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Annie Ruhlmann for / pour  
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OTTAWA, ONT.

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**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

**AND IN THE MATTER OF** the proposed acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an interim order pursuant to section 104 of the *Competition Act*;

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

THE COMMISSIONER OF COMPETITION

Applicant

– and –

SECURE ENERGY SERVICES INC. and  
TERVITA CORPORATION

Respondents

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AFFIDAVIT OF J. GREGORY EASTMAN, Ph.D.

Affirmed July 19, 2021

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## I. PROFESSIONAL QUALIFICATIONS AND EXPERTISE

1. I am a Senior Vice President at Cornerstone Research, an economic consulting firm. I have more than 20 years of experience addressing complex financial and economic issues arising in litigation and regulatory matters. I have led engagements that performed measurements of financial distress, investigated causes of financial distress, and estimated the impact of financial distress on valuations. I have led engagements that analyzed efficiencies in several merger cases. I have performed valuations of companies and divisions, including in situations involving mergers and acquisitions, spinoffs and joint ventures that have involved estimates of synergies and efficiencies.

2. As a testifying expert at trial in a U.S. merger antitrust case, I have opined on behalf of the U.S. Department of Justice regarding the financial health of a company in the nuclear energy industry in relation to its “failure and exiting assets” defense as well as its proposed efficiencies as defined by the U.S. Department of Justice and Federal Trade Commission’s Horizontal Merger Guidelines (the “Merger Guidelines”).<sup>1</sup> I was also retained by the State of Washington Attorney General’s office as the testifying expert on failure and exiting assets and efficiencies as part of its challenge to a previously consummated merger.<sup>2</sup> I have also been retained as a potential testifying expert by the U.S. Federal Trade Commission (“FTC”) and by parties to opine on the financial health of merging companies and potential claims relating to a failure and exiting assets defense. I analyzed profitability and efficiency issues on the Aetna-Humana proposed merger,<sup>3</sup> investigated issues related to the cause of financial failure of cancer treatment centers, analyzed the U.S. Food and Drug Administration (“FDA”) process associated with medical device approvals, and performed a valuation of drugs focusing on the FDA approval process (and the resulting drug company valuation) for an appraisal case.

3. I have led a variety of consulting projects involving accounting and financial reporting issues. In these matters, I have evaluated the adequacy of disclosures, fair value and asset impairments, materiality, goodwill, accounting for losses, deferred taxes, concentrations of risk, and revenue recognition. I have also evaluated issues pertaining to whether financial statements were prepared in

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<sup>1</sup> United States of America v. Energy Solutions, Inc., 265 F. Supp. 3d 415 (D. Del. 2017); U.S. Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines (2010) (“RX001222 / Merger Guidelines”).

<sup>2</sup> State of Washington v. Franciscan Health System d/b/a CHI Franciscan Health; Franciscan Medical Group; The Doctors Clinic, A Professional Corporation; and WestSound Orthopaedics, P.S., 388 F. Supp. 3d 1926 (W.D. Wash. 2019).

<sup>3</sup> United States of America v. Aetna Inc. and Humana Inc., 240 F. Supp. 3d 1 (D. D.C. 2017).

accordance with generally accepted accounting principles (“GAAP”) and whether audit and review procedures complied with generally accepted auditing standards (“GAAS”). I have led engagements involving the computation of damages and assessment of liability in multiple industries, including financial, insurance, oil, transportation, electric utilities, nuclear utilities, energy, private equity, and medical services.

4. My curriculum vitae, which is attached as Exhibit A, includes a list of my testimony over the last four years as well as a list of my publications over the last ten years. Cornerstone Research is billing per hour for my work on this matter. I have been assisted by staff of Cornerstone Research, who worked under my direction. Neither my nor Cornerstone Research’s compensation is contingent in any way or based on the content of my opinion or the outcome of this matter. I have also attached my Acknowledgement of Expert Witness as Exhibit B to this affidavit.

## **II. ASSIGNMENT**

5. I have been retained by the Competition Bureau (“Bureau”) to assist the Bureau in its efficiencies analysis of Secure Energy Services Inc.’s (“Secure”) acquisition of Tervita Corporation (“Tervita”). The Bureau has asked me to review the Andrew C. Harington Initial Report Assessing Productive Efficiencies Arising from the Proposed Transaction, dated June 3, 2021 (“Harington Report”), the Affidavit of Andrew C. Harington, dated July 14, 2021 (“Harington Affidavit”), and Secure’s response to the Commissioner’s Section 104 application, and other related documents. Specifically, the Bureau has asked me to provide my general opinions with regard to verifiability of Mr. Harington’s findings in the Harington Report with regard to efficiencies, and to review the Harington Report’s “Facility Rationalization Cost Savings” with regard to the “Annual Throughput” and “Annual Throughput Capacity post Transaction.”

6. I have based my opinions in this affidavit upon my independent review of the evidence produced in this case to date, my own research from publicly available sources, and my past professional experience. I hold all of the opinions stated in this report to a reasonable degree of professional certainty. Because the opinions stated in this affidavit are based, in part, on the evidence produced in this case to date, I reserve the right to supplement my opinions based on any additional information that I receive after the submission of this affidavit. The materials that I have relied upon in forming my opinions are discussed and cited herein.

