Court File No. CV-14-10672-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

HERIDGE S.A.R.L.,

Applicant

- and -

GREAT LAKES BIODIESEL INC., EINER CANADA INC. and BIOVERSEL TRADING INC.

Respondents

MOTION RECORD OF EAST GUARDIAN SPC

September 23, 2014

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Applicant

-and-

GREAT LAKES BIODIESEL INC., EINER CANADA INC. AND BIOVERSEL TRADING INC.

Respondents

Court File No. CV-14-10672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

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Lawyers for East Guardian SPC

Index

INDEX

Tab 1

Court File No. CV-14-10672-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

HERIDGE S.A.R.L..,

Applicant

- and -

GREAT LAKES BIODIESEL INC., EINER CANADA INC.
and BIOVERSEL TRADING INC.

Respondents

NOTICE OF MOTION

East Guardian SPC ("East Guardian"), will make a Motion to a Judge on Wednesday, September 24th at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR an order:

(a) if necessary, abridging the time or dispensing for the requirement of service of this Notice of Motion;

(b) a declaration that East Guardian is a creditor of GLB with an interest in and entitled to notice of any future proceedings in the Receivership;

(c) continuing the appointment of the Receiver, KPMG, pursuant to s. 101 of the *Courts of Justice Act*;

(d) appointing the Receiver over all the assets and properties that can be traced from any account of GLB, through and to whatever form, person or entity, and any related documents, records or other property of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the "GLB Property");

(e) empowering the Receiver to locate, investigate and monitor the GLB Property and to secure access for the Receiver to such books, records, documents and information the Receiver considers necessary to conduct an investigation of transfer of funds by or from GLB or its bank or trust account, to the other Respondents or other persons;

(f) The costs of this Motion; and,

(g) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

The Parties and Players

(a) East Guardian is a company incorporated under the laws of the Cayman Islands consisting of private portfolio investment funds that invest in securities, real estate and private equity and also provide debt financing to trading companies;

(b) Mazur is a Canadian national residing in Toronto, Ontario, a guarantor of the East Guardian Loans, and the principal of a web of related companies, including: GLB,

North Sea Biodiesel A/S ("NSB"), Einer Energy S.A.R.L. ("Einer Energy SARL"), Reneos Ltd. ("Reneos") and Verdeo Inc. ("Verdeo");

(c) While the exact nature of Mazur's relationship to these companies is known only to him, he exercised actual and *de facto* control over Einer Energy SARL, NSB and GLB at all relevant times;

(d) Mazur has represented both to East Guardian and the Ontario Superior Court of Justice that he is the founder and, at all relevant times, director of GLB, as well as the beneficial owner of the majority of GLB's shares via Orense and Reneos;

(e) Reneos is a company incorporated pursuant to the laws of the United Kingdom that holds all the shares of NSB and also holds shares in GLB;

(f) Orense is a company incorporated under the laws of Cyprus that holds all the shares of Reneos;

(g) GLB is a company incorporated under the laws of Ontario with its principal asset being a biodiesel refinery plant located in Welland, Ontario;

(h) GLB is a guarantor of the East Guardian Loans, described below;

(i) An interim Receiver was appointed in respect of GLB on August 27, 2014;

(j) Constantin Lutsenko ("Lutsenko") is an individual from the United States, presently believed to be residing in Moscow, a business partner of Mazur, a guarantor of the East Guardian Loans, and an owner, directly or indirectly, of shares in Einer Energy SARL, NSB and GLB;

(k) NSB, formerly Uniol A/S, is a company incorporated under the laws of Norway and a sister company to GLB;

(l) Einer Energy SARL is a company incorporated under the laws of Luxembourg;

(m) The Applicant, HERIDGE S.A.R.L. ("Heridge") is a company incorporated under the laws of Luxembourg;

The East Guardian Loans

(n) Between April 3, 2013 and March 26, 2014, East Guardian loaned Einer Energy SARL and NSB (the "Borrowers") a total of $30 million (the "East Guardian Loans");

(o) At all times, the terms of the East Guardian Loans:

(i) limited the permissible use of the loan funds to specified trade finance activities only on behalf of the Borrowers;

(ii) specified that East Guardian was entitled to receive full and frank information as to the use of the funds by the Borrowers, but was not obliged to monitor their use;

(iii) required that the loan funds be repaid by a certain date;

(iv) committed the Borrowers to certain reporting obligations, namely weekly reports and monthly management accounts;

(v) included representations that no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency had been commenced or threatened against either Mazur or Lutsenko;

(vi) specified that the loan funds could not be used to repay the interest owing on the loan;

(vii) required the use of a secured banking system designed to prevent the Borrowers from drawing down the loan without East Guardian's express approval;

(viii) obliged the Borrowers to inform East Guardian in the event of any event of default;

(ix) were structured on a short term basis and tied to specific trading contracts that would demonstrate that the Einer Energy SARL was selling sufficient inventory to third parties to remain profitable and service the loans;

(x) were guaranteed (first by GLB alone and then by Mazur and Lutsenko as well); and

(xi) defined breach of any of the above or fraud as an act of default triggering the obligation on behalf of the Borrowers and Guarantors to fully repay all outstanding monies along with accrued interest;

(p) Of the $30 million loaned, $21 million remains outstanding, plus accrued interest of approximately $2 million;

Mazur's Misappropriation of the Loans

(q) East Guardian has recently discovered that:

(i) The Borrowers, Mazur, and Lutsenko used the loan funds for purposes specifically prohibited by the terms governing the East Guardian Loans;

(ii) Almost the entirety of the outstanding $21 million remaining to be repaid has been removed;

(i) The Borrowers, Mazur, and Lutsenko deliberately and secretly circumvented the secure banking system that East Guardian had designed and imposed as a condition of the loan in order to make unauthorized drawdowns on the loan funds;

(ii) Mazur and Lutsenko, as the controlling minds behind Einer SARL, NSB and GLB, provided East Guardian with falsified records to conceal the actual use of the loan funds; and,

(iii) Contrary to his undertaking, Mazur was and is the subject of numerous legal proceedings wherein he has either been found or alleged to have used his vast corporate web as a single economic entity to defraud creditors;

(r) When confronted with the fraud, Mazur and Lutsenko did not deny their dishonesty, but admitted to misusing the loan funds and attempted to negotiate further advances from East Guardian which would permit them to commence operations through GLB to repay the outstanding $21 million;

(s) On May 29, 2014, Mazur sent East Guardian a report on the state of the East Guardian Loans admitting that at least $12 million of the loan funds had been used for purposes contrary to the terms of the loan;

(t) In a recent judgment of the Superior Court in *Petro-Diamond Incorporated v. Verdeo Inc.*, 2014 ONSC 4538 ("*Petro-Diamond*)", the Honourable Wilton-Siegel J. concluded in respect of another transaction involving Mazur that, "This motion is proceeding against the backdrop of the Court's determination in the Endorsement that the applicants have established a strong *prima facie* case of fraudulent transfer in respect of the Orense Transaction in which Mazur was a knowledgeable participant."

Mazur Restructures to Protect His Assets

(u) In March 2014, Mazur effected a restructuring of the companies under his direction and control in an effort to protect his assets by moving them offshore to be held directly and indirectly through various corporate shells;

(v) Pursuant to share transfer and assignment agreements entered into by Mazur and other parties, companies under Mazur's control, including GLB and Orense, were consolidated into Reneos, a company incorporated in England;

(w) As a result of these transactions, Reneos came to own the shares in GLB and NSB;

(x) The restructuring was not permitted under the terms of the East Guardian Loans;

(y) Mazur remains the ultimate beneficiary of the assets held by Reneos;

Mazur's Assets

(z) Mazur presently rents a home located at 50 Lawrence Crescent in Toronto Ontario for $15,000 per month, the rent for which is paid out of funds that Mazur has in an account at the Scotia Bank held jointly with his wife;

(aa) Mazur has admitted to having cash, which includes proceeds of the transactions he has been involved in and the liquidation of his offshore and overseas assets, including:

(i) In August 2013, the sale of Mazur's property at 32 Stratheden Road in Toronto for $2.8 million;

(ii) In May 2014, the sale of Mazur's property at 10 Cedarwood Avenue in Toronto for $2.9 million;

(iii) In May 2013, the sale of a property in Florida for $1.3 million by Banyan Villas LLC which is believed to be owned by Mazur through Praveen Investing Ltd., a British Virgin Islands registered company which is believed to own a number of other companies for the benefit of Mazur; and

(iv) The sale of one of Mazur's companies to Research in Motion for tens of millions of dollars by Mazur's own account;

(bb) Mazur also has interests in a number of corporate entities over which he exercises control from Ontario, including:

(i) Reneos which is at least 50% owned by Mazur and in turn owns the shares of GLB and NSB;

(ii) Einer Canada which is controlled by Mazur and a sister company and possible shareholder of GLB and wholly owns Bioversel Trading;

(iii) Spectrum Chemicals Inc.;

The UK Freezing Order

(ee) East Guardian recently commenced proceedings against Mazur and Lutsenko in the High Court of Justice Chancery Division in England where on September 22, 2014, the Applicant obtained a "Freezing Injunction" against the Respondent and Lutsenko *ex parte* (the "UK Freezing Order"), which is attached hereto as Schedule "A";

(ff) Pursuant to the UK Freezing Order, among other things, Mazur must not remove from England or Wales any of Mazur's assets up to a value of $23,000,000 and is prohibited from removing, dealing with, disposing or diminishing the value of his assets in certain companies in which he has an interest;

(gg) The evidence referred to above and contained in the affidavit of Erik Wigertz in support of the East Guardian Application demonstrates that the relief sought in the East Guardian application is necessary to protect the interests of East Guardian;

The Heridge Receivership

(hh) The Applicant, HERIDGE S.A.R.L. ("Heridge") alleges that it is a secured creditor of the Respondents;

(ii) Heridge has alleged that GLB's cash has been misappropriated for personal use;

(jj) There is outstanding litigation against GLB and Mazur by other plaintiffs in which fraud is alleged;

(kk) East Guardian has a strong case that Mazur has engaged in fraud and that, without the expansion of the Receiver's powers, East Guardian's right to recovery will be in serious jeopardy;

(ll) The Receiver is necessary to determine the rights of creditors to the assets of GLB and Mazur;

THE FOLLOWING DOCUMENTARY EVIDENCE:

(a) The affidavit of Erik Wigertz, the chairman and a director of East Guardian, affirmed September 22, 2014;

(b) The affidavit of Erik Wigertz to be affirmed.

(c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Tab A

Schedule "A"

**FREEZING INJUNCTION **

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
Before the Honourable Mr Justice Morgan
22 September 2014

And
IN THE MATTER OF THE ARBITRATION ACT 1996
IN THE MATTER OF AN INTENDED ARBITRATION CLAIM

BETWEEN:

EAST GUARDIAN SPC

Applicant

- and -

(1) ARIE MAZUR
(2) CONSTANTIN LUTSENKO

Respondents

PENAL NOTICE

IF YOU ARIE MAZUR AND IF YOU CONSTANTIN LUTSENKO DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

THIS ORDER

Morgan

1. This is a Freezing Injunction made against Arie Mazur ("the First Respondent") and Constantin Lutsenko ("the Second Respondent") on September 2014 by Mr Justice [ ] on the application of East Guardian SPC ('the Applicant'). The Judge read the Affidavit listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.

