

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

IN RE:) Case No. 09-13150(MFW)
) (JOINTLY ADMINISTERED)
) Chapter 11
TRIDENT RESOURCES,)
CORP., et al.,) Courtroom 4
) 824 Market Street
 Debtors.) Wilmington, Delaware 19801
)
) June 15, 2010
) 9:34 A.M.

TRANSCRIPT OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER PURSUANT
TO SECTION 365 OF THE BANKRUPTCY CODE AUTHORIZING THE
ASSUMPTION OF CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY (DOCKET NO. 281). SECOND AMENDED JOINT PLAN OF
REORGANIZATION (DOCKET NO. 349).
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Good morning.

2 MR. ALBERINO: Good morning, Your Honor. Scott
3 Alberino from Akin Gump on behalf of the debtor, Trident
4 Resources Corp.

5 Your Honor, the agenda was filed last week, and there
6 are two items on our agenda. One was the uncontested matter
7 with respect to our motion to extend the agree to assume
8 nonresidential leases of real property.

9 I believe the Court has entered an order that
10 contains language which has resolved the issue that was raised
11 with the U.S. Attorney's Office.

12 THE COURT: I have.

13 MR. ALBERINO: So, that leaves us with one matter on
14 the agenda today, which is our confirmation hearing with
15 respect to our second amended plan.

16 Before I begin, I'm pleased to report there are no
17 objections. So, we do sit here today on a -- hopefully on a
18 fully consensual basis with all stakeholders, subject to
19 Your Honor's comments or concerns with respect to the
20 documents.

21 What I'd like to do, Your Honor, is walk you through
22 a couple of preliminary items, I'll provide you with an update
23 concerning where things are in the Canadian process, financing,
24 and also walk you through certain minor plan modifications that
25 were made and that were filed with the Court on Thursday.

1 Your Honor, I assume you have a blackline up there
2 with you?

3 THE COURT: I think I do.

4 MR. ALBERINO: Okay. Well, Your Honor, I guess to
5 begin, a lot's happened in this case, and we're very pleased to
6 be here today approximately nine months after the case began
7 with a fully consensual restructuring that's fully baked with
8 all the necessary financing to exit bankruptcy.

9 As Your Honor is aware, this has always been a joined
10 proceeding with the CCAA, presided over by Justice Romaine in
11 Alberta.

12 The CCAA court plan proceeding is underway in the
13 Canadian courts. There is a meeting of creditors scheduled for
14 Wednesday of this week for creditors to approve the plan with
15 the sanction hearing which, I believe, is the equivalent of a
16 confirmation hearing, scheduled for Friday this week. It's the
17 hope that between this hearing and the sanction hearing on
18 Friday that the company will be given authorization from both
19 courts to proceed with closing on the debt and equity raise and
20 exiting from the bankruptcy case.

21 On the exit financing front, you'll hear more about
22 this a little bit later, and I think there is some testimony
23 contained within the affidavit of Todd Dillabough and Neil
24 Augustine, which were also filed with this Court on June
25 10th.

1 Upon the exit financing front, you know, the company
2 does have committed financing in the amount necessary to exit,
3 along with the rights offering proceeds. The -- C.S. has been
4 in the process of syndicating the -- the syndicate has been
5 allocated. And we will talk in a little bit about one plan
6 modification that we made in order to -- in order to, you know,
7 allow the company to enter into the exit documents pre-
8 effective date in order to create kind of more binding
9 commitment among the syndicate members.

10 So, with that, Your Honor, I'd like to just briefly
11 turn to the blackline of the plan just to highlight the plan
12 modifications. Most of them were relatively immaterial. There
13 are three that I do wish just to bring to your attention:

14 The first one deals with the exit financing point,
15 which is in Section 6.3. This is in our implementation
16 section. Initially the plan had provided that post
17 confirmation pre-effective date, you know, the company could
18 engage in a number of transactions necessary to implement the
19 restructuring. However, the plan did say that we could enter
20 into our exit facility on the effective date.

21 That's been modified now to say that we can enter
22 into it on or before, and the goal here is for the company at
23 the TRC level, which will be a guarantor under the exit
24 facility, to enter into the plan facility, you know, post
25 confirmation so that we can go out and get syndicate members,

1 as well as C.S., and to sign up, and become contractually bound
2 to the actual form of the credit agreement. The credit
3 agreement will have C.P.'s predicated upon the U.S. order
4 becoming a final order. The Canadian order being approved, as
5 well as other kind of customary conditions precedent to
6 funding. But it's not the intention to prefund, but it's just
7 the intention to essentially close on the documents with the
8 funding to occur at the end of the month on our contemplated,
9 you know, June 30th effective date.