### III. ANALYSIS

#### A. Regarding the Harington Report on Efficiencies

7. I have reviewed the Harington Report and its supporting documents, including the schedules to Mr. Harington's report, and the underlying supporting documents listed in footnotes to his report, schedules, and noted within his Appendix B – Scope of Review.

8. At this time, I have not reached any conclusions on the reasonableness of Mr. Harington's efficiencies. The efficiencies calculated by Mr. Harington are based, in large part, on: 1) spreadsheets with hardcoded data that do not include adequate description; and / or 2) appear to be based on subjective business judgments, such as representations from management. Mr. Harington's reliance on hardcoded data without adequate description and the lack of support for the assumptions and management representations precludes a replication or verification of his analysis.

#### B. Facilities Rationalization Throughput Capacity Analysis

9. Mr. Harington's analysis of the "Facility Rationalization Cost Savings" appears to inappropriately rely on volume throughput data that was impacted by COVID 19. Using this throughput data inappropriately assumes that certain facilities could be closed as the low volumes occurring during COVID 19 could be absorbed by other facilities. It is inappropriate for Mr. Harington to rely on this low volume data, which he acknowledges in the Harington Affidavit with respect to "inbound waste volumes" for landfills, but ignores with regard to Secure and Tervita facilities ability to absorb throughput.<sup>4</sup>

10. The Harington Report section "Facilities Rationalization Cost Savings" describes Secure management's analysis of "the combined network of locations of the parties, including proximity to other facilities, service capabilities, total and available capacities, and facility operating costs, and determin[ation] that the Proposed Transaction will allow it to cease operations at certain locations in whole or in part without any reduction in total output."<sup>5</sup>

11. Mr. Harington further describes the criteria for the rationalization analysis:

For each facility ceasing operations in whole or in part, one or more proximate facilities of the parties that is to remain operational will have sufficient capacity for each relevant service

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<sup>4</sup> Harington Affidavit, paragraph 61.

<sup>5</sup> Harington Report, paragraph 48.

to absorb the demand that is currently being supplied, and is expected in the future would be supplied, from the facility coming offline. Note that a facility can cease operations “fully” (whereby all of the operations of the facility cease) or “partially” (whereby only certain operations at a facility cease and others continue). Whether a facility is closed fully or partially depends on whether all services at a closing facility can be absorbed into the nearby party facilities or whether only certain services can be absorbed (e.g., given operational differences of the facilities or capacity constraints).<sup>6</sup>

12. Mr. Harington describes the facilities rationalized and the analysis at paragraph 57 of the Harington Report, in Table 7 on page 19, and in Schedules 2A, 2B, 2.1, and 2.2. As indicated in his Schedule 2.2, Note 1, the support for the “annual throughput for SECURE facilities is based on 2020 figures. The throughput figures for Tervita facilities are based on annualized Q1 2021 figures. Available capacity for each integration grouping is calculated as total annual throughput capacity post transaction less annual throughput...South Taylor's waste processing, treating and pipeline capacity annual throughput relies on 2019 figures.”<sup>7</sup>

13. Mr. Harington’s analysis determines that his Facility Rationalization closures and partial closures will result in the remaining facilities having excess capacity “post Transaction” throughput, except in two instances.<sup>8</sup> Those two instances relate to “Pipeline” throughput in South Wapiti TRD and Brazeau TRD, where Pipeline throughput exceeds available capacity. Mr. Harington, however, notes that South Wapiti TRD and Brazeau TRD locations “would not be affected by the Proposed Transaction” because those locations truck out oil volumes.<sup>9</sup>

14. I have reviewed Mr. Harington’s analysis and the amounts utilized in the Harington Report Schedule 2.2 to determine that annual throughput are in large part based on 2020 and Q1 2021 (“COVID 19 Period”) data, from Secure and Tervita, respectively.

15. The amounts in Schedule 2.2 are calculated as the amount of cubic meters, or M<sup>3</sup>, of product volume that are processed per hour on average in a given year. For example, in Schedule 2.2, Wonowon SWD is described as having “Water Disposal” “Annual Throughput” of, [REDACTED]” and “Annual Throughput Capacity” “pre” and “post Transaction” of, “[REDACTED]”<sup>10</sup> This means that during the

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<sup>6</sup> Harington Report, paragraph 49.

<sup>7</sup> Harington Report, Schedule 2.2.

<sup>8</sup> Harington Report, Schedule 2.2.

<sup>9</sup> Harington Report, Schedule 2.2.

<sup>10</sup> Harington Report, Schedule 2.2, row 1.

year, Wonowon SWD was capable of running at █████ M<sup>3</sup> per hour, 24 hours a day, 360 days per year, but only processed, on average, “█████” M<sup>3</sup> per hour during the year.

16. I believe that it is unreasonable for Mr. Harington to rely on data affected by COVID 19, not only because he appears to agree that the “impact of Covid 19 commencing in April 2020 appeared significant for some facilities,”<sup>11</sup> but also because, when the average 2017–2019 annual throughput is used to perform the same analysis, there are multiple instances when the average throughput exceeds Mr. Harington’s post transaction capacity.

