

THE ALBERTA ENERGY REGULATOR

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

AER PROCEEDING

VOLUME 3

VIA REMOTE VIDEO

November 4, 2020

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1 Proceedings taken via Remote Video

2

3 November 4, 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

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11 T. Turner

AER Staff

12 A. Shukalkina

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13 W. Handayani

AER Staff

14 E. McKellar

AER Staff

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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 S. Burns, CSR(A), RPR, CRR Official Court Reporter

2

3 (PROCEEDINGS COMMENCED AT 9:03 AM)

4 Discussion

5 THE CHAIR: Good morning, everybody. I
6 hope everyone had a good evening and a pleasant night,
7 a restful night, hopefully.

8 So with that, is there any preliminary matters
9 that parties would like to bring to our attention?

10 Mr. Gorman, why don't you start?

11 MR. GORMAN: No preliminary matters from
12 the requesters.

13 THE CHAIR: And any transcript
14 corrections?

15 MR. GORMAN: We noticed a few insignificant
16 edits, wrong initials, and that sort of thing, but
17 nothing that we need to take any time with. We'll send
18 an email later in the day.

19 THE CHAIR: Thank you, Mr. Gorman.

20 Mr. Dumanovski, Ms. Ross, any preliminary matters
21 from you?

22 MS. ROSS: None from us. Thank you,
23 Madam Chair.

24 THE CHAIR: And any corrections from you?

25 MS. ROSS: Similarly, we noticed the odd
26 correction, but nothing to worry about right now, I

1 think.

2 THE CHAIR: Okay. Thank you, Ms. Ross.

3 So with that, we will begin with your presentation
4 Ms. Ross or Mr. Dumanovski.

5 MS. ROSS: Thank you, Madam Chair,
6 distinguished Panel Members. It will be me presenting
7 Mr. Gosselin's evidence today.

8 Mr. Gosselin, I don't see you. There you are.
9 Good morning, Mr. Gosselin.

10 MR. GOSSELIN: Good morning.

11 MS. ROSS: Mr. Gosselin, can you start by
12 telling the Panel a bit about your background,
13 including your education, your previous positions, and
14 how long you've been with the AER?

15 MR. GOSSELIN: I'd like to, but I probably
16 should get sworn in.

17 MS. ROSS: Oh, that's right. That would
18 help.

19 TREVOR GOSSELIN, Affirmed
20 Direct Evidence by Compliance and Liability Management

21 Q MS. ROSS: Okay. I'll repeat that.
22 Mr. Gosselin, can you please tell the Panel a bit about
23 your background, including your education, your
24 previous positions, and how long you've been with the
25 AER?

26 A MR. GOSSELIN: I will.

1 MR. GOSSELIN: I just want to just say a
2 quick word to Madam Chair and the members of this
3 proceeding. I realize we're taking tomorrow off at my
4 request to deal with a family matter for surgery. I
5 just wanted to offer a public thanks to all of you. I
6 know it's an inconvenience to the schedule.

7 A MR. GOSSELIN: To my experience and
8 background, I've been with the AER since 2014, so for
9 six plus years. I've been a statutory decision-maker
10 for the last three years plus. I have dealt with a
11 number of notable and unfortunate insolvencies,
12 particularly with companies like Lexin and Sequoia.

13 In terms of education, I hold a masters degree
14 from the Royal Military College of Canada in defence
15 studies. Prior to my current career at the AER, I was
16 a senior military officer in Her Majesty's Canadian
17 Armed Forces for 25 years. In that role, I was a
18 certified presiding officer, which allowed me to
19 conduct military tribunals which I had to unfortunately
20 do so -- on -- on numerous occasions.

21 My regulatory background spans not only my life
22 here at the AER but inside the military. I was asked
23 to work inside things like UN Security Council
24 resolutions, Dayton peace accords in the Balkans, and
25 executing missions on behalf of Canada. I have served
26 abroad on several occasions in a leadership and command

1 role and most recently served in Afghanistan.

2 Q MS. ROSS: Thank you, sir.

3 What is your current role with the AER?

4 A Currently, I am the director of transfers, statements
5 of concern, and support within regulatory applications
6 branch.

7 Q Okay. And your role in 2019?

8 A In 2019, pardon me, I was the director of licencing
9 management within a branch that no longer exists called
10 closure and liability. Closure and liability has now
11 been transformed into Compliance and Liability
12 Management or CLM, as we are referring to it in this.

13 Q And was that your role during the Trident matter?

14 A Yes, it was.

15 Q Okay. Can you explain what your responsibilities were
16 as director of licencing management?

17 A Yes. My job was essentially dealing with distressed
18 and struggling licencees either -- as they fell into
19 distress and then transferred over and became insolvent
20 assets. So we dealt with tens of licencees that were
21 in varying states of distress. We worked with them to
22 find ways in which to have the best outcomes possible.

23 I also dealt with the transfers of assets and
24 liabilities, eligibility in terms of Directive 67, and,
25 of course, security that goes along with those two
26 types of regulation.

1 Q And as that role, did you have a number of managers who
2 reported to you?

3 A At that time, I had three, two of which are relevant to
4 this proceeding. They were Chris Schacher, who is the
5 manager -- then was the manager of orphaning closure.
6 Chris dealt with emerging distressed companies.

7 And then the second manager that's relevant is
8 Ms. Kaitlin Szacki, she was the manager of insolvency.
9 So once the company crosses over into an insolvent
10 state, Kaitlin's team took over management of that
11 file. Both of those managers reported to me, and,
12 yeah, that's kind of how it went.

13 Q Now, I'd like you to discuss for the Panel the mandate
14 of the AER, particularly as it relates to the
15 requirements and obligations of licencees.

16 A So relevant to this context, we want licencees to
17 follow all the requirements of the AER, particularly
18 licencees that are in distress situations. We want
19 them to ensure the safety of Albertans at all times.
20 We want them to protect the environment, and especially
21 relevant to this, we want them to -- the mandate is
22 that we want to protect the orphan fund as much as
23 possible.

24 As I've told a number of town halls, 99 percent of
25 the operators in Alberta are good corporate citizens,
26 but we want to make sure that the orphan fund is not a

1 dumping ground for those folks and have -- bills have
2 to be paid by those orphan fund levy payers.

3 Q Now, how would the AER assess the risk of failure of a
4 licensee to meet the AER requirements?

5 A We look at their operational activity, how they're
6 behaving in the field, how they're behaving and
7 interacting with the AER, so a response to direction.
8 We look at the impacts of their actions and any
9 mitigating factors.

10 Q Was any risk assessment done in relation to Trident
11 and, if so, when would that have occurred?

12 A We would've started risk assessment methodology and
13 processes probably in the middle part of March when we
14 met with Veracity and Mr. Gwartney on or about the 14th
15 of March.

16 Q Now, Mr. Gosselin, on Monday, you may remember
17 Mr. Gorman complaining about how the AER was presenting
18 strangers to this situation. You're not a stranger to
19 this Trident situation, are you?

20 A No, I'm not. I was the individual who signed off on
21 the order of 29 April 2019. I was extremely and
22 intimately familiar with Trident affairs, and as well,
23 in our midst today is Ms. Olsen, who is aware of all
24 the matters with Trident, and we've seen Mr. Schacher
25 and Ms. Szacki's names sprinkled throughout the
26 previous proceedings. Kaitlin and Chris are through

1 the walls behind me and through the wall that way. We
2 work in a very close and collaborative -- we worked in
3 a very close and collaborative relationship.

4 Q And while you're talking about the other panel members,
5 do you maybe want to just mention what Mr. Reilly's
6 role is in the AER currently --

7 A Sure.

8 Q -- so that the Panel is aware of why he's here?

9 A Okay. So Mr. Wadsworth is no longer with the AER, and
10 he has been replaced by a person named Ms. Maria Skog.
11 Ms. Skog is unavailable and has appointed a
12 representative, and that is Mr. Reilly's duties today.

13 Q Thank you.

14 So you referred to, I believe, a meeting in early
15 2019 with Trident. Is that your first memory of how
16 you became involved with the Trident matter?

17 A Yes. I think I was aware that Rob Wadsworth had met
18 with Trident somewhere in the month of February, but,
19 officially, the file took root for me when we met with
20 Veracity and Mr. Gwartney on the 14th.

21 MS. ROSS: Ms. Turner, would you mind
22 pulling up Exhibit 38.01, PDF page 71? If you could
23 scroll down a bit. Yeah.

24 Q MS. ROSS: Mr. Gosselin, is this the
25 meeting that you were referring to that is referenced
26 in this email?

1 A MR. GOSSELIN: Yes.

2 Q And if you scroll down further, you will see at
3 page 72, the paragraph that Mr. O'Brien read into the
4 record on Monday. Do you see that beginning at "Trevor
5 and Chris were very clear"? If you could scroll down a
6 bit more -- there. That's good. Do you see that
7 there?

8 A I do.

9 Q Do you want to read that paragraph as well?

10 A Begin with "Trevor and Chris"?

11 Q Yeah.

12 A Okay. (as read)

13 Trevor and Chris were very clear that the
14 board does not look to punish management or
15 directors from corporations that fail unless
16 in their minds the management did not act
17 with integrity with respect to the public
18 interest. Trevor went on to further indicate
19 a potential director could protect himself --
20 herself -- [sorry] him/herself from potential
21 retribution from the AER by outlining the
22 situation to the AER, him specifically, prior
23 to taking on the duties of a director of a
24 company that ultimately became insolvent.

25 Q Thank you.

26 Now, were those your words in that meeting to

1 Mr. Gwartney?

2 A No. I don't believe they were.

3 Q Do you recall either you or Mr. Schacher saying those
4 specific words to Mr. Gwartney?

5 A No, I do not. I think what's occurred here -- and I
6 don't mean to call Mr. Gwartney into -- into disrepute.
7 Chris Schacher and I unfortunately with the number of
8 dry gas producers that were in trouble due to commodity
9 prices at that time were meeting with a number of
10 companies, and part of our duties were and are today to
11 communicate to them what happens to licencees and how
12 we want to see them behave.

13 So I think Mr. Gwartney may have captured the
14 intent of what I was saying incorrectly. We want
15 companies where they have no options left to wind
16 themselves down appropriately and for the directors to
17 live up to their responsibilities, you know, kind of
18 in -- in accordance with Bulletin 2016-10.

19 Q And would you have used the word "retribution"?

20 A No. I'm acutely aware of my responsibilities as a
21 statutory decision-maker. I would have not given some
22 form of veiled indemnity to a licencee in a situation
23 like that. So I -- I wouldn't have used those words,
24 no.

25 Q Were there subsequent meetings with Trident which you
26 did not attend?

1 A Yes, there were.

2 Q And why did you not attend these subsequent meetings?

3 A As we came out of the meeting with Trident on the 14th
4 of March and into the later part of March and early
5 April, my mind turned to the possibility that
6 compliance action might be necessary with Trident.

7 And at that time, I -- sorry, at that moment, I
8 said or came to the conclusion that if I had to act as
9 an SDM, I should no longer be meeting with the company,
10 and that's standard practice here at the AER, that if
11 there is a statutory decision-maker that's going to be
12 involved with compliance actions, we should know the
13 parties only by record until such time as pre-issuance
14 occurs.

15 Q Okay.

16 MS. ROSS: Ms. Turner, can you now pull
17 up Exhibit 6.04, PDF page 286.

18 Q MS. ROSS: We've discussed these meeting
19 notes through Mr. Gorman's witnesses a number of times
20 in the last few days. You might remember that these
21 are meeting notes of a meeting that occurred at the AER
22 on April 18th, 2019, from the title. Is this one of
23 the meetings that you did not attend?

24 A MR. GOSSELIN: That's correct.

25 Q Were you briefed on this meeting, and, if so, what was
26 your knowledge of it?

1 A I was aware that the meeting occurred. Again, a
2 collaboration with Mr. Schacher and Ms. Szacki was
3 daily and ongoing. Trident was the *crise de jour* at
4 that time in the AER and, yeah, I would've had numerous
5 conversations about this meeting and its outcomes.

6 Q You'll note the attendance of ATB. Is it normal for
7 the AER to meet with creditors of a licensee?

8 A No, it's not normal. I think in this situation --
9 well, we didn't invite Trident -- sorry, we didn't
10 invite ATB to the meeting. We didn't necessarily
11 object to them attending. We were surprised by the
12 numbers of people that ATB sent. They overwhelmed one
13 of our meeting rooms, and my understanding was we had
14 to bring in more chairs, and it was rather unexpected.

15 Q And did you have an understand of what took place
16 between the AER and Trident following that April 18th
17 meeting?

18 A Yes. The AER was working to try and understand
19 Trident's proposal in relation to Redwater and the
20 AER's obligations to the insurer that end-of-life
21 obligations were handled to the extent possible. The
22 AER is pragmatic in these occasions, so we're -- we're
23 not Utopian.

24 The AER met with Trident in person. We also --
25 you know, we had been meeting with Trident in person or
26 by phone, not me personally, numerous times, and we

1 understood that there was the threat in the background
2 that was being levelled towards us, that the directors
3 would potentially resign, throw the keys at us if we
4 didn't agree to ATB's proposal on CCAA funding. I
5 think we also -- go ahead.

6 Q Oh, sorry. Yeah. You go ahead. Sorry. Sorry to
7 interrupt.

8 A Yeah. We also later came to understand that ATB had
9 swept the -- the cash from the accounts. We've talked
10 about that in numerous occasions here. And, you know,
11 we -- we were in receipt of an email with Mr. Corbett
12 and Ms. Szacki outlining the terms and conditions that
13 ATB wanted to have in order to fund the CCAA, which we
14 viewed largely as an ultimatum.

15 MS. ROSS: Do you want to turn to that
16 exhibit, Ms. Turner? It's Exhibit 6.04, page 312. Can
17 you scroll down a bit to the next email with
18 Mr. Corbett?

19 Q MS. ROSS: Are these the emails that you
20 were just referring to, Mr. Gosselin?

21 A MR. GOSSELIN: Yeah. That would be the
22 series of events, and it -- it kind of culminated in
23 terms of a DIP lender with this PCR on the 28th of
24 April.

25 Q All right.

26 MS. ROSS: Now, Ms. Turner, if you could

1 turn to Exhibit 6.04, page 297.

2 Q MS. ROSS: Mr. Gosselin, can you see
3 where it starts on April 18th? Can you read that
4 paragraph?

5 A MR. GOSSELIN: Yes. (as read)
6 On April 18th, Trident's counsel had
7 described two different scenarios for funding
8 a sales process in a CCAA. In the first
9 scenario, they advised that Trident would be
10 looking to use March production revenue, at
11 that time estimated 5 to \$6 million, plus an
12 additional \$2.3 million in DIP financing to
13 run the sales process. Alternatively, the
14 \$6 million in production revenues, which
15 flowed through to ATB, and they would then
16 provide the full financing for the sales
17 process on the understanding that the
18 \$6 million, plus any additional financing,
19 would be paid to ATB -- would be paid on the
20 first priority to ATB. [My apologies].
21 Trident's counsel expressly sought AER
22 support that the initial \$6 million plus any
23 additional financing to run the sales process
24 would be repaid in priority to ATB over any
25 Redwater claim.

26 Q And then the following paragraph as well, please.

1 A (as read)

2 In the 25 -- in the meeting on 25 --
3 April 25, 2019, AER intended to provide an
4 answer to Trident under counsel's question
5 only to learn that the March production
6 revenues, \$5,166,318, had already been paid
7 directly to ATB. A result that was not in
8 either scenario they provided.

9 Q Now, is that your understanding of what occurred from
10 the AER's perspective with respect to the April 18th
11 meeting and the April 25th meeting?

12 A Yes. The cash sweep was a complete surprise to us.

13 Q Okay. Now, do you recall Mr. Corbett talking yesterday
14 about how there were apparently discussions with the
15 AER as to the AER funding the DIP?

16 A I do.

17 Q Do you have any idea why Mr. Corbett would think the
18 AER would fund an insolvency process?

19 A I think Mr. Corbett and in fairness to him might have
20 looked at how the AER had funded the Lexin
21 receivership, and it is true and it's on the record AER
22 did fund the Lexin receivership, which is largely, I
23 think, concluding as we speak.

24 But the AER's funding of the Lexin receivership
25 was a strategic decision taken to support our case at
26 the Supreme Court of Canada vis-à-vis Redwater, and as

1 we came out of the -- as we came out of the Supreme
2 Court of Canada decision and largely prior to that, the
3 messages being given to me by the executive leadership
4 team here at the AER was that the AER would not enter
5 into any more insolvency proceedings as a lender.

6 Q Thank you.

7 Now, I'm just going to move to a little bit
8 different topic. Can you please discuss with the Panel
9 what the AER's internal process is for issuing
10 compliance orders to licencees?

11 A Sure. We -- we follow procedures set out in the
12 integrated compliance assurance framework or ICAF, as
13 it's known -- that's available on the AER's website --
14 and, subsequently, Manual 13.

15 But in short, I think, and -- and in the essence
16 of this discussion, we looked at breaches that are
17 recorded, suspected, or confirmed. And we take those
18 breaches, we draft an order with input from various
19 parties inside the AER, including our law branch, and
20 then procedural fairness really takes over at this
21 point.

22 We conduct a pre-issuance where those that are
23 named potentially in the order -- in the draft order
24 are given an opportunity to answer to the breaches and
25 give their side of the story, and then the SDM steps
26 away and either requests more information of what's

1 occurred for the breaches or requests the party named
2 to the breaches to provide information and then,
3 ultimately, reaches a decision to issue the order,
4 amend it, or withdraw it.

5 Q What was your role in issuing compliance orders to
6 licencees?

7 A I had unfortunately had to issue several orders against
8 licencees. We were dealing with and continue to deal
9 with here at the AER a number of insolvent companies,
10 so it wasn't my first rodeo, so to speak.

11 MS. ROSS: Ms. Turner, if you could pull
12 up Exhibit 6.04, PDF page 9.

13 Q MS. ROSS: And do you recognize this
14 order, Mr. Gosselin?

15 A MR. GOSSELIN: Yes, I do.

16 Q What is it?

17 A I'm sorry. Could you repeat the question?

18 Q What is this order for?

19 A This order is an order that I executed against Trident
20 Exploration, both entities represented there. We -- we
21 set that order out to clarify expectations on the
22 requirements that we needed to be met. We wanted to
23 hear what the licencees had to say about their
24 situation. I wanted to hear it personally, and we --
25 we ultimately wanted to offer a better outcome or
26 destiny for Trident than -- than what we saw happening

1 in events leading up to the 29th of -- of April.

2 Q So what brought the AER to the position of deciding to
3 issue that order to Trident on April 29th, 2019?

4 A Right. So it was becoming more and more clear that the
5 actions of Trident were not as -- as previously
6 thought. We suspected, you know, that they were not
7 going to leave things in a state that was acceptable to
8 our requirements. We also ascertained there was a risk
9 that the directors would resign and walk away. We also
10 assessed that there was a risk that care and custody
11 might be compromised and that if the directors walked
12 away, there would be no responsible party to undertake
13 the care and custody.

14 We also noticed the size of Trident, and, you
15 know, the numbers are -- are in the record, but the
16 total number of licences, I believe, was in and around
17 or north of the 4,000 mark, and the risk to the public
18 as well was -- was noteworthy as we decided to go
19 forward and conduct pre-issuance with -- with Trident.

20 Q And you mention care and custody of the assets there.
21 Can you explain what you mean by "care and custody"?

22 A Yeah. Generally, we look for three things. We want to
23 see in proper care and custody an ability to respond to
24 incidents and complaints, and we've noted this -- you
25 know, as we get into the events of -- of 30 April,
26 Trident turned its contact information at the AER,

1 which is not the appropriate action for a company that
2 ceases operations.

3 Second, we want the company to shut in or, in
4 other words, chain and drain everything, ensure safety,
5 protect the environment, and prohibit or prevent any
6 loss of containment on any liquid gas, anything that's
7 coming out of holes and being produced.

8 The third thing we want them to do for care and
9 custody is to maintain records in accordance with our
10 requirements such that if they do have to transition
11 either to another party or to the Orphan Well
12 Association or another entity, the records are intact,
13 and we're not running with a cold case on an asset.

14 Q And can you tell the Panel about your recollection of
15 the pre-issuance meeting that occurred with Trident on
16 April 29th, 2019?

17 A Yes. I was with Ms. Szacki and Mr. Schacher, and I
18 believe you, Ms. Ross, were in attendance as well.
19 From Trident, I remember Mr. O'Brien and Mr. Gorman. I
20 think Mr. Harvie joined us later that -- later --
21 15 minutes later or so once the meeting kicked off at
22 4:00 PM.

23 Q And do you recall how that meeting went and anything
24 that was said?

25 A I remember a couple of moments in there. I remember
26 Mr. O'Brien being -- I'm going to try to be fair here.

1 He was a little bit upset with this. I think he found
2 it as a surprise that the AER was going to issue an
3 order against Trident. I mean -- and -- and I -- I can
4 understand his position. I'm not a cold, heartless
5 human being.

6 The conduct of the meeting was such that, as I do
7 with most -- with all licencees, I walk through the
8 order, give a chance for the named party to offer any
9 explanations or disagree with any of the "whereas"
10 clauses or the breaches. I use -- I walk through the
11 entire order with them. I clarify expectations. I
12 want the directors and officers who are in attendance
13 at the pre-issuance meeting to understand their
14 responsibilities, and I would emphasize points. And I
15 emphasize points like care and custody, public safety,
16 and the environment. So that's sort of how the meeting
17 unfolded.

18 Q Was there ever discussion about ceasing operations?

19 A Yeah. I remember Mr. O'Brien indicating that they were
20 going to cease operations. This was somewhat
21 unacceptable, and I -- I communicated to him in reply
22 the intent of this order, and if you look down in, I
23 think, paragraph 3, cited in no way, shape, or form did
24 Trident have to cease operations.

25 I wanted them to re-examine their options, wind
26 down the company properly. We had suspicions that, you

1 know, that -- that things were not being looked after,
2 and I wanted them to have an option to choose their
3 destiny and not have an outcome like they did.

4 Q Generally speaking, when you issue these orders, is it
5 open for the company to continue to work with the AER?

6 A Absolutely.

7 Q Do you recall what happened after that? Was the order
8 issued?

9 A Yeah. I had heard from Mr. O'Brien and -- and counsel.
10 I don't remember if Mr. Young was on the call. We did
11 some of it as in person. Some of it was -- was over
12 the phone. I don't recall if Mr. Young was there, but
13 I -- I left that meeting and went back. I reflected on
14 what I had heard, and based on the risk that I saw and
15 the behaviour I saw in the meeting, I -- I issued the
16 order, and that was distributed by Mr. Schacher at 5:52
17 that day.

18 Q Okay.

19 MS. ROSS: Ms. Turner, can you pull up
20 Exhibit 6.04, PDF page 100 to 110. Start with 100, and
21 if you could just scroll through that for Mr. Gosselin.

22 Q MS. ROSS: Do you recall seeing these
23 documents at some point?

24 A MR. GOSSELIN: I only became --

25 Q Scroll town to -- if you scroll down to the next page,
26 I think it should become -- no. Keep going. Okay. If

1 you want to scroll back up to the email there on
2 page 100, that would be great.

3 Do you want to just maybe read this short email
4 from Mr. Young to Darren O'Brien, Howard Gorman, and
5 Kate Stevens, please?

6 A (as read)

7 Kate, please find attached my executed
8 resignation and mutual release. Please do me
9 a favour and date my resignation and release
10 for the appropriate date when you file the
11 document. Tomorrow presumptively. Thanks
12 for all your help and Norton Rose's help.
13 Sorry it ended this way. Very sorry. Best,
14 Jeff.

15 Q And can you note the date and time of that email?

16 A It's April 29th, 2019, 4:23 PM.

17 Q So when would that have occurred in relation to the
18 pre-issuance meeting?

19 A It would've occurred while we were it would appear in
20 the middle of the pre-issuance meeting. I think the
21 pre-issuance meeting started at 4:00 PM, and so these
22 look like they were sent in the middle of it.

23 MS. ROSS: And if you can go down to
24 page 111, Ms. Turner. That's good.

25 Q MS. ROSS: And can you just note what
26 this email is, Mr. Gosselin?

1 A It is the -- it looks to be the identical resignation
2 of -- of Mr. O'Brien.

3 Q And the time, date there is?

4 A April 29th, 2019, 4:40 PM. I would conclude that
5 this is --

6 Q And what does that --

7 A I'm sorry.

8 Q Right. And what does that document read?

9 A The document reads -- would you like me to read what --
10 what it says, or what --

11 Q What was -- what Mr. O'Brien wrote.

12 A "My documents attached. Holy shit. Darren."

13 MR. GORMAN: Excuse me, Ms. Ross. Can you
14 just confirm the page? It's been slipped down.

15 MS. ROSS: 111.

16 MR. GORMAN: Thank you.

17 Q MS. ROSS: So you came to learn that
18 these resignations were sent in by Mr. O'Brien and
19 Mr. Young either during or immediately following your
20 meeting with Trident. Do you know when you came to
21 learn that that happened?

22 A I -- I wasn't certainly aware in the -- in the meeting
23 about these resignations and being sent to their
24 counsel. I became aware of those when the notice of
25 intent for Section 106 went out, and -- and -- and that
26 process took place. So I guess just for sake of

1 clarity, prior to the 29th or prior to the 30th, I
2 would've known or suspected that the directors were
3 contemplating resignation. I received their
4 resignation or notice late in the day on the 30th of
5 April. So the fact that they had sent these in during
6 our pre-issuance meeting only became known to me in
7 June and July of 2019.

