COMPETITION TRIBUNAL
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CT- 2021-002

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OTTAWA, ONT. | Doc. # 134

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 acquisition by Secure Energy Services Inc. of all of the issued and outstanding shares of Tervita Corporation;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

SECURE ENERGY SERVICES INC.

Respondent

AFFIDAVIT OF J. GREGORY EASTMAN, Ph.D.

Affirmed April 11, 2022

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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.[1] 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.[2] 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,[3] 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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[1] 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).
[2] 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).
[3] 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. 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 Transaction"). The Bureau has asked me to review the Expert Report of Andrew Harington dated March 25, 2022 ("Harington Report"). Specifically, the Bureau has asked me to provide my opinion regarding Mr. Harington's assessment of productive efficiencies arising from the Transaction, and to review and respond to Mr. Harington's assessment of the amount of efficiencies that would be lost in the event of a hypothetical divestiture order.

5. I attach as Exhibit "A" to this affidavit my report setting out my opinion.

6. I attach as Exhibit "B" to this affidavit my curriculum vitae.

7. I attach as Exhibit "C" to this affidavit my Acknowledgement of Expert Witness.

Affirmed remotely by J. Gregory Eastman stated as being located in the City of Dallas in the State of Texas, before me in the City of Gatineau in the Province of Quebec on April 11, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	))))))))	
Commissioner for Taking Affidavits	)	J. Gregory Eastman

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

This is Exhibit A to the Affidavit of
J. Gregory Eastman
Affirmed on April 11, 2022

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

File No. 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 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.*

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

SECURE ENERGY SERVICES INC.

Respondent

EXPERT REBUTTAL REPORT OF J. GREGORY EASTMAN, Ph.D.
DATED April 11, 2022

Table of Contents

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.[1] 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.[2] 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,[3] 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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[1] 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).

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[3] 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. 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.

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 Transaction"). The Bureau has asked me to review the Affidavit of Andrew Harington, *The Commissioner of Competition v. Secure Energy Services Inc.*, March 25, 2022, Exhibit A ("Harington Report"). Specifically, the Bureau has asked me to provide my opinion regarding Mr. Harington's assessment of productive efficiencies arising from the Transaction, and to review and respond to Mr. Harington's assessment of the amount of efficiencies that would be lost in the event of a hypothetical divestiture order.

6. For clarity, the Bureau has not asked me to provide an opinion on the trade-off assessment whereby the cognizable efficiencies are compared to the anti-competitive effects of the Transaction. Thus, my report does not consider issues beyond the scope of cognizable efficiencies, such as anti-competitive effects, the appropriate welfare standard, or other matters related to the comparison of efficiencies to anti-competitive effects.

7. I have based my opinions in this report 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 report 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 report. The materials that I have relied upon in forming my opinions are discussed and cited herein and are presented in Appendix A.

8. This Report should not be construed as expressing opinions on matters of law, which are outside of my expertise and are for the Tribunal to determine. To the extent I have interpreted regulations, contracts, agreements, or other evidence, these interpretations necessarily reflect my understanding thereof from an economic perspective.

III. SUMMARY OF OPINIONS

9. To the extent the closing and absorbing facilities represent differentiated products, the cost savings resulting from facility closures represent a loss of choice and therefore are not productive efficiencies.[4]

10. Mr. Harington's assessment of claimed efficiencies fails to consider a number of factors that would likely impact the amount of cognizable efficiencies, rendering his analysis incomplete, overstated, and/or not verifiable:

a. Mr. Harington's analysis of the FST and SWD facility rationalization relies on volume and capacity data that does not appear to address the impact of current and future economic and oil production environments on product volumes, which could result in diseconomies of scale, and is therefore not verifiable;

b. Mr. Harington's claimed efficiencies from fixed cost savings from closures of FSTs, SWDs, and landfills rely on an incomplete analysis of the fixed and variable cost structures of the closing and absorbing facilities, and therefore the level of productive efficiency at absorbing facilities is not verifiable;

c. Mr. Harington's analysis likely understates incremental customer transport costs by failing to address the likely increase to customer wait times caused by increased volumes at absorbing facilities, and by using data from a period of time with depressed volumes;

[4] Competition Bureau Canada, "Merger Enforcement Guidelines," October 6, 2011 ("MEGs"), ¶ 12.20.

d. Mr. Harington's analysis of claimed geographic based efficiencies associated with construction of [redacted] pipelines fails to account for certain costs that may offset potential savings;

e. Mr. Harington's claimed corporate headcount efficiencies include reductions that occurred in advance of the execution of the Secure and Tervita merger, and therefore do not appear merger specific.

