

THE ALBERTA ENERGY REGULATOR

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

AER PROCEEDING
VOLUME 2
VIA REMOTE VIDEO

November 3, 2020

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1 Proceedings taken Via Remote Video

2

3 November 3, 2020

Morning 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 K. Bourassa

For Mr. Corbett

24

25 K. Meyer

For Mr. Darby

26 T. Myers

1 C. Longacre, RPR, CSR(A) Official Court Reporter

2

3 (PROCEEDINGS COMMENCED AT 9:02 AM)

4 Discussion

5 THE CHAIR: Good morning, everyone.

6 MS. TURNER: Morning.

7 THE CHAIR: I hope everybody had a restful
8 evening.

9 Before we start, I have one preliminary matter,
10 and then I will ask the counsel if there is any other
11 preliminary matters.

12 Yesterday when we had the audio glitch, we allowed
13 observers from both parties to attend the Zoom meeting.
14 I'm going to ask -- I think Ms. Turner has already
15 given them access, but I would like to hear from
16 counsel for both parties, if that's okay.

17 Mr. Gorman why don't you go first.

18 MR. GORMAN: Yes, Ms. Turner made
19 invitation shortly before you joined, and that is fine
20 with the requesters.

21 THE CHAIR: Mr. Dumanovski.

22 MR. DUMANOVSKI: No concerns from us, Madam
23 Chair. Thank you.

24 THE CHAIR: And I would like to ask the
25 observers please have your video turned off and your
26 audio muted at all times, please.

1 Any preliminary matters from you, Mr. Gorman?

2 MR. GORMAN: None, Madam Chair.

3 THE CHAIR: Mr. Dumanovski?

4 MR. DUMANOVSKI: Nothing from us, Madam Chair.

5 THE CHAIR: Okay. Mr. Gorman, you may
6 start.

7 MR. GORMAN: Thank you. The next witness
8 from the requesters is Alex Corbett, who has joined the
9 call, if he could be sworn or affirmed, please.

10 ALEXANDRE CORBETT, Affirmed

11 Direct Evidence of the Requesters

12 Q MR. GORMAN: And could you please confirm
13 your name for the record?

14 A Alexandre Corbett.

15 Q And, Mr. Corbett, you've just taken an oath to tell the
16 truth. Is that oath binding on your conscience?

17 A It is.

18 Q And you understand it is of the same significance as if
19 we were all in a regulatory hearing room as opposed to
20 joining over computers and Zoom lines?

21 A I do.

22 Q I'd ask Ms. Turner or her team to bring up Exhibit 38.01,
23 starting at PDF page 37. It seems to be stuck on page 1
24 still.

25 Sir, is this a document you recognize?

26 A Yes. It's my resumé.

1 Q Okay. And this is a resume you've recently prepared?

2 A I have, yes.

3 Q Okay. Can you just very briefly, referring to the
4 resume or CV as necessary, give us some background
5 starting with your education background?

6 A Yes. I completed my bachelors in accounting from -- in
7 commerce from the U of C in 2005. In 2006, I completed
8 a masters of professional accounting from the
9 University of Saskatchewan. In 2007, I became a
10 chartered accountant. In 2011, I became a chartered
11 insolvency and restructuring professional. In 2014, I
12 became a licenced trustee; in 2016, a chartered
13 business evaluator; and in 2017, became certified in
14 financial forensics.

15 Q Okay. And with that educational background, can you
16 now give us an overview of your professional work
17 experience?

18 A I spent approximately three years in audit in Calgary
19 with Ernst & Young. After that, I transferred to Ernst
20 & Young's corporate restructuring group where I was
21 working on assisting banks or assisting companies that
22 were in financial difficulty.

23 In 2010, I moved to London, England, to work on
24 cross-border international restructurings. In 2013, I
25 came back, and I started working in business valuations
26 at -- alongside the corporate restructuring.

1 In 2016, I joined ATB leading their corporate
2 turnaround and restructuring group, which -- and in --
3 from there, I started getting involved in their
4 commercial turnaround assistance group and their
5 turnaround -- or, sorry, their commercial realization
6 group, and, finally, I became a vice president, and
7 also I am leading the consumer realization group as
8 well.

9 Q Okay. In your time at Ernst & Young, were you involved
10 in any court-directed insolvency proceedings?

11 A Yes. I was involved in receiverships, CCAAs.

12 Q Okay. And --

13 A And some bankruptcy as well, but -- sorry. Go ahead.

14 Q And in your role at ATB, have you been involved in
15 insolvency proceedings from the lender rather than the
16 practitioner side?

17 A I have, yes, in the same types of filings.

18 Q Okay. And I see at ATB you're in the turnaround and
19 restructuring group. Can you describe the role of that
20 group?

21 A I was in the turnaround and restructuring group.
22 The -- and role of that group is to provide advice or
23 manage high-risk exposures for ATB. I'm currently vice
24 president of the risk advisory and management group to
25 which the turnaround and restructuring group reports
26 to.

1 Q Okay. And, generally, when are files referred to the
2 turnaround and restructuring group?

3 A There's a -- well, the files will need to have some
4 level of distress. The timing of transfer is dependent
5 on a decision from sales or credit and also the
6 experience of the deal team that's handling the
7 account.

8 Q Okay. And with respect to Trident, what was your first
9 professional involvement with respect to Trident?

10 A I was first involved with Trident in 2016 as part of
11 their then restructuring, and I became involved with
12 Trident -- sorry. Once a restructuring is completed,
13 we -- we're no longer involved on the file, and I
14 became involved on the Trident matter late in the day
15 on April 17th, 2019.

16 Q Okay. So you had some prior involvement with respect
17 to the -- we've just talked about yesterday a 2016 CBCA
18 restructuring?

19 A That's correct.

20 Q And then there was three years where you were not
21 involved with them until April 17th?

22 A That's correct.

23 Q Okay. Now, sir, with respect to background, I would
24 next refer you to Exhibit 38.01, PDF page 127. And is
25 this a document you recognize from its cover page, sir?

26 A Yes. It's -- would you like me to describe the

1 document?

2 Q That would be great. Thank you.

3 A It's -- it's an amendment and restatement of Trident's
4 credit facility which --

5 Q And --

6 A -- occurred in July 31st, 2017.

7 Q Okay. And can you generally describe the nature of the
8 credit facility?

9 A The credit facility provided a \$20 million borrowing
10 base facility by way of a revolving facility, which was
11 syndicated.

12 Q Okay. Can you describe how a revolving facility
13 operates?

14 A A revolving facility allows the -- the client to drop
15 or repay at any point in time the -- on the facility
16 subject to them being in compliance with the covenants
17 within the agreement and including within the borrowing
18 base.

19 Q Okay. And what happens when the client receives
20 revenues or income?

21 A These agreements are typically structured where they're
22 linked to the client's deposit account to facilitate
23 everyday banking, whereby the -- the operating account
24 can go into overdraft and will automatically get funded
25 by the revolving facility or the operating line. And
26 if there's a positive balance at the end of each

1 night -- at the end of each day, it would get swept and
2 applied to the revolver or the operating line.

3 Q Do you have an understanding when revenues are
4 typically received in the oil and gas industry?

5 A It will be on or about the 25th depending if the 25th
6 lands on a weekend.

7 Q And was that unique to Trident?

8 A That is industry-wide regardless of the product that
9 you are selling. The exception would be joint venture
10 billings, which are collected on usually a separate
11 day.

12 Q Okay. And did ATB maintain any security with respect
13 to this facility?

14 A ATB had security over all of the company's assets,
15 which formed our collateral. We also had a first
16 charge -- sorry, cash collateral -- cash collateralized
17 the bank accounts of Trident, and Trident was to keep
18 all of its banking with ATB, and we had setoff rights
19 as well.

20 Q All right. And, sir, if I could then ask Ms. Turner's
21 team to bring up the same exhibit, page 306.

22 Just looking at the cover page, do you recognize
23 this document, sir?

24 A Yes. It's the first amendment to the credit agreement
25 that we had just reviewed.

26 Q Okay. And then if we looked at page 321 in the same

1 exhibit. Do you recognize this document as well, sir?

2 A Yes. That's the second amendment.

3 Q And do you -- can you tell by it when this amendment
4 was agreed?

5 A It was May 30th, 2018.

6 Q And then if we skip back a bit to the same exhibit,
7 page 334, is that yet another agreement you recognize,
8 sir?

9 A Yes. That's the last amending agreement which we did
10 on Trident dated December 27, 2018.

11 Q And would those four agreements, being the amended and
12 restated and the three subsequent amendments, be the
13 agreements in place in 2019 with respect to Trident and
14 ATB?

15 A That's correct.

16 Q Okay. And can you give us a one- or two-sentence
17 explanation as to what the status of the agreements
18 were as of the third -- December 27th, 2018, amending
19 agreement?

20 A Sorry. My computer logged me out. Give me a ...

21 Sorry. Could you please repeat the question?

22 Q What was the terms of the agreements as at the third
23 date with respect to amounts, dates, covenants,
24 et cetera?

25 A So the term update was extended to May 30th, 2019. I
26 believe that was done as part of the second amending

1 agreement, and the facility was capped to \$12 and a
2 half million in -- as part of the third amending
3 agreement.

4 Q Okay. And at that point in time, was the file in the
5 turnaround and restructuring group at ATB?

6 A No, it was not.

7 Q Okay. When was it referred to that group?

8 A We started shadowing the account on February 8th
9 subsequent to the Redwater decision, and we managed --
10 started managing the account on the -- late in the day
11 on April 17th, 2019.

12 Q Okay. Who initially in the turnaround group was
13 responsible for the Trident matter?

14 A Well, it was overshadow -- we were shadowing the
15 account, so we wouldn't have been responsible for the
16 account. But the person that was overseeing -- or
17 shadowing the account was Greg Steidl, who was a
18 director in the turnaround and restructuring group and
19 Muhammad Ashraf, who was his associate director at the
20 time.

21 Q Okay. And can I ask you: At some point, did you meet
22 or talk to Darren O'Brien?

23 A I did the morning of April 18th. I think we met about
24 an hour before meeting with the AER --

25 Q Okay.

26 A -- that morning.

1 Q And what about Mr. Jeff Young? Have you ever spoken to
2 or met Mr. Young?

3 A No.

4 Q Okay. Now, you mentioned an April 18th meeting. I
5 would ask that Exhibit 31.02 starting at page 65 be
6 brought up on the screen.

7 Sir, these are minutes that have been produced
8 from the AER. Can you take a moment to review them to
9 refresh your memory and -- that you had attended the
10 meeting with the other people listed therein?

11 A Yes. I did attend this meeting --

12 Q Okay.

13 A -- with the people listed there.

14 Q It says you attended with Ms. Bourassa as ATB's
15 counsel?

16 A That's correct.

17 Q And there's also a reference to Greg and Muhammad. Are
18 those the two gentlemen we just discussed?

19 A They were [sic].

20 Q Okay. And can you generally describe your recollection
21 of the discussions at this meeting?

22 A We were -- the purpose of the meeting was to discuss
23 the company's distress. They were going to run out of
24 cash in -- I believe it was early May, first or early
25 in the second week of May, and the company was looking
26 to find a resolution -- find a solution for its current

1 predicament.

2 It had tabled a CCAA as a potential option, and as
3 part of that, earlier that morning we were asked if we
4 were willing to fund a DIP, which is a
5 debtor-in-possession financing. We discussed that
6 during the meeting, and we had stated to the AER that,
7 given the amount of environmental liabilities in place,
8 the nature of the assets, which effectively would --
9 would be difficult to find a buyer for, they were
10 cash-flow negative, and the environmental liabilities
11 dwarfed the value of the assets.

12 The other players in this kind of -- for this kind
13 of play, which was coalbed methane, were also burning
14 cash. So, therefore, we didn't feel they would have
15 sufficient access to capital to pay cash for -- or a
16 substantial amount of cash for any transaction. And as
17 a result of all those factors, we thought that it would
18 probably make -- that it would make sense for the AER
19 to fund the debtor-in-possession financing or to fund
20 the receivership of Trident Exploration. That was what
21 we had tabled as the first -- call it -- logical choice
22 from ATB's point of view.

23 We recognized that we didn't have the best history
24 following the recent Redwater matter escalation -- the
25 escalation of that matter, and we offered to -- if the
26 AER wasn't willing to fund, that we could look at doing

1 a joint funding of the DIP financing. We noted that
2 that was not our preference, and that would be subject
3 to credit committee approval, and we had said that it
4 would -- we would look at what conditions we would need
5 in that respect -- sorry, in place in order to be able
6 to fund the DIP because we were concerned that there
7 would be no means to repay back our DIP financing, and
8 ATB's not in the business of lending on loans and not
9 getting anything back, so ...

10 And then in the alternative, we would look at
11 financing the entire DIP, again, subject to certain
12 conditions, but that that was not our preference. We
13 had also said that we would be willing to look at doing
14 a joint DIP with Origami or AIMCo who were investors in
15 Trident.

16 Q Was there ever an agreement reached with the AER such
17 that ATB provided DIP?

18 A Sorry. Can you repeat the end of that question?
19 Since the day back --

20 Q Was there ever an agreement with the AER such that ATB
21 agreed to provide the DIP?

22 A No. We were unable to agree upon terms. The terms
23 that the AER would -- were willing to agree to we can
24 see in retrospect would've resulted in zero recovery of
25 our DIP financing, which is why we wouldn't agree to
26 those terms.

1 Q Okay. And if we turn to page 66. You have to scroll
2 down to the bottom of the page, please. Thank you.

3 There is a reference: (as read)

4 No environmental or safety concerns with
5 assets. Have retained employees needed to
6 address safety.

7 Was the ATB looking at the oversight or management of
8 the assets that was part of their collateral?

9 A We were not providing oversight, but we were working
10 with management to try to buy time so that we could
11 have conversations with the AER and find a solution
12 rather than having the wells get shut in and -- and
13 perhaps never brought back on and end up with the OWA.
14 We were trying to see our -- our way through to the
15 best outcome possible in the circumstances.

16 Q Okay. Now, sir, if we turn to the next page, page 67,
17 there's a reference to "post-meeting discussion", and
18 it starts with: (as read)

19 As Melissa pointed out, this will force our
20 hand in terms of how we deal with CCAA
21 insolvencies going forward.

22 Was that discussed at the meeting?

23 A I don't believe that I was involved in any
24 conversations that were in that section of the minutes.

25 Q Okay. And then it carries on: (as read)

26 If we agree to administrative charges and DIP

1 financing superpriority above Redwater
2 claims, it may prejudice our position over
3 actual sales proceeds for Redwater that Grant
4 Thornton is seeking to pay themselves.

5 Were the discussions that how Trident was handled would
6 affect Redwater?

7 A I saw them independently.

8 Q Okay. But it wasn't discussed on April 18th when you
9 were in the meeting?

10 A No. And I can add that I was not involved in the
11 conversations between Grant Thornton and the AER -- AER
12 in respect of their fees, nor was my organization.

13 Q Now, if we turn to Document 38.01 at page 39, and it's
14 a two-page document. So after we look at 39 a bit,
15 perhaps the AER could show you the next page as well.

16 Sir, do you recall the creation and delivery of
17 this document?

18 A I do, yes.

19 Q Okay. Can you tell us the circumstances relating to
20 its creation and delivery?

21 A Well, when we get -- when we manage -- when we start
22 managing a file, we'll do a file review. So we'll
23 identify any defaults that may have occurred, and we
24 will paper those. So that's a standard process.

25 And so this is what we did herein. We identified
26 a default associated in respect of taxes, municipal

1 taxes, and we -- having said that, we were willing to
2 work with the company to try to avoid an adverse --
3 call it the worse outcome in respect of Trident. So
4 what we had and we include in the last paragraph is a
5 note saying that we would consider critical payment
6 requests while the company was under the notice of
7 default.

8 Q Okay. And that's your signature as one of the two
9 signatories on PDF page 40, sir?

10 A That's correct.

11 Q Okay. Did you have any discussions with Mr. O'Brien or
12 anyone at Trident prior to the issuance of this
13 default?

14 A So usually -- I -- I didn't personally have that
15 conversation. We would typically pick up the phone
16 prior to sending the notice. That would be immediately
17 prior to sending the notice to let a customer know that
18 the default notice is coming and that the access to the
19 facilities are getting restricted as a result. And in
20 this case, we would explain to them that we're willing
21 to work with them as part of the critical payments
22 with -- to fund critical payments. That -- I presume
23 that my colleague, Greg Steidl, would've had this
24 conversation with Darren or --

25 Q Did --

26 A -- or someone else.

1 Q Did Mr. O'Brien or Trident request that you issue this?

2 A No.

3 Q Did you have discussions or plans with Mr. O'Brien or
4 Trident that if you issued this you could defeat AER
5 claims?

6 A No. The -- the only thing we would've talked about
7 would've been when we first met, talking about the
8 company -- providing the company with access to funds
9 until a certain period of time to allow the company to
10 do a -- to try to plan its restructuring. And those
11 were discussed with the AER on our meeting on April 18th,
12 so ...

13 Q Okay. And on or shortly after April 23rd, the March
14 revenues were received in Trident's accounts?

15 A I believe on the 25th.

16 Q Okay. And what happened to those funds?

17 A The funds -- the funds are swept as part of the -- the
18 needling between the operating account and the -- the
19 revolver and operating line.

20 Q Okay. And do you know which entity that account was in
21 the name of?

22 A The -- sorry. I'd like to clarify the question. Are
23 you asking me which account the monies went into or
24 which account is linked to the operator, or would you
25 like both?

26 Q Which account was swept on the 24th or 25th?

1 A The account that was swept is the Trident Exploration
2 Corp. account.

3 Q Okay. All right.

4 And did Mr. O'Brien or anyone at Trident ask ATB
5 to sweep the account?

6 A No.

7 Q Had it ever previously happened that the account was
8 swept when a deposit was received?

9 A Every day.

10 Q Now, if we could then, sir, pull up page 137 in
11 Exhibit 31.02. This, again, is produced by the AER,
12 and it suggests there was a discussion involving you on
13 April 25th, 2019. Do you recall having a discussion
14 with the AER staff in or around that timeline?