8 MS. ROSS: Okay. Now if you could please
9 pull up Exhibit 6.04, page 29. And, yeah, just scroll
10 down to the email from Darren O'Brien. Thank you.

11 Q MS. ROSS: Mr. Gosselin, can you discuss
12 what occurred on April 30th, 2019, based on what's in
13 this email and your recollection?

14 A MR. GOSSELIN: Sure. Late in the day, so
15 4:39 PM, we received this email from Mr. O'Brien to
16 Mr. Schacher, and it basically outlines the state of
17 affairs from the company's perspective, and
18 inappropriately forced the Trident assets on to the
19 doorstep of the AER, effectively throwing the keys at
20 us.

21 It -- it was kind of clear to me at this point
22 that, you know, the -- the directors were seeking or
23 had -- had essentially abdicated their responsibilities.
24 Again, paramount in my mind at this time is care and
25 custody. As -- as we've seen, you know, there was a
26 number of assets left. As we -- as we knew, this would

1 expose the AER, the industry, and the OWA to some
2 \$259 million in liability. More candidly, I guess, you
3 know, this left a -- this left a hot pumping 1,700 well
4 risk-laden mess at the feet of the Regulator, and it --
5 it caused a fair bit of concern and chaos. I wouldn't
6 say panic from the Regulator, but this was certainly
7 unique in its actions, and I would say we could've
8 ended this differently.

9 Q So then after the resignations of the directors, what
10 did the AER do to respond to this action?

11 A So we immediately notified or updated our field folks.
12 They had been along with us on this ride, but we
13 alerted them to this developing situation as to what
14 the state of affairs likely was in the field.

15 We began immediately contemplating our strategy
16 with the Orphan Well Association to see if they would
17 be willing to undertake the receivership. Again, I was
18 under instructions at that time that the AER would not
19 itself enter into an insolvency.

20 We, again, noted the abdication of care and
21 custody. We had Trident contacts directed at the AER.

22 We had to deal with an insurance issue. As we
23 talked about yesterday, the Trident insurance expired
24 on the 30th of April, and one of my other leaders who
25 wasn't mentioned, Jen Rempel, who was reporting to me,
26 was able to negotiate with Reed Stenhouse and get

1 coverage extended until the 5th of -- of May.

2 So, you know, I've -- I've outlined here a set of
3 actions. This is over a number of days. We know that
4 on the 3rd of May the Trident assets entered into a
5 receivership, and I think the only other thing I would
6 say on this about the actions of the directors, it
7 caused -- the AER felt it had an obligation, as they do
8 with everybody, to go to the community most affected by
9 the actions of these directors.

10 So we held a town hall in Torrington, Alberta, not
11 far from here in Calgary. We spoke to what we knew
12 about the state of affairs with Trident, why the AER
13 took the decisions it did. It was a very difficult
14 session to hold, probably one of the toughest
15 challenges I've had as a leader. We spoke with
16 landowners who were affected by Trident assets not
17 knowing who to turn to. I spoke to several Trident
18 employees who were flabbergasted just to put it mildly
19 at what had happened with the company.

20 The OWA did its best to sort of indicate where it
21 wanted to go with the assets and pursue a receivership,
22 but this caused quite a bit of upset in the community
23 to which we are still dealing with today.

24 Q And you'll recall yesterday that Mr. Gorman raised the
25 issue of the AER preparing receivership documents that
26 ultimately never went forward. Can you tell me

1 anything about that?

2 A I can. I can understand, you know, Mr. Gorman coming
3 to that conclusion. We -- we -- again, there was a
4 perception in industry and those that work with it that
5 the AER might be up for funding another insolvency. It
6 was confirmed to me -- I can't remember the specific
7 date without going deep into my personal notes, but,
8 certainly, in the early days of May or perhaps even on
9 the 30th of April, that the AER would not be entering
10 into any insolvencies, and that was direction from the
11 executive leadership team, which is headed by our --
12 our chief executive officer.

13 Q And so then how did the OWA come to take on the
14 receivership?

15 A I spoke with the OWA and attended their board meetings.
16 I was a member of their board at the time, and I spoke
17 to them about what the state of the Trident affair was
18 and let them come to their conclusions about the best
19 way to efficiently deal with the assets of Trident. It
20 was likely through a receivership, and they took their
21 decision.

22 Q And, now, moving to the issue of the Section 106
23 declarations. Is it common, would you say, for the AER
24 to issue Section 106 declarations?

25 A No. It's -- it's fairly infrequent. We, to the best
26 of my knowledge, have had about ten since the AER's

1 inception in 2013. I'll leave it there.

2 Q Why does the AER issue Section 106 declarations?

3 A We reserve Section 106 declarations when we have seen
4 the worst of the worst behaviour from operators in the
5 industry, the directors and officers more specifically.
6 We -- we use it sparingly, and we seek -- we seek
7 banishment. Directive 67 sets it out nicely in its
8 opening line, which is having eligibility or the
9 ability to operate in Alberta is a privilege and not a
10 right, and, unfortunately, privileges need to be
11 revoked.

12 Q How does the AER go about making decisions with respect
13 to whether or not to issue a Section 106 declaration?

14 A We follow a fairly standard process. I'm just going to
15 reach for a document here. We would look at the nature
16 of the breach. We'd look at what the impacts are in
17 terms of the breach to the public and the environment.
18 We'd make a determination of what are the risks,
19 whether it was fine to continue to operate unimpeded.
20 So if we don't issue this, what would consequences
21 potentially look like? Is there precedent that should
22 be adhered to, how other cases have been treated? Are
23 there any mitigating or aggravating considerations or
24 any other relevant considerations?

25 Q And -- and what is the internal procedure that the AER
26 takes in issuing these declarations?

1 A Similar to an order. We would look at alleged
2 breaches. We would draft that into a briefing package
3 for the statutory decision-maker, which was Robert
4 Wadsworth in this instance.

5 We would lay out things like: Was there control,
6 direct and indirect? Was there an actual breach? And
7 I'm missing one off the top of my head. The elements
8 are set out in -- in the Oil and Gas Conservation Act.

9 We would set those out and offer evidence as to
10 why those had been breached or why those conditions had
11 been met. We'd look at, again, who is in control,
12 directly or incorrectly. Was there contraventions?
13 Was the public interest put at risk?

14 And we determined in that case the elements were
15 present at the time, and Section 106 is a bit unique,
16 and I will, you know, not pretend to be a legal expert
17 here, but it's a reverse onus. So you have to prove
18 that these things, in fact, didn't -- or didn't occur
19 or -- in existence.

20 Q So was Trident offered an opportunity to respond to a
21 notice of intent, then?

22 A Yes. I think the record would reflect we -- we issued
23 the notice of intent for Section 106 declarations on
24 the 24th of June, and Trident and its counsel or the
25 requesters responded on the 24th of July with what, I
26 believe -- and I think it was 6.04 -- is the -- is the

1 record for that. Approximately, a 200-page response
2 that we analyzed.

3 Q Have you reviewed that record, which is Exhibit 06.04
4 in these proceedings?

5 A Yes, I have.

6 Q Can you confirm whether the record represents the
7 information which was available to the decision-maker,
8 Mr. Wadsworth, at the time he made the decision to
9 issue the Section 106 declarations against the
10 requesters?

11 A Yes, I can.

12 Q And who briefed Mr. Wadsworth in making that decision?

13 A I made the recommendation, which was contained in a
14 briefing package that went in to Mr. Wadsworth. We had
15 been discussing the Trident matter on a very, very
16 frequent basis, so, you know, Trident really -- late
17 days of April and early May. It was a very significant
18 event at the AER.

19 We would've discussed it on numerous occasions,
20 and then I would have delivered a final recommendation
21 to him by a package that was presented to him. He
22 would've had several days and then took the decision of
23 his own -- of his own mind on what to do.

24 Q Do you know whether the AER considered the consequences
25 of issuing a declaration on Mr. O'Brien and Mr. Young?

26 A Yes. It's a very serious matter. You know, we

1 understand that Section 106 have, you know, a very
2 detrimental effect, and -- and I go back to my earlier
3 comments. That's why we use it extremely sparingly,
4 that there's good solid process, legal and otherwise,
5 attached to issuing a Section 106 declaration, and I
6 think the AER judiciousness since 2013 speaks to that.

7 MS. ROSS: Okay. Ms. Turner, would you
8 mind pulling up Exhibit 31.02, PDF page 282?

9 Q MS. ROSS: You'll note that's the first
10 report of the receiver, which is PwC.

11 MS. ROSS: Now, Ms. Turner, could you
12 scroll down to paragraph 2.5, which I believe is on
13 page 285. And then paragraph 2.5.

14 Q MS. ROSS: Okay. Mr. Gosselin, can you
15 read paragraph 2.5 for the record?

16 A MR. GOSSELIN: I can. (as read)

17 Prior to the resignation date, Trident had
18 approximately 2,400 wells producing. The
19 receiver understands that after learning of
20 the resignation, most of Trident's
21 contractors and field staff, despite being
22 informed by the company that they would not
23 be paid, chose to remain on-site for the day
24 and shut in all of Trident's facilities.
25 Most of the compressor stations and
26 approximately 700 wells. Subsequent to the

1 resignation date, approximately 1,700 wells
2 continued to flow and remain open to
3 Trident's pipeline system which continued to
4 accumulate pressure.

5 Q Does this statement by the receiver appear to be
6 accurate in your recollection of the events?

7 A Yes, it does.

8 Q And what did that mean to the AER at 4:00 PM on
9 April 30th, 2019, when the directors resigned?

10 A We had all of the Trident assets, some of which were
11 still turning, operating, and accumulating pressure
12 without care and custody, which is, again, against
13 every fibre of the Regulator's mandate in this respect.

14 Q And what does that mean in terms of the public and the
15 environment?

16 A It means it was at significant risk. Mr. Gwartney and
17 Veracity were given an impossible mission to close in
18 that number of wells, facilities, and pipeline in that
19 amount of time. It's laudable they got that much done.

20 I remember us talking about the email from Chris
21 Schacher offering accolades to the good folks in the
22 Trident employee ranks that did everything they could
23 that day before getting terminated, but still, as we
24 had suspected, there is no way that that shut-in
25 could've been done properly and thoroughly in the time
26 that was afforded to Veracity and the employees of

1 Trident. So, again, it was -- it was a hot pumping
2 mess that was dumped on the doorstep of the AER.

3 Q Now, in the requesters' testimony before this Panel
4 over the last few days, we've heard a lot, particularly
5 from Mr. O'Brien, about how they, being the requesters,
6 were good stewards over the Trident assets and that the
7 AER commented numerous times that there were no issues
8 with how the licences were handled by Trident. What
9 was the AER's view of whether or not the requesters
10 were good stewards or not?

11 A The AER's view became increasingly dim of the directors
12 from Trident. You know, as we got to the point of
13 issuing the notice of intent on the 24th of June, it
14 became clear the directors were not good stewards.
15 They weren't good captains. They didn't go down with
16 their ship.

17 Trident's story is now, you know, communicated to
18 us by other directors who are in tough situations who
19 say they don't want to do it like Trident. So we were
20 very disappointed in the behaviour. We didn't feel
21 that, you know, in accordance with Directive 67 they
22 deserved the privilege to operate any further in
23 Alberta.

24 And, again, we use Section 106 sparingly. We
25 realize the consequences of our actions. We use it for
26 the worst of the worst, and this was certainly the

1 worst that I had ever seen, and the Section 106
2 decision against these two gentlemen was not taken
3 lightly, but we have to deter people from -- who are
4 like-minded from pursuing activities like this as they
5 enter into distress situations with their assets.

6 We have to ensure that all who operate in Alberta
7 in this sector know who they are. We have to have
8 confidence in the regulatory scheme that when
9 behaviours are chosen, appropriate consequences are
10 meted out, and we have to protect public safety and the
11 environment, and this was the right decision.

12 Q Thank you, Mr. Gosselin.

13 Now, I understand that you have reviewed the
14 evidence filed in these proceedings by CLM; is that
15 correct?

16 A That is correct.

17 Q Can you confirm that you adopt that evidence as your
18 evidence in these proceedings?

19 A I do.

20 MS. ROSS: I have no further questions
21 for Mr. Gosselin.

22 MS. ROSS: Mr. Gosselin, please answer
23 any questions that Mr. Gorman may have or the Panel or
24 Panel's counsel, please.

25 MR. GOSSELIN: Absolutely.

26 THE CHAIR: Thank you, Ms. Ross. Thank

1 you, Mr. Gosselin.

2 I'm going to turn to Mr. Gorman.

3 MR. GORMAN: In your hands, Madam Chair,
4 whether we start now. We are obviously not going to
5 finish before a morning break. My goal is to conclude
6 the examinations today so that Mr. Gosselin can deal
7 with his family issues and not worry about coming back
8 Friday. So I'm in your hands whether we start the
9 cross and go for perhaps half an hour. I will be
10 taking breaks, and I doubt I will finish before the
11 lunch break. So we can either take 10 or 15 minutes
12 now and come back for an extended period or start now
13 and take a break in a half hour, 40 minutes. I'm
14 leaving up to you.

15 THE CHAIR: Mr. Gorman, we're taking a
16 break for sure because I am sure the court reporter and
17 everybody else needs a break, but in a determination
18 letter we sent to the parties, we allowed you to have a
19 break after Mr. Gosselin's direct evidence. If you
20 wish to change your strategy on your cross-examination
21 or your questions based on the evidence we received,
22 would you like to use a break, or would you like to --
23 and, I mean, a larger break than just 15 minutes?

24 MR. GORMAN: Oh, no. I'm -- I'm ready to
25 commence. I thought the CLM had suggested that
26 Mr. Gosselin's direct testimony would take two hours.

1 So the whole schedule has -- has changed somewhat in
2 that regard. I'm -- I'm ready to proceed now, and we
3 can then take a short break when convenient for the
4 Panel and the reporter and the witnesses and can get
5 further instructions during the lunch break or
6 certainly prior to -- to my concluding.

7 THE CHAIR: So I would suggest we take a
8 short break now. It's top of the hour. It's 10:00.
9 Why don't we reconvene at 10:15 so everybody gets a
10 break, a chance to walk, and be back at 10:15. And
11 then you can start at that point.

12 Would that work for everyone?

13 MR. GORMAN: That is fine. It works for
14 me, Madam Chair.

15 THE CHAIR: Okay. Thank you.

16 Ms. Ross?

17 MS. ROSS: That works for us as well.

18 THE CHAIR: Thank you. We'll see you at
19 10:15.

20 (ADJOURNMENT)

21 THE CHAIR: Hello, everyone, and thank you
22 for coming back. I am just going to make a quick
23 check.

24 Ms. Turner, is everybody back from the break?

25 MS. TURNER: I think so, yes.

26 THE CHAIR: And, Mr. Gorman, Ms. Ross, are

1 you ready to proceed?

2 MR. GORMAN: I'm ready, Madam Chair.

3 THE CHAIR: Okay.

4 MS. ROSS: We are ready too.

5 THE CHAIR: Thank you. Thank you. Please
6 proceed.

7 MR. GORMAN: Madam Chair, it's my
8 understanding that the AER has requested and the Panel
9 has approved -- or the Regulatory Panel has approved
10 that the cross will expand beyond Mr. Gosselin who did
11 the direct to include Ms. Olsen and Mr. Reilly. If
12 that's the case, I would assume they should be sworn in
13 now as well?

14 THE CHAIR: You're correct, Mr. Gorman.

15 LONNY OLSEN, Sworn

16 BLAIR REILLY, Affirmed

17 Mr. Gorman Cross-examines Compliance and Liability
18 Management (Mr. Gosselin, Ms. Olsen, Mr. Reilly)

19 Q MR. GORMAN: My initial questions are
20 background with respect to Ms. Olsen. Can you briefly
21 give me your educational background?

22 A MS. OLSEN: Certainly. So I have a
23 diploma in nursing from Foothills School of Nursing
24 in -- I graduated in 1987. I have a degree in
25 communications studies from the University of Calgary
26 from 1991. I have a project management certificate

1 from Mount Royal University. I think that was two
2 years ago. And that's pretty much it.

3 Q Okay. And what about your work experience with -- with
4 respect to the regulatory or oil and gas industry? I
5 don't care about nursing. We'll -- we'll skip that
6 part.

7 A Sure. I was -- I worked as, actually, president of
8 Centaur Resources Limited for three years. I consulted
9 with Eagle Rock Petroleum for one year. I then was a
10 drilling technician for Canadian Natural Resources for
11 three years, and I've been with the Alberta Energy
12 Regulator for almost seven years.

13 Q And what was your personal involvement with respect to
14 Trident? What was your first personal involvement?

15 A My direct involvement was as part of my role as -- at
16 the time, I was a compliance specialist. So I prepared
17 documents and do research as directed at that time by
18 my manager, Chris Schacher, and I was not directly
19 involved in any meetings with Trident. I was a
20 researcher kind of behind the scenes.

21 Q Okay. And would you have started that research before
22 or after April 30th, 2019?

23 A I started it after April 30th.

24 Q Okay. And, again, I think I heard you say you've never
25 spoken to Mr. Young or Mr. O'Brien?

26 A That's correct.

1 Q Did you speak to any of the other four witnesses that
2 we've heard over the last few days?

3 A You mean Mr. Corbett or Mr. Darby or --

4 Q Correct.

5 A -- any of those? No. No, I have not.

6 Q But you did listen to their evidence since Monday
7 morning?

8 A Yes, I have. I have spoken to Mr. Gwartney in --
9 related to another matter with a different licensee
10 since Trident.

11 Q Okay. Thanks for that clarification.

12 And, Mr. Reilly, could we do the same for you,
13 sir?

14 A MR. REILLY: Absolutely.

15 Q Briefly give me your educational work background as it
16 relates to energy or the AER.

17 A Yeah. I have a technical diploma in fish, wildlife,
18 and recreation. I also have a bachelor in conservation
19 enforcement. I've been in the regulatory field for
20 16-plus years. I started with the conservation service
21 with -- here in Alberta. I moved to Alberta
22 Environment at the time as an environmental protection
23 officer. I was an investigator and a peace officer for
24 the Province of Alberta.

25 I worked in the executive ranks as an executive
26 advisor to the assistant deputy minister of operations

1 for six years. I moved to the Regulator six years ago
2 now and worked with our executive vice president at the
3 time. I have led the development of the dam safety
4 program for the Alberta Energy Regulator and have -- I
5 was the manager -- manager of emergency management. My
6 current role is the director of enforcement and
7 emergency management here at the Regulator, and I am
8 here as the acting vice president of CLM.

9 Q And, Mr. Reilly, when was your first personal
10 involvement with Trident?

11 A Just a few months ago. I'm here as the current
12 statutory decision-maker for the Section 106 order. If
13 there was any amendments or rescinding of that order
14 outside of this process, I would be the decision-maker
15 for that.

16 Q And so it's fair to say that you've not spoken to
17 Mr. Young or Mr. O'Brien?

18 A That's absolutely correct. As a statutory
19 decision-maker, as Trevor has described before, I keep
20 independence, and when that decision would come -- or a
21 requirement for a decision would come forward, I would
22 review all the information and independently make that
23 decision.

24 Q And with respect to preparing for the cross, have you
25 spoken to Robert Wadsworth?

26 A No, I have not. Not on this matter. Months ago, he

1 was our acting vice president but not since that time.

2 Q So as recently as a few months ago, Mr. Wadsworth was
3 performing a role in the AER?

4 A Correct. And I don't have the exact date when he left
5 the AER, but from that point forward, we have not
6 discussed any matters.

7 Q I'll start first with the -- Mr. Gosselin. The rest of
8 you, the other two witnesses, can expect to hear very
9 similar questions shortly. Oh, and -- and, Mr. Beattie
10 [sic], you've through the entire evidence thus far?

11 A MR. REILLY: Sorry. I think that was
12 directed to myself. Yes, I have. I've been present
13 the entire time.

14 Q Thank you.

15 All right. First, Mr. Gosselin, I understood you
16 to take exception with Mr. Gwartney's comments at
17 page 72 of 38.01, which was attributing comments to you
18 and Chris Schacher from the March 14th meeting, and
19 those comments were distributed by Mr. Gwartney later
20 that evening? And this is page 71 and 72 of
21 Exhibit 38.01. It would be the top of the next page, 72.
22 You took exception to the -- Mr. Gwartney reporting
23 that "Trevor and Chris were very clear". That
24 sentence. Do you recall that?

25 MR. GORMAN: I'm sorry. Have we lost
26 Mr. Gosselin?

- 1 A MR. GOSSELIN: My apologies. I was on mute.
2 In response to your question, I do recall that
3 sentence.
- 4 Q MR. GORMAN: Okay. But you took exception
5 to that being in the email and Mr. Gwartney's evidence
6 with respect to that being said. Do you recall that?
- 7 A I think I said -- yeah.
- 8 Q Is there any other evidence that was provided by
9 Mr. Gwartney that you dispute or challenge?
- 10 A No.
- 11 Q Was there any evidence of Mr. Corbett that you dispute
12 or challenge?
- 13 A No.
- 14 Q Was there any evidence of Mr. Helkaa that you dispute
15 or challenge?
- 16 A No.
- 17 Q Was there any evidence of Mr. Darby that you dispute or
18 challenge?
- 19 A No.
- 20 Q Was there any evidence of Mr. Young that you dispute or
21 challenge?
- 22 A No.
- 23 Q Was there any evidence of Mr. O'Brien that you dispute
24 or challenge?
- 25 A In general, I dispute that they were good stewards up
26 until -- they were -- they were good stewards

1 throughout the entire process. I would -- I would add
2 to that that they looked to be doing okay but worsened
3 over the month of April, and, certainly, in the late
4 days of April, the AER's perspective on them changed
5 dramatically.

6 Q Was the dramatic change in that they resigned on
7 April 30th as they had foretold the AER would occur?

8 A That would've triggered it, and the fact that as we
9 discovered with the first report of the receiver from
10 Mr. Darby that, in fact, shut-in hadn't occurred
11 properly or thoroughly.

12 Q It hadn't --

13 A So it was (INDISCERNIBLE - OVERLAPPING SPEAKERS).

14 Q Okay. So there was nothing before April 30th that you
15 would suggest Mr. Young and O'Brien had not been good
16 stewards?

17 A In terms of public safety and the environment, care and
18 custody, everything appeared to be acceptable.

19 Q Ms. Olsen, is there anything in Mr. Gwartney's evidence
20 that you dispute or challenge?

21 A MS. OLSEN: No.

22 Q Is there anything in Mr. Corbett's evidence that you
23 dispute or challenge?

24 A No.

25 Q Is there anything in Mr. Helkaa's evidence that you
26 dispute or challenge?

1 A No.

2 Q Is there anything in Mr. Darby's evidence that you
3 dispute or challenge?

4 A No.

5 Q And is there anything in Mr. O'Brien's evidence that
6 you dispute or challenge?

7 A I'm not sure if it was his evidence or just your
8 opening remarks, sir. I do dispute that the requesters
9 did not have an opportunity to provide evidence as they
10 were issued the notice of intent and did submit the
11 200-page response. If that --

12 Q The response?

13 A If that was -- yes.

14 Q The response was through counsel. Nobody sought --

15 A That -- okay.

16 Q -- out to interview them. Do you agree with that?

17 A That's -- that is correct, yes.

18 Q Okay. And I cannot believe I've missed late in my
19 question whether I asked you about Mr. Young or
20 Mr. O'Brien, but perhaps we'll wrap -- wrap it up.
21 There is nothing in the requesters' six witnesses that
22 you dispute or challenge?

23 A No.

24 Q Okay. And, Mr. Reilly, maybe we'll use that shortcut
25 with you. Is there anything in any of the requesters'
26 six witnesses' evidence that you dispute or challenge?

1 A MR. REILLY: As I said before, I've been
2 independent from this process. So I wouldn't have the
3 context to provide that answer to you.

4 Q You don't have any firsthand direct information with
5 respect to this matter at all; is that fair?

6 A Correct. As -- as intended.

7 Q Okay. Sir, based upon that, I can advise you I will
8 not be asking you any further questions.

9 Now, Mr. Gosselin, we went through your
10 background, and you started at the AER in 2014; is that
11 correct?

12 A MR. GOSSELIN: Correct.

13 Q And do you know how many wells were being administered
14 by the Orphan Well Association in 2014?

15 A Not accurately. Would you like me to hazard a guess?

16 Q Sure. If you could give a round number. We won't hold
17 you to it.

18 A I want to say it was between 1 and 2,000 and was on the
19 climb.

20 Q Okay. If I suggested in 2014 it was less than 500 --
21 we -- we can look at the records.

22 A I wouldn't quarrel with you on that.

23 Q Now, you had mentioned you had been involved in your
24 prior career -- and thank you for your service in the
25 military. I'm not sure I'll be quite so complimentary
26 about your current role, but thank you for that. You

1 worked on military tribunals. Do you have any legal
2 training?

3 A Yeah. As -- as a matter of having what's called powers
4 of punishment under the National Defence Act, so that's
5 the ability to conduct a military tribunal or a summary
6 trial, you'd have to go through what's called
7 presiding-officer certification, which is -- and I'm
8 recalling off the top of my memory here -- somewhere in
9 the neighbourhood of a two- to three-day course
10 conducted by members of -- or a judge advocate branch,
11 so our legal branch or the legal branch within the
12 Department of National Defence.

13 And I had to do recertification on that body of
14 training and knowledge. I think if I recall correctly,
15 every three years you had to be recertified as -- as an
16 officer and able to conduct summary trials. It's
17 equivalent to statutory decision-making here to draw
18 the -- to draw the conclusion.

