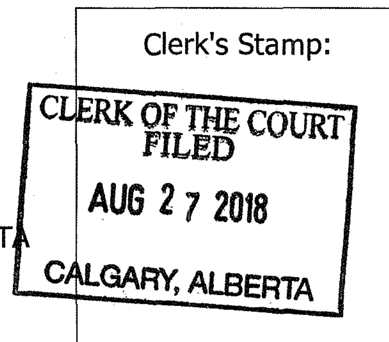
Form 11
[Rule 3.31]

Clerk's Stamp:



COURT FILE NUMBER	1801-10960
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
DEFENDANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE
DOCUMENT	**STATEMENT OF DEFENCE**
PARTIES FILING THIS DOCUMENT	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. (the **Perpetual Defendants**)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Burnet, Duckworth & Palmer LLP 8th Avenue Place, East Tower 2400, 525 - 8th Avenue, SW Calgary, Alberta T2P 1G1

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Overview

1. Perpetual Energy Inc. (**Perpetual**) is a Calgary based energy company that sold some of its shallow gas properties in Alberta to an unrelated third party in October 2016 (the **Transaction**), after extensive marketing and negotiations. The consideration included a marketing contract that ensured a minimum natural gas price for almost two years on 90% of the natural gas production sold. Perpetual held the properties in a wholly owned subsidiary, which in turn held them in trust.

2. The sale price was negotiated between Perpetual and the purchaser in arm's-length negotiations, each acting in its own best interests. The Transaction was structured as the sale of the shares of the subsidiary trustee. As part of the Transaction, that subsidiary trustee was required to first combine the beneficial interest with the legal interest in the properties.

3. Following the purchase of the shares, the purchaser renamed the purchased company Sequoia Resources Corp. (**Sequoia**). Sequoia successfully pursued its business plan, which involved producing the assets, purchasing assets from other companies, recompleting wells, and abandoning and reclaiming certain wells, facilities and pipelines. A year and a half later, a combination of events, including a dramatic decline in natural gas prices, led to Sequoia's bankruptcy. The Transaction was not the cause of the bankruptcy.

4. Sequoia's bankruptcy trustee sued the Perpetual Defendants and Perpetual's CEO in August 2018. The Plaintiff ignores the fact that the Transaction was with an arm's-length purchaser at fair market value, and mischaracterizes an imbedded step that involved the combination of the legal and beneficial interests in the properties as a reviewable transaction under the *Bankruptcy and Insolvency Act* (***BIA***). The Plaintiff claims that imbedded step in the Transaction is void, or alternatively seeks a monetary award from the Defendants.

5. None of the essential conditions for a declaration that the step in the Transaction is void or for a monetary award under the *BIA* have been met. There was no transfer at undervalue. The parties were dealing at arm's-length. The Transaction occurred more than one year before Sequoia's bankruptcy. Sequoia was not insolvent at the time of the Transaction nor rendered insolvent by the Transaction.

6. The Transaction was fully compliant with the *Oil and Gas Conservation Act* (Alberta), the *Oil and Gas Conservation Rules* (Alberta), the Alberta Energy Regulator's (the **AER**) Directives 001, 006, and 011 (the **Regulatory Regime**), public policy reflected in the Regulatory Regime, and with the law. Specifically, the Transaction fully complied with well licence transfer requirements and the AER's Licensee Liability Rating (**LLR**) Program.

7. The Plaintiff's claim is an abuse of the process of the Court and is without merit.

Admissions and Denials

8. The Perpetual Defendants admit the allegations of fact in paragraphs 1, 2, 7 and 9 in the Statement of Claim. Except as otherwise expressly admitted, the Perpetual Defendants deny the other allegations of fact in the Statement of Claim.

The Perpetual Entities

9. Perpetual is a publicly-traded oil and natural gas exploration, production and marketing company headquartered in Calgary, Alberta. Perpetual operates a diversified asset portfolio, including liquids-rich natural gas assets in the deep basin of west central Alberta, heavy oil and shallow natural gas in eastern Alberta, with longer term opportunities through undeveloped oil sands leases in northern Alberta. Perpetual is an Alberta corporation.

10. The Defendant Perpetual Operating Trust (**POT**) is a trust established in 2002 under the laws of Alberta pursuant to a trust indenture (the **POT Trust Indenture**). Perpetual is the beneficiary under an express trust to various oil and gas properties, licences and permits. At all material times prior to the Transaction (defined below), the beneficial interest in the assets was administered by POT pursuant to the POT Trust Indenture and Perpetual Energy Operating Corp. (**PEOC**) was the trustee under the POT Trust Indenture.