15 A I do, yes.

16 Q Okay. And can you review this, and does it generally
17 remind you what was discussed during that call?

18 A Broadly, yes. There's a few things that -- that I
19 wouldn't mind clarifying. So in respect to -- of our
20 three terms, our second term, which was -- well, sorry.
21 Let me say -- the first term was to have a confirmation
22 that the administrative costs of the CCAA, which would
23 include the costs of individuals working on the wells
24 or companies working on the wells during the CCAA and
25 the DIP financing, would get -- would have a first
26 charge on the estate so they could -- so those costs

1 could be funded and the DIP repaid.

2 The second clause was that the sales process would
3 ask for cash-only bids to ensure that we can fund
4 these -- the costs of the process and so that the --
5 any obligations incurred by the CCAA could get paid.
6 We didn't want to see employees or service providers
7 left flailing in the wind.

8 And -- but, specifically, what I had said in this
9 regard was that the prioritization of the cash bids
10 would only be in respect of paying those costs.
11 Once -- once there was sufficient cash received from
12 the bids that the AER could pick and choose what the
13 receiver -- whichever offers they wanted to minimize
14 the amount of wells going to the OWA -- we understand
15 that that was the AER's objective -- we -- if we were
16 going to step up and help out the AER by funding the
17 DIP, we just wanted to increase the likelihood we would
18 get paid back.

19 And then the third clause in respect of splitting
20 the sales proceeds, that was just if anything remained.
21 So the amount of money we would make off the DIP, given
22 the risk of it not getting repaid, that wasn't a
23 financial decision, but we were -- given the
24 circumstances, as I had explained, we were trying to
25 see if we could reach out with an olive branch in this
26 case, and we were looking to see if we could have a bit

1 more financial rationale for what we were doing. As --
2 as you know, the ATB has a mandate to make a
3 significant -- sorry, to make a return that's
4 comparable to its competitors, so ...

5 Q Sir, if we could scroll a little higher up with your
6 eyes. Under "Additional Information Pieces", the first
7 three or four bullets talk about the operating line and
8 auto payment. Were there discussions with respect to
9 the accounts having been swept, and what do you recall
10 about those discussions?

11 A I don't necessarily recall that part of the discussion
12 on that day. I remember having those conversations
13 later -- later in the week. I -- I was on holidays at
14 the time, so I had a lot on the go, so ...

15 Q Well, Mr. Corbett, by my recollection, the 25th was the
16 Thursday. So we're relatively late in the week, and I
17 see that's noted on the top as well. So just -- just
18 for context, we know the 29th was a Monday, so we can
19 count backwards and forwards from -- from the 29th.

20 Is it fair to say that --

21 A So --

22 Q Sorry.

23 A So what I can tell you is I had phone calls, from
24 memory, with the AER on the 24th, 25th, 26th, and 27th.
25 I can't recall if I had some on the -- on the Sunday as
26 well. But I remember working every day on Trident and

1 speaking to the AER every day while I was on a family
2 holiday.

3 Q And would that include discussions or negotiations with
4 respect to the potential DIP funding?

5 A Yes. We were trying to see if we could find a
6 solution. We also were providing the AER with -- they
7 were asking us for general advice in respect of
8 receiverships. We were trying to find a -- find a
9 solution -- help them find a solution, so ...

10 Q So those DIP discussions continued even after the
11 revenues had been swept?

12 A They did, and so did advice provided in respect of --
13 or guidance that -- in respect of receiverships.

14 Q Now, sir, I'd like to skip ahead to Exhibit 38.01,
15 page 44.

16 Sir, do you recognize this as an email you
17 would've sent on or about 5:48 PM on Sunday, April 28?

18 A Yes.

19 Q Okay. And, generally, is it an update as to where ATB
20 was with respect to Trident and the DIP negotiations?

21 A That's correct. The AER had given us a formal request
22 that we ask our credit committee to fund the DIP
23 without -- without having agreement on all of our
24 terms. The major one was requesting for cash bids and
25 prioritizing cash bids to fund the cost of the process.

26 Q Okay. And did you ever take that to credit committee?

1 A We took it to credit committee on the weekend knowing
2 the urgency of the matter, and I believe this was from
3 a request that the AER had given us on the Friday. And
4 we had a credit committee over the weekend, and the
5 credit committee unanimously declined to offer pursuant
6 to the amended terms that the AER was proposing ATB
7 advance a DIP under.

8 Q And if you could then look to Exhibit 31.02, PDF
9 page 152.

10 In the body, there's an email from Kaitlin Szacki
11 dated Monday, April 29th at 5:08 PM. Do you recall
12 receiving this email response from the AER?

13 A I do recall receiving this response.

14 Q Okay. And after this email, were there any further
15 discussions or negotiations concerning ATB funding a
16 CCAA?

17 A Not directly with the AER. I received a call from PwC
18 asking us -- sorry. I received a call from PwC stating
19 that they understood from the AER that ATB would fund
20 the receivership, but that's not specifically a CCAA.

21 Q Okay. And how did you respond to PwC?

22 A We said that we were not willing to fund the
23 receivership in the same way that we weren't willing to
24 fund the DIP financing without agreement to certain
25 clauses. We further said that, because all the wells
26 had been shut in, funding a receivership or CCAA at

1 this stage would not be something ATB would be prepared
2 to do because the costs associated with bringing some
3 of the wells back online were significant, and the
4 likelihood of being able to recover any DIP financing
5 was now extremely unlikely versus doubt -- where it was
6 before.

7 Q And who from PwC made that inquiry to you?

8 A I believe it was Paul Darby.

9 Q Okay. Now, post-April 29, did ATB allow any payments
10 to go through the Trident account?

11 A I'd have to double-check my records.

12 Q What about the payroll to month end?

13 A Oh, sorry. Yes. We -- we -- we -- we had -- as
14 previously discussed, we had agreed to certain critical
15 payments being made, and one of the things that we had
16 agreed on or around April 18th with management was that
17 we would fund payroll to April 30th to -- so that they
18 could work with the AER on finding a solution.

19 Q And you understood at some point that ATB -- or, pardon
20 me, that PwC had been appointed as receiver?

21 A I did, yes.

22 MS. ROSS: Madam Chair, can I just
23 interrupt here? Mr. Gorman has several times refreshed
24 Mr. Corbett's memory and has been leading the witness,
25 and we just want to make our objection known.

26 THE CHAIR: Mr. Gorman.

1 MR. GORMAN: Thank you. I will try to --
2 to avoid such concerns in the -- the future, and,
3 happily, we're near the conclusion.

4 Q MR. GORMAN: Has ATB given any directions
5 to PwC as receiver?

6 A No.

7 Q Have you received any payments through the
8 receivership?

9 A No.

10 Q Sir, were there any discussions with Mr. O'Brien or
11 Young or anyone at Trident with respect to avoiding
12 Redwater?

13 A No.

14 Q Sir, was ATB and red -- and O'Brien or Young or Trident
15 working together to defeat AER claims?

16 A No.

17 Q Was ATB's real goal in discussing a CCAA to allow it to
18 sweep the Trident accounts on April 24?

19 A No. The AER had the option of agreeing to a CCAA or a
20 receivership and setting a date, and that was one of
21 the things that was discussed on April 18th. It was
22 that the company would be prepared to file CCAA as
23 early as -- I think it would've landed -- I think it
24 would've landed a -- a few days before the 25th. It
25 was one of the plans that was put forward.

26 Q Sir, did you understand in your negotiations with AER

1 that you were acting in good faith?

2 A I did, yes.

3 Q Okay. Until the October 8th submissions of the AER,
4 had you ever heard an allegation that ATB had not been
5 acting in good faith with the AER?

6 A Sorry. The audio cut out on my end for a second.
7 Would you mind repeating?

8 Q Sorry. Prior to the October 8th AER submissions with
9 respect to this hearing, had you ever heard an
10 allegation that ATB was not acting in good faith in the
11 discussions with the AER?

12 A No.

13 Q Okay. Sir, has Mr. O'Brien or Young or any person
14 offered any payment or inducement for your evidence and
15 your participation today?

16 A None.

17 Q Thank you, sir. Those are all of my questions, and
18 based upon timing, I understand you will be asked to
19 re-attend with the other requesters' witnesses at some
20 point -- I'm assuming shortly after the lunch hour --
21 to answer any questions by CLM or the Panel. Thank you
22 for your attendance today.

23 THE CHAIR: Thank you, Mr. Corbett.

24 Thank you, Mr. Gorman. How would you like to
25 proceed, Mr. Gorman?

26 MR. GORMAN: Well, I think we can take a

1 12-minute break because I had asked Mr. Darby and his
2 counsel to be available about 10. I will send them an
3 email asking them to join in, and we can take the
4 morning break then.

5 I expect Mr. Darby's direct will be similar in
6 length to Mr. Corbett's, which means we should be
7 finishing late this morning, in which case, if
8 Mr. Dumanovski and Ms. Ross want to discuss when the
9 cross would occur, I'd propose an early lunch and
10 coming back at 1:00 and starting the cross so that we
11 can finish that today, but I'm in -- I'm in their
12 hands. They're doing the heavy lifting with respect to
13 the cross, so I'm not sure how much time they'll need
14 to prepare.

15 THE CHAIR: Thank you.

16 Mr. Dumanovski, Ms. Ross -- and I will ask you
17 again, but would that plan work for you, an earlier
18 lunch and then reconvene at 1?

19 MR. DUMANOVSKI: Yes, Madam Chair, that -- that
20 will work for us. Thank you.

21 THE CHAIR: Okay. And should you -- you
22 can ask if -- should you need more time or less, let us
23 know, please.

24 MR. DUMANOVSKI: We will. Thank you.

25 THE CHAIR: So, with that, how about we
26 come back at ten past 10. Would that work?

1 Mr. Gorman?

2 MR. GORMAN: Yes, Madam Chair. Then we can
3 check the new attendees' audio functions and make sure
4 we're all set up for 10:10.

5 THE CHAIR: Okay. Thank you.

6 MR. GORMAN: Thank you.

7 THE CHAIR: Thanks, everyone.

8 (ADJOURNMENT)

9 THE CHAIR: Good morning, everyone.
10 Apologies. We took a bit longer than we promised.
11 There was something to deal with. With that,
12 Mr. Gorman, please proceed.

13 MR. GORMAN: Thank you, Madam Chair, and
14 Panel.

15 Could the appropriate AER person please have
16 Mr. Darby sworn in or affirmed?

17 PAUL JAMES DARBY, Sworn
18 Direct Evidence of the Requesters

19 Q MR. GORMAN: And could you please confirm
20 your name for the transcript record, sir?

21 A Paul Darby.

22 Q And, Mr. Darby, you just took an oath to tell the
23 truth. Is that oath binding on your conscience?

24 A Yes, it is.

25 Q And you understand that that oath is of the same
26 significance and consequence as if we were all in an

1 AER regulatory hearing rather than joining from various
2 locations by Zoom?

3 A Yes.

4 Q Okay. I'd ask the Exhibit 38.01, page 82 be brought up
5 to the screen, please.

6 Sir, do you recognize this document?

7 A Yes.

8 Q And is it your current CV?

9 A Yes, it is.

10 Q Okay. Can you just generally describe your education
11 and work experience?

12 A A University of Calgary degree, bachelors of commerce,
13 major in accounting. The chartered professional
14 accountant certified insolvency restructuring
15 professional and licenced insolvency trustee. I've
16 been doing insolvency work for PricewaterhouseCoopers
17 for 20 years and have been involved in all types of
18 proceedings in-court and out-of-court proceedings.

19 THE COURT REPORTER: Sorry. I'm having --

20 Q MR. GORMAN: Sir --

21 THE COURT REPORTER: -- a hard time --

22 Q MR. GORMAN: I'm getting some feedback.

23 MR. GORMAN: Is somebody not on mute?

24 THE COURT REPORTER: Me too, and I just missed the
25 very end of Mr. Darby's answer because of the sound.

26 A Mr. Gorman, can you hear me?

1 Q MR. GORMAN: I'm still getting the
2 feedback.

3 MS. TURNER: Everybody appears to be on
4 mute.

5 Q MR. GORMAN: Mr. Darby, are you using
6 wireless headphones? It might be from your line.

7 A I'm switching my audio. Is this better?

8 Q No. That wasn't it. It's still existing. It's a
9 humming sound. So perhaps if we both speak slowly and
10 clearly. And if Madam Reporter needs us to repeat, we
11 will see if we can keep going forward.

12 THE COURT REPORTER: But, Mr. Gorman, I just
13 got -- at the very end of Mr. Darby's answer, he said
14 "have been in all types of proceedings in court", and I
15 didn't get the end.

16 A And out of court.

17 Q MR. GORMAN: Okay. Sir, if we look at the
18 bottom of page 82 through page 83 of your CV -- and it
19 continues even on to the next page -- these are
20 examples of your involvement in the energy sector?

21 A That is correct.

22 Q And what kind of roles would you have had with respect
23 to the files in the energy sector on those three pages?

24 A Court-appointed receivers, CCAA monitors, and trustees
25 in bankruptcy proceedings.

26 Q Okay. And if we look at page 82, are one of the

1 matters that are being discussed the Trident
2 proceedings?

3 A Yes.

4 Q And which event is that or which item is that?

5 A On that page that's displayed under the "energy sector"
6 on the right-hand column, the first full paragraph, a
7 court-appointed receiver and manager of a 4,500-well
8 natural gas producer in Alberta.

9 Q Thank you.

10 And there are other references to "monitor" and
11 then on the next page other references to "receiver"
12 and "manager"?

13 A Yes, there are.

14 Q Okay. And in your capacity as a receiver and manager,
15 you had occasion to return wells to the Orphan Well
16 Association?

17 A Yes. We were involved as a monitor of FairWest. I
18 think it was 2013 where wells got stranded and were
19 turned over.

20 Q Okay. And, sir, can you explain the difference, if
21 any, in directors' roles in a CCAA versus a
22 receivership?

23 A A CCAA, the directors remain in place or at least one
24 of them in their capacity as it would be for a CCAA in
25 directing the company and providing oversight.

26 Typically, there are no directors in a

1 receivership. In my experience, I've never seen a
2 director stay on after a receivership has been
3 appointed.

4 Q Okay. Now, with respect to Trident, when were you or
5 PricewaterhouseCoopers first contacted?

6 A I believe we were contacted the week of April 22nd to
7 clear conflicts.

8 Q And when were conflicts cleared?

9 A I believe they were contact -- cleared on the 23rd.

10 Q And who contacted PwC?

11 A The AER.

12 Q Okay. And what discussions were there with respect to
13 timing?

14 A We were asked to clear conflicts in the event of a
15 proceeding that was looking like a CCAA may fail, and
16 they would need a receivership.

17 Q And were any dates discussed?

18 A We knew that the end of the month was a critical date.

19 Q Okay. Sir, if we could pull up Exhibit 31.02,
20 page 188. It's a little faint. If we could scroll
21 down a bit, there's an email from Ms. Ross at the AER
22 to me and others, including yourself. Do you recall
23 receiving this email on or around 5:06 PM on April 30?

24 A I recognize the email.

25 Q Okay. And did you understand that there was a
26 possibility PwC would be appointed as receiver as early

1 as the next morning, May 1st?

2 A Yes.

3 Q And had you prepared to take over in that role as early
4 as May 1st?

5 A We were ready, yes.

6 Q Okay. And that application did not proceed?

7 A That is correct.

8 Q Okay.

9 MR. DUMANOVSKI: Madam Chair, sorry to
10 interrupt. It seems that Mr. Gorman is leading the
11 witness again, and we are --

12 Q MR. GORMAN: Did that application proceed?

13 A No, it did not.

14 Q What happened next with respect to your appointment?

15 A We were subsequently advised that the application would
16 be made by the OWA.

17 Q And when was that application made?

18 A I believe the appointment occurred on the 3rd.

19 Q And --

20 A I'm -- the application would've been made a day or two
21 before that. I'm not sure.

22 Q Okay. And was an order granted?

23 A Yes.

24 Q Okay. If we could refer to Exhibit 31.02 starting at
25 page 202. And perhaps we could scroll through a few
26 pages so you can confirm that the front page is

1 accurate for what's behind.

2 A That is the receivership order of May the 3rd.

3 Q Okay. And do you understand that this form of
4 receivership order is relatively standard?

5 A Yes. There's a template order in Alberta.

6 Q Okay.

7 THE COURT REPORTER: Sorry. Sorry. I'm having a
8 really hard time hearing Mr. Darby. I just heard
9 "There's a template", and I couldn't hear the end.

10 MR. GORMAN: It was "There's a template
11 order".

12 THE COURT REPORTER: I'm still going to ask.

13 Just, Mr. Darby, I don't know what's going on with
14 the audio, but can you just try to speak up?

15 A Yes.

16 THE COURT REPORTER: Thanks.

17 THE CHAIR: And, Mr. Darby, could you
18 please repeat your answer for our lovely court
19 reporter?

20 A There is a template order in Alberta.

21 Q MR. GORMAN: Okay. Did you attend the
22 application?

23 A Yes.

24 Q Was there any opposition to the application?

25 A No.

26 Q Did counsel for the former directors attend the

1 application?

2 A I -- I recall yourself, Mr. Gorman, there. I'm not
3 sure in which capacity, if you were for the company or
4 for the directors on their own.

5 Q Okay. Sir, if we review the form of order starting on
6 the page 203, the second page, paragraph 3, can you
7 describe your understanding of the effects of this
8 provision?