17. In Table 1, I provide a comparison of the data used by Mr. Harington in the Harington Report Schedule 2.2, with the 2017–2019 average annual volume data.<sup>12</sup> As Table 1 describes, in many instances the average from 2017–2019 is higher. Mr. Harington’s use of the COVID 19 impacted annual volume data instead of the 2017–2019 average annual volume data causes him to underestimate the post-merger volume requirements. As shown below, this underestimate of the post-merger volume requirements causes Mr. Harington to overstate the number of facilities that could be closed.

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<sup>11</sup> Harington Affidavit, paragraph 61.

<sup>12</sup> Harington Report, Schedule 2.2; PROTECTED & CONFIDENTIAL Capacity 2017.xls; PROTECTED & CONFIDENTIAL Capacity 2018.xlsx; PROTECTED & CONFIDENTIAL Capacity 2019.xlsx; 5 210422 - Capacity & Capacity Utilization.xlsx.

**Table 1: Comparison of Average Annual Facility Throughput  
(Water Disposal/Waste Processing/Treating)**

Facility Name [1]	Secure & Tervita 2017–2019 Averages			Harington Report Schedule 2.2 COVID 19 Period			Change in Volume from 2017–2019 to Covid 19 Period		
	Water Disposal	Waste Processing	Treating	Water Disposal	Waste Processing	Treating	Water Disposal	Waste Processing	Treating

Source: Harington Report, Schedule 2.2; PROTECTED & CONFIDENTIAL Capacity 2017.xls; PROTECTED & CONFIDENTIAL Capacity 2018.xlsx; PROTECTED & CONFIDENTIAL Capacity 2019.xlsx; 5 210422 - Capacity & Capacity Utilization.xlsx  
Note:

[1] I have displayed the facility groupings as identified by Mr. Harington in Schedule 2.2 to the Harington Report.



18. I have also updated Mr. Harington's analysis in the Harington Report Schedule 2.2, with the 2017–2019 average throughput data, and have identified a number of instances where the actual throughput exceeds Mr. Harington's post transaction throughput capacity. As noted in Table 2, the instances where the 2017–2019 average throughput exceeds Mr. Harington's post transaction throughput capacity are highlighted.

**Table 2: Harington Rationalization Using 2017–2019 Throughput Data  
(Water Disposal/Waste Processing/Treating)**

Facility Name [1]	Integration Plan [1]	Secure & Tervita 2017–2019 Averages			Harington Report Schedule 2.2 Pre Transaction Capacity			Harington Report Schedule 2.2 Post Transaction Capacity		
		Water Disposal	Waste Processing	Treating	Water Disposal	Waste Processing	Treating	Water Disposal	Waste Processing	Treating
[REDACTED]										

Source: Harington Report, Schedule 2.2; PROTECTED & CONFIDENTIAL Capacity 2017.xls; PROTECTED & CONFIDENTIAL Capacity 2018.xls; PROTECTED & CONFIDENTIAL Capacity 2019.xls; 5 210422 - Capacity & Capacity Utilization.xlsx

Note:

[1] I have displayed the facility groupings and integration plan as identified by Mr. Harington in Schedule 2.2 to the Harington Report.

19. As described in Table 2, when the three years of pre-COVID 19 Period data are used, there are eight instances when the average throughput exceeds the proposed post-acquisition and closure capacity. Therefore, those facilities could not be closed and the efficiencies that Mr. Harington assigned to those closures would not be achieved.

20. I understand that the oilfield services industry in Canada is seasonal. In addition to Mr. Harington's confirmation that seasonality impacts its business, Secure also highlighted this in its 2020 Annual Information Form. The 2020 Annual Information Form describes that Canadian seasonality can impact the volume of activity, for example, due to "road bans" where heavy loads are not permitted, which can result "in smaller loads and a general reduction in the volume of waste delivered to SECURE's facilities."<sup>13</sup> It is my opinion that an analysis of the throughput capacity should take into account this seasonality and therefore it would more accurately reflect capacity constraints if it were performed on a monthly basis.

21. To the extent that the throughput across different facilities is affected by the same seasonality, utilizing annual averages rather than monthly averages to determine actual demand likely reduces the calculated activity during the peak periods, which may result in the actual throughput in a given month being reduced below a given location's actual capacity. To the extent that the seasonality causes additional post-merger facilities to have throughput volumes that exceed their capacity that would mean fewer closures and therefore a reduction in the achievable efficiencies. I also note that, consistent with Mr. Harington's analysis that utilizes annual average throughput, I have not performed an analysis using monthly throughput data, as I understand a complete dataset is not available.

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<sup>13</sup> SECURE Energy Annual Information Form, December 31, 2020, p. 30, "Seasonality of Operations."



A handwritten signature in blue ink, appearing to be "J. Gregory Eastman", is written over a horizontal line.