11. The Defendant Perpetual Operating Corp. (**POC**) is an Alberta corporation and wholly owned subsidiary of Perpetual. For a brief period prior to the Transaction, POC acted as an agent for PEOC with respect to certain properties in POT. Following the Transaction, POC was the trustee under the POT Trust Indenture.

12. PEOC was at all material times prior to the Transaction an Alberta corporation and a wholly owned subsidiary of Perpetual. Immediately after the Transaction, under its new ownership and

management PEOC changed its name to Sequoia (when the context requires, the company is referred to herein as **PEOC/Sequoia**).

Background to the Transaction

13. In early 2016, Perpetual determined that it was in the company's best interests to sell certain shallow natural gas assets legally held by PEOC and beneficially held by POT, in light of Perpetual's evolving asset base, its view of the prevailing industry trends and its strategy to focus on developing liquids-rich resource style plays.

14. Perpetual solicited potential third party buyers. As part of this marketing process:

(a) Perpetual established a data room that included relevant and material technical, operational, administrative, and legal information, including title and operating documents, well files, joint venture agreements, marketing agreements, handling agreements, gathering agreements, transportation agreements, consulting contracts, environmental information, corporate information, and lease operating statements regarding the assets that Perpetual wanted to sell;

(b) POT entered into confidentiality agreements with third parties to permit them to conduct due diligence and review the information in Perpetual's data room; and

(c) Perpetual provided multiple presentations including extensive analysis of recently implemented operating models, reviewed its in-house management system of abandonment and reclamation activities and results, and presented workover, recompletion and drilling opportunities.

15. On May 12, 2016, POT entered into a confidentiality agreement with Kailas Capital Corp. (**Kailas**). On May 17, 2016, Kailas had access to Perpetual's data room. On May 18, 2016, Perpetual retained Macquarie Capital Markets Canada Ltd. (**Macquarie**) as its independent third party financial advisor in relation to Kailas. Macquarie introduced Perpetual to Kailas. Kailas is a private financial consulting and investment company unrelated to Perpetual.

16. Perpetual understood that Kailas' strategy was to acquire large oil and natural gas positions in the Western Canadian Sedimentary Basin in a low commodity price environment. Kailas' stated strategy involved acquiring gas assets, some of which were close to the end of their

life-cycle, and reducing the operating and administrative costs of these assets, in part by implementing methodical and efficient abandonment and reclamation programs. Kailas stated that its goal was to complete abandonments in strategic groups (that is, on an area by area basis) and with an in-house team and equipment so that it would be able to clean up legacy obligations more efficiently and economically than under a less structured program. Kailas also recognized the opportunity to accelerate investment in recompletions and workovers to increase production across largely fixed cost structures.

17. Perpetual also understood that Kailas was a well-capitalized, sophisticated and reputable buyer capable of acquiring and operating oil and gas businesses, including as a result of the following:

(a) in July 2015, Sinoenergy Pacific Corp. (**Sinoenergy Pacific**), an affiliate of Sinoenergy Corporation (**Sinoenergy**), a Beijing-based company related to Kailas that specialized in supplying the natural gas transportation industry in China, acquired Calgary-based junior oil company New Star Energy Ltd. through an amalgamation with a wholly owned subsidiary of Sinoenergy Pacific for approximately $170 million in cash and approximately $45 million in assumed debt;

(b) in or about April 2016, 1069130 B.C. Ltd., a company related to Kailas, acquired the Canadian assets of insolvent Quicksilver Resources Canada Inc., including the Canadian National Energy Board approved Discovery LNG project, for an undisclosed amount;

(c) in June 2016, Sinoenergy Investment Corp., an affiliate of Sinoenergy and a related party to Kailas, acquired Calgary-based Long Run Exploration Ltd. (**Long Run**) in a $780 million transaction that involved Sinoenergy Investment Corp. assuming approximately $679 million of Long Run's debt as part of a plan of arrangement; and

(d) in September 2016, the Canadian government announced that Sinoenergy Corporation Ltd., an affiliate of Sinoenergy, would invest $500 million into Long Run over the following two years.