9 A Paragraph 3 is the receiver's powers to take possession
10 and control of the company's operations and property.

11 Q And did PwC follow the directions of this order?

12 A Yes.

13 Q Okay. And what is the role of Trident's former
14 directors after this order was granted?

15 A The directors, I understood, had resigned prior to the
16 granting of this order.

17 Q Okay. Even if they hadn't resigned, what's the role of
18 former directors once a receiver is appointed?

19 A They have no role because they've resigned.

20 Q Okay. Do they have any power or authority over the
21 company or its accounts?

22 A No.

23 Q Sir, if we turn in a few more pages, can you explain
24 your understanding of paragraphs 7 and 8 of the order?

25 A The stay of proceeding in the standard court order that
26 no one can take enforcement actions against the

1 receiver or the property during the receivership
2 without leave of the Court.

3 Q And has anybody applied for leave with respect to
4 Trident?

5 A I believe there is one person in the process of seeking
6 leave, actually.

7 Q Had the AER ever sought leave?

8 A No.

9 Q Okay. And then, finally, flipping back a page to 206
10 with respect to cooperation and records. What were the
11 state of Trident's records on your appointment?

12 A The records would've been what we'd have expected from
13 a company slightly in arrears, given that its employees
14 had left, but relatively good condition.

15 Q Were there issues with respect to accessing the
16 records?

17 A We were able to gain access, as the contractor,
18 Veracity, who would've been engaged by the company
19 prior, remained present and was able to gain us access.

20 Q Okay. Did the receiver ever reach out to O'Brien or
21 Young for assistance or cooperation?

22 A No.

23 Q Have you ever spoken to Mr. O'Brien or Mr. Young?

24 A No.

25 Q Now, sir, from time to time in Trident, like other
26 receiverships, the monitor files reports?

1 A The receiver files reports.

2 Q Pardon me. I misspoke. You're right. The receiver in
3 a receivership; the monitor in a CCAA?

4 A Correct.

5 Q And is it correct that the receiver has filed five
6 reports to date?

7 A Yes.

8 Q Okay. And if we look to Exhibit 31.02, page 282, do
9 you recognize this document, sir?

10 A Yes.

11 Q And did you prepare this report understanding it to be
12 accurate and true?

13 A Yes.

14 Q And does your signature appear on page 292 of that
15 report, sir?

16 A Yes, it is.

17 Q Okay. And can we briefly look at 2.7 on page 285. Can
18 you summarize what you're telling the Court in this
19 paragraph and where that information came from?

20 A The estimate of the amount Trident owed its creditors
21 for its draft financial statements from March of 2019.

22 Q Okay. And have any of these creditors received any
23 payment?

24 A No.

25 Q And is it projected that any of these creditors receive
26 any payment?

1 A No.

2 Q Now, we heard yesterday from Mr. Gwartney at Veracity.
3 Can you describe the receiver's discussions or
4 involvement with Veracity since your appointment?

5 A The receiver contracted Veracity to act as our advisor
6 and contract assistance to deal with the field
7 operations and several accounting matters.

8 Q And are they still retained in assisting the receiver?

9 A Yes.

10 Q And did you understand that prior to the receivership
11 they had an involvement with Trident and what that was?

12 A Yes. That was one of the main reasons we kept them, is
13 they had a deep knowledge of Trident's operations and
14 was -- were aware of what was -- the goings-on of the
15 company at the time.

16 Q And, sir, there were subsequent receiver reports filed,
17 and we can go through in sequence. I think the next
18 report is 38.01 at page 88. See if we can pull that up
19 and if you recognize it.

20 A Our second report to the Court.

21 Q Okay. And what generally was occurring by February 10th,
22 2020, when the second report was issued?

23 A The receiver was in the process of selling off as many
24 of the wells as possible through a sales process.

25 Q Okay. And what were Messieurs Young or O'Brien's
26 involvement in that process?

1 A They had no involvement.

2 Q Okay. And if we turn to page 97 in the same exhibit,
3 do you recognize this document, sir?

4 A The third report to the Court as the receiver.

5 Q Okay. And, again, you were involved in its preparation
6 believing it to be accurate?

7 A Yes.

8 Q And through the third and indeed the fourth and fifth
9 report, you were reporting additional sales of Trident
10 assets?

11 A That is correct.

12 Q Page 105 is what, sir?

13 A The fourth report to the Court.

14 Q And page 115?

15 A Our fifth report to the Court.

16 Q And, sir, in the fifth report, I refer you to page 120
17 at paragraph 6.1. Can you describe or give us
18 information with respect to the schedule that's at 6.1?

19 A 6.1 is a summary of the well licences and the
20 nonoperated interests of Trident showing what was there
21 on the date of receivership, what we've sold to date,
22 and our proposed sales from the October application
23 resulting in remaining licences that we've been unable
24 to sell at this point in time.

25 Q And what is your understanding as what's going to
26 happen with those remaining licences?

1 A The majority, we expect, will be transferred to the AER
2 and to the OWA. There may be a little bit more of
3 interest, but this has been going on for quite some
4 time now.

5 Q All right. And when you say "quite some time", this
6 report is relatively recent -- of October 19th. Remind
7 me again your appointment date.

8 A It was May of 2019.

9 Q Approximately 18 months prior to this report. There
10 are still ongoing sales efforts?

11 A That is correct.

12 Q Now, sir, in your reports, without going page by page,
13 do you recall any criticism of Mr. Young or O'Brien?

14 A There's no direct comments about Mr. Young or O'Brien
15 in our reports that I'm --

16 Q Okay. Is there --

17 A -- that I recall.

18 Q Okay. Is there any reference to litigation or
19 threatened litigation against Mr. Young or O'Brien?

20 A No.

21 Q Any suggestions or concerns with respect to them
22 squandering the Trident assets prior to the
23 receivership?

24 A No.

25 Q And, again, have Messieurs Young or O'Brien had any
26 control over Trident, its assets, or its operations

1 since May 3rd?

2 A No, they have not.

3 Q Okay. Were you aware of a May 3rd invoice from the AER
4 to Trident?

5 A I would have to ask my staff. I don't recall one.

6 Q Do you recall anyone from the AER making demands on the
7 receiver in June of 2019 to post a quarter of a billion
8 dollars?

9 A I do recall that order coming out.

10 Q Okay. Were there any requests on the receiver to
11 comply with the terms of that order?

12 A No. I -- the receiver wouldn't be in a position to
13 post funds.

14 Q Okay. What about with respect to the other components
15 of that order? Did the receiver comply with the
16 remaining terms of that order?

17 A Can I see the order?

18 Q Sorry. I had the wrong binder in front of me,
19 Mr. Darby.

20 If you could be referred to page 160 in
21 Exhibit 31.02. Did the receiver comply with
22 paragraph 2 of that order and appoint an agent?

23 A No.

24 Q Okay. Did it comply with paragraph 3.(a) to submit an
25 application to transfer well facility licences, et
26 cetera?

1 A The first sale would not have occurred by June 14th.

2 Q And with respect to 3(b), that was what we were talking
3 about, was the posting of security that the note occur?

4 A Correct.

5 Q 3(c). Was a compliance plan provided by June 14th,
6 2019?

7 A No.

8 Q And, sir, since May 3rd, Trident and its assets were
9 under the receiver's exclusive control?

10 A That is correct.

11 Q Have Messieurs O'Brien, Young, or any person offered
12 any payment or inducement for your participation and
13 evidence today?

14 A No.

15 Q Thank you, Mr. Darby. Those are all of my questions,
16 and prior to your examination there was discussions we
17 would reconvene for the Panel and CLM's
18 cross-examinations at 1:00 today. If you could call in
19 again at that time.

20 A Yes, I will.

21 THE CHAIR: Thank you, Mr. Darby.

22 And thank you, Mr. Gorman. Is there any other
23 matter before we break?

24 MR. GORMAN: I don't believe so, My Lady.
25 That is the last witness in direct of the requesters.

26 THE CHAIR: Mr. Dumanovski, is 1:00 still

1 going to be suitable for you to reconvene?

2 MR. DUMANOVSKI: Yes, Madam Chair. Thank you.

3 THE CHAIR: Okay. So with that, we will
4 see you at 1:00. Thank you very much.

5 MR. GORMAN: Thank you.

6

7 PROCEEDINGS ADJOURNED UNTIL 1:00 PM

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1 Proceedings taken Via Remote Video

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3 November 3, 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 K. Bourassa

For Mr. Corbett

24

25 K. Meyer

For Mr. Darby

26 T. Myers

1 C. Longacre, RPR, CSR(A) Official Court Reporter

2

3 (PROCEEDINGS COMMENCED AT 1:02 PM)

4 Discussion

5 THE CHAIR: Thanks, everyone, for coming
6 back to this hearing. We have received an email from
7 Mr. Myers. Forgive me if I'm mispronouncing your name.
8 I think it's Mr. Myers. Yes. And he wishes to ask
9 questions from Mr. Darby, who is -- who he --
10 Mr. Myers, I think you're counsel to Mr. Darby.

11 Before proceeding with that, I'd like to --
12 Mr. Myers, if you're on the call, please let us know.
13 What's the nature of your questions? And then I would
14 like to hear from Mr. Gorman and Mr. Dumanovski or
15 Ms. Ross on their views.

16 MR. MYERS: Thank you, Madam Chair. And
17 that's correct, my name's Tim Myers with Bennett Jones,
18 and with me is Ms. Kelsey Meyer, and we are counsel to
19 PricewaterhouseCoopers in its capacity as the
20 court-appointed receiver of the Trident entities.
21 We -- and Mr. Darby obviously works for
22 PricewaterhouseCoopers as he mentioned during his
23 testimony this morning.

24 We have a limited number of clarifying questions
25 that relate to certain of the questions or areas that
26 Mr. Gorman was explaining or discussing with Mr. Darby

1 before we broke. We were hoping to ask those further
2 direct-examination or clarifying questions prior to
3 counsel for the CLM commencing with their
4 cross-examination.

5 So with your leave, we would propose to proceed
6 with those questions. We've notified Ms. Turner, as
7 well as counsel. They're all on the hearing right now.
8 And we do understand that Mr. Dumanovski has an
9 objection to us proceeding with those questions. But,
10 otherwise, we -- we have not heard any objection and
11 don't understand Mr. Gorman to have any objection to us
12 proceeding with those further questions.

13 THE CHAIR: Thank you, Mr. Myers.

14 Mr. Gorman.

15 MR. GORMAN: Yes, Madam Chair and Panel.

16 Mr. Darby's the court-appointed court officer with
17 respect to Trident. I would think this Panel would
18 want to be as fully informed as appropriate with
19 respect to the receivership, and if I somehow asked
20 questions such that he is concerned that there's
21 clarification, I can't imagine any resistance to this
22 Panel receiving that clarification from the court
23 officer.

24 THE CHAIR: Ms. Ross, Mr. Dumanovski?

25 Thank you, Mr. Gorman.

26 MR. DUMANOVSKI: Madam Chair, it is not clear

1 in what capacity will counsel ask questions of this
2 witness. PwC and Mr. Darby are not party to this
3 proceeding, and they have no standing. In our view,
4 it's highly unusual and inappropriate to allow for
5 this.

6 If -- this is a regulatory appeal of -- from the
7 106 declarations of Mr. O'Brien and Young, and any
8 questions that he wanted to ask, Mr. Gorman had the
9 opportunity, and this Panel and Panel counsel will also
10 have opportunity to ask questions of Mr. Darby to
11 clarify any -- any evidence.

12 THE CHAIR: Thank you, Mr. Dumanovski.

13 Mr. Gorman, do you have any reply to that?

14 MR. GORMAN: No. I am still at a loss to
15 understand why there would be any restriction on the
16 court officer wanting to clarify his evidence and any
17 objections by CLM.

18 THE CHAIR: Okay. Thank you.

19 We would like to have a short discussion amongst
20 the Panel, and we will be back.

21 MR. MYERS: Madam Chair, just if I may,
22 Mr. Gorman may not have any response to Mr. Dumanovski's
23 objection, but we certainly do. And the basis for our
24 response would be that Mr. Darby is appearing as a
25 witness in this proceeding. That's been acknowledged
26 and accepted by all the parties to this proceeding.

1 He's entitled to have his own counsel present, and
2 we've certainly been invited to participate in this
3 hearing today.

4 We're here, and we do have some clarifying
5 questions, as I mentioned. We would agree with
6 Mr. Dumanovski that the circumstances of this
7 proceeding are a bit unique, but there's absolutely no
8 bar to us proposing further questions or asking further
9 questions which we think do help clarify matters and
10 would be of benefit to the Panel, just as there would
11 be no bar to us asking further questions in re-direct,
12 if the need arises during my friend's cross-examination
13 of Mr. Darby.

14 Moreover, there's absolutely no prejudice in our
15 view to the CLM if we proceed with some simple
16 clarifying questions at this stage prior to them
17 proceeding or commencing their cross-examination. We
18 can also confirm that we haven't had any discussions
19 with Mr. Darby about the testimony that he provided
20 this morning or about the nature of the questions that
21 we're going to be proceeding with if you allow us to
22 proceed with those questions.

23 So that would be our response to what we would
24 consider to be a baseless objection on behalf of the
25 CLM to us proceeding with those questions.

26 THE CHAIR: Thank you, Mr. Myers.

1 Mr. Dumanovski, do you want to take another
2 chance?

3 And then I'll get back to you, Mr. Myers, if you
4 wish to ...

5 MR. DUMANOVSKI: Thank you, Madam Chair. This
6 Panel determines who -- who may participate in a
7 regulatory appeal proceeding. The requesters and the
8 CLM, as the decision-maker, are parties in accordance
9 with the AER rules. Otherwise, anyone who wants to
10 participate must file an application to participate
11 which must be approved by this Panel.

12 Therefore -- I'm not sure who invited Mr. Myers to
13 participate here, but this is some very short notice.
14 We heard about it 45 minutes ago, and we don't know
15 what the questions will involve. And we are in an
16 adversarial relationship to the requesters of this
17 proceeding, and we'll suffer -- we'll suffer prejudice
18 and procedural fairness issues because of the short
19 notice.

20 THE CHAIR: Okay. Thank you,
21 Mr. Dumanovski.

22 We heard from all the counsels. We are going to
23 take a short break, and then we will be back. Thank
24 you.

25 (ADJOURNMENT)

26 THE CHAIR: Hello, everyone. Thanks for

1 your patience. The Panel has considered the request
2 from Mr. Myers. Considering PwC's not a party to this
3 proceeding and Mr. Darby's appearing as one of
4 Mr. Gorman's witnesses, in absence of knowing further
5 details about the nature of the question, the Panel has
6 decided to deny the request. With that, if there's no
7 other matters, Mr. Dumanovski, we can move to your
8 cross-examination.

9 MR. DUMANOVSKI: I am ready, Madam Chair.
10 Thank you.

11 Good afternoon. My name is Kiril Dumanovski. I'm
12 legal counsel for the CLM in this proceeding. I have
13 some questions for you this afternoon. My first line
14 of questions are for Mr. O'Brien.

15 DARREN O'BRIEN, JEFFREY YOUNG, GARY GWARTNEY, ALEXANDRE
16 CORBETT, Previously Affirmed

17 DERYCK HELKAA, PAUL JAMES DARBY, Previously Sworn

18 Mr. Dumanovski Cross-examines the Requesters

19 (Mr. O'Brien, Mr. Young, Mr. Gwartney, Mr. Helkaa,
20 Mr. Corbett, Mr. Darby)

21 Q MR. DUMANOVSKI: Mr. O'Brien, in your testimony
22 yesterday, you stated that ATB was basically willing to
23 put in the liquidity if they could get clarity over
24 sales proceeds. What did you mean by clarity over
25 sales proceeds?

26 A MR. O'BRIEN: So my understanding was that

1 ATB wanted certainty that their DIP would be repaid
2 first by sales proceeds. That was what we discussed in
3 the April 18th meeting with AER.

4 Q Yesterday you also stated that the AER did not allow a
5 priming DIP charge for Trident to be payable to fund
6 the CCAA process; is that correct?

7 A Yes.

8 Q I would like to pull up Exhibit 6.04, which is the
9 record of decision in this proceeding.

10 We are looking at PDF page 312. This is an email
11 dated April 29, 2019, from Kaitlin Szacki of the AER to
12 Alex Corbett of ATB. Do you see that, Mr. O'Brien?

13 A I do.

14 Q Could you please read for the record the first three
15 sentences in the second paragraph of this email?

16 A So it says: (as read)

17 With regards to the licensee, Trident, our
18 primary goal is to have the end-of-life
19 obligations addressed by ensuring that
20 licences are transferred to responsible
21 operators. We support reasonable and
22 appropriate fees for services to conduct the
23 potential CCAA process, including DIP
24 financing fees, and support that these fees
25 take first priority in this instance. We
26 cannot, in the abstract, support your

1 condition to give high priority in the sales
2 process to cash bids.

3 Q Thank you.

4 Were you aware of this position of the AER with
5 regard to the DIP financing?

6 MS. HALL: Sorry, Mr. Dumanovski. This
7 is Alana Hall, counsel for the Panel. I just wanted to
8 raise the issue that we haven't confirmed that
9 Mr. O'Brien is -- or any of the requesters' other
10 witnesses are still under oath before proceeding with
11 cross-examination.

12 MR. DUMANOVSKI: We don't have any concerns.
13 We consider them under oath. But if the Panel wants
14 to --

15 MS. HALL: Okay.

16 MR. DUMANOVSKI: -- perform the swearing in
17 again, that's fine with us too.

18 MR. GORMAN: Similarly, since the witnesses
19 were only examined directly yesterday or today, we
20 don't think they need to be re-sworn, but if, Ms. Hall,
21 you want to remind them that they're still under oath
22 so that it's on the record, that -- that might be the
23 most efficient way forward.

24 MS. HALL: Sure. So as was just
25 discussed, the witnesses for the requesters,
26 Mr. O'Brien now -- and this will also apply to

1 Mr. Young, Mr. Corbett, and Mr. Gwartney, and
2 Mr. Darby, and Mr. Helkaa -- I believe I got all of the
3 witnesses there. Just a reminder that you have taken
4 an oath or affirmation to tell the truth in giving your
5 evidence today. Thank you.