19 Q All right. But you did not attend law school?

20 A No, I did not.

21 Q All right. And I think you said with respect to your
22 understanding that there's a reverse onus clause, you
23 don't have legal training to assist in that regard?

24 A No.

25 Q All right. Do you understand that for the reverse onus
26 to be raised, the Regulator first must set out a prima

1 facie case?

2 A If that's what's -- if that's what's indicated in our
3 regulations, I -- I can't recall that specifically.

4 Q Okay. Sir, currently, are you aware of the number of
5 properties being administered by the Orphan Well
6 Association?

7 A Not directly. So, Mr. Gorman, I -- I have -- the AER
8 went through a significant reorganization. I was
9 assigned duties in another part of the AER, so I left
10 the proximity of sort of closure orphaning and
11 insolvency work in January, February of this year.
12 Were I to hazard a guess, it's somewhere in the
13 neighbourhood of 3 to 4,000 or possibly higher.

14 Q Okay. Now, from the Orphan Well website, I've noted
15 that they say: (as read)

16 Only assets designated as orphaned by the AER
17 are under management of the OWA.

18 Is that your understanding, that until the AER
19 designates them, they're not managed by the OWA?

20 A Yes.

21 Q And if I were to say the website suggests that there
22 are 2,538 orphan wells for abandonment, does that
23 generally meet with your understanding? And I
24 understand you might not have been looking at this as
25 closely since January of this year.

26 A It seems representative.

1 Q 270 facilities for decommissioning? Does that sound
2 about right?

3 A Yes.

4 Q 3,447 orphan pipeline segments? Does that sound about
5 right?

6 A It does.

7 Q 3,566 orphan sites for reclamation? Does that --

8 A Yes.

9 Q -- sound about right?

10 A It does.

11 Q And none of those are Trident properties because they
12 have not been designated by the AER to the OWA yet.
13 Does that sound right?

14 A No, it does not. I'd have to -- I'd have to check on
15 the specific status of the Trident insolvency. I'm not
16 sure if Mr. Darby and PwC have been discharged on any
17 assets, so I -- I have to do a confirmation of records.

18 Q Okay. Do you recall Mr. Darby took us through the
19 fifth report of the receiver which said they have not
20 yet transferred any wellsites because they're trying to
21 complete a few more sales?

22 A I do now. Thank you for the reminder. So no assets
23 have gone to the OWA as of yet. I agree.

24 Q Okay. Now, on the Orphan Well list, I recognize some
25 names of companies in receivership, and you had
26 mentioned a couple of them. There was Lexin. You were

1 involved in the Lexin file?

2 A Yes, I was.

3 Q And the AER was the applicant in Lexin?

4 A The AER was the applicant for the receivership in
5 Lexin. Yes, that's correct.

6 Q Correct.

7 And you had mentioned and we've talked about
8 Redwater. You understand there are Redwater assets
9 that have been transferred to the OWA?

10 A Yes, I do.

11 Q Manitok is another receivership where the assets have
12 been transferred to the OWA?

13 A Yes.

14 Q LGX is another receivership where assets have been
15 transferred to the OWA?

16 A Yes.

17 Q Sequoia is another receivership where assets have been
18 transferred to the OWA?

19 A Again, that receivership, I believe, is still live, so
20 I'd have to check records. But if you are indicating
21 that off of whatever source you're looking at, I will
22 take your word for it.

23 Q Okay. And Terra Energy, another bankrupt company where
24 assets were transferred to the OWA?

25 A I'm not specifically recalling that, but you're clearly
26 referencing something.

1 Q Verity, another receivership where assets were
2 transferred to the OWA?

3 A Again, my memory isn't a hundred percent on that one.

4 Q Shoreline, another receivership where assets were
5 transferred to the OWA?

6 A Yes.

7 Q Questfire, another receivership where assets were
8 transferred to the OWA?

9 A Yes.

10 Q And in all of those receivership cases, the AER has
11 issued a Section 106 directive only as against the
12 directors of Lexin. Do you recall that?

13 A Yes, I do.

14 Q And that's because the directors of Lexin ignored
15 orders to decommission unsafe properties for nine
16 months prior to the receivership, and the time to
17 remedy these defaults had expired prior to their
18 resignation. Do you recall the context of the Lexin?

19 A Yes.

20 Q And all of those other receiverships where assets were
21 transferred to the Orphan Well Association, there were
22 no Section 106 directions as against any of those
23 directors?

24 A Is that a question or a statement, Mr. Gorman?

25 Q I'm asking you if you can confirm my understanding that
26 that is correct.

1 A I cannot confirm that. Section 106 proceedings -- and,
2 again, I'm not going to disclose where the AER's gaze
3 is turning these days, but I will not confirm that we
4 have or will not take any action against any of those
5 directors involved with those receiverships at this
6 time.

7 Q We can take a look at the AER website and see whether
8 you have in the past taken any actions as against any
9 of those directors; correct? And I'm not asking you to
10 speculate in the future.

11 A Okay. So if you want to look at the website, you could
12 look backwards and see which declarations have been
13 issued, yes.

14 Q Now, where is Robert Wadsworth?

15 A Robert Wadsworth has left the AER. As Mr. Reilly
16 testified, he left the AER somewhere around June or
17 July of this year.

18 Q Okay. Is he still alive?

19 A As far as I know, yes.

20 Q Is he in Canada?

21 A As far as I know, yes.

22 Q Does he have access to a telephone?

23 A As far as I know, yes. I'm -- I'm not Robert
24 Wadsworth's keeper. He left the organization, and
25 that's -- that's an employee/employer matter.

26 Q Okay. Does he have a computer that he could join a

1 Zoom call?

2 A I'm not sure.

3 Q Okay. Did you talk to him to prepare for this hearing?

4 A No, I did not. I've talked with Robert Wadsworth. He
5 was my boss, like I said, up until ostensibly January
6 of this year. I then changed roles slightly and new
7 leaders. I have probably not talked to Robert
8 Wadsworth about Trident matters since the notice of
9 appeal was made known to me.

10 Q And did Mr. Wadsworth quit, or was he terminated?

11 A I'm not at liberty to discuss that matter.

12 Q Was he terminated because of his handling of orphan
13 well matters?

14 A You can have my same comment again. I'm not at liberty
15 to discuss this matter.

16 MR. GORMAN: Madam Chair, would you please
17 direct the witness to answer this question?

18 MS. ROSS: May I speak, Madam Chair?

19 THE CHAIR: Yes.

20 MS. ROSS: As Mr. Gosselin has indicated,
21 this is an employee/employer matter. Mr. Gosselin does
22 not have the authority to discuss nor does he
23 necessarily have the knowledge to discuss the reasons
24 for Mr. Wadsworth no longer working at the AER. I
25 don't think this line of questioning is appropriate.

26 MR. GORMAN: Mr. Gosselin described the

1 consequences of the Section 106 as against the
2 requesters as being very detrimental and very serious.
3 There are serious matters involving them. I don't know
4 that any issues with respect to whether Mr. Wadsworth,
5 the decision-maker who is not being produced as a
6 witness, is no longer with us partly as a result of his
7 conduct with respect to this matter. I think it's of
8 significant relevance and importance.

9 THE CHAIR: Ms. Ross, do you want to
10 respond?

11 MS. ROSS: Same answer, Madam Chair.
12 Mr. Gorman can't expect a witness to comment on the
13 reasons for termination for his boss. He probably has
14 no idea. This is a matter for the executive of the
15 AER. Mr. Gorman hasn't called anyone from the
16 executive. I think this should end that discussion.

17 MR. GORMAN: Well, if the witness answers
18 he doesn't know, that's an answer. If it's, I don't
19 want to say, that's not an acceptable answer.

20 THE CHAIR: Ms. Ross?

21 MS. ROSS: Mr. Gosselin can answer he
22 doesn't know, but if he's disclosing confidential
23 information from the AER, I don't think he can answer.

24 MR. DUMANOVSKI: Madam Chair, may I say
25 something? Or maybe Mr. Gosselin knows something, but
26 he's not at liberty to disclose that. We don't want to

1 make Mr. Gosselin perjure himself by saying he doesn't
2 know when, in fact, he knows that information.

3 Mr. Gorman has had the opportunity to subpoena
4 Mr. Wadsworth for this proceeding. He hasn't done
5 that, and now I don't understand what's the relevance
6 of -- of the information that he is seeking.

7 THE CHAIR: Mr. Gorman, would you like to
8 answer that? And I will need to just have a quick chat
9 with the Panel after that.

10 MR. GORMAN: Thank you, Madam Chair. I
11 know your two colleagues on the Panel are -- are
12 lawyers, and you mentioned yesterday -- and I think
13 self-derogatorily -- I think you said you were a mere
14 engineer. I don't think that's mere.

15 If you attended law school, on about the first day
16 in the first class you're told you don't subpoena
17 witnesses that you don't know the answers to that are
18 apparently on the other side of a matter. It's
19 ridiculous to say I should subpoena Mr. Wadsworth who
20 is the author of Mr. Young and Mr. O'Brien's
21 misfortune. That's -- that's a hollow answer.

22 I think the witness should answer if he knows if
23 he was terminated or resigned, and then if the
24 follow-up questions are objected to, then it'll be on
25 the record that the follow-up questions were objected.

26 THE CHAIR: Thank you for that answer,

1 Mr. Gorman and Ms. Ross and Mr. Dumanovski.

2 If we were in Grovier Hall in a hearing room, we
3 would just turn our chairs around and have a quick
4 discussion amongst the Panel. But we can't do that, so
5 we have to step out and get back to you quickly. Just
6 please be patient with us.

7 (ADJOURNMENT)

8 THE CHAIR: Okay. Thank you for your
9 patience. We considered the two counsel's positions.
10 The Panel is satisfied with Mr. Gosselin's response
11 that he's not at liberty to discuss Mr. Wadsworth's
12 departure from AER.

13 So you may proceed, Mr. Gorman, please. You're on
14 mute, sir.

15 MR. GORMAN: Thank you. It has to happen
16 at least once a day to one of us.

17 Q MR. GORMAN: Now, Mr. Gosselin, you learned
18 at some point that in late December 2018 Origami
19 invested another \$5 million into Trident?

20 A MR. GOSSELIN: I don't specifically recall
21 that moment. I might have known that fact through a
22 review of the file.

23 Q Okay. Would you agree that that would be evidence of
24 good faith with them trying to move the company
25 forward?

26 A Yes.

1 Q Okay. And you were aware that Alberta Treasury
2 Branches amended the loan in late December 2017 -- or,
3 pardon me, 2018?

4 A Yes, I would be, by the record.

5 Q Now, you had mentioned in the spring or the first
6 quarter of 2019 you were looking at various dry gas
7 producers because of pricing difficulties; is that
8 fair?

9 A Yes. Pricing and liability burdens, yeah. It was
10 particularly accentuated on the dry gas producers,
11 although other types of producers were and continued to
12 be in trouble.

13 Q My recollection is dry gas went negative for a short
14 period of time, that you'd have to pay someone to burn
15 it off. Do you recall the pricing getting that severe?

16 A I remember it being pennies on the GJ. I don't
17 remember negative pricing, but we could review any
18 number of industry watch lists and see what that
19 went -- looked like.

20 Q Okay. And notwithstanding that, Trident was not on any
21 accentuated or special watch list with the AER until
22 the March meeting with Mr. Gwartney?

23 A That would be correct, to the best of my recollection.

24 Q Mr. O'Brien had previously reached out to Mr. Wadsworth
25 through an introduction through another gas producer,
26 and they had a meeting in February of 2019. You

1 recall -- you understand that meeting occurred?

2 A I -- I do.

3 Q Okay. And Mr. O'Brien testified that Mr. Wadsworth was
4 very complimentary to Trident for its efforts through
5 to at least February of 2019. Do you dispute that
6 those words were said?

7 A No, I don't. I don't -- I don't remember Mr. Wadsworth
8 saying anything to me. He -- he told me that there was
9 a meeting. I think he may have given me his hard copy
10 of the deck that Mr. O'Brien potentially used, but I --
11 I had no other specific reactions of an interaction
12 with Mr. Wadsworth and I on the state of affairs
13 with -- with Trident.

14 Q Okay. But, certainly, in February of 2019, you weren't
15 starting to draft up an -- an order as against Trident?

16 A No, I was not.

17 Q Okay. And then there was the meeting with Mr. Gwartney
18 that we had previously looked at his notes to. That
19 was with you and Mr. Schacher?

20 A Yes. There was also a couple of other AER folks there.
21 The one with (INDISCERNIBLE - AWAY FROM MICROPHONE)

22 Q Mr. Wynne, and I'm not sure if it's Mr. or Ms. A-U --
23 A-Y-U-B?

24 A Yes, Mr. Ayub.

25 Q And would you agree at that point in time nothing was
26 determined? AER was going to look at the deck and see

1 if some accommodations could be given with respect to
2 levies and the amount of reclamations that had to occur
3 in the calendar year 2019?

4 A That would be generally correct. I -- I came out of
5 that meeting with Mr. Gwartney, and I think Patricia
6 Hawke was in attendance. Like other oil and gas
7 producers, they were having problems with their
8 abandonment and reclamation commitments or their
9 closure plan, and, you know, they indicated they would
10 need some concessions or help from the AER to modify
11 that closure plan so that the company could continue to
12 operate. So I don't have any specific recollections
13 coming out of that meeting, Mr. Gorman, that I -- an
14 order is absolutely -- or a Section 106 is a
15 recommendation I would make. I don't recall having any
16 of those thoughts.

17 Q You don't recall this being a Trident or Trident
18 director issue. It was an industry and a commodity
19 pricing issue?

20 A I think that's fair. I -- I didn't have any -- any
21 concerns about the directors at that time.

22 Q Now, sir, you would've been aware that in the western
23 Canada oil and gas industry the settlement date is the
24 25th unless it's a weekend of the month following
25 production?

26 A No. I would not be aware of that.

1 Q You're not aware that virtually every oil and gas
2 producer gets paid the 25th of the month following
3 production?

4 A No. I am not aware of that.

5 Q Are you aware that numerous oil and gas producers have
6 bank facilities that revolve?

7 A Not particularly. The AER regulates licencees. The
8 business operations of licencees with their lenders,
9 investors, and however else they acquire money, unless
10 there is transgressions in other jurisdictions, don't
11 concern the AER.

12 Q And, sir, by the March and April 2019 meetings, we had
13 the Supreme Court of Canada decision in Redwater which
14 came out January 31?

15 A Correct.

16 Q And you were certainly aware of that decision?

17 A I was.

18 Q Now, we had marked into evidence the ATB loan agreement
19 and the three amendments. Do you recall that?

20 A I recall them being marked as evidence, yes.

21 Q Okay. And just for your reference or records, if you
22 wanted to look at them, they are in 38.01 starting at
23 page 127, and I can tell you that the fourth amendment
24 ends at page 349. So there are approximately 222 pages
25 just for reference, sir. Have you ever reviewed the
26 loan agreement and the three amendments?

1 A No, I have not.

2 Q Ms. Olsen, had you in reviewing the Trident matter ever
3 reviewed the loan agreement and the three amendments?

4 A MS. OLSEN: No, I have not.

5 Q Now, sir, had you reviewed the CLM submissions of
6 October 8th, 2020?

7 A MR. GOSSELIN: I have to double-check that --
8 what exhibit is that. So we can have a look at it.

9 Q I believe it is 32.01, but perhaps Ms. Turner or
10 Ms. Ross or Mr. Dumanovski could confirm that. I've
11 printed my copy, so I would not be looking at it on a
12 computer.

13 MS. ROSS: Sorry. Which exhibit are you
14 looking for?

15 MR. GORMAN: Your submission of
16 October 8th, 2020. I think it's 32.01, but I've
17 printed it, so I don't have the exhibit number with me.

18 Yes. This is the right document, and if we could
19 scroll down to page 3, and I'm going to start at
20 paragraph 8.

21 Q MR. GORMAN: This is under the heading
22 "Facts", sir, not "Argument". Do you see paragraph 8's
23 under that heading, "Facts"?

24 A MR. GOSSELIN: I do.

25 Q Okay. I want you to tell me all of the facts you know
26 that caused you to argue a fact as it appears that it

1 was ATB's goal to avoid the consequences of Redwater by
2 receiving a large repayment of debt prior to Trident
3 entering a formal insolvency process. What are all the
4 facts you're relying on?

5 A The primary fact would be that part of the discussions
6 about how an insolvency proceeding could go forward
7 revolved around what monies were in the Trident
8 accounts up to the last days of April. There was
9 indications that 5 and a half or 6 million -- I don't
10 have the figure in front of me -- would be available,
11 plus an additional possibly \$2.3 million that would be
12 set aside to finance the entire insolvency proceeding,
13 and when that disappeared, this is the conclusion.

14 Q Sir, you were aware that FTI had prepared two cash
15 flows for the AER that showed an opening balance of
16 zero?

17 A Not specifically, no.

18 Q Okay. But if they're in the record -- that they're in
19 the record, you don't dispute that those were provided?

20 A Provided to whom, Mr. Gorman?

21 Q To the AER.

22 A I'd have to go back and review 6.04. I haven't got it
23 committed to memory in its entirety.

24 Q Okay. All right.

25 And in paragraph 9 on the next page, it appears
26 the requesters and ATB were working together. What

1 facts do you rely upon to make that argument in which
2 you called as a fact in your -- in the CLM brief?

3 A Certainly, we had indication that ATB was working very
4 closely with Trident's leadership, and, again, that is
5 not the norm where licencees involve their lenders,
6 their bankers, their financeers to the extent that it
7 was.

8 Q You heard from Mr. Corbett yesterday that he was
9 introduced to the file the day before the April 18th
10 meeting. Do you dispute his evidence in that regard?

11 A No, I don't.

12 Q Okay. And you've never read the loan agreement. You
13 don't understand how a revolver works, and you don't
14 know that the 25th is the settlement date in the
15 industry? Are all those correct representations of
16 your prior responses?

17 A Yes.

18 Q Okay. And in paragraph 10 where you say -- (as read)

19 It appears that the real goal was to allow
20 ATB to sweep all of the available cash in
21 Trident's accounts on April 24th.

22 -- that's a fact without reading the loan agreement,
23 without knowing that the 25th was the settlement date.
24 Do you still allege that as being a fact?

25 A Yes.

26 Q Okay. And in paragraph 11, with that limited

1 background and limited knowledge you allege as a fact
2 that the action by ATB, which was to sweep the
3 accounts, was viewed by the AER as an act of bad faith
4 by ATB and Trident? You allege that's a fact without
5 having read the documents or understanding how a
6 revolving facility works?

7 A I do.

8 Q Okay. And is the ATB regulated by the AER?

9 A Absolutely not.

10 Q Okay. So Mr. O'Brien and Mr. Young find themselves in
11 the splash zone because you're alleging bad faith as
12 against ATB?

13 A Mr. O'Brien and Mr. Young made a choice to involve
14 their bank and bring them into this circle. So perhaps
15 your question should be directed to them.

16 Q They brought the bank in to try to find a solution to
17 run a sales process that needed funding; correct?

18 A Sure.

19 Q Okay. And you've now told us that the AER,
20 notwithstanding Lexin, decided they weren't going to
21 fund another receivership going forward.

22 A Yes. It's not the position of a regulator to do that.

23 Q Okay. So if funding was required by Trident, it had to
24 be from someone other than the AER?

25 A Correct.

26 Q And no one would fund Trident without an accommodation

1 from the AER to know that any loan would be repaid?

2 A Correct. And I believe in the AER's statements we said
3 that we were accommodating to receivers and other
4 insolvency professionals. We would pay them back, plus
5 reasonable fees on top of that.

6 Q Okay. That's professional fees. That's not a DIP
7 loan. You understand those are different?

8 A Yes, I do.

9 Q Okay. The AER has never allowed the funding of a DIP
10 loan since Redwater, have they?

11 A I'm not sure. I'd have to review all the files.

12 Q Can you recall a case where they have?

13 A Not specifically. Again, I left this area in
14 January 2019 -- or '20, pardon me. 2020.

15 Q By January of 2020, you couldn't recall an incident
16 where the AER allowed the funding of a DIP loan?

17 A Not to the best of my knowledge. I'm not new to this
18 area. Again, we have managers and staff who look after
19 this. I have a broad area.

20 Q Now, sir, do you understand that on April 22nd the AER
21 reached out to PricewaterhouseCoopers to clear
22 conflicts to act as receiver of Trident?

23 A Yes.

24 Q Okay. And so that was done approximately 12 or 13 days
25 before the OWA actually appointed the receiver?

26 A Approximately, yes.

1 Q Okay. And PwC confirmed that they declared conflicts
2 and were ready to act as early as April 23rd?

3 A Yes.

4 Q And, sir, I understand you were directly involved in
5 the Lexin receivership where AER was the applicant in
6 the receivership?

7 A Yes, I was.

8 Q Would it be fair to generally describe that as having
9 gone poorly?

10 A Can you repeat that. You garbled just a bit at the
11 end, Mr. Gorman.

12 Q Would it be safe to say that the Lexin receivership
13 went poorly and was unsatisfactory to the AER?

14 A No, I wouldn't agree with that.

15 Q Okay. What was the result of the Lexin receivership?
16 Did the AER get their funding back?

17 A Yes, it did.

18 Q Okay. And some wells were sent over to the Orphan Well
19 Association?

20 A A large number were sent over to the Orphan Well
21 Association.

22 Q Okay. And, sir, if Lexin went fine, why weren't the
23 AER willing to be the applicant for Trident?

24 A The AER is not willing to be the applicant for Trident
25 because it's not the position of a regulator to be in
26 the business of funding insolvencies. That -- that

1 should be left to creditors and other interested
2 parties. The regulator is not the friend of industry;
3 it's not the enemy of industry. It's the regulator.
4 It -- it shouldn't be taking up insolvency proceedings.

5 Q Now, sir, we've heard from Mr. Reilly and Ms. Olsen
6 that they had never spoken to the requesters, Young and
7 O'Brien. Have you ever spoken to Mr. Young?

8 A The only time, Mr. Gorman, that I would've spoken to
9 him -- and, again, my -- my memory is -- is not exact
10 on this -- is in a meeting where we conducted
11 pre-issuance on the 30th of April. So I can't recall
12 if he was on the call. I definitely spoke with
13 Mr. O'Brien and interacted with him as well.

14 Q Just to correct you, sir, that call was on the 29th of
15 April, not the 30th?

16 A Thank you. Thank you. My error.

17 Q Okay. And that call was scheduled for 4:00?

18 A Correct.

19 Q Okay. And did you understand that Mr. Young and
20 Mr. O'Brien were not aware that it would be to discuss
21 your order until it was provided some minutes before
22 the 4:00 call?

23 A Yes.

24 Q Okay. I think you said Mr. O'Brien was surprised and
25 upset?

26 A Yes, that's my recollection.

1 Q Okay. And if Mr. Young said he wasn't on the call, you
2 don't dispute that. You don't recall who all was?

3 A I definitely remember you, sir. I remember
4 Mr. O'Brien. I remember the AER staff that I had named
5 previously. I -- I can't remember if Mr. Young was on
6 or not.

7 Q And you never spoke to Mr. O'Brien again?

8 A No, I don't believe I did.

9 Q And prior to April 29th at approximately 3:45 when the
10 order came out, had the AER ever raised any issues with
11 Young and O'Brien with respect to their directorship of
12 Trident?

13 A So the question is: Had the AER raised any issues with
14 the directorship of Young and O'Brien prior to the
15 29th? Is that your question?

16 Q That's my question.

17 A I can't speak to that as accurately as I would like.
18 Mr. Schacher and Ms. Szacki did the majority -- in
19 fact, not the majority. Let me retract that. They did
20 all of the discussions with the companies and the other
21 parties that were involved in this. We would have to
22 go back and look through the records and see, you know,
23 were Mr. O'Brien and Mr. Young spoken to by
24 Mr. Schacher and Ms. Szacki and were those concerns
25 communicated.

26 Were I to offer an opinion at this point without

1 having done that thorough search, we certainly would've
2 communicated Bulletin 2016-10 to them. I think that's
3 on the record from Mr. Schacher as occurring the day
4 before or the day of, and that would've indicated what
5 we expected of directors and how they are to cease
6 operations if that was their contemplated business
7 decision.

8 Q Okay. Sir, that's an exhibit we're going to look at
9 shortly.

10 A Okay.

11 Q But let's first start with Exhibit 31.02 starting at
12 page 62, and this is an email chain within the -- the
13 AER, and I want to start at the bottom of the page of
14 the Monday, April 15th at 3:12 from Mr. Schacher to
15 numerous people, including yourself, sir.

16 A Okay. I'll wait for the scrolling to get done.

17 Q And this is other AER people meeting with Mr. Gwartney
18 who -- if you recall from yesterday, Veracity was
19 retained to be interim officers starting February 2nd.
20 I'll just give you that for context.

21 A Thank you.

22 Q So it provides the last line at the bottom of the page:
23 (as read)

24 We met with Gary Gwartney representing

25 Trident this morning. Some details below.

26 And if we turn over to page 63, the three bullet [sic]

1 down, "to Trevor's points in his Friday email", and
2 your Friday email said when you're looking at companies
3 you look at: Are they a danger, and are they
4 squandering?

5 So Mr. Schacher on the 15th of April "to Trevor's
6 points in his Friday email": (as read)

7 They do not appear to be a danger to public
8 health or the environment at this time, nor
9 do they appear to be squandering the
10 resource.

11 Do you see that was the internal report as of the 15th?

12 A Yes.

13 Q And, sir, nothing changed other than the directors
14 resigned on the 30th, which they had told the AER would
15 occur if AER and ATB couldn't work out a funding
16 arrangement?