2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 12 below.

3. There will be a further hearing in respect of this order on 15 October 2014 ('the return date').

4. If there is more than one Respondent-

   (a) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and

   (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

FREEZING INJUNCTION

5. Until the return date or further order of the court, the Respondent must not –

   (1) remove from England and Wales any of his assets which are in England and Wales up to the value of USD 23,000,000; or

   (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

6. Paragraph 5 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

7. This prohibition includes the following assets in particular –

   (a) Any money standing to the credit of any bank account, including any accounts held by the First Respondent or the Second Respondent;

   (b) Any interest under any trust or similar entity including any interest which can arise by virtue of the exercise of any power of appointment, discretion or otherwise howsoever:

   (c) such interest as the First Respondent may have in Reneos Ltd, a company registered in the United Kingdom;

   (d) such interest as the First Respondent may have in a property investment company Global Horizons Group, SPV's established in Florida, USA GHG042 LLC, GHG042A LLC, and Banyan Villas LLC, and any properties acquired or held by those companies or SPV's;

   (e) such interest as the First Respondent may have in a Cypriot company called Orense Investments Ltd;

   (f) such interest as the First Respondent may have in a BVI-registered company called Praveen Investing Ltd;

   (g) such interest as the Second Respondent may have in Reneos Ltd, a company registered in the United Kingdom;

   (h) such interest as the Second Respondent may have in NK Prospekt, a company registered in SARATOVSKOY OBLASTI;

   (i) the Second Respondent's property known as 101 Warren Street, Unit 590, New York, NY 10007 or the net sale money after payment of any mortgages if it has been sold;

   (j) the Second Respondent's property known as 7123 Fisher Island Drive, Unit 7123, Miami Beach, FL 33109 or the net sale money after payment of any mortgages if it has been sold;

(k) the Second Respondent's property known as 1-iy Smolenskiy pereulok, d. 17. Kv. 75 or the net sale money after payment of any mortgages if it has been sold;

(l) the Second Respondent's property known as Ul. Nikolayeva, d. 4, kv. 9 or the net sale money after payment of any mortgages if it has been sold.

8. (1) If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in England and Wales exceeds USD 23,000,000 the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above USD 23,000,000.

(2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed USD 23,000,000, the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above US$7,300,000.

PROVISION OF INFORMATION

9. (1) Unless paragraph (2) applies, the Respondent must within 3 working days of service of this order and to the best of his ability inform the Applicant's solicitors of all his assets worldwide exceeding USD 10,000 in value whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

10. Within 7 working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.

EXCEPTIONS TO THIS ORDER

11. (1) This order does not prohibit the Respondent from spending //$2000// a week on his ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.

(2) This order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of buisness.

(3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

(4) The order will cease to have effect if the Respondent –

(a) provides security by paying the sum of USD 23,000,000 into court, to be held to the order of the court; or

(b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

COSTS

12. The costs of this application are reserved to the judge hearing the application on the return date.

VARIATION OR DISCHARGE OF THIS ORDER

13. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

14. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

15. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

16. **Effect of this order**

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

17. **Set off by banks**

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order

18. **Withdrawals by the Respondent**

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

19. **Persons outside England and Wales**

(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –

(a) the Respondent or his officer or agent appointed by power of attorney;

(b) any person who-

(i) is subject to the jurisdiction of this court;

(ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

20. **Assets located outside England and Wales**

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with –

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

Service out of the jurisdiction

21. The Applicant has permission to serve:

(a) This Order, together with a copy of the Affidavit listed in Schedule A hereto; and

(b) The Arbitration Claim Form

on the First Respondent out of the jurisdiction by (a) prepaid post to 50 Lawrence Crescent, Toronto, Ontario, Canada, M4N 1N2 and (b) by email at a@einerenergy.com

and on the Second Respondent out of the jurisdiction by (a) prepaid post to M. Novopeskovski 8-36, Moscow 121099, Russian Federation and (b) email at constantin.lutsenko@einerenergy.com

(c) The First Respondent has 22 days within which to acknowledge service.

(d) The Second Respondent has 21 days within which to acknowledge service.

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to –

Fifth Floor, The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL quoting the case number. The telephone number is 020 7947 6322.

The offices are open between 10am and 4.30pm Monday to Friday.

NAME AND ADDRESS OF APPLICANT'S SOLICITORS

The Applicant's solicitors are:-

Asserson Law Offices
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London W1U 2RU
Telephone: +44 0203 150 1300
Fax: +44 0203 150 0391

Out of hours: Trevor Asserson by telephone +972 54 2001491
By email to trevor@asserson.co.uk

Yisroel Hiller by telephone +972 54 9473808
By email to yisroel@asserson.co.uk

SCHEDULE A

AFFIDAVIT

The Applicant relied on the following affidavit–

1. Erik Wigertz sworn on 22 September 2014.

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.

(2) The Applicant will issue the arbitration claim form as soon as reasonably practicable. As soon as appropriate the Applicant will issue and serve points of claim in the arbitration in the form of the draft produced to the court claiming the appropriate relief.

(3) The Applicant will serve upon the Respondent together with this order as soon as practicable –

(i) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application; and

(ii) the arbitration claim form; and

(iii) an application notice for the continuation of the order.

(4) Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.

(5) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.

(6) If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

(7) The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

(8) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales, or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets, save for in Canada.

NAME AND ADDRESS OF APPLICANT AND RESPONDENT

Applicant:

EASTGUARDIAN SPC
c/o Maples Corporate Services Ltd., P.O. Box 309
Ugland House, South Church Street, Grand Cayman KY1-1104
Cayman Islands.

Respondent:

(1) **ARIE MAZUR**

50 Lawrence Crescent, Toronto, Ontario, Canada, M4N 1N2

(2) CONSTANTIN LUTSENKO

M. Novopeskovski 8-36, Moscow 121099, Russian Federation

September 23, 2014

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Respondent

Tab B

Applicant
E Wigertz
1st Affidavit
Exhibit EW1
22 September 2014

Claim No.:

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVSION

AND

IN THE MATTER OF THE ARBITRATION ACT 1996
IN THE MATTER OF AN INTENDED ARBITRATION CLAIM

B E T W E E N:

EAST GUARDIAN SPC

Applicant

- and -

(1) ARIE MAZUR
(2) CONSTANTIN LUTSENKO

Respondents

I, ERIK WIGERTZ, of East Guardian SPC, c/o Maples Corporate Services Ltd., P.O. Box 309, Ugland House, South Church Street, Grand Cayman KY1-1104, Cayman Islands, **STATE [redacted]:**

1. I am the chairman and a director of the Applicant company, East Guardian SPC ("**EG**"); following this application EG intends to commence arbitration proceedings against the Respondents, amongst others, to recover the loss caused as a result of the Respondents' failure to ensure the repayment of loans which they personally guaranteed in the cumulative capital sum of USD 21,000,000.

2. I make this affidavit in support of EG's without notice application under section 44(3) of the Arbitration Act 1996 for a Worldwide Freezing Order against the Respondents in the maximum sum of USD 23,000,000 (comprising principal, interest and costs) which EG seeks to recover in the intended arbitration proceedings.

3. I have had an ongoing involvement in the commercial relationship with the Respondents and the companies with which they are associated since the outset. Save where otherwise indicated, the matters to which I attest in this

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affidavit are within my own knowledge and are true to the best of my knowledge and belief. Where the facts and matters to which I refer are otherwise than within my own knowledge, I identify the source of the information which is true to the best of my knowledge, information and belief.

4. Where I refer to documents I exhibit true copies hereto in an exhibit marked "**EW1**". All page references refer to pages in that exhibit

The Basis for the Application

5. As I set out in more detail below, the Respondents each personally guaranteed the repayment of a number of loans made by the Applicant between April 2013 and March 2014 to Einer Energy SARL (**"Einer"**), a Luxembourg Company, and to its former subsidiary, North Sea Biodiesel AS (**"NSB"** formerly known as Uniol AS), a Norwegian private limited company (collectively "**the EG Loans**"). The cumulative sum of the EG Loans amounted to USD 30,000,000; capital of USD 21,000,000 and interest of USD 939,652 was due to be repaid on 23 August 2014 but none of that amount was repaid and that amount of the loans are in default. The outstanding loan interest stands at USD 1,268,244.

6. Each of the EG loans was made for the limited and very specific purpose of funding trade contracts. It was an express term of each facility that it was to be used specifically for the purchase of feedstock for refining into biodiesel in Norway, the refining of biodiesel, and transportation and sale to customers on the world market.

7. It has recently come to the attention of EG that the Respondents, who direct and control the activities of Einer and NSB, have not only knowingly paid complete disregard to the express restrictions as to the use of the loan finance that EG was prepared to advance, but also deliberately concealed that conduct and misled EG as to the use of its funds. In particular:

   7.1. The Respondents have been responsible for the misapplication or misuse of a substantial part of a USD 17,500,000 facility and have authorised or procured the use of some of the money for purposes expressly refused by EG (paying down loans on an associated company), inconsistent with the trading mandate of EG's assets and trade portfolio (investment in fixed no income producing assets) and for other purposes which remain unknown.

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

7.2. The Respondents have been responsible for the misappropriation of the loan facility of USD 3,500,000 granted to NSB earlier this year.

7.3. All or almost all of the USD 21,000,000 outstanding has been removed from Einer and NSB, which are unable to repay the Loans. We have yet to establish precisely where our funds went.

7.4. The Respondents caused false "use of funds" records to be generated and provided to EG over a period of months, concealing from EG that the funds were being misused and enabling that continued misuse to go unchecked.

7.5. It was only when we noticed a discrepancy in May 2014 and started asking a series of questions about the use of the funds and the available assets of Einer and NSB that we discovered the extent to which we had been deliberately misled and the exposure which we faced. Equally it was only after we had started asking questions that the Respondents admitted in part what they had done and indeed accepted that that they had acted dishonestly.

7.6. Since that unhappy discovery EG has been seeking to explore every available avenue to ensure that its exposure is minimised and its potential losses are recouped; we have viewed litigation very much as a last resort and have engaged in discussions over the summer with the Respondents to seek to reach a satisfactory commercial resolution.

7.7. I understand that I am not able to set out the terms of our discussions as they may be privileged; however I am able to say that it has become clear that there is now no realistic alternative than for EG to take steps to commence arbitration and enforce its awards.

7.8. Since the borrowing companies have no means of repayment, and EG's other security (a guarantee from Great Lakes Biodiesel ("**GLB**"), the refining company which the Respondents operated in Canada) may be difficult to realise or in any event be insufficient, claims need to be made and enforced against the Respondents.

