

Our File: 268109

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July 30, 2010

**Via Courier**

The Honourable Mr. Justice K.D. Yamauchi  
Court of Queen's Bench of Alberta  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

My Lord:

**Re: Cow Harhour Contracting Ltd.**

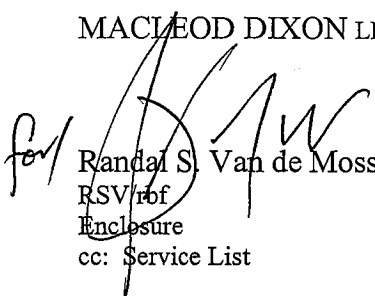
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Further to our letter of July 21, 2010, we are enclosing an unfiled copy of our client's Second Report, which is in the process of being filed concurrent with the writing of this letter.

We trust that the enclosed is satisfactory.

Yours truly,

MACLEOD DIXON LLP

  
Randal S. Van de Mosselaer

RSV/rbf

Enclosure

cc: Service List

**Action No. 1003 05560**  
**Bankruptcy No.: 24-115359**

## **Cow Harbour Construction Ltd.**

**SECOND REPORT OF THE TRANSACTION FACILITATOR**  
**JULY 30, 2010**

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
**COW HARBOUR CONSTRUCTION LTD.**

**SECOND REPORT TO THE COURT  
SUBMITTED BY PRICEWATERHOUSECOOPERS INC.  
IN ITS CAPACITY AS COURT ORDERED TRANSACTION FACILITATOR**

**INTRODUCTION**

1. On April 1, 2010, Cow Harbour Construction Ltd ("CHC" or the "Company") filed a Notice of Intention to File a Proposal under the Bankruptcy and Insolvency Act. These proceedings were subsequently taken up under the Companies' Creditors Arrangement Act ("CCAA").
2. On April 7, 2010, the Company made an application under the CCAA and an initial order was granted by the Honourable Justice K. D. Yamuchi of the Court of Queen's Bench of Alberta granting, *inter alia*, a stay of proceedings ("Stay") against the Company until and including May 3, 2010 and appointing Deloitte & Touche ("Deloitte") as monitor. Subsequent orders of the Court have extended the Stay period to August 5, 2010. In addition, the Court directed that CHC hire Patrick Ross as the Chief Restructuring Advisor ("Advisor") with specific duties as set out in the initial order.

3. On May 21, 2010, the Court directed that a committee be formed (the "Sales Committee") to oversee and guide a dual track process for the sale or refinancing of CHC (the "Sales Process"). The Sales Committee was comprised of representatives from various lenders, the Company and the Advisor. The Sales Committee recommended that Ernst & Young Orenda Corporate Finance Inc. ("E&Y") assist in the Sales Process and E&Y was subsequently retained by the Advisor as the Advisor's sale and refinance advisor.
4. On June 1, 2010, the Court approved the Sale and Refinancing Plan put forth by the Advisor as outlined in the Advisor's First Report to the Court dated May 27, 2010
5. As described in the Advisor's Third Report dated June 29, 2010, a number of expressions of interest were received for the purchase of CHC through the Sale Process which resulted in four parties submitting binding letters of intent. On July 6, 2010, this Honourable Court issued an Order (the "Amended Initial Order") which, *inter alia*, appointed PricewaterhouseCoopers Inc. as Court Ordered Transaction Facilitator (the "Facilitator") in these proceedings, with the following powers and duties:
  - a) Meet and communicate with the prospective purchasers identified by the Advisor in the CCAA Proceedings (the "Prospective Purchasers");
  - b) Meet and communicate with the affected lenders and creditors (the "Lenders") to attempt to clarify and negotiate creditor support for the transactions proposed by the Prospective Purchasers;
  - c) Provide any assistance to conclude a transaction, subject to Court approval, with the Prospective Purchasers;
  - d) Meet and communicate with Syncrude Canada Ltd. ("Syncrude") or other customers to negotiate their support for the transactions proposed by the Prospective Purchasers;
  - e) Amend or extend any transaction proposed by the Prospective Purchasers;  
and

