 himself.

20 MR. YOUNG: Done.

21 MR. GORMAN: And, Mr. Young, I believe
22 someone from the AER will ask you to affirm or swear an
23 oath.

24 JEFFREY YOUNG, Affirmed

25 Q MR. GORMAN: And, Mr. Young, you just took
26 an affirmation to tell the truth. Is that affirmation

1 binding on your conscience?

2 A Yes, sir.

3 Q And you understand that, although we are conducting
4 this proceeding by Zoom, that oath is as binding as if
5 we were all in a boardroom gathered together in
6 non-COVID times?

7 A I do.

8 Q Okay. And could you briefly give the Panel your
9 educational and professional designation background?

10 A I'm happy to. My -- I earned my bachelor's in
11 political science and history at the University of
12 California at Berkeley in 1989. I earned my law degree
13 in 1993 from the Santa Clara University School of Law.
14 I am admitted to practice in California and Nevada.
15 And though I have not practiced law, I have started
16 businesses in my career.

17 I first began my first business in 1995. I built
18 wireless facilities in Canada and the United States and
19 Argentina by developing cell sites throughout all three
20 countries, sold that business in '01, then developed
21 real estate from my own personal account in conjunction
22 with a partner and sold my assets in 2006.

23 Our now former partner at Origami asked me to help
24 start this business, Origami Capital; and in 2009, I
25 began working on Origami Capital and have been doing so
26 since. Today, I act in the role as managing partner of

1 the firm.

2 Q All right. And can you describe your relationship in
3 Origami with -- in comparison to Mr. O'Brien's?

4 A I think the question is: Can I describe my
5 relationship in comparison with Mr. O'Brien's; is that
6 correct?

7 Q That's correct.

8 A Darren is a partner of the firm, and I am the managing
9 partner and also partner of the firm of the controlling
10 partner in the organization.

11 Q Would it be safe to summarize your --

12 A Say again. I'm sorry.

13 Q Would it be safe to simply summarize that as your --
14 you have been Mr. O'Brien's superior?

15 A Yes, sir.

16 Q Now, with respect to Origami, we had heard
17 Mr. O'Brien's description with respect to the size of
18 investments. Would you adopt that information so we
19 needn't go through that line by line?

20 A I do.

21 Q And, sir, prior to Trident, had you been involved
22 through Origami or otherwise with respect to any
23 Canadian oil and gas investments?

24 A I have not.

25 Q And what about with respect to Canadian insolvency CCAA
26 or receivership proceedings?

1 A Not prior to Trident.

2 Q Okay. And can you confirm Origami's relationship with
3 AIMCo and just generally in your own words describe
4 your -- your ongoing involvement with AIMCo and Trident
5 or otherwise?

6 A AIMCo is and has been our largest client. We felt and
7 continue to feel deeply grateful for their support
8 financially and a tremendous gratitude towards the
9 organization and its clients.

10 Q Okay. And what was your personal first involvement
11 with respect to the potential investments in -- in
12 Trident?

13 A After the decision was made by the firm, Origami, at
14 which time I was not the managing partner, I assisted
15 Darren -- Mr. O'Brien with the implementation of the
16 CBCA so as to convert the then overburden some debt
17 into equity to permit Trident to have a new life and to
18 potentially grow.

19 Q And in 2016, you, in conjunction with the CBCA, became
20 a director of Trident and various of its subsidiaries?

21 A Correct.

22 Q Have you ever been an officer?

23 A I was an officer of Trident, yes.

24 Q Okay. What about Trident Exploration or (WX)?

25 A No --

26 Q Sorry. (Alberta) or (WX)?

- 1 A I do not believe so, no.
- 2 Q Okay. And can you confirm your recollection as to how
3 much Origami has invested in Trident through either
4 debt or equity or acquisition of bonds?
- 5 A I believe the sum is 65 million.
- 6 Q Okay. And --
- 7 A You asked --
- 8 Q -- other than -- other than director fees, how much has
9 Origami recovered?
- 10 A Zero.
- 11 Q Do you have any expectation of any future recovery?
- 12 A No, sir.
- 13 Q Did you have any direct contact with Mr. Gwartney or
14 Ms. Woolsey from Veracity?
- 15 A I may have listened once or twice on the telephone to
16 what they were telling us, so I believe I had a couple
17 of telephone calls with them, but largely it was Darren
18 who led the call and the conversation. I was listening
19 and learning.
- 20 Q Apologies. I've got a call coming in from my computer
21 I've got to ignore.
- 22 And did you have an understanding as to why
23 Veracity were being retained?
- 24 A Yes.
- 25 Q And what was that?
- 26 A In December of 2018, we had deep concerns about the

1 skill of Alan Withey to navigate the treacherous
2 natural gas environment and sought additional
3 assistance from expert folks in the oil and gas
4 business as directors, and we retained them for the
5 purpose of trying to get an independent perspective of
6 the efficacy of Mr. Withey's stewardship.

7 Q Okay. And you understand that they were engaged in
8 January of 2019, and that engagement was expanded in
9 February of 2019?

10 A I do.

11 Q And were you involved in the decision to retain --
12 expand the retainer and release Mr. Withey from his
13 duties?

14 A Yes, sir, I was.

15 Q Now, have you ever met anyone from the Alberta Energy
16 Regulator?

17 A No.

18 Q Have you ever had a telephone conversation with anyone
19 from the Alberta Energy Regulator?

20 A No.

21 Q Has anyone from the Alberta Energy Regulator ever
22 reached out to you looking for information with respect
23 to Trident's operations or ultimately the orders as
24 against Trident (Alberta) and Trident (WX)?

25 A But for the letter we received by registered mail, no.

26 Q Okay. Has anyone from the AER reached out to you

1 seeking information with respect to the Section 106
2 declaration issued as against you and Mr. O'Brien?

3 A No.

4 Q Were you in Calgary at all between January and May of
5 2019?

6 A No.

7 Q Have you directly or indirectly managed or directed any
8 of the Trident entities since your resignation as a
9 director on April 30, 2019?

10 A No.

11 Q Have you signed any cheques or directed any deposits
12 with respect to Trident since April 30, 2019?

13 A No.

14 Q Did you understand that the Orphan Well Association
15 appointed to Trident a receiver over the various
16 Trident entities on or about May 3rd, 2019?

17 A Yes.

18 Q Has anyone from the receiver ever contacted you seeking
19 any information?

20 A No.

21 Q Has anyone from the receiver ever contacted you seeking
22 any advice or directions with respect to Trident's
23 operations, disclaimer, or sale of assets?

24 A No.

25 Q Did you ever receive the May 3rd invoice for payment
26 directed to Trident (WX) and Trident (Alberta)?

1 A No.

2 Q And were you in a position to cause Trident to pay
3 those invoices?

4 A No.

5 Q Were you in a position to cause Trident to post
6 hundreds of millions of dollars of security?

7 A No.

8 Q Were you a position to cause an agent to be appointed
9 on June 1, 2019?

10 A No.

11 Q Were you -- did anyone ask you to transfer well
12 licences by June 14th, 2019?

13 A No.

14 Q Did anyone ask you to update working-interest party
15 lists by June 14th, 2019?

16 A No.

17 Q And could you have done any of those things even if
18 requested?

19 A No.

20 Q Did you ever have any discussions with anyone from
21 Alberta Treasury Branches with respect to the April
22 sweep of accounts?