11. With respect to the amount of cost savings that would be lost in the event of an order by the Tribunal, Mr. Harington's analysis does not properly account for a potential divestiture involving more than one potential purchaser. In the event the facilities identified in the order are divested to multiple purchasers, the amount of efficiencies that are claimed to be lost in the event of the order is likely overstated.

IV. BACKGROUND

A. OVERVIEW OF SECURE AND TERVITA

12. In this section, I provide my understanding of Secure and Tervita's businesses, as well as my understanding of the Transaction. The overview is not intended to be comprehensive, as I understand that readers of this report have been provided with numerous documents and overviews relating to these topics.

13. Secure is a publicly traded Canadian energy company that provides "fluid and solid solutions to upstream oil and natural gas companies" and "midstream infrastructure, environmental solutions and technical solutions" to its customers.[5] Secure was founded by former Tervita employees in 2007.[6] It has grown through acquiring competitors and building its own facilities during a period of high oil exploration and development.[7] Prior to the company's merger with Tervita, Secure operated 21 FSTs, 7 industrial landfills (as well as one it does not own but operates under contract), and 17

[5] Secure Energy Services Inc., Annual Report 2018, February 26, 2019 (Exhibit 4 of Affidavit of Dave Engel, March 25, 2022), p. 2.
[6] "Leading SECURE forward," *Secure Energy*, 2022, https://www.secure-energy.com/leadership?hsLang=en.
[7] Between 2007 and 2015, over 11,000 wells were drilled in Western Canada for exploration and development on an annual average. Since 2015, this number declined to less than 4,700. "Statistics," *The Canadian Association of Petroleum Producers (CAPP)*, https://www.capp.ca/resources/statistics/. Secure Energy Services Inc., Annual Information Form for the year ended December 31, 2020, February 25, 2021 (Exhibit 6 of Affidavit of Dave Engel, March 25, 2022), pp. 25–27.

standalone water disposal wells (among other assets).[8] These facilities are primarily located in Alberta, Canada; however, the company also operates facilities elsewhere in Western Canada as well as in the United States.[9]

14. Tervita Corp. was founded in 1983 and was a publicly-traded Canadian company that provided integrated environmental services to the oil and gas exploration and extraction industry, and to industrial businesses, more generally.[10] Tervita's operations were divided into two reporting segments: energy services and industrial services.[11] Energy services include treatment, recovery, and disposal of wastes that result from upstream and midstream segments of oil and gas production, and industrial services comprise waste services, metals recycling, rail services, and environmental services accessed by a large set of industries.[12] In 2020, energy services accounted for 60 percent of Tervita's revenue.[13] Tervita grew its presence in waste services through de novo entry and mergers and acquisitions, including its 2011 acquisition of Complete Environmental, inclusive of the Babkirk secure landfill, and its 2018 merger with a large waste service operator, Newalta Corporation ("Newalta").[14] Prior to the company's merger with Secure, Tervita operated 44 treatment, recovery and disposal ("TRD") facilities, 22 engineered landfills, eight stand-alone water disposal facilities, eight onsite facilities, three cavern disposal facilities, nine bioremediation facilities, five metals recycling facilities, three transfer stations, and one (naturally occurring) radioactive materials

[8] As of December 31, 2020. In addition, the company also manages operations at an eighth landfill in Manitoba. Secure Energy Services Inc., Annual Information Form for the year ended December 31, 2020, February 25, 2021 (Exhibit 6 of Affidavit of Dave Engel, March 25, 2022), pp. 25–27.

[9] As of December 31, 2020. Specifically, the company operated facilities in British Columbia, Saskatchewan, Manitoba, North Dakota and Oklahoma in addition to their Alberta operations. Secure Energy Services Inc., Annual Information Form for the year ended December 31, 2020, February 25, 2021 (Exhibit 6 of Affidavit of Dave Engel, March 25, 2022), pp. 7, 23.