7.9. EG has recently discovered a number of further disturbing pieces of information which, coupled with the conduct of the Respondents in their dealings with and towards us, have led us to the view that it is necessary to make this application if there is to be any realistic prospect of EG enforcing an award. In particular:

7.9.1. The Respondents have concealed from EG that the First Respondent, Mr Mazur, is the subject of a number of significant financial claims in both the US and in Canada which allege, inter alia, that he has taken steps to put assets beyond the reach

of corporate creditors by fraudulent transactions and suggest a pattern of dealing which causes genuine concern that Mr Mazur is an individual who is likely to dissipate or secrete his assets in order to avoid the enforcement by EG of an award.

7.9.2. The Respondents had repeatedly warranted that there were no pending claims against themselves at all as one of the conditions for obtaining loans from EG; it is apparent from the information that we have now obtained in relation to the pending litigation against Mr Mazur that the warranty was at all times untrue, which the Respondents must both have known;

7.9.3. GLB, the one valuable asset in which the Respondents are interested whose whereabouts can be readily identified, and which itself gave a guarantee in respect of Einer's indebtedness, has recently been made the subject of a Receivership order by the Ontario Court with a return date fixed for 24 September 2014. The Respondents did not disclose that GLB was likely to be or was the subject to the Receivership Order; this has been a further independent discovery on our part.

7.9.4. Mr Mazur appears to have realised a number of his property assets within the last year. In addition, the home which he until very recently occupied in Toronto (which was registered in Mr Mazur's wife's name) was sold in May 2014, around the time when we learnt of the Respondents' activities.

8. EG is concerned that unless the Respondents are restrained from dealing with their assets up the value of the arbitration claims, and obliged to disclose the location of their assets so that adequate steps can be taken to secure those assets pending the enforcement of any award, there is a very real risk that the Respondents will take steps to put assets beyond, or further beyond, EG's reach, whether by dissipation or secretion. EG believes that a worldwide freezing order is necessary to ensure that an award is not rendered worthless.

9. Our reasoning is that EG has been the victim of conduct on the part of the Respondents which can only (and fairly) be described as plainly dishonest. Had EG not been repeatedly deceived by the Respondents in relation to the use to which the loan funds were being put and in relation to the risk to which EG was being exposed by investing in companies on the security of their personal guarantees, EG would not in my view find itself in the present position of having to try and rescue itself from a very substantial loss.

10. EG has lost all confidence in the bona fides of the Respondents and take the view that the Respondents' recent conduct has been driven by a desire to delay the commencement of proceedings rather than a genuine desire to meet their liabilities.

11. The cynical disregard that the Respondents have shown towards their contractual obligations to EG, the extent to which they deliberately sought to conceal that conduct from us and the more recent revelations, including of the extent to which they have been prepared to permit the true position to be misrepresented to us, leave us in little doubt that both the First and Second Respondent are a genuine dissipation risk and cannot be trusted to preserve their assets to meet what is a claim to which there is as far as I am aware no possible defence.

12. It is against that background that this application is now made.

Personal and Professional Background

13. I am a Swedish national and was brought up and educated in Sweden. In 1996 I received a Master of Science in Business Administration and Economics from the Stockholm School of Economics in Stockholm, Sweden. In the same year I moved to Moscow, Russia, and between 1996 and 2006 I was a director and partner at major banks in Moscow, including UBS Brunswick and UFG Deutsche.

14. In 2011 I joined EWI Capital and was appointed as the Chief Investment Officer of EWI Capital and the president of East Guardian Asset Management AG (EGAM). EGAM is an investment management company that manages EG, a segregated portfolio company which holds funds ultimately owned by a single investor.

15. In addition to being chairman and a director of EG, I am also presently the chairman or a member of the board of various group private equity portfolio companies with a connection to EG including being the Chairman of OOO NGK Gorny, a Russian oil company with production in the Timan-Pechora region.

16. I have extensive experience in the oil and gas industry, having been head of oil and gas research at UBS Brunswick and head of research at UFG Deutsche [EW1: 1-2].

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The Parties

17. EG is a segregated portfolio company established under the laws of the Cayman Islands with a registered address and headquarters at c/o Maples Corporate Services Ltd., P.O. Box 309, Ugland House, South Church Street, Grand Cayman KY1-1104, Cayman Islands.

18. EG consists of a number of private portfolio investment funds which invest in securities, real estate and private equity and also provide debt financing to trading companies.

19. The EG Loans were issued by one of the segregated portfolios managed by EG called the East Guardian Asset and Trade Finance Fund Segregated Portfolio (formerly known as the East Guardian Real Property Segregated Portfolio), although legally each loan is with EG [EW1: 3].

20. The First Respondent, Mr Mazur, is a Canadian national currently residing at 50 Lawrence Crescent, Toronto, Ontario, Canada, M4N 1N2. As I set out in greater detail below, Mr Mazur is one of the beneficial owners of shares in Einer, and indirectly now one of the beneficial owners of NSB, the companies which borrowed funds from EG. He is also a director and indirect owner of GLB.

21. The Second Respondent, Mr Lutsenko, is a national of the United States of America residing at M. Novopeskovski 8-36, Moscow. 121099, Russian Federation. Mr Lutsenko is one of the beneficial owner of shares directly in Einer and indirectly in NSB. He has an indirect interest in GLB and is Mr Mazur's business partner.

The relationship between Einer, NSB and GLB and the Respondents

22. To the best of my knowledge and belief, regardless of whether they were formally officers or not, at all relevant times, the First and Second Respondents exercised de facto control over all of the entities relevant to our commercial relationship, namely Einer, NSB and GLB, and directed their operations and their interactions with EG.

23. Whenever I communicated with either of the Respondents they spoke and acted as though they ran Einer, NSB and GLB; they negotiated all the EG Loans; they spoke to me as owners of each of the companies, and of their personal plans for them. When I visited both Einer and GLB and walked around the plant of each, all the other people present behaved towards the

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

Respondents as though they were "the boss." When I spoke with others at any of those companies they deferred to the Respondents. As I set out below, Einer's CFO, Mr Kalra, I know took his instructions from Mr Mazur.

24. Equally it appeared clear from their actions that the Respondents controlled the companies in the Einer group. By way of example, on 21 September 2013, Mr Mazur sent EG a proposal he and Mr Lutsenko were considering for the restructuring of the various companies involved in the Respondents' operations in Canada and Norway which involved shifting control and ownership of all group companies, including Einer, NSB and GLB, to a holding company in the UK [EW1: 4-9].

25. The precise nature of the legal relationship between the Respondents and the various companies under their control is not clear, but I believe the position to be as follows

    25.1. All of the EG Loans were made to Einer. Einer Energy Holdings SARL in Luxembourg was the holding company for Einer and Uniol AS (later NSB) [EW1: 10-11; 16]. NSB (Uniol) was solely owned by Einer, and served as a cost centre for Einer's European refining operations. Einer also maintained a branch in Geneva to manage its trading and financing matters, as well as a branch in Canada responsible for sales [EW1: 10; 16]. In 2011, the Einer group took over Bioversel in Canada, and renamed it GLB [EW1: 10]

    25.2. At the outset of our commercial relationship Mr Lutsenko was a "*Manager Category A*" of Einer. Mr Mazur and Mr Lutsenko signed the first three loan agreements as "Directors" of Einer Energy SARL [EW1: 38; 58; 80]. It may be that this formally changed at some later point as some of the loan agreements were signed only by Mr Lutsenko, as a *"Manager Category A"* which I believe to be equal to the role of a director in Luxembourg [EW1: 100; 107; 110].

    25.3. It was also always clear to EG that Mr Mazur was a director and the controlling person behind GLB and the operations in Canada. Mr Mazur has always claimed to me to have been a founder and director of GLB [EW1: 111; 119]. I believe that as between Mr Mazur and Mr Lutsenko, Mr Lutsenko had greater responsibility for the European business operation and Mr Mazur for the Canadian business.

    25.4. So far as concerns NSB, I do not know whether either of the Respondents was formally a director, although I do know that it was the Respondents who committed NSB to business with EG and, as was plain, controlled the business of NSB and directed the use of funds derived from the EG Loans which were transferred to NSB (this

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

was confirmed by the Respondents in our telephone conversation on 29 May 2014 to which I refer in detail below).

25.5. In March 2014 the Respondents effected a restructuring of all of these various companies, in line with the proposal Mr Mazur had made in September 2013 to Richard Creitzman, a consultant for EG [EW1: 4-9]. Pursuant to various share transfer and assignment agreements entered into by the Respondents and other parties [EW1: 151-159; 160-174; 175-200], various companies were consolidated into a company incorporated in England, Reneos Limited ("Reneos") [EW1: 123] and Reneos became the 99.5 per cent shareholder in GLB and NSB [EW1:162].

25.6. The shareholding structure in Reneos is set out below and is derived from the various share transfer documents that the Respondents have provided [EW1: 123-150; 151-159; 160-174; 175-200]:

25.6.1. 50 per cent of Reneos is owned by Mr Mazur through a Cypriot company Orense Investments Ltd, in which we believe Mr Mazur has a substantial interest, allegedly with other partners. In the US proceedings against Mr Mazur to which I refer below, it is alleged that Orense was one of the recipients of a series of fraudulent transfers of funds from Verdeo Inc. This latter company, registered in Delaware, is described in that litigation as Mr Mazur's "*personal piggy bank*" [EW1: 222]

25.6.2. The Second Respondent owns 16.66 per cent of the shares in Reneos [EW1: 163; 182] through a company called Sovereign Sales & Commerce Ltd. The remaining shares in Reneos are owned equally by Argali Holdings, which is owned by Gunnar Nordsletten, who is known to EG and a relative of EG's principal, and Thinkpulse Ltd., which is possibly owned by an individual called Alexander Lubawin [EW1: 18-19]. In various conversations with the Respondents, the precise dates of which I do not recall, the Respondents have told me that Gunnar and Lubawin are their business associates.

Summary of the EG Loans and background

26. For reference the EG loan agreements and their details are set out in the table below.

	Guarantors	Borrower	Repayment Date	Date	

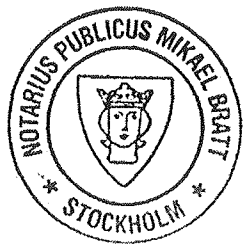
NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

Amount (USD)					
4,500,000	Great Lakes Biodiesel Inc.	Einer	17-05-13	03-04-13	**Loan 1**
Total: **10,500,000**	Mr Mazur Mr Lutsenko	Einer	20-11-13	22-05-13	**Loan 2:**
Increase of 7 000,000 Total: **17,500,000**	Mr Mazur Mr Lutsenko	(1) Einer (2) Uniol (NSB)	23-08-14	23-08-13	**Loan 2: Increase**
3,500,000	Mr Mazur Mr Lutsenko	(1) NSB (2) Einer	23-02-15	24-02-14	**Loan 3**
Increase of 9,000,000 Total: **12,500,000**	Mr Mazur Mr Lutsenko	(1) NSB (2) Einer	23-02-15	26-03-14	**Loan 3: Increase**

27. At the outset I should explain that the reason that we imposed strict restrictions on the use of funds in the EG loan agreements is that EG and its portfolios are subject to internal policies and restrictions which limit the types of assets for which EG will provide financing. The policy and mandate of EG's asset and trade portfolio, a copy of which is at [EW1: 259], is to invest only in existing assets; its official "investment objective and strategy" profile notes that:

> *"The fund will not invest in assets where upside primarily will come from development or re-development...."*

28. The thinking behind this particularly strategy is that EG only invests in existing or producing assets which can provide investment income in return. Where proper security arrangements are in place EG can effectively trace its loan funds all along the customer journey. It will see the purchase contract for raw material and the cost of work to the material within the borrower company – here Einer – as value is added. It will also follow the product, through cost of shipping and to the eventual purchaser, having seen the purchase contract. Thus the finance is relatively safe throughout – absent fraud. Value is added which should both cover the interest and costs and



also provide some profit for the borrower. At all times the use of funds can be reasonably closely identified with particular stock or product.