23 A No.

24 Q Have you ever spoken to Mr. Corbett?

25 A I don't believe so, no.

26 Q Have you ever spoken with Mr. Steidl or Mr. Ashraf from

1 the special loans group at ATB?

2 A I don't think so, no.

3 Q Did ATB ever ask you to assist in the sweep of the
4 accounts in April of 2019?

5 A No.

6 Q Did you understand that was done in accordance with the
7 longstanding practice and loan agreements between
8 Trident and ATB?

9 A Yes.

10 Q Sir, you've had the opportunity to hear Mr. O'Brien's
11 evidence, and based upon that and the questions I've
12 asked you this morning and the documents we reviewed
13 with Mr. O'Brien, do you adopt the submissions set out
14 in Exhibits 31.02 and 38.01 that we have reviewed with
15 respect to today's appeal proceeding?

16 A Yes, sir, I do.

17 Q And have you offered any inducement to any witness for
18 any evidence or submissions they might make with
19 respect to this proceeding?

20 A No, I have not.

21 Q Thank you.

22 Mr. Young, those are all my questions. And,
23 again, please ensure you're available via Zoom
24 hopefully without a power failure tomorrow afternoon
25 when scheduling is concluded.

26 A Thank you. I will.

1 Q Thank you.

2 (WITNESS STANDS DOWN)

3 MR. GORMAN: Madam Chair, I think we are
4 26 minutes ahead of where I expected, so perhaps we can
5 take a lunch break now. As I previously indicated,
6 Mr. Helkaa has suggested he is not available until 3 PM
7 today. I expect to be an hour or less with
8 Mr. Gwartney. So perhaps a lengthy break until 2 PM is
9 appropriate.

10 We'll get through Mr. Gwartney and Mr. Helkaa
11 today and begin -- Mr. Corbett and Mr. Darby were not
12 available today. So I've got them lined up at 9:00 and
13 sequentially tomorrow, which then, I believe, leaves us
14 with -- we will have tomorrow afternoon for all
15 witnesses to be available for the Panel cross, assuming
16 that the Panel or CLM requests all witnesses to be in
17 attendance, which then means we should be able to get
18 to Mr. Gosselin's evidence Wednesday morning, and then
19 we can decide whether it makes sense to conduct the
20 cross Wednesday or skip to Friday.

21 Sometimes having more time with my notes makes me
22 a little less verbose, but we certainly are very
23 mindful of Mr. Gosselin's requirement to be with his
24 family on Thursday, and we are, of course, respecting
25 that, whether he ends up splitting his cross or the
26 Panel cross or not.

1 THE CHAIR: Thank you, Mr. Gorman.

2 Thank you, Mr. Young, for your testimony.

3 A longer lunch break works for us. We will back
4 at 2. Again, this time is set aside for you,
5 Mr. Gorman, to -- however you want to manage it, and we
6 have made -- all of us have made ourselves available
7 for the week. So if you choose to conduct cross after
8 Mr. Gosselin's direct evidence on Wednesday or rather
9 save it for Friday, I leave that to you, and depending
10 on his direct evidence, you may choose otherwise.

11 MR. GORMAN: I think -- I think that's
12 right, My Lady. I have a script of some anticipated
13 questions, but the will say is relatively broad, so I'm
14 not sure how quickly I'll be able to -- to respond.

15 THE CHAIR: So we are available all week.
16 Other than Thursday that Mr. Gosselin is not available,
17 we are scheduled to be available, and we can be very
18 flexible with our timing. So however it works for your
19 clients and your witnesses and also CLM, that works for
20 us. So with that, we will see each other at 2 PM this
21 afternoon.

22 MR. GORMAN: Thank you.

23 THE CHAIR: Thank you.

24 _____

25 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

26 _____

1 Proceedings taken Via Remote Video

2

3 November 2, 2020

Afternoon Session

4

5 P. Meysami

The Chair

6 C. Chiasson

Hearing Commissioner

7 T. Stock

Hearing Commissioner

8

9 A. Hall

AER Counsel

10 F. De Luca

AER Counsel

11 T. Turner

AER Staff

12 A. Shukalkina

AER Staff

13 W. Handayani

AER Staff

14 E. McKellar

AER Staff

15 T. Wheaton

AER Staff

16

17 C. Ross

For Compliance and

18 K. Dumanovski

Liability Management

19

20 H. Gorman

For Requesters

21 A. Harvie

22

23

24 A. Vidal, CSR(A)

Official Court Reporter

25

26

1 (PROCEEDINGS COMMENCED AT 1:57 PM)

2 THE CHAIR: Welcome back, everyone. I
3 hope you had a chance to enjoy -- well, the ones who
4 are in Calgary -- the nice weather we have here. At
5 least please get out of the -- for five minutes.

6 And, with that, Mr. Gorman.

7 MR. GORMAN: Thank you, Madam Chair. The
8 next witness has unmuted himself and is on my screen.
9 It's Gary Gwartney from Veracity Energy Services Ltd.
10 If he could be sworn in or affirmed, please.

11 GARY GWARTNEY, Affirmed

12 Direct Evidence of the Requesters

13 Q MR. GORMAN: Thank you for attending this
14 afternoon, Mr. Gwartney. Could you just please confirm
15 your name for the record, please?

16 A Gary Gwartney.

17 Q And, Mr. Gwartney, you've just made an affirmation to
18 tell the truth. That affirmation is binding on your
19 conscience; is that correct?

20 A That is correct.

21 Q And you will be giving accurate evidence as if we were
22 all in a Regulator meeting room rather than a meeting
23 via Zoom during the COVID?

24 A Yes.

25 Q Sir, I'd ask you to refer to -- oh, and these numbers
26 have changed over the last few days, but the -- the AER

1 has been very efficient in putting the documents up.
2 I'm referring first to Exhibit 38.01, PDF page 54,
3 which should be on the screen shortly.

4 I need to see PDF page 54, please. There we go.
5 And if we could scroll down a bit, and we can get
6 Mr. Gwartney's picture and face in the middle of the
7 page.

8 Sir, I understand this is a page from Veracity
9 Energy Services' well site, which includes yours and
10 other team members' qualifications. Do you recognize
11 this, sir?

12 A Yes, I do.

13 Q And perhaps using yours as a guide, can you briefly
14 outline your education and professional experience?

15 A Yeah. I have a -- I graduated from the University of
16 Alberta with a BSc in mechanical engineering, and -- in
17 1988 and went immediately to work in the oil field. So
18 I've been working more than 30 years in all various
19 areas of oil and gas operations and exploitation,
20 primarily here in Canada in Alberta, but also in BC,
21 Saskatchewan, and overseas at -- in Asia and South
22 America.

23 Q Thank you.

24 And, sir, looking at the last line, what does it
25 mean to be a professional engineer in good standing in
26 the province of Alberta? What is required in that

1 regard?

2 A I'm registered with APEGA, the Association of
3 Professional Engineers in -- in Alberta, and I pay my
4 dues, and I maintain a permit to practice engineering
5 in Alberta.