18. On July 6, 2016, Kailas delivered a letter of intent to purchase certain assets from Perpetual.

19. Kailas incorporated 1986114 Alberta Inc. (**198**) to effect its business strategy. Perpetual negotiated the Transaction with Haro (Harold) Wang and Wentao Yang who were principals of Kailas and 198. Kailas, 198, Wang and Yang (the **Purchaser Team**) were strangers to Perpetual and POT (the **Vendor Team**).

20. Between July 6, 2016 and September 26, 2016, the Purchaser Team and the Vendor Team negotiated the Transaction as self-interested adversaries, each advised by their separate legal counsel, and in particular:

(a) the Purchaser Team conducted and completed extensive and detailed reviews of the assets subject to the Transaction;

(b) the Purchaser Team and the Vendor Team negotiated the specific assets that would be part of the Transaction, the consideration, and the structure and commercial terms of the Transaction, including the written agreements that implemented the Transaction;

(c) the Purchaser Team engaged in extensive technical discussions and presentations with the Vendor Team to assist in their assessment of the Transaction and the business going forward;

(d) the Purchaser Team and the Vendor Team negotiated the details of assets to be included in the Transaction, which included a complete understanding of associated future estimated abandonment and reclamation costs that would be required;

(e) the Purchaser Team and the Vendor Team negotiated the specifics of transitioning the assets to a sustainable cost structure relative to current natural gas prices, including the transition of a reduced group of field and office employees and in-house abandonment and reclamation equipment and processes;

(f) the Purchaser Team and the Vendor Team negotiated a marketing arrangement that would eliminate natural gas price risk for the purchaser and, combined with the sustainable cost structure, ensure profitable operation of the assets for the purchaser for almost two years to enhance the execution of the purchaser's business plan; and

(g) a retained interest agreement was negotiated that provided for the accelerated recovery of a legacy Alberta Crown royalty credit.

The Transaction

21. On September 26, 2016, the negotiations between the Purchaser Team and the Vendor Team culminated in an agreement, the substance of which was that 198 would acquire all of the shares of PEOC, conditional upon PEOC and POT first combining the legal and beneficial interests in the sale assets, being certain producing and non-producing oil and gas properties in north and east Alberta (the **Goodyear Assets**) in PEOC, and establishing a gas marketing arrangement in PEOC with a counter-party to provide a minimum gas price for 90% of the production. Production from the Goodyear Assets was approximately 35 MMcf/d. Booked reserves were approximately 83 Bcf.

22. Perpetual and 198 entered into a share purchase and sale agreement dated September 26, 2016 (the **Share Purchase Agreement**). The Share Purchase Agreement required several other interrelated and interdependent agreements and steps as necessary and integral parts of the Transaction. The Share Purchase Agreement incorporated the other agreements, including the Asset Purchase Agreement and Gas Marketing Agreement (defined below), as schedules to the Share Purchase Agreement, constituting "the entire agreement between the Parties".

23. Key terms of the Share Purchase Agreement included:

(a) 198 purchased all of Perpetual's shares in PEOC for $1.00 plus municipal tax adjustments and other adjustments;

(b) Perpetual warranted that the transfer of the beneficial interest in the Goodyear Assets from POT to PEOC would be executed and constitute binding obligations on the parties;

(c) POT acquired on September 26, 2016, and then assigned and novated PEOC into a put/call agreement dated September 26, 2016 with Mercuria Commodities Canada Corporation (**Mercuria**), a third party marketing company, by which Mercuria would pay PEOC a gas price of at least $2.58/GJ on an average 33,611 GJ/day (or approximately

90% of PEOC's production) for 23 months; POT retained upside for monthly index settlements higher than $2.81/GJ over the same period (the **Gas Marketing Contract**);

(d) Perpetual provided additional consideration to PEOC to enable it to successfully operate its assets on a go forward basis and to effect Kailas and 198's business strategy:

(i) Perpetual subleased to PEOC 15,300 square feet of office space without PEOC having any obligation to pay rent or operating costs until March 31, 2018 (the **Office Sublease**);

(ii) Perpetual caused POT to grant PEOC ownership rights and licences for geophysical information; and

(iii) Perpetual cooperated with 198 to establish a low operating and administrative cost structure through the orderly transition of 40 employees from Perpetual to PEOC.