17 A No, I disagree with that statement.

18 Q Okay. What else changed? What resources did they
19 squander between April 15th and April 30th?

20 A I didn't say that they squandered a resource.

21 Q Okay. Well, then what do --

22 A And when I say "squandered a resource", would you like
23 a bit of a definition of what that is?

24 Q If you don't say they did it, I don't care what the
25 definition is. They didn't do it whatever -- however
26 you define it; correct?

1 A Correct. I will agree with you on the squandering the
2 resource line. We were having a discussion about when
3 did I access that they became a danger to public health
4 or the environment, and I would be happy to clarify
5 what my thoughts were.

6 Q Okay. Was it anything other than they resigned?

7 A Yes. It was how they resigned, Mr. Gorman --

8 Q Okay. And what --

9 A -- and when they resigned, and the fact that they
10 didn't work with the AER to ensure the safe ceasing of
11 operations or pursue further avenues for an insolvency.

12 Q Okay. Well, we'll go through that in a bit greater
13 detail when we get closer to the 29th, sir.

14 A Okay.

15 Q Sir, there was a meeting on April 18th, the minutes of
16 which start at page 65 of Exhibit 31.02. And, sir,
17 looking at the attendees on the top of page 65, you
18 were not in attendance?

19 A Correct.

20 Q Does that -- that meets your recollection?

21 And --

22 A Yes.

23 Q -- Mr. Wadsworth was not in attendance?

24 A Correct.

25 Q Okay. And if we look down at the bottom of page 65,
26 the second bullet from the bottom: (as read)

1 Lending to the process 6 million in the
2 account takes priority over AER. ATB could
3 use it as a facility credit?

4 You understood that was being discussed?

5 A Yes. We were discussing options for funding the
6 insolvency.

7 Q Okay. And the 6 million in the account is the
8 April 25th production proceeds?

9 A It would appear that, yes.

10 Q Okay. And then the next bullet "AER and three secured
11 creditors to negotiate". That was still an open item
12 as of the 18th?

13 A Yeah. My recollection is -- I understood that there
14 were three creditors, ATB, Origami, and -- no, I
15 don't -- I don't dispute that there were three.

16 Q Okay. But it wasn't -- if Trident was to negotiate
17 with the AER, it was to secure creditors who needed to
18 negotiate with the AER for funding?

19 A So at this point, yeah, there was an appearance that
20 the negotiate -- sorry, the creditors wanted to
21 negotiate directly with the AER.

22 Q And those negotiations never came to fruition?

23 A No. They did not.

24 Q Then if we look to page 66, again near the bottom of
25 the page, there's a reference: (as read)

26 No environmental or safety concerns with

1 assets. Have retained employees needed to
2 address safety.

3 That was the AER's notes from the April 18th meeting?

4 A Yes. Those are the notes.

5 Q And if we turn to the next page, 67, under "Post
6 Meeting Discussion", we see that the AER had
7 discussions that they did not have in front of Trident
8 and ATB. Is that your understanding of this
9 memorandum?

10 A Yes. I would conclude that by those two words,
11 "post-meeting discussion".

12 Q Okay. (As read)

13 As Melissa pointed out, this will force our
14 hands in how we deal with CCAA insolvencies
15 going forward.

16 So the AER was looking at it not on a Trident basis but
17 how it would affect insolvencies and CCAAs going
18 forward?

19 A Yes.

20 Q And you've now told us -- although Trident and ATB
21 weren't told it -- AER had made an internal decision
22 they weren't going to fund insolvencies going forward.

23 A Yes. That -- that -- that set of directions, I would
24 have to go back to my calendar and figure out when I
25 was summoned to ELT. My recollection is it was in the
26 early days of the week of the 29th, 30th, 1, 2, 3 of

1 May.

2 Q Well, sir, the AER didn't proceed with its receivership
3 appointment that it had scheduled for May 1st. Do you
4 recall that?

5 A I do.

6 Q Okay. Were you the person who instructed counsel not
7 to proceed with the scheduled application?

8 A I don't recall.

9 Q And certainly someone told them before the 2nd or 3rd
10 of May not to go ahead on the 1st?

11 A Agreed. Now, whether I mentioned to one of my leaders
12 to speak to counsel -- we might have had counsel with
13 us at -- when we were given firm direction from ELT not
14 to pursue a receivership or insolvency process under
15 AER means, but it certainly looks like it got turned
16 off, and that was something that we wanted to have
17 happen.

18 Q And, sir, continuing on page 67, "AER's position going
19 forward": (as read)

20 If we agree to administrative charges and DIP
21 financing as a superpriority above Redwater
22 claims, may prejudice our position over
23 actual sales proceeds from Redwater that
24 Grant Thornton is seeking to use to pay
25 themselves.

26 Do you see that reference, sir?

1 A Yes.

2 Q Okay. What did Mr. O'Brien or Mr. Young or Trident
3 have to do with Redwater and Grant Thornton and that
4 receivership?

5 A I would surmise that, you know, we were looking at the
6 Redwater, and I wasn't in command of all the matters
7 dealing with Redwater as it exited the Supreme Court.
8 The Redwater task force was -- was directed by Robert
9 Wadsworth, so I wasn't privy to all of the ongoings and
10 where thought processes were going.

11 I would offer as an opinion that, you know, we
12 were concerned with what precedent we would set in
13 terms of insolvencies going forward with matters like
14 Redwater, Trident, and others.

15 Q Okay. So the AER determination that it wouldn't fund
16 Trident included considerations of cases totally
17 unrelated to Mr. O'Brien and Mr. Young?

18 A I don't know that we had other cases where this issue
19 was as germane as you're making it out to be. Again,
20 I'd have to go back and do a series of timelines on
21 what licences were in distress. Certainly Trident was
22 the biggest one coming out of the Supreme Court
23 decision, which was at the end of January 2019, to my
24 recollection.

25 Q Mr. O'Brien and Young were not officers, directors, and
26 had no involvement in Redwater; correct?

1 A Correct.

2 Q Okay. ATB was the secured lender in Redwater that AER
3 fought to the Supreme Court of Canada?

4 A Yes.

5 Q It didn't fight Mr. Young and O'Brien to the Supreme
6 Court. It fought ATB?

7 A Yes.

8 Q Now, sir, if we could turn to the same exhibit,
9 page 69. It should be an email from myself to various
10 parties, which was then forwarded on internally to
11 various people at the AER. I'll give you a minute to
12 take a look at this email when it scrolls down.

13 A Sure.

14 Okay. I've read the first two paragraphs.

15 Q Oh, unfortunately, sir, I'm going to need you to scroll
16 down a bit more because I'm going to take you to the
17 bottom paragraph that starts with "confirmation".

18 A Okay.

19 Q Okay. Sir, you see that this email was sent out the
20 day after the April 18th meeting?

21 A I do, yes.

22 Q When did you first see this email?

23 A I don't think I've ever seen this email.

24 Q Okay. But do you now have an understanding as per the
25 final paragraph when we say: (as read)

26 What we immediately require from AER is the

1 following: Confirmation that any CCAA
2 borrowings, initially estimated to be
3 6 million but to perhaps increase up to
4 9 million, cash-flow cash -- forecasts are
5 being finalized, will be repaid in priority
6 to any AER Redwater claim.

7 Do you see that reference, sir?

8 A I see that reference.

9 Q Okay. And a 6 to \$9 million CCAA borrowing would only
10 be necessary if the account was at zero on the day of
11 filing.

12 A So -- sorry. I don't see that in front of me. I've
13 got the "confirmation ..." paragraph ending with "but
14 we are". So are you elaborating on the sentence in
15 there?

16 Q No, no, sir. We know from the presentations to the
17 AER --

18 A Okay.

19 Q -- that the 13-week cash flows required between 6 and
20 \$9 million of funding. Do you recall that?

21 A Yes, I do.

22 Q Okay. So if there were \$6 million in the bank, you
23 wouldn't need to borrow another \$6 million, would you?

24 A No.

25 Q That would be 12 million.

26 So on the 19th, the day after the meeting, the AER

1 was if we being told there's no cash. We need to fund
2 the CCAA; correct?

3 A Correct.

4 Q And now I'm going to the same -- sorry. I misread my
5 notes as to number.

6 I'm now looking at the same exhibit, 31.02,
7 page 139. And I see a briefing note entitled "Redwater
8 Task Force Decision". This is a document you've seen
9 before, sir?

10 A I have.

11 Q Okay. And it's prepared for Rob Wadsworth, VP closure
12 and liability. You see that reference?

13 A I do.

14 Q And it's prepared by the Redwater task force. Who is
15 the Redwater task force?

16 A That would consist of -- my recollection -- I don't
17 have notes on this -- it would have consisted of
18 Ms. Kaitlin Szacki and Ms. Melissa Barg. Maria Lavelle
19 might have been on there. Is that sufficient?

20 Q Sure. It wasn't -- it didn't include you?

21 A No. Mr. Wadsworth had directed that he wanted a
22 separate task force to deal with Redwater and its
23 impacts, so he took some of my staff. Kaitlin Szacki
24 was reporting to me in -- in a -- sort of a split
25 reporting relationship, so she had accountability to me
26 and accountability to Rob. And so the Redwater task

1 force was set up to deal with issues like this. Is
2 that clear?

3 Q Thank you.

4 A You're welcome.

5 Q And notwithstanding the Redwater task force supposing
6 to be separate, they're discussing Trident?

7 A Yes.

8 Q Okay. And this -- this briefing note deals with
9 Trident, not Redwater. And I'm looking, sir, at the
10 bottom paragraph on page 139 where it provides:

11 (as read)

12 Without agreement to the conditions from ATB,
13 Trident may not have a clear source of
14 funding to proceed into CCAA without -- [I
15 think it says] an [it's very light]
16 appropriate funding source or ability to sell
17 assets outside of CCAA processes, Trident may
18 end up in bankruptcy or in ceased operations
19 and walk away from assets entirely.

20 That was the internal briefing note on the 26th?

21 A Correct. And if we turn to the next page, 140, again
22 starting at the bottom of the page: (as read)

23 As at April 18th, Trident's counsel had
24 described two different scenarios for funding
25 the sales process in CCAA. In the first
26 scenario, they advised the AER, that Trident

1 would be looking to use the March production
2 revenue, at that time estimated to be 5 to \$6
3 million, plus an additional \$2 million in DIP
4 financing to run the sales.

5 That was one of two options that was discussed; is that
6 right?

7 A Yeah. Yes.

8 Q Okay. Alternatively, in their second scenario:
9 (as read)

10 The \$6 million in production revenues would
11 flow through to ATB, and they would then
12 provide the full financing for the sales
13 process on the understanding that the
14 \$6 million plus any additional financing
15 would be paid on priority to ATB.

16 That was the second scenario.

17 A Yes, it was, and I'm going to just clarify again.

18 There were discussions going on with members of my
19 team, outside of my awareness, with Robert Wadsworth on
20 how to handle the impacts of Redwater, and I agree with
21 you it relates to Trident here. So my recollection of
22 this is I was told that there were no more options
23 available for financing the insolvency. I was aware
24 that things had been exhausted with ATB probably by
25 conclusion there were no there immediate circle of
26 creditors, anybody else willing to come forward to fund

1 the insolvency.

2 Q And as it turns out, the second alternative occurred in
3 that the \$6 million was not left in the account and
4 Trident required a \$6 million DIP, and AER and ATB
5 could not agree on the terms for that.

6 A Correct.

7 Q Okay. And in that regard, still on page 141, there is
8 "From ATB" Alex, which I assume is Alex Corbett, there
9 are his position with respect to moving forward?

10 A The centre of the page reading "From ATB", is that what
11 you're looking at?

12 Q Correct.

13 A Okay. Give me a second to read. Okay. I've read it.

14 Q And included in the information from Mr. Corbett, the
15 third bullet was: (as read)

16 The auto payment requirement of ATB loan
17 agreement is all bank accounts with ATB. So
18 when revenue comes in, it is automatically
19 applied against the operating line.

20 Do you dispute that Mr. Corbett's suggestion in that
21 regard is accurate?

22 A No. I don't dispute that that's what's written on the
23 page.

24 Q Well, no, no. But that's what's written in the loan
25 agreement, and that's the practice in the industry?

26 A I'm not going to confirm that opinion. I'm not going

1 to tell you that across the industry it is. You've got
2 your experts. I'm not an expert in financial affairs
3 with companies, what they did to oil and gas.

4 Q So while you can't endorse it, you don't dispute it.
5 Is that fair?

6 A Yeah. Okay.

7 Q And then if we look near the bottom of page 141 under
8 "Options", Option 1 is "Agree with ATB's conditions",
9 and the briefing note recommendation: (as read)

10 This is not supported as AER regulates the
11 licence and should not be agreeing to
12 conditions that can impact the outcome of
13 CCAA or sales process.

14 That was the briefing note recommendation, sir?

15 A As it's presented here, yes. Again, I wasn't in charge
16 of generating this briefing note or delivering the
17 recommendation to Mr. Wadsworth.

18 Q Right. That would have been under Mr. Wadsworth's
19 purview, and we don't have the benefit of his
20 attendance here today; correct?

21 A Correct.

22 Q And by the time of this briefing note, PwC had been
23 contacted and was ready to go in as receiver if an
24 application by AER was made.

25 A So we -- I'm going to have to check the timelines on
26 this one in order to agree to that.

1 Q Well, we heard Mr. Darby yesterday --

2 A M-hm.

3 Q -- say that they were contacted April 22nd --

4 A Okay.

5 Q -- and cleared conflicts on the 23rd and were ready at
6 that time.

7 A Okay.

8 Q Do you recall that evidence?

9 A I do.

10 Q Okay. Sir, I'm now looking --

11 MR. GORMAN: And I'm sorry, Madam Reporter
12 and AER staff. I've been going on for a bit. Do we
13 need another mid-morning break for 10 or 15 minutes, or
14 should we continue? We kind of started at an awkward
15 time, and we're now at 11:40.

16 THE CHAIR: If the court reporter is happy
17 to continue, I don't want to interrupt your
18 cross-examination, Mr. Gorman.

19 MR. GORMAN: Well, Madam Chair, I'm not
20 going to finish before lunch, so there's going to be an
21 interruption at some point, and I'll -- we'll perhaps
22 go till a little past noon and see if there's a
23 convenient time to break at that point. As a heads-up
24 to everyone planning their schedules, I am going to
25 finish today --

26 THE CHAIR: Okay. Why don't you just

1 carry on and see where would a natural break fall in
2 your line of questioning?

3 MR. GORMAN: -- we'll -- we will do so,
4 Madam Chair.

5 THE CHAIR: Thank you.

6 Q MR. GORMAN: Now, sir, I'm now -- next
7 looking at an email chain that is starting at 31.02,
8 page 144. And if we scroll to the beginning, it starts
9 with an April 27th email from Mr. O'Brien to various
10 AER personnel. And I can remind you, sir, April 27th
11 is a Saturday, the key date being the 29th, the Monday.
12 So this was a Saturday email at 7:18, sir. Do you see
13 that's the start of the chain, on page 147?

14 A I still don't see the 7:18 start. Did you mean
15 7:49 PM?

16 Q On 147, halfway down, I'm showing it as
17 April 27th, 7:18, .06?

18 A I think we need to scroll down a bit. There we are.
19 Okay. I see the start of that. April 27th, 7:18 PM,
20 Mountain Daylight Time.

21 Q And, sir, this might be a good time because we'll have
22 to take a look at a document that -- on April 29th to
23 be discussed. Did you understand that Mr. O'Brien and
24 Mr. Ellis primarily worked out of Chicago?

25 A Yes, I do.

26 Q Okay. Do you understand Chicago's in a different time

1 zone?

2 A Yes, I do.

3 Q And Mr. Young primarily works out of Chicago or
4 California, both in different time zones?

5 A No. I didn't understand that.

6 Q Okay. You understood he didn't work out of Calgary?

7 A I understood that both the directors were operating out
8 of Chicago and -- yeah.

9 Q Okay. You understand Chicago is in a different time
10 zone?

11 A I do.

12 Q So sometimes emails are an hour off based upon who the
13 sender or who the recipient is?

14 A Yes.

15 Q Okay. So the email that came in at 4:23 from Mr. Young
16 that you referenced might have been sent from a
17 different time zone, and it didn't occur at 4:23. It
18 could have been 5:23?

19 A We'd have to go back and look at the time date stamps
20 on that to see how they appeared in the various
21 systems.

22 Q Okay. All right. But I just -- you had made some
23 assumptions that an email was sent during the 4:00
24 call. The emails were not sent by people in this time
25 zone? That's all I'm highlighting when you're making
26 assumptions with respect to timing, sir.

1 A Yeah. I'd have to go back and look at it. The fact of
2 the matter is that they resigned without putting away
3 their assets appropriately.

4 Q Okay. Now, sir, at page 149 -- and this is printed out
5 kind of oddly with very skinny columns. Do you -- can
6 you read, for the record, the paragraph starting "In
7 the unfortunate instances"?

8 A (as read)

9 In the unfortunate instant -- in the
10 unfortunate instance where this happens, I
11 would hope to go to the AER to get guidance
12 from the AER on the way to transfer the
13 licences and operations of the company and
14 its 4,700 wells. I would hope to get this
15 guidance as early as possible. Hopefully
16 this weekend, given the urgency and magnitude
17 of this matter, so that we can work together
18 on this contingency plan.

19 Q And this was in the context of Mr. O'Brien saying he
20 had heard concerns that AER and ATB were not going to
21 reach a financing agreement. You understood that?

22 A I -- yeah. That makes sense.

23 Q Okay. And then if we turn back a few pages, which is a
24 subsequent email, as the chain works, there's an
25 April 27, 2019, 8:18 email from Melissa Barg to various
26 people in the AER, including yourself. And it starts

1 with: (as read)

2 We could suggest they reach out to Century
3 Services if they haven't.

4 You understand Mr. MacLennan from Century Services
5 is -- deals with funding from time to time?

6 A Yes.

7 Q Okay. Do you know that Trident had reached out to
8 Mr. MacLennan at Century?

9 A I don't know if he did -- they did or did not.

10 Q Did Mr. MacLennan at Century reach out to AER saying
11 could he assist with DIP funding on Trident or other
12 insolvency matters going forward?

13 A Not to my knowledge.

14 Q Okay. But, certainly, they'd never been engaged for
15 any DIP funding?

16 A So I'm going to speak very much to my knowledge,
17 Mr. Gorman. I had no knowledge of any interactions by
18 me, by my staff, anybody who reported to me in the
19 context of this conversation about Century Services.

20 Q Okay. Then Ms. Barg continues "also assuming issuing
21 the order Monday is critical." Do you see that
22 reference, sir?

23 A I'm having trouble keeping up with you, Mr. Gorman. I
24 think you're on paper, and I'm on a screen here, so ...

25 Q Okay. It should be 146, please. That's -- that's
26 where we got lost.

1 A Okay.

2 Q And that's why I'm old fashioned and use stickies and
3 highlighters.

4 A I'm not trying to be difficult. I'm just having --

5 Q No, no. I understood. You're right. I was looking
6 down, and you were looking up.

7 Okay. So if we go a little bit lower on 146, you
8 can see the Melissa Barg email on the -- okay. There
9 we go. You see the reference there "also assuming
10 issuing the order Monday is critical"? Do you see that
11 reference, sir?

12 A Yes.

13 Q Why was Monday critical for the issuance of the order?

14 A We would've had indications that funding solutions for
15 insolvencies were likely not possible, that we would've
16 layered that on top of the threats we had perceived
17 from the directors to resign, and we're moving to find
18 the appropriate timing to issue the order.

19 Q You wanted to issue the order before the directors
20 resigned; correct?

21 A I wanted to issue the order to make sure that the
22 directors understood their responsibilities, they
23 understood the severity of the issues, and that they
24 had options to choose their outcomes, not just throw
25 their arms up in the air and ceased operations and
26 chucked their keys at the AER.

1 Q Okay. And you say you tried to be pragmatic, not
2 Utopian. You think an option to post \$270 million by a
3 company that can't make payroll is an option?

4 A Mr. Gorman, we regulate licencees. The financial
5 affairs of a company are its business. Trident and its
6 directors are trying to get the AER to make its
7 business decisions for it. Those directors have
8 directorships. They're in charge of the company. They
9 steer the ship.

10 Q You said you try to be pragmatic, not Utopian. Is
11 posting --

12 A Yes.

13 Q -- \$270 million not the ultimate expression of Utopia
14 with respect to a company --

15 MS. ROSS: Mr. Gorman --

16 Q MR. GORMAN: -- (INDISCERNIBLE -
17 OVERLAPPING SPEAKERS) insolvency?

18 MS. ROSS: -- the witness has already
19 answered that question.

20 Q MR. GORMAN: Did you consider requesting
21 the directors to deliver a pink unicorn to your house?

22 MS. ROSS: Argumentative.

23 Q MR. GORMAN: Now, with Mr. O'Brien asking
24 for engagement as early as the weekend to deal with
25 well licences and well transfers, we know a meeting is
26 set up for April 29th at -- at 4:00; correct?

- 1 A MR. GOSSELIN: The -- I would have to see the
2 email that Chris Schacher sent, but the intent of that
3 email was to indicate we had an order to discuss the
4 pre-issuance.
- 5 Q Okay. And he --
- 6 A (INDISCERNIBLE - OVERLAPPING SPEAKERS)
- 7 Q He sent that Monday at 3:48 PM? We looked --
- 8 A Yes.
- 9 Q -- at 155. So 12 minutes before the meeting?
- 10 A Correct.
- 11 Q And in that time between the 27th and the 29th, no
12 guidance was given to Mr. Young's request, How do we
13 best transition if funding doesn't occur?
- 14 A I don't think that that's correct, and I think
15 Mr. Schacher responded -- my recollection is somewhere
16 26, 27, 28 and indicated what ceased operations would
17 look like if a funding solution couldn't be found.
- 18 Q Okay. Well, sir, let's look at page 163 in the same
19 exhibit, then. Okay? Is this the response from
20 Mr. Schacher that you recall?
- 21 A No. This -- this -- this email would've been after the
22 pre-issuance meeting was conducted. I think
23 Mr. Schacher -- Mr. Schacher sent an email to
24 Mr. O'Brien sometime before the 29th and indicated in
25 there what the AER's direction was with respect to
26 Bulletin 2016-10.

1 Q Well, sir, let's look at page 164, then.

2 A Okay.

3 Q It is Bulletin 2016-10. If Mr. Schacher had previously
4 sent it, why would he be sending it again after the
5 pre-hearing meeting?

6 A I clearly have my times and dates mixed up. My
7 apologies.

8 Q Correct.

9 He sent it after the pre-hearing meeting.

10 A M-hm.

11 Q Correct?

12 And what he sent was Bulletin 2016-10 --

13 A Agreed.

14 Q -- which -- which is dated April 8th, 2016?

15 A Yes.

16 Q Three years before Redwater. That's the information
17 you're giving as to how people deal with licences
18 post-Redwater?

19 A It's to do with licences as it states in the title with
20 insolvency or when otherwise ceasing operation.

21 Q There was no bespoke response as to what to do with
22 these 4,700 wells, what to do with Veracity, who to
23 contact. They got a generic three-year-old bulletin.
24 That was the response to Mr. O'Brien's request for how
25 to deal with the predicament; correct?

26 A Correct. Bulletin 2016-10 does not -- is not overly

1 prescriptive. It speaks to outcomes and communicates
2 expectations of directors and officers on how to handle
3 the assets that they're entrusted with in Alberta.

4 Q Okay. The next to last paragraph on page 164 says:
5 (as read)

6 The AER's lien has priority over all other
7 liens, charges, rights of setoff, mortgages,
8 and other security interests pursuant to
9 Section 103 of the Oil and Gas Conservation
10 Act.

11 Do you see that reference, sir?

12 A Yes.

13 Q Okay. But until Redwater, that was not an effective
14 remedy for the AER. That's why you went to the Supreme
15 Court on Redwater?

16 A Yes. We wanted the environment to take priority over
17 repayment to creditors.

18 Q Okay. The bottom of page 164 provides: (as read)

19 The AER encourages any licensee considering
20 ceasing operations or entering into
21 insolvency proceedings to contact the AER's
22 closure and liability group at liability
23 management [an email address] and to engage
24 in their working interest participants in
25 their plans for ceasing operations.

26 Do you see the reference that the AER encourages

1 licencees considering ceasing operations to reach out?

2 A Yes. Just scroll down a bit for the person who is
3 running the screen. There we go. Thank you.

4 Yes, I agree that that's what's written.

5 Q Okay. And that's what Mr. O'Brien did commencing
6 February 15th when he reached out to Mr. Wadsworth
7 through an introduction through an industry
8 participant?

9 A No, he didn't. He wasn't contemplating ceasing
10 operations at that point.

11 Q Even -- even before he was considering ceasing
12 operations, he was in contact because of the
13 difficulties.

14 A Yeah. He wanted to come in and work with the AER, but
15 I -- I -- I don't know that he was thinking about
16 ceasing operations at that point.

17 Q Okay. He remained in contact with the AER as that
18 decision developed?

19 A As that decision developed, yes, and I'm not going to
20 speak for Mr. O'Brien, but my takeaway was he wasn't
21 contemplating ceasing operations.

22 Q Okay.

23 A And I think -- I think we're starting to argue about
24 what constitutes ceasing operations.

25 Q I'm just trying to read the bulletin which you said was
26 supposed to provide guidance to Mr. O'Brien and

1 Mr. Young.

2 A Yes.

3 Q When things went from, We might be able to work out a
4 plan to we would need CCAA to we need funding for CCAA,
5 they had reached out and contacted the AER's closure
6 and liability group and engaged in discussions with
7 them?