6 Q Now, if we could scroll down a bit, there's a reference
7 to Wendy Woolsey and a large picture on the next page.
8 Can you tell me with respect to Trident if Ms. Woolsey
9 had some involvement?

10 A Yes. Originally, in our original assessment of the
11 Trident assets, company, if you will, in January of
12 2019. And then subsequent to the -- to -- to the
13 Redwater decision and the removal of the management
14 at -- at -- at Trident, I was hired by Origami --
15 actually, correction, by Trident to act as an interim
16 COO; and Wendy act -- acted as well on behalf of -- or
17 on behalf of Veracity for Trident as the acting or
18 interim CFO of Trident at the time.

19 Q All right. If we could refer to page 57. It's another
20 page from the website. This might give you some
21 overview or guidance. Could you explain what
22 Veracity's business is, the expertise, from inception
23 to production page?

24 A Yeah.

25 THE CHAIR: I apologize for interrupting
26 your examination. It has been brought to my attention

1 that the audio webcast is not working, and the parties
2 may -- I don't know if the parties have people
3 listening in to the audio and if you would like us to
4 pause until they fix it, or -- I'm going to ask you
5 first since it's your examination and then ask counsel
6 for CLM.

7 MR. GORMAN: Certainly the requesters are
8 on the line. I believe Mr. Ellis was viewing this
9 morning on the webcast or the -- the alternate site. I
10 have not received an email from Mr. Ellis that I can
11 see that he is having any difficulties or concerns, but
12 perhaps if we wait a minute or two, we can see if we
13 hear from anyone that they're having difficulties or
14 perhaps Mr. Young or O'Brien know if Mr. Ellis was
15 rejoining us this afternoon.

16 MR. YOUNG: Well, I mean -- this is Jeff
17 Young, and I would offer that I don't think we need to
18 wait for Max for these proceedings. I can communicate
19 with him directly, or he can watch through the public
20 portal.

21 MR. GORMAN: Very good. Oh, I thought I
22 understood the Chair to be saying the public line's not
23 working. That's what we're waiting on.

24 THE CHAIR: That's correct. Yeah.

25 MR. YOUNG: Well, then -- thank you very
26 much, Madam Chair. We don't want to interrupt the

1 proceedings to include him, but it's very kind of you
2 to include him or be thoughtful about him. So it's
3 okay. If he -- if and when it starts to work again,
4 that's fine.

5 THE CHAIR: Okay. Thank you for that, and
6 I'm going to hear from counsel to CLM, please.

7 MR. DUMANOVSKI: Madam Chair, we have staff
8 listening to the other stream, and we would like to
9 pause the hearing until -- until the stream is
10 re-established again, if that's possible.

11 THE CHAIR: Okay. I think that may be
12 appropriate.

13 I'm just going to ask, Ms. Turner, how the -- when
14 do you perceive the technical difficulty may be
15 resolved?

16 MS. TURNER: It shouldn't be too long.
17 Anastasia is working on it, and this is what's been
18 happening off and on for the last week or so in the
19 other hearing. So we're -- we're aware of the problem.
20 It's -- it's not on our end; it's on Resolve's end, the
21 company.

22 THE CHAIR: Do you think five minutes is
23 sufficient?

24 MS. TURNER: Yes. And then if it's not
25 working, we can come up with an alternative.

26 THE CHAIR: Okay. So we can go into

1 breakout rooms for five minutes and then come back
2 since -- or we can stay here.

3 MR. GORMAN: I think I will just stay here
4 and turn off my camera and mute my line until we hear
5 we're good to continue.

6 THE CHAIR: Sounds good. Thank you. I
7 appreciate your patience.

8 (ADJOURNMENT)

9 Q MR. GORMAN: Mr. Gwartney, have you
10 returned and unmuted yourself?

11 A Yes, I have.

12 Q Okay. Now, looking at page 57, which is another page
13 from the Veracity website, could you perhaps use this
14 as a guide and explain to the Panel and the other folks
15 on the line Veracity's business?

16 A It's been very fortunate that we've had so much time
17 on -- on the screen; I think everybody had a chance to
18 review that. But, effectively, Veracity is
19 a full-service oil and gas consulting company, and it's
20 capable of supplying consultants in most aspects of a
21 producing oil and gas company, including operations,
22 accounting, engineering, geology, completions,
23 exploitation, and management.

24 Q All right. And prior to January of 2019, did Veracity
25 have the opportunity to interact with the AER on
26 various of its engagements?

1 A Yes, of course.

2 Q Okay. And does Veracity own any of its own properties,
3 pipelines, well sites?

4 A No, it does not.

5 Q Okay. Now, when was Veracity first contacted regarding
6 a potential Trident engagement?

7 A Just before Christmas. I believe it was the 22nd of
8 December 2018.

9 Q And by whom was Veracity contacted?

10 A Mr. O'Brien contacted us --

11 THE COURT REPORTER: I'm sorry. I didn't catch
12 Mr. Gwartney's answer there. It was a bit quiet.

13 A I'm sorry. Mr. O'Brien contacted Mr. Wilneff, who is
14 the president of our company.

15 Q MR. GORMAN: Okay. And how did you
16 personally become involved in any discussions?

17 A Mr. Wilneff discussed the opportunity of working for
18 Origami at that time, and I had -- did some research
19 into the company at that time before Christmas.

20 Q Okay. And we also had heard from Mr. Young this
21 morning. Did you ever speak to Mr. Young or take
22 directions from Mr. Young?

23 A He was on a call or two that I had been on, but I never
24 took any direction from Mr. Young. Almost exclusively
25 from Mr. O'Brien.

26 Q And at some point, was there a meeting with Mr. O'Brien

1 in Calgary?

2 A Yes. I met with Mr. O'Brien in Calgary several times.

3 Q Okay. I'm talking about leading up to an engagement.

4 Did you have an interview or a beauty-pageant-type
5 meeting?

6 A Yes, we did. Veracity presented our capabilities to
7 Mr. O'Brien and Mr. Ellis.

8 Q Okay. And did ultimately that lead to a letter of
9 engagement between Trident and Veracity?

10 A Yes, it did.

11 Q And if you could look at PDF page 58 of the
12 Exhibit 38.01. Do you recognize that document?

13 A Yes. That is our letter of engagement --

14 Q And is this --

15 A (INDISCERNIBLE - OVERLAPPING SPEAKERS)

16 Q And is this a typical Veracity form of engagement
17 letter?

18 A Yes, it is.

19 Q And, sir, if we refer to page 62, it should be
20 Appendix A, "Scope of Work". Was this the scope of
21 work that was discussed and agreed to between Veracity
22 and Trident?

23 A Yes, it is.

24 Q And did Veracity perform these services through the end
25 of January 2019?

26 A Yes, we did.

1 Q Okay. And, generally, what were Veracity's
2 observations or recommendations to Trident through the
3 end of the -- the first three weeks plus of the
4 engagement?

5 A Our primary -- after reviewing the details, our primary
6 conclusions were that the project was cash-flow
7 deficient in 2019. Even with restructuring, the --
8 Trident would not have had a plausible cash flow in
9 2019. And then the -- our recommendations went on to
10 what restructuring we would propose and what we would
11 do with different aspects with respect to staffing and
12 operations of the company.