- f) Report to this Court as to any progress with respect to effecting a transaction involving a Prospective Purchaser including, to the extent practicable, with such Report being filed on or before July 21, 2010.
6. It is the Facilitator's understanding that the Sales Committee recommended that the Company pursue further discussions with one of the parties who submitted a letter of intent (referred to further in this report as Bid A) as this offer appeared to be superior to the others submitted. Bid B (referred to further in this report) was considered as an alternative to Bid A but was not specifically endorsed at that time.
7. On July 23, 2010, this Honourable Court issued an Order extending the Stay period to August 5, 2010. At the hearing on that date in connection with that Order (the "July 23 Hearing"), the Facilitator undertook to report to this Court on its further progress with respect to effecting a transaction involving a Prospective Purchaser on or before July 30, 2010.
8. This report is being submitted pursuant to the terms of the Amended Initial Order to report on progress with respect to effecting a transaction with a Prospective Purchaser since the Facilitator's First Report, including the following:
  - a) Consideration of Bid A, including discussions thereon with Bidder A and the Lenders;
  - b) Consideration of Bid B, including discussions thereon with Bidder B and the Lenders; and
  - c) Recommendations of the Facilitator.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Amended Initial Order or the Facilitator's First Report.
10. Certain information regarding the Sale Process, including information on the bidders and the offers made, is under seal subject to further Order of this Court. For purposes of this Report, references to Bid (or Bidder) A and B pertain to the two offers (and the respective offerors) that have been discussed with the Lenders.

11. The information contained in this Report has been obtained in part from the books and records, forecasts, and other unaudited financial information made available by the Company, and is based upon discussions with and representations made by the Company, the Monitor and their advisors. The accuracy and completeness of the financial information contained herein have not been audited or otherwise verified by the Facilitator, and the Facilitator does not express an opinion or provide any other form of assurance on the information presented herein. The Facilitator reserves the right to refine or amend its comments and findings as further information is obtained or brought to its attention subsequent to the date of this Report.

### **ACTIVITIES OF THE FACILITATOR**

12. Since its First Report, the activities of the Facilitator have included, *inter alia*, the following:
  - a) Further meetings and discussions with each of Bidder A and Bidder B on the terms of their respective letters of intent (each a "Bid"), and to provide feedback from the Lenders regarding their bids;
  - b) Dissemination of information prepared by the Bidders to the Lenders that have agreed to confidentiality terms with the Facilitator;
  - c) Facilitating meetings between Ritchie Bros. Auctioneers ("Ritchie") and those Lenders that requested further information on the results of the Ritchie Appraisal (discussed in the Facilitator's First Report) pertaining to the assets securing their loans;
  - d) Preparing revisions to the Allocation Analysis (discussed in the Facilitator's First Report) as additional relevant information has been received;
  - e) Dissemination to Bidder A of certain information from the Allocation Analysis as authorized by certain Lenders;
  - f) Numerous conference calls with the Lenders and their counsel over the period from July 22 to 30, 2010; and
  - g) Discussions and correspondence with the Monitor regarding the Allocation Analysis and various other matters over the period from July 22 to 30, 2010.

## **CONSIDERATION OF BID A**

### **OVERVIEW**

13. Bid A is an offer to purchase certain assets of the Company, including certain capital assets, real estate, and contracts of the Company, in exchange for cash consideration. These assets include assets not specifically encumbered (but subject to the Company's general security agreement with Royal Bank of Canada ("RBC")), and other assets subject to the security of certain Lenders.
14. As outlined in the Facilitator's First Report, an Amended Bid A was submitted on July 20, 2010 which reflected an amended purchase price. Amended Bid A remains Bidder A's current offer, and for simplicity will be referred to as Bid A through the balance of this Report.