6 Q MR. DUMANOVSKI: Mr. O'Brien, would you like me
7 to repeat the question?

8 A MR. O'BRIEN: Yes, please.

9 Q Were you aware of this position of the AER with regards
10 to DIP financing after reading this email?

11 A So was I aware? No, I wasn't aware. This was the
12 feedback that we had been seeking for days and never
13 received.

14 Q Thank you.

15 Did you make any attempts to obtain financing for
16 the CCAA process from sources other than ATB Financial?

17 A Yes. We had hired Peters to secure financing. We
18 talked to Origami. We talked to AIMCo, and we talked
19 to ATB.

20 Q And what was -- what was the response you received?

21 A There was no interest because there was no clarity over
22 Redwater.

23 Q So the Redwater decision was the -- the main reason for
24 denial of financing? Is that your recollection?

25 A No. It was the absence of guidance in how to operate
26 after Redwater. No -- no lender would lend to a

1 company that had a number of -- a high degree of -- of
2 environmental obligations without clarity on how the
3 AER would act.

4 Q And are you referring to guidance from the AER only?

5 A I'm referring to guidance from the AER in how an
6 insolvency would play out.

7 Q Have you read the Redwater decision?

8 A I have.

9 Q And what's your understanding of it?

10 A My understanding of it is that it -- it confirms that
11 the AER's obligations under -- the AER's obligations,
12 the environmental obligations, are senior to any
13 obligation.

14 Q In your testimony yesterday, you stated that you
15 received a notice of default from ATB on April 23rd,
16 2019; is that correct?

17 A Correct.

18 Q You also state on the same page of the transcript,
19 page 56, that there was nothing you could've done to
20 prevent that sweep from happening since it was a
21 contractual sweep; is that correct?

22 A Correct.

23 Q The "sweep" you were referring here, what sweep is
24 that?

25 A The sweep? So it's --

26 Q Yeah.

1 A -- the application of the revenue received on
2 April 25th to pay down the loan as it had done for
3 every month since Trident had existed and -- and been
4 borrowing from ATB.

5 Q And what was the amount? Do you recall that?

6 A It was about 5 and a half million, from memory.

7 Q And what was the reason for the notice of default?

8 A I don't recall.

9 MR. GORMAN: Excuse me, Mr. Dumanovski. I
10 don't mean to interrupt. But do you have a transcript
11 from yesterday's proceeding? Because we have not been
12 provided one.

13 MR. DUMANOVSKI: Yes, we do.

14 MR. GORMAN: I find it unusual that you do
15 and I don't.

16 MR. DUMANOVSKI: That's beyond my control,
17 Mr. Gorman.

18 MR. GORMAN: I didn't say it was your
19 control. I said I found it unusual that someone
20 would've provided you the transcript and not one to the
21 requesters' counsel.

22 THE CHAIR: Ms. Turner.

23 MS. TURNER: We provided the court
24 reporting company's information to everyone on
25 October 26th to make your arrangements. They've also
26 been posted to the AER website.

1 MR. GORMAN: Thank you. We will pursue the
2 remaining transcripts accordingly.

3 Q MR. DUMANOVSKI: I would like to pull up
4 Exhibit 38.01. We're looking at PDF page 39.

5 At the second paragraph -- do you see that,
6 Mr. O'Brien?

7 A I do.

8 Q Do you see the reason for the ...

9 A Yeah.

10 Q You also state in your evidence of yesterday -- from
11 yesterday on page 56 of the transcript, Volume 1, that
12 you received a heads-up from ATB before receiving the
13 notice of default letter. Do you recall that?

14 A I do.

15 Q How far in advance did you receive the heads-up that
16 the notice of default was coming?

17 A I think it was within the hour.

18 Q So it was the same day?

19 A Same day. Almost -- almost immediately.

20 Q Did you advise the AER of the heads-up and the -- and
21 the formal notice of default and the potential
22 consequences of that for Trident?

23 A I did not. We were still waiting for feedback from the
24 AER from our meeting on the 18th.

25 Q And you didn't think that this information was
26 important for -- for the AER, to have the latest

1 update?

2 A It did not cross my mind.

3 Q I would like to go back to Exhibit 6.04, which is the
4 record of decision. We are looking at PDF page 401.
5 This is an email dated April 30th, 2019, from you,
6 Mr. O'Brien, using Origami's email account to Chris
7 Schacher of the AER. The subject of the email is
8 "Trident Cessation of Operations".

9 In this email, you confirm the directors'
10 resignation and advise that, among other things, the
11 insurance -- the insurance expires on the same day,
12 April 30th, 2019, and that the insurance needs to be
13 renewed and replaced the following day. Do you see
14 that?

15 A I do.

16 Q Was the insurance renewed on -- on an annual basis?

17 A I don't recall if it was annual or monthly or
18 semiannual. I don't recall.

19 Q Do you recall the value of the insurance policy?

20 A I don't.

21 Q Do you recall the insurance premium that Trident was
22 paying at the time?

23 A I don't.

24 Q Do you recall the length of the renewal notice required
25 to renew the insurance every year?

26 A I don't.

1 Q And do you recall whether the insurance sent annual
2 notice in 2019 and, if yes, when was it sent?

3 A If it did, it wasn't something that crossed my desk.

4 Q And whose desk would it -- would it cross; do you know?

5 A I don't know. Maybe -- maybe through AP [phonetic]. I
6 actually -- I actually don't know.

7 Q But you haven't received any -- any notice of that?

8 A No.

9 Q Did you make any attempts to renew the insurance?

10 A We didn't have the money to renew it.

11 Q So the answer is no; correct?

12 A No.

13 Q I would like to pull up Exhibit 31.02. This is the
14 requesters' submission in this proceeding. We are
15 looking at PDF page 15, paragraph 114. The last
16 sentence of -- of that paragraph states the following:
17 (as read)

18 This will have a chilling effect on future
19 investment and willingness of sophisticated
20 and experienced businesspeople to be
21 directors and officers of oil companies in
22 Alberta.

23 Do you see that, Mr. O'Brien?

24 A I do.

25 Q Does the phrase "sophisticated and experienced
26 businesspeople" refer to you in this context?

1 A Yes.

2 Q What does that phrase mean in relation to being a
3 director or officer of oil companies in Alberta to you?

4 A It means someone who is looking out for all
5 stakeholders, lenders, equity holders, AER, the public,
6 and trying to do the right thing for all those
7 stakeholders.

8 Q Does it mean that directors and officers of oil
9 companies in Alberta must be familiar with the
10 obligations of licencees when in insolvency or when
11 otherwise ceasing operations?

12 A I don't know.

13 Q Are you familiar with Bulletin 2016-10?

14 A I -- I've read it, but it's been a while.

15 Q Did you -- did you follow that bulletin during the time
16 Trident was ceasing operations?

17 A We did everything in our power to fulfill all of our
18 obligations.

19 Q Let's pull up exhibit -- Bulletin 2016-10. That's
20 Exhibit 6.04, PDF page 390. 391. I'm sorry.

21 There are some bullet points in this bulletin,
22 Mr. O'Brien. Do you see those?

23 A M-hm.

24 Q Which of those bullets did you comply with?

25 A So ensuring continued care and custody of all
26 AER-licenced properties. I think we've proven that we

1 did that responding --

2 Q For what period of time?

3 A Pardon me?

4 Q For what period of time did you do that?

5 A Until we had no money to do -- to do it. So as my
6 testimony indicated, I think our record was -- was a
7 good one and one that was commended by the AER, and our
8 actions were commended by the AER until April 30th.
9 The second bullet responded to any incidents and
10 complaints. We did that. Maintaining records of AER
11 licenced properties in accordance with AER
12 requirements, we did that. Obtaining approval from the
13 AER to transfer licences, we did that.

14 Q What approvals were those?

15 A So acquisitions or transfers of licences, we -- we did
16 that. And then we tried to work with the AER in
17 transferring the well licences back, and we hit a brick
18 wall.

19 Q When were those -- those transfer approvals granted; do
20 you recall?

21 A Throughout two thousand -- throughout 2018.

22 Q My question is specific to the -- to the period in 2019
23 just before your resignations. Did you do that during
24 that time?

25 A No.

26 Q And why not?

1 A Because we resigned before we did this.

2 Q And -- and based on what grounds did you assume that
3 you could just hand over the assets to the AER and
4 avoid all of the liability and, in a way, resign your
5 way out of accountability?

6 MR. GORMAN: There's no evidence that he
7 ever handed over the assets to the AER. The evidence
8 is he resigned, and the OWA appointed a receiver.

9 Q MR. DUMANOVSKI: I'm going to go back to
10 Exhibit 6.04, PDF page 401.

11 Do you see the last phrase on -- on page 402
12 before -- just before your name?

13 A MR. O'BRIEN: (as read)

14 Further details in the attached email from
15 Wendy.

16 Q Page 402, the -- just after the last bullet -- bullet
17 point.

18 A Sorry. I'm confused. That is 402.

19 MR. GORMAN: He's asking the two words
20 above your name.

21 MR. DUMANOVSKI: Yes.

22 A Oh, "good luck"?

23 Q MR. DUMANOVSKI: Yeah. What was the meaning of
24 that?

25 A I genuinely wished the AER and Alberta well.

26 Q In relation to what?

1 A Navigate a difficult oil and gas environment. I -- I
2 wanted everyone to do well here. It was a
3 well-intentioned "good luck".

4 Q Can we go back to page 391 of the same exhibit, 6.04.
5 Let's scroll down.

6 The second-last paragraph, the last sentence in
7 this Bulletin 2016-10, states the following: (as read)
8 The AER's lien has priority over all other
9 liens, charges, rights of setoff, mortgages,
10 and other security interests pursuant to
11 Section 103 of the Oil and Gas Conservation
12 Act.

13 Do you see that?

14 A I do.

15 Q Did you consider this statement when Trident and ATB
16 were trying to negotiate financing?

17 A I did. It made it very difficult to negotiate
18 financing.

19 Q And did you consider this statement when ATB proposed
20 the terms of its financing to the AER which it terms
21 the AER found unacceptable? In other words, did you
22 have any discussions with -- with ATB about this
23 particular requirement?

24 A Are you asking -- are you asking me to speculate on the
25 negotiations between the AER and ATB?

26 Q No. Between -- whether or not you as a director of

1 Trident and the ATB were considering this when making a
2 proposal to the AER.

3 A I -- we didn't make a proposal. I didn't talk to ATB
4 about this, so I object to that question on its face.

5 When I was trying to negotiate the financing for
6 Trident, I did consider this because it made it very
7 difficult.

8 Q Well, didn't you arrange this with ATB in case that
9 what ATB was proposing was contrary to this -- this --

10 A Oh, I --

11 Q -- requirement?

12 A I -- I -- I can't wave -- I couldn't wave a magic wand
13 and make financing happen. All I could do is try to
14 attract terms that were acceptable to lenders, and ATB
15 dictated their terms, and -- and whether it -- whether
16 it -- whether it conflicted with this or not was -- I
17 had nothing to do with that. That was between the AER
18 and ATB, not -- not to do with me.

19 Q So is it fair to say that regardless of you -- of what
20 you did, it was up to the ATB to decide whether or not
21 they'll provide financing?

22 A Correct. I can't make ATB lend to the company.

23 Q In the opening remarks, your counsel yesterday
24 expressed dissatisfaction with your FOIP request
25 disclosure with -- with respect to this matter;
26 correct?

1 A He did.

2 Q Are you aware of the FOIP legislation that the FOIP
3 legislation provides for the complaint process in case
4 a party is not satisfied with the disclosure?

5 A I am not.

6 Q And I take it you did not use that complaint process to
7 potentially get a better disclosure; is that fair?

8 A I don't know.

9 Q So you were not aware of the process, and you don't
10 know whether you used it?

11 A Correct.

12 Q Thank you, Mr. O'Brien. Those are all -- all of my
13 questions for you.

14 Now, the next line of questions is for Mr. Gary
15 Gwartney. I'm sorry if I mispronounced your last name.

16 So yesterday in your testimony you stated that
17 late afternoon or early evening on April 29th, 2019,
18 Mr. O'Brien asked you personally to prepare a plan for
19 a quick and safe securing of the assets and shutting
20 everything in and also advising staff, in particular
21 the field staff, of the situation. Is that correct?

22 A MR. GWARTNEY: Could you say again? I missed
23 the very first part of the question.

24 Q Well, yesterday in your testimony, you stated that late
25 afternoon or early evening on April 29th, 2019,
26 Mr. O'Brien asked you to personally prepare a plan for

1 a quick and safe securing of the assets and shutting
2 everything down and also advising staff, in particular
3 the field staff, of the situation; is that correct?

4 A That is essentially correct. In -- in conjunction with
5 that, we had already had some planning done in place,
6 so I -- it was to direct me to do that planning and to
7 provide him with any other details that would've been
8 required at that time, given that we had short notice
9 to continue -- to complete the shut-in.

10 Q So what was the timeline given by Mr. O'Brien for the
11 preparation of the shut-in plan and for the execution
12 of that plan?

13 A Well, up until then, we just had -- so prior to, call
14 it, April 29th, we had general ideas on what we would
15 do of [sic] a shut-in, so we did not have a formal plan
16 at that point assuming that we were going to go into
17 CCAA. And when I say "we", I don't -- I mean Trident.

18 Subsequent to that, it was -- in my opinion, it
19 was fairly -- it surprised management, including
20 Mr. O'Brien, at the time on the 29th to -- that we
21 would, in fact, be shutting in. So he directed me at
22 that time to proceed with whatever was necessary to
23 shut in the well safely for the company by the 30th.

24 Q So it was --

25 A On the 30th.

26 Q -- less than 24 hours basically; is that fair?

1 A Yes.

2 Q And so what is the usual timeline when -- for a -- in
3 normal circumstances for preparing a shut-in plan and
4 execute that plan in your experience?

5 A Well, I don't think there's a normal anything because
6 it's different with every asset. But like I had -- I
7 had already indicated, we had a general plan on how to
8 proceed, but you -- it would normally take days to
9 weeks depending on the size of an asset.

10 Q And in this case, do you remember the number of the --
11 the assets that needed to be shut in?

12 A I don't remember the specific number.

13 Q Can you describe the shut-in work that was not
14 completed before the directors walked away?

15 A I don't think anybody walked away, but the work that
16 was not completed in the first day -- in the first day
17 as per my email, we were -- we did manage to shut in
18 all of the plants, all of the major compressors,
19 anything with safety issues, and some of the wells.

20 What was left was -- what was left that was not
21 shut in included wellheads. So as per my email on
22 the -- to Mr. Schacher on the next day, there were a
23 number of wells that were left open, but the -- they
24 would flow to compressors or pipelines that were shut
25 in at plant entries and so -- so forth.

26 So I don't remember the specific numbers, but the

1 majority of the facilities were shut in, and most of
2 the compressors were shut in, and any minor field
3 compressors would go down on pressure setting.

4 Q And was there any pressure left in the lines --

5 A Yes.

6 Q -- as far as you know?

7 A Yes.

8 Q Can you -- can you guess what -- what number of lines?

9 A Not -- I could determine that, but I couldn't guess
10 offhand.

11 Q How could you determine that?

12 A I would have to go back to our shut-in reports.

13 Q Is that information in the record in this proceeding,
14 to your understanding?

15 A I was not asked to provide that information. I don't
16 believe it's part of these proceedings.

17 Q Were the wells flowing to pipelines, and, if yes, do
18 you know how many?

19 A Yes, and I -- again, I don't know the specific number
20 of how many.

21 Q And based on your experience and expertise, what
22 happens when pressure builds up in lines?

23 A Well, gathering systems are typically designed to
24 handle any kind of a shut-in with respect to the
25 wellheads. If you get to a point where the well -- so
26 when you shut in a well, if you shut it in at the

1 wellhead, you're -- all of the gas is contained within
2 the wellbore.

3 If in this -- as in this case, when the facilities
4 or compressors are shut in, all of the gas continues to
5 flow from the wellbore into the pipeline, and then over
6 time, it will increase in pressure. Pipelines are
7 designed to handle the maximum pressure of the well or
8 have a pressure-relief system that relieves pressure if
9 it was to exceed the pipeline's design pressure.

10 Q Thank you.

11 And you were also hired by PwC as the contractor
12 to finish this work; is that correct?

13 A That is correct.

14 Q Is the work complete now?

15 A Yes, it is.

16 Q How much additional time did you take for you and your
17 team to safely shut in all of the sites after the
18 resignation of -- of the directors?

19 A Approximately six weeks, but that was constrained
20 somewhat by -- the receiver directed me to shut them in
21 as cost effectively as possible, not as quickly as
22 possible provided it remained safe.

23 So we had to deal with some landowners that didn't
24 want us to enter onto their properties and so on, so
25 some of that time was -- was used up in contacting
26 landowners and -- and abandoning at a -- at a -- or,

1 sorry, shutting in wells when convenient as opposed to
2 as soon as possible.

3 Q Were those facilities left at any time without
4 supervision, for example, between April 30th, 2019, and
5 May 3rd, 2019?

6 A I believe pretty much all of those facilities were left
7 without supervision, but most of these facilities -- in
8 fact, I would be surprised if there are any of them
9 that aren't left without supervision on a regular
10 basis.

11 Q And in your view, who would've responded to an
12 emergency in that -- in that period of time?

13 A I would assume the AER would've responded to any
14 emergency at that time.

15 Q Thank you very much. Those are all of my questions for
16 you.

17 The next line of questioning is for Mr. Helkaa.

18 Mr. Helkaa, yesterday in your testimony, you
19 stated that you believe ATB was willing to provide the
20 DIP loan, but the AER would not allow the priming of
21 the DIP; is that correct?

22 A MR. HELKAA: Correct. The AT -- yeah. ATB
23 was willing to provide the -- a DIP -- a DIP loan.
24 That's correct. But then there was a dispute over the
25 priority with the AER is my understanding.