13 Q Okay. Did Veracity make any operational
14 recommendations to Trident that were not implemented?

15 A I would have to review that document, but I don't
16 believe there are any significant recommendations that
17 were not implemented.

18 Q Okay. There was no "something is leaking", "something
19 is on fire", some drastic remedial measures that you
20 had identified?

21 A No, not at all.

22 Q Okay. And I understand that the engagement between
23 Trident and Veracity was expanded in early February of
24 2019?

25 A That's correct.

26 Q And if you look at the document starting at PDF

1 page 63, do you recognize this February 2nd, 2019,
2 agreement?

3 A Yes, I do.

4 Q And is it fair to say that you understood that
5 Veracity's scope of engagement was being expanded in
6 conjunction with Trident making some decisions with
7 respect to its CEO on January 31?

8 A Yes, I did.

9 Q Okay. And the expanded scope of work, is it set out on
10 page 68 of the -- the exhibit, again, Appendix A,
11 "Scope of Work"?

12 A Yes. That's the -- that was the scope of work of the
13 February engagement.

14 Q Okay. And did Veracity perform these services for
15 Trident from February 2nd on?

16 A Yes, we did.

17 Q Until what date, sir?

18 A April 29th, on or about.

19 Q Okay.

20 A April 30th, I guess, would be more accurate.

21 Q All right. And in that regard, did you meet from time
22 to time with management and directors?

23 A Yeah. Basically met with Mr. O'Brien and Mr. Ellis at
24 least -- at almost -- definitely daily and quite often
25 more often than that.

26 Q Okay. Did Mr. O'Brien and Mr. Ellis seem conscientious

1 with respect to the efforts being undertaken by
2 Veracity?

3 A Yes.

4 Q And responsive to recommendations?

5 A Yes.

6 Q And did you also meet with Trident's legal and
7 financial advisors from time to time?

8 A From time to time.

9 Q Okay. And did you meet with the AER's regulator from
10 time to time?

11 A Yes, I did.

12 Q Now, sir, if I could refer you to page 71 from the same
13 exhibit. I show it as an email from you to Mr. O'Brien
14 on March 14th, 2019. Do you recognize that as an email
15 that you have created?

16 A Yes, I do.

17 Q Okay. And does that help you recall a meeting on or
18 about March 14th with various AER personnel?

19 A Yes, it does.

20 Q And you reference "Patricia and I met with the AER".
21 Who was Patricia?

22 A Patricia was the regulatory person at -- at Trident at
23 the time.

24 Q Okay. And the four names from the AER listed in your
25 email is an accurate representation of who from the AER
26 attended that meeting?

1 A Yes, it is.

2 Q Okay. And is the summary, taking a look at it now, a
3 correct reflection of what you had discussed at that
4 meeting?

5 A Yes, it is.

6 Q Okay. And the starting point in the summary was:
7 (as read)

8 The AER was very open. Discussed the plan
9 and worked with us.

10 Is that accurate?

11 A Yes, that's correct.

12 Q Okay. And can you just briefly describe what was the
13 plan as of mid-March or what the request from Trident
14 was?

15 A Well, in the previous -- under the previous management,
16 Trident had made some obligations to do a certain
17 amount of abandonment and reclamations in 2019, and in
18 our original January report, we had recognized that the
19 obligations that they had committed to were quite
20 onerous financially to Trident, especially given the --
21 the negative cash flow that the company was
22 experiencing in 2019. And then our -- our January
23 recommendation -- we had recommended that -- that a --
24 a regulatory concession would likely be required with
25 the -- with the AER with respect to our -- with respect
26 to Trident's then current abandonment and reclamation

1 obligations, and that is what I'm referring to in that
2 sentence there.

3 Q Okay. As at this time, were there any outstanding
4 abandonment orders as against Trident?

5 A Not that I'm aware of that -- there weren't
6 specifically outstanding orders at that time.

7 Q Okay. Were you aware of any abandonment orders through
8 April 30th, 2019?

9 A No -- no orders, but they -- Trident had made
10 commitments to do a certain amount of abandonments, and
11 that's -- Trident subsequently had created this -- this
12 presentation to -- to make some concessions with the
13 AER so that -- to avoid any outstanding orders.

14 Q Okay. And, sir, can you turn to page 72. And I'm
15 looking at the second full paragraph starting with the
16 line "Trevor and Chris were very clear". These were
17 your notes from what Trevor Gosselin and Chris Schacher
18 told you at the March 14th meeting?

19 A Yes. Those are my notes from that very meeting. When
20 I got back after the meeting, I wrote this email to
21 keep -- to keep my notes in order.

22 Q Did anyone from the AER at this meeting express any
23 concerns that Trident was improperly maintaining the
24 assets?

25 A No.

26 Q Did anyone express any concern that they were

1 squandering the resource?

2 A No.

3 Q And, sir, if we turn to page 73 and then 74, is this
4 the document that was the proposal that you were
5 talking about with respect to effecting the timing of
6 an amount of reclamation operations through 2019?

7 A That email alludes to it, and the attachment looks like
8 the document that I was -- the proposal that I was
9 referring to.

10 Q Okay. And did you ever get a response from the AER
11 with respect to this proposal?

12 A Not that I know of.

13 Q And from then through the middle of April, did you
14 continue to work with Mr. Ellis, Mr. O'Brien, and
15 Trident?

16 A Yes.

17 Q Okay. And did you understand that they were trying to
18 find a solution for Trident's stakeholders with respect
19 to its cash-flow and liquidity issues?

20 A Yes.

21 Q And did you understand Mr. O'Brien and Mr. Ellis were
22 continuing to act in good faith?

23 A That would be my opinion, yes.

24 Q Did you ever have any discussions that Trident could or
25 should seek to prefer a payment to ATB as a secured
26 lender to the detriment of the AER?

1 A No.

2 Q Okay. I'd now like to refer you to -- and I apologize
3 to the AER; I seem to have missed this from my list --
4 Document 31.02, page 62.

5 And if we could scroll down a bit, Mr. Gwartney,
6 this is an internal report from Chris Schacher to
7 various AER people, and if we look at the bottom of
8 page 62, there's an email dated Monday, April 15th. It
9 starts: (as read)

10 We met with Gary Gwartney representing
11 Trident this morning. Some details below.
12 Do you recall another meeting with the AER on or about
13 April 15th?

14 A Yes.

15 Q And do you agree with Mr. Schacher's description of the
16 discussion that hasn't been redacted on the top of
17 page 63 wherein at the third bullet, he provides:
18 (as read)

19 They do not appear to be a danger to public
20 health or environment at this time, nor do
21 they appear to be squandering the resource.
22 Do you recall that being discussed?

23 A They believe it -- yes. I was at that meeting.

24 Q Okay. And did Trident do anything different between
25 April 15th and 29th with respect to becoming a public
26 health or environmental danger or --

1 A No.

2 Q -- squandering the resource?

3 A No. Between April 15th and the 29th, we were still
4 under the perception that we would likely be going into
5 a CCAA.

6 Q Okay. And during your discussions with the AER, did
7 they ever suggest they would be filing an order
8 requiring the posting of hundreds of millions of
9 dollars of security?