29. This is quite typical of the form which trade finance takes. It is very different to funding something such as the building of plant at a new factory. Investing in a new factory leaves the money far more exposed. Any difficulty which arises could result in a project being slowed down, even halted, and the investment is then stuck until the project can be re-commenced, finished, and production begins. This is an entirely different type of risk which EG was not interested in investing in.

30. I was the principal person negotiating the loans with the Respondents on behalf of EG at the outset. Later we hired Mr Creitzman, who has experience at trade finance, and he took responsibility for negotiating the EG loans. I worked with Mr Creitzman and I have discussed the content of this statement with him before it was signed. He has confirmed to me that it is accurate so far as he is aware.

31. Both I and Mr Creitzman at all times made it clear to the Respondents that EG was only interested in trade finance. The Respondents both frequently invited GB to invest in GLB, and in the biodiesel plant in Canada which was in the process of construction and/or to become shareholders in the group of companies. Both Richard and I made it clear that EG only wanted to lend for trade finance and did not want to lend to finance an asset which was still under development.

32. This was expressly incorporated as a term of all of the loan agreements following the initial loan which defined the permitted activities for which the loan can be used as limited to the

> *"...financing of the Borrower's business activities, specifically the purchase of feedstock for refining into biodiesel in Norway, the refining of the biodiesel, and transportation and sale to customers on the world market."*

33. Similarly, clause 11.8 of the May 2013 loan agreement for the EG Loan dated 23 August 2013, contained an undertaking by the Respondents and Einer to ensure that all funds provided by EG pursuant to the agreement are used only for Einer's defined business activities in Norway and are not used in connection with the operations of Einer's affiliated companies in Canada [EW1: 52].

34. Given the clarity of our discussions as to the use of funds and of the contracts which we agreed, neither of the Respondents nor the companies which they operated could have been in any doubt as to the nature of the commercial relationship which EG was prepared to commit to. We were prepared to lend for trade finance for specific trades which offered security as to the use of the monies lent and could generate the income necessary to ensure repayment both of principal and our return. It was disconcerting against that background to learn that despite knowing, and we thought accepting, EG's clear instructions, the Respondents ignored the restrictions we had agreed and have used the greater part of the loan funds for purposes which we had either specifically refused, were inconsistent with our investment policies and in all cases were not permitted by the loan agreements.

EG's Loan History

35. In the early part of 2013, EG was approached by Mr Lutsenko, who requested that EG provide a loan to Einer which Einer could use as working capital to operate a biodiesel processing facility owned by NSB and located in Norway. EG's initial introduction to Mr Lutsenko was made by Gunnar Nordsletten (**"Gunnar"**), who was a minority shareholder in Einer. Gunnar is related by family to the beneficial owner of EG and EGAM and he expressed a view that both Mr Mazur and Mr Lutsenko were reliable. I have no doubt that he believed that to be the case. Gunnar's recommendation was certainly influential in the initial decision to lend.

36. "Biodiesel" is a fuel additive made by processing rapeseed or other organic oils, blending it with chemicals and then combining it with ordinary fossil or diesel fuel. NSB's facility in Norway processes rapeseed and canola oil to create "biodiesel" which is a mandatory component in regular diesel products in markets in North America and Europe.

37. I met the Respondents and discussed their investment proposal. Mr Lutsenko and Mr Mazur told me that the Norwegian processing plant was not presently operational due to insufficient working capital, but that they believed that if EG provided an injection of working capital through a credit facility the plant could be operational and profitable in short order. When talking to them they seemed to understand the business and to be experienced and they gave me the impression that they were knowledgeable and credible.

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

38. Although the Respondents sought a substantial initial loan of USD 10,500,000, the loan which EG was prepared to contemplate was for a smaller sum of USD 4,500,000 made against a distinct trading contract with Bunge Europe showing that Einer would be selling sufficient inventory to third parties to be profitable and capable of repaying the loan [EW1: 260-261].

39. The loan we had in mind, as was ultimately agreed by the parties, would be due for repayment after 45 days, which was based on the period of time Einer needed to purchase raw materials, process them, and sell them to third parties under trading contracts. Einer would then use the proceeds of these sales to repay the loan. The structure of tying a short term loan to specific trades provided us with security that the EG Loans would be repaid.

40. I explained that EG would only lend at expensive rates, 20%. The Respondents both explained that they were in the process of negotiating longer term financing in the form of a facility of c USD 30,000,000 with BNP Paribas and that in the meanwhile they could afford to pay the 20% financing. Indeed Mr Mazur showed me a draft agreement between Einer and BNP pursuant to which BNP would potentially be providing a maximum of USD 37,000,000 in financing to Einer [EW1: 262-274].

41. EG agreed to provide an initial loan of USD 4,500,000 to Einer on 3 April 2013 so that Einer could use the loan to fund the operations of its Norwegian plant. The loan was repayable, together with accrued but unpaid interest, by 17 May 2013 [EW1: 22-38]. This short term loan for the period of a single trade cycle is typical for trade financing loans.

42. During this period, April to May 2013, I was aware that Einer was in the process of finalising the construction of a similar biodiesel plant in Ontario, Canada, to be ultimately owned and operated by GLB, and it was GLB who provided a guarantee on behalf of Einer in connection with the USD 4,500,000 loan referred to above [EW1: 275-285]. We were content with a guarantee from GLB. For future loans of larger amounts we required additional security and the Respondents offered to provide personal guarantees for the loans as I set out below.

EG increases the loan to Einer in May 2013

43. By late April 2013 the initial loan seemed to be performing; we had lent against specific trades, indeed, I had personally authorized payment direct to the seller of the soya oil that was acquired, and it accordingly seemed

reasonable to consider an increase of the amount of the loan to USD 10,500,000 in accordance with the initial request.

44. I decided that I should visit the GLB offices and plant in April 2013.

45. I could see that the plant was a genuine plant, and looked in reasonable condition. Having worked as an oil and gas analyst and having inspected numerous oil refineries previously in that capacity I felt reasonably able to form a view. I spoke to a few people at the offices adjoining the plant as well as to Mr Mazur himself. We also discussed the general operation and business plan of the Canadian-Norway operations. I also looked at GLB's balance sheet and management accounts to evaluate it as a trading company for potential investment and considered that GLB was a potentially valuable asset, although it was not doing any trading at that time.

46. I also prepared a more formal due diligence report directed at the continuation of the business relationship. A copy of the report that I prepared is at pages 10 to 14. As can be seen there were a number of factors which I considered to be relevant to the decision making, in particular:

46.1. the purpose of the loan request was to enable Einer to build up a sufficient operating history to enable the negotiation of a loan from BNP Paribas, at lower rates than EG was prepared to offer;

46.2. there were risks attached to our lending which were not negligible, including risk of default on a loan from Raiffeisen to NSB and risk of litigation in Canada in relation to historical conduct of GLB in dealing with RIN credits (Renewable Identification numbers which need to be purchased by US operators in the biodiesel market in order to operate legally). I noted at the time that what I had been able to establish was that Mr Mazur was someone who appeared to sail close to the wind and was not shy of "stretching the envelope";

46.3. overall, however, I was persuaded that the business case was sound in particular because:

46.3.1. although there were risks associated which I spelled out, it appeared that there was no litigation pending and that it was unlikely that Raiffeisen would foreclose;

46.3.2. we were able to minimise risk by lending against specific trades (as had been done with the initial loan);

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

46.3.3. the cycle of purchasing feedstock to refining to sale was 40 days and we therefore ought to have had fair warning if anything was untoward within 45 days;

46.3.4. the limit of the credit was relatively small for our business.

47. I would draw attention to a number of further points that I noted at the time. First I considered that the collateral over the Canadian plant owned by GLB would be difficult to enforce; second, I recommended that we made sure that we did not finance the GLB plant and only offer trade finance for the operation to build up a track record.

48. As a consequence of my recommendations, we included a number of requirements in the contract and sought additional security from the Respondents. The Respondents themselves offered to provide personal guarantees of the credit line.

49. Although we did not require the Respondents to provide us with proof of their assets, we felt that we could rely on their offer to provide personal guarantees because the Respondents assured us that they had sufficient funds to meet the guarantees. In particular, the First Respondent informed us that he had sold one of his companies to Research In Motion (RIM-Blackberry) and made tens of millions of dollars from the sale and later also continued to work for RIM-Blackberry. In addition, Gunnar told us that the Second Respondent had been the representative of Rompetrol in Russia and had made a substantial sum on the sale of that company to KazMunaiGaz.

50. So far as concerned the contract, that reflected the recommendations and requirements which I had identified. It therefore contained:

50.1. An express restriction to use for specific trade (as I have set out above): Recital B (page 41);

50.2. An express obligation to assign by way of security the title to the feedstock and refined product prior to sale: the "Security Documents" (page 275-285);

50.3. An obligation that monies drawn down were to be paid into a specific designated account for the purposes of the trades contemplated by the agreement: clause 2.2 (page 45);

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

50.4. An express prohibition against utilizing the funds for the purpose of satisfying any third party claims: eg by Raiffeisen: clause 6 (page 48);

50.5. An express prohibition against further borrowing, the creation of security, and against the use of any of the loan funds for the Canadian operations of GLB: clause 11.8 (page 52);

50.6. A continuing warranty by the Respondents and Einer that there was no litigation, arbitration or administration proceedings before any court, tribunal or agency which to the best of their knowledge and belief had been started or threatened against any of the Respondents or Einer: clause 10.6 (page 50); and

50.7. Personal Guarantees by the Respondents at clause 7.1 (page 48).

51. On 22 May 2013 EG therefore agreed to increase the amount of the initial loan to USD 10,500,000 and entered into a new loan agreement including the above terms which superseded their previous agreement.

Operation of the Facility

52. For the next few months we did get payment of the interest on or near the due date. In support of the application for loans, the Respondents provided trading contracts purportedly entered into between the Respondents' companies and third parties for the purchase of inventory being produced by the Respondents' factory [EW1: 286-294; 295-303]. These documents were in the form that I was used to seeing in the industry. Mr Creitzman, who has more expertise than I do in trade finance, confirmed that they were fairly standard both as to form and content.