**This is Exhibit A to the Affidavit of  
J. Gregory Eastman  
Affirmed on July 19, 2021**

**J. GREGORY EASTMAN, Ph.D.**  
**Senior Vice President**

**Cornerstone Research**  
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**ACADEMIC BACKGROUND**

1992 – 1997	<b>Harvard University</b> <i>Ph.D. Economics</i>	Cambridge, MA
1988 – 1992	<b>The University of Kansas</b> <i>B.A., Economics and Mathematics</i>	Lawrence, KS

**PROFESSIONAL EXPERIENCE**

2001 – Present	<b>Cornerstone Research, Inc.</b> <i>Senior Vice President</i>	Washington, D.C.
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Specializes in applying economic analysis and accounting to tax controversy, antitrust and competition, financial products and financial institutions, securities, and valuation and damages matters. Experience with directing complex cases with large teams and multiple experts. Substantial experience taking cases to trial. Served as a testifying expert in cases addressing issues of damages, lost profits, cost efficiencies and the failing firm defense. Testified in *EnergySolutions-Waste Control* proposed merger case. Presented analysis to the enforcement staffs at the DOJ, FTC, and CMA on merger analysis, the DOJ, CFTC and FBI on market manipulation analysis and the EPA and California Air Resources Board on economic benefit analysis.

1997 – 2001	<b>The Brattle Group</b> <i>Associate</i>	Washington, D.C.
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Conducted economic analysis for cases in the firm's litigation practice, including antitrust, environmental, breach of contract, and valuation issues. Assisted in taking several cases to trial.

**Testimony Experience**

- *U.S. Department of Justice v. EnergySolutions, Inc., Rockwell Holdings, Inc., Andrews County Holdings, Inc., and Waste Control Specialists, LLC*, U.S. District Court for the District of Delaware, 2017. (Expert report, deposition, and trial testimony). For a proposed merger, analyzed merger-specific and verifiable efficiencies and performed failing firm and asset exit analyses.
- *LG Life Science, LTD. v. Chiesi USA, Inc., F/K/A Cornerstone Therapeutics, Inc., F/K/A Cornerstone Biopharma, Inc., Merus Labs International Inc., and Vansen Pharma, Inc.*, International Chamber of Commerce Arbitration, 2015 (Expert

report and arbitration testimony). Estimated damages related to allegations of breach of contract.

- *U.S. Federal Trade Commission v. Axon Enterprise, Inc. and Safariland LLC*. U.S. Federal Trade Commission Office of Administrative Law Judges, 2020. (Report and deposition). For a post-closing merger review, performed failing firm and asset exit analyses.
- *Phaedra A. Makris v. Endo International PLC et al.*, Ontario, CA Superior Court of Justice, 2020. (Affidavit). Analyzed trading volume of Endo's stock on Toronto Stock Exchange and NASDAQ.
- *United States of America v. Navistar, Inc.*, U.S. District Court for the Northern District of Illinois, 2020. (Expert report and deposition). Analyzed Navistar's financial condition and impact of potential monetary fines on the firm's financial condition and future competitiveness.
- *State of Washington v. Franciscan Health System d/b/ CHI Franciscan Health; Franciscan Medical Group; The Doctors Clinic, A Professional Corporation; and WestSound Orthopaedics, P.S.*, U.S. District Court for the Western District of Washington, 2018. (Expert report and deposition). For a post-closing merger review, analyzed merger-specific and verifiable efficiencies and performed failing firm and asset exit analyses.
- *Sharon Barnum et al. v. Equifax Information Services, LLC*, U.S. District Court for the District of Nevada, 2018. (Expert Report and deposition). Provided rebuttal opinions on class certification and damages.
- *Silfab Solar Inc. et al. v. U.S. et al.*, U.S. Court of International Trade, 2018. (Expert Report). Performed economic analysis of injury to importers of solar panel components from U.S. Government's imposition of safeguard (Section 201) tariffs.
- *U.S. Department of Justice v. Aetna Inc. and Humana Inc.*, U.S. District Court for the District of Columbia, 2016. (Expert report and deposition). Estimated profitability of the individual commercial health insurance business.
- *Jason D. Burke vs. The Prudential Insurance Company of America*, U. S. District Court for the District of Arizona, 2014. (Expert report). Estimated the value of past benefits and the present value of future benefits to plaintiff related to a long term disability plan.
- *John B. Davidson, Individually, and on behalf of all others similarly situated v. Henkel Corporation, Henkel Of America, Inc., and Henkel Corporation Deferred Compensation and Supplemental Retirement Plan and Its Committee as Administrator Of The Henkel Corporation Deferred Compensation and Supplemental Retirement Plan*, U. S. District Court for the Eastern District of Michigan, Southern Division, 2014. (Expert report). Provided testimony on economic losses resulting from the alleged failure to timely withhold FICA payroll taxes within certain retirement and deferred compensation plans.
- *CBR Systems, Inc., v. Christopher Deigan and Cord:Use Cord Blood Bank, Inc.*, Superior Court of New Jersey, Chancery Division, Bergen County, 2013. (Expert report). Provided testimony on damages and causality in a breach of contract and trade secrets case involving cord blood services.
- *Universal Surveillance Corporation dba Universal Surveillance Systems v. Checkpoint Systems, Inc.*, U.S. District Court for the Northern District of Ohio,

Eastern Division, 2013. (Expert report and deposition). Provided testimony on damages and causality in a breach of contract, trade secrets, and unfair competition case involving loss prevention products in the retail and apparel industry.