10 A No.

11 Q Okay. Now, sir, if you could look to -- back to the
12 previous exhibit, 38.01, page 39. It should be a
13 notice of default from ATB to Trident April 23rd, 2019.

14 Is this a document you received a copy of on or
15 before -- or -- on or shortly after April 23rd?

16 A I actually don't recall seeing this document at that
17 time.

18 Q Okay. Did you learn at some point that ATB had issued
19 a default --

20 A Yes.

21 Q -- notice to Trident?

22 A Yes.

23 Q And were you aware from April 9th or onwards how ATB
24 managed Trident's operating account?

25 A Yes.

26 Q Okay. And did you understand it was a result --

1 revolving accounts and that any deposits would
2 automatically be used to reduce the outstanding
3 indebtedness?

4 A Yes.

5 Q And Trident never, during 2019, got to a positive
6 balance? It was always owing money under the account?

7 A That's my understanding.

8 Q Okay. Did you learn at some point that there would not
9 be a CCAA filing pursued by Trident?

10 A On or about the 29th of April.

11 Q Okay. And in that regard, were you surprised?

12 A Yes, I was.

13 Q Did you believe Trident was making efforts to attempt
14 to pursue a CCAA to minimize the adverse effect on
15 stakeholders?

16 A Yes.

17 Q And when you learned of it, would that be through being
18 copied on an email from Mr. O'Brien to the AER, which
19 would be Document 31.02, PDF page 174?

20 A No. I believe that he told me personally.

21 Q And would that have been late in the afternoon or early
22 evening of the 29th?

23 A Yes.

24 Q And what did Mr. O'Brien advise or request Veracity do
25 once this inability to fund the CCAA became apparent on
26 the 29th?

- 1 A He said that -- he had asked me to prepare a plan
2 for -- as -- as quick and as safe as possible to secure
3 the assets and shut everything in and go about advising
4 the staff, in particular the field staff, of the
5 situation.
- 6 Q Sir, if you could refer to Exhibit 31.02 at page 174.
7 MR. GORMAN: I'm sorry. It should be
8 Exhibit 31.02, page 174. I think you're in the wrong
9 exhibit, whoever is handling the screen. 174, please.
10 Okay. There we go. Thank you.
- 11 Q MR. GORMAN: This is an email from
12 Mr. O'Brien at 5:54 PM on April 29th. Do you recall
13 getting a copy of this email?
- 14 A Yes.
- 15 Q Did you assist in drafting it?
- 16 A Yes.
- 17 Q Okay. And the paragraph starting "The key risk points
18 we are addressing tomorrow", who came up with that key
19 list, sir?
- 20 A I did.
- 21 Q And were you instructed to implement them with all due
22 dispatch?
- 23 A Yes.
- 24 Q And did you do so?
- 25 A Yes.
- 26 Q And if we turn to page 175, there appears to be an

1 email from you to Mr. Schacher and others at the AER
2 from 11:13 on April 30th. Do you recognize that you
3 created that email update?

4 A Yes, I did.

5 Q And at that point in time, at the request of
6 Mr. O'Brien and Trident, were you continuing to
7 undertake as much shut-in of priority issues as was
8 possible?

9 A Yes, we were.

10 Q If you could then look at page 177 from the same
11 exhibit, this is an update from you to the AER copied
12 to Mr. O'Brien and others later that same day?

13 A If that's a question, yes, it is.

14 Q Okay. And this, again, is an additional update of the
15 efforts that had been undertaken in approximately
16 24 hours since the funding wasn't able to be arranged?

17 A That's correct.

18 Q And you embolden the paragraph, sir. Could you read
19 that for the record?

20 A Yes, I did. It says: (as read)

21 It should be noted that despite being
22 informed that the contractors would not be
23 paid for April invoices, not a single
24 contractor refused to work, and some even
25 came in from their days off to assist with
26 shutting in the wells and facility. The

1 Trident field contract personnel were
2 exemplary for securing the facilities and
3 wells.

4 Q And you gave that report believing it to be true?

5 A Yes, I did.

6 Q Because it was true?

7 A To the best of my knowledge, every one of them.

8 Q Thank you.

9 If we could turn to page 178, do you recognize the
10 response that you received from Mr. Schacher at the
11 AER?

12 A Yes.

13 Q And do you agree with his conclusion that it was a
14 refreshing and admirable act during an unfortunate
15 situation?

16 A Yes, I do.

17 Q Now, after April 30th, did Mr. O'Brien, Ellis, or Young
18 direct Veracity to do anything else with respect
19 to Trident's assets?

20 A No, they did not. At least they didn't direct me.

21 Q Are you aware of Veracity doing anything at the behest
22 of O'Brien, Young, or Ellis?

23 A No.

24 Q Okay. And did you later learn that
25 PricewaterhouseCoopers had been appointed as receivers?

26 A Yes, I did.

1 Q And what was your first contact with anyone from
2 Pricewaterhouse?

3 A I don't remember specifically, but I believe it was
4 Mr. Darby.

5 Q And would that have been early in the week following
6 the -- May 3rd, which I can tell you, by calendar, was
7 a Friday appointment?

8 MR. DUMANOVSKI: Madam Chair, my friend has
9 been leading the witness in the last 20 minutes. This
10 is a direct evidence, and he has to ask open-ended
11 questions and not cross-examine his witness.

12 Q MR. GORMAN: What did Pricewaterhouse ask
13 you to do?

14 A They contacted us after they were appointed receiver
15 and asked if we were able to assist them with managing
16 the asset going forward under the receivership.

17 Q Was this similar to the services you had been providing
18 to Trident up to April 30th?

19 A As far as our functions were concerned, it was very
20 similar, yes.

21 Q Okay. And what steps did you take to complete the
22 shut-in?

23 A We were -- we were engaged by PricewaterhouseCoopers at
24 that time, and then we set forward a plan to -- to
25 continue with the shutting in of any wells that weren't
26 shut-in, de-pressuring of any lines, and then

1 subsequently winterizing the facility.

2 Q And how long did that take?

3 A The original shut-in took up to six weeks for access to
4 all of the wells simply because there was a huge number
5 of wells and -- and gaining access onto private lands
6 for wells that -- where the landowners had shut Trident
7 operators off.

8 Q Could it have been completed in 24 hours?

9 A No, I don't believe it could've.

10 Q Now, did Mr. O'Brien or Young give any directions to
11 you following May 3rd?

12 A No.

13 Q Had you even spoken to them following May 3rd?

14 A No.

15 Q Did you ever reach out to them for directions after
16 May 3rd?

17 A No.

18 Q Have Mr. O'Brien or Young or any party offered any
19 payment or inducement to you for your evidence today?

20 A No.

21 Q Thank you, sir. Those are all of my questions. It may
22 be that you will be asked to return tomorrow afternoon
23 in the event the Panel or CLM has any questions for
24 you.

25 A Okay.

26 MR. GORMAN: Madam Chair, I believe that

1 gives us a ten-minute break where we can turn off the
2 video, and I will try to encourage Mr. Helkaa to join
3 as close to 3:00 as possible.