53. Significantly, the Respondents provided us with a copy of a trading contract between Uniol (NSB) and Vitol, Inc. dated 1 July 2013 which showed that NSB would be making substantial sales of inventory to Vitol [EW1: 286-294]. After the first loans had been made, we started to receive weekly reports in accordance with the agreement purporting to demonstrate the Respondents' use of EG Loan funds on roughly a weekly basis from June 2013 to May 2014, although these reports were typically 2 to 7 days late. These documents contained the information we had expected to see and related to the trades which we believed were occurring. We were not alerted to any issue or that there might have been any reason to question the reports until the weekly report for 16 May 2014 identified what appeared to be an anomaly, as I set out in more detail below.

54. Between the weekly reports and other updates from the Respondents over time, we felt reasonably secure that the EG Loans were performing, in that they were providing working capital to Einer to make trades and repay the loans and accrued interest. In August 2013 we received a report noting that NSB was making regular sales of inventory and expected to do increased trading in the fall of 2013 through its contract with Vitol [EW1: 304; 305-6; 307-8].

55. We also received documents showing the trades which were supposedly being funded by the EG Loans. Mr Creitzman was responsible for monitoring the loans. The drawdown of funds was immediate, into the NSB account. Although our money was supposed to have been held on a separated account, I understand this was never effected. We were supposed to authorise the use of funds, but we did not have control over the bank account; at the time it was not deemed to be practical due to the number of smaller transactions that they were doing on the account where the money actually was held.

EG increases the loan to Einer further in August 2013

56. A few months after the agreement to increase the loan to USD 10,500,000 Mr Mazur requested that EG further increase the amount of its loan so that Einer (through GLB) could increase its sales of biofuel to the United States market, which was the only market in which Einer operated [EW1: 309]. Mr Mazur represented that for sales to the US market, the cycle to purchase raw materials, process, ship and receive sales proceeds required an additional USD 15-20,000,000 in working capital simply because the customer journey was longer because of the distances. Einer therefore needed further funds to serve as working capital during the longer production / sales period. This was an entirely logical argument which, at the time I found convincing.

57. Mr Mazur re-iterated that he was in the process of finding long-term funding in any event, from BNP Paribas. He assured me that he understood that EG would not lend money for construction work on GLB. He indicated that he would not find difficulty getting finance, but merely that EG was losing a great opportunity to own part of what he was convinced would be a very profitable entity.

58. In assessing the loan performance, we primarily relied on the trading contracts being provided by the Respondents [EW1: 305-6; 307-8] and on the weekly reports identifying use of funds, which from recollection

appeared to show that Einer and NSB were doing increasing trade [EW1: 312-4]. EG was receiving monthly payments of the interest amounts due on the Loans, and this reassured us that the Respondents' businesses were operating well and in accordance with what the Respondents were telling us.

59. EG accordingly agreed to increase the loan to USD 17,500,000 on 23 August 2013 [EW1: 59-81]. Einer and Uniol (now NSB) were joint borrowers of the loan and the loan was again personally guaranteed by both of the Respondents and on the same terms and subject to the restrictions and prohibitions that I have outlined above.

Reports

60. As far as EG was concerned the lending relationship with Einer and NSB continued to operate in accordance with the expected parameters.

61. It might be that the weekly reports and trade contracts sent to us initially matched or to some degree reflected reality. However, as I explain below, by 29 May 2014 it became clear to us that almost all of the funds had in fact been expended on unauthorized purposes. I suspect that some elements of these documents were initially accurate, but as I explain below, they became entirely misleading.

EG's further loan to NSB in February 2014

62. In about February 2014 Mr Creitzman and I were approached by Mr Lutsenko who proposed that EG make a further loan to provide working capital for some of NSB's specific trading operations refining raw material from Cargill for onward sale to Esso and Shell in Norway. This was a separate line of business from the trading/tolling operations which formed the basis for the previous EG Loans.

63. Mr Lutsenko proposed that an initial USD 3,500,000 would be loaned to NSB against specific trade contracts [EW1: 315-7] and it was contemplated that this loan would be increased against future trade contracts if the first loan performed well.

64. Accordingly, on 24 February 2014 EG issued a loan to Einer and to NSB jointly for USD 3,500,000 to be repaid with accrued but unpaid interest by 23 February 2015 [EW1: 82-101]. The loan was on very similar terms to the earlier loans and contained the same restrictions, prohibitions and warranties. The Respondents were again the personal guarantors.

65. This NSB/Einer loan was increased by USD 9,000,000 by way of a further loan agreement signed on 26 March 2014. [EW1: 102-109]. As can be seen from Mr Creitzman's email to Mr Lutsenko at the time, EG was comfortable with an increase in the loan provided the offtakers were the ones stated in the loan agreement and that we received advance information on trading partners. Mr Creitzman made clear that the line was at a maximum and that we would like to be kept informed about refinancing discussions and about whether EG might become co-owners and directly involved in the management of the business [EW1: 318-321].

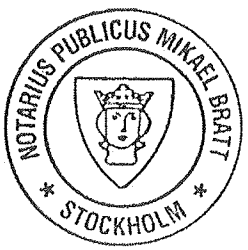
Discovery of the Respondents' misconduct

66. Beginning in the last quarter of 2013 and continuing into the first quarter of 2014, Einer and NSB became less efficient in complying with their reporting obligations under the agreements.

67. In particular, as at October 2013 the Respondents had not yet provided management accounts or audited financial statements as required under section 8 of the Loan agreements [EW1: 48-9]. EG, and in particular, Mr Creitzman, had regularly chased the Respondents for these documents [EW1: 322]. On 4 October 2013 I emailed Mr Mazur to insist that the Respondents provide these documents as they were required to do under the Loan Agreements. Mr Mazur responded the same day promising to send them as soon as they were *"finalized"* [EW1: 323].

68. Mr Creitzman regularly corresponded with Vik Kalra, the CFO of Einer, and Mr Mazur after this to chase for these accounts, but EG ultimately did not receive these accounts until April 2014 [EW1: 327-459]. I do not recall there being any indication in the accounts that alerted us at that time to any suggestion that our loan funds were being misused.

69. Whilst we were concerned by the delay in the provision of financial information during this period, we did not believe that there was any basis for genuine concern about the lending relationship. There had been a reasonable history of performing under the loans; interest had always been paid, and for quite a long period documents had been provided, albeit that document provision had become erratic. Poor document control is not of itself so unusual in the industry. Although our relationship was not perfect, we were comfortable with it and had successively increased the available credit lines on the basis that it was good and appropriate business for EG to undertake



70. However on 16 May 2014 Einer provided a standard report to EG (the "**May Report**") [EW1: 460-464] which appeared to show that Einer had used USD 301,787 of the funds provided by EG in order to pay off the interest due to EG on the loans it provided to Einer. This caused me and Mr Creitzman alarm. This was not a permitted use of the loan funds.

71. Mr Creitzman and I rang Einer's director and CFO, Mr Vik Kalra and asked if this interest payment had been included in error.

72. Mr Kalra confirmed, however, that Einer had, in fact, used some of EG's loans to repay the interest due on the loans. He stated that he assumed that EG was already aware of this and/or that the First Respondent had already told EG that Einer was using the funds to repay the interest due. I do not believe that there is any basis for his believing that anyone at EG was aware of this breach. Mr Creitzman and I were surprised and concerned; we explained that EG was not aware of this use of funds and that the use of the funds to repay interest was a breach of the terms of the loan agreements.

73. Mr Creitzman then quizzed Mr Kalra about the other figures on the report showing the use of funds. The report contained an entry in respect of tolling fees; these are fees which Einer would have paid to the owner of the facility which was processing Einer's product. In this case, that company would have been NSB. However, it emerged in our discussion with Mr Kalra that no production or processing was taking place at NSB; given that there was no processing going on at the plant, there was no reason for Einer to have been paying any processing/tolling fees to NSB.

74. Mr Kalra also explained that although the report listed the value of Einer's inventory as c. USD 5,000,000, in fact Einer had very little raw material or finished product inventory. Richard and I were obviously very alarmed to learn that we had been provided with a report showing substantial inventory when in fact there was little inventory there.

75. Following this call Mr Creitzman immediately wrote to the Respondents setting out our concerns. Rather than summarise I set out below what Richard emailed [EW1: 465]:

> *"Arie & Constantin,*
> *As discussed just now with Vik we are v concerned that out funds under the $17.5 line have been used to pay running costs and interest. This is not part of the agreement. Please ensure the following.*
> *No further payments from the 950,000 cash balance are used.*

The 4 mln hedge amount. We would like to know if this can be unwound and money returned, also details of where funds are and a copy of the hedge report for this week.
An explanation of how you plan to liquidate the 5 mln of raw material and similar amount of finished product at GLB. Also in the meantime a mark to market report valuing all of the stock should also be prepared so we can understand if we need to get more security.
The trading lines totalling 12.5 mln. Please do not make any drawdowns without first informing us and sending us copies of the buy and sell contracts.
Please get back to me asap on all of the above
Regards
Richard"

76. Simultaneously, we initiated an investigation, insofar as we were able to, into the status of the loan funds I asked Mr Creitzman, who had been managing the EG Loans, to investigate. He quickly made two worrying discoveries:

76.1. Firstly, he established in his discussions with Einer and Mr Mazur that the weekly report we had been receiving had a major flaw; the finished product listed was not in fact physical product at all but value attributed to Blenders Credit. A "Blenders Credit" is a tax credit provided by the US government to encourage the production of biofuel. These credits can be sold or traded and so could have value. The problem was that the awarding of Blenders Credits had ceased on 31 December 2013, as the legislation regarding this was not renewed. Although industry participants have talked about these Blenders Credits being retroactively reinstalled in the US sometime in the autumn of 2014, there is no proof of this actually happening and hence the number is more fiction than science. This meant that we were secured only by a future potential receivable which might never materialise.

76.2. Secondly, there was an issue with the entry which had appeared in a number of reports recording a hedge. This in itself had not raised any concerns in EG when it first appeared in the reports as the hedge might have constituted a genuine investment. Richard had been told that a hedge breakdown was being prepared at present but that in order to monetize the hedge Einer needed to sell product, which was not happening. In the event we have not ever received any such breakdown or any explanation of the hedge and we do not know whether this was ever genuine.

77. Mr Creitzman concluded that without Blenders Credits sales were at best break even, but more realistically loss making. He also recorded that Mr Mazur accepted that he had gone "off track".

78. It remained unclear where precisely the loan funds were, whether any funds were remaining, and what the most appropriate remedy was from our perspective, given that we had ongoing exposure to Einer and NSB and were obviously concerned not to make our position worse. We accordingly arranged a call with Mr Mazur and Mr Lutsenko to try and obtain a full explanation as to how the funds had been used and the status of the Respondents' businesses.