[10] About a quarter of revenues come from well drilling and completion process (early phase of well development) and three-quarters come from ongoing production activities. *See* Tervita Annual Information Form for the fiscal year ended December 31, 2020 [RBBC00003_000000017], p. 8, 11–12. [redacted]

[11] Tervita Corporation, Annual Information Form for the fiscal year ended December 31, 2019, March 8, 2020, https://tervita.com/files/public-files/basic-financial-reports-documents/1Yu9W5JmSEFGxvjF.pdf., pp. 13–14.

[12] Tervita Corporation, Annual Information Form for the fiscal year ended December 31, 2019, March 8, 2020, https://tervita.com/files/public-files/basic-financial-reports-documents/1Yu9W5JmSEFGxvjF.pdf., pp. 13–14, 19–20.

[13] Tervita Annual Information Form for the fiscal year ended December 31, 2020 [RBBC00003_000000017], p. 13.

[14] The other mergers include those with International Technologies Inc. in 1993, a merger with CCS Inc. and 987681 Alberta Ltd in 2002, and a merger with 1331826 Alberta ULC in 2007. *See* Tervita Annual Information Form for the fiscal year ended December 31, 2020 [RBBC00003_000000017] pp. 8, 12. Federal Court of Appeal, 2013 FCA 28, at ¶¶ 6–15.

facility.[15] These facilities were primarily located in Alberta, Canada; however, the company also conducted operations at a number of facilities in British Columbia and Saskatchewan.[16]

15. In March 2021, Secure and Tervita announced a merger agreement, and in July 2021, the parties announced the closing of the merger of the two companies.[17] In the time between the closing of the merger in July 2021 and February 28, 2022, [redacted][18]

B. OVERVIEW OF PROPOSED ORDER FOR A DIVESTITURE OF CERTAIN TERVITA ASSETS

16. As set out in the *Competition Act* ("Act"), if the Competition Tribunal finds that a "merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially," it may establish an order against the merging parties.[19] In the case of a completed merger, an order may be a directive to either "dissolve the merger in such manner as the Tribunal directs" or "dispose of assets or shares designated by the Tribunal in such manner as the Tribunal directs."[20]

17. In his report, Mr. Harington presents an analysis of the claimed efficiencies that would likely be lost in the event of two hypothetical divestiture orders.[21] He presents lists of facilities assumed to be divested in each of the two hypothetical divestiture order scenarios in the Harington Report Appendix C.

18. I understand that a single purchaser may not exist in either hypothetical divestiture order scenario and that the facilities may be sold to multiple individual purchasers.[22] As discussed below, my analysis of the impact of a potential divestiture Order is based on the premise that multiple individual purchasers will acquire the divested assets (the "Order").

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[15] Tervita Corporation Presentation, "Investor Presentation," March 2021, pp. 6, 28.
[16] Tervita Corporation Presentation, "Investor Presentation," March 2021, p. 29.
[17] Secure Energy Services Inc. Press Release, "SECURE Energy Services Inc. Completes Merger with Tervita Corporation," July 2, 2021, https://secure-energy.mediaroom.com/2021-07-02-SECURE-Energy-Services-Inc-completes-merger-with-Tervita-Corporation.
[18] Affidavit of Keith Blundell, *The Commissioner of Competition v. Secure Energy Services Inc.*, March 25, 2022 ("Blundell Affidavit"), ¶¶ 49–120.
[19] Competition Act, R.S.C., 1985, c. C-34, current to November 11, 2021, last amended July 1, 2020 ("Act") Subsection 92(1).
[20] Subsection 92(1) of the Act.
[21] *See* Harington Report, ¶ 10, Appendix C, Schedules 4, 5.
[22] Harington Report, ¶ 217.

V. COGNIZABLE EFFICIENCIES UNDER SECTION 96 OF THE COMPETITION ACT

19. I conducted the claimed efficiencies analysis discussed in Sections VI and VII of my report based on the guidance set out in the Act, the Competition Bureau's 2011 Merger Enforcement Guidelines ("MEGs"), and by the Competition Tribunal's ruling in the matter of *The Commissioner of Competition v. CCS Corporation et al.,* 2012 Comp Trib 14 ("Tervita 2012"), as well as from my experience as a financial economist.