26 Q And based on what -- what information did you reach the

1 conclusion that the AER would not allow priming of the
2 DIP?

3 A I apologize. Maybe it's me, but you just cut out
4 there.

5 Q Sorry.

6 And based on what information you reached the
7 conclusion that the -- that the AER would not allow
8 priming of the DIP?

9 A Yeah. I'm just -- I apologize. I'm trying to
10 remember. I don't think we heard it directly. I -- I
11 would've either heard it through management or maybe
12 legal counsel that there was a dispute over the -- if
13 the sale went ahead and how those proceeds would be
14 used to repay was my understanding. So it would've
15 either been from either Norton Rose or the company.

16 Q By the "company", you mean Trident?

17 A Correct.

18 Q I would like to go back to Exhibit 6.04, PDF page 312.
19 This is the email dated April 29, 2019, from Kaitlin
20 Szacki of the AER to Alex Corbett of ATB.

21 Do you see it?

22 A I do.

23 Q The second sentence of the second paragraph in this
24 email states the following: (as read)

25 We support reasonable and appropriate fees
26 for services to conduct potential CCAA

1 process, including DIP financing fees, and
2 support these fees take first priority in
3 this instance.

4 Do you see that?

5 A I do.

6 Q So it seems that the -- the AER was in support of
7 priming of the DIP; would you agree with that?

8 A Well, it says "DIP financing fees". That's -- and I'm
9 not trying to be difficult. I'm not sure if that means
10 DIP financing. That -- to me, fees are something a bit
11 different but --

12 Q What's the difference?

13 A DIP financing and DIP financing fees?

14 Q Yes.

15 A Just that. It's like -- it's -- DIP financing fees
16 are -- would be the fees on the DIP financing -- would
17 be how I read that specifically, but ...

18 Q Thank you. Those are all my questions for you.

19 The next line of questions are for Alex Corbett.

20 Mr. Corbett, this morning in your testimony you
21 stated that the terms of the financing proposed by the
22 AER were not acceptable to ATB; is that correct?

23 A MR. CORBETT: That's correct.

24 Q I would like to refer you to the same exhibit, which is
25 6.04, PDF page 312, which should be on the screen right
26 now.

1 A M-hm.

2 Q Could you please read the first paragraph of the email
3 for the record?

4 A Sorry. The first sentence of the first paragraph?

5 Q The first paragraph. That whole paragraph.

6 A Okay. (as read)

7 Hi, Alex. I'd like to clarify our discussion
8 on Friday, as there are misconceptions we're
9 hearing from Trident and the other creditors
10 involved. Firstly, I'd reiterate that ATB
11 brought the below terms forward to the AER
12 and that the AER provided comments on them.
13 These are not AER's terms, nor did we propose
14 them as per your note suggests.

15 Q And this is -- this is an email to you; correct?

16 A It is, and it's inaccurate.

17 Q Did you respond to this email?

18 A There was nothing to gain from responding.

19 Q And who are the parties to the financing agreement that
20 you were trying to negotiate in April of 2019?

21 A Can you rephrase that?

22 Q Sorry?

23 A Who are the parties?

24 Q To the financing agreement that you were trying to
25 negotiate. Who would be the signatories of those -- of
26 that agreement, assuming it was reached?

1 A So it would be between the loan parties of the existing
2 credit agreement, but you would have to get consents
3 from the AER. Otherwise, in an insolvency process, as
4 a result of Redwater, all of the estate's farms would
5 be used to -- to meet end-of-life obligations, which I
6 have -- they were iterated this morning -- dwarfed the
7 value of any of assets within the estate.

8 Q And what was -- what -- what were the results of
9 Redwater, in -- in your view?

10 A What were the results of Redwater in my view?

11 Q Yeah. What was your understanding of the case?

12 A Are you asking me what the decision was or what the
13 implication for our industry was?

14 Q Both.

15 A Well, maybe it's easier if I -- if I speak to what I
16 know more intimately rather than what the -- what the
17 impact to our industry would be, but the -- so I'll
18 look at it from the banking perspective.

19 The Redwater decision dictated or -- or -- or set
20 the rule that the law that -- a common law that we
21 would have -- sorry, an estate -- an insolvent oil and
22 gas estate would have to use any proceeds that it has
23 to meet obligations under the end-of-life -- sorry,
24 obligations for end-of-life assets such as wells,
25 pipelines, and facilities. And --

26 Q And if you take -- go ahead.

1 A Sorry. Go ahead.

2 Q No, no. Finish, please.

3 A The implication of that for Trident, the borrowing
4 base -- and as we went through the credit agreement
5 this morning, it was a borrowing-base facility. The
6 borrowing base of Trident as a result of that -- of
7 that priority of environmental liabilities went from
8 12-and-a-half million down to what would be a very
9 large negative number.

10 Having said that, in the spirit of moving forward
11 to try to find a reasonable solution, ATB did
12 not redetermine Trident's borrowing base to zero
13 following Redwater.

14 Q So could you please take a look at the first sentence
15 in the second paragraph of this letter we have up on
16 the screen?

17 A M-hm.

18 Q Read it for the record.

19 A The first sentence of the second paragraph says:
20 (as read)

21 With regards to the licensee, Trident, our
22 primary goal is to have end-of-life
23 obligations addressed by ensuring that
24 licences are transferred to responsible
25 operators.

26 Q Don't you think that this interpretation by the AER

1 is -- aligns with your understanding of the Redwater
2 decision?

3 A No. I -- I think that's different than the Redwater
4 decision, and in our negotiations with the AER, one of
5 the things we were always clear about was that when
6 we -- when it came down to prioritizing asset sales, we
7 would not prioritize -- like, we would respect their --
8 their discretion to grant licence transfers to the
9 purchasing party.

10 The idea was that -- to structure it so that there
11 was a chance of getting the DIP back. As -- you know,
12 you've made a lot of references today about priming,
13 and it -- it's fine to say that the AER will have --
14 will allow any access proceeds to go back to pay the
15 DIP or the administration cost, but at the end of the
16 day, if the AER is grinding down the purchase price to
17 effectively zero on any purchased assets, there is no
18 money left to pay for the costs of the administration
19 or fund the DIP.

20 And that was one of the concerns that we made
21 really clear to the AER on April 18th and in subsequent
22 conversations.

23 Q But do you have any business with the end-of-life
24 obligations which -- which were of concern to the AER?

25 A Sorry. Could you repeat that question?

26 Q Do you have any -- any objections or concerns with the

1 end-of-life obligations that the AER was concerned with
2 when it comes to obtaining financing?

3 MR. GORMAN: I'm sorry. I don't understand
4 the question. Does he have any objections to the AER's
5 end-of-life obligations?

6 Q MR. DUMANOVSKI: Well, does the AER have a --
7 the jurisdiction to disregard the end-of-life
8 obligations so -- in order to just grant the financing
9 at any cost?

10 MR. GORMAN: You're asking him a legal
11 opinion outside of his area.

12 MR. DUMANOVSKI: I'm not asking for a legal
13 opinion. If he has a -- his own view --

14 THE CHAIR: Mr. Gorman, would you like to
15 make a formal objection?

16 MR. GORMAN: No. I understand the
17 question's about to be reformatted. Perhaps that will
18 get me over my concerns. I was, quite frankly, having
19 trouble understanding the question to know if I should
20 object.

21 THE CHAIR: Mr. Dumanovski.

22 MR. DUMANOVSKI: I'm not sure whether
23 Mr. Gorman is objecting or not. If not, I would like
24 for -- for the witness to answer the question.

25 A MR. CORBETT: Sorry. Can I ask you to --
26 'cause there was a bit of back and forth, can I ask you

1 to ask the question one more time?

2 Q MR. DUMANOVSKI: What is your understanding of
3 the AER's jurisdiction to waive the end-of-life
4 obligations that the AER is concerned with in this
5 email and -- and during the -- those times when Trident
6 was trying to get financing?

7 A I don't think anyone was asking the AER to waive
8 end-of-life obligations. I think what was being
9 asked -- effectively, the -- the problem was that the
10 company had no funds to operate. We were willing to
11 advance certain monies while we were trying to get to a
12 reasonable solution. There was only a certain amount
13 of time that we were willing to keep advancing funds.
14 The company was burning cash, and our -- the amount
15 going on the operator, which I had said would have a
16 borrowing base of below zero, the -- the -- our
17 operator and revolver kept on -- the balance kept on
18 increasing as a result of the company's cash burn, and
19 the company could not pay all of its obligations as
20 they were becoming due.

21 So what we said is we -- we would provide a bit of
22 time and fund certain costs, and the -- so there was no
23 request of a waiver in respect of -- in -- in respect
24 of that aspect, and in an insolvency, all -- at the end
25 of the day, someone has to pay for the costs of the
26 insolvency. And so if the -- the party that will

1 benefit the most from having a well-administrated
2 insolvency process is the AER as a result of being able
3 to maximize either properties that are transferred to
4 minimize the amount of wells that go to the OWA or
5 maximize sales proceeds to then use those sales
6 proceeds to abandon the wells. It seems to me like the
7 logical choice would've been for the AER to fund this
8 process, which we had voiced as the preferred option.

9 When we met with the AER on April 18th we voiced
10 it several times probably every single call we had with
11 the AER representative following that. You can see it
12 in my emails. And at the end of the day, how do you --
13 how would a company get financing to run an insolvency
14 process if the sales proceeds from asset sales are
15 going to get round down to zero, so there's no monies
16 left to refund -- sorry, to pay back the DIP -- the DIP
17 financing?

18 So, again, at the end of the day, that's the AER's
19 objective. What we said is, Here's a plan. We're --
20 we're working with management. We helped them -- we --
21 we helped find cost reductions and opportunities for
22 the -- for the CCAA. We gave the AER advice as to when
23 we ask -- or advice -- we gave them our perspective,
24 CCAA versus receivership. We explained to them why it
25 would make sense for them to finance it. And at no
26 point in time -- when we -- when we tabled -- we tabled

1 our concern to fund -- to get any DIP financing we paid
2 on April 18th when we met with them.

3 So if the AER didn't have the discretion to grant
4 someone -- or to orchestrate asset sales so that the
5 DIP could get paid back, why wouldn't they have just
6 told us on April 18th? I don't have that expertise.
7 I'm not a lawyer. I don't specialize in regulatory
8 obligations either.

9 Q And it is your view that the AER has the jurisdiction
10 to do so, like you said, to orchestrate the sale of
11 assets; is that correct?

12 A What I said was that -- that if they don't have that
13 power, then I would question why they wouldn't have
14 told us and the company on April 18th, and then we
15 could've all -- I could've not spent my holiday --
16 family holiday talking to the AER about whether I'm on
17 a -- whether I'm willing to -- whether my organization
18 can finance their -- the DIP so that they can manage
19 the -- the CCAA of the company's assets.

20 Q Well, who was your plan for this financing, Trident or
21 the AER?

22 A Sorry. What was that?

23 Q Who was -- who was the client for this financing,
24 Trident or the AER?

25 A Well, the AER in an insolvency has a first --
26 effectively, has a first claim on any sales proceeds,

1 so it isn't a matter of who the client is at that
2 stage. Like -- like, if I can't get -- if I can get
3 the person with the first charge that -- let's say the
4 assets are worth \$50 million and there's \$330 million
5 of liabilities. If there's \$330 million of liabilities
6 that are going to rank ahead of the DIP financing, if I
7 can't get their -- if I can't get the consent of the
8 person that has the first charge on the \$330 million of
9 liabilities, I would never, ever, ever look at that
10 deal. No one in my organization would ever look at
11 that deal.

12 So the -- I -- I -- at that stage, it's really
13 irrelevant who the client is. It's will the person
14 that has the dwarfing charge be willing to work to
15 allow the -- allow the CCAA sales process to generate
16 sufficient cash to refund the DIP.

17 And keep in mind that any interest that you would
18 be charging on these kinds of assets would've not
19 really -- they -- they wouldn't make it attractive
20 to -- to -- to lend against this. This was -- this
21 was -- we are trying to mend what happened with
22 Redwater. We said that on our first meeting with the
23 'A' -- on the first meeting of the AER; the only reason
24 why we'd look at doing this DIP financing is to try to
25 see if we can improve our relationship. That was
26 discussed at credit committee when any of the requests

1 for DIP financing under Trident were put forward.

2 Q Thank you.

3 In your testimony this morning, you also stated
4 that on April 17th, 2019, ATB took over the account of
5 Trident; is that correct?

6 A On -- sorry. Say that again.

7 Q I believe you said this morning that on April 17th, ATB
8 took over the account of Trident. Is my
9 understanding --

10 A No. I -- no. I said that on April -- late in the day
11 on April 17th, my team took the management of --
12 when -- when I referred to -- if I used the word
13 "account", I just mean, like, effectively managing the
14 relationship of Trident --

15 Q And so --

16 A (INDISCERNIBLE - OVERLAPPING SPEAKERS)

17 Q -- what was the consequence of that for Trident?

18 A The consequence of that for Trident? That there --
19 there's no change in how the lending agreement works.
20 The only change that there would be is who they're
21 dealing with. The --

22 Q And why is that important?

23 A Why is that important?

24 Q If there's no other change?

25 A You're asking why -- why would we transfer Trident's
26 loan from the regular sales team to the turnaround and

1 restructuring group? Is that what you're asking?

2 Q Yes. Correct.

3 A Because we had found out that they -- earlier that day,
4 my understanding, that the company was looking to file
5 CCAA because it was going to run out of cash in early
6 May. And so that was a -- call it a triggering event
7 from ATB's point of view where they -- any file that
8 would be in that situation would get transferred to our
9 team. So -- because we specialize in dealing with
10 companies in distress.

11 Q And so what's the benefit for ATB from making that
12 change, and how does that impact Trident? Because you
13 received some red flags, and now you're taking action.
14 So what's the difference between this and what was the
15 arrangement before?

16 A Well, our -- an example is our sales teams don't know
17 how to deal with a company that's looking to do an
18 insolvency filing. So -- so conversations -- getting
19 the right professionals to the table and knowing the
20 rel -- the various aspect that we need to -- to plan,
21 such as DIP financing. They won't know -- they won't
22 know what the requirements are for DIP financing, they
23 won't know how to price DIP financing, so they just
24 don't have that same level of expertise.

25 The other thing is every bank will -- has their
26 group that deals with distressed companies, and one of

1 the reasons why they also have that change is because
2 usually there's a closer relationship between a sales
3 team and a management team. And then we -- by it
4 coming in, we're, call it, more independent. So ...

5 Q Was Trident able to use -- to continue to use its
6 account with you, or did you impose additional
7 restrictions on Trident?

8 A So a transfer to our team wouldn't have been able to
9 increase the restrictions to Trident in and of itself.
10 What we did is we did a review of the file, as we do
11 with any borrower that we get, and we identified there
12 was a default, and we papered the default. As a result
13 of the default, there -- there was a restriction on
14 their ability to access a revolver, but that has really
15 nothing to do with it coming to our team. That has to
16 do with the fact that there was a default in respect of
17 the loan agreement.

18 Q And are you referring to the default notice that was
19 sent on April 23rd?

20 A That's correct.

21 Q And so what was the -- what was the impact of that
22 notice to Trident?

23 A It was no longer able to access the operator or -- and
24 revolver.

25 Q Thank you.

26 MR. DUMANOVSKI: Those are all my questions,

1 Madam Chair.

2 THE CHAIR: Mr. Dumanovski, are those all
3 your questions for all the witnesses?

4 MR. DUMANOVSKI: That is correct.

5 THE CHAIR: Okay. So maybe it's
6 appropriate time to take a break. I would suggest till
7 possibly 2:35. We need to confer with our counsel
8 because I think Panel counsel has some questions maybe.
9 I just want to confirm that, and then we will come back
10 at 2:35, roughly, or 2:40. So we get a chance also to
11 refresh our cups and come back to the -- after our
12 discussion. Would that work for everyone?

13 MR. GORMAN: Yes, Madam Chair. I
14 understand we are going to, again, keep the lines open,
15 turn off the cameras, mute, and rejoin at 2:40.

16 I can advise thus far with respect to the
17 questioning, I will have a very short re-direct, and,
18 of course, we'll hear what the Panel counsel may ask
19 the various witnesses.

20 THE CHAIR: Thank you, Mr. Gorman.

21 So we'll see you at 2:40.

22 (ADJOURNMENT)

23 THE CHAIR: Hello, everyone.

24 Ms. Turner, do we have everybody on the call?

25 MS. TURNER: Yes, I believe so.

26 THE CHAIR: Okay. Unless there is any

1 matters that counsel would like to bring up to our
2 attention -- is there so, Mr. Gorman, Mr. Dumanovski?

3 MR. DUMANOVSKI: Nothing from us, Madam Chair.

4 MR. GORMAN: Nothing. Unless the Panel
5 counsel has no questions, then I have a very brief
6 re-direct, as I had mentioned, but there's no
7 procedural matters to bring up at this point.

8 THE CHAIR: Okay. Thank you, Mr. Gorman,
9 Mr. Dumanovski.

10 Panel counsel has some questions, and I would like
11 to invite you to start asking your questions.

12 Ms. Hall, Mr. De Luca, please proceed.

13 MR. DE LUCA: Thank you. Thank you, Madam
14 Chair. Just two questions from me.

15 Alberta Energy Regulator Staff Questions the Requesters
16 (Mr. O'Brien, Mr. Young, Mr. Gwartney, Mr. Helkaa,
17 Mr. Corbett, Mr. Darby)

18 Q MR. DE LUCA: Mr. O'Brien, this is directed
19 towards you.

20 MR. DE LUCA: Tammy, if you could please
21 pull up paragraph 32 of Exhibit 31.02.

22 MS. TURNER: One minute. Paragraph 32?

23 MR. DE LUCA: Sorry. That was Exhibit 31.02.

24 MS. TURNER: Okay. On to the next exhibit
25 over, 31.02.

26 MR. DE LUCA: Yes. It's 31.02. That's the

1 requesters' --

2 MS. TURNER: Okay.

3 MR. DE LUCA: -- hearing submission.

4 MS. TURNER: Wanti, switch it to 31.02, the
5 next tab over to your left.

6 MR. DE LUCA: Thank you.

7 That was paragraph 32 in the submission itself.
8 So you'll have to scroll up to the top.

9 MS. TURNER: Do you have the page number?

10 MR. DE LUCA: Not off the top of my head.

11 It would be probably page 3 or 4. A little bit lower
12 down, Tammy. Thank you. That's great right there.

13 Thank you.

14 Q MR. DE LUCA: Mr. O'Brien, in that
15 paragraph, the requesters in their submission state
16 that if Trident ran out of liquidity and was forced to
17 cease operations and terminate employees, Trident's
18 directors would have no choice but to resign.
19 My question is: Why were the requesters forced to
20 resign?