24. As part of the Transaction, Perpetual and 198 also negotiated the Purchase and Sale Agreement between PEOC and POT dated October 1, 2016 (the **Asset Purchase Agreement**). At all material times prior to the Transaction, PEOC already held the legal interest to the Goodyear Assets, including well licences. The purpose of the Asset Purchase Agreement was to combine in PEOC the legal interest already held by PEOC and the beneficial interest held by POT in the Goodyear Assets. PEOC paid POT a purchase price of $10, with adjustments to reconcile prepaid expenses and invoices not yet due, representing the value of the consideration PEOC received as negotiated by the Purchaser Team and the Vendor Team. POT transferred its beneficial interest in the Goodyear Assets to PEOC.

25. There was no requirement to transfer well licences as part of the Transaction, either pursuant to the Asset Purchase Agreement or the Share Purchase Agreement, as all well licences were already held by PEOC. The only well licences that were required to be transferred were from PEOC to POC for the KeepCo Assets (defined below). The AER approved the transfers of these well licences in August and September 2016.

The KeepCo Assets and the Retained Interests

26. On August 18, 2016, pursuant to a Title Trust Agreement between POC and PEOC (the **Title Trust Agreement**), PEOC appointed POC as its nominee to hold as trustee for POT the legal title and licences to the assets referenced in that agreement, which were some of the assets not intended to be sold. The Title Trust Agreement permitted the parties to add or delete assets. On or before October 1, 2016, all assets legally owned by PEOC and beneficially owned by POT that were not Goodyear Assets (the **KeepCo Assets**) were transferred or were in the process of being transferred by PEOC pursuant to the Title Trust Agreement to POC, so that on October 1, 2016, POC held as trustee licences to all the KeepCo Assets except the Retained Interests (defined below). On October 1, 2016, PEOC resigned as trustee under the POT Trust Indenture and Perpetual appointed POC as the successor trustee of POT.

27. POT and PEOC also entered into the Retained Interests Agreement dated October 1, 2016 (the **Retained Interests Agreement**). The objectives of the Retained Interests Agreement included to permit PEOC, for an interim period, to retain a 1% working interest in four wells that were part of the KeepCo Assets (the **Retained Interests**) and to remain the licensee of the Retained Interests:

(a) at 198's request, to defer payment of a closing adjustment with respect to Perpetual's Alberta Crown royalty credits;

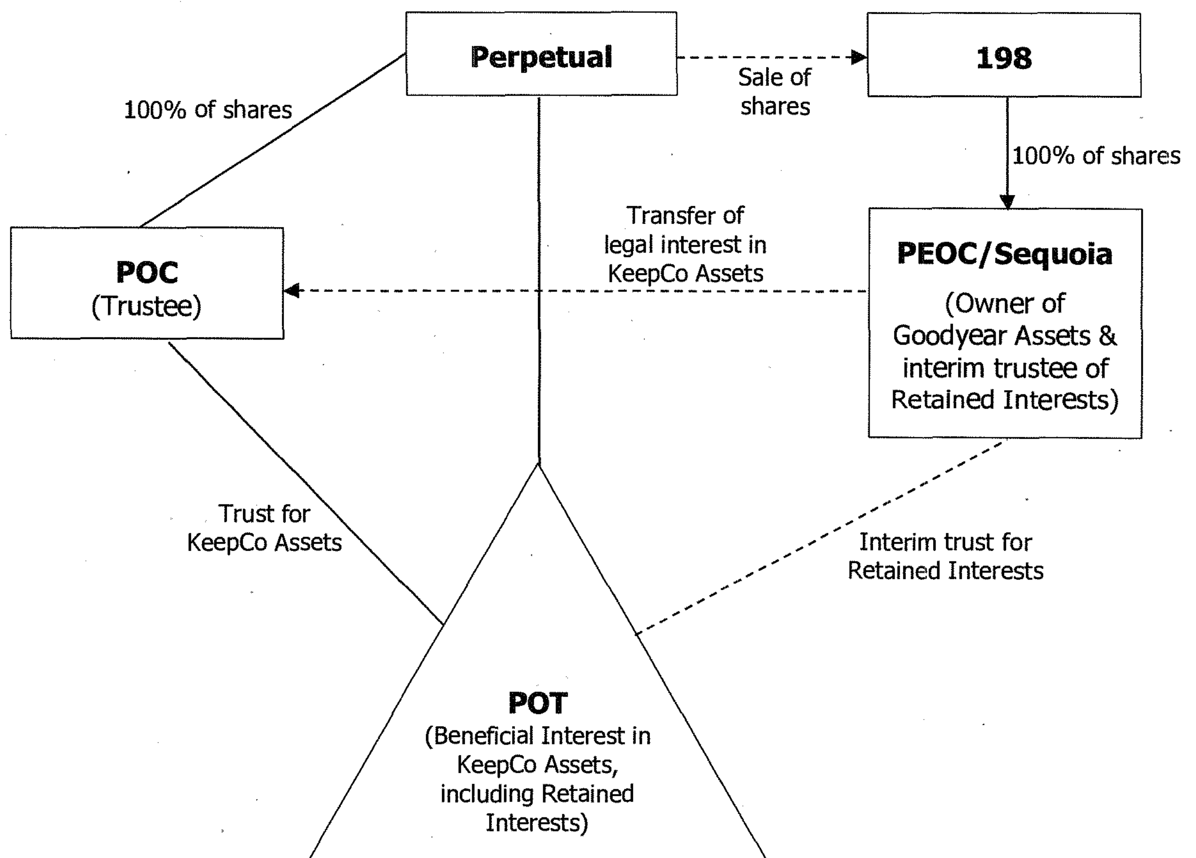
(b) to facilitate the timely recovery of a legacy gas over bitumen royalty credit of $1.6 million that PEOC held with the Alberta Crown for the benefit of POT prior to the Transaction, which the Crown would not transfer to another licensee; and