79. Richard and I spoke with Mr Mazur and Mr Lutsenko on 23 May 2014. During this call both Respondents confirmed what Mr Kalra had told us: that the EG Loans had been used to repay the interest due on the loans and that the statements regarding inventory in the weekly reports were inaccurate.

80. Mr Mazur also told us for the first time that the Respondents had used approximately USD 3,500,000 of our loan funds to repay a debt owed by NSB to Raiffeisen Bank. This was another unauthorised use of the loan funds which was particularly galling because the Respondents had previously, in or around September 2013, proposed that EG make a separate loan to them to finance their repayment of this debt to Raiffeisen Bank and EG had refused. It therefore appeared that despite EG's express refusal to make funds available for repayment of the debt to Raiffeisen, the Respondents instead simply took funds from the EG Loans to pay this debt.

81. This information was upsetting and worrying; we demanded that the Respondents explain how they were going to repay the EG Loans if, as it appeared, Einer and NSB were not doing any trading and the EG Loan funds had largely been dissipated for unauthorised purposes.

82. We asked the Respondents to provide us with a clear plan for meeting these requests and also fixed another call with the Respondents for 29 May 2014. In advance of this call, on 28 May 2014, the First Respondent sent me an email [EW1: 466-468] in which he stated that he intended to send me a summary of the current position as to how the loan funds had been used by Einer in advance of our telephone call. The First Respondent's email noted that he was taking time to compile the relevant information to ensure that the information he was providing was accurate.

83. On 29 May 2014, the First Respondent sent me an email attaching a report and noting that the attached report was the *"most accurate"* description of the position in regard to the use of the loan funds from EG [EW1: 469-473; 474] (the **"EWI Report"**). The EWI report told a very different story to the reports we had been receiving, including the most recent May Report. In particular:

83.1. The May Report lists Einer's finished inventory as in excess of USD 5,800,000, whilst the EWI Report lists Einer's finished inventory as USD 1,700,000– a reduction of USD 4,100,000;

83.2. The May Report lists the Blenders Credit to which Einer is entitled as at USD 5,260,000 whilst the EWI Report lists the same Blenders Credit as at USD 2,415,000– a reduction of USD 2,850,000.

83.3. The May Report lists the RIN receivables available to Einer as being worth USD 1,647,000 whilst the EWI Report lists the RIN receivables available to Einer as worth only USD 860,000 – a reduction of USD 858,353. "RINs" are generated by a company when it imports biodiesel fuel into the US. RINs (Renewable Identification Numbers) are a method of identifying a quantity of renewable fuel which has been refined. RINs are potentially valuable because the Environmental Protection Agency in the United States requires that oil companies bring a certain amount of renewable fuel to market, a quota that can be reached by either creating biodiesel or by purchasing RINs as offsets.

84. It was clear that we had been misled. Not only that, the EWI Report identified that approximately USD 12,000,000 of the loan funds had been used for unauthorised disbursements, including:

84.1. The payment of c. USD 3,500,000 to reduce the debt owed by NSB to Raiffeisen Bank. This payment was made after I had expressly declined offers to participate in this debt buyback; I suspect now that this payment had been made as far back as in October 2013. An email from Mr Mazur dated 4 October 2013 notes that the Respondents had refinanced the Raiffeisen debt and had made a down payment against the outstanding amount.

84.2. A payment of c. USD 2,417,000 to reduce a debt owed by one of Einer's affiliates to Mercuria, a third party creditor;

84.3. A payment of c. USD 614,000 as the down payment in an auction for the purchase of a biodiesel plant in Estonia. The Respondents used EG Loan funds for this down payment in late 2013 I believe, without informing EG, and then, having won the auction, proposed in November 2013 that EG lend further funds to complete the purchase

of the plant, still without informing us that the EG Loan funds had been used for the down payment. The financing contemplated would have been for 50% of the total purchase price, taking 100% of the shares as security. As the plant had been sold at knock-down value in a bankruptcy auction, we considered such a loan good value with good security. Had it been made, it would ultimately have gone into another of EG's segregated portfolios, one that invests into private equity. The Respondents ultimately did not manage to complete the purchase of the plant and this money was therefore lost;

84.4. A payment of c. USD 1,652,000 to repay interest due on the loans made by EG to Einer. This was obviously much more than we had previously been told.

85. The EWI Report raised as many questions as it answered. I raised all of these items with the First and Second Respondent in the course of our telephone conversation on 29 May 2014. The call was recorded and a transcription of the tape of the telephone call is attached at pages 475 to 486. The Respondents were aware that the call was being recorded. I was in the room with Mr Lutsenko and the automated tape identified that the call was being recorded.

86. By way of summary, during the call:

86.1. Mr Mazur accepted that he was responsible for the reports which had been provided by Einer (including by Mr Kalra) to EG; he made clear, as I expected, that Mr Kalra had been acting on instructions.

86.2. Mr Mazur accepted that the inventory figures listed in the May Report were false; he sought to explain this by asserting that Einer had recorded as positive inventory stock which in fact belonged to a supplier and not to Einer on the basis of an alleged claim against that supplier for faulty feedstock. However, Mr Mazur then admitted that the alleged claim against the supplier had been settled in December so there was no justification at all for retaining the inventory in the report to give the impression that loan funds were in fact invested in such inventory;

86.3. Mr Mazur accepted that what had previously been represented to EG as finished inventory had been replaced by Blenders credits and RIN receivables, and then gave an incomprehensible explanation for the alternation in the figures for Blenders credits and RINs.

86.4. Mr Mazur accepted that EG had been lied to.

86.5. Mr Mazur and Mr Lutsenko stated that if their personal guarantees were called upon they could not repay the entire sums personally within two months.

86.6. Finally Mr Mazur answered as follows to a question put by EG's owner [EW1: 484]:

> **Q:** *So you misused the funds and you didn't actually put us in, er, in any awareness that you were going to do this. So you misled us, you misled Richard, myself and Erik, so we didn't have a clue I mean what was going on with the money. Because the report that you sent to us, the latest reports do not correspond to what you say now."*
>
> ...
>
> A: *"That is a very correct assessment of, er, you know, and er, we could, you're probably right..."*

87. It was obvious to us from this point that Mr Mazur and Mr Lutsenko had behaved dishonestly. Our difficulty was that we remained in the dark about what level of recovery could be expected, and were in an ongoing relationship with ongoing trades, in particular under the NSB/Einer credit line which was also at risk. There was no obvious or easy solution. EG was heavily committed.

88. We left the call on the basis that we would be provided with a concrete proposal by the Respondents as to how we were to be repaid. Mr Mazur had in fact provided a proposal on 29 May 2014 [EW1: 469-473]. That was followed by a further proposal from Mr Lutsenko, Mr Mazur and the other shareholders on 4 June 2014 [EW1 : 487-8]. As we stated in response, this was not what we were seeking as a solution, EG wanted the Respondents to provide a clear and detailed plan for how they would manage to repay the loans.

89. Given that the Respondents had no viable business plan to repay the loan, it appeared to us that the only way to recover the loan funds would be through the only one of the Respondents' business which might have a chance of becoming profitable, GLB.

90. After conducting a further review of the accounts of the Respondents' businesses, we decided to try to persuade the Respondents to allow EG to take over GLB. Once in control, EG could inject further funds into the company to turn it around and make it profitable/marketable. That seemed

to us to be the most likely and expedient way for EG to recover the loan funds.

91. From June to September 2014 EG engaged actively in trying to seek solutions and managing the ongoing relationship. I understand that it is possible that some or all of our communications during this period should not be referred to in this affidavit to the extent that they were with a genuine view towards pursuing a consensual resolution of the issues that had arisen. I should, however, make clear that during this period we remained in communications with the Respondents and that payments in the following amounts were made:

    91.1. USD 712,995 in interest on 11 June 2014;

    91.2. USD 317,708 in interest on 15 July 2014; and

    91.3. USD 9,000,000 of the principal of the NSB/Einer facility was paid on 15 July 2014 from the proceeds of sales by NSB.

The present application

92. As I have stated above, by the beginning of September 2014, we had formed the view that litigation, which we had considered to be very much a last resort, might offer our only alternative. This decision has been prompted by the following:

    92.1. We discovered in late July that the Respondents had concealed from EG that Mr Mazur is the subject of a number of significant financial claims in both the US and in Canada which allege that Mr Mazur has taken steps to put assets beyond the reach of corporate creditors.

    92.2. As I have set out above, the Respondents had repeatedly warranted in the loan agreements that there were no pending claims against themselves at all as one of the conditions for obtaining loans from EG; it is apparent from the information that we have now obtained in relation to the pending litigation against Mr Mazur that the warranty was at all times entirely untrue, which the Respondents must both have known;

    92.3. We also discovered during July that Mr Mazur appears to have realised a number of his property assets within the last year, and that a substantial property owned by his wife in Canada was sold in May 2014. Mr Mazur is now in rented accommodation.

92.4. Then in early September we discovered that GLB, the one valuable asset in which the Respondents are interested whose whereabouts can be readily identified, and which, as I have said, EG considered might offer a solution, had been made the subject of a Receivership order by the Ontario Court with a return date fixed for 24 September 2014. The Respondents did not disclose that GLB was likely to be or was the subject to the Receivership Order to us; this has been a further independent discovery on our part.

92.5. An interim receivership order was entered on 27 August 2014 by the Ontario Superior Court of Justice under case no. CV-14-10672-00CL. A copy of the order is at pages 489 to 505. The Order is in favour of a company called Heridge SARL which apparently has a debt of some USD 10,000,000.

93. I understand that it might be said that EG has held out for the prospect of a consensual resolution for too long, but I do not think that this would be a fair criticism. EG was not aware of all of the options that it may have had, and was trying to secure the best solution, in particular one that did not involve closing the businesses down, also taking into account that forced proceedings could produce collateral damage. We had managed to ensure repayment of a substantial sum in July, and we hoped that progress could be made which did not require litigation. Although we would claim that the loans were in default and repayable in any event, in fact the principal loan outstanding was due for repayment on 23 August 2014.

94. Whilst there was an ongoing dialogue between us, and whilst we thought that the GLB plant in Canada might provide a means of recovering our loss, we did not take steps to commence proceedings. I am obviously very concerned now that if assets of GLB are sold in the Receivership, there is a real danger that GLB will be unable to satisfy its liability and EG's position is made considerably worse. Accordingly the need to commence proceedings and to make this application is all the more urgent.

95. I was not previously aware that an application of this nature could be made in the very short timeframe that has passed since EG engaged Asserson Law Offices in early September.

Good arguable case

96. I believe that EG has a very strong case that the Respondents are liable under the guarantees. The principal loan outstanding is the USD 17,500,000 credit line which was due to be repaid on 21 August 2014. So far as

concerns the USD 3,500,000 facility to NSB and Einer granted in February 2014, Vik Kalra admitted during our call on 29 May 2014 that the monies which were recorded in the report that we received as being available in cash were not there. There were multiple events of default under this loan, including the provision of false information which entitled EG to call in the loan (see clause 11.2 of the loan agreement), and non-payment of interest. EG demanded repayment on 21 August 2014 [EW1: 506; 507-10].

