

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N:**

**MACQUARIE EQUIPMENT FINANCE LIMITED**

Applicant

- and -

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY  
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC.,  
KINGSTON COGEN LIMITED PARTNERSHIP AND KINGSTON COGEN  
GP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED;  
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43,  
AS AMENDED**

**SUPPLEMENTAL AFFIDAVIT OF JOSHUA HAMILTON STEVENS  
(SWORN AUGUST 2, 2023)**

I, Joshua Hamilton Stevens, of the City of Sydney, in the State of New South Wales, in the Country of Australia, MAKE OATH AND SAY:

## **I. OVERVIEW**

1. I swear this supplemental affidavit in support of an application by Macquarie Equipment Finance Ltd. (the “**Applicant**”), to appoint KSV Restructuring Inc. as receiver and manager in respect of the Validus Group. Unless otherwise indicated, capitalized terms used in this supplemental affidavit and not otherwise defined shall have the meanings given to them in the affidavit I previously swore in support of this application on July 31, 2023.

2. I either have direct knowledge of the facts set out herein or, where indicated, I have been advised by the indicated individuals and believe such information to be true.

## **II. THE DEBTORS’ STAKEHOLDERS CANNOT WAIT FOR A RECEIVERSHIP**

3. I am advised by Mike Noel of Torys LLP, counsel to the Applicant, that, following the service of the Applicant’s application record, the Debtors requested a significant adjournment of the Applicant’s receivership application on the afternoon of August 1.

4. There is an imminent and serious risk of significant and irreparable value destruction of the Debtors’ business and the Applicant’s collateral if the Receiver is not appointed as soon as possible. In addition to the risks outlined in my July 31 affidavit, I have learned of significant concerns regarding the Debtors’ ability to manage, safely operate and staff their various plants.

5. First, the Debtors’ senior management are in disarray. They appear to lack adequate—or any—executive leadership:

- (a) I am advised by Craig Tavares, the Debtors’ Chief Operating Officer (COO) that Todd Shortt, the Debtors’ Chief Executive Officer (CEO), announced during the week of July 17 that he wished to resign from that role and requested that Mr. Tavares assume the role of CEO.
- (b) Mr. Tavares wrote in an email on July 26<sup>th</sup> that he is no longer involved in the day-to-day operations at the Validus Group and has been strictly acting as an

advisor to help facilitate the IFPC Marketing Process. A copy of that email is attached as **Exhibit “A”**.

6. Second, the Debtors are fast losing critical employees. I am concerned that further critical employees will quit their roles based on the matters alleged in the union grievance described in my July 31 affidavit and other discussions I have had with the Debtors’ staff.

7. As an example of the Debtors’ non-payment of their staff, I was advised over email by Ryan Chua, the Debtors’ General Counsel, that as of July 25<sup>th</sup>, he is owed approximately \$57,500 in unpaid wages. Mr. Chua also paid over \$35,000 of the Debtors’ regulatory and legal expenses on his personal credit card and has yet to be reimbursed. Due to the Debtors’ failure to pay for employees’ group benefits, Mr. Chua has also been paying out of pocket for personal healthcare expenses. Mr. Chua informed me that he was last paid on April 15<sup>th</sup>—approximately three and a half months ago. He reached out to me personally for help resolving these issues after his extensive discussions with the Debtors’ management did not result in him being paid these foregoing amounts. Due to the personal information contained in my email correspondence with Mr. Chua, that email correspondence is not attached to this affidavit. I am concerned that other employees are in similarly dire situations and will soon quit.

8. Indeed, many of the Debtors’ critical employees have quit in the previous six weeks, and I am concerned that, given the Debtors’ recent staff turnover rate and the generally tight labour market in Ontario, the Debtors may shortly be forced to shut down some or all of their plant operations due to lack of staff.

9. Examples of recently departed employees include Ryan Forget, the General Manager of Power Generation and the key manager of all of the Debtors’ power generation facilities, who played a critical role in managing the Debtors’ operations. Additionally, I am advised by Mr. Tavares that one of the Debtors’ plant managers has received another job offer and is considering resigning. I am also advised by Mr. Forget that the Debtors’ electricians for the North Bay and Iroquois Falls plants have quit recently, which has likely left those plants without the direct ability to perform various types of maintenance if required.

### **III. THE DEBTORS' REMAINING FUNDS ARE AT RISK OF BEING DISSIPATED**

10. I am also concerned that the remaining cash in the Debtors' bank accounts will be used by the Debtors' management for improper purposes, leaving the Debtors with insufficient funds to carry on business in the ordinary course.