10 The second and third modifications deal with certain
11 incentive payments with respect to management. There is a
12 component of the plan called the long-term incentive plan under
13 which certain directors and officers of the debtor had earned
14 in previous periods certain payments at the TEC level in
15 Canada.

16 The U.S. plan previously addressed those payments.
17 And it's been modified to provide now the CCAA plan will
18 address those payments because the obligations are truly TEC
19 level obligations.

20 And the second modification deals with the management
21 incentive plan. Previously the plan was drafted in a way so
22 that the plan would have been negotiated and filed with the
23 plan supplement. Management has agreed to defer negotiation of
24 that until post emergence, so it will become a post emergence
25 issue.

1 However, the plan still does provide that up to 7.5
2 percent of the common stock of the company will be allocated
3 for issuance pursuant to a plan on terms and conditions to be
4 determined by the new board.

5 So, Your Honor, those are the, I guess, the most
6 material modifications that have been made to date.

7 I don't know if Your Honor has any questions.

8 THE COURT: Not with respect to this.

9 MR. ALBERINO: Okay. Your Honor, for today's
10 confirmation hearing, the company intends to rely upon certain
11 evidence in the form of affidavits, notices, and other
12 documents that have been previously filed in the proceeding.

13 I'll go through this in a minute, if you'd like me to
14 go through the documents that we'd like moved into evidence,
15 but before I go through certain of the kind of procedural
16 documents, I do want to point out that in terms of feasibility,
17 best interest, and certain of the 1129(a) factors, the company
18 has submitted, you know, a brief in support of confirmation.
19 And we also submitted declarations from Todd Dillabough, the
20 company's CEO, who's in the courtroom with me today.

21 And we have also submitted the affidavit of Neil
22 Augustine from Rothschild, the company's financial advisor,
23 back on June 10th. Mr. Augustine is not here in the courtroom
24 today. Marsella Messer (phonetic), a Senior Vice President
25 from Rothschild, who's been personally involved in the case,

1 working with Mr. Augustine, is here in the courtroom today.
2 And we would like to either move the affidavits into evidence,
3 with Your Honor's permission. Or if Your Honor would prefer,
4 we could, you know, put a -- we could submit a proffer.

5 THE COURT: Well, let me see if anybody objects to
6 considering the declarations of Mr. Augustine and Dillabough.

7 (No audible response heard)

8 THE COURT: All right. Then we'll include those as
9 part of the record.

10 Anybody wish to cross examine either witness or the
11 substitute from Rothschild?

12 (Laughter)

13 MR. ALBERINO: An able substitute.

14 (No audible response heard)

15 THE COURT: All right. I'll include them, and no
16 further cross examination is desired.

17 MR. ALBERINO: Okay. Thank you, Your Honor.

18 In addition to the affidavits of Mr. Augustine and
19 Mr. Dillabough, the company would ask Your Honor to move into
20 evidence the solicitation procedures order, which is Docket
21 Number 353, the affidavit of service with respect to that
22 order, Docket Number 361, the voting declaration from Garden
23 City Group, which was filed on June 10th and has been docketed
24 as Docket Number 386, our plan supplement filed on May 25th,
25 docketed as Item Number 372, our director -- our director

1 supplement to our plan supplement, which was filed on June
2 10th, as well, Docket Item 384, and a copy of the exit
3 financing commitment letter, which was filed on May 10th and
4 which has been docketed as Item Number 360, Your Honor.

5 THE COURT: Any objection to the Court considering
6 those documents?

7 (No audible response heard)

8 THE COURT: All right. They'll be incorporated as
9 part of the record.

10 MR. ALBERINO: Okay. Thank you, Your Honor. Just
11 moving on with that evidence as our backdrop here.

12 Your Honor, the company respectfully submits that the
13 plan meets all the requirements for confirmation under 1129(a)
14 and 1129(b) of the Bankruptcy Code.

15 In lieu of going through the confirmation brief that
16 we submitted, and we have gone through all the 1129(a) factors,
17 I did want to just briefly, unless Your Honor would like me to
18 go through those factors, just touch upon feasibility and best
19 interest as part of our record here.

20 From the feasibility perspective, Your Honor, that's
21 been the name of the game in this case. You know, ironing down
22 the projections and making sure that the company has -- is in a
23 position to raise sufficient liquidity on the debt and equity
24 side to exit this case.