4 THE CHAIR: Thank you, Mr. Gorman.

5 Thank you Mr. Gwartney.

6 (WITNESS STANDS DOWN)

7 THE CHAIR: You would please -- if you
8 could please let Ms. Turner know when your next witness
9 is ready, and we will reconvene then. For now, we are
10 taking a break for ten minutes, aiming for 3:00, but if
11 it's past 3:00, you just let us know. Thank you.

12 MR. GORMAN: Thank you.

13 (ADJOURNMENT)

14 THE CHAIR: Okay. Thank you, everyone.

15 Mr. Gorman, you may proceed.

16 MR. GORMAN: Thank you, Madam Chair.

17 Mr. Helkaa is now here on mute on my screen. Perhaps
18 if the oath or affirmation could be administered to
19 him, please.

20 DERYCK HELKAA, Sworn

21 Direct Evidence of the Requesters

22 Q MR. GORMAN: And please confirm your name
23 for the record.

24 A Deryck Helkaa, H-E-L-K-A-A.

25 Q And, Mr. Helkaa, you just took a Scottish oath to tell
26 the truth. That oath is binding on your conscience?

1 A It is.

2 Q And you understand, notwithstanding the fact that we're
3 here today on a Zoom call, the oath is of the same
4 significance as if we were all in an AER regulatory
5 hearing?

6 A I do.

7 Q I would ask that the Exhibit 38.01, PDF page 46 be
8 pulled up on the screen for you and the Panel. That's
9 an old exhibit. Don't worry. I'm not going to ask you
10 about the 200-page loan agreement. I was looking for
11 page 46 of 38.01.

12 Sir, do you recognize this as being your CV?

13 A I do.

14 Q Could you briefly just give an overview of your
15 educational experience and then, once we're done that,
16 your professional experience, including your current
17 position?

18 A Sure. I'm -- I have my BA in economics. I'm also a
19 CPA, CA. I'm a CRIP, which is chartered insolvency
20 restructuring professional, and a licenced insolvency
21 trustee. That will be my educational background.

22 With respect to my professional experience, I'm a
23 junior managing director at FTI Consulting. I've
24 been -- you know, I have over approximately 20 years in
25 restructuring. The last 17 I would've -- would've been
26 focused in western Canada and primarily in the oil and

1 gas sector. I've worked with -- you know, both
2 on the -- for lenders and company-side engagements. I
3 have significant experience as a court officer, being a
4 court-appointed receiver or a monitor in CCAA
5 proceedings along with financial advisors to board of
6 directors, companies, and lending syndicate.

7 Recent oil and gas experience would be Pengrowth,
8 Bonavista, Lightstream Energy, Endurance Energy,
9 Quicksilver, to name a few of the more recent examples.
10 But that's a high level of my work experience.

11 Q Okay. Sir, under associations, you reference the
12 Turnaround Management Association and the Insolvency
13 Institute of Canada. Can you tell me what those
14 organizations are and what your involvement with them
15 is?

16 A Sure. The -- the Turnaround Management Association is
17 a -- it's an international association for
18 restructuring professionals from bankers, lawyers,
19 accountants, things like that. It's a bit of a --
20 socializing and also some, you know, educational
21 content. I was their -- I was the former president of
22 the chapter -- of the northwestern chapter, which
23 covers BC, Alberta, the Prairies, and also Oregon.
24 That's the Turnaround Management Association. And I'm
25 still a current member of TMA.

26 And the next one I think you said, Mr. Gorman, was

1 the Insolvency Institute of Canada, the IIC?

2 Q That's right.

3 A Yeah. The Insolvency Institute of Canada is a -- it's
4 a -- a group, again, of some bankers, some lawyers, and
5 accountants where you are invited to join, and the -- I
6 think the general criteria is that you have to have
7 over a certain amount of experience focusing in
8 restructuring. And I won't put this in right away, but
9 it's -- it tries to attract, like, the -- I think it's
10 the top 125 professional -- professionals in Canada.
11 It's a Canadian ...

12 And so you apply, and then if you meet the
13 criteria, you get invited to join. And I've been a
14 member of the IIC for the past -- probably past eight
15 years, approximately. And I'm currently the treasurer
16 of the IIC and on the board of directors.

17 Q Okay. And if we scroll down to the bottom of page 46,
18 I think you had mentioned some of the cases that are
19 referenced therein. Can you tell me about your
20 experience in oil and gas CCAAs or receiverships?

21 A Some of my -- some of the specific experience or
22 generally some of the --

23 Q Just -- just generally scope, number.

24 A Yeah. I -- with respect to oil and gas, like,
25 probably -- specific on E&P experience, I would say I
26 probably would've been involved as the lead on over 20

1 either receiverships or CCAA -- what I'll call "court
2 appointment" on that side. Some of the more recent
3 was -- I think I mentioned -- would've been, like --
4 from a pure CCAA would be, like, Endurance Energy,
5 Quicksilver. We were the monitor in the CCAA. Twin
6 Butte, we were the court-appointed receiver. Those are
7 some -- some more recent examples of -- of my
8 experience.

9 And generally when you're -- I don't know,
10 Mr. Gorman, if you want to get into, kind of, our role
11 as a monitor or a receiver, but let me know if I've
12 gone far enough or if you'd like some more.

13 Q No. Why don't you explain your role as a monitor
14 versus a receiver and also the role of directors in a
15 CCAА versus a receivership.

16 A Sure. I apologize. Just a sec. My -- my monitor just
17 blacked out here. There.

18 When -- in the role of the monitor, obviously,
19 just is a -- is slightly different, obviously. You're
20 more -- you often get involved, you know, prior to the
21 CCAА filing, and you're working with the company and
22 the company's management team to look at cash flows and
23 prepare it to go through a CCAА filing and all the
24 issues with, you know, dealing with employees, dealing
25 with trade creditors and, you know, making sure you
26 have proper DIP financing in place, things like that.

1 So it's more -- you're generally dealing with -- it's a
2 slightly different role when you're a court-appointed
3 monitor. Obviously with respect to a court-appointed
4 receiver where -- while you're both reporting to a
5 Court in both circumstances, a court-appointed receiver
6 is -- obviously you are -- the assets vest with you.
7 You -- you know, you are effectively, for lack of a
8 better term, the -- the board and the CEO of the
9 company. You're making all the decisions about what to
10 pay, employees to retain. You're -- you know, you
11 are -- and -- and, really, you're in control. You
12 know, in -- in running the sale process, you would be
13 making all the decisions, effectively like the board of
14 directors or the management team would be in a CCAA.

15 As a monitor in a CCAA, you're there as a -- you
16 know, you're reporting to Court, but you wouldn't have
17 the actual specific, you know, decision-making power
18 you would as -- as a court-appointed receiver. So you
19 attempt to -- you try to work with management, and
20 obviously they'll share your views because the
21 ultimate -- you know, if the company wants to do
22 something that the monitor doesn't agree, obviously,
23 then you -- you know, your -- your -- your role is that
24 you could report to Court, but you can't make a
25 decision where -- as in a court-appointed receiver,
26 you're -- you're effectively running the operations at

1 a high level, the difference in the two roles between
2 monitor and receiver.

3 Q And in your experience, what do directors of a company
4 do upon the appointment of a receiver?

5 A Upon the -- sorry. The -- you -- you just cut out
6 there. I think you were at the appointment -- or
7 appointment of a receiver, what happens to the
8 directors?