11. On July 21, Shelley Goertz, the Debtors' Chief Financial Officer, requested on behalf of Mr. Shortt approximately \$20,000 be released to pay Mr. Shortt's personal credit card which Ms. Goertz noted included significant entertainment and dining expenses. On July 31, Ms. Goertz attempted to withdraw approximately \$85,000 from the Debtors' bank account to her personal holding company without substantiation. I am surprised and concerned that these requests and attempts are being made given the circumstances of the company as I understand them.

12. If the Receiver is not appointed immediately, I believe there is a real risk that the Debtors' management will attempt to remove some or all of the Debtors' remaining funds for similar inappropriate or improper personal uses over the coming days or weeks.

### **IV. THERE IS NO OTHER PATH FORWARD**

13. The Debtors do not have a viable path forward outside of a receivership. The Debtors' management has been telling the Applicant since January of this year that equity and debt financing was just around the corner, but financing never materialized. As I described in my July 31 affidavit, the Debtors have not maintained proper books and records for at least the previous twelve months; I believe that those books and records would need to be substantially rectified and brought current before any sophisticated investors or financiers would be willing to either buy the Debtors' business or make an investment.

14. The Debtors have had months to repay their indebtedness to the Applicant and other secured creditors, including nearly two months since the Applicant delivered its first demand letters and its section 244 notices. The Debtors owe the Applicant \$55,598,575 as of July 31<sup>st</sup> and over \$6,000,000 to CRA according to CRA's lien registration. These amounts (among others) would need to be repaid for an investor to hold first-ranking security or for a new owner to acquire the business. Furthermore, as I described in my July 31 affidavit, a four-month out-of-

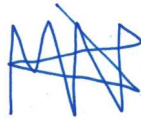
court sale process was undertaken in respect of IFPC that ultimately did not result in any successful bids.

**V. EXPEDITED TIMELINE FOR SERVICE**

15. The Applicant's service timeline for its application materials was unavoidable in the circumstances. A number of steps have had to be taken to be prepared to take over the Debtors' plants and operations, including ensuring that experienced power plant operational oversight is available to the Receiver. Those arrangements were only finalized over the course of this last weekend. Given Ryan Forget is no longer employed by the Debtors and Craig Tavares is no longer in an operating role, these arrangements were necessary to ensure that the Debtors' operations can be safely, legally and continuously managed.

**SWORN REMOTELY** by Joshua Hamilton Stevens at the City of Sydney, in the State of New South Wales, in the Country of Australia, before me on August 2, 2023 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

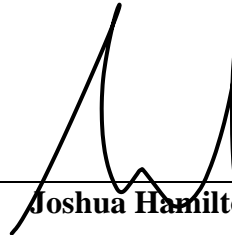
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Commissioner for Taking Affidavits  
(or as may be)

**MICHAEL NOEL**  
(LSO#: 80130F)



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**Joshua Hamilton Stevens**

THIS IS **EXHIBIT “A”** REFERRED TO IN THE  
AFFIDAVIT OF JOSHUA HAMILTON STEVENS,  
AFFIRMED REMOTELY BY JOSHUA HAMILTON  
STEVENS BEFORE ME *BY VIDEO CONFERENCE*,

THIS 2nd DAY OF AUGUST, 2023.



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Michael Noel  
Commissioner for Taking Affidavits

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**From:** Craig Tavares <craig.tavares@validuspower.com>  
**Sent:** Wednesday, July 26, 2023 7:13 AM  
**To:** Ronnie Alam  
**Cc:** Shelley Goertz; James Roberts; Joshua Stevens  
**Subject:** Re: Validus - Demand Packages

**External Communication**

(cc Shelley from an HR perspective)

Hi Ronnie,

You can exclude me from all sensitive correspondence of this nature going forward as I am no longer involved in any day-to-day work at Validus and have been strictly acting as an advisor to help facilitate the asset sale process.

Thanks,  
Craig

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**From:** Ronnie Alam <Ronnie.Alam@macquarie.com>  
**Sent:** Monday, July 24, 2023 8:20 PM  
**To:** Craig Tavares <craig.tavares@validuspower.com>; Ryan Chua <ryan.chua@validuspower.com>; Shelley Goertz <shelley.goertz@validuspower.com>; Todd Shortt <todd.shortt@validuspower.com>  
**Subject:** Validus - Demand Packages

All

Please see the attached letters and notices



**Ronnie Alam** | Legal Counsel | Division Director  
Commodities and Global Markets | Macquarie Group Limited  
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Member of the  
**Legal and Governance Group**

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MACQUARIE EQUIPMENT FINANCE LIMITED v VALIDUS POWER CORP. et. al.

Court File No. CV-23-00703754-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SUPPLEMENTAL AFFIDAVIT OF  
JOSHUA HAMILTON STEVENS  
(Sworn August 2, 2023)**

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Lawyers for Macquarie Equipment Finance Limited,  
the Applicant