25 The company intends to raise a term loan in the

1 amount of \$410 million on a gross basis. And on the rights
2 offering side, the plan went out with a rights offering in the
3 maximum amount of 255 million. Based upon, you know, how the
4 numbers have worked out, it looks like the rights offering is
5 going to be sized at approximately \$246 million. The company
6 obtained \$207 million of commitments through the rights
7 offering under the plan, and the remaining balance will be
8 soaked up through the backstop commitment provided by the '06
9 and '07 backstop parties.

10 Your Honor, the company has worked through detailed
11 sources and uses. We believe that through the rights offering
12 proceeds, as well as the net proceeds from the term loan, the
13 company will have sufficient liquidity to pay in full the
14 Canadian second lien facility. And also to pay all required
15 fees and expenses under the backstop commitment, then to pay
16 all administrative expenses in the U.S., as well as the
17 Canadian proceedings. At the end of the day, leaving the
18 company with more than \$30 million of excess cash on the
19 balance sheet to be used as working capital for the Canadian
20 operating company.

21 The sources and uses have been reviewed, vetted by
22 numerous advisors in this case from the backstop side, as well
23 as the company side. And the company is firmly of the belief
24 that based upon our projections and the liquidity that we're
25 raising through the debt and equity offerings in this case,

1 that the company will certainly -- certainly meets the
2 feasibility requirements for the plan.

3 On the best interest side, Your Honor, the best
4 interest test here was predicated upon an assumption built into
5 our methodology that absent the backstop transaction, the
6 company would not have adequate funds to pay off the second
7 lien facility.

8 Our best interest results were predicated off that
9 with nominal recoveries for the '06 lenders, and no recoveries
10 for the '07's based upon that methodology. Through our SISP,
11 which was the sale and investor solicitation process, which was
12 run by this Court, as well as the Canadian court, May 28th, if
13 you'll recall, was our deadline for bids. Frankly, our best
14 interest methodology was validated by that process because at
15 the end of the day, the only bid to come in, other than the
16 backstop deal, was a credit bid from our second lien lenders.

17 So, we feel fairly comfortable, based upon the record
18 established through the marketing process run by the company
19 that this plan will provide creditors with recoveries equal to
20 or greater than what they would have received in a Chapter 7
21 liquidation.

22 Your Honor, under 1129(b), there are certain classes
23 here that will receive no recovery under the plan. So, we are
24 required to go through those factors.

25 In this case, our general unsecured class is the --

1 is probably the only class, other than the equity interest, not
2 receiving a recovery here. In our view, the plan is fair and
3 equitable, and there's no unfair discrimination given the fact
4 that the '06 debt in this case, being that it is secured debt,
5 would swamp all unsecured claims in this class.

6 So, to the extent that there are recoveries going to
7 the '07's merely through their right to recover -- right to
8 participate through the rights offering, we believe based upon
9 previous cases in this District that this does not equate to
10 unfair discrimination. We think it's appropriate under prior
11 cases and the fact that the '06's are willing to allow the
12 '07's to participate in the rights offering with them, not to
13 receive anything on account of their claims, you know, is
14 appropriate.

15 Your Honor, we would like -- to the extent Your Honor
16 is inclined to confirm the plan, we would like to see the order
17 -- the confirmation order entered as quickly as possible. We
18 do have a copy of the order with us today that is ready for
19 signature with one minor change -- with one minor typo that was
20 corrected. It is important for the company to get the
21 confirmation order entered as quickly as possible to get the
22 clock running on the appeal period so that we can close on the
23 C.S. facility.

24 I'll stop there, Your Honor, and see if you have any
25 questions about what I've gone through.

1 THE COURT: I do. But do any other parties wish to
2 be heard on the confirmation process?

3 MR. SOMERSTEIN: Good morning, Your Honor. Mark
4 Somerstein of Ropes & Gray. I'm counsel to Wells Fargo as
5 agent for the 2007 facility.

6 Your Honor, I rise only to make a brief additional
7 disclosure with respect to the plan. The company -- Mr.
8 Alberino has represented that the rights offering should be in
9 the approximate amount of \$246 million.

10 And I wanted to note to the Court that the 2007
11 lenders may -- and I emphasize may -- make available to the
12 company an additional \$2 million in liquidity above the amount
13 that Mr. Alberino noted.

14 The purpose of this additional liquidity would be to
15 ensure that the company has sufficient funds to compensate
16 present and former directors and officers of the company, which
17 is a matter that the reorganized debtors' board will consider
18 post confirmation in connection with its MIP determinations and
19 other issues akin to those deliberations. And, of course, as
20 Mr. Alberino pointed out, that's a post confirmation matter.

21 The 2007 lenders are in discussions with the company
22 and representatives of the future equity owners of the company
23 regarding these issues, and whether the company will actually
24 require the additional liquidity. But I did want to note to
25 the Court that the numbers that Mr. Alberino represented may be

1 slightly different, but not in a very material way for this
2 purpose.