### **FURTHER CONSULTATION WITH BIDDER A AND THE LENDERS**

15. In the July 23 Hearing, counsel for Bidder A expressed his client's wish for greater visibility and involvement in the process of pursuing a transaction, including more information from the Allocation Analysis from the Facilitator. Many of the parties represented at that hearing expressed a desire for such information to be shared with Bidder A, and for Bidder A's involvement in addressing the allocation issues affecting the proposed transaction. As indicated in the July 23 Hearing, the Facilitator was prepared to provide the Allocation Analysis to Bidder A with the express authorization of the Lenders or at the direction of this Court, neither of which had been provided at that time.
16. In the afternoon of July 23, 2010, the Facilitator arranged a meeting between Bidder A and certain of the Lenders, at the request of those Lenders. The purpose of this meeting was specifically to discuss how to address the impasse on allocation, rather than a negotiation of what that allocation should be. In the meeting, Bidder A advised of their continuing interest in completing a transaction, which in their view would require them to make their own allocation of value to the different assets. They reiterated their desire for the fullest possible disclosure of the information in the Allocation Analysis so they could properly evaluate whether an acceptable allocation could be agreed with the Lenders.

17. Following the meeting, Bidder A informed the Facilitator that it would extend the expiry date of Bid A to July 26, 2010, with a view to extending that date depending on the provision of the information they sought from the Lenders.
18. The Facilitator wrote to the majority of the Lenders on the Service List in these proceedings late on July 23, 2010 to seek their authorization to share the details of the Allocation Analysis for their respective institution with Bidder A. Following further correspondence and discussion with some of the Lenders and their counsel from July 24 to 27, 2010, the Facilitator received permission from most of the Lenders consulted to provide some or all of the Allocation Analysis for their institution to Bidder A. This information has been provided to Bidder A by the Facilitator as such permission has been received from the Lenders.
19. On July 26, 2010, counsel for Bidder A wrote to the Facilitator confirming that the expiry date of Bid A was further extended to August 5, 2010 at 4:00 pm Mountain Time.

#### **DISCUSSIONS BETWEEN THE LENDERS AND RITCHIE**

20. In its First Report, the Facilitator outlined the methodology used to prepare the Allocation Analysis, which included the use of the Ritchie Appraisal to apportion the value attributed to the capital assets in Bid A to individual assets. The Facilitator also noted that a number of the Lenders raised concerns about the value being ascribed to their equipment in the Ritchie Appraisal and the impact this had on the allocation of the proposed purchase price.
21. In order to address this concern, the Facilitator arranged and attended conference calls between Ritchie and eleven interested Lenders to discuss the results of the Ritchie Appraisal and to review certain information in respect of the specific assets pledged as security to those Lenders. This resulted in the majority of those Lenders gaining a better appreciation for the amount of due diligence conducted by Ritchie and the basis of their comments affecting the values in the Ritchie Appraisal.

#### **FURTHER MATTERS REGARDING BID A**

22. Several of the Lenders filed applications in advance of the July 23 Hearing requesting that this Honourable Court declare that their lease agreements constituted true leases. Following discussions amongst counsel for the Lenders prior to that hearing, all of these applications were adjourned *sine die*, and have not been subsequently evaluated by the Monitor or the Facilitator. Some of these Lenders have continued to assert their views on this issue in discussions and correspondence with the Facilitator and Bidder A.
23. The Facilitator's First Report referred to a group of "Core Lenders" who had been contacted by the Facilitator to discuss the Allocation Analysis and their views on Bid A. The Core Lenders primarily comprised the larger affected creditors of the Company. The Facilitator has subsequently been contacted by other Lenders who wished to be involved in these discussions. The Facilitator has provided the results of the respective Allocation Analysis for those institutions to those Lenders.