8 A I agree.

9 Q Okay. And the reward for that was the day before they
10 told you they were going to resign, they get your
11 unexpected, unannounced closure order?

12 A I don't agree with your choice of words.

13 Q If they hadn't reached out to management, they could've
14 resigned prior to the issuance of a closure order
15 because they weren't on your radar -- or, pardon me,
16 the -- the order to post amounts? They could've not
17 been in the circumstances where it was issued the day
18 before they resigned if they issued -- if they resigned
19 earlier?

20 A I didn't -- so I'm -- I'm getting a bit jumbled in your
21 question, and I'll just state what my outcomes were. I
22 didn't want Mr. O'Brien and Mr. Young to resign. I
23 wanted them to steward their assets to either an
24 orderly ceasing of operations or an insolvency
25 proceeding. And when I detected that that wasn't going
26 to materialize, I took the measure to issue them an

1 order and offer them a way out rather than quitting,
2 cutting, and running away.

3 Q They stewarded towards an insolvency proceeding. It
4 could've happened May 1; it didn't. So it happened
5 May 3rd because you delayed the proceeding, not them;
6 correct?

7 A So how would you explain the two-day gap where we had
8 no assets or nobody, sorry, to undertake the care and
9 custody?

10 Q I explain it because you adjourned the May 1
11 application, which would've been hours after they
12 resigned. The AER created the gap between May 1 and
13 May 3 and not the directors?

14 A I would disagree.

15 Q Okay. Well, we'll go through the documents and look at
16 that, then. Sir, I'm looking at Exhibit 31.02,
17 page 151. This is an email from AIMCo to the AER which
18 was forwarded by Mr. Schacher to you and others.

19 A M-hm.

20 Q Okay. And did you understand on April 28th, which is
21 the Sunday, AIMCo was reaching out to the AER asking
22 them to broker an agreement over DIP financing terms?

23 A If you scroll down a bit more, I could get the context.
24 Okay. I understand the email.

25 Q Okay. So AIMCo was asking AER to broker an agreement
26 for DIP funding?

1 A Yes.

2 Q Okay. And you understand AIMCo had over \$60 million
3 invested in Trident?

4 A Yes, that would be my recollection.

5 Q Okay. And you understand the 'A' in AIMCo stands for
6 Alberta?

7 A Yes.

8 Q Okay. They oversee investments with respect to
9 numerous pensions and other Alberta interests?

10 A Yes.

11 Q And how did the AER respond to AIMCo's plea that a deal
12 be brokered with respect to DIP funding?

13 MS. ROSS: Mr. Gorman, the document
14 speaks for itself. I think you're characterizing it in
15 a way which is unfair to the witness.

16 Q MR. GORMAN: How did AER respond to AIMCo's
17 April 28th email?

18 A I don't have a specific recollection of this, but my
19 conclusion would be that we had exhausted all
20 reasonable means at the time to find insolvency
21 planners.

22 Q But there was not a DIP financing agreement involving
23 the AER that was reached by Tuesday at 10 AM as per
24 their email?

25 A Mr. Gorman, I'm terribly sorry. You garbled at the
26 last bit. Can you repeat that one again?

1 Q Okay. There was no DIP involving the AER in place by
2 Tuesday AM?

3 A Correct.

4 Q Okay.

5 MR. GORMAN: Madam Chair, I think we are at
6 an appropriate place to take a lunch break. We're just
7 over noon now. I don't know if we want to limit it to
8 an hour or up a bit longer. In -- in any event, as
9 I've previously forecast, I will finish probably give
10 or take an hour, and the witness would then be
11 available for the Panel or any re-direct questioning.

12 With apologies to Ms. Olsen, I'm probably going to
13 have about 15 minutes of questions for her as well.
14 So, again, we should easily finish today, and all
15 parties will be released for the remainder of the week.

16 THE CHAIR: We originally scheduled an
17 hour and 15 minutes. Why don't we -- since we are
18 ahead of schedule, we can use an hour and 15 minutes
19 and then be back 20 past 1.

20 MR. GORMAN: I think that -- that will work
21 for me if it works for others.

22 THE CHAIR: Ms. Ross and Mr. Dumanovski,
23 for your witnesses, does that work? And for you?

24 MS. ROSS: I believe that works for us.

25 Mr. Gosselin, is that fine with you?

26 MR. GOSELIN: It is. Thank you.

1 THE CHAIR: Thank you. Thank you. See
2 you at 1:20.

3 _____

4 PROCEEDINGS ADJOURNED UNTIL 1:20 PM

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1 Proceedings taken via Remote Video

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3 November 4, 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 S. Burns, CSR(A), RPR, CRR Official Court Reporter

2

3 (PROCEEDINGS COMMENCED AT 1:21 PM)

4 THE CHAIR: Hello, everyone.

5 Ms. Turner, who do we -- do we have any absentees
6 yet, or do we have everybody? That sounded like a
7 classroom.

8 MS. TURNER: I think everyone is back.

9 THE CHAIR: Okay. Thank you.

10 Is there any matters, or you're ready to continue,
11 Mr. Gorman, with your questions?

12 MR. GORMAN: I'm ready to continue unless
13 other counsel wants to raise any preliminary matter.

14 THE CHAIR: Ms. Ross?

15 MS. ROSS: None from CLM. Thank you.

16 THE CHAIR: Thank you, Ms. Ross.

17 You may proceed.

18 MR. GORMAN: Thank you.

19 Q MR. GORMAN: Mr. Gosselin, you recognize
20 that you are still under oath?

21 A MR. GOSSELIN: I do.

22 Q Sorry. Your picture moved to middle of my board. I
23 had trouble seeing you there. I've spotted you now.

24 And, sir, can you confirm you didn't discuss your
25 evidence with anyone over the lunch break?

26 A I conferred with my colleagues in the witness panel.

1 Q All right. Sir, I'd like to continue with
2 Exhibit 31.02, page 155, and this is an email from
3 Mr. Schacher to Mr. O'Brien at 3:48 PM on Monday,
4 April 29th?

5 A Yes.

6 Q And you know that this went to Mr. O'Brien's Trident
7 email account, not his Origami one that he typically
8 uses for email?

9 A No. I don't know that. It just says "Darren O'Brien"
10 in there.

11 Q Okay. And Mr. Schacher gave Mr. O'Brien a call
12 somewhere around 3:48 but before 4 PM to advise this
13 email was there?

14 A That's my recollection loosely, yes.

15 Q Okay. And he references: (as read)

16 I have booked a pre-issuance meeting between
17 yourself and AER at 4:00 PM.

18 Do you see that reference, sir?

19 A I do.

20 Q Do you know that Mr. O'Brien did not understand it was
21 a pre-issuance meeting? He thought the 4:00 PM meeting
22 was to discuss the CCAA?

23 A No, I don't know that. I don't know what his
24 interpretation is of that email. I'm not him.

25 Q I'm not talking about the email. I'm talking about
26 prior to the email. Had anyone from AER advised Young

1 or O'Brien that you may be delivering an order at 4:00
2 on the 29th?

3 A Well, the email in the first line says: (as read)
4 Please advise or please find attached a draft
5 order.

6 It's contemplating issuing, so I think he would've had
7 notice that we were contemplating an order against him
8 when he read that email.

9 Q I'm asking prior to the email. There had been no prior
10 notice that an order was being contemplated?

11 A No, fair enough. I don't know. I don't think we had
12 explicitly communicated to him. I'm not going to sit
13 here and comment on his knowledge of our regulations,
14 processes, and procedures.

15 Q You certainly in the record haven't seen any reference
16 to an advanced notice before 3:48 PM on April 29th
17 that --

18 MS. ROSS: Mr. Gorman, the -- the email
19 itself states that: (as read)

20 As discussed previously, you are free to
21 bring counsel, and understand you have
22 prepped Howard.

23 MR. GORMAN: And we heard from Mr. O'Brien
24 that he was surprised that there was an order being
25 issued. We heard from Mr. Gosselin that he was -- he
26 recognized that Mr. O'Brien was very surprised at the

1 4:00 call. That is the evidence on the record and what
2 I want to find out. Is -- does Mr. Gosselin have any
3 evidence that there was any notice about an order prior
4 to this email?

5 A MR. GOSELIN: So I have no evidence that
6 there was any notice. The -- the -- the sentence
7 beginning with "as discussed previously", I'm not sure
8 what Mr. Schacher was implying there or what previous
9 conversations had gone on in detail. Maybe he had
10 communicated to Mr. O'Brien he was free to bring
11 counsel to any meetings with the AER. I don't know.

12 Q MR. GORMAN: Sir, if we, then, turn to
13 page 157, this is the order that was ultimately issued
14 with your signature on page 158?

15 A Yes.

16 Q Okay. And, sir, I just point out to you that there may
17 have been a flip-flop with respect to exhibits because
18 169 says "Please find enclosed the issued order", and
19 it is unsigned, and it is in 'X's with respect to dates
20 as opposed to being filled in.

21 A So, Mr. Gorman, here's how this works.

22 When we go to a pre-issuance meeting, the
23 statutory decision-maker has not yet made up his mind.
24 So, generally, we present an order that is absent a
25 signature, absent a day, and may or may not contain
26 "draft" or the words "confidential" on it.

1 We have the meeting. We may go in and vary some
2 of the terms and conditions or elements of the order,
3 including timelines, and then after the SDM makes a
4 decision, we execute and issue the order. Is that --
5 is that helpful?

6 Q It is, sir, and my point was just this: If we look to
7 page 169, there is, I think, the draft form of order
8 you just described that has April XX in it and is
9 unsigned. Do you see that, sir?

10 A I see it, yes.

11 Q Okay. That was the draft order that was delivered
12 around 4:00; correct?

13 A Yes, that --

14 Q Or 3:48?

15 A -- makes sense. Yeah.

16 Q Okay. My point to you is: Page 167, which is, Here's
17 the actual order, the document behind it is the draft
18 order. And the Document 155 which says, Here's the
19 draft order, the document behind it is the actual
20 order. So I think in preparing the exhibits, the draft
21 and the actual got mixed up.

22 A That may be possible.

23 Q Okay. So the draft order is, again, the one with the
24 'X's at 169, and you were then -- were involved in a
25 call with Mr. O'Brien --

26 A M-hm.

1 Q -- and myself and AER counsel that was deferred a bit
2 from 4:00 'til about -- oh, and Mr. Harvie -- 'til
3 about 4:15. Do you recall that?

4 A Yeah, I do.

5 Q Okay. And you said your AER practice was generally to
6 provide the draft order and see if the -- the
7 respondent to the draft order has any comments. Do you
8 recall that?

9 A Yes.

10 Q And Mr. O'Brien suggested he was very surprised. Do
11 you recall that?

12 A I do.

13 Q And you repeatedly asked going through it paragraph by
14 paragraph if we understood the draft order; correct?

15 A Correct.

16 Q And the response was, We understand the words on the
17 page. We don't understand why you're doing this. We
18 thought we were talking about the CCAA. That was the
19 nature of the response?

20 A That was the nature of the response. I can't remember
21 my comments word for word in that email. My practice
22 has been to explain what the purpose of that meeting
23 is. So I should've set you straight at the very
24 beginning of the meeting that the purpose of this was
25 to contemplate the issuing of an order and not to
26 discuss the CCAA process.

- 1 Q Oh, to be fair, we knew that from the 3:48 email.
- 2 A All right.
- 3 Q But prior to 3:48, Mr. O'Brien had understood the
4 meeting was to discuss a CCAA process.
- 5 A Fair enough.
- 6 Q Okay. Now, let's go to the actual order itself, which
7 is -- the executed version starts on page 157 of 31.02.
8 It's on letterhead, and it's dated; correct?
- 9 A I'll just wait for the -- yeah, that's good.
- 10 Q Okay. And it is addressed to Trident Exploration
11 (Alberta) and Trident Exploration (WX) Corp.; correct?
- 12 A Correct.
- 13 Q It's not addressed to Trident Energy Corporation
14 because Trident Energy Corporation is not a regulated
15 entity.
- 16 A It has a BA code, but it is not the subject of this
17 order.
- 18 Q It hasn't been the subject of any AER order that you're
19 aware of?
- 20 A I can't -- I -- that I'm aware of, no, but they do have
21 a BA code with us.
- 22 Q And then if we go beyond the cover letter to the order
23 itself -- and it was in substantially the same form as
24 the draft that had been discussed at 4:00 or shortly
25 after 4. Sir, do you recall?
- 26 A I do. Sorry. I couldn't pick up your intonation, if

1 that was a question or not.

2 Q No, no. But there were -- there were very little
3 modifications other than filling in the -- the dates
4 and executing between the draft and the final?

5 A That's my recollection. If you need me to be more
6 precise than that, I'd have to pull them out line by
7 line and see what changes I made almost 18 months ago.

8 Q No need to do that, sir. We've got both in -- in the
9 form.

10 So let's look at the final form of order again
11 starting at 159. It is against the two Trident
12 entities. I'm looking at the fifth "whereas":
13 (as read)

14 Whereas the corporate registry records
15 indicate as at February 7th, 2019, the
16 directors of Trident had changed and the
17 current directors listed for Trident reside
18 outside of Alberta.

19 Do you see that reference, sir?

20 A I do.

21 Q And you didn't need to look at corporate registry.
22 Trident had advised the AER in February 15th that the
23 two directors were Mr. Young and Mr. O'Brien who
24 resided outside of Alberta?

25 A We were aware of that.

26 Q Okay. And between February 15th and April 29th, there

1 was no complaint by the AER with respect to that?

2 A No, there was not. We chose not to pursue this
3 actively as other matters were rising to the top with
4 Trident.

5 Q Right. So the "whereas" is about residents'
6 requirement or a change of directors. They're thrown
7 in, but it was not the driving force with respect to
8 this order?

9 A It had partial concern for me, Mr. Gorman. We -- our
10 regulations want to have somebody in Alberta, a
11 resident in Alberta, so that we can have contact with
12 them if we need to. We don't want directors solely
13 residing outside the province, and so we asked them to
14 be ordinarily resident six months of the year or
15 greater.

16 Q But with respect to Trident between February 15th and
17 April 29th, there was no complaint by the AER; correct?

18 MR. GOSSELIN: Madam Chair, I'd just like a
19 second to confer with my colleagues, please.

20 THE CHAIR: Mr. Gorman.

21 Q MR. GORMAN: There is nothing that you were
22 aware of -- of any prior complaint, with respect to the
23 residency issue between February 15th and April 29th?
24 I'm asking for your knowledge.

25 A MR. GOSSELIN: Mr. Gorman, I can't agree to
26 that statement. At that point, those directors were in

1 noncompliance under Directive 67. They should've
2 appointed an agent the minute that they didn't have
3 residency inside the province. So I can't agree that
4 you are going to say that there was no complaint from
5 the AER.

6 Q Did the AER ever send a letter or any of the meeting
7 notes? Did you see a concern that Mr. O'Brien and
8 Mr. Young were nonresident?

9 A I'm not a hundred percent sure, but it was not unknown
10 to me as I was dealing with this file in March and
11 April that the residency piece was there.

12 Q Paragraph 1 on page 160: (as read)

13 The licences -- licencees' licence
14 eligibility is limited and will not be
15 permitted to hold any additional licences.

16 Do you see that reference, sir?

17 A I do.

18 Q And was that effective immediately?

19 A Yes. It would be effective on -- on -- at the time I
20 signed the order.

21 Q Okay. And did Mr. Young or Mr. O'Brien or anyone
22 attempt to hold additional licences after April 29th?

23 A No.

24 Q Okay. 2: (as read)

25 The licensee has until June 1, 2019, to
26 appoint an agent.

1 How did you make the date of June 1?

2 A We wanted to give Mr. Young and Mr. O'Brien an
3 appropriate amount of time to arrange their affairs.
4 We were trying to be somewhat empathic [sic] here. We
5 detected risk with this licensee but weren't trying to
6 be unreasonable.

7 Q Okay. And we know that by May 3rd a receiver had been
8 appointed?

9 A Yes.

10 Q Okay. 3: (as read)

11 The licensee has until June 14th, 2019, to
12 (a) submit an application, plural, to
13 transfer the wealth, facility, and pipeline
14 licences to a person or persons eligible to
15 hold AER licences.

16 Do you see that reference, sir?

17 A Yes.

18 Q And that would be all of Trident's properties?

19 A It could be all or it could be part. We want to give
20 the option to the licensee that if they don't want to
21 be the licensee of those assets, they can find a
22 suitable transferee and transfer the licences.

23 Q And on April 29th, you knew it was impossible with the
24 Redwater decision and the end-of-life obligations for
25 these assets that any such person would exist?

26 A I disagree vehemently.

1 Q You think someone was going to step in and acquire all
2 of Trident's licences?

3 A Quite possibly, Mr. Gorman. My objective in that
4 meeting was to communicate expectations to those
5 directors and give them an option other than doing what
6 they did.

7 Q Well, we know from the receiver that 18 months later
8 2,000, approximately, licences still haven't been
9 transferred; correct?

10 A Correct. But I don't agree with your conclusion that
11 that was the state of affairs at the time. You're
12 asking me to determine if anybody on the planet Earth
13 would be unwilling to come in and buy these assets, and
14 I won't agree with your conclusion.

15 Q Would you agree it was highly impracticable that
16 anybody would acquire these -- all of these licences?

17 A No, I would not. I have seen all sorts of people
18 approach the OWA and licencees in distress to buy
19 onsie, twosies, or whole on-block packages. I didn't
20 rule it out.

21 Q You were hoping Harold Wang would show up again? Is
22 that what you were hoping for? The time where
23 unexpected people showed up, these would've been
24 foreign offshore buyers that would've led to additional
25 AER difficulties; correct?

26 A Mr. Gorman, the job of the AER is to ensure that

1 quality capital lives, operates, and enters the western
2 Canadian sedimentary basin inside the province of
3 Alberta. I'm not going to comment on other qualities
4 of other directors. That's not the subject of this ...

5 Q 3(b): (as read)

6 Have Trident Exploration (Alberta) post
7 security in the sum of \$245,714,822 with
8 Trident (WX) posting \$13,294,700.50.

9 Do you see those requirements? Did that occur by
10 June 14th?

11 A No, it did not.

12 Q It was one of the options because of the word "or";
13 correct?

14 A Correct.

15 Q And did you understand that 3(b) was impossible to
16 believe it would occur, that someone's going to post
17 \$260 million in security in six weeks for the Trident
18 assets when it's on the verge of insolvency?

19 A No, I don't agree with you.

20 Q You believe this was a reasonable alternative for
21 Trident (Alberta) and Trident (WX) to accomplish?

22 A Mr. Gorman, I deal with hundreds of licencees every
23 year. Quite often, they say to me, We don't have money
24 for security. And after the AER asserts itself
25 further, security dollars show up. Do I agree with you
26 that it was somewhat unlikely given the distress of

1 Trident? Yes. But my job is to leave options open for
2 companies so that they can choose their destiny.

3 Q Well, it was difficult for Trident, but we discussed
4 earlier this morning it was difficult for the dry gas
5 industry entirely in April of 2019; correct? Prices --
6 commodity prices were near record lows?

7 A It doesn't mean it's impossible for other buyers to
8 come forward and see a distressed asset and purchase
9 it.

10 Q And PricewaterhouseCoopers hasn't found that purchaser
11 in 18 months; correct?

12 A I'm not sure what their advising campaign is, who they
13 were talking with, how broad and wide that is. I won't
14 offer a comment.

15 Q Next: (as read)

16 Demonstrate that it does not pose an
17 unreasonable risk by submitting a compliance
18 plan. The plan must outline Trident's plans
19 to ensure ongoing care and safety, outline
20 plans to address outstanding abandonment and
21 reclamation obligations, and set timelines.

22 Correct? You wanted that by June 14th?

23 A Yes.

24 Q You wanted -- and I do not believe this to be an "or"
25 with respect to (d), but you can tell me if it is.

26 (as read)

1 Update working interest participant records
2 associated with Trident.

3 You heard from Mr. Darby that there were no issues with
4 respect to the records, and you never had to reach out
5 to Mr. Young or O'Brien with respect to records perhaps
6 because of Veracity, so that turned out not to be an
7 issue?

8 A Sir, you've asked me two questions. Which one would
9 you like me to answer first?

10 Q Answer -- answer the first one first.

11 A Okay. So under 3(a), 3(b), and 3(c), as we see the
12 document before us, were -- were intended to be options
13 for the company to choose what it wanted to do.
14 Option (d) was not an option as compared to 3(a), 3(b),
15 and 3(c).

16 Q Okay. And --

17 A To your comment about Mr. Darby and his comments about
18 the records, I don't know that he mentioned anything
19 specifically about WIP records. Usually when we run
20 into licencees that are in a distressed state, the
21 recordkeeping is not up to scratch, and so we generally
22 advise them to make sure their records are as up to
23 date as possible.

24 Q Okay. And Mr. Darby perhaps with the assistance of
25 Veracity said they never had to reach out to Young or
26 O'Brien with respect to records; correct?

1 A Sure.

2 Q Okay. And then (e): (as read)

3 Confirm in writing that all fluids have been

4 removed from inactive sites as defined.

5 We heard from Mr. Gwartney and Mr. Darby that that took

6 perhaps six weeks or longer and was delayed partially

7 because of funding constraints. Do you remember that

8 evidence?

9 A I do.

10 Q Paragraph 4: (as read)

11 The AER may amend this order and any terms or

12 conditions it may specify.

13 Did the AER ever amend this order?

14 A No, it did not.

15 Q Did it ever extend the order to PricewaterhouseCoopers

16 as receiver on May 3rd?

17 A I'm going to let us catch up because I think the order

18 is being zipped along here. You're on which page,

19 Mr. Gorman?

20 Q I was on page 161 where at the very top it says "the

21 AER may amend this order on any terms".

22 A Okay. And, sorry, your question was -- again, please?

23 Q Was the order ever amended to name PricewaterhouseCoopers

24 as receiver of Trident (Alberta) and Trident (WX)?

25 A I don't think it was.

26 Q Now, Ms. Ross had helpfully told me that she had

1 referred you to Exhibit 6.04, page 111, and I believe
2 it was an earlier page. Perhaps you can help. There
3 was a reference that Jeff Young had sent an email at
4 4:23 PM. Do you recall that discussion?

5 A Yes.

6 Q Okay. And the meeting that occurred around 4:15 was
7 relatively brief. Perhaps ten minutes, give or take.
8 Would you agree with that?

9 A No. It seemed longer than that. I thought we were in
10 there for 20 to 30 minutes, but ...

11 Q Okay. All right. And your comment this morning was it
12 seemed Mr. Young had sent the email during the meeting
13 with the 4:23 timestamp on it. Do you see that it was
14 received at 5:23 in Calgary?

15 A I see the 5:22, but received by whom? Received by --
16 by Mr. O'Brien and Mr. Gorman. By you -- both of you
17 at 5:23. Yes, I see that.

18 Q Correct.

19 And the only point I'm making there is he didn't
20 resign during the meeting. He resigned perhaps an hour
21 after, but you seem to be making a point that it
22 happened during the meeting. I'm just showing you that
23 Ms. Stephens and I received it at 5:32 Calgary time,
24 and the meeting had clearly concluded by 5:23. Agreed?

25 A Right. So I'm no expert in this aspect of law or any
26 aspect of law for that matter. There's no time date

1 stamps on this, Mr. Gorman. I'm not trying to be
2 difficult. I don't know whether this is Mountain
3 Daylight Time or Central Standard Time.

4 One could conclude that Mr. O'Brien perhaps was
5 typing during the meeting. Again, this came to be -- I
6 was aware of this as the notice of intent and the
7 Section 106 process has unfolded. I wasn't aware when
8 we sat down on the 29th and did pre-issuance that these
9 documents had moved.

10 Q And Mr. O'Brien during that call around 4:15 repeated
11 what had previously been said, which is, We're going to
12 have to resign if there is not an agreement with
13 respect to CCAA funding; correct?

14 A I recall that, yes, and I replied to him that wasn't
15 necessary, and I reiterated what the options were.

16 Q All right. If we could look at page 162. There seems
17 to be an email from you to Mr. Wadsworth and others.

18 A Mr. Gorman, we have a different 162 than what you're
19 looking at.

20 Q Oh, I'm sorry. We jumped to a different exhibit. I'd
21 only ever been in one. So I'm back to 31.02, page 162.
22 As the reporter will be frustrated by Ms. Ross and I,
23 some documents appear many times, and we don't always
24 refer to the same version of the same document in the
25 exhibit records. So 31.02, this now is the right
26 exhibit, and I apologize for misleading the staff.

1 With respect to this, I just note in the bottom of
2 the paragraph that says "I do not take issuing orders
3 lightly", it continues: (as read)

4 I'm acutely aware of the economics facing gas
5 producers and realize this may not be
6 possible. That decision remains in the hands
7 of the Trident directors.

8 What you were recognizing was -- may not be possible
9 was complying with the terms of the order; correct?

10 A Give me a second to reread this, please. I would agree
11 with you to some extent that probably a solution coming
12 out of gas producers or like entities was not probable,
13 but it wasn't impossible either. And the thrust of
14 this email was to tell my leadership I didn't take the
15 order -- issuing of orders lightly. I knew what I was
16 doing to Mr. O'Brien and Mr. Young and to all the good
17 people of Alberta who are related to this company.

18 Q And, again, at virtually the same time -- this email is
19 5:33 -- at 5:32, Mr. Schacher sent the -- the final
20 form of order to Mr. O'Brien copied to you. That's
21 Document 167 we looked at earlier; correct?

22 A That would be consistent, yeah. We usually issue the
23 order, and then I put out a bit of a note to our
24 leadership and involved staff.