3 And that's really all. Otherwise, we're fully in
4 support of confirmation, Your Honor.

5 THE COURT: All right.

6 MR. SOMERSTEIN: Thank you.

7 THE COURT: Thank you.

8 MR. FELDMAN: Good morning, Your Honor. David
9 Feldman, Gibson Dunn & Crutcher, on behalf of the backstop
10 parties.

11 I simply wanted to rise to say that we are fully in
12 support of confirmation of the plan. This -- we're here today,
13 as Mr. Alberino indicated, as a result of an extensive amount
14 of work, you know, negotiations among the various parties,
15 among the backstop parties, the company, the Canadian creditors
16 have taken place over several months, and we're very pleased to
17 have been able to put together the debt financing and the
18 equity financing, and to reach an accommodation that's
19 acceptable to all the different parties in interest in both
20 countries to be able to reach this place. So, it's taken an
21 extraordinary -- I mean we haven't been in front of Your Honor
22 all that often, but I can tell you this has been one of those
23 deals and one of those cases which has involved an extensive
24 amount of work over an extensive period of time, and lots of
25 negotiation among all parties. And to be able to come here

1 today with a fully consensual deal, and to walk into the
2 Canadian court on Friday with the same, I think, is a great
3 accomplishment for all involved. And we're happy to support
4 confirmation today.

5 THE COURT: All right. Thank you. Well, I have
6 two questions:

7 Number one, why, in light of Third Circuit precedent,
8 am I able to deem the debtors consolidated for purposes of
9 treatment under the plan? And is it necessary?

10 MR. ALBERINO: Your Honor, actually I don't believe
11 it's -- I don't believe it would have been necessary to
12 actually -- to do the deemed consolidation given the fact that
13 the other U.S. -- the other U.S. debtors in this case, and to
14 the extent that they're either guarantors of the same debt as
15 the '06 facilities, of they have no other debt. Because most
16 of the -- most of the actual trade claims at the U.S. level
17 were either at the TRC or TRC/U.S. level. And to the extent
18 that they're not receiving any recovery, it wouldn't have made
19 much of a difference.

20 We did it obviously for purposes of just trying to
21 facilitate and kind of ease the administration of the plan. I
22 mean obviously I think, you know, at this stage were we to go
23 back and modify the plan to provide for, you know, separate
24 subclasses based upon that, I mean I think it would just be a
25 function of us modifying our plain classes to make them apply

1 to multiple classes --

2 THE COURT: Well, I think --

3 MR. ALBERINO: -- that apply to other debtors.

4 THE COURT: I think you've already covered it. In
5 the event I don't approve it, the plan shall be treated as a
6 separate plan for each debtor.

7 MR. ALBERINO: Yeah.

8 THE COURT: And you don't have to resolicit votes.

9 MR. ALBERINO: That's correct, Your Honor.

10 THE COURT: You've provided --

11 MR. ALBERINO: That's correct. I mean from -- I
12 guess from our perspective, if you are inclined not to approve
13 the deemed consolidation, I guess what we could do is just
14 provide for that in a confirmation order and reference the fact
15 that the plan could be confirmed with respect to each of the
16 debtors on a separate standalone basis. Because I don't
17 believe the plan consideration will change, or the consequences
18 of confirmation will change with respect to each of these
19 debtors.

20 THE COURT: I think that's right. Does anybody else
21 disagree?

22 MR. FELDMAN: Your Honor, I don't think we disagree.
23 The only thing I would say is that the other option, I think
24 the way to distinguish it from existing precedent is to say
25 that in this case, all parties that would receive the

1 distribution, whether on an unconsolidation or on a
2 consolidated basis, have consented. So, all the parties have
3 consented to the consolidation, we're not asking Your Honor to
4 do anything that's not, you know, fully supported by all the
5 parties who would receive a distribution.

6 I don't know whether that distinction from existing
7 precedent is sufficient. That was certainly the way that it's
8 been outlined in the plan and what we just discussed would
9 work, as well. I think leaving it as a consolidated plan would
10 be simpler, but we leave that up to you. I just wanted to lay
11 out that other option.

12 THE COURT: Well, that's a good point. Owens
13 Corning dealt with an objection by the creditor who argued they
14 were adversely affected by the substantive consolidation.

15 All right. Well, I will allow it. I think from the
16 perspective of getting the documents done, and the financing in
17 place, consolidation works.

18 MR. ALBERINO: Thank you, Your Honor.

19 THE COURT: Let's talk about the releases. Are the
20 releases effective as to any creditor who did not vote in favor
21 of the plan?