21 A MR. O'BRIEN: So our advice from counsel was
22 that there would be personal liabilities if we were
23 unable to pay payroll taxes and pay for wages for work
24 that had been done. So we had to weigh the very
25 difficult choice of -- of that obligation to our
26 employees and -- and all of the other obligations.

1 Q So there was nothing at law that strictly required you
2 to resign, then?

3 A I mean, I guess I view personal liability as -- as a
4 legal issue.

5 Q Okay. Thank you.

6 MR. DE LUCA: Tammy, if you could go to
7 Exhibit 32.01. It's going to be paragraph 25. So
8 it'll be, similarly -- no, sorry, that's paragraph 25.
9 So that'll be one of the first few pages in their
10 submission.

11 MS. TURNER: Wanti, go to page 3 and look
12 for paragraph 25, please. Go down to paragraph 25.

13 MR. DE LUCA: That's great right there.
14 Thank you.

15 Q MR. DE LUCA: Mr. O'Brien, the requesters
16 have argued that compliance with the order was
17 impossible. In paragraph 25, CLM notes that:
18 (as read)

19 The requesters did not appoint a director or
20 agent resident in Alberta who was authorized
21 to make decisions about Trident, which was
22 one of the actions required in the order.

23 Earlier in your testimony, you said that the requesters
24 were not in a position to do this. Why was that the
25 case?

26 A MR. O'BRIEN: Well, we talked -- so, first

1 of all, the company had no money to pay for other
2 directors, employees, or management. Second of all, we
3 had talked to other directors, and there was no
4 interest in taking over a company that was likely
5 headed for a restructuring. So it was a -- it was a
6 catch-22. There was -- there was no ability to replace
7 ourselves, and there was no ability to fulfill our
8 obligations, so we were forced to resign.

9 Q Thank you. Those are my questions.

10 MR. DE LUCA: I'll pass it over to Ms. Hall.

11 MS. HALL: Thank you, Mr. De Luca.

12 Q MS. HALL: I do have one question for
13 you, Mr. O'Brien.

14 So I understand you gave some testimony around
15 identifying other investment potential for Trident, and
16 CLM has made submissions that there's no evidence
17 provided on the record that the requesters tried to
18 obtain the necessary financing from other sources or
19 lenders other than ATB, which was presented to the AER
20 as a take-it-or-leave-it proposition. That's a direct
21 quote from Exhibit 32.01, PDF page 11 at paragraph 55.
22 I don't need that brought up. That's just for the
23 record.

24 My question, Mr. O'Brien, is: Besides, you know,
25 looking for other investors for Trident or creditor
26 protection under the CCAA process, did you investigate

1 any other avenues to provide continued care and custody
2 of Trident's assets after April 30th?

3 A MR. O'BRIEN: Well, we had engaged Veracity
4 to -- to oversee the day-to-day, and we encouraged the
5 AER to continue with Veracity in -- in the day-to-day.
6 But, no, this -- this happened all very quickly. I
7 think, you know, the AER's decision to not work with
8 ATB or to not accept ATB's terms, that wasn't
9 communicated to us until 6 PM on Monday.

10 Q Okay. Thank you, sir.

11 And besides -- or before April 30th, because
12 you've given evidence that Trident was experiencing
13 financial difficulty for -- for some time before April
14 30th and that you were aware that Trident was going to
15 run out of liquidity, was anything other than CCAA
16 explored for -- for continued care and custody of the
17 assets?

18 A Well, we had worked with -- I think I may have
19 mentioned this, but we had worked with Peters for two
20 or three months to generate interest in buying the
21 company, financing the company, or merging the company,
22 but there was very limited appetite.

23 Q Okay. Thank you, Mr. O'Brien. Those are my questions
24 for you.

25 MS. HALL: And then I just have a couple
26 of questions for Mr. Gwartney, who I don't see on my

1 screen.

2 MR. GORMAN: I see him on the screen, but
3 he is still muted.

4 MS. HALL: Oh, okay. I'm not sure where
5 he is on my screen.

6 MR. GWARTNEY: Yeah. I'm here. I'm just
7 trying to get started.

8 MS. HALL: Okay. Okay.

9 MR. GWARTNEY: There we go.

10 MS. HALL: There. Thank you, sir.

11 MR. GWARTNEY: You're welcome.

12 MS. HALL: Okay. If you could bring up
13 Exhibit 31.02, PDF page 304, please, Tammy, or whoever
14 is controlling the --

15 UNIDENTIFIED SPEAKER: Tammy.

16 MS. HALL: -- screen share, Tammy. Thank
17 you.

18 MS. TURNER: Page -- yes.

19 MS. HALL: Oh, that is not it. I have my
20 exhibit reference written down incorrectly, so my
21 apologies for that, but I think I can ask the question
22 without it.

23 Q MS. HALL: The declarations -- or the --
24 Mr. Wadsworth's letter enclosing the declarations
25 states: (as read)
26 Despite the repeated threats to the AER that

1 Trident would cease operations on April 30th,
2 no steps were taken prior to that date to
3 shut in the assets and ensure that the public
4 and the environment were not at risk.

5 In cross-examination this afternoon, you said that
6 Trident, before your conversation with Mr. O'Brien on
7 the evening of April 29th, had a general plan before
8 then to shut in Trident's assets. What steps, if any,
9 did Trident take to shut in its wells, facilities, and
10 pipelines before April 30th, 2020 -- 2019?

11 A MR. GWARTNEY: I think I understand the
12 question. I -- I believe that there's a lot of wells
13 involved here. So you're talking at the time in the
14 range of 2,000 producing wells. So we were daily
15 shutting in wells and -- and starting other ones.
16 That's part of operating any producing oil and gas
17 company.

18 With respect to plans, we had general ideas of
19 what we would need to do. In particular, we talked
20 about the Mikwan gas plant which had an ammonia gas
21 refrigeration system which posed a danger to the
22 public. So we had contemplated the possibility that
23 the AER would not allow a CCAA, and what we would do in
24 that event -- what was important in order to shut in
25 and keep public safety.

26 But we did not proceed along shutting in any of

1 those wells because the wells that were still producing
2 we believed to be either economic or less uneconomic
3 than shutting them in. So typically we would've
4 maintained the existing producing assets producing
5 to -- to minimize cash-flow loss or maximize the profit
6 in the event -- in the case where the wells were
7 profitable.

8 So if I didn't answer your question, Ms. Hall --

9 Q No. That's great. Thank you.

10 Okay. So my last question -- and this one I do
11 need the exhibits pulled up, and so hopefully I have
12 the references correct. So the first is Exhibit 31.02,
13 PDF page 3 at paragraph 18. Okay. That's right.

14 So here, sir -- and I believe -- where is this
15 here? There's a reference to the meeting on March 14th.
16 It says: (as read)

17 Trident met again with the AER on March 14th,
18 2019, again setting out its need for
19 refinancing. During this meeting, the
20 requesters advised the AER that they would
21 have no choice but to resign if Trident could
22 not be refinanced.

23 Again, that's a direct quote.

24 And then in Exhibit 38.01, PDF page 71, please.
25 There. Thank you. And if you could scroll down. And,
26 of course, this is a two-page email, so we may have to

1 flip to the second page as well.

2 But, Mr. Gwartney, you summarized that meeting in
3 this email to Mr. O'Brien; correct?

4 A No. That's not correct.

5 Q Okay.

6 A This email -- the -- I think you're referring to two
7 different meetings.

8 Q Okay.

9 A I don't believe I was at the meeting. I believe the
10 first reference that you brought up was to a meeting
11 that occurred between management and the AER with
12 respect to their funding. This was a meeting that I
13 attended with those members of the -- of the AER, and
14 this is my summary notes of that meeting. I believe
15 there are two different meetings that you're referring
16 to.

17 Q Okay. Thank you, sir. That's helpful.

18 So it's your understanding that there were two
19 separate meetings held on March 14th, or was this email
20 not referring to a meeting held on March 14th?

21 A This email is referring to a meeting held on March 14th
22 that I attended that Mr. O'Brien was not at.

23 Q Okay. Thank you, sir. Those are all my questions for
24 you.

25 MR. GORMAN: Madam Chair, if we're ready
26 for re-direct, I do not believe it will take five

1 minutes.

2 MS. TURNER: Madam Chair, you're muted.

3 THE CHAIR: I apologize, everybody.

4 Ms. Hall, are you finished with your questions?

5 Mr. De Luca?

6 MS. HALL: Yes, Madam Chair. I --

7 MR. DE LUCA: Yes, Madam Chair.

8 MS. HALL: -- have no further questions.

9 THE CHAIR: Mr. Gorman, the Panel may have
10 some questions still outstanding. So we need to take a
11 five-minute break to -- so I confer with my colleagues
12 to see if we have any questions outstanding still, and
13 then we will come back for you to conduct your
14 re-direct.

15 MR. GORMAN: Of course, Madam Chair. I'm
16 sorry if I skipped the queue inadvertently.

17 THE CHAIR: That's all right. Okay. We
18 will see you in five minutes.

19 (ADJOURNMENT)

20 THE CHAIR: Ms. Turner, do we have
21 everybody?

22 MS. TURNER: Yes, I believe so.

23 THE CHAIR: Okay. So the Panel has some
24 questions. I'm going to ask my colleague, Commissioner
25 Chiasson, to please start.

26 MS. CHIASSON: Thank you, Madam Chair.

1 Alberta Energy Regulator Panel Question the Requesters
2 (Mr. O'Brien, Mr. Young, Mr. Gwartney, Mr. Helkaa,
3 Mr. Corbett, Mr. Darby)

4 Q MS. CHIASSON: My first question is for
5 Mr. O'Brien.

6 So, Mr. O'Brien, this morning -- I believe it was
7 this morning. Over the course of the past day or two,
8 we heard about and saw reference to the ATB loan
9 documents with Trident. Was the AER provided with
10 copies of those loan documents before April 29th, 2019?

11 A MR. O'BRIEN: I actually don't know if they
12 were or weren't.

13 Q Okay. Thank you.

14 And then I would like us to refer to
15 Document 31.02, page 137. So it is about mid-page.
16 Under the "Additional Information Pieces", it talks
17 about -- and this is summing up a discussion between
18 Mr. Corbett with the ATB and the AER. It says:
19 (as read)

20 Identified not involved in the fall transfer.
21 It was completed with equity. Took on a lot
22 more wells, and liability worsened
23 post-transfer from Alex's perspective.

24 Could you give us some background in relation to this
25 transfer that it's referring to?

26 A I'm -- I'm sorry. First -- sorry. I'm -- I'm a little

1 lost here. Can -- can I see the top of the document?

2 I just want to -- I'm not sure what I'm looking at.

3 Okay. So this is --

4 Q These are AER notes of a discussion with ATB.

5 A Okay. So this is the meeting of Trident and ATB --

6 Q April 25th.

7 A Okay. It's -- okay. So -- and then your question's
8 about the -- the fall transfer?

9 Q Yes.

10 THE CHAIR: I apologize. I'm going to
11 interrupt, Ms. Chiasson, Mr. O'Brien. We have lost
12 second counsel -- the connection to second counsel
13 for -- or -- I don't know. I shouldn't categorize that
14 way. But we have lost connection to Ms. Ross.

15 MS. CHIASSON: I'm fine to wait.

16 THE CHAIR: So if you can be patient with
17 us, and I'll ask Ms. Turner to follow up and find out
18 what's happening.

19 Do you know, Mr. Dumanovski?

20 MR. DUMANOVSKI: I don't, Madam Chair. I'm
21 going to inquire now and see what's -- what's
22 happening.

23 Ms. Ross is trying to re-connect, Madam Chair.

24 THE CHAIR: Okay. Oh, there you are.

25 MS. ROSS: I'm here. Sorry about that.

26 I had some technical issues.

1 THE CHAIR: No problem. Thank you.

2 Ms. Chiasson. And if you wish to repeat your
3 question, that's fine too.

4 Q MS. CHIASSON: Okay. So we've got the
5 document up. So middle of the page it makes reference
6 to information that I'm assuming came to them from
7 Mr. Corbett about a fall transfer which says:

8 (as read)

9 Trident took on a lot more wells.
10 Can you tell us about -- about that?

11 A MR. O'BRIEN: Yeah. So I wasn't a party to
12 this conversation, but I believe what this is
13 referencing is there was an acquisition in the fall
14 of -- I believe it was 2017. I'd have to look at a
15 calendar -- but of -- of some challenged wells from
16 Canlin [phonetic] and -- that the AER would've approved
17 that -- that increased the -- the liabilities.

18 Q Okay. Thank you. Those are all my questions for you.

19 MS. CHIASSON: I do have a couple of
20 questions for Mr. Gwartney. So just given the last
21 round of questions, I just want to check and make sure
22 Mr. Gwartney is all set.

23 A MR. GWARTNEY: Sorry. I am. I'm trying
24 to --

25 Q MS. CHIASSON: No worries. Thank you.

26 Great.

1 A Thank you.

2 Q So yesterday in your testimony -- and it's in the
3 transcript at page 92 -- you had -- you had stated
4 that: (as read)

5 Even with restructuring, Trident would not
6 have had a plausible cash flow in 2019.

7 I understand that correctly?

8 A A positive cash flow is what you --

9 Q Plausible. Sorry.

10 A No. A positive --

11 Q Oh, positive.

12 A -- cash flow.

13 Q Positive. Okay. Sorry. It's saying "plausible" in
14 the -- that's what I had thought I heard, but that's
15 what showed up when I looked at the transcript. Thank
16 you.

17 So just tied in with that, I'm interested if you
18 can tell me about: How would an earlier shut-in of
19 Trident's assets -- given that in -- or early in the
20 year Veracity had determined that projections showed a
21 lack of a positive cash flow for the year, how would an
22 earlier shut-in of Trident's assets have changed
23 marketability of those assets in a CCAA proceeding?

24 A When we -- I'm not exactly sure. Can I rephrase the
25 question, please?

26 Q Okay.

1 A Could you rephrase the question, please?

2 Q Sure. So I guess what I'm interested in getting at is:
3 If shutting had occurred earlier, so -- so say the --
4 what I'm gathering from the testimony, say, is that
5 from, you know, through -- through the -- say, the
6 first quarter -- third of the year, it was clear that
7 Trident was having problems and that there was a need
8 for refinancing or restructuring if things were to move
9 ahead.

10 So I'm looking to understand if an earlier shut-in
11 would have somehow influenced the marketability of
12 Trident's assets, if it had been able to go through a
13 CCAA process, and if so, how would that have influenced
14 it?

15 A Yeah. So if you're talking about a complete shut-in,
16 then definitely that would make a -- a substantial
17 difference to the value of the -- of the assets, in my
18 opinion. A potential buyer would look at that and say,
19 Well, this well has been -- or this group of wells has
20 been shut in. Now there's an incremental cost to
21 restarting those wells, so that may prejudice the buyer
22 one way or another to -- to -- to either increase or
23 decrease his bid depending on his opinion on whether or
24 not the incremental costs to start -- restart the wells
25 would be -- exceed the value of shutting them in and
26 retaining the gas effectively in storage.

1 So all of that is a financial evaluation, a
2 financial opinion, and -- and in my experience, it
3 varies from client to client.

4 With respect to my role at Veracity at the time,
5 we had looked at all of the fields with a determination
6 of whether or not it was viable to shut the fields in
7 to improve cash flow on behalf of Trident at the time.
8 And when I say "improve cash flow", I don't mean
9 necessarily make it positive; necessarily make it less
10 negative. So in some circumstances, you can shut wells
11 in if they are producing at less than the -- the
12 variable cost to operate them, which would improve your
13 cash flow.

14 In other scenarios, the well may be -- or the
15 group of wells may be cash-flow negative, but shutting
16 them in, all that -- you still have all the -- the --
17 the existing fixed cost to produce those assets. So,
18 therefore, even if you shut them in, all you're doing
19 is -- you may have 90 percent of the total costs, but
20 you've reduced all of the potential revenue. So that
21 revenue versus operating cost is a constant -- is a
22 constant calculation that needs to be done when we are
23 managing marginal assets.

24 Does that --

25 Q Okay.

26 A -- answer your question?

1 Q Thank you. That's quite helpful.

2 So then the other question I have for you is:
3 Yesterday when you were referring to the March 14th
4 meeting that you had with the AER -- and you referred
5 to that -- the purpose of that meeting, at least in
6 part, was to seek regulatory concessions in relation to
7 abandonment commitments that had been made by the
8 previous Trident management to ideally avoid any orders
9 in relation to those commitments and the possibility of
10 how much could be fulfilled.

11 So what I'm just looking to understand is: Those
12 abandonment commitments that -- you know, that you're
13 seeking concession on, would that be something similar
14 to what the AER was seeking as a compliance plan in the
15 April 29th order?

16 A Yes, it is. So, effectively, when -- when it -- it
17 relates to the -- to the previous question of
18 Mr. O'Brien -- and that is the assets that were
19 acquired late in 2018. When those were acquired by the
20 existing Trident management at that time, they made a
21 commitment to do a certain number of abandonments in
22 each of the subsequent years, because, at the time,
23 they were probably close to if not offside with respect
24 to their LMR with -- with it.