- *New York State Citizens' Coalition for Children v. Gladys Carrion, Commissioner of the New York State Office of Children & Family Services, in her official capacity*, U.S. District Court, Eastern District of New York, 2012 (Expert report and deposition). Estimated underpayments in the State of New York for foster care reimbursement rates as required by the U.S. Child Welfare Act. Proposed methodology to ensure future reimbursement rate increases are appropriate.
- *Peak Performance Nutrition, LTD., v. Incubation, LLC, Nature's Pure Body Institute, et al., and related cross actions*, Superior Court of the State of California for the County of Ventura, 2012 (Expert report). Estimated damages and unjust enrichment related to allegations of breach of contract and infringement and misappropriation of rights to name, likeness and product endorsement.
- *Aviva USA Corporation et al v. Anil Vazirani et al.*, U.S. District Court, District of Arizona, 2012 (Expert report and deposition). Estimated damages related to allegations of trademark infringement, trade dress infringement, cyberpiracy, unfair competition, and racketeering in insurance and annuity industry.
- *Tobacco Technology, Inc. v. TAIGA International N.V. et al.*, U.S. District Court, District of Maryland, 2008 (Expert report and deposition). Estimated damages and unjust enrichment in a breach of contract and trade secrets case involving tobacco flavorings.
- *Pestube Systems, Inc. v. HomeTeam Pest Defense LLC*, U.S. District Court, District of Arizona, 2007 (Expert report and deposition). Estimated damages and unjust enrichment in false advertising (Lanham Act) and unfair competition for pest control services.
- *HomeTeam Pest Defense v. Pestube Systems, Inc.*, U.S. District Court, District of Arizona, 2005 (Expert report and deposition). Estimated damages and unjust enrichment in false advertising (Lanham Act), unfair competition and trademark infringement case for pest control services.

### **Trial and Arbitration Experience**

- For a partnership transaction dispute related to the transfer of the Chicago Cubs, analyzed the probability of financial distress and the value of debt guarantees, analyzed the substantive costs and benefits of ownership of a minority equity position, and assisted in the preparation of trial testimony and exhibits for petitioners in *Tribune Media Company v. Commissioner of Internal Revenue*.
- For transfer pricing dispute analyzed the benefits of local sales and marketing activities as compared to sales and marketing activities performed by the parent and assisted in the preparation of trial testimony and exhibits for plaintiffs in the *Coca-Cola Company and Subsidiaries v. Commissioner of Internal Revenue*.
- For a proposed merger, analyzed merger-specific and verifiable efficiencies and performed failing firm and asset exit analyses in *U.S. Department of Justice v. EnergySolutions, Inc., Rockwell Holdings, Inc., Andrews County Holdings, Inc., and Waste Control Specialists, LLC*.



- Analyzed profitability of individual commercial health insurance business for plaintiffs in *U.S. Department of Justice v. Aetna Inc. and Humana Inc.*
- Estimated damages related to allegations of breach of contract in *LG Life Science, LTD. v. Chiesi USA, Inc., F/K/A Cornerstone Therapeutics, Inc., F/K/A Cornerstone Biopharma, Inc., Merus Labs International Inc., and Vansen Pharma, Inc.*
- For an action related to insider trading, failure to report stock transactions as required by Rule 144 and evasion of taxes, reviewed trading records, analyzed corporate structures, and reviewed off-shore trusts structures. Analyzed impact of but-for reporting of trades and assisted in preparation of trial testimony and exhibits for defendants in *Securities Exchange Commission vs. Samuel E. Wyly, Donald R. Miller, Jr., in his Capacity as the Independent Executor of the Will and Estate of Charles J. Wyly, Jr., Michael C. French, and Louis J. Schaufele III.* Analyzed stock price returns related to alleged insider trading information, including analysis related to the materiality of information.
- Analyzed non-tax related business purposes for a structured financing between an U.S. bank and U.K bank. Assisted in the preparation of trial testimony and exhibits for plaintiff BB&T in *Salem Financial, Inc., et al., as Successor-in-Interest to Branch Investments LLC, vs. United States of America*, United States Court of Federal Claims, Case No. 10-192.
- Analyzed investment returns related to a large portfolio of high-yield bonds, including the risks and suitability of investing in junk bonds. Analyzed profitability for rehabilitated insurance company. Analyzed adequate capitalization of insurance company from an actuarial perspective, including the application of risk-based capital standards. Investigated market for letter of credit and credit guarantees. Assisted with rebutting alleged damages analysis. Assisted in the preparation of trial testimony and exhibits for defendant Artemis S.A. in *John Garamendi v. Altus Finance S.A. et al. Case No. CV 99-2829 AHM (CWx)*, in the U.S. District Court for the Central District of California.
- Analyzed the liquidity position of a company including the impact of a number of acquisitions and asset dispositions. Assisted in the preparation of trial testimony and exhibits for trial. *Liberty Media Corp. et al. v. Vivendi Universal SA*, Case Number 1:03-cv-02175, in the U.S. District Court for the Southern District of New York.
- On behalf of a major investment bank, estimated damages related to valuations of a portfolio of hedge funds. Drafted testimony and exhibits used at a Financial Industry Regulatory Authority (FINRA) Arbitration.
- On behalf of a former audit partner of a Big Four firm analyzed the accounting treatment of subsequent events for a Public Company Accounting Oversight Board (PCAOB) investigation and trial of enforcement action.
- Analyzed roles and responsibilities of chief financial officer as related to the appropriate accounting for real estate transactions with Duane Reade stores in criminal case. Helped prepare cross examination for trial for defendant William Tennant in *United States v. Anthony Cuti et al.*, case number 1:08-cr-00972, in the U.S. District Court for the Southern District of New York.
- Analyzed the liquidity position of a company including the impact of a number of acquisitions and asset dispositions. Analyzed the appropriate disclosures for