9 Q Correct. What do they typically do?

10 A You would typically -- generally they would resign
11 probably even before the -- you know, if you -- you
12 know, on the eve of going to court or -- or immediately
13 upon the granting of the receivership order, the
14 directors resign.

15 Q Okay. And, sir, with respect to Trident, when were you
16 first contacted regarding a potential engagement
17 involving Trident?

18 A We were -- when I look back -- we were contacted early
19 in April originally about a possibility, but I -- we
20 were formally -- got formally involved later in April.
21 I think it was, like, April 20th or 21st, around that
22 specific time period, where we actually got going and
23 looking at cash flows and working with management.

24 Q And what was discussed with Trident or their advisors
25 with respect to a potential CCAA --

26 A CCAA --

1 Q -- (INDISCERNIBLE - OVERLAPPING SPEAKERS) involvement?

2 Yes.

3 A The -- the primary focus was we were working with the
4 company to -- to mock-up or -- or derive some
5 short-term cash flows and what -- what financing was
6 needed to get it through a -- a CCAA filing. So the
7 company had its base case forecast, as companies
8 typically do, and we work with the company to determine
9 whether there are certain cost savings that can be
10 implemented or -- or if there was going to be a -- any
11 acceleration of some payables that you often get in a
12 CCAA. So we were working primarily with the company to
13 say, What is the minimum amount of cash you need to get
14 through a -- a filing is what the -- the primary focus
15 was on. And going back, working with the company's
16 advisors on what was an expedited time period to go
17 through a SISP and what cash flows did you need to
18 support that? That was our -- our primary focus when
19 we were engaged.

20 Q Okay. And, sir, in your experience prior to Trident,
21 would you have been involved in negotiations or
22 dealings with the AER from time to time?

23 A Yeah. We would've for sure dealt with the -- the AER
24 in previous -- you know, whether you're sell -- selling
25 assets or things like that. Correct.

26 Q Okay. Now, sir, if I could refer you to Exhibit 31.02,

1 PDF page 32. It should be the start of a short
2 document. We'll start with the title page to see if
3 you recognize the document.

4 A Yeah. This -- yes, I recognize this document.

5 Q Okay. And can you generally describe what your
6 involvement was in this document and -- and what you're
7 intending to convey?

8 A Yeah. On this document, we were primarily -- and I --
9 I -- I just see the title page, but going -- I've seen
10 the document -- is -- it was our summary of our
11 forecast, like, the presentation, basically, of what
12 the DIP loan would need to be or how much financing was
13 needed to get it through -- as I said, the expedited
14 sale process.

15 So this would be -- it would've been derived,
16 from, you know, FTI and our team working with
17 management, and also I think Veracity is out there to
18 try to refine and come up with the best, What cash do
19 we need to get through a CCAA filing? And then working
20 with Peters on what they thought could be a -- the time
21 period that they needed to go through a two-phase sale
22 process.

23 So the bulk of this document was the actual
24 short-term -- I think it's -- I can't remember if it's
25 a 13-week cash flow or -- or something to that
26 effect -- and also the main assumptions on the --

1 Q Sorry. We needn't test your memory. We can look at
2 page 33.

3 A Okay.

4 Q And perhaps you can describe that page.

5 A Yeah. This is just our -- yeah. So this would be
6 our -- yeah. This would be our 13-week cash flow
7 forecast where we would work with companies and input
8 together, like, what we thought revenues were going to
9 be on a pure cash basis. This wouldn't be accrual, so
10 you would get down to, Well, how many OpEx would we
11 need to spend in Week 1? What's our payroll? When do
12 we think we're at (INDISCERNIBLE). So this would be
13 the granular cash flow that you would -- if you filed a
14 CCAA, this would be the base of what gets filed with
15 the Court.

16 Q All right. And, sir, if we look at the bottom line,
17 "closing cash balance", why is there no cash in
18 Week Zero, April 26th?

19 A Oh, I -- we started with zero cash was the --

20 Q Correct.

21 A -- was the question?

22 Because this is -- the Week 1 was the week after
23 revenue date, so -- and the way -- and I think Trident
24 was typical to most E&P companies. When revenues come
25 in, there is no cash. It just gets offset or -- or
26 swept or applied against the revolver. So this would

1 be looking post, like, April 26th after the revenue
2 date and what would be the new cash that you'd need to
3 get through. So, effectively, if you look, you would
4 have -- the first -- first revenue comes in in Week 5,
5 but you'd -- but you would need all the cash up to that
6 point for OpEx. So this was really to try to size
7 it -- what DIP you needed to get through the sales
8 process.

9 Q Okay. And, sir, you said the sweeping of accounts is
10 common? It's something you've seen in previous
11 matters?

12 A Yeah. You know, I'm not -- not a banking expert, but
13 it's pretty typical. Companies -- the way it -- it's
14 like an overdraft account, and maybe that's too simple,
15 but when revenues comes in, they get sold. For
16 companies owed 20 million and revenues come in at 5,
17 well, now the -- that line goes down to 15, and then
18 you redraw it back up as you get to your next revenue
19 date.

20 Q Sir, I'd ask you to look at page 37 in the same
21 document.

22 A Yes.

23 Q This is entitled "Decision Tree". Can you describe
24 this page to us, please.

25 A Yeah. The -- I -- what we were trying to do is really
26 map out the alternatives that Trident would have, and

1 this was, you know, both from a -- you know, just
2 whether -- if -- if you could do a DIP charge, how much
3 time you needed and what the options were if you could
4 get a -- a -- a priming loan. So that was -- it was
5 really trying to lay out the scenarios.

6 And also a bit of this was receivership versus
7 CCAA and -- and our thoughts of did one court filing
8 make sense versus the other? And kind of compare and
9 contrast is what this -- what this decision tree tried
10 to lay out.

11 Q Okay. And who created this decision tree and the
12 results of the "yes" and "no"?

13 A Yeah. It would've been for sure FTI. It -- it
14 would've been a combination of myself and the FTI team.

15 Q Okay. And who had the ability to decide whether the
16 AER was to allow priming DIP charge? Is that something
17 that was in Trident's control?

18 A To -- no. I don't -- it wouldn't be in Trident's
19 control. It would be for sure in AER's control, and
20 also, I guess, ATB might have some say in that too.
21 I'm not sure. But, yeah -- no, Tri -- Tri -- this
22 document to be -- was really to get the parties there
23 to show how much money is needed and wherever that
24 money came from. You know, that's -- that's what this
25 was to lay out and -- and also the best structure
26 moving forward --

- 1 Q Okay.
- 2 A -- given the circumstances.
- 3 Q Was that in Mr. Young and O'Brien's control?
- 4 A To -- for the DIP charge?
- 5 Q Correct. For the AER --
- 6 A No.
- 7 Q -- to allow priming.
- 8 A No, I don't believe so.
- 9 Q And do you know where this report was distributed to?
- 10 A Yeah. This -- I know there was a couple. Like, this
11 would've been certainly to the -- we would've went to
12 the company with this. We walked through the -- ATB
13 with the cash flows specifically, I recall, and also I
14 believe this document would've went to the AER. I'm
15 just -- there was a lot of meetings there in that short
16 time frame.
- 17 Q Okay. Well, perhaps, sir, I could refer you to
18 Exhibit 38.01 starting at page 48.
- 19 A Okay.
- 20 Q Sir, if you look at the -- the second email in the
21 chain, it's an email from Mr. Kleebaum to you and
22 various parties at the AER copied to other FTI people
23 and Mr. O'Brien. Do you recognize this email?
- 24 A Yeah, I -- I do recognize the email.
- 25 Q Okay. And who's Robert Kleebaum?
- 26 A He's a -- he's one of my colleagues at FTI. He

1 would've been on the core FTI team on -- for Trident.