Risk of Dissipation

97. I have set out above that EG is concerned that unless the Respondents are restrained from dealing with their assets up the value of the arbitration claims, and obliged to disclose the location of their assets so that adequate steps can be taken to secure those assets pending the enforcement of any award, there is a very real risk that the Respondents will take steps to put assets beyond, or further beyond, EG's reach, whether by dissipation or secretion. EG believes that a worldwide freezing order is the only means to seek to ensure that an award is not rendered worthless.

98. Our reasoning is that:

    98.1. EG has been the victim of conduct at the hands of the Respondents which can fairly be described as plainly dishonest. The Respondents have paid wholesale disregard to the terms of our agreements, and have lied to us to cover up their misuse of loan funds. I do not consider that there can be any doubt that the Respondents were each aware of the restrictions upon the use of funds, or that they were each aware that EG was being deliberately misled by them. The loan agreements required disclosure of any event of default; the Respondents concealed repeated breaches of the agreements, as Mr Mazur accepted on 29 May 2014.

    98.2. Had EG not been repeatedly deceived by the Respondents in relation to the use to which the loan funds were being put and in relation to the risk to which EG was being exposed by investing in companies on the security of their personal guarantees, EG would not find itself in the present position of having to try and rescue itself from a very substantial loss.

    98.3. It must be recalled that EG was continuing to open larger credit lines at the Respondents' requests up to March 2014 on the basis of representations by each Respondent that there was no litigation that

they were aware of which was pending or threatened against either of them. In fact, as we have recently discovered, the following suits were actual or I would ask the Court to infer known to be threatened at the time that EG was commencing and expanding its commercial relationship with the Respondents and their companies:

98.3.1. A company called BioUrja commenced a claim in Texas for damages against Verdeo Inc., another company alleged to have been controlled by the First Respondent. On 17 October 2013, the jury appointed in this case concluded that a variety of transactions between Bioversel and Verdeo were fraudulent conveyances. A formal judgment was issued by the District Court for Harris County, Texas against Verdeo, Bioversel Trading and the First Respondent on 9 December 2013 [EW1: 513].

98.3.2. In 2008 a company called Kolmar Americas, Inc. filed a claim against the First Respondent and various companies allegedly controlled by him in the Supreme Court of the State of New York [EW1: 513], alleging, inter alia, fraud by the First Respondent. The former CFO of the Bioversel group of companies testified that over USD 20,000,000 was transferred between Bioversel companies in potentially fraudulent transactions aimed at avoiding creditors. For example, the former CFO identified a payment of USD 2,000,000 from Verdeo to Praveen Investing as *"likely being for the benefit of Mr Mazur"* [EW1: 224]. Mr Mazur and Einer were added as defendants to this claim in December 2013 [EW1: 513].

98.3.3. An action was commenced in June 2011 by a US company, Petro-Diamond against Verdeo. Mr Mazur and Einer were added as defendants in 2012 and a trial proceeded against them which concluded in a judgment on 14 April 2014 in an amount of USD 2,550,000 based on findings of fraudulent transfers [EW1: 513].

98.3.4. On 20 September 2013 a claim was commenced in the Superior Court of Ontario by Petro-Diamond, Bio-Urja and Kolmar for freezing injunctions against GLB and Mr Mazur [EW1: 513]. This claim was to trace the funds that had been fraudulently conveyed away (including funds of Einer).

98.3.5. On 9 July 2014 the Superior Court of Justice ruled that a case for a Mareva injunction had been made out against Mr Mazur but that since the application had been pending since

September, and since the existence of assets in Ontario could not be demonstrated conclusively, Mr Mazur was likely to have removed the assets from Ontario [EW1: 541-545].

98.4. Although the Respondents had divulged to us early on that some of their businesses were the subject of legal proceedings, we had no idea that so many different claims had been filed against the First Respondent, nor did we know that these claims all alleged some element of dishonesty by the First Respondent. As I set out in the due diligence report that I prepared in May 2013, I did not consider the litigation risk to be high because I was not aware of any ongoing litigation and neither of the Respondents ever suggested to the contrary.

98.5. Had EG known of the circumstances which might have led to litigation I am confident that we would have insisted on due diligence of those facts and matters before lending further sums. I am also confident that the due diligence would have highlighted at a far earlier stage the problems which ultimately only came to light in mid May 2014. We would then have taken early action to recover loans already paid and would not have made further loans.

98.6. As it is, the Respondents have continually breached their obligations in at least the following respects:

98.6.1. They have taken loans for specific purposes and used the funds for other unauthorised purposes;

98.6.2. They have concealed from EG the true use of funds by providing false and misleading reports over a number of months;

98.6.3. They have concealed from EG the existence of a number of claims against the First Respondent alleging inter alia fraudulent activity and signed warranties stipulating that no such litigation existed or was contemplated;

98.6.4. They have concealed from EG the fact that a Receivership Order had been applied for and then been made in respect of the assets of GLB.

99. The disregard that the Respondents have shown towards their contractual obligations to EG and toward our company, the extent to which they

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deliberately sought to conceal that conduct from us, and the more recent revelations, including of the extent to which they have been prepared to permit the true position to be misrepresented to us, leave us in little doubt that both the First and Second Respondent are a genuine dissipation risk and cannot be trusted to preserve their assets to meet what is a claim to which there is as far as I am aware no possible defence.

100. Even now it is unclear to us precisely what has happened to our funds. As I have stated above, one of the alleged uses of our funds was in respect of a hedging arrangement in relation to which we have sought an explanation [EW1: 465]. No explanation has ever been provided as to where these funds of in excess of USD 4,000,000 were diverted.

101. That view is reinforced by a consideration of the claims that are being made against Mr Mazur abroad. I accept that the fact that proceedings have been commenced against the First Respondent is not evidence that the Respondent will be found liable under the proceedings. Nevertheless, the existence of so many claims against the First Respondent alleging similar types of dishonest conduct to that which EG has experienced and the removal of assets to avoid the claims of creditors is an added cause for concern that there is a real risk of dissipation.

102. It is further enforced by the discoveries we made in the summer that Mr Mazur had sold property assets in Canada. In August 2013, the First Respondent arranged the sale of a real estate property in Canada for USD 2,795,000. In May 2014, at around the time that we learned of the misuse of our loans, a property registered in the name of Mr Mazur's wife was sold for USD 2,850,000.

103. I accept that much of the focus in my evidence has been on the role of Mr Mazur. However, I believe that Mr Lutsenko is equally culpable:

    103.1. Mr Lutsenko has, at all relevant times, acted in concert with Mr Mazur who is his business partner;

    103.2. Mr Lutsenko was a party to the deception of EG and to the misuse of its funds. For example, it was he that informed us that Einer had paid the deposit on the Paldisk refinery auction, and then proceeded to try to agree a separate loan agreement for the purchase of this asset; he did not say that our loan monies had been improperly used for that purpose.

103.3. Mr Lutsenko did not seek at any time to assert during our discussions following the provision of the May Report that he was unaware of the activities that had been undertaken or that he was not equally responsible for them; he was the principal manager of Einer and was responsible for the operation of NSB; it is inconceivable that he was unaware of the use to which loan funds were being put.

103.4. It is overwhelmingly likely that Mr Lutsenko was fully aware of the litigation that was threatened or ongoing against Mr Mazur and was prepared nevertheless to warrant that no such litigation was pending or threatened in order to obtain additional credit from EG.

Without notice

104. This application is made without notice to the Respondents for two reasons:

104.1. Firstly, I am concerned that if notice were given of this application the Respondents might take steps to evade service, or to secrete or further secrete or dissipate assets and thus defeat the purpose of the Order. Although our discussions with the Respondents have come to a halt, this was very recently. I do not believe that the Respondents are aware that this application has been in contemplation.

104.2. Secondly, there is a hearing in Canada on 24 September 2014 in the receivership of GLB in which EG wishes to participate. EG does not wish to alert the Respondents that it is intending to engage in that receivership prior to making this application, and it is necessary to make this application before the 24 September 2014. It is EG's intention to take such steps as are available to it in the Receivership of GLB in Canada, including under the GLB guarantee.

Evidence of the Respondents' assets

105. I set out below the assets of the Respondents to the best of my knowledge. I have no way of knowing the precise details of the Respondents' assets.

106. I believe that each of the Respondents is individually very wealthy by ordinary standards. As set out above, when I first met the Respondents they both made out to me, and also to Mr Creitzman, when he met them, that they were independently wealthy.

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

107. Both of the Respondents have from time to time repeated that they have considerable assets. I had been taken in by this, because they seemed to operate on a grand scale and appear to be successful and experienced businessmen.

First Respondent's assets

108. I am aware of the following assets which I believe are either wholly or partially owned by the First Respondent or in which he has an interest.

109. I believe that the First Respondent has an interest in a Cypriot company called Orense Investments Ltd, although I do not know of the precise extent of that interest. I believe that Orense owns shares in a number of other companies, including Reneos Ltd, the English company into which the shares of GLB and of Einer have been transferred [EW1: 160-174]. Reneos Ltd is the 99.55 per cent shareholder in GLB [EW1: 162].

110. I believe that the First Respondent has substantial liquid assets; as I set out I above I believe that the First Respondent made a very substantial sum of money from the sale of his software business in Israel to RIM. Equally the First Respondent indicated during our call on 29 May 2014 that he had cash. It must also be the case that he has the sale proceeds of a sizeable property portfolio which I believe he has sold, details of which are set out below [EW1: 552-4; 557; 560s].

111. I believe from public records that we have obtained that:

111.1. In August 2013 Mr Mazur sold one property (32 Stratheden Road in Toronto) for USD 2,800,000.

111.2. In May 2014 a second property in Toronto (10 Cedarwood Avenue) was sold for USD 2,900,000. The latter property was held in the name of Eva Mazur, understood to be Mr Mazur's wife. We believe Mr Mazur currently rents a property in Toronto (50 Lawrence Crescent).

111.3. I believe Mr Mazur has previously been – and may still currently be – a partner with the property investment company Global Horizons Group to acquire a number of properties in Miami. A number of SPV's registered in Florida were set up for this purpose, including GHG042 LLC, GHG042A LLC, and Banyan Villas LC. In the aforementioned litigation proceedings it is alleged that Mr Mazur

made a number of fraudulent transactions to the first of these three companies. In other words, it appears that a portion of creditors' funds is alleged to have been funnelled into his property investments.

111.4. I believe that the company called Banyan Villas, LLC is owned by Mr Mazur through BVI-registered Praveen Investing Ltd; Banyan was the owner of 8118 Harding Avenue in Miami (just down the road from Mr Lutsenko's Fisher Island property). Banyan Villas, LLC sold the property in May 2013 to DTP Group LLC for $1.3m.