non-GAAP measures in the financial statements and press releases of a company. Analyzed the differences in U.S GAAP and French accounting standards for company filing statements in both jurisdictions. Assisted in the preparation of trial testimony and exhibits for *In re Vivendi Securities Litigation*, case number 1:02-cv-05571, in the U.S. District Court for the Southern District of New York.

- Analyzed the tax accounting treatment of net operating loss carry forwards. Analyzed whether a shareholder rights agreement (poison pill) may have sustained the value of the net operating loss carry forwards. Assisted in the preparation of trial testimony and exhibits for *Selectica, Inc., v. Versata Enterprises, Inc., and Trilogy, Inc.* trial in Delaware's Chancery Court.
- Analyzed investment returns related to a large portfolio of high-yield bonds. Assisted in the preparation of trial testimony and exhibits for defendant Artemis S.A. in *John Garamendi v. Altus Finance S.A. et al.*
- Performed rebuttal damage analysis for breach of contract case involving an auditor resignation during an audit. Drafted testimony and exhibits used at arbitration with the American Arbitration Association.
- Analyzed the economic benefits of alleged non-compliance (with both Clean Air and Clean Water Acts) for a steel company. Assisted in the preparation of trial testimony and exhibits in *United States v. WCI Steel, Inc.*
- Estimated property and reputation damages due to environmental contamination. Assisted in the preparation of trial testimony and exhibits. *City of Newburgh, New York v. Central Hudson Gas & Electric Corporation*
- Estimated allocated share of environmental remediation costs for the Lipari Landfill Superfund site. Assisted in the preparation of trial testimony and exhibits. *Rohm and Haas v. Crown Cork & Seal Co. of Philadelphia, Continental Can Co. and NL Industries.*
- Analyzed franchise fee calculations related to electric utility's dispute with municipalities and assisted with trial preparations. *Wharton, Galveston and Pasadena et al v. HL&P and Houston Industries Finance Inc.*

### **Litigation Consulting Experience**

#### *Tax Controversy*

- For a state transfer pricing dispute, analyzed the non-tax benefits of a corporate reorganization.
- For a debt-equity case, determined the appropriate rating methodology to apply for a non-rated fully owned subsidiary.
- For a transfer pricing dispute, analyzed the value of licenses associated with a medical device product.
- For a transfer pricing dispute, analyzed a multisided platform business. Investigated the interaction of the technology, user base and marketing intangibles. Analyzed the value of the private company at the time of the transfer. Reviewed the marketing intangibles and how they provide value to the company.
- For a transfer pricing dispute, analyzed the relative value of various software components.

- For taxpayer dispute with IRS, assisted with analysis of manufacturing capabilities required for a medical device product and determined comparability to alternative products. Analyzed the FDA process associated with medical device approvals.
- For a taxpayer dispute with IRS, analyzed a company's cash managements and treasury systems to discuss how the company performed its internal banking services and how it managed its liquidity. Analyzed a company's debt capacity and whether it would have been able to issue and refinance an equivalent amount of intercompany debt to third parties.
- Based on analysis of market data, determined an appropriate arms-length guarantee fee payment to compensate a parental guarantee for an intercompany loan transaction.
- Analyzed the structure of a multinational financial institution and its risk management functions. Analyzed the normal and extraordinary risks a multinational financial institution faces. Discussed the appropriate allocation of settlement payments for a securities class action between different parents and subsidiaries of the institution.
- For taxpayer disputes with the Internal Revenue Service (IRS), analyzed the pre-tax expected profitability for collateralized loan transactions. Analyzed non-tax related business purposes for a structured financing between an U.S. bank and U.K. bank. Compared financing costs with alternative forms of financing.
- Analyzed generally acceptable accounting principles for income taxes and reviewed appropriate accounting for net operating loss carry forwards. Discussed potential future values for net operating loss carry forwards in the context of tax sharing agreements between parties.
- Performed cost-benefit study of proposed Treasury regulations of the paid tax preparation market.