22 MR. ALBERINO: No, the third party releases, and let
23 me turn to --

24 THE COURT: The third party releases. Yes, I'm
25 sorry.

1 MR. ALBERINO: I believe it's Section 11.5 of the
2 plan. Let me just get to it, Your Honor.

3 THE COURT: Because it seems to suggest that "each
4 person who votes to accept the plan, and each entity which
5 held, holds, or may hold a claim against the debtors is
6 releasing." Do you really mean "and" there?

7 MR. ALBERINO: I guess the way it is drafted, you
8 know, in conjunctive, you could read that to apply to accepting
9 creditors, as well as all holders. So, it may have a
10 nonconsensual element to it.

11 MR. WILLIAMS: Your Honor, it's Matthew Williams,
12 also Gibson Dunn, for the backstop parties.

13 I actually was reading the document on the way down
14 to court this morning and noticed that, as well, and I was
15 talking to some of my colleagues. And at least from the
16 backstop parties' perspective, it was only our intention to be
17 released from the parties that actually do vote in favor of the
18 plan.

19 Thank you.

20 THE COURT: Well, maybe we can cover that in the form
21 of order to make that clear that the third party releases apply
22 only to those who have affirmatively accepted the --

23 MR. ALBERINO: That's acceptable, Your Honor. We can
24 go back and revise the order to reflect that. I'm not sure Mr.
25 Somerstein's here on behalf of the '07 agent.

1 Do you have any objection, Mark?

2 MR. SOMERSTEIN: No, no objection.

3 THE COURT: Okay.

4 MR. ALBERINO: Okay. We're happy. That was the
5 intention, was to limit it to actual consenting parties.

6 THE COURT: Okay. Well, those are my only issues.
7 And I'm glad I didn't have to deal with all the complicated
8 issues that I'm sure all of you have been dealing with for
9 months.

10 MR. ALBERINO: I had a lot more hair when the case
11 started, Your Honor.

12 (Laughter)

13 MR. ALBERINO: I'm sorry. Excuse me for one second.

14 (Pause)

15 MR. ALBERINO: Your Honor, would it be possible, just
16 given the need to get the order entered today, if you could
17 perhaps give us five minutes so we can just, you know, enter
18 the changes directly into the order?

19 THE COURT: That's fine.

20 MR. ALBERINO: Is that okay?

21 THE COURT: Do you want to take a break? Otherwise,
22 based on the testimony and the overwhelming support of those
23 interested parties who have put the hard work in here, I'm
24 happy to confirm the plan.

25 MR. ALBERINO: Okay. Thank you, Your Honor.

1 THE COURT: All right. Let's take a break, and you
2 can let me know when the order is ready.

3 MR. ALBERINO: Okay.

4 (Recess 9:57 A.M./Reconvene 10:05 A.M.)

5 MR. ALBERINO: For the record, Scott Alberino from
6 Akin Gump again on behalf of Trident Resources Corp.

7 Your Honor, during the break, we were able to make
8 certain changes -- handwritten changes to the form of order to
9 deal with the third party release issue, which have been
10 reviewed, you know, and approved by representatives from the
11 backstop parties here in the courtroom today.

12 May I approach?

13 THE COURT: You may.

14 (Pause)

15 THE COURT: Okay. Let me see.

16 (Pause)

17 MR. ALBERINO: What we have done, Your Honor, is we
18 struck the offending language from the section of the plan,
19 which will be attached to the form of order, and then just
20 referenced in the finding and the order component with respect
21 to the releases. That the releases are, with respect to the
22 plan, as attached to that order.

23 THE COURT: Okay. All right. That looks fine then.

24 All right. I will enter the order and get it
25 docketed today.

1 MR. ALBERINO: Thank you, Your Honor.

2 THE COURT: Good luck. We'll stand adjourned.

3 ***

4 (Whereupon, at 10:07 A.M., the hearing was adjourned.)

5

6

CERTIFICATE

7

8 I certify that the foregoing is a correct transcript from
9 the electronic sound recording of the proceedings in the
10 above-entitled matter.

11

12

13 /s/ Karen Hartmann AAERT CET**D0475 Date: June 16, 2010

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UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Trident Resources Corp.
Suite 1000, 444-7th Avenue S.W.
Calgary, AB T2P 0X8
CANADA
EIN: 98-0412788

Chapter: 11

Case No.: 09-13150-MFW

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

A transcript of the proceeding held on 6/15/2010 was filed on 6/17/2010 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 7/8/2010 .

If a request for redaction is filed, the redacted transcript is due 7/19/2010 .

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