25 So in order to complete those transactions that
26 were done in 2018, they had to get regulatory approval

1 for the transfer of those licences, which they did. In
2 order to get that regulatory approval, they had
3 submitted a plan.

4 And when Veracity was hired in January of -- of
5 2019 for -- to review the current status of -- of
6 Trident, one of the things that we identified at the
7 time was not just the negative cash flow, but we also
8 identified that the obligations that the management of
9 Trident had committed to could not be -- could not be
10 handled under the existing cash flow that we had
11 predicted for Trident for the year of 2019.

12 And as such, it was recommended that we would
13 approach the board with a -- with a revised schedule of
14 abandonments to -- to help Trident survive on its own
15 cash-flow means until the -- until gas price recovery.

16 Q Great. Thank you very much. Those are all my
17 questions for you.

18 MS. CHIASSON: I do have one question for
19 Mr. Corbett.

20 A MR. CORBETT: Okay. Go ahead.

21 Q MS. CHIASSON: Okay. So, Mr. Corbett, all
22 I'm wanting to do is clarify my understanding. There
23 was a lot of discussion in your testimony earlier today
24 and in --

25 THE CHAIR: Ms. Chiasson --

26 Q MS. CHIASSON: -- cross-examination --

1 THE CHAIR: -- pardon me to interrupt you.
2 I do not have Mr. Corbett's video. I wonder if it's
3 just my system not performing or if everybody else can
4 see Mr. Corbett.
5 MR. CORBETT: I can try logging in and out.
6 Would you like me to do that?
7 THE CHAIR: I don't know. Are you fine --
8 MR. CORBETT: This will take me a minute.
9 THE CHAIR: Okay. Why don't you do that.
10 MR. CORBETT: Okay. I'll be right back.
11 THE CHAIR: While you're doing that, I can
12 jump and ask my -- or actually --
13 MS. CHIASSON: Actually, I do have one other
14 question that's for someone other than Mr. Corbett. So
15 I could ask that question while we're waiting for
16 Mr. Corbett, if you'd like.
17 THE CHAIR: Please.
18 MS. CHIASSON: Okay. So I do have one
19 question for Mr. Darby.
20 A MR. DARBY: Yes.
21 Q MR. CHIASSON: Okay. Oh, there you are.
22 Okay. Great.
23 So, Mr. Darby, actually, what I'm going to ask is
24 if we get Document 31.02, page 208 brought up, please,
25 and that is the receivership order. Okay. So could we
26 scroll down a little bit? I want to be able to see

1 paragraph (d) of paragraph 9. There. That's fine
2 there.

3 So, Mr. Darby, when Mr. Gorman was taking you
4 through the order this morning, part of what you had
5 mentioned was that this is -- this is essentially
6 following a standard template order. So I'm just
7 wondering: Could you explain to me in terms of
8 paragraph 9(d) -- and I'm just going to read for the
9 record where it says: (as read)

10 Further provided that nothing in this order
11 shall [and then (d) says] exempt the debtors
12 from compliance with statutory or regulatory
13 provision relating to health, safety, or the
14 environment.

15 So in terms of standard practice, how do receivers
16 interpret that? How do they treat that sort of
17 provision -- that provision there?

18 A Is there a context in which you'd like to refer to or
19 just generally speaking?

20 Q Just generally speaking, and then -- I don't know
21 whether it may suggest context to me or not. I'm
22 looking to understand: Generally given -- you know,
23 given that you've said this is sort of a standard
24 template order, I'm looking to understand what
25 receivers generally do if that clause comes into play.

26 A Right. So it would be that we still need -- although

1 receiver -- and there's many powers in here that stay
2 other parties and restrict the rights of others, the --
3 the receiver essentially becomes the debtor and in
4 control of the debtor company. It still needs to
5 comply with base health safety and environmental
6 issues, as far as it can.

7 Obviously, on something like Trident, we got --
8 there were -- there were 1,700 wells on production.
9 We -- you know, it would take some time to bring that
10 back into compliance but not something we could
11 outright ignore.

12 Q Okay. Thank you. That's all -- that's all I need to
13 know.

14 MS. CHIASSON: Have we got Mr. Corbett back?

15 A MR. CORBETT: Yes. I'm -- I'm back.

16 Q MS. CHIASSON: Thank you. Nice to see you,
17 Mr. Corbett.

18 So this is just to -- I just want to make sure I
19 am clear on my understanding. So as I think I was
20 starting out saying, we had a lot of back-and-forth, I
21 think, earlier around the proposal for CCA and CCA
22 financing, and you were quite emphatic in relation
23 to -- in relation to what, you know -- that ordinarily
24 that ATB -- that that wasn't a proposal that ATB
25 would consider or pursue in the normal course of
26 affairs and that.

1 And I'm just wanting to understand -- am I
2 understanding correctly, then -- or taking away from
3 your testimony that the reason that ATB pursued this
4 with the -- with -- with considering the CCA
5 refinancing proposal and engaged in the discussions
6 with Trident and the AER was in terms of -- that the
7 ATB wanted to improve its relationship with the AER?

8 A That's correct, but the other factor, which I also
9 talked about, is we also didn't want to see all those
10 wells end up going to the OWA, and I -- I talked about
11 how once the wells are shut in, some of them would
12 probably never be brought back on line or the chances
13 were low.

14 So there's multiple aspects of it, if you think
15 about it from a more holistical [sic] point of view,
16 and that is why we were also at the table trying to
17 find a solution.

18 Q Okay. And just so that we're all clear, the reason
19 that the ATB -- I'm going to ask -- is the reason that
20 the ATB wanted to improve its relationship with the AER
21 because -- is because the ATB was the primary secured
22 creditor in the Redwater insolvency and, hence, on
23 opposing sides of that lengthy litigation?

24 A There's that, and then -- but the other aspect is that
25 there's also going to be more of these to come, and
26 what we want to do is -- what we wanted to do is try to

1 establish a way forward, and we had reached out to the
2 AER several times to try to come up with, call it, a
3 framework where we could work together so that we could
4 try to minimize the impact on the initia [phonetic] and
5 on the environment.

6 And one of the things that the AER had asked us to
7 do was: If you have one of these kinds of
8 circumstances, we -- we won't give you -- tell you what
9 the framework is, but we'll assess them on a
10 case-by-case basis, and we want you to approach us with
11 management and come to us and help -- help us find a
12 solution.

13 And, you know, I've been doing this kind of work
14 for quite a while now, and I can tell you that it's --
15 it would be rare that you'd be in a situation where you
16 could -- when I say "rare", I'd say probably less than
17 20 percent of the time or about 20 percent of the time
18 where you -- you'd be in a situation you could walk
19 hand in hand with management. And when I -- when I say
20 that, I just mean try to find cooperatively, like, a
21 solution.

22 A lot of the times the -- management will have
23 different interests, and one of the things I referred
24 to in my conversation with Kaitlin on the 25th was
25 management entrenchment. So that's usually when
26 management's trying to protect their jobs because they

1 have no alternative job. So if it were to go into the
2 industry -- and you didn't have that case here, and
3 that's one of the reasons why I think it was easier for
4 us to be able to work with management to avoid that
5 kind of situation.

6 Q Okay. So just, sorry, one follow-up question in
7 relation to your answer. So you mentioned about not
8 only the relationship with the AER but also avoiding
9 having wells go to the OWA.

10 So earlier in your cross-examination by
11 Mr. Dumanovski, you had said in relation to the extent
12 of the -- that the liabilities would dwarf the charge
13 to ATB, I would never look at that deal and then
14 said -- but you wanted to improve the relationship. Is
15 that something that's -- and in relation to the wells,
16 only in relation to Trident, or is that something that
17 ATB would be looking at in any instance with an oil and
18 gas -- oil and gas company in financial difficulty?

19 A So let me try to give -- try to frame sort of a -- that
20 we would look -- we -- we would look to try to -- to --
21 if -- if the circumstances came -- came about again, we
22 would look to try to find a reason -- like, an amenable
23 solution so we could avoid a worst-case scenario.

24 Having said that, if it wasn't on the back of
25 Redwater, I don't think our organization would've had
26 the appetite to fund the DIP financing even if the AER

1 had agreed to all three conditions because the assets
2 were so challenging. I talked about how it's coalbed
3 methane. They were cash-flow negative. There was some
4 conversation as well from Veracity about how assets
5 were cash-flow negative, and they were forecasted to
6 continue to be cash-flow negative.

7 The other -- the other players, the logical buyers
8 for the Trident assets -- and there are not that
9 many -- they were burning cash. They -- they were --
10 they were not in a good spot. So their ability to pay
11 cash for assets are going to be burning. It could be
12 cash-flow negative; it's quite limited. So that
13 would -- it really reduces anyone's appetite to lend
14 in -- to -- to Trident in its -- in -- in that
15 situation. So it would depend on the circumstances.

16 Q Okay. So if I understand what you just said correctly,
17 then -- and please correct me if I'm wrong -- from
18 what -- what I took what you -- what you just said,
19 even if the AER had agreed to postpone in relation to
20 the DIP financing, it was not -- it's not -- it was not
21 a given that ATB or that your credit committee would
22 have -- your credit committee would have -- would have
23 approved to proceed with CCA financing?

24 A If they had agreed to all of the conditions, I believe
25 we already -- by -- by -- I think on the -- I think on
26 the -- the weekend when we had the -- the credit

1 committee, we had approval to proceed with funding on
2 the three conditions that I had presented, if they were
3 to have been agreed by the AER. They were
4 socialized -- the conditions were socialized with my
5 boss, who's the senior vice president of credit. He's
6 a voting member of credit committee. I'm also a voting
7 member of credit committee. And we had social -- I had
8 presented it on April 23rd to the credit committee, and
9 they had said that they were supportive of the
10 direction. We sought to do a bit more analysis
11 internally.

12 Q Okay.

13 A So --

14 Q Okay.

15 A So I would say -- I would say in the spirit of working
16 with the AER, I would've been surprised if ATB wouldn't
17 have stepped up if AER had -- had agreed, so ...

18 Q Okay. I guess I misheard, then.

19 So just one other question, because you referred
20 to "worst-case scenario", which I heard you refer to
21 previously. Can you explain -- just explain for us or
22 describe what -- from the -- from the ATB's
23 perspective, what is worst-case scenario? What would
24 that be?

25 A Well -- and -- and when I say -- like, I just meant in
26 respect of how that -- the transfers occurred; right?

1 I'm not saying -- but, effectively, all the wells were
2 shut-in regardless of whether there were -- some of
3 them were economical; some of them weren't. They might
4 not get brought back on. Management was left in the
5 situation where they end up shutting in what they could
6 within a certain period of time, and then everything
7 sat in limbo, I think, for two or three days before a
8 receiver came in.

9 So to -- to me, that -- so I think the ability for
10 a receiver to try to -- I'm going to talk about
11 maximizing value, and to me, maximizing value is --
12 there's different ways of measuring it. But in this
13 case, it would be to try to minimize the amount of
14 wells going to the OWA. If there were a well that
15 someone might've been willing to pay for -- or -- or
16 pay for and take over with a liability -- so it might
17 not actually be any cash -- is now shut-in, and it was
18 never going to get brought back on. To me (AUDIO FEED
19 LOST) --

20 THE COURT REPORTER: Sorry. Sorry.

21 A MR. CORBETT: That's not --

22 THE COURT REPORTER: Mr. Corbett --

23 A MR. CORBETT: -- a positive outcome.

24 THE COURT REPORTER: Mr. Corbett. Mr. Corbett.

25 MR. CORBETT: Yes?

26 THE COURT REPORTER: I've lost a lot of what you

1 just said. I don't know if anyone else did.

2 THE CHAIR: Yes. Yeah.

3 THE COURT REPORTER: Okay. Madam Chair, do you
4 want me to just read what I have last?

5 THE CHAIR: Yes, please.

6 THE COURT REPORTER: I just have: (as read)

7 -- is now shut-in, and there was going --

8 And then I lost you. I don't know if that makes sense
9 to you.

10 THE CHAIR: Can you go a bit further
11 ahead?

12 A MR. CORBETT: Sorry. You go ahead.

13 THE COURT REPORTER: Sorry. (by reading)

14 ... so I think the ability for a receiver to
15 try to -- I'm going to talk about maximizing
16 value. To me, there's --

17 A MR. CORBETT: Yeah. So what I'm talking
18 about -- yeah. So when I talked about a receiver's
19 ability to maximize value is probably -- it's -- it's
20 easier for them to do that if the -- the wells that are
21 -- would attract a buyer or an interested party are
22 operating. And some of the -- the -- the cost of
23 turning them back on will typically reduce the amount
24 that someone is willing to pay for it. And also
25 there's risk associated with turning them back on as
26 well, and I'm not the expert to speak about this.

1 But -- but -- and so as a result in that
2 situation, there's less of an ability to transfer as
3 many liabilities as the AER -- as the AER may have
4 wanted along with those -- with those wells, or maybe
5 no one is interested in those wells now that they've
6 been -- now that they've been -- sorry. My daughter's
7 home with me as a result of the -- the -- the current
8 environment.

9 So -- yeah. So perhaps no one would be interested
10 in -- in -- in those wells. And then rather than
11 having a well that has value that can be sold, even for
12 a dollar along with a bunch of liabilities, now you
13 have an additional well that goes to the OWA.

14 Q MS. CHIASSON: Okay. Thank you, Mr. Corbett.
15 Those are all my questions.

16 MS. CHIASSON: Those are all my questions,
17 Madam Chair.

18 THE CHAIR: Thank you, Ms. Chiasson.

19 Ms. Stock, Commissioner Stock, please proceed.

20 MR. STOCK: Thank you, Madam Chair.

21 A question for Mr. O'Brien.

22 Q MR. STOCK: Hello. Mr. O'Brien, just to
23 clarify, could you again explain the connection between
24 payment to employees and the resignation of directors
25 on April 30th of -- of the year in question?

26 A MR. O'BRIEN: Sure. So we had paid all

1 employees at the beginning of the month through
2 April 30th, and we also knew that we would have revenue
3 coming in on April 25th. And we realized that without
4 a solution between the AER and ATB, once that money was
5 swept, as it was contractually obligated to do under --
6 under the banking documents and past practices and how
7 every banking facility works, we would have no money to
8 pay employees.

9 And my understanding and -- and my advice was:
10 As -- as a director in Canada, there's a personal
11 obligation to unpaid wages, unpaid payroll taxes, and
12 so that was a -- a major consideration driving the
13 April 30th when -- when we were running out of money.

14 Q So just to be clear, you're saying paid at the
15 beginning of the month. That would've been for the
16 prior month of March, or you're prepaying for April?

17 A Sorry. So they were paid April 1st and then April 15th.
18 So we were current through April 30th.

19 Q So you're current to April 30th. So your concern is
20 that you wouldn't have funds to pay any employees
21 May 1st and onward?

22 A Correct.

23 Q Okay. And I believe yesterday's transcript you said
24 that you would be terminating employees in the next
25 24 hours. That was in reference to April 29th. So the
26 employees were terminated on April 30th?

1 A Correct, the morning of April 30th.

2 Q Okay. And so with no employees on May 1st, there was
3 no wage obligation on May 1st; is that correct?

4 A Yes, I believe so.

5 Q Okay. So the resignation is on April 30th -- back to
6 my question. With the connection between payment to
7 employees and the resignation on the 30th, with all the
8 employees paid to the 30th and released on the 30th,
9 there was no continuing obligation. So on May 1st, the
10 directors could have been in place without any
11 liability in connection with wages; is that correct?

12 A I -- I suppose theoretically, but at that point, our
13 decision was to resign, and there's not much -- what --
14 what could we have done differently without employees?
15 I mean, I'm -- I'm not sure what that would've
16 accomplished.

17 Q Okay. Well, thank you.

18 So that takes me to my next question: After the
19 resignation of all Trident directors, how could Trident
20 operate?

21 A I -- I don't know, but I also -- the decision, in my
22 opinion, was made for us because we had no money. So
23 how could Trident operate without money? How could the
24 directors direct the company and pay employees without
25 money and without a way for the company to have access
26 to funds and fund its obligations? Nothing that we

1 could've done as a director other than remain as
2 director would've been different.

3 And so the fact that we -- we got no guidance
4 and -- and received no feedback between the meeting of
5 April 18th and April 29th, there was nothing that we
6 could do by April 29th because we had no money.

7 Q So on the resignation of the directors on April 30th,
8 were you at that time aware that there were operating
9 facilities that Trident was responsible for?

10 A Yeah. I sent that in the email where there was -- I
11 sent the -- the list, so obviously.

12 Q Okay. And thank you for your comments. Those are all
13 my questions.

14 THE CHAIR: Thank you, Ms. Stock.

15 Q THE CHAIR: I just have -- Mr. O'Brien, I
16 have one question after Mr. Stock's question. That
17 email that you mentioned, when you are -- indicated in
18 that email that the contractors -- without being paid,
19 they continue. Then they -- and then you were
20 commanded by the AER for -- despite the difficult
21 situation -- and I can't -- I didn't reference it, but
22 the contractors being referred to, are they Veracity
23 contractors, or you had also contractors working for
24 the company?

25 A Yeah. So, first, just a point of clarification. I
26 think that was an email from Gary.

1 Q Oh.

2 A And I think -- so just -- just to be clear, and then I
3 think that the response was from Chris Schacher
4 commending Gary, the employees, and -- and the work
5 that was done to -- to try to leave Trident in the best
6 position possible. So those were -- those were Trident
7 contractors. So they -- they had been contractors of
8 Trident for -- for years in many cases, not necessarily
9 Veracity contractors.

10 Q Okay. Thank you very much. I appreciate that answer.

11 And the next questions I have are for Mr. Helkaa
12 and Mr. Darby. And you can answer -- whoever wishes or
13 both. Do we have Mr. Helkaa?