#### *Antitrust and Competition*

- For a proposed merger, provided analysis of the financial condition of the target for merging parties.
- For a proposed merger, provided analysis of potential efficiencies for merging parties.
- For a proposed merger worked for the Federal Trade Commission as potential cost efficiencies expert.
- Engaged to estimate the ability of a company to pay civil penalties and potential private litigation related expenditures.
- Investigated potential liability in several international price fixing conspiracy cases.
- Estimated plaintiff damages in monopolization and Lanham Act false advertising case in cable industry.
- Involved with a merger investigation before the FTC in a large horizontal merger in the paperboard industry.

#### *Financial Products and Financial Institutions*

- Analyzed the GSE bond market.

- Analyzed interest rate and commodities derivative positions to determine the commercially reasonable process and valuations assigned during close out process specified in ISDA agreements following the bankruptcy of one of the largest financial institutions.
- For a regulatory investigation into reporting of the London Interbank Offer Rate (LIBOR) and other interest rate benchmarks for investment bank, reviewed the firm's unsecured financing costs, investigated its interest rate swaps, swaptions, future rate agreements, futures and money markets transactions tied to LIBOR, analyzed the firm's IBOR submission processes and submission patterns, and provided multiple presentations to regulatory agencies.
- Analyzed appropriate accounting for sale and repurchase agreements of financial instruments.
- Analyzed the books and records of an asset management company and performed valuation of minority share of the privately held company. Drafted testimony and exhibits to be used at arbitration.
- Analyzed the accounting treatment of energy traded contracts including the appropriateness of the related revenue recognition policies.
- Analyzed private equity investments and stock trading behavior for an insider trading case.
- Helped perform valuation of minority equity position in industrial corporation in the context of a proposed change of control transaction.

#### *Securities and Financial Accounting*

- Estimated potential damages exposure for Rule 10(b)-5 and Section 11 federal and state cases filed against international companies with ADS listed in U.S. Participated in mediation and settlement discussions with counsel.
- Estimated potential damages exposure for multiple Rule 10(b)-5 and Section 11 federal and state cases filed against the same company. Participated in mediation and settlement discussions with counsel. Assisted in the preparation of a class certification rebuttal report.
- Assisted in review of the appropriate disclosures made by company in its Management Discussion and Analysis portion of its financial statements.
- Estimated potential damages exposure for Rule 10(b)-5 claims and the equivalent exposure in a parallel Canadian securities case related to a Canadian company whose primary assets were in China. Reviewed the timing of disclosures and whether new information was released to the market at the time of the alleged corrective disclosure.
- For an SEC investigation, reviewed purchase accounting treatment of assets acquired for a retail franchise along with the associated remodeling costs. Reviewed subsequent accounting adjustments and impacts on earnings.
- Engaged to estimate potential damages in a Rule 10b-5 securities litigation.
- For a securities litigation involving Rule 10b-5 and Section 11 claims, analyzed the appropriate accounting treatment and disclosures of repurchase transactions. Analyzed the appropriate auditing procedures for repurchase transactions. Reviewed disclosure standards for non-GAAP metrics.
- Assisted in the review of loan files and underwriting decisions for mortgages packaged and sold to Fannie Mae.

- Estimated potential damages exposure for Rule 10(b)-5 and Section 11 claims in securities cases arising from the financial crisis.
- Analyzed the appropriate accounting for loan loss reserves.
- Analyzed the appropriate accounting for oil well decommissioning costs and hurricane remediation costs in the context of a dispute with the insurance company.
- Analyzed the appropriate internal control over financial reporting, including the appropriate disclosures related to material weaknesses as opposed to significant deficiencies.
- Analyzed the accounting treatment of stock option awards and the associated effects of changing measurement dates. Analyzed the materiality of restated accounts.
- Analyzed the appropriate tax accounting, including the accounting for uncertain tax benefits, and the materiality of restated accounts.
- Analyzed the accounting treatment of investments in internet-related advertising companies, including issues of alleged impairment and extent of consolidation by parent. Assisted in the preparation of summary judgment argument. Drafted testimony and exhibits to be used at trial.
- Analyzed the appropriate software revenue recognition accounting and the materiality of restated accounts.
- Analyzed the tax accounting treatment of stock options and the associated effects of changing measurement dates.
- Analyzed the typical venture capital structure for investments in internet-related advertising companies. Drafted testimony and exhibits to be used at trial.
- Analyzed an individual's tax treatment of trading income in a breach of contract and valuation dispute.
- Analyzed trading behavior, returns and impacts of market timing and late trading for a mutual fund company.
- Analyzed private equity investments and relative performance for a case involving executive compensation. Reviewed detailed accounting records related to financial impacts of investment performance. Drafted testimony and exhibits to be used at trial.
- Analyzed the appropriate valuation of and accounting for goodwill for a manufacturing company.

#### *Valuation and Damages*

- Estimated the loss to the manufacturer from allegedly grey market activities by a distributor.
- Following the dissolution of a joint venture agreement, analyzed the value of multiple drugs, reviewed the impact of the valuations on the capital account of the JV and analyzed the appropriate allocation of cash distributions from the capital account.
- For an appraisal case claiming additional payments above the transaction price, performed valuation of drugs, including a focus on the FDA approvals process and the resulting company valuation.