25 Q All right. And we earlier looked at what was provided
26 to Mr. O'Brien in his request for guidance which was

1 Bulletin 26-10 [sic] with respect to steps that were
2 being undertaken within half an hour of the -- the
3 issuance of the final order. Page 174 is the action
4 items with respect to Trident that were being
5 undertaken, and including near the bottom of the page,
6 there is the list of the three items.

7 A You're losing me here, Mr. Gorman.

8 Q We should be on 174, please.

9 A Okay. Okay. Can you re-state your question and have
10 me do what you need me to do here --

11 Q Sure.

12 A -- please?

13 Q Mr. O'Brien asked for guidance. He got directed to
14 26-10. He then writes back references to Mr. Gwartney
15 and Ms. Woolsey's contact the list of employees and
16 operators --

17 A M-hm.

18 Q -- and the key risk items that were going to be
19 addressed on the 30th.

20 A Okay.

21 Q So there was some detailed plans as opposed to a
22 three-year-old directive; correct?

23 A I'll agree with the comment there are some detailed
24 plans in this email.

25 Q And we know from Document 178, which you were copied
26 with -- and this has been referenced previously --

1 Mr. Schacher talked about: (as read)

2 The field went above and beyond, and it was
3 refreshing and an admirable act during an
4 unfortunate situation.

5 That was the AER's view of what was accomplished on the
6 30th, refreshing and admirable; correct?

7 A That was the AER view of the rank and file at Trident.
8 It wasn't the AER's view of the directors.

9 Q But the directors organized Veracity and the rank and
10 file to accomplish what could be accomplished on the
11 30th and reported to you what was being done on the
12 29th?

13 A As we were later to find out, they organized and
14 planned and executed on some of the shut-in but not
15 all.

16 Q Now, sir, consistent with what the AER had previously
17 been advised, the directors of Trident Exploration,
18 Trident (WX), and Trident (Alberta) resigned effective
19 4:00 PM on April 30th; correct?

20 A Correct.

21 Q And at Exhibit 180 is the resignation with respect to
22 Mr. Young, and the next page is virtually identical for
23 Mr. O'Brien with respect to Trident Exploration Corp.;
24 correct?

25 A Correct.

26 Q And this is the document where there is a fiat attached

1 to the left side of the page that was signed by Justice
2 Jones on May 1st, 2019; correct?

3 A M-hm.

4 Q And --

5 A Yeah.

6 Q -- we're going to look at some further AER documents
7 where some discussion with respect to the fiat takes
8 place. Do you understand what a fiat is?

9 A No, I don't. Not -- not intimately.

10 Q Okay. If I were to tell you it's Latin, for, Let it be
11 done, would that ring a bell one way or another?

12 A Yes.

13 Q Okay. And what a fiat is is a judge typically telling
14 a government agency to register a document
15 notwithstanding a deficiency. And you understand that
16 at land titles or otherwise?

17 A Sure.

18 Q Okay. And the fiat wasn't necessary for the
19 resignation to be effective. The fiat was so that
20 someone in a government department would file it even
21 though there were blanks on the form. Do you
22 understand the concept of that?

23 A Let's scroll a little bit further, please.

24 Q Well, do you understand what Justice Jones was saying
25 was: With respect to Trident Exploration Corp., Canada
26 Business Corporations Act accept the resignations even

1 though there aren't replacement directors in any event?

2 A So, Mr. Gorman, I have no expertise in the Canada
3 Business Corporations Act. I can talk about the Oil
4 and Gas Conservation Act. I can talk about the
5 Responsible Energy Development Act. I have no
6 expertise in the Bankruptcy Insolvency Act, nor the
7 Alberta Business Corporations Act.

8 Q All right. So any discussions the AER had with respect
9 to the fiat, you are not an expert. You were
10 uninformed in those discussions; correct?

11 A I don't recall getting any specific advice that would
12 inhibit me from placing an order against Trident.

13 Q Well, you placed the order as against Trident
14 Exploration and Trident (Alberta) and Trident (WX)
15 prior to the fiat?

16 A Correct. So if we're talking about Trident Exploration
17 Corp., that was not in our mind.

18 Q Correct.

19 THE COURT REPORTER: Sorry. Can I interrupt? This
20 is the court reporter. I'm sorry to interrupt.

21 Mr. Gosselin, I'm just going to have to get you
22 just to slow down just a wee bit, please, if you
23 wouldn't mind.

24 MR. GOSSELIN: Okay. I was told that was
25 going to happen. My apologies.

26 THE COURT REPORTER: Thank you.

- 1 Q MR. GORMAN: And with respect to Trident
2 Exploration (Alberta) and Trident Exploration (WX),
3 they were Alberta corporations, not Canadian CBCA
4 corporations. Do you understand the distinction?
- 5 A I do.
- 6 Q Okay. And if we look at -- for example, at page 185,
7 we see the Alberta Trident Exploration (WX) notice of
8 change of directors?
- 9 A Yes.
- 10 Q And that didn't require a fiat?
- 11 A Is that a question or a statement?
- 12 Q I'm asking you. Do you know that it did not require a
13 fiat?
- 14 A I do not know if it required a fiat or not.
- 15 Q The only fiat you recall seeing would be with respect
16 to Trident Exploration Corp. who are not named in your
17 order?
- 18 A Correct.
- 19 Q Okay. Now, did I understand correctly when you were
20 reviewing your work history this morning that for some
21 period of time you were on the board of the OWA?
- 22 A Yes.
- 23 Q And what period of time was that?
- 24 A I'm trying to think here. I'm sorry.
- 25 Q Would it have been before April of 2019?
- 26 A Before April of 2019? I honestly don't know,

1 Mr. Gorman. I'm not trying to be difficult. I'd have
2 to look. I was in for either a one-year or a two-year
3 stint, and then I handed off to -- to Robert Wadsworth,
4 and my memory is not being kind to me here.

5 Q By April of 2019, you would've been in relatively
6 constant contact with the OWA?

7 A Yes. Even if I wasn't an OWA board member, our staff
8 maintains relationships with their staff, and I do with
9 Mr. DePauw as well who is the director.

10 Q Right. And we'll see his name in some later documents.

11 A Yeah.

12 Q When did you first contact the OWA with respect to
13 Trident?

14 A I don't recall.

15 Q Do you know if it was before April 29th when you had
16 issued the order?

17 A I don't recall.

18 Q Did you have any discussions with the OWA about them
19 appointing a receiver or PricewaterhouseCoopers, who
20 had been contacted the week before, that they should be
21 appointing a receiver over Trident?

22 A I had no conversation that I recall before the 30th.
23 My recollection is: Once the order was issued and the
24 resignations were made known to me, that's when I
25 actively began engaging the OWA board. Calgary is a
26 small, close-knit community in terms of oil and gas.

1 There were likely rumours circulating about what was
2 happening with Trident, but I don't recall specifically
3 communicating to the OWA prior to the late afternoon of
4 the 30th.

5 Q All right. If we could look to page 188. It should be
6 an email chain from looking at the bottom of 188,
7 5:06 PM from Ms. Ross?

8 A Okay.

9 Q Do you see that, sir?

10 A I do.

11 Q Okay. And it starts: (as read)

12 In light of the actions of Trident and
13 ceasing operations, terminating employees,
14 and all directors and officers having
15 resigned as at 4:00 PM today, the AER is
16 proceeding tomorrow with an application to
17 appoint a receiver.

18 Did you understand that was being discussed as at 5:00
19 on April 30th?

20 A Again, events are hazy in and around that time. I
21 don't disagree that the AER may have been heading in
22 one direction with PricewaterhouseCoopers, but I
23 specifically remember being directed by my executive
24 leadership team that the AER would not be proceeding
25 with any more insolvency proceedings as a lender.

26 Q All right. If we flip over to page 180, the attachment

1 is an unfiled originating application before Justice
2 Jones at May 1, 2019. Do you see that originating
3 application? 190, please. Thank you.

4 A I -- I see the unfiled application.

5 Q Okay. And do you know that Justice Jones was available
6 on May 1 because that's when Trident had booked time
7 for its CCAA that did not proceed?

8 A I didn't know that he had time, no.

9 Q Okay. And on page 192, paragraph 11, near the bottom,
10 it references that: (as read)

11 PricewaterhouseCoopers has agreed to act as a
12 receiver pursuant to the terms of the filed
13 consent to act.

14 So PricewaterhouseCoopers had -- was already in line to
15 act as early as May 1?

16 A I agree that's what's written here.

17 Q Okay. Well, do you also recall Mr. Darby yesterday
18 said they could've been prepared to act as early as
19 April 23rd?

20 A I do.

21 Q And the AER didn't bring an application prior to
22 April 30, nor did they proceed with the application
23 May 1?

24 A Correct.

25 Q So do you understand that Trident and its officers and
26 directors had advised they couldn't consent to the

1 order because they had already resigned but did not
2 oppose the application if it proceeded? Did you have
3 that understanding?

4 MR. GOSSELIN: Madam Chair, could I have a
5 second to confer with my colleagues here?

6 THE CHAIR: Okay. You may. Go ahead,
7 Mr. Gosselin.

8 MR. GOSSELIN: Thank you.

9 (ADJOURNMENT)

10 THE CHAIR: Mr. Gosselin, are you ready to
11 answer the question?

12 MR. GOSSELIN: I'm ready, Madam Chair. I
13 just don't know if my colleagues are back or not. I
14 can't see them.

15 THE CHAIR: I can see them.

16 So, Mr. Gorman, you may proceed.

17 Q MR. GORMAN: Sir, did the AER understand
18 that O'Brien, Young, and Trident did not intend to
19 oppose any receivership application? They couldn't
20 issue a consent because the directors had already
21 resigned?

22 A MR. GOSSELIN: I'm not going to speak for the
23 AER, Mr. Gorman. There are 800 people -- at that time,
24 there would've been 1,200. I didn't understand that
25 PricewaterhouseCoopers had been contacted in the minds
26 of -- in my mind as a decision-maker. We were out of

1 options on the afternoon of the 29th in terms of that,
2 and it was time to issue an order.

3 Q Sir, were you involved in the decision that the AER
4 would not proceed with the May 1 application that
5 Ms. Ross had attached to her April 30th email?

6 A I don't think directly. Again, I would've taken my
7 marching orders from ELT at that time, our executive
8 leadership team, and that was -- we weren't going
9 forward on an insolvency. How that was communicated to
10 Ms. Ross or whoever shut down this application, I can't
11 speak to.

12 Q Did you know that an application was being contemplated
13 but it was, in your words, shut down?

14 A I don't think I recall that.

15 Q Okay. Looking at the record, do you now see that
16 indeed that's what happened?

17 A Yes.

18 Q Okay. And if we look to document page 198, there is an
19 originating application of the Orphan Well Association.
20 Did you come to learn that on May 3rd the Orphan Well
21 Association and not the AER was applying before Justice
22 Jones to appoint a receiver?

23 A Yes, I do.

24 Q Okay. And any gap between May 1st and May 3rd resulted
25 from the AER shifting the onus on the applicant to the
26 OWA?

1 A I disagree with that. There was no money to fund an
2 insolvency for PricewaterhouseCoopers. The application
3 would've been pointless without funding, and so in
4 light of that, your directors chose to -- pardon me,
5 the requesters chose to cut and run and leave, and,
6 thus, we had the problem we did with the care and
7 custody and safety.

8 Q Well, the AER cut and run on May 1 when they didn't
9 proceed and pushed the onus on to the OWA, if that's
10 your characterization of cutting and running.

11 A I don't think the OWA -- correction. I don't think the
12 AER has a responsibility to fund insolvencies. It's a
13 regulatory agency. Your directors have a
14 responsibility to live up to their obligations and
15 comply with AER requirements, which they didn't do.

16 Q The company didn't perform the requirements when you
17 knew they were insolvent, and the directors had
18 previously warned the AER that if they couldn't fund
19 the CCAA, there was going to be a receivership
20 liquidation, and that's ultimately what happened when
21 the AER made its decision on funding; right?

22 A Yes.

23 Q Okay. The receivership order is at page 202. From
24 your experience with Lexin or otherwise, did you
25 understand that this gave PricewaterhouseCoopers all of
26 the powers that officers and directors prior to a

1 receivership would enjoy?

2 A As of the date of the stamp, yes. Prior to that, no.

3 Q Now, do you have any information contrary to what we
4 heard from Mr. Darby and Mr. Helkaa that they could not
5 remember an instance where directors didn't resign on
6 the eve of a receivership?

7 A I remember that evidence.

8 Q Okay. Do you have any understanding that Mr. Darby and
9 Mr. Helkaa are incorrect?

10 A I don't agree with the use of the term "eve".

11 Q Well, Christmas Eve is the day before Christmas.
12 Wouldn't April 30th be the day before a May 1
13 receivership application? That doesn't meet "eve" in
14 your mind?

15 A I see a date stamp that says "May 3". So I -- they
16 might've wanted to resign on the 2nd of May after
17 stewarding their company to the final days of its life.

18 Q But on April 30th, they were told there was going to be
19 a receivership application the next day that got
20 adjourned not by their doing but by the AER's?

21 A Those directors had plenty of options to figure out a
22 different way to have this end. And in the face of it
23 instead of living up to their responsibilities, they
24 chose to resign on the 30th to avoid accountability.

25 Q They chose to resign on the 30th in accordance with
26 their rights under corporate law.

1 Sir, on May 3rd at page 218 in 31.02, two invoices
2 for the orphan fund levy were issued. Were you aware
3 that those two invoices that appear on page 218
4 through 221 were being issued?

5 A Yes.

6 Q Okay. By then you knew Pricewaterhouse had been
7 appointed based upon the date stamp we just looked at?

8 A Yes.

9 Q Okay. And you knew that the directors had resigned and
10 Pricewaterhouse had all those powers under the
11 receivership board?

12 A Yes.

13 Q Now, sir, I'm going to ask you to look at 31.02,
14 page 222. I'm sorry. I'm looking for 222. This is a
15 memorandum that appears to have been prepared by
16 Ms. Olsen to yourself and Amy Woo?

17 A Correct.

18 Q And you received this memorandum on or about that date?

19 A Yes.

20 Q And this memorandum would've been some of the
21 background for the ultimate issuance of the Section 106
22 declaration as against Young and O'Brien?

23 A Yes, it would. It should form a fairly healthy package
24 here.

25 Q Okay. Under -- in page 222 under "Corporate
26 Structure": (as read)

1 O'Brien and Young are the current directors
2 of Trident Corp., Trident (Alberta), and
3 Trident (WX).

4 You'll agree with me the first statement in Ms. Young's
5 analysis is wrong?

6 A Yeah. The verb tense is wrong.

7 Q Right. By June 14th, they were not the current
8 directors of Trident Corp.?

9 A Right. They had resigned of all three entities.

10 Q Right. And June 1st and June 14th were the dates in
11 your order that certain alternative events were to be
12 accomplished?

13 A Yes.

14 Q Carrying on the same page, the second paragraph
15 under 2, "Summary of Current Assets". As of June 1,
16 2019, Trident's LMR was 1.4 with deemed assets of
17 344 million and change. Deemed liabilities of
18 245 million and change. Trident (WX)'s LMR was 0.93
19 with deemed assets of 12 million and deemed liabilities
20 of 13 million. The AER holds no security for either
21 company. Do you see that reference, sir?

22 A Yes.

23 Q And the AER's goal with respect to LMR is one to one?

24 A It depends. If it's a licensee wanting to transfer in
25 assets under Bulletin 2016-21, we have latitude to
26 operate discretion up to -- or, sorry, from an LMR of

1 2.0 and below.

2 Q Okay. But as of June 1, Alberta's LMR was
3 significantly in excess of one to one, and (WX)'s had
4 about a million-dollar deficiency; correct?

5 A Yeah.

6 Q And the AER had never issued a request for security
7 prior to your April 29th order; correct?

8 A I'd have to go back and double-check all the orders.
9 Trident has a history that pre-dates me in certain
10 aspects, to -- so to be a hundred percent on that, I'd
11 have to double-check.

12 Q Okay. But do you agree with -- that AER was holding no
13 security at that time --

14 A Yes.

15 Q -- and that Alberta's LMR was significantly in excess
16 of one?

17 A Yes. There's a provision in the OGCA that allows us to
18 draw a security at any time, so a comfort that they're
19 at 1.40 without aggregating risk factors. It shouldn't
20 be done.

21 Q Certainly there is nothing in this report that says
22 they were in breach of filing a securities request?

23 A Correct.

24 Q Okay. If we look at the next page, 223, under
25 April 30, 2019: (as read)

26 Trident announces it is ceasing operations,

1 terminates its staff, and O'Brien and Young
2 resign.

3 Do you see that reference?

4 A Can you help me out again? I'm sorry.

5 Q April 30th --

6 A Yeah.

7 Q -- 2019. Yeah.

8 A M-hm. Yes, I read that. I've read that.

9 Q O'Brien and Young resign. So --

10 A M-hm.

11 Q -- page 2 of your report from Ms. Olsen contradicts her
12 first sentence internally; correct?

13 A Yes. And on the basis of a verb conjugation.

14 Q Okay. At the bottom of 223, she talks about
15 Section 106 of the OGCA, and on the top of page 224,
16 she accurately quotes "Control": (as read)

17 Control: The individuals are directors,
18 officers, agents, or other persons who were
19 directly or indirectly in control of the
20 licencee, approval holder, or working in
21 interest participant [and this is the
22 legislature's words, not mine] at the time of
23 the failure to comply or failure to pay.

24 You'll agree with me Mr. Young and O'Brien were not
25 directors at the time of the failure to comply, which
26 is June 1st or June 14th, where the failure to pay --

1 which invoices hadn't even been issued until after they
2 had resigned?

3 A No, I disagree with you. They were in control.

4 Q I thought we agreed the receiver was in control since
5 the stamp on May 3rd.

6 A The order was issued on the 29th. They were in breach
7 of the order, and they resigned.

8 Q They were in breach of an order that gave them various
9 options to do by June 1st or June 14th?

10 A And they chose to avoid any consequences for those
11 options or demonstrate any ability to figure something
12 else out by resigning.

13 Q By resigning and by the appointment of a receiver, they
14 were not in direct or indirect control at the time of
15 the failure to comply or failure to pay?

16 A I disagree.

17 Q Okay. Do you want to rewrite the legislation, or you
18 want this Panel to rewrite the --

19 MS. ROSS: Mr. Gorman, you have your
20 answer. You don't need to argue with the witness, and
21 you're asking him for a legal interpretation, which
22 will be up to the Panel.

23 MR. GORMAN: Well, in response to reviewing
24 the memo, he gave a legal interpretation, which the
25 Panel will be invited to determine, based upon the
26 reading in this language, is wrong. So I will move on.

1 Q MR. GORMAN: On page 225 at the start of
2 the page, "O&C staff." Who are O&C staff?

3 A Orphaning and closure staff. That would've been the
4 team under Mr. Schacher.

5 Q Okay. (as read)

6 Believes that Young was also a person in
7 direct control of Trident immediately prior
8 to the issuance of the order and in indirect
9 control at the time of the contraventions.
10 Prior to the issuance of the order, he was a
11 director.

12 What indirect control is being distinguished from the
13 direct control prior to the issuance (AUDIO FEED LOST).

14 A Sorry, Mr. Gorman. You lost me. I'm not trying to be
15 difficult here.

16 Q Well, O&C -- on the top of 225, "O&C staff" --

17 A Right.

18 Q -- I'm wondering what distinction O&C staff are making
19 of direct control prior to the order and indirect
20 control at the time of the contravention? What was
21 the --

22 MR. GOSSELIN: Madam Chair, could I have a --
23 I'm sorry.

24 THE CHAIR: Go on. You want to confer, go
25 ahead.

26 MR. GOSSELIN: Thank you.

1 THE CHAIR: No problem.

2 (ADJOURNMENT)

3 THE CHAIR: I see the witnesses are back.

4 Are you ready, Mr. Gosselin, to answer questions?

5 MR. GOSELIN: Yes, I am, Madam Chair.

6 THE CHAIR: Okay. Mr. Gorman, all yours.

7 Q MR. GORMAN: Perhaps, Madam Reporter, could
8 read the question back. I was trying to organize
9 myself for my next question, and I'm embarrassed to
10 admit I forgot the last one.

11 THE COURT REPORTER: (by reading)

12 I'm wondering what distinction O&C staff are
13 making of direct control prior to the order
14 and in indirect control at the time of the
15 contravention. What was the --

16 And then you interrupted, Mr. Gosselin, and then asked
17 for -- to be able to confer.

18 A MR. GOSELIN: So we deemed Mr. Young in
19 indirect control. I don't think he was present at the
20 time we held the meeting of pre-issuance. We received
21 legal advice on the interpretation of the statutes set
22 out in the Oil and Gas Conservation Act. By virtue of
23 the fact they resigned, there was no one to comply with
24 the order and, therefore, no way -- no way to comply
25 with it.

26 So by resigning, they essentially frustrated the

1 process and breached the order, and we viewed it as a
2 gaming of the system and a cute way to hop through a
3 loophole in the legislation.

4 Q MR. GORMAN: Well, you don't say, You're
5 gaming the system. You said they were in indirect
6 control. How are they in indirect control when they
7 are resigned and have receivers in place?

8 A They weren't -- the receiver wasn't in place until the
9 3rd of May.

10 Q The invoices to pay weren't issued 'til the 3rd of May.
11 The order required steps to be taken by June 1 and
12 June 14.

13 A And your clients resigned from that responsibility,
14 even in an attempt to get somewhere with that.

15 Q If we look further down on page 225, the third
16 paragraph under "Public Interest".

17 A Okay. I'm on it.

18 Q It starts with "by ceasing operations": (as read)

19 I see the staff are also critical that
20 Trident declined to assist AER in an orderly
21 insolvency process, including providing
22 consent for the appointment of a receiver.

23 Do you see that, sir?

24 A I do.

25 Q AER didn't apply to appoint a receiver. There was no
26 application for the directors to consent to, was there?

1 A So they didn't consent to the appointment of a receiver
2 on the 3rd of May because they had basically vacated
3 their responsibilities.

4 Q They directed counsel to attend to confirm they were
5 not opposing. Did you attend the application, sir?

6 A No, I did not.

7 Q Do you know if they resisted it at all?

8 A I don't.

9 Q Sir, if we turn to page 245, there's another internal
10 AER memorandum from the director of licensee management
11 to Mr. Wadsworth. I know who Mr. Wadsworth is. Who is
12 the director of licensee management that drafted this?

13 A That would be me.

14 Q And the reasons for the recommendation in your memo at
15 section -- or the first paragraph under "Reasons For
16 Recommendation", a Section 106 declaration is a reverse
17 onus process, and we discussed that briefly this
18 morning. You understand it's a reverse onus once the
19 prima facie case is met?

20 MS. ROSS: You're calling for a legal
21 definition, and Mr. Gosselin is not a -- Mr. Gosselin
22 is not a lawyer.

23 Q MR. GORMAN: Sir, why did you write on a
24 piece of paper that a Section 106 declaration is a
25 reverse onus process?

26 A MR. GOSSELIN: I wanted to highlight to my

1 boss that the respondents had -- had an obligation to
2 demonstrate that they were not individuals in direct or
3 in indirect control of Trident at the time there were
4 issues.

5 Q Okay. Well, first off, what was your basis for your
6 understanding that there was a reverse onus?

7 A I read the legislation. I took advice from legal
8 counsel and my staff.

9 Q And by the "legislation", you mean Section 106 of the
10 Act?

11 A Yes. I think reverse onus is contained elsewhere,
12 though.

13 Q Okay. Might it be in various regulatory appeal
14 decisions? Do you know if that's where it comes from
15 or not?

16 A I can't recall.

17 Q Okay. And then you say: (as read)

18 They have not demonstrated they were not
19 individuals in direct or indirect control of
20 Trident.

21 We're agreed they weren't in direct or indirect control
22 by May 3rd; correct?

23 A Correct.

24 Q And then you say "at the time the order was issued".

25 Where do you have an understanding that the legislation
26 speaks to the time that the order was issued as opposed

1 to the time it wasn't complied with?

2 A Mr. Gorman, you broke up again. Can I get you to just
3 repeat that?

4 Q Okay. I think we've agreed they were not in direct or
5 indirect control of Trident by May 3rd when the
6 receiver was appointed three or four days after they
7 resigned. Are we in agreement there?

8 A We are.

9 Q Then you say that the 106 declaration relates to at the
10 time the order was issued. I'm asking you to agree
11 with me if the words -- the legislature used on -- in
12 Section 106 is not issued. It's a failure to comply or
13 a failure to pay. Where do you see wording that talks
14 about a reverse onus at the time an order was issued?

15 MR. GOSSELIN: Madam Chair, can I have a
16 moment to confer with my colleagues, please?

17 THE CHAIR: Yes, you may.

18 (AJOURNMENT)

19 THE CHAIR: I was talking to myself for
20 quite a while right now. This may be a good time to
21 take a break, if you don't have any objections to that,
22 Mr. Gorman or Ms. Ross, or we could ask Ms. Turner to
23 send a message to ask the witnesses if they need more
24 time. However you want to proceed, Mr. Gorman.

25 MR. GORMAN: My guess is I will be done in
26 10 to 15 minutes. I'm nearing the end of my notes with

1 respect to this witness, and then I was going to ask
2 Ms. Olsen a brief set of questions. So I'm in your
3 hands if you want me to seek to finish Mr. Gosselin, or
4 we can take the break now and still finish.