20. According to the MEGs, "Section 96 of the Act provides an efficiency exception to the provisions of section 92. When a merger creates, maintains or enhances market power, section 96(1) creates a trade-off framework in which efficiency gains that are likely to be brought about by a merger are evaluated against the anti-competitive effects that are likely to result."[23]

21. The categories of efficiencies described in the MEGs as "relevant to the trade-off analysis in merger review" include:

- allocative efficiency: the degree to which resources available to society are allocated to their most valuable use;
- technical (productive) efficiency: the creation of a given volume of output at the lowest possible resource cost; and
- dynamic efficiency: the optimal introduction of new products and production processes over time.[24]

22. The MEGs define productive efficiencies as follows:

> Productive efficiencies result from real cost savings in resources, which permit firms to produce more output or better quality output from the same amount of input. In many cases, such efficiencies can be quantifiably measured, objectively ascertained, and supported by engineering, accounting or other data, subject to a discount, as appropriate, for likelihood in practice. Timing differences in the realization of these savings are accounted for by discounting to the present value.[25]

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[23] MEGs, ¶ 12.1.
[24] MEGs, ¶ 12.4.
[25] MEGs, ¶ 12.14.

Productive efficiencies include the following:

- cost savings at the product, plant and multi-plant levels;
- savings associated with integrating new activities within the firm; and
- savings arising from transferring superior production techniques and know-how from one of the merging parties to the other.[26]

23. The MEGs also provide guidance as to dynamic efficiencies, "including those attained through the optimal introduction of new products, the development of more efficient productive processes, and the improvement of product quality and service."[27]

24. The MEGs provide that costs incurred to achieve efficiency gains are deducted from the total value of efficiencies considered under the Act:

> Once all efficiency claims have been valued, the costs of retooling and other costs that must be incurred to achieve efficiency gains are deducted from the total value of the efficiency gains that are considered pursuant to section 96(1). Integrating two complex, ongoing operations with different organizational cultures can be a costly undertaking and ultimately may be unsuccessful. Integration costs are deducted from the efficiency gains.[28]

25. While the Act acknowledges the importance of efficiencies to mergers, not all gains in efficiency resulting from a merger reduce harm and enhance competition. For example, some cost savings may bring about gains in efficiency only by a redistribution of income, and such cost savings are not considered "cognizable efficiencies" under the Act.[29]

26. The MEGs provide that certain categories of efficiencies are generally excluded from the trade-off analysis, including:

- gains that would likely be attained in any event through alternative means if the potential orders were made (examples include internal growth, a merger with a third party, a joint venture, a specialization agreement, and a licensing, lease or other contractual arrangement);

[26] MEGs, ¶ 12.15.
[27] MEGs, ¶ 12.17.
[28] MEGs, ¶ 12.19.
[29] Subsection 96(3) of the Act.

- gains that would not be affected by an order, when the order sought is limited to part of a merger;
- gains that are redistributive in nature, as provided in section 96(3) of the Act (examples include gains anticipated to arise from increased bargaining leverage that enables the merging parties to extract wage concessions or discounts from suppliers that are not cost-justified, and tax-related gains);
- gains that are achieved outside Canada (examples include productive efficiency gains arising from the rationalization of the parties' facilities located outside Canada that do not benefit the Canadian economy); and
- savings resulting from a reduction in output, service, quality or product choice.[30]

27. When determining whether efficiencies arising from a merger can be considered "cognizable," the Tribunal provided further guidance in Tervita 2012, which sets out five screens it applies to eliminate "efficiencies that are not cognizable":[31]

> **First Screen:** "eliminates claims that do not involve a type of productive or dynamic efficiency, or that are not otherwise likely to result in any increase in allocative efficiency."
>
> **Second Screen:** "narrows the claimed efficiencies to those that the Tribunal is satisfied are likely to be brought about by the Merger. Efficiencies that cannot be demonstrated to be more likely than not to be attained in the Merger are filtered out at this stage."
>
> **Third Screen:** "filters out claimed efficiency gains that would be