

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. B-3, AS AMENDED

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

AND IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND REORGANIZATION

OF

**COW HARBOUR CONSTRUCTION LTD.**  
("CHC" or the "Company")

**THIRD REPORT TO THE COURT  
OF THE CHIEF RESTRUCTURING ADVISOR**

**INTRODUCTION**

1. On April 1, 2010 Cow Harbour Construction Ltd. 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") as discussed below.
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 against the Company until and including May 3, 2010 ("the Stay Period").
3. On April 28, 2010 the Court extended the Stay Period to May 21, 2010.
4. On May 21, 2010 the Court extended the Stay Period to June 4, 2010.
5. On May 21, 2010 the Court also directed that a committee ("the Sales Committee" or "SC") be formed to oversee and guide a dual track process for the sale or refinancing of the Company.

6. On May 24, 2010 the SC met and decided to proceed with a sale and refinancing plan based on a proposal from Ernst & Young Orenda Corporate Finance Inc. ("Ernst & Young"), subject to Court approval.
7. On May 28, 2010 counsel for the Chief Restructuring Advisor ("CRA") applied for Court approval of the engagement of Ernst & Young, of the sale and refinancing plan and of the timetable, as set out in the First Report of the CRA dated May 27, 2010. At that time the Court ordered the CRA and Ernst & Young to proceed with the sale and refinancing plan on the timelines proposed and adjourned the application for approval of the engagement of Ernst & Young pending circulation to the service list of their engagement later and a work plan ("the Work Plan") as proposed in its Seventh Report by Deloitte & Touche Inc. ("the Monitor"). Both documents were circulated as directed.
8. On June 1, 2010 the Court reconvened and issued an Order approving the sale and refinancing plan, the timeline and the engagement of Ernst & Young. The timeline, which was aggressive, provided:
  - (i) Begin dissemination of teasers and Confidentiality Agreements ("CA")- May 31
  - (ii) Disseminate Confidential Information Memorandum ("CIM") and provide access to the Data Room – June 1
  - (iii) Obtain Indicative Offers – June 16
  - (iv) Obtain Binding Offers – June 25
  - (v) Execute Binding Offer subject to Court Approval – June 30
  - (vi) Closing – July 15

#### **SUMMARY OF SALE AND REFINANCING PROCESS**

9. On May 28 Ernst & Young, in consultation with the Monitor and the CRA, began compiling a list of potential buyers for Cow Harbour and reviewing relevant filings with the Court.

10. Ernst & Young worked in conjunction with the CRA and used its knowledge and experience in the oil sands, oilfield services and heavy construction industry to identify potential buyers and sources of financing that it believed would be capable of providing the necessary funds in the proposed timeframe.
11. Between May 28 and June 2 Ernst & Young reviewed and provided comments on draft forms of the teaser and CIM prepared by the Monitor.
12. The Monitor prepared the teaser and CIM in accordance with the Court approved timeline, May 31 and June 1 respectively.
13. On May 31 the teaser was finalized and distributed to 25 potential buyers and investors. Ernst & Young contacted a total of 51 parties and distributed 20 CIMs by the bid deadline of June 16. All 20 parties receiving the CIM were offered access to the virtual data room prepared by the Monitor for due diligence.
14. Ernst & Young and the CRA had follow-up phone calls and teleconferences with interested parties.
15. Ernst & Young and the CRA held meetings with interested potential buyers.
16. Ernst & Young and certain management of the company held meetings and had phone calls with potential financing sources.
17. Throughout the process interested parties submitted questions to Ernst & Young as part of their due diligence. The most common questions related to:
  - (i) The condition of the equipment and availability of repair and maintenance records;
  - (ii) The location of and number of hours on the equipment;
  - (iii) The capability of management;
  - (iv) The circumstances that led to Cow Harbour's CCAA filing;
  - (v) Cow Harbour's current and forecasted financial performance;

- (vi) The relationships of Cow Harbour with Syncrude and Suncor and other potential customers; and
  - (vii) The appraised value of the equipment or other reports (e.g. repairs and maintenance reports) related to the equipment.
18. The process resulted in more qualified parties and a higher level of interest than originally anticipated.

#### **EXPRESSIONS OF INTEREST**

19. On behalf of Cow Harbour, Ernst & Young sent a letter to all parties who had received a CIM providing instructions for completion of an expression of interest ("EOP") and how to submit an EOI.
20. Between June 16, 2010 and June 21, 2010, Ernst & Young received nine EOIs for Cow Harbour, including one joint submission, for a total of 8 proposals.
21. Ernst & Young and the CRA had discussions with all prospective purchasers and financing sources subsequent to the submission of EOIs. Ernst & Young and the CRA discussed the EOI and various alternative transaction structures, including but not limited to injecting equity into Cow Harbour. Most prospective purchasers were open to alternative structures.
22. In broad terms:
- (i) Four EOIs offer to acquire Cow Harbour for cash on the EOIs respective closing date;
  - (ii) One EOI was a letter generally stating an interest in the opportunity but not indicating a value or transaction structure;
  - (iii) Two EOIs, each in conjunction with the other, offer to replace existing lenders of up to a given ceiling in operating and equipment debt; and
  - (iv) Two EOIs offer to acquire the company by assuming the existing debt and requesting certain concessions from the secured lenders.

**DECISION OF SALE COMMITTEE**

23. The Sale Committee met on June 21, 2010 to review the EOIs.
24. The Sale Committee directed Ernst & Young and the CRA to solicit binding offers from 3 parties. Counsel for the CRA prepared a preferred form of Letter of Intent that was provided to these 3 parties on Friday, June 25.
25. The Sale Committee agreed to extend the deadline for binding offers to 5 p.m. June 28, 2010 and later to 5 p.m. June 29 to allow additional time for the three bidders to conduct their required due diligence or enhance their bid.

The Chief Restructuring Advisor respectfully submits to this Honourable Court this, his Third Report.

Dated this 29<sup>th</sup> day of June 2010.

Patrick F. Ross  
Chief Restructuring Advisor  
Cow Harbour Construction Ltd.

**APPENDIX "A"**

<b>Cow Harbour Construction Ltd. Sale &amp; Refinancing Process Milestone Summary 28 June 2010</b>			
	<b>Strategic</b>	<b>Financial</b>	<b>Total</b>
Contacted	26	25	51
CAs Executed	11	9	20
CIMs Sent	11	9	20
EOI Proposals Received (Nine EOIs were received but two presented one joint proposal)	3	5	8

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RESTRUCTURING ADVISOR**

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