5 THE CHAIR: I'll ask Ms. Burns.

6 How are you doing? Would you like a break?

7 THE COURT REPORTER: I'm totally in your hands.
8 I'm fine to continue, if we would like to. That's
9 fine.

10 THE CHAIR: So why don't we --

11 MS. TURNER: Madam Chair, the witnesses are
12 back.

13 THE CHAIR: I see that.

14 Mr. Gorman, why don't you finish with your
15 questioning of Mr. Gosselin and then we take a break
16 then.

17 MR. GORMAN: I'm not sure Mr. Gosselin and
18 his colleagues are back.

19 THE CHAIR: They are back. They're all
20 back.

21 So, Mr. Gosselin, please answer the question.

22 A MR. GOSSELIN: The brief before the Panel,
23 Madam Chair, was prepared and assisted by my staff as
24 well as that of the legal staff of the AER.

25 Speaking directly to the reverse onus, it is clear
26 in Section 106(2) that any director, officer, agent, or

1 other person -- and gives them at least ten days to
2 show cause as to why the declaration should not be
3 made. I want to clarify that in the Regulator's
4 opinion, Mr. O'Brien and Mr. Young were in indirect
5 control -- I'll say that again -- were in indirect
6 control of licences on the 30th of April after they
7 resigned. I reviewed that the contravention occurred
8 at the time of resignation frustrating the process and
9 that the moment -- at that moment the order was, then,
10 breached with their resignations.

11 Q MR. GORMAN: How was an order to post money
12 or to pay invoices that hadn't yet been paid by -- or
13 take steps by June 1 or June 14th do you conclude that
14 on April 30th they breached June 1 and June 14th
15 obligations by resigning as directors? That's
16 basically the theory of the complaint as against the
17 directors, isn't it?

18 MS. ROSS: Madam Chair, I've let this go
19 on for awhile. I just want to raise an objection if
20 that's fine.

21 THE CHAIR: That's fine.

22 Mr. Gorman, why --

23 Go ahead, Ms. -- counsel, Ms. Ross.

24 MS. ROSS: So the first two issues in the
25 hearing are whether the AER erred in holding
26 Messrs. O'Brien and Young liable under Section 106 of

1 the OGCA as persons in direct or indirect control over
2 Trident at the time Trident failed to comply with the
3 order or pay the invoice.

4 And Number 2 is whether the AER erred in
5 concluding that Messrs. O'Brien and Young's conduct
6 made compliance with the order or payment of the
7 invoice impossible.

8 The AER made a decision, and that is what is now
9 being under appeal here, and, in my view, these
10 questions are properly before the Panel and not before
11 this witness.

12 THE CHAIR: Mr. Gorman?

13 MR. GORMAN: I agree. These questions are
14 properly before the Panel in a de novo hearing where
15 the Panel have had access to much more information and
16 evidence. I just don't want to hear the argument that
17 appears in contrast in the CLM's brief that there is
18 some deference that is owed to the AER decision of
19 Mr. Wadsworth, who is not here today. So I will move
20 on, then, Madam Chair.

21 THE CHAIR: Thank you, Mr. Gorman.

22 Ms. Ross, do you have any reply to that, or you're
23 happy to move on?

24 MS. ROSS: I'm happy to move on, Madam
25 Chair. Thank you.

26 THE CHAIR: Thank you, Ms. Ross.

1 MR. GORMAN: Thanks.

2 Q MR. GORMAN: Could you please look to
3 31.02, page 257? Sir, this is the declaration that is
4 under appeal in this hearing. You recognize that?

5 A MR. GOSSELIN: Yes, I do.

6 Q Were you involved in the drafting of this declaration?

7 A Yes. At some point, I would've been involved in the
8 drafting.

9 Q Sir, on page 261, the third bullet point down that
10 starts with "the fact", if we could look at the last
11 sentence in that provision. (as read)

12 Until that time, the AER had been under the
13 impression that Trident was still acting in
14 good faith and only took steps to resign at
15 4 PM on April 30th, 2019.

16 Do you see that reference, sir?

17 A I do.

18 Q And the resignation on April 30th, 2019, had been
19 forewarned before the existence or the potential
20 existence of an order had existed?

21 A Yes.

22 Q Okay. If we could turn to page 262 under "Control".
23 (as read)

24 As a result of their resignation, they were
25 not directors at the time the order was
26 technically [the word "technically" is

1 underlined] contravened.

2 Do you agree with that, sir? They were not directors
3 at the time the order was technically contravened?

4 A Give me a second to read this. You started in without
5 telling me we were on the second sentence. My
6 apologies.

7 Q Sorry.

8 A Okay. Can you repeat your question?

9 Q Do you agree with this statement in the direction that
10 as a result of the their resignation they were not
11 directors at the time the order was technically
12 contravened?

13 MR. GOSSELIN: Madam Chair, could I again
14 have a moment to confer with my colleagues, please?

15 THE CHAIR: Yes. How much time would you
16 need do you think? Just an estimate.

17 MR. GOSSELIN: Two to five minutes.

18 MR. GORMAN: Madam Chair --

19 THE CHAIR: Yes.

20 MR. GORMAN: -- why don't I take you up on
21 your offer, then, and why don't we take a short break
22 now. I will call my clients and my colleagues and make
23 sure I haven't missed anything, and we'll do the last
24 few minutes of Mr. Gosselin's cross and then move on to
25 Ms. Olsen. If we're having a sidebar again, we may as
26 well all sidebar at the same time.

1 THE CHAIR: That's fine. How much time
2 would you need? 20 minutes is sufficient or more --
3 MR. GORMAN: 15 minutes --
4 THE CHAIR: -- less?
5 MR. GORMAN: 20 minutes is more than
6 sufficient for me. 10 or 15 would -- would work here.
7 THE CHAIR: So why don't we come back at
8 ten past 3, roughly.
9 MR. GORMAN: Very good. Thank you.
10 THE CHAIR: Thank you.
11 MR. GOSSELIN: Thank you, Madam Chair.
12 THE CHAIR: Thank you.
13 (ADJOURNMENT)
14 THE CHAIR: Hello, everyone.
15 Ms. Turner, do we have everybody? Ms. Turner?
16 MS. TURNER: Yes, we do.
17 THE CHAIR: Okay. Mr. Gorman, please
18 proceed.
19 MR. GOSSELIN: Madam Chair, I just wanted to
20 say thank you very much for the -- for the breaks and
21 allowing me to confer with my colleagues. It's getting
22 on in the day. These are very dense questions, and I'm
23 trying to answer them truthfully and as thoroughly as
24 possible. So thank you.
25 THE CHAIR: You're welcome.
26 Q MR. GORMAN: I believe where we left off

1 was we were looking at page 262, which is in the
2 declarations as against O'Brien and Young. I was
3 asking: Do you agree with the statement that as a
4 result of their resignation they were not directors at
5 the time the order, which I understand to be your
6 order, was technically contravened? Do you agree with
7 that statement in Mr. Wadsworth's declaration?

8 MR. GOSSELIN: Madam Chair, for the context
9 of this question -- this is Norton Rose Fulbright's
10 statement. The intent of the statement is to argue
11 that they were not in control. I will return to my
12 earlier words, which is, in the opinion of the
13 Regulator, Mr. O'Brien and Mr. Young were in indirect
14 control of licences on the 30th of April after they
15 have resigned.

16 Q MR. GORMAN: Well, let's talk about the
17 rest of the sentence in the declaration. (as read)
18 Given that the order allowed for a period of
19 time within which to comply with its terms
20 (June 1 for appointment of an agent and
21 June 14th to transfer the licences or post
22 security).

23 Do you agree that they were not in control at the time
24 the orders were not complied with?

25 A MR. GOSSELIN: No, I do not. They were in
26 indirect control.

1 Q On June 1 and June 14, you believe they were in
2 indirect control?

3 A They were in indirect control as I've stated three
4 times now, Mr. Gorman, on the 30th of April after they
5 had resigned.

6 Q Were they on indirect control on June 1 or June 14?

7 MS. ROSS: Madam Chair, I feel like this
8 is the same line of questioning we were dealing with in
9 the earlier document.

10 MR. GORMAN: I'm now looking -- I'm now
11 looking at the declaration, and when I asked if they
12 were in indirect control at the time of the failure to
13 comply, he keeps talking about April 30th,
14 notwithstanding the memo says June 1 and June 14th. He
15 has not taken head on the important question. Is it
16 his position that Young and O'Brien were in direct or
17 indirect control on June 1 or June 14?

18 THE CHAIR: Ms. Ross, you're okay to
19 continue with the question?

20 (SIMULTANEOUS CROSS-TALK)

21 MS. ROSS: My objection is the same. I
22 believe this is -- these are issues that are squarely
23 before the Panel in the regulatory hearing. You have
24 our order or the declaration, and it states what it
25 states.

26 THE CHAIR: Mr. Gorman.

1 MR. GORMAN: I believe this is a question
2 that the witness put forward by the AER has to answer
3 with respect to their position with respect to the
4 issuance of the declaration. Is it his position that
5 Young and O'Brien were in indirect or direct control on
6 June 1st or June 14th, which are the dates that are
7 referenced on page 262 we're looking at? It's a simple
8 yes or no question.

9 THE CHAIR: Mr. Gosselin, please answer
10 the question.

11 MR. GOSSELIN: Madam Chair, can I have
12 another minute to confer with my colleagues, please?

13 THE CHAIR: Mr. Gorman [sic], the last
14 question Mr. Gorman stated -- phrased, it's simple
15 enough. If you wish to confer, go ahead. Just a
16 minute.

17 MR. GOSSELIN: Thank you.

18 (ADJOURNMENT)

19 MR. GOSSELIN: Madam Chair, I'm ready to go
20 if everybody is back.

21 THE CHAIR: Please. Do you need the
22 question to be repeated, or are you good?

23 MR. GOSSELIN: I'm good. Thank you.

24 A MR. GOSSELIN: Mr. Gorman, the SDM made that
25 determination. I cannot speak for his mind at that
26 time. The point of control is not important, and I

1 would direct the remainder of the AER's argument on
2 this matter to Exhibit 06.04, page 475.

3 Q MR. GORMAN: When you go offline and chat
4 with your colleagues, who I understand to be Ms. Olsen
5 and Mr. Reilly, are you looking for factual input, or
6 are you guys discussing arguments you want to make?

7 A MR. GOSSELIN: We're discussing factors of
8 the case. We deal with a number of these, so I need to
9 be reminded of some factors that were relevant, what
10 was in the thinking, how did the advice turn out.

11 Q Okay.

12 MS. TURNER: Sorry, Madam Chair. We just
13 had to readmit Ms. Ross.

14 THE CHAIR: Oh, we lost Ms. Ross.

15 Mr. Gorman, would you mind pausing for a minute.

16 MR. GORMAN: Of course not, Madam Chair.

17 THE CHAIR: Thank you. So we have her now
18 back?

19 MS. TURNER: Please unmute yourself,
20 Ms. Ross.

21 MS. ROSS: Sorry, Madam Chair. I lost
22 connection there for a moment, but I'm back.

23 THE CHAIR: So did you hear the last
24 question, or you would like Ms. Burns to repeat it, or
25 not? Or I suppose Mr. Dumanovski was there.

26 MR. DUMANOVSKI: Madam Chair, it seems to me

1 that we are dealing with the interpretation of the
2 relevant Section 106, and it seems that Mr. Gorman
3 wants Mr. Gosselin to change his mind. That is as
4 Ms. Ross reiterated earlier --

5 THE CHAIR: Are you making an objection?
6 I didn't invite an objection. I was just checking to
7 see if Ms. Ross is okay to move ahead, if she missed a
8 question or heard the question. That's all.

9 MR. DUMANOVSKI: I'll let Ms. Ross speak to
10 that.

11 MS. ROSS: I don't know which question
12 you're referring to.

13 THE CHAIR: So I'm going to ask Ms. Burns
14 to read the question once more, please.

15 THE COURT REPORTER: Did you want the question
16 before the adjournment or the question regarding going
17 offline and chatting?

18 THE CHAIR: No, no, no. The last sentence
19 that was said when Ms. Ross was disconnected.

20 THE COURT REPORTER: Okay. I'm not sure when that
21 was, Ms. Ross, but I will give you -- how about I'll go
22 like this: (as read)

23 Q MR. GORMAN: When you go offline and chat
24 with your colleagues, who I understand to be
25 Ms. Olsen and Mr. Reilly, are you looking for
26 factual input, or are you guys discussing

1 arguments you want to make?

2 A We're discussing factors of the case.
3 We deal with a number of these, so I need to
4 be reminded of some factors that were
5 relevant, what was in the thinking, how did
6 the advice turn out.

7 Q Okay.

8 THE COURT REPORTER: And then Ms. Turner said that,
9 "Sorry, Madam Chair, we just lost Ms. Ross".

10 THE CHAIR: So did you get all of that,
11 Ms. Ross? I just wanted to confirm as you're counsel
12 to --

13 MS. ROSS: I appreciate the -- yeah, I
14 appreciate that. Thank you. I didn't hear that.

15 THE CHAIR: Okay. You may proceed,
16 Mr. Gorman. Sorry about the glitch.

17 Q MR. GORMAN: So, sir, as I understood your
18 last answer, you said you and your colleagues had
19 determined control was not important and referenced me
20 to a page in argument; is that right?

21 A MR. GOSSELIN: Control is not important as
22 the Regulator deems for the question you asked me,
23 which is: Were they in control on 1 June or 14 June?

24 Q Okay. And your -- you and your colleagues considered
25 control was not a relevant factor; correct?

26 A Correct.

1 Q Okay. Can we turn to page 264, please, and I'm looking
2 at the third paragraph. It starts on Section 106, so
3 we're going to have to scroll down a bit. A little bit
4 more, please.

5 The third sentence starts: (as read)

6 The individuals are in the best position to
7 respond to the notice as they are the ones
8 with the best information regarding why they
9 failed to comply with AER orders or pay
10 outstanding debts.

11 Do you agree with that, that the individuals are the
12 ones with the best information?

13 A Just give me a second to reread that, please. Yes, I
14 agree with that statement.

15 Q Okay. If we turn to page 269. Do you recognize the
16 signatory on behalf of the Alberta Energy Regulator?

17 A It would appear to be Robert Wadsworth.

18 Q And as I recall from earlier discussions, he was your
19 superior at the time of this order?

20 A Yes, he was.

21 Q Okay. Now, did you have any involvement with PwC in
22 the Trident receivership?

23 A Do you have a date in mind, Mr. Gorman?

24 Q Well, we -- we know the receivership was May 3rd, and
25 what I'm asking is: There are a bunch of sales that
26 have been reported from time to time in the five

1 reports. Was the receiver seeking input from the AER
2 with respect to potential sales?

3 A Yes. We do a number of these, and I'm the statutory
4 decision-maker for transfers, so by a logical
5 conclusion, I would've seen some of these transfers
6 move through my process under Directive 6.

7 Q And it would've been the AER providing input or
8 guidance with respect to potential sales, not
9 Mr. O'Brien and not Mr. Young; correct?

10 A Well, the AE -- so how the transfer process works with
11 an insolvency is the receiver will contact us and let
12 us know that they want to transfer assets. They've got
13 a buyer, and they look for some degree of -- of
14 certainty that we won't have a significant issue with
15 the buyers.

16 Q And the sales that had been concluded were with the
17 support of the AER; correct?

18 A If they were approved and a decision was issued by me,
19 then, yes, they were.

20 Q And do you have an understanding that from all of the
21 sales that have been concluded with respect to oil and
22 gas properties, facilities, or licences, the
23 consideration received by the receiver has been
24 de minimis?

25 A I'm not familiar with that term. Do you want to
26 explain that to me?

1 Q Very meager.

2 A Very meager? I don't have the numbers in front of me,
3 so I don't know that I would necessarily agree with
4 that. I know that about three-quarters of the assets,
5 if I remember the statistics from a day or so ago, have
6 moved through. I'm not privy to how much the actual
7 amounts were, and we don't see that. We see the deemed
8 asset and deemed liability.

9 Q And your concern is about what liabilities are being
10 acquired, not what the cash purchase price is?

11 A Correct. When we look at the transferee, we also look
12 at them to make sure that they are suitable to take on
13 licences. Generally, things coming out of an insolvent
14 state are in poor condition, so we always look at the
15 licencees and make sure that they are able and viable
16 in terms of taking on that liability load, as it were.

17 Q And this is the exact impasse that Mr. Corbett was
18 worried about in August of -- or, pardon me, April of
19 2019 when he said, We need sales to recover the DIP
20 loan, not just worry about end-of-life obligations?
21 That was the impasse between the AER and ATB, wasn't
22 it?

23 A No. The impasse was that we couldn't find an
24 insolvency mechanism.

25 Q An insolvency mechanism to allow ATB to fund the DIP
26 facility that was required?

1 A I don't think the AER was wed to ATB. ATB entered the
2 fray at the insistence of Trident. We would take any
3 suitable insolvency professional, and, again, there are
4 professionals in Calgary who do this. So we went
5 through the certifications of a number of folks. The
6 funder of the DIP loan, that's -- that's a business
7 arrangement.

8 Q Do you understand that the receiver is taking steps to
9 pursue funding under the site rehabilitation program?

10 A I did not.

11 Q Sir, were you aware that on April 30th, 2019, Trident
12 issued a press release on the last day of Young and
13 O'Brien being directors?

14 A I vaguely remember it.

15 Q If you could look to 31.02, page 295. I'll give you a
16 minute to review that, sir.

17 A Thank you. If I could ask that it be scrolled upwards.
18 I've read it. Thanks for -- thank you for the
19 patience.

20 Q Thank you.

21 And did you understand that Trident was very
22 publicly criticizing the AER handling of their
23 situation through this press release?

24 A Yeah. It's not particularly favourable to the AER.

25 Q Okay. They talk about we -- (as read)

26 Although we've substantially settled the

1 terms on a financing solution with our
2 primary creditors for an order of
3 restructuring and sales process, we were
4 unable to secure AER's support for a
5 restructuring in a timely fashion.
6 Ultimately, the recent Redwater decision,
7 regulatory uncertainty, and a lack of egress
8 has created a treacherous environment for
9 energy investors that dare to risk their
10 capital in Canada.

11 You understood that to be a shot at the AER's handling
12 of their situation?

13 A I did.

14 Q And then the next paragraph partway down: (as read)

15 We fear that many other companies may falter
16 without clear, sound policy making post
17 Redwater. In the face of this extended
18 uncertainty, blunders and investors may flee
19 Canada, and further job losses will occur.
20 Without access to financing, we expect that
21 the Orphan Well Association may grow
22 exponentially.

23 Again, a criticism of the Regulator?

24 A Yeah. It's actually a criticism of the Government of
25 Alberta, if you want to split hairs.

26 Q And did you discuss this press release with

1 Mr. Wadsworth?

2 A I don't recall doing so, no.

3 Q Okay. Do you know if Mr. Wadsworth was personally
4 challenged or feeling attacked by this press release?

5 A I don't know.

6 Q Do you know if Mr. Wadsworth saw this as a provocation
7 which affected his decision whether to issue the
8 Section 106 declarations as against Young and O'Brien?

9 A I don't know that. My opinion of Mr. Wadsworth is he's
10 an objective individual and wouldn't have used this to
11 allow himself to be provoked.

12 Q But you didn't recall discussing that with him one way
13 or another?

14 A No.

15 Q Okay. With respect to the current appeal, would you
16 agree that this panel has had the benefit of live
17 witness testimony that the AER and Mr. Wadsworth did
18 not have or did not access with respect to their
19 issuance of the declaration?

20 A I don't think it's my place to comment on the
21 proceedings of this panel. I felt Mr. Wadsworth
22 received an appropriate package and recommendation from
23 my team and an analysis that was appropriate to the
24 decision that he made.

25 Q Okay. But this panel in addition to seeing that
26 analysis have also heard from six live witnesses in

1 addition to yourself; correct?

2 A Yes.

3 Q This panel has the opportunity so they -- if they so
4 choose to read the various loan documents that govern
5 the ATB relationship with Trident that I haven't found
6 anyone from the AER acknowledging they read. They have
7 that benefit as well; correct?

8 A They do.

9 Q And, sir, while at the conclusion of your testimony in
10 chief, you adopted the record of the AER with respect
11 to the finding. We're in agreement that you have
12 personal firsthand knowledge of but a small minority of
13 the documents, and you're relying upon the documents on
14 their face without firsthand knowledge?

15 A No, I'm not going to agree with that.

16 Q You know what happened at meetings you didn't attend?

17 A I can read reports, and statutes that I operate under
18 allow me to know parties only by record, and that is
19 sufficient for the acts and regulations I'm asked to
20 enforce.

21 Q Correct.

22 My point, sir, is you're relying upon the record
23 primarily as opposed to firsthand involvement or
24 knowledge; correct?

25 A It depends what aspect of this you want to argue,
26 Mr. Gorman. I sat down and delivered a pre-issuance,

1 as unfortunate and as unpleasant as that was, to your
2 clients. So I -- I -- I don't know that I can agree
3 with you wholeheartedly.

4 Q Mr. Gosselin, I wish you well with your family issues
5 and your son tomorrow.

6 I have a few questions for Ms. Olsen --

7 A I appreciate your patience (INDISCERNIBLE - OVERLAPPING
8 SPEAKERS).

9 Q -- so if you could unmute yourself.

10 Ms. Olsen, can you hear me?

11 A MS. OLSEN: I can. Can you hear me?

12 Q Yes, I can.

13 I'd first like to refer you to a page we
14 previously looked at, which is page 222 in 31.02, which
15 is your June 14th memorandum.

16 A Okay.

17 Q Do you have that?

18 MS. OLSEN: Thank you, Ms. Turner.

19 Q MR. GORMAN: Okay. And --

20 A MS. OLSEN: Yes, I can see that.

21 Q Okay. And if we scroll down a bit to "Background", the
22 first sentence in your memorandum on background
23 provides: (as read)

24 O'Brien and Young are the current directors
25 of Trident Corp., Trident (Alberta), and
26 Trident (WX).

1 Would you agree that your report dated June 14th, the
2 first sentence, is wrong?

3 A Well, that was -- it should say that they were
4 directors. But you're correct. That is what it says.
5 It is corrected later in the chronology where it's
6 noted they resigned on April 30th. So it was an error.

7 Q Thank you.

8 And on page 224, do you also have to correct under
9 "control" -- it's 224, please. Thank you.

10 If you were to scroll down a bit more, "control at
11 the material time", you write: (as read)

12 O&C staff believes that Darren O'Brien was a
13 person in direct control of Trident
14 immediately prior to the issuance of the
15 order and in indirect control at the time of
16 the contraventions.

17 Can we agree that's another error? At the time of the
18 contraventions, they were not in indirect control?

19 A No, that is not an error.

20 Q How are they in indirect --

21 A That was based on -- sorry. That was based on
22 discussions with counsel. These memos are not prepared
23 in a vacuum, so it was determined that they were in
24 indirect control. I can't speak to the legal aspects
25 of that, but it is not an error. That is -- that is as
26 written.

1 Q Okay. What did you understand was at the time of
2 contraventions?

3 A From what I understood -- and, again, I'm not a legal
4 person, but I can certainly speak to my opinion of what
5 I interpreted from my legal counsel -- was that the
6 moment Mr. O'Brien and Mr. Young resigned, they ensured
7 the order could not be complied with, which immediately
8 constituted a breach of the order.

9 Q Now, I'm going to ask that Exhibit 38.01, page 27, be
10 called up. And at the very top --

11 MS. OLSEN: Thank you for zooming in.

12 Q MR. GORMAN: Yeah. At the very top, it's
13 an email from Laura Chant to yourself dated August 13th
14 at 1:11?

15 A MS. OLSEN: Yes.

16 Q Okay. And we just looked at your report that is dated
17 June 14th; correct?

18 A Correct.

19 Q Okay. Can you tell me why Laura Chant on August is
20 sending you background emails from April of 2019?

21 A Absolutely. So part of the Section 106 research
22 process, there's -- Mr. Gosselin alluded to it earlier.
23 There's two memos presented.

24 So the first one is background and research to
25 demonstrate whether or not a notice of intent should be
26 issued, is -- should -- and that notice of intent, that

1 was the first package dated June 14th.

2 The second one, as you know, because you prepared
3 the submission on behalf of your clients, which was
4 received, I believe, July 24th -- you can correct me if
5 I'm wrong. But following that, that information has to
6 be processed and presented in another package due --
7 given that information, is there a reason to proceed
8 with the Section 106 enforcement?

9 Part of my role is to gather information. It was
10 stored on -- we were in the process of migrating to
11 another storage facility. A lot of people had personal
12 emails, so I had requested everybody who had direct
13 knowledge of what had happened to Trident to please
14 forward their emails and records to me for compilation
15 into the record.

16 Q Okay. So --

17 A And that would be why it was in August, 'cause you'll
18 notice the next -- the -- kind of the decision memo,
19 and I don't know what page of your -- I believe it was
20 October 8th. That would've been the next internal
21 memo, and I know it's -- I know where it is in our
22 exhibits. I -- sorry. I don't -- it's page 251 of
23 Exhibit 06.04. That was -- it would've incorporated
24 some of these emails that Laura Chant sent to me.

25 Q All right. So when you issued your report of
26 June 14th, had you reviewed Mr. O'Brien's email of

1 April 30th? That's at page 27 that we're looking at.

2 A I may have. Some of these were duplicates.

3 Q Okay. And, similarly, if we turn a couple of pages
4 to 29, there's another email forwarded to you on -- now
5 on September 19th attaching another April 29th email.
6 You might or might not have had that on June 14th?

7 A This one from Mr. Schacher, I probably didn't have on
8 June 14th.

9 Q And if we look at page 30, there's another email,
10 September 19th, to -- to you now from Mr. Schacher.
11 Again, another April 29th email that you might or might
12 not have had on June 14th?

13 A I might not have had it from him prior to that. It
14 might have been saved in one of the other drives.
15 Again, I requested everybody send me everything, so
16 there were -- there was duplication.