(c) to permit Sequoia to commence abandonment, reclamation work and recompletion work immediately.

28. In specific response to the allegations in paragraph 11 of the Statement of Claim, the objectives of the Retained Interests Agreement were as described above. The objective was not to support PEOC's "LLR", which is one aspect of a company's Liability Management Rating (**LMR**). Nor was the objective to support PEOC's LMR to allow the Transaction (either the Share Purchase Agreement or the Asset Purchase Agreement) to be completed without regulatory intervention by the AER. Neither involved a transfer of well licences or otherwise engaged the AER. On a net

interest basis, including both operated and non-operated Goodyear Assets, thereby excluding the Retained Interests, PEOC's LMR at the time of the Transaction was greater than 1.0.

29. The Transaction closed on October 1, 2016. The legal and beneficial interests in the Goodyear Assets were combined and the assignment of the Gas Marketing Agreement was effective. Immediately thereafter, 198 acquired all the shares in PEOC. Wang and Yang became directors of PEOC. Susan Riddell Rose (**Rose**) resigned as a director and officer of PEOC. On October 3, 2016, PEOC changed its name to Sequoia. The chart below illustrates the post-Transaction structure:



30. Following the Transaction, the AER had no concerns with Sequoia's ongoing LMR. Sequoia sought to acquire assets from bankrupt Waldron Energy Corp. (**Waldron**) pursuant to an asset purchase agreement dated October 18, 2016. The AER relaxed its LMR requirements at Sequoia's request and approved the necessary transfers. Sequoia's purchase from Waldron's trustee was also approved by the Court.

Events Subsequent to the Transaction

31. With the operating and administrative cost structure in place as part of the Transaction, and the Gas Marketing Agreement providing revenue greater than costs until August 31, 2018, PEOC's financial stability and solvency was ensured until that time.

32. The Perpetual Defendants were not associated with Sequoia following the Transaction. Based on public information and information provided by others, the following occurred after the Transaction:

(a) Sequoia immediately began operating the Goodyear Assets and began its abandonment and reclamation program by abandoning certain wells;

(b) Sequoia paid the municipal tax invoices it was responsible for as the invoices came due or as agreed to by the municipalities;

(c) from October 1, 2016 to December 31, 2017, Sequoia abandoned 150 wells and received reclamation certificates for 91 wells. Due to its focus on cleaning up environmental liabilities, Sequoia ranked fifth in Alberta in terms of reclamation certificates received during this period;

(d) Sequoia did not drill any new wells or contribute to the creation of any new environmental obligations during its existence and focused all of its cash on either rehabilitating legacy assets through workover and recompletion programs, or the suspension, abandonment and reclamation of those assets which had completed their productive life and restoring the associated lands to their original condition, in accordance with applicable AER and environmental requirements;

(e) Sequoia acquired significant additional assets (and related liabilities) until August 2017, in acquisitions unrelated to the Perpetual Defendants, including acquisitions from bankrupt Waldron (under which Sequoia acquired assets previously operating at negative cash value, that required immediate and significant capital expenditures as well as payment of past due property taxes), insolvent Endurance Energy Ltd. and Husky Oil Operations Ltd.; and

(f) in or about July 2017, Sequoia sold the Gas Marketing Contract for cash to a third party, thereby exposing Sequoia to extremely low gas prices from the summer of 2017 to the date of Sequoia's bankruptcy.