#### **CURRENT STATUS**

24. Bidder A has informed the Facilitator that it is continuing to review the information it has received on the allocation of value to the Lenders, and is making good progress in developing a proposal that it considers will be acceptable to the Lenders. They have had a number of direct discussions with certain of the Lenders as part of this process, which they have found to be beneficial. Bidder A wishes to continue the process of refining its proposed allocation, and intends to revert to the Lenders early in the week of August 2, 2010 to discuss this with them further.
25. Bidder A wishes to reach agreement on the terms for a transaction on or before August 5, 2010. It remains their hope that a transaction to acquire all of the assets included in their offer can be reached by that time. Bidder A has informed the Facilitator that it does not intend to further extend the expiry date on Bid A beyond August 5, 2010 if it is unable to secure agreement to Bid A (or any further amendments of Bid A in the interim) with the vast majority of the Lenders by that time.
26. The Facilitator understands, based on its discussions with the Core Lenders, that this group remains generally supportive of the proposed purchase price in Bid A on an overall basis. The acceptability of the proposal on allocation by Bidder A will be a key factor in determining whether a transaction may be concluded on the basis of Bid A.

27. The Facilitator understands that the proposal on allocation by Bidder A, much like the Allocation Analysis, will only address the gross allocation of the purchase price in Bid A to the Lenders. Certain of the Core Lenders have expressed their wish to understand what the net recovery to them is forecast to be based on the Allocation Analysis. In its 14<sup>th</sup> Report, the Monitor provided a preliminary analysis of some of the amounts covered by priority charges and other costs that would be allocable to the Lenders, and some comments on possible methodologies for the allocation of these amounts. The Facilitator considers that it is unlikely that these amounts will be fully quantified or that the allocation issues will be resolved prior to the completion of a transaction with Bidder A, if such a transaction is possible.
28. Overall, we consider that significant progress has been made by all parties in the evaluation of Bid A, and we consider that there remains the potential for a transaction based on Bid A subject to resolving the allocation issues noted above. We anticipate that discussions between Bidder A and various Lenders to seek to resolve these issues will continue up to August 5, 2010. The Facilitator will continue to provide such assistance as may be required to assist in these ongoing discussions. In addition, definitive documentation will need to be completed for the transaction, and agreement will need to be reached on whether this transaction will be completed as part of these CCAA proceedings or through a receivership of the Company.

## **CONSIDERATION OF BID B**

### **OVERVIEW**

29. Bid B is an offer to purchase certain assets of the Company in exchange for the assumption of certain equipment leases and financing by a new limited partnership formed by Bidder B. Bid B also contemplates certain financial investment and support from Bidder B and its partners in the proposed transaction.
30. Based on the initial discussions amongst the Company and the Lenders included on the Sales Committee, Bid B was not considered to be an acceptable offer as presented and so was not made the primary focus of the Lenders or the Facilitator to pursue a transaction.

31. As outlined in the Facilitator's First Report, an Amended Bid B was submitted on July 20, 2010 which incorporated a number of changes to Bid B in an attempt to address some of the concerns expressed by the Lenders. Amended Bid B remains Bidder B's current offer, and for simplicity will be referred to as Bid B through the balance of this Report.

#### **FURTHER CONSULTATION WITH BIDDER B AND THE LENDERS**

32. The Facilitator has reviewed Bid B to understand the financial impact of its terms on the Lenders, and has sought additional feedback from the Lenders on the proposal. Limited additional views have been provided to this point.
33. Certain of the Lenders indicated that they required more information from Bidder B before determining whether they are prepared to consider Bid B further. These requests for information, which include requests for business plans, cash flow projections, and other information in support of the terms of the proposal outlined, have been shared by the Facilitator with Bidder B. The Facilitator has also spoken with Bidder B about the need to address several gating issues in its proposal with the Lenders.
34. From July 21 to 23, 2010, the Facilitator received responses from Bidder B to a number of questions that were raised independently by the Facilitator and some of the Lenders, and circulated those responses to the Lenders who made those requests.
35. In the evening of July 28, 2010, Bidder B sent the Facilitator its business plan document, together with other materials and addenda (collectively the "Business Plan"), in support of Bid B as presented. This information was forwarded by the Facilitator to those Lenders who had previously agreed to confidentiality terms in respect of such information.
36. The Facilitator and the Lenders are continuing to review the information that has now been presented by Bidder B in support of their bid. Bidder B has informed the Facilitator that they intend to contact some of the Lenders directly to review these materials, discuss the views of the Lenders on their proposal, and address the gating issues affecting Bid B.
37. On July 26, 2010, Bidder B wrote to the Facilitator confirming that the expiry date of Bid B was further extended to August 5, 2010 at 5:00 pm Eastern Time.