14 A MR. HELKAA: Yeah. I'm here.

15 Q There you are and Mr. Darby.

16 So, Mr. Helkaa, why don't I start with you, and
17 then this question -- and forgive me, both of you; I'm
18 not -- I'm just an engineer. I am not an accomplished
19 finance professional like both of you. So if they
20 sound naive, forgive me for that.

21 The -- the question I have is about the CCAA
22 process that we talked about in great length. So what
23 happens when a company goes through a CCAA process?
24 And, specifically, in general -- that's a general
25 question, but, specifically, with regards to its
26 directors and managers, and that -- how does that

1 contrast with a receivership process?

2 A MR. HELKAA: Yeah. I -- I don't know.

3 Paul, do you want -- maybe I can go first, and then --
4 or do you want to go first and -- I'll leave it to you.

5 A MR. DARBY: Go ahead, Deryck. You were
6 the CC --

7 A MR. HELKAA: Sure.

8 A MR. DARBY: -- AA proposed monitor.

9 A MR. HELKAA: Hopefully our answers will
10 line up anyway.

11 I think your first --

12 Q It's not a test. It's not a test.

13 A Your first -- like, on a CCAA, you know, obviously
14 the -- the main -- you know, the main aspect or court
15 order of a CCAA will be to get the stay of proceedings,
16 but I -- I don't -- I don't think our question is so
17 much of what goes on in a CCAA. But to high-level
18 differentiate between a CCAA process in that court
19 order versus a receivership order would be -- with a
20 CCAA you'll hear, like, debtor-in-possession, so the
21 company is intact. Like, the assets remain in -- you
22 know, in the operation of the company. The board of
23 directors remains in place to the extent there is. You
24 know, the -- the process is -- it's ultimately governed
25 by the Court, but it is management running the
26 operations and things like that. You would have an

1 oversight, like I said, of the Court, but of the
2 monitor who would be reporting to Court on management's
3 actions and all that type of stuff.

4 With a receivership, upon appointment of a
5 receivership -- and I think Mr. Darby said as much
6 today -- the assets effectively vest with the receiver,
7 and I don't know legally if that's the right -- but
8 there is no power of the board of directors or
9 management to do anything with the assets. They
10 couldn't sell them. They couldn't, you know, disclaim
11 contracts. They couldn't do anything like that. They
12 couldn't terminate employees. The receiver would have
13 all those powers to effectively run.

14 So I think in a -- simple but accurate is -- the
15 receiver steps into the shoes of the company and runs
16 the company, and -- and there is no board of directors
17 at that time that would have -- even if they remain in
18 place, they wouldn't have any power or things like that
19 to do anything with the assets because the court order
20 gives the receiver all those powers to do.

21 Does that answer your question? Is that what you
22 were looking for?

23 Q That was what I was looking for, actually, in fact.

24 And with that, what happens to the obligations in
25 these -- like, regulatory obligations you have to the
26 Regulator or et cetera? Is there a difference between

1 the two proceedings or processes?

2 A I assume you're talking about end-of-life or
3 environmental or --

4 Q Or --

5 A -- ARO?

6 Q -- in the order in this case. Let's cut to the chase.
7 There was an order here. What would have happened to
8 the order if this path would've been taken versus the
9 other?

10 A Yeah. This is a harder question. I -- I don't think
11 from a pure stacking up of -- in my view, I don't think
12 the -- the priority of the obligation would change
13 under either scenario. It would ultimately have to
14 come out -- you know, so in a receivership or CCAA, you
15 know, the priorities would be what the priorities are,
16 whether it's ARO or -- or -- or liens or what have you.

17 So I don't think that -- that would change in
18 either the scenarios. So, you know, I think -- and
19 I'm -- and, generally, what the plan was in this
20 scenario in the CCAA, I don't think it was probably a
21 lot different to what it was in the receivership. You
22 know, I think the idea was you're going to have to put
23 some money into this. You're going to have to run a
24 process, and you're going to have to try to sell the
25 assets as quickly and as efficiently as possible and,
26 as Mr. Corbett said, get as many of them into someone's

1 hands that could operate them and not go to the OWA. I
2 think that was -- that was the -- and you need a stay
3 of proceedings. So I think that would've been the
4 process quite frankly under both the CCAA or ultimately
5 what happened in the receivership. But I --

6 Q So would it be fair to say -- sorry. I interrupted
7 you.

8 A No. Go ahead. I was -- I was done.

9 Q Would it be fair to summarize -- so the difference
10 would be the directors will remain in power in one
11 process versus the other? The other, the Court, has
12 all the controls under -- well, the Court then gave to
13 the receiver?

14 A I -- I -- I think, you know, maybe it's not -- you
15 know, a company in CCAA, I -- I -- you know, while the
16 directors stay in charge and the -- and management and
17 the assets are -- are still to debtor-in-possession, I
18 don't think it's as simple as they can do -- it's not
19 like they're not in CCAA. There's considerable
20 oversight in a CCAA by Court. Like, assets would have
21 to be subject to a court order. Everybody's getting
22 notice of it. So any major decisions would be subject
23 to Court approval. So there is quite a bit of
24 oversight, I think, even in the CCAA scenario.

25 With respect to orders, you know, environmental
26 orders and things like that, I think Paul -- Mr. Darby

1 said it quite well. Like, you can't ignore them, but
2 at the same time, there would be a stay and a -- and a
3 cooling down period to figure out what's the best way
4 to deal with these assets in -- in -- in either
5 scenario.

6 Q Thank you. That's very helpful.

7 Mr. Darby, do you want to add anything to that
8 before I move on to the next question?

9 A MR. DARBY: No. I -- I think Mr. Helkaa
10 summarized those differences, if that answered your
11 question.

12 Q Yes, it did. Thank you.

13 And, Mr. Helkaa, this is a specific question for
14 you. So you were -- you got engaged and involved with
15 Trident at the end of -- well, in April 2019. What was
16 your assessment as a potential monitor in the chance of
17 success for a CCAA process to occur considering the gas
18 price of -- the externalities that were in play at that
19 time?

20 A MR. HELKAA: I think -- I think this will
21 go -- it -- it is really -- and I'm not trying to be --
22 it's what -- what is your definition of "success"?

23 When we came on, we've obviously worked with
24 Veracity. We know Peters. We -- we weren't naive to
25 the situation, and -- and, you know, this was not --
26 you know, Trident wasn't in a position that was a lot

1 different than a lot of dry gas producers.

2 So I don't think -- there was no -- in my view,
3 there was no expectations that this would be a
4 successful CCAA and that there would be a -- a plan of
5 arrangement and there would be new money come in and
6 you'd -- that was not the case, and I don't think -- I
7 think the success that we viewed in this -- and I --
8 and to be -- quite frankly, even management and Peters
9 were, Can we get a stay of proceedings? Like, can
10 we -- can we get some money in to run process -- an
11 expedited sale process which would result in the
12 majority -- or a -- or a large portion of these wells
13 going to another buyer? That would've been a success
14 in this scenario, and I think that's all -- and the
15 whole process was set up for that.

16 Like, if you look in the cash flows, it was a
17 pretty tight process. I don't think anybody was naive
18 in that there wasn't going to be, like, millions of
19 dollars of cash roll out of the asset sale, if any, on
20 this. I think the -- the -- the goal here -- and just
21 from our involvement was, Can you put in 6 million
22 bucks or whatever it was? Get a process. If you get
23 that money back, that would be a success. If you could
24 find a home for all these assets, that would be a --
25 that would be a success. And I think that's what
26 people were really trying to get to. We were trying --

1 and I -- and -- and I've been sitting here and
2 listening -- what you didn't want to happen was kind of
3 where it did happen where you have a hard stop,
4 everything kind of stopped, things got shut in, and
5 that -- that's what -- that's what everybody was trying
6 to avoid.

7 Q That's very helpful. Thank you. Thank you.

8 And, Mr. Darby, I have one question. Mr. Gorman
9 asked, actually, in fact, this morning -- and I found
10 it intriguing, and I may have -- you may have answered
11 it, and I may have missed the answer to your question,
12 so I'm going to ask it again if you don't mind.

13 So the question was: If the directors wouldn't
14 have resigned, what would have been their role in the
15 company after receivership?

16 Now, let's assume hypothetically they wouldn't
17 have resigned. What would've been their role -- or
18 what is the role of directors in a receivership in
19 general?

20 A MR. DARBY: I've never seen a receivership
21 with directors in place after the court order is
22 granted. The powers of the director are taken away by
23 the court order and given to the receiver. So I guess,
24 theoretically, if they'd stayed behind, the receiver
25 could've, you know, had them assist with matters.

26 You know, in this Trident proceeding, we hired

1 back, you know, several of the head office accountants
2 to do the month-end work. We hired back field
3 contractors to assist with the shut-in and looking at
4 the field.

5 So, you know, the receiver doesn't do everything
6 themselves. They hire back the people they think will
7 be the most efficient and effective to do the task
8 which it has in front of it, which is get control and
9 sell it. So I guess a director could've assisted, but
10 he would have no authority or power; he would just be
11 someone the receiver would be calling upon.

12 Q Okay. Thank you, Mr. Darby. Appreciate the answers.

13 I appreciate everybody's answers. That concludes
14 my questions and Panel's questions, unless there's
15 something that emerged in the last little while.

16 If not, Mr. Gorman, how would you like to proceed?

17 MR. GORMAN: I have -- again, I might be up
18 to six minutes now -- but just some very brief
19 questions, and I'll start first with Mr. Darby and the
20 last question you answered him -- or asked him and he
21 answered.

22 Mr. Gorman Re-examines the Requesters (Mr. O'Brien,
23 Mr. Young, Mr. Gwartney, Mr. Helkaa, Mr. Corbett,
24 Mr. Darby)

25 Q MR. GORMAN: With respect to assistance by
26 directors, that would be, as an employee-type function,

1 any rights as a director to manage the company is under
2 the order; is that correct?

3 A MR. DARBY: Yes.

4 Q Okay. And, again, did you ever ask Mr. O'Brien or
5 Mr. Young for any assistance?

6 A No.

7 Q Okay. I now turn to Mr. Corbett with apologies to him
8 and his daughter that he has to unmute for a moment or
9 two.

10 A MR. CORBETT: Go ahead, Mr. Gorman.

11 Q Thank you.

12 You were taken to the April 29th email from
13 Ms. Szacki by Mr. Dumanovski in direct. I'd like to go
14 one document back. And so I'm looking at 38.01,
15 page 44.

16 A Sorry. Which document am I looking at?

17 Q 38.01, page 44. It's an email from you April 28th at
18 5:48 PM. Okay. And if we could scroll to the bottom
19 of that page.

20 Madam Chair or one of the other Panel Members had
21 asked you what was ATB's position with respect to a
22 potential DIP funding. Can you read the start of the
23 bottom paragraph on page 44 over to the top of page 45?

24 A (as read)

25 We confirm that ATB is unwilling to fund a
26 DIP under AER's proposed terms. ATB requires

1 agreement on all ATB proposed terms in the
2 circumstances. As time is of the essence
3 given the company's cash burn and limited
4 availability of the Court next week, our
5 offer expires at 4 PM on Monday.

6 Q And when you say the "offer", was that the DIP funding
7 with the three conditions we had discussed?

8 A Yes.

9 Q Okay. And did you get a response by 4:00 the next day?

10 A I did not.

11 Q Okay. Could we then turn to Ms. Szacki's response at
12 5:08 PM, and I've marked it at 31.02, page 152.

13 Okay. And if we scroll down to the bottom, we see
14 the start of your email, and that's the email we just
15 had looked at for context, sir. You recognize that?

16 A Yes.

17 Q Okay. And you were taken to the start of the second
18 paragraph. Can we go a little bit further into it to
19 the fourth line in the sentence that starts: (as read)

20 We cannot in the abstract support your
21 conditions to give priority to sales proceeds
22 to cash bids.

23 I think we have turned to the wrong page. I can't see
24 the page number. I'm looking for --

25 A I'm -- I think I'm on --

26 Q -- 31.02, page 152. There we go.

1 So the sentence that starts with: (as read)
2 We cannot in the abstract support your
3 condition ...

4 A Yes.

5 Q Did you understand --

6 A Would you like --

7 Q -- that to satisfy your three conditions that it was
8 acceptable to fund?

9 A No. And --

10 Q Okay.

11 A And it's -- it's consistent, effectively, with the
12 proposal that she had -- that Kaitlin had requested --
13 requested we take to our credit committee for approval.

14 Q Okay.

15 A And that -- we told her that we were not able to agree
16 to their terms.

17 Q Okay. And if we go down a few more lines, there's a
18 sentence that starts: (as read)

19 Once we know what the bids are, we then could
20 consider whether our objective liability
21 address -- aligns with your interest.

22 Did that support your funding conditions?

23 A No.

24 Q And carrying on: (as read)

25 Similarly, we can't agree to negotiations on
26 the distribution.

1 Did that satisfy your pre-funding conditions?

2 A No.

3 Q And the final sentence that starts: (as read)

4 For example, if all assets are sold to AER --
5 sold, then AER will not seek proceeds.

6 Were you comfortable that all assets would be sold such
7 that it met your conditions?

8 A No.

9 Q Thank you. Those are my questions for you,
10 Mr. Corbett.

11 I now have a few questions for Mr. Gwartney.

12 A MR. GWARTNEY: Go ahead, Mr. Gorman.

13 Q Thank you, sir.

14 And, again, my understanding is Veracity had begun
15 overseeing field operations in approximately January of
16 2019?

17 A No, that's not exactly correct. We did an evaluation
18 of the existing operations in January of 2019 and then
19 subsequently were engaged by Trident on or about
20 February 9th, 2019, and that would be when I would
21 suggest that Veracity started to assist with the
22 direction of the Trident assets.

23 Q Thank you. And that's the amended agreement we looked
24 at yesterday. Thanks for that clarification.

25 A That's correct.

26 Q Are there employees on every wellsite and every

1 facility 24 hours a day, 7 days a week?

2 A No, sir.

3 Q Right. There were thousands of wells, and I think 60
4 contractors?

5 A Yes. And in this instance, with respect to shallow CBM
6 gas wells, several of these wells are not visited but
7 possibly yearly. They would be on SCADA, which is
8 remote -- remote monitoring and remote measurement
9 of -- of gas production. So yeah, in lots of cases
10 these wells hadn't had a person actually go to the
11 wellsite for years.

12 Q And after April 30th, were there any incidents on any
13 Trident assets where any party was hurt or the health
14 of any member of the public was adversely affected?

15 A No.

16 Q We looked at the email -- you identified the priorities
17 for April 29th and April 30th and oversaw them on
18 April 30th?

19 A Yes, I remember the email.

20 Q Did you sleep that night, sir? With all of your --
21 your designations and your knowledge of the industry,
22 were you able to sleep that night based upon the
23 efforts you'd conducted?

24 A Yes. Certainly I was not afraid that there was any
25 significant risk to the public or the environment.

26 Q Okay. And, sir, you're aware there's an AER line that

1 any member of the public, including you, could call if
2 you see an emergency to be addressed?

3 A Yes. I answer that line quite often.

4 Q Did you call that line after March 1st with respect to
5 the Trident assets?

6 A No, I did not.

7 Q Thank you, sir.

8 MR. GORMAN: Those are all my questions on
9 re-direct for any of the witnesses, other than to thank
10 them all for -- for their attendance today, and I'll
11 turn the microphone over to you again, Madam Chair.

12 THE CHAIR: Thank you very much,
13 Mr. Gorman, and thank you all the witnesses. I
14 appreciate your patience and endurance throughout the
15 last two days.

16 And with that, tomorrow morning we are planning to
17 start at 9 unless there is any reason that comes to
18 mind and you would like us to change that timing,
19 Mr. Gorman, Mr. Dumanovski?

20 MR. GORMAN: No. I believe Mr. Gosselin
21 will be the witness tomorrow, so if it works for CLM
22 and the Panel and Mr. Gosselin, we'll make ourselves
23 available.

24 MS. ROSS: 9 works for CLM as well.

25 THE CHAIR: 9 works for CLM? That's good.

26 So one just housekeeping note. We -- it -- I'm

1 not sure if you have got the transcript from yesterday,
2 Mr. Gorman. We didn't receive any -- I -- well, I
3 didn't turn my mind into asking you about transcript
4 corrections. So you can include both of those tomorrow
5 before Mr. Gosselin starts his direct if you have any
6 corrections from yesterday and today.

7 MR. GORMAN: I will endeavour to do that,
8 My Lady. I have a lot of work on my desk tonight, with
9 one eye on the US election.

10 THE CHAIR: Yes. And with that, have a
11 good evening, everyone, and see you tomorrow at 9:00.

12 MS. TURNER: Madam Chair, are you
13 releasing -- or --

14 THE CHAIR: Oh, yes. With that, we can
15 release the witnesses. Unless Mr. Gorman feels
16 necessary to call any of them for any correction, I
17 don't see a reason for them to attend tomorrow.

18 MR. GORMAN: I can imagine no reason, and
19 we've tested their patience, I expect, enough today, My
20 Lady -- Madam Chair.

21 THE CHAIR: Thank you. So, yes, thank
22 you, and the witnesses are released. And have a good
23 evening.

24 MR. DARBY: Thank you.

25 MR. HELKAA: Thank you.

26 (WITNESSES STAND DOWN)

1 THE CHAIR: Okay. Bye-bye.

2

3 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, NOVEMBER 4, 2020

4

5 CERTIFICATE OF TRANSCRIPT:

6

7 I, Christy Longacre, certify that the foregoing
8 pages are a complete and accurate transcript of the
9 proceedings, taken down by me in shorthand and
10 transcribed from my shorthand notes to the best of my
11 skill and ability.

12 Dated at the City of Calgary, Province of Alberta,
13 this 3rd day of November 2020.

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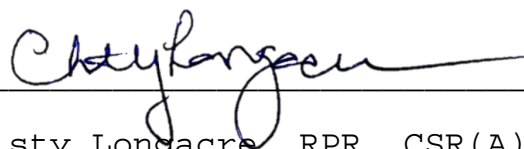
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