33. While Sequoia's strategy was initially successful, it encountered worsening gas prices in the summer of 2017 which continued to decline. Sequoia had been ensured a profit for the Goodyear Assets by the Gas Marketing Contract, but, having sold that contract by July 2017 and having acquired additional assets from third parties, it was exposed to the gas price collapse and materially reduced cash flow on all of its production.

34. Ultimately, with lower gas prices and no gas price management agreement, Sequoia could not continue to operate without sustaining significant losses. On February 22, 2018, Sequoia met with the AER to discuss the options available to Sequoia for shutting down operations in a safe and orderly manner. On March 2, 2018, Sequoia filed a Notice of Intention to Make a Proposal pursuant to the *BIA*. On March 23, 2018, Sequoia made an assignment into bankruptcy.

35. Sequoia's business decisions, including the decision to sell the Gas Marketing Agreement in July 2017, and market forces subsequent to the Transaction were the causes of the bankruptcy. The Transaction did not cause Sequoia's insolvency or bankruptcy.

The Claims under the *BIA*

36. The Perpetual Defendants specifically deny the allegations in paragraphs 21 to 23 of the Statement of Claim that the Asset Purchase Agreement is void against the Plaintiff or that the Plaintiff is entitled to a monetary judgment against any of the Defendants.

37. The Transaction as a whole, not just one part of it, is the proper subject of an analysis under s. 96(1) of the *BIA*. The combination of the legal and beneficial interests in PEOC was a technical step required by 198 before it acquired PEOC's shares. The Plaintiff opportunistically attempts to isolate this step, because it involved a transfer of the beneficial interest in assets between PEOC and POT, and claims it is reviewable under s. 96 of the *BIA*, when in substance the Transaction was a sale of shares between Perpetual and 198.

38. Three essential conditions for a declaration or payment under s. 96(1)(b) of the *BIA* are not satisfied:

(a) there was no transfer at undervalue;

(b) the parties were dealing at arm's-length; and

(c) PEOC/Sequoia was not insolvent at the time of the transfer nor rendered insolvent by it.

39. In the alternative, even if the Asset Purchase Agreement, artificially viewed in isolation to the rest of the Transaction, is the subject of an analysis under s. 96 of the *BIA*, the same three essential conditions under s. 96(1)(b) of the *BIA* are still not satisfied.

There was no transfer at undervalue

40. The Transaction, including the Asset Purchase Agreement, was not a transfer at undervalue as defined in the *BIA*, that is, the consideration received was not conspicuously less than the fair market value of the consideration given.

41. Perpetual solicited purchasers in a free market and entered into discussions and confidentiality agreements with several arm's-length potential purchasers. The terms of the Transaction, including the Asset Purchase Agreement, were negotiated between an informed buyer and an informed seller, dealing with each other in their own self-interest and at arm's-length.

42. The value of the consideration received by PEOC/Sequoia was equivalent to the value given by PEOC/Sequoia under the Asset Purchase Agreement. The consideration was negotiated between sophisticated and informed parties with professional advisors in a free market. Pursuant to the Asset Purchase Agreement:

(a) PEOC/Sequoia received:

(i) the beneficial interests in producing and non-producing oil and gas properties, which included production, wells, pipelines, facilities, and their associated liabilities at end of life, being the Goodyear Assets;

(ii) gas price protection in the Gas Marketing Contract, providing a minimum revenue for 23 months that would exceed the new cost structure established for

the operations and administration of the properties and its current compliance with asset retirement obligations for the properties, thereby ensuring a profit and providing funds for additional investment;

(iii) the Office Sublease; and

(iv) the other consideration referred to under the heading "The Transaction"; and

(b) PEOC/Sequoia paid $10 plus adjustments.

43. When considering the Transaction as a whole, the value of the consideration received by 198 was equivalent to the value given by 198 under the Share Purchase Agreement, and was negotiated between the same sophisticated and informed parties with professional advisors in a free market.