17 Q Okay. Well, for some reason under our information
18 request, these are the versions of these documents
19 we've seen, and I just noted the -- it seemed odd to me
20 that they're dated to you after the report.

21 And the last one I'll refer to from this bundle is
22 page 33, again, from Laura Chant to you on
23 September 12th attaching an email chain, including
24 Mr. Gwartney, on April 30. You might or might not have
25 that on June 14th?

26 A Could you scroll up a bit, please. Thank you. Just so

1 I can see what -- which one it was.

2 And, again, I'm relying on my memory to see if I
3 can remember which ones I had and which ones were
4 duplicates. This might have been the one from EOP. I
5 don't know for -- I couldn't -- I honestly couldn't
6 tell you whether I had it June 14th or just before the
7 October memo.

8 Q Right.

9 A I did compile all of these into one location, which is
10 probably why you received these versions of them when
11 you made your information request 'cause it would've
12 been the easiest place to access all the documents.

13 Q Okay. Ms. Olsen, do you take exception to or dispute
14 any of Mr. Gosselin's evidence that we've been
15 reviewing over the past several hours? Do you have a
16 different view with respect to any of the answers?

17 A I would clarify that -- and I think it was your
18 Exhibit 31.02, page 262, the letter of decision that
19 accompanied the declarations that Mr. Wadsworth issued.

20 Q Okay.

21 A I'm a bit more familiar with the structure of that
22 letter 'cause I was involved in creating it with
23 counsel. So I can tell you -- so you'll notice that it
24 says -- there. There we go. If you scroll down,
25 please, to the "Control" part. Keep going. And thank
26 you. That's so big. I apologize for my bad eyes.

1 So the structure of this letter was there would be
2 a statement from the submission that we had reviewed.
3 So in this case at the -- oops.

4 MS. OLSEN: If you just go back up to the
5 previous page, Tammy, please. Just that last
6 paragraph.

7 A MS. OLSEN: So it says the "NRF
8 submission", which was defined earlier as the Norton
9 Rose Fulbright submission. So it's -- that statement
10 is from -- is, you know, paraphrasing that submission,
11 and then it further goes on to say -- it also states
12 The Business Corporate Act say "it's -- its directors
13 resign. They cease to hold office [et cetera]".
14 And now if you go to the next page, you then see -- to
15 page -- and one more down, please. Yes. In fact --
16 and this would be the AER's response to that statement.
17 So that was somewhat of the structure of the letter,
18 and you'll see that throughout. There would be the
19 issue, what the submission says, and what the AER
20 response was to that.

21 Q MR. GORMAN: Thank you for that.

22 A I don't know if that helps, if that helps at all.
23 Other than that, no. I --

24 Q If -- if other than that clarification you are content
25 with Mr. Gosselin's evidence, I would have no further
26 questions --

1 A Yes.

2 Q -- for you, and you can thank Mr. Gosselin for doing
3 the heavy lifting earlier today.

4 A Okay. Thank you, Mr. Gorman.

5 Q And, Mr. Reilly, I have no further questions for you.

6 MR. GORMAN: Thank you for putting up with
7 me asking the extended questions to Mr. Gosselin. That
8 concludes my cross, Madam Chair.

9 THE CHAIR: Thank you, Mr. Gorman.

10 Thank you, Mr. Gosselin and Ms. Olsen, for
11 answering all the questions, and you don't need to
12 apologize for your bad eyes. It helped me because I
13 couldn't see it either.

14 So, with that, if you're okay, I think Panel
15 counsel may need a quick break before they are prepared
16 for their questions. And then Panel may have some
17 questions for Mr. Gosselin and maybe Ms. Olsen and
18 Mr. Reilly. I'm not sure. So if you give us, let's
19 say, 15 minutes, five past 4, we'll be back. Thank you
20 all.

21 (ADJOURNMENT)

22 THE CHAIR: Thanks for your patience,
23 everyone. So I'm happy to report that through the
24 cross-examination, many of our questions have been
25 dealt with. Ms. Hall has a few questions, and then the
26 Panel.

1 So, Ms. Hall --

2 MS. HALL: Thank you, Madam Chair.

3 THE CHAIR: If you --

4 MS. HALL: Thank you, Madam Chair.

5 Alberta Energy Regulator Staff Questions the Compliance
6 and Liability Management (Mr. Gosselin, Ms. Olsen,
7 Mr. Reilly)

8 Q MS. HALL: These questions, I believe,
9 will be for you, Mr. Gosselin.

10 The first is --

11 MS. HALL: If we could have up
12 Exhibit 31.02, PDF page 258, Ms. Turner. And then if
13 you could just scroll down to the last paragraph,
14 please. Thank you.

15 Oh, boy. That may be a bit big for my eyes, but
16 that's okay, yeah -- or for my brain. I'm not sure
17 which it is. Thank you.

18 Q MS. HALL: And so, Mr. Gosselin, if you
19 can see at the second sentence in this paragraph reads,
20 quote: (as read)

21 At the February meeting between Trident and
22 the AER, Trident committed to a plan that
23 included addressing its liabilities. At no
24 point was the AER advised of a change to this
25 plan or of Trident's intention to pursue a
26 plan of arrangement pursuant to the

1 Companies' Creditors Arrangement Act until it
2 and its primary secured creditor, ATB
3 Financial, met with the AER on April 18th, 2019.
4 And then if we could go to PDF page 2, I believe, of
5 this same exhibit, paragraph 15.

6 So I'll give you a moment to read this paragraph,
7 Mr. Gosselin. For the record, it reads: (as read)
8 This resulted in a meeting on February 19th,
9 2019, during which Mr. O'Brien presented to
10 Mr. Wadsworth; Tania De Silva, director of
11 oil and gas and pipelines, CLM; and Syed
12 Ayub, director CLM, in detail, Trident's
13 negative cash-flow situation as well as the
14 difficulties Trident faced in obtaining
15 financing in the ... [Can you scroll down
16 please. Thank you.] ... in the wake of the
17 Supreme Court of Canada's decision in Orphan
18 Well Association v. Grant Thornton and the
19 lack of guidance from the AER on priorities
20 under the Companies' Creditors Arrangement
21 Act.

22 Do you see that?

23 Do you know, Mr. Gosselin -- and I recognize that
24 you may not, but do you know whether this is the same
25 meeting that the letter enclosing the declarations that
26 we just looked at was referring to? And you're muted,

1 Mr. Gosselin.

2 A MR. GOSSELIN: I apologize. I'm having
3 trouble drawing the connection and remembering which
4 part of the last document we looked at, so ...

5 Q Sorry. My apologies. Yeah. So the last document,
6 which was the letter from Mr. Wadsworth enclosing the
7 declarations, referred to a February meeting between
8 Trident and the AER --

9 A M-hm.

10 Q -- in which Trident committed to a plan that included
11 addressing its liabilities?

12 A M-hm.

13 Q And I'm just wondering if this is the same meeting
14 that's referred to here, if you're aware of that?

15 A So I wasn't at this February 15th meeting. I think
16 that's pretty clear. I do not wish to contest that. I
17 wasn't there. Again, my recollection of events prior
18 to the 15th of March is -- is not stellar. I really
19 became engaged and aware of Trident's situation on the
20 15th of March.

21 At that time Gary Gwartney, I believe, indicated
22 that, you know, as he was running operations, they
23 wanted to talk about concessions or re-adjusting their
24 closure plan, which dealt with the, then, bit of
25 reclamation work that had been committed to. Is that
26 helpful?

1 Q Yes. Thank you, Mr. Gosselin.

2 A Okay.

3 Q I'll just move on to my next question which is just --
4 there seems to be some discrepancy in the record as to
5 when Trident first communicated to the AER that the
6 requesters intended to resign or when the AER first
7 learned that the requesters intended to resign. Again,
8 I recognize this may be a difficult question for you to
9 answer definitively on behalf of the AER, but if you
10 can clarify when CLM or when you first learned that
11 Trident's directors intended to resign?

12 A That's a really tough question. I don't think it's
13 unfair to say I -- you know, and I have been dealing
14 with insolvent companies or companies struggling with
15 their situation for a number of years. Probably coming
16 out of that meeting, I would have said and thought in
17 my mind that them resigning might be something that
18 would unfold eventually, and that's sort of mid --
19 mid-March, but I think that that sort of notion really
20 took root probably after the 18th of April meeting with
21 the report provided through Kaitlin Szacki and Chris
22 Schacher.

23 At that time I would have had -- because it was
24 communicated to me that they had -- were contemplating
25 resigning, so I think that's a fair assessment to say
26 at that point I really believed it could be true or

1 might come to fruition.

2 Q Okay. Thank you, Mr. Gosselin.

3 MS. HALL: And those are all my
4 questions, Madam Chair.

5 THE CHAIR: Thank you, Ms. Hall. With
6 that, we will move to Panel's questions. I'm going to
7 ask my colleague Commissioner Chiasson to please
8 proceed.

9 MS. CHIASSON: Thank you, Madam Chair.
10 Alberta Energy Regulator Panel Questions Compliance and
11 Liability Management

12 Q MS. CHIASSON: So most of these questions I'm
13 going to put to the panel of witnesses generally, and
14 then if I need follow-up from someone specific, I'll
15 ask.

16 So the first question I have is: So why would the
17 AER get involved in -- in discussions with looking to
18 facilitate -- facilitate licencees or operators in
19 obtaining financing?

20 A MR. GOSSELIN: So as a normal practice, we
21 don't want to get involved with licencees and their
22 financial institution lenders and financiers. We
23 regulate licencees, Madam Commissioner, and I -- you
24 know, in this situation with Trident, it was an
25 exception. It caused some confusion and frustrated
26 several things, but as standard practice, we want to

1 deal with regulated parties, not service providers, not
2 financiers, not anybody else. We have authority to
3 deal with the licencees, and that's how we prefer to
4 keep the relationship.

5 Q And what made it an exception with Trident?

6 A Well, again, going back to the 18th of April email, I
7 can't remember who initiated it, but Trident wanted
8 their bank there and told us that they were going to
9 bring their bank. We were trying to be good
10 professional colleagues. We had no reason not to allow
11 ATB to attend the meeting, and as I've indicated in my
12 testimony this morning, they showed up there en masse.

13 Q Okay. Does the AER have a statutory or regulatory
14 obligation to facilitate licencees or operators in
15 obtaining financing?

16 A Not that I'm aware of.

17 Q Okay. So moving on from that, so this morning,
18 Mr. Gosselin, you described the process for issuing a
19 Section 106 declaration, and your description does --
20 is different, I think, than what we see looking at some
21 of the past Section 106 declaration decisions that have
22 been issued by the AER or the ERCB, and that's in,
23 again, reference to the panel in this matter. Can you
24 tell us a bit about why there's a difference in
25 relation to those processes?

26 A Yes. So my understanding is, Madam Commissioner, that

1 the ERCB processes varies from the AER's processes. So
2 if you were to go back through time, they're going to
3 look different. I can't speak to why that changed. I
4 know that in my tenure working for Mr. Wadsworth, I
5 can't remember if this was the first or second
6 Section 106 matter we had dealt with, but he had -- and
7 I wasn't privy to the conversations that he had -- he
8 had secured delegated authority to impose Section 106
9 decisions from his leadership chain, and so if you're
10 speaking to who was the SCM and why wasn't it, I
11 believe EAC might have been the named body that takes
12 the decisions in -- in earlier years with the AER or
13 the A -- ERCB, that's -- that's what happened.

14 Q Okay.

15 A Is that clear enough?

16 Q Yeah. Perhaps, just for -- for the record, if you
17 could explain who the EAC is?

18 A Right. So I -- so we just call it the EAC, so it is, I
19 believe, it is the executive adjudicative council or
20 committee. Would you mind if I just check with my
21 colleagues to make sure I don't mess that one up to --

22 Q Well, you know what? Either of your colleagues can
23 speak to it as well. Thank you.

24 A MR. REILLY: It was --

25 Q Mr. Reilly, you look like you have an answer.

26 A Executive adjudicative committee. So the --

1 Q Okay.

2 A -- statutory decision-making authority lies with our
3 CEO. That delegation is provided to the EAC in the
4 past. In the current framework of the AER, that
5 delegation comes down to the vice president of CLM and
6 can be delegated as needed.

7 If you look back in our past -- the last five
8 years as you've seen the ten Section 106s, delegations
9 have been to different individuals at different points
10 in time. But the primary delegation goes to the CEO,
11 and he or she provides that out to other individuals.

12 Q Okay. Again, thank you, Mr. Reilly.

13 So, then -- actually, this one is specific to
14 Mr. Gosselin. So -- and actually it's -- it's the
15 same -- pretty much the same question I asked
16 Mr. Gwartney yesterday in relation to the meeting that
17 you had with him on March 14th, and he talked about --
18 he talked about bringing a proposal or looking to work
19 out some way to deal with the abandonment commitments
20 that had been made by the previous Trident management,
21 and when I went back and looked at the documents
22 again -- and it made reference to a corporate proposal.

23 So I'm wondering is if the substance of that
24 discussion and that corporate proposal -- would that be
25 similar to what the AER was seeking as a compliance
26 plan in the April 29th order?

1 A MR. GOSSELIN: It would be similar. We would
2 want to look -- and the thrust of Mr. Gwartney's
3 presentation on the 14th was we're going to need some
4 concessions. We can't do as much work -- to call a
5 spade a spade, Madam Commissioner, closure work equals
6 cash. You need money to do that.

7 So he was essentially asking us, Can we do less
8 closure work; divert money away from closure work? Not
9 abandon it entirely or not do it all entirely and put
10 that to other portions of their operation?

11 So when we talked about a compliance plan or a
12 closure plan, they're -- they're sometimes used
13 interchangeably. So we would look for a plan of how
14 is -- how is Trident going to stay afloat? How is it
15 going to look after its obligations for all of our
16 requirements to include doing some closure work? And
17 we never got to that point.

18 Q Okay. So what you're discussing on March 14th was --
19 was narrower and focused on -- focused on closure.
20 With a compliance plan, you would have been looking
21 more broadly in terms of continued operations of
22 Trident. Am I understanding you correctly there?

23 A Correct. Correct.

24 Q Okay. Thank you.

25 So one last question, and this can be anyone on
26 the panel. Was the AER provided with the ATB and

1 Trident loan agreements at any time before this
2 proceeding, so before this matter was sent to
3 regulatory appeal?

4 A I -- I don't know.

5 Ms. Olsen, do you know if we received those
6 documents before this matter came to appeal?

7 A MS. OLSEN: I don't have them in the
8 record of decision which means I didn't find them, and
9 they weren't sent to me. That doesn't mean they
10 weren't provided a hundred percent. You know, I can't
11 say for a hundred percent that somebody didn't have
12 them, but there is nothing on our shared drives. I
13 don't know if that's terribly helpful. Sorry.

14 Q No. That does help a bit. Just one follow-up question
15 from that. In dealing with -- with licencees that are
16 in financial distress, would it be a standard practice
17 that the AER would be provided with or would see loan
18 or credit agreements between licencees and -- and their
19 lenders?

20 A It -- I can say that with distressed licencees we often
21 request financial statements, and we have financial
22 specialists to review them. Sometimes they have
23 follow-up questions regarding lenders, but they're --
24 they typically are higher level questions. They don't
25 want to see the actual agreements.

26 But, Trevor, did you want to ...

1 A MR. GOSSELIN: And that's absolutely
2 correct. We look at them at a high level. We may look
3 at certain factors beyond -- asset over liability, and
4 that really ranges in licences that are between 1.0
5 and 2.0 (UNREPORTABLE SOUND). My apologies. I'm
6 getting a pop-up here. Licences between 1.0 and 2.0,
7 so we tend to look at their financial statements, not
8 necessarily loan agreements and that level of detail.

9 Q Okay. Thank you.

10 Those are all of my questions.

11 THE CHAIR: Thank you, Commissioner
12 Chiasson. Commissioner Stock?

13 MR. STOCK: Thank you, Madam Chair. I
14 have no questions at this time.

15 THE CHAIR: Thank you, Commissioner Stock.

16 Q THE CHAIR: I have one or maybe two
17 questions for you, Mr. Gosselin. I apologize for
18 saying your name wrong.

19 So as you may know, hearing commissioners, while
20 their decisions are the decisions of AER pertaining to
21 any hearing, they're not involved with AER processes,
22 operations. We're at arm's length and appointed
23 through an order in council, so we are independent
24 decision-makers making decisions on behalf of the AER
25 when it comes to a hearing. So we have very little
26 knowledge of your processes, and you spoke of a process

1 this morning in answer to Ms. Ross's question about the
2 risk assessment process. This is how I wrote it -- and
3 you may have answered it or talked about it, and I may
4 have missed it; so I apologize for that. But you spoke
5 of the risk assessment and process that you undertake
6 when there is a company in financial distress, and you
7 take certain steps.

8 And then Manual 13 speaks to that process -- or
9 maybe a different process for issuing an order if there
10 is a potential confirmed -- suspected, reported,
11 confirmed breach, I think. So can you talk -- walk us
12 through that process briefly? What is that risk
13 assessment process that you spoke of?

14 A So, Madam Chair, we would generally come to know that a
15 licencee is in distress either through a complaint, a
16 missed deadline with the company, some action they were
17 supposed to take and didn't take. So it usually always
18 starts with one event. It could be reported to us
19 through the field. It might be some of our own
20 programs that they are not adhering to. There may be
21 discussions throughout the companies, and we learn that
22 they are in some degree of difficulty. We then use our
23 judgment -- our opinion to say we should look at this
24 company closer. We may work with other areas to
25 determine if there's been other breaches in other areas
26 and try and come up with a set of actions for the

1 company to -- to either remedy or -- remedy or bring
2 them into compliance.

3 Q So that -- you -- I think that question was asked. If
4 I'm wrong, please correct me. Specifically to middle
5 of March, when it was brought to your attention and you
6 realized that Trident, in specific, is a potential
7 company that may not succeed through its financial
8 difficulties.

9 A M-hm.

10 Q So is that -- and then what happens next when you
11 realize that? What are the steps that you take? And
12 if --

13 A So -- sorry.

14 Q So --

15 A The steps that we take -- it's okay. My apologies for
16 interrupting.

17 So, Madam Chair, we'd have some indicators, as I
18 mentioned, of a company starting to get into distress,
19 and, again, we try and arrest that as early as we can.
20 We learned from the Lexin -- the Lexin example that if
21 we leave things too late, options get limited. So we
22 try and work with the company as early as we can.

23 A manager would be designated to be the lead
24 manager to look after that company and is responsible
25 for coordinating communication and -- and overseeing
26 the -- the management of that file. They would enter

1 into a set of companies of which, at the time for
2 Trident, there would have been a number that are
3 struggling. But, again, Trident is noteworthy because
4 of its magnitude, and so, you know, we would have
5 watched that company, and then, you know, it was
6 really -- some of these files take some -- some months
7 and even years before the company is in severe
8 distress, and Trident was noteworthy because, you know,
9 we had a little bit of an inkling through the Rob
10 (INDISCERNIBLE) the 14th of March, on the 15th of
11 March -- or 14th of March -- I think I'm getting the
12 date wrong (UNREPORTABLE SOUND). My apologies. I've
13 got another pop-up. We had more of an inkling and then
14 within, you know, ostensibly 30 to 40 days, the company
15 is in severe distress. So it really elevated quickly,
16 and then it's sort of all hands on deck on the 11th
17 floor here to see if we can get a solution for this
18 company to not have the unfortunate outcomes that we
19 did.

20 Q That's very helpful. Thank you, Mr. Gosselin.

21 Just a follow-up question on that. So why did you
22 choose the date of April the 29th for issuance of the
23 order? Why not earlier, if this matter was becoming so
24 urgent so rapidly?

25 A I wanted to see if, you know, some sort of arrangement
26 could be made with ATB, Trident, and ourselves;

1 something that was acceptable to us. That really
2 exterminated itself on the 27th. I'd have to go back
3 and check my records, but I think I indicated to
4 Mr. Schacher to begin drafting an order and chose the
5 29th as the next business day to issue that.

6 THE CHAIR: Thank you very much. That's
7 all my questions.

8 Is there any matters that counsel would like to
9 bring to our attention? And then I'll talk to
10 scheduling and -- oh, I apologize.

11 Ms. Ross, do you have any re-direct?

12 MS. ROSS: No, Madam Chair. We have no
13 re-direct. Thank you.

14 THE CHAIR: Okay. Thank you.

15 So any other matters you would like to bring up?
16 And then I will discuss the scheduling for the next
17 day, Mr. Gorman? Ms. Ross?

18 MR. GORMAN: Nothing other than scheduling
19 Madam Chair.

20 (WITNESSES STAND DOWN)

21 Discussion

22 THE CHAIR: Okay. Thank you.

23 So tomorrow, we are adjourning for Mr. Gosselin to
24 attend his family. We have booked Friday as well as
25 next Tuesday for argument, and that's all there is
26 next, I believe. Let me just consult with my -- unless

1 there is any rebuttal evidence -- no, that's -- yes.

2 Mr. Gorman, I apologize. We had allocated an hour
3 for rebuttal.

4 MR. GORMAN: We will not be seeking to call
5 any rebuttal evidence.

6 THE CHAIR: Okay. Thank you.

7 So then with that, there will be argument, and
8 what would be the preference -- I'm going to ask you
9 Mr. Gorman for today whether -- now, before that I
10 should just mention there may be some legal questions
11 that the Panel may send the parties to be addressed
12 during the argument. So with that in mind, what's the
13 preference? Tuesday next week or Friday this week?

14 MR. GORMAN: I would've thought the first
15 question -- but I have not discussed with
16 Mr. Dumanovski and Ms. Ross -- are we --

17 MS. CHIASSON: I'm sorry, Madam Chair. I'm
18 having -- I'm having real problems hearing Mr. Gorman.
19 I can barely hear him.

20 THE CHAIR: Your microphone seems to be
21 malfunctioning.

22 MR. GORMAN: I put my microphone up so I
23 could drink out of my water glass without making a mess
24 and forgot to put it back down.

25 I would've thought the first question -- and I
26 have not discussed it with Mr. Dumanovski or Ms. Ross,

1 nor my Mr. Harvie -- is this Panel's preference for
2 oral argument or written argument due to the volumes of
3 materials. I'm in the CLM's and the Panel's hands in
4 that regard.

5 THE CHAIR: Well, the Panel early on
6 during the proceeding decided that probably an oral
7 argument is more beneficial for us in the sense that we
8 will be able to ask questions.

9 Now, I can ask the Panel Members for a quick
10 discussion if their views have changed since or not
11 and then get back to you. I don't know.

12 You have any preference Ms. Chiasson, Mr. Stock?
13 Do you want to go to a breakout room and have a
14 discussion?

15 MR. GORMAN: Well, perhaps we hear from
16 Mr. Dumanovski and Ms. Ross. And --

17 THE CHAIR: Oh, regarding their
18 preference? Yeah.

19 MR. GORMAN: If they have a preference one
20 way or another.

21 MR. DUMANOVSKI: We don't have any preference
22 in terms of --

23 MS. ROSS: I believe --

24 MR. DUMANOVSKI: Go ahead.

25 MS. ROSS: Go ahead.

26 (SIMULTANEOUS CROSS-TALK)

1 THE CHAIR: So I'm going to ask Ms. Ross
2 to speak first, and then we go to Mr. Dumanovski.

3 MS. ROSS: Sure. Yeah. I don't think we
4 have a preference. I think we were preparing for oral,
5 as that had been the previous direction of the Panel,
6 but we're in your hands.

7 THE CHAIR: And, Mr. Gorman, do you have a
8 preference?

9 MR. GORMAN: No. Although if it is oral, I
10 would prefer next Tuesday as reserved. We're getting
11 the transcripts about a day behind, and I'm a day
12 behind on catching up to them. So it would be a rush
13 for me to be ready for Friday.

14 And has been attributed to many famous people
15 through the years, including Mark Twain, I'm sorry I
16 wrote such a long letter. I didn't have time for a
17 short one. If I have the benefit of the weekend, I
18 could probably go a little more with a rifle shot than
19 a shotgun approach.

20 THE CHAIR: And, Ms. Ross, do you have a
21 preference with the date? Tuesday works for you?

22 MS. ROSS: Yeah, I believe so.

23 THE CHAIR: Okay. Perfect. And we have
24 made ourselves available for Tuesday, so we can go with
25 Tuesday for the final argument.

26 You may receive a letter -- and we will do our

1 best to send it to you as soon as we can sometime
2 tomorrow -- with Panel's potential questions on legal
3 matters that we would like to be addressed in addition
4 to your arguments. So you frame your argument however
5 you want it, but if you can touch on those questions
6 that we have, that would be very helpful in our
7 decision-making.

8 And with that, I am going to close the evidentiary
9 portion of this hearing, and the witnesses are
10 released, and I'll see you on Tuesday at 9:00.

11 MR. GORMAN: Thank you, Madam Chair, Panel,
12 and counsel and colleagues who spent a long three days
13 together. Our computers are no doubt burning out with
14 respect to the Zoom usage.

15 THE CHAIR: Yes. Thank you, everyone, and
16 see you Tuesday morning at 9:00. And the evidentiary
17 portion of this hearing is closed now.

18

19 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, NOVEMBER 10, 2020

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Sandra Burns, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

8 Dated at the City of Edmonton, Province of
9 Alberta, this 4th day of November 2020.

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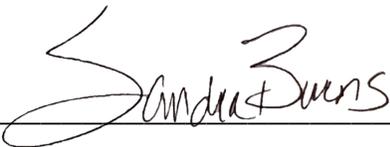
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Sandra Burns, CSR(A), RPR, CRR

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