2 Q Okay. And would it be accurate that Mr. Kleebaum was,
3 under his email, attaching the most recent cash flows
4 and related assumptions?

5 A Correct.

6 Q If we look at page 50, a couple of more pages in,
7 there's a similar document with a different date. Do
8 you recognize that?

9 A Yes.

10 Q And then page 51 is what, sir?

11 A That -- I'd have to -- I -- I believe -- yeah. This
12 would've been -- I think we were refining the cash
13 flows all the way. So this would be the updated --
14 same -- same document as what was a couple days
15 earlier, just some of the -- as you do, we kept
16 refining the forecast. So I think this is just an
17 updated cash-flow forecast.

18 Q Okay. And we could hold them side by each [sic]
19 and compare the circled numbers to see if they had
20 changed on the closing cash balance at the bottom?

21 A Yeah, you could.

22 Q And the opening balance on the 26th didn't change. Why
23 not, sir?

24 A Yeah. It would've been the same -- same reason.

25 There's no -- there was no cash to start; right?

26 You're dealing with a -- effectively, an overdraft. So

1 I think this document to -- I think if I -- if my
2 memory -- I think we were just updating the forecast,
3 so that's why the numbers changed a little bit on what
4 the -- on what the net cash needs are.

5 Q Okay. And at some point did you learn whether -- back
6 to your decision tree -- there was an agreement with
7 respect to DIP funding?

8 A Yes. We -- yeah. I believe ATB was willing to --
9 like, ATB was willing to provide the DIP loan, but
10 ultimately our -- my understanding is the AER would
11 not -- would not allow the -- the priming of the DIP.

12 Q Okay. And, sir, what happened to the CCAA filings
13 following that?

14 A There -- there was none.

15 Q Okay. Sir, in your practice, would you accept the
16 appointment as a monitor without DIP funding or cash
17 flow?

18 A It -- you -- you would not accept -- you wouldn't
19 accept to be a monitor if the company didn't have
20 sufficient funds to operate. That's correct. And so
21 in this case they needed, you know, approximately up --
22 up towards of 6, \$7 million. So if you did not have --
23 if you didn't have the financing in place or the
24 ability to get that, then you would -- you -- I
25 couldn't go to court and say -- I would have to report
26 that to the Court, so the CCAA filing would not

1 happen --

2 Q Okay.

3 A -- in my view.

4 Q Okay. And did you learn there was going to be a
5 receivership application?

6 A Yes. Sometimes I -- I did.

7 Q Okay. And were you proposed as receiver?

8 A Was I proposed? No. I -- we were not. FTI was not.

9 Q Okay. And were you surprised the directors resigned on
10 the eve of a receivership?

11 A No, I was not.

12 Q In your time in dealing with Mr. O'Brien and Ellis, did
13 you see anything that they were doing in preparing for
14 the potential CCAA that you concluded was unusual or
15 inappropriate?

16 A No, not -- not at all. You know, it was a -- it was a
17 pretty hectic time, but, you know, Darren and -- Darren
18 O'Brien and Max Ellis worked -- you know, we worked
19 pretty closely with them to come up with realistic cash
20 flows. You know, we worked with -- they had advisors
21 there being Peters and Veracity that we worked very
22 closely with to come up with kind of our best and final
23 cash flows, and, you know, I think they did -- you
24 know, in my view, they did what you -- you would
25 hope -- you would try to do at that point --

26 Q Did they --

1 A -- preparing CCAA proceedings.

2 Q Did they appear conscientious as to preserving and
3 protecting Trident and its stakeholders?

4 A Yeah. I -- I think so. Everybody -- it was a tough
5 situation. People were just trying to work to get to a
6 solution and find a buyer for these assets was what
7 everybody was -- what everybody was trying to do.

8 Q Have Mr. O'Brien or Young or any party offered any
9 payment or inducement for your evidence today?

10 A No, they have not.

11 Q Okay. Thank you, sir. Those are all of my questions,
12 and it may be that you will be asked by the Panel or
13 the AER to re-attend a cross-examination tomorrow
14 afternoon. So please keep your after-lunch available,
15 if necessary.

16 A Will -- will do. Okay. Thank you.

17 Q Thank you.

18 (WITNESS STANDS DOWN)

19 THE CHAIR: Thank you, Mr. Helkaa.

20 Thank you, Mr. Gorman.

21 MR. GORMAN: Madam Chair, Panel, unless you
22 have any questions, those were the witnesses that were
23 available today, and I'm pleased to again report we are
24 slightly ahead of -- of schedule, and we should finish
25 the direct evidence of the requesters tomorrow morning.

26 THE CHAIR: I appreciate that. Thank you,

1 Mr. Gorman.

2 If you don't have any further comments or matters
3 to discuss, I'm going to turn to counsel to CLM, if
4 they would have anything to discuss at this point.

5 Any matters that need to be brought up to the
6 attention of the Panel?

7 MR. DUMANOVSKI: No. We don't have anything,
8 Madam Chair. We will hear the testimony of the
9 witnesses tomorrow, and we'll probably have questions
10 for every witness so -- that appears today, and we will
11 make that -- that decision tomorrow after hearing the
12 other two witnesses.

13 THE CHAIR: Okay. Panel Counsel, anything
14 from you? Mr. De Luca, Ms. Hall?

15 MR. DE LUCA: Nothing, Madam Chair. Thank
16 you.

17 THE CHAIR: Nothing?

18 MR. DE LUCA: Nothing.

19 THE CHAIR: And any questions from the
20 Panel? Mr. Stock, Ms. Chiasson?

21 MS. CHIASSON: No. I'm assuming that we'll
22 proceed with the timing tomorrow morning as planned.

23 THE CHAIR: Yes. I will get to that.

24 MS. CHIASSON: Okay.

25 MR. STOCK: I have no questions.

26 THE CHAIR: Okay. So if there's nothing

1 else left to be discussed, we will resume tomorrow at 9
2 as planned, and thank you for participating in today's
3 portion of the hearing. Have a good evening.

4

5 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, NOVEMBER 3, 2020

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Andres Vidal, certify that the foregoing pages
4 are a complete and accurate transcript of the
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6 transcribed from my shorthand notes to the best of my
7 skill and ability.

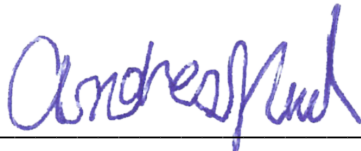
8 Dated at the City of Calgary, Province of Alberta,
9 this 2nd day of November 2020.

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Andres Vidal, CSR(A)

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Official Court Reporter

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