44. The Perpetual Defendants expressly deny the allegations in paragraph 13 and 14 of the Statement of Claim:

(a) the value of the consideration given by PEOC/Sequoia was not $223,241,000;

(b) the amount of $223,241,000 appears to represent a calculation through a computer simulation in 2018 of the future estimated costs of the asset retirement obligation (**ARO**) associated with the Goodyear Assets at the time of Sequoia's bankruptcy, assuming all its wells were immediately required to be abandoned and reclaimed;

(c) PEOC/Sequoia's liabilities at the time of the Transaction were comprised of the estimated future costs to be incurred over time by Sequoia in an efficient abandonment and reclamation program at a discount rate commensurate with the discount rate for other producing assets, and were considered in the value of the Goodyear Assets;

(d) the value of PEOC/Sequoia's liabilities at the time of the Transaction was approximately equivalent to the value of its assets;

(e) the parties expressly acknowledged in the Asset Purchase Agreement that the ARO associated with the Goodyear Assets was not capable of being quantified at the time of closing, depended on numerous unknowable factors, that any related accounting reserves were of no relevance in determining any matter under the Asset Purchase Agreement, including the purchase price, and as a result the parties attributed no value to the assumption of the ARO associated with the Goodyear Assets;

(f) the alleged value of the consideration received by PEOC/Sequoia of $5,670,200 is a discounted net present value in a reserves report at a certain discount rate as of December 31, 2015. The reserves report value was inclusive of certain expected expenditures for abandonment and reclamation that have been separated out by the Plaintiff and included as liabilities;

(g) the reserves report value is not reflective of the fair value of all the Goodyear Assets at the time of the Transaction. PEOC represented in the Share Purchase Agreement that the reserves report does not overstate the aggregate pre-tax quantity and present worth of the reserves evaluated in the report as of the effective date of the report, and contrary to paragraph 8.3 of the Statement of Claim, not that the report reasonably represented the value of the Goodyear Assets at the time of the Transaction; and

(h) PEOC/Sequoia received other valuable consideration, including the Gas Marketing Agreement and provisions establishing a cost structure that ensured profitability.

The parties were dealing at arm's-length

45. The parties were dealing at arm's-length, particulars of which are set out above.

46. The Asset Purchase Agreement did not exist, and would not have occurred, except as part of the Transaction. Like the Share Purchase Agreement, it too was the product of arm's-length negotiation between the Purchaser Team on the one hand, and the Vendor Team on the other. At the relevant time, 198 exercised *de facto* control of PEOC prior to the Transaction:

(a) the terms of the Asset Purchase Agreement, including the consideration, were negotiated between the Purchaser Team and the Vendor Team, dealing at arm's-length; and

(b) as the purchaser of all of the shares of PEOC as part of the Transaction, 198 (and only 198) had a commercial interest in the terms of the Share Purchase Agreement as they affected PEOC.

47. Because the parties to the Transaction, including the Asset Purchase Agreement, were dealing at arm's-length, the Plaintiff's claim is time barred pursuant to s. 96(1)(a) of the *BIA*, which permits a review of a transfer at undervalue only if the transfer occurred one year before the date of bankruptcy.

PEOC was not insolvent at the time of the transfer nor was Sequoia rendered insolvent by the transfer

48. Prior to the Transaction, PEOC was a bare trustee and only held the legal interests in POT's oil and gas assets, contracts, licences, and permits. It held no beneficial interest in any property and had no material revenue, expenses, assets or liabilities. It was not insolvent.

49. Sequoia was not rendered insolvent by the Transaction, nor by the Asset Purchase Agreement if considered in isolation. Sequoia was financially stable at the time of the Transaction and for almost a year and a half after the Transaction. It possessed the financial resources and capabilities to operate as a viable going concern. Sequoia was able to pay, and did pay, its obligations as they became due, including paying outstanding municipal property tax associated with invoices as per the statement of adjustments as they became due and successfully meeting its abandonment and reclamation obligations in the normal course.

50. Sequoia was rendered insolvent and became bankrupt as a result of its own conduct, including lack of adequate risk management, and market forces described above.

The Plaintiff's alternative monetary claim

51. The Plaintiff claims in the alternative judgment against the Perpetual Defendants and Rose for the difference between the value of the consideration received and given by PEOC pursuant to the Asset Purchase Agreement. There was no material difference between the value of the consideration received by PEOC and the value of the consideration given by PEOC pursuant to the Asset Purchase Agreement or the value of the consideration received by 198 and the value of the consideration paid by 198 pursuant to the Share Purchase Agreement. Alternatively, the alleged difference is grossly inflated.