111.5. GHG042 LLC, also owned through Praveen Investing Ltd, previously owned a number of properties, including:

111.5.1. Unit 121, Building 1, South Palm Place Condominium Homes;

111.5.2. 8271 SW 29th Street, No. 103, Miramar, FL;

111.5.3. 2872 SW 83rd Ave, No. 104, Miramar, FL;

111.5.4. 2760 SW 82nd Ave, No. 106, Miramar, FL;

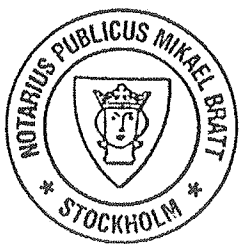
111.5.5. 8251 SW 27th St, No. 105, Miramar FL.

112. I realise that I am unable to pinpoint precisely where Mr Mazur's assets are, or in what form they are held. That is why the disclosure order which we seek is necessary. However, it seems to me to be very likely that Mr Mazur has assets in Ontario where he lives. He pays for rented accommodation and to live in Canada he must have bank accounts which he can access for that purpose and it is likely that such accounts are in Canada (Mr Mazur apparently disclosed a joint account in Scotiabank during the Petro-Diamond proceedings). Even if Mr Mazur holds assets in other jurisdictions, and through nominee arrangements (which may be the case given his holding of GLB and NSB) Mr Mazur must also at the very least have assets in the form of contractual or beneficial rights over or to those assets which are exercisable by him in Canada.

Second Respondent's assets

113. I am aware of the following assets which I believe are either wholly or partially owned by the Second Respondent or in which he has an interest.

Company shares and other assets



114. The Second Respondent holds a 16.66 per cent shareholding in Reneos Ltd [EW1: 163; 182], a company registered in the United Kingdom [EW1: 123]. Reneos Ltd is the 99.55 per cent shareholder in GLB [EW1: 162].

115. The Second Respondent is the majority shareholder (50.02 per cent) owner of an oil company called NK Prospekt, which holds production rights to three oil and gas fields in the Saratov Oblast [EW1: 548].

116. NK Prospect owns a number of licences for hydrocarbon production and development, acquired for approximately USD 3,800,000 [EW1: 546; 548].

101 Warren Street, Unit 590, New York, NY 10007

117. The Second Respondent is listed as the owner of this condominium in the deed for the property [EW1: 562-575]. This unit was purchased by the Second Respondent in 2008 for USD 1,603,744.

123 Fisher Island Drive, Unit 7123, Miami Beach, FL 33109

118. This property was purchased by the Second Respondent's spouse in 2008 for USD 3,900,000. It is not clear whether the Second Respondent is a part owner of this property. He is not listed on the deed for the property [EW1: 576-8] but he is jointly responsible for a number of mortgages, totalling USD 3,000,000, taken out on the property.

Real property in Moscow and elsewhere

119. Through the services of a private investigation firm, EG has confirmed that the Second Respondent may have an ownership or beneficial interest in two properties located in Moscow, Russia [EW1: 551]:

119.1. 1-iy Smolenskiy pereulok, d. 17. Kv. 75; and

119.2. Ul. Nikolayeva, d. 4, kv. 9.

120. It may be that Mr Lutsenko also has an interest in M. Novopeskovski 8-36, Moscow 121099 which is the address Mr Lutsenko gave for service of notices under the contracts with EG earlier this year.

Duty of full and frank disclosure

121. This application is made without notice to the Respondents as I believe that, in view of their pattern of dishonest behaviour, should the Respondents have

notice of this application they will attempt to frustrate the application by dissipating assets.

122. I understand that because of the ex parte nature of the application, EG is under an obligation to provide the court with full and frank disclosure.

123. I am not aware of any basis upon which the Respondents could defend the claims EG intends to bring under the guarantees.

124. So far as concerns dissipation, I have set out in as much details as I am permitted above the facts that once EG was alerted to an issue in relation to the EG loans we have been provided with some explanations and cooperation by the Respondents. In particular, as I have said, the Respondents did procure certain payments to EG in July 2014, including in particular the payment of USD 9,000,000 of the principal outstanding under one of the loans following receipt of payment.

125. The Respondents might suggest that this repayment and their conduct since being challenged in May 2014 are inconsistent with the acts of a dishonest person. I would not agree.

126. Shortly after our 29 May 2014 call with the Respondents we discovered that NSB was in danger of having its accounts frozen by various trading companies to whom Einer/NSB owed substantial debts. This was very concerning because the USD 9,000,000 referred to above had been lent to Einer/NSB and funnelled into NSB's accounts to finance specified trading operations in biodiesel. We were accordingly concerned that the USD 9,000,000 would be frozen in NSB's accounts and would therefore not be repaid.

127. Mr Creitzman and I accordingly began a negotiation with the Respondents around the middle of June in an effort to persuade them to repay the USD 9,000,000 when NSB was paid an anticipated receivable. I believe that the Respondents agreed to pay over the said sum in an effort to encourage EG to continue that trading relationship through another entity which would not be encumbered by potential claims from other counterparties.

128. There is also the question of the timing of this application and the fact that it is possible that the Respondents may already have tried to secrete assets to avoid EG's claim. I do not know whether that has occurred or not, but I do not believe that it should be assumed in the Respondents' favour on this application. As I have set out above, we have opted to try and explore

resolution without the recourse to litigation, and the Respondents have to an extent co-operated in that and have engaged in discussions. I do not believe that this is an inappropriate commercial approach to have adopted.

129. Nor do we think that obtaining the order sought on this application will be ineffective. I do not think that it is likely that the Respondents have divested themselves of all of their assets, or that there is nothing that can be done once they are the subject of an order to ensure that their assets are located and caught. EG's aim is to serve Mr Mazur in Canada with the Order and thereafter to seek a mirror order in Canada. The process involved is set out in the letter at pages 529 to 582 from our Canadian Lawyers.

130. In this context I should draw to the Court's attention to the ruling in July this year in the Ontario Court on the application of Petro-Diamond, when a Mareva injunction was refused because it could not be demonstrated that Mr Mazur had relevant assets in Ontario and the Court concluded that Mr Mazur would have removed the assets from the jurisdiction. This application was not made to mirror an injunction made in a different jurisdiction; nor does it appear to have been pointed out to the Court that Mr Mazur has plainly had access to very substantial assets and that his contractual rights to give directions in relation to assets out of the jurisdiction are themselves valuable assets. If Mr Mazur is compelled to give disclosure, there are means available to ensure that any secreted assets are located, even if the jurisdiction to freeze assets Canada may be limited.

131. The simple fact is that we have become increasingly concerned recently, and in particular by the revelation that GLB was in Receivership, that we may have been strung along. We have acted as quickly as we can to get this application before the Court before the Receivership application comes on.

132. EG is prepared to give a cross-undertaking to the court that it will compensate the Respondents for any loss caused by the freezing orders if the Court orders it to do so. I am not aware of any loss which would be suffered by the Respondents if a freezing order were made. The only active business I know them to have had is GLB which is presently in receivership and Einer, which I believe has no working capital and so has ceased or almost ceased to function.

133. EG is a company with substantial assets under its control and is able to meet any order that the Court is likely to make in regard to a cross-undertaking.

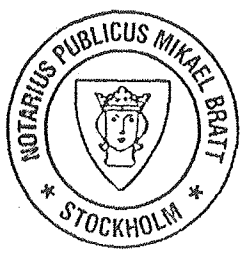
Service out of the jurisdiction

134. As set out above, both Respondents are located outside the jurisdiction. The First Respondent is presently domiciled in Canada and the Second Respondent is presently domiciled in the United States.

135. Under the EG Loan Agreements each of the Respondents was obliged to provide an address and appoint an agent for service of arbitration proceedings in England (see clause 22 of the August 2013 agreement) [EW1: 78]. EG has no record of either Respondent having complied with that obligation. In default, each consented to service by pre-paid post (see clause 22.3(d)) to the addresses applying for the time-being under Clause 16 [EW1: 78]. So far as concerns Mr Mazur this address is the address of his current rented accommodation (the February 2014 agreement having updated his address). So far as concerns Mr Lutsenko, the address is the M. Novopeskovski 8-36, Moscow 121099 I have set out above.

136. EG intends to serve the arbitration claim form in accordance with the contractual method and therefore requests that the Court grant permission, I am told, under CPR r.62.5(1)(b) (WB 2014, vol. 2, 2E-12 p.763) to serve the arbitration claim form and any corresponding documents out of the jurisdiction pursuant to its application under s44 of the Arbitration Act 1996. I understand that under CPR Part 6.11 EG is entitled to serve by the contractual method but that it needs to satisfy the Court that it has jurisdiction, because service is out of the jurisdiction. The EG Loan Agreements both contain arbitration agreements for exclusive LCIA arbitration in this jurisdiction (in the absence of an identified seat the LCIA rules provide that the seat is to be London). EG relies if necessary on para 3.1(6)(c) of 6BPD (a claim is made in respect of a contract governed by English law).

137. I am not aware of whether the Respondents actually live in the addresses which they respectively provided in the EG Loan Agreements. However, I do know that the First Respondent always receives documents sent to him by email to a@einerenergy.com. I also know that the Second Respondent always receives documents sent to him by email to constantin.lutsenko@einerenergy.com. Accordingly EG intends to serve the arbitration claim form and any Order made by this court on the First Respondent and on the Second Respondent by emailing their respective email addresses.



AFFIRMED by the above-named ERIK WIGERTZ)
)
at Stockholm, Sweden)
)
this 22nd day of September 2014)

Before me

Notary Public

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

Applicant
E Wigertz
1st Affidavit
Exhibit EW1
22 September 2014

Claim No.
IN THE HIGH COURT OF JUSTICE

B E T W E E N:

EAST GUARDIAN SPC
Applicant
and –

MR ARIE MAZUR

MR CONSTANTIN MR LUTSENKO

Respondents

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NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

Applicant
E Wigertz
1st Affidavit
Exhibit EW1
22 September 2014

Claim No.:

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVSION

AND

IN THE MATTER OF THE ARBITRATION ACT 1996
IN THE MATTER OF AN INTENDED ARBITRATION CLAIM

B E T W E E N:

EAST GUARDIAN SPC

Applicant

- and -

(3) ARIE MAZUR
(4) CONSTANTIN LUTSENKO

Respondents

EXHIBIT EW1

This is Exhibit EW1 referred to in Erik Wigertz's affidavit.

Signed: _____

Erik Wigertz

This is to certify that Mr Erik Wigertz
has signed his name above.
Stockholm September 22, 2014

Ex officio:
Notary Public

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

Applicant
E Wigertz
1st Affidavit
Exhibit EW1
22 September 2014

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IN THE HIGH COURT OF JUSTICE
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- and -

(1) ARIE MAZUR
(2) CONSTANTIN LUTSENKO

Respondents

EXHIBIT EW1
INDEX

NOTARIUS PUBLICUS MIKAEL BRATT * STOCKHOLM *

NOTARIUS PUBLICUS MIKAEL BRATT
STOCKHOLM

HERIDGE S.A.R.L.

Applicant

-and-

GREAT LAKES BIODIESEL INC., EINER CANADA INC. AND BIOVERSEL TRADING INC.

Respondents

Court File No. CV-14-10672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

NOTICE OF MOTION

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