## **CURRENT STATUS**

38. The Facilitator and the Lenders are continuing to evaluate Bid B and review the materials in the Business Plan to understand the financial impact of its terms on the Lenders and their acceptability. The Facilitator is supportive of the discussions that Bidder B is seeking to hold with certain of the Lenders to review Bid B and the Business Plan. These discussions are likely to continue up to the hearing scheduled on August 5, 2010. At this point it remains unclear whether the Lenders are prepared to consider Bid B further on the basis of the information presented, so it is not clear yet whether a transaction on the basis of Bid B is possible.

## **RECOMMENDATIONS OF THE FACILITATOR**

39. The Facilitator is working with Bidder A on addressing the allocation issues noted above with respect to Bid A as proposed, to determine whether a transaction based on Bid A can be achieved. Bidder A is continuing to work on its proposal for the allocation of value to individual Lenders as part of its bid, and intends to hold discussions with the Lenders early in the week of August 2, 2010, with a view to concluding such discussions and agreeing on the terms of a transaction on or before August 5, 2010.
40. As outlined above, we consider that progress has been made over the past week with all parties to address Bidder A's concerns and to address the matters affecting the completion of the proposed transaction. Further work is still required to resolve all of these open issues, but we consider that there remains potential for a transaction based on Bid A subject to the resolution of these issues.
41. The Facilitator is also continuing to evaluate Bid B and the Business Plan received on July 28, 2010 to consider if this information addresses the issues raised by the Lenders and to seek their feedback. Bidder B intends to consult with the Lenders on the terms of Bid B and the Business Plan, including addressing the gating issues to their proposal, which discussions are also likely to continue to August 5, 2010.
42. A number of gating issues in Bid B, including agreement on the proposed amendments to the lease agreements and post-emergence financing terms, remain outstanding. It is not yet clear whether these issues can be resolved and whether there is potential for a transaction based on Amended Bid B.

43. We consider that it is still worthwhile to continue to pursue a transaction with a Prospective Purchaser. At a minimum, it is the Facilitator's view that the average recovery to Lenders under Bid A or Bid B would exceed the average recovery in a liquidation scenario.
44. The Facilitator is of the view that all parties in this matter are working in good faith and with due diligence. Given that both offers and the Stay period currently expire on August 5, 2010, there is considerable pressure on all affected stakeholders in these proceedings to see if agreement can be reached with either Bidder A or Bidder B in a very short time frame. That being said, the Facilitator understands that the key financial stakeholders in this matter are working diligently to see if an appropriate agreement can be reached.
45. Accordingly, the Facilitator will continue the process as set out in the Amended Initial Order to pursue a transaction with one of the Prospective Purchasers. In light of the short time frame of the next hearing before this Honourable Court in these proceedings, and given the range of issues still under discussion, the Facilitator anticipates that the majority of its further findings on these matters may be delivered orally at the hearing on August 5, 2010.

The Facilitator respectfully submits to the Court this, its Second Report.

Dated this 30<sup>th</sup> day of July, 2010.

**PricewaterhouseCoopers Inc.**  
**In its capacity as Court Ordered Transaction Facilitator of**  
**Cow Harbour Construction Ltd.**



Donald MacLean / Mica Arlette  
Senior Vice President / Vice President

Action No. 1003 05560  
Bankruptcy No.: 24-115359

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

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IN THE MATTER OF THE *BANKRUPTCY & INSOLVENCY*  
*ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED

AND THE *COMPANIES' CREDITORS ARRANGEMENT*  
*ACT*,  
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AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF COW HARBOUR  
CONSTRUCTION LTD.

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**SECOND REPORT OF THE TRANSACTION  
FACILITATOR**

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