52. In response to paragraphs 22.2.5 and 23.2 of the Statement of Claim, s. 96(1) of the *BIA* only creates a potential claim against "a party to the transfer or any other person who is privy to the transfer". Perpetual and POC were not privy to the Asset Purchase Agreement as that term is defined in s. 96(3) of the *BIA*.

Oppression

53. As Sequoia's trustee in bankruptcy, the Plaintiff has no authority to sue Perpetual or POC under Part 19 of the *Business Corporations Act* (the ***ABCA***).

54. The Plaintiff is not a complainant under s. 242(1) of the *ABCA* and therefore cannot bring an oppression action against Perpetual or POC.

55. The Plaintiff could only have standing to become a complainant if leave of the Court was granted pursuant to s. 239(b)(iv) of the *ABCA*. The Plaintiff has not sought and would not be entitled to leave because:

(a) the Plaintiff, as Sequoia's trustee in bankruptcy, could only be a complainant if Sequoia could have brought an oppression claim, which it could not;

(b) an oppression daim under s. 242(1) of the *ABCA* is a personal remedy belonging to certain stakeholders of Sequoia;

(c) the Plaintiff, by reason of Sequoia's bankruptcy, is not in a better position to advance the claims of Sequoia's creditors; and

(d) none of Sequoia's creditors on bankruptcy, including the AER or municipalities, were creditors of PEOC with provable claims at the time of the Transaction.

56. At all material times, Perpetual and POC, to the extent their conduct affected PEOC, acted in the best interests of PEOC with a view to PEOC's stakeholders, including PEOC's creditors. For all the reasons set out in this Statement of Defence, Perpetual and POC have not engaged in conduct that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of any of PEOC's stakeholders.

Public Policy, Statutory Illegality and Equitable Rescission

57. This Transaction was fully compliant with the Regulatory Regime, with public policy reflected in the Regulatory Regime, and with the law. Specifically, the Transaction fully complied with well licencing requirements and the LLR Program.

58. The vague and unparticularized allegations in paragraph 24 of the Statement of Claim that the Transaction is void on the grounds of public policy, on the basis of statutory illegality, and on equitable grounds, do not disclose a cause of action.

59. The Statement of Claim does not disclose what public policy or which statutory provisions of the Regulatory Regime the Plaintiff relies on. Whatever public policy or statutory illegality allegedly prohibited by the Regulatory Regime is relied upon, no action can be brought to declare contracts void or for any other relief on those grounds. The doctrine of illegality, including conduct contrary to public policy, can only be used as a defence to oppose the enforcement of rights by a plaintiff. It cannot be used as a cause of action to provide a foundation for a plaintiff to pursue an action or seek relief.

60. There is no basis for equitable rescission or other relief on equitable grounds. Such relief could only be granted in cases of fraud, innocent misrepresentation and where a contract was obtained by unconscionable acts, none of which is alleged nor exists. In any event, a remedy of declaring the contract void for this reason is unavailable because of the impossibility of restoring the parties to their pre-contractual position over two years after the Transaction.

Abuse of Process

61. In answer to the entire Statement of Claim, the Plaintiff's claims constitute an abuse of process, and are frivolous, irrelevant and improper. Certain of the claims do not disclose a reasonable cause of action.

62. The Plaintiff as Sequoia's trustee in bankruptcy only has authority to pursue claims for the benefit of Sequoia's creditors generally. It does not have authority to pursue:

(a) claims for the benefit of the AER or others;

(b) an oppression claim against Perpetual or POC; or

(c) claims based on the AER's sense of public policy. The AER itself acknowledges that, with respect to the Transaction:

> Our governing legislation did not provide us the necessary flexibility to do what is needed, while in other cases our own requirements and processes are limiting. We are working to fix both.

63. This action is an abusive attempt by Sequoia's trustee to indirectly pursue the agenda of the AER and energy companies that make significant contributions to the orphan well fund, by suing the Perpetual Defendants in relation to a Transaction that fully complied with the Regulatory Regime and the law. That agenda should not be pursued through an abusive lawsuit.

Remedy Sought

64. Dismissal of the action with costs on a full indemnity basis and such other relief as this Honourable Court deems just.