- Performed valuation of a celebrity endorsement on product sales and estimated damages to alleged breach of contract.
- Estimated damages due to allegedly construction defects for a class of homeowners. Helped prepare exhibits for trial.
- Engaged to estimate damages in a theft of trade secrets case.
- Estimated diminution in value of a real estate property related to soil contamination.
- Estimated value of iPhone application related to the golf industry.
- Performed valuation of privately held company in education industry.
- Analyzed the valuation of long-term structured energy contracts, including the reasonableness of the energy modeling techniques used across time.
- Estimated damages in false advertising (Lanham Act) and trademark infringement case for cleaning products.
- Performed valuation of company taken private in leveraged buyout and provided critique of opposing experts valuation.
- Estimated damages and liability for alleged breach of contract in several cases, including a failed merger in the electric utility industry and litigation in the oil industry.
- Performed valuations of multiple companies within a variety of industries.
- Estimated damages from breach of contract allegations in several cases including for a large transportation firm, between the U.S. Department of Energy and several nuclear utility clients, and in a breach-of-contract class action involving a major energy firm.
- Estimated damages in a false advertising (Lanham Act) case in the baby formula industry.

#### *Other*

- Analyzed the impact of marketing on the sales of a class of drugs for a pharmaceutical manufacturer.
- Analyzed the determinants of drug addiction.
- Estimated economic benefit and beyond BEN benefit within the context of the mobile source civil penalty policy for a vehicle manufacturer.
- Estimated impact of fine on company's financial position to determine whether fine would result in financial distress.
- Assisted in drafting testimony for several cost of capital cases for utilities.
- Supervised analysis of IPO allocations for SEC related case.
- Performed analysis of the appropriate level of spending for the state of New York on its provision of foster care services to be in compliance with the federal Child Welfare Act.
- Analyzed the economic benefits of alleged non-compliance (with both Clean Air and Clean Water Acts) within several industries.
- Estimated property and reputation damages due to environmental contamination in several cases.

#### **Publications**

- “Non-Standard Counterfactuals in Merger Control” with Peter Davis and Kostis Hatzitaskos, *Getting the Deal Through—Merger Control 2020*, available at <https://www.cornerstone.com/Publications/Articles/Non-Standard-Counterfactuals-in-Merger-Control/Non-Standard-Counterfactuals-in-Merger-Control.pdf>
- “5 Questions with Greg Eastman: The Failing Firm Defense in the Age of COVID-19” available at <https://www.cornerstone.com/Publications/Articles/5-Questions-with-Greg-Eastman-The-Failing-Firm-Defense-in-the-Age-of-COVID-19>
- “5 Questions with Greg Eastman and Ceren Canal Aruoba: The Horizontal Merger Guidelines and the Failing Firm Defense” with Ceren Canal Aruoba available at <https://www.cornerstone.com/Publications/Articles/5-Questions-Horizontal-Merger-Guidelines-Failing-Firm-Defense>
- “Will PCAOB’s New Audit Rule Trigger Shareholder Litigation?” with Elaine Harwood, Steven McBride, and Jean-Phillippe Poissant, available at <https://www.law360.com/articles/1209786/will-pcaob-s-new-audit-rule-trigger-shareholder-litigation->
- “The Increasing Importance of Loss Causation Analysis in Criminal Cases” available at <http://www.law360.com/whitecollar/articles/276932/the-increasing-importance-of-loss-causation-analysis>
- “An Imprecise Measure Of Loss — At Best” available at <http://www.law360.com/whitecollar/articles/353974/an-imprecise-measure-of-loss-at-best>
- “A Primer on When to Use Expert Witnesses and How to Find Them,” with Vandy M. Howell and Maria Salgado, *Bloomberg BNA Expert Evidence Report* 13, no. 1 (January 2013)
- “Working Successfully with Expert Witnesses,” with Vandy M. Howell and Maria Salgado, *Bloomberg BNA Expert Evidence Report* 13, no. 4 (February 2013)

A handwritten signature in blue ink, appearing to be "J. Gregory Eastman", is written over a horizontal black line.

**This is Exhibit B to the Affidavit of  
J. Gregory Eastman  
Affirmed on July 19, 2021**



CT-2021-002

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

**AND IN THE MATTER OF** the proposed acquisition of Tervita Corporation by Secure Energy Services Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an order pursuant to 92 of the *Competition Act*;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an interim order pursuant to section 104 of the *Competition Act*;

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

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**SECURE ENERGY SERVICES INC.**

**TERVITA CORPORATION**

**Respondents**

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**ACKNOWLEDGEMENT OF EXPERT WITNESS**

**J. GREGORY EASTMAN, Ph.D.**

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I, **J. Gregory Eastman, Ph.D.**, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

July 19, 2021

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Date



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J. Gregory Eastman, Ph.D.

**CT-2021-002**

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**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**– and –**

**SECURE ENERGY SERVICES INC.  
TERVITA CORPORATION**

**Respondents**

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**ACKNOWLEDGEMENT OF EXPERT WITNESS  
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**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**– and –**

**SECURE ENERGY SERVICES INC. and  
TERVITA CORPORATION**

**Respondents**

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**AFFIDAVIT OF J. GREGORY EASTMAN, Ph.D.  
Affirmed July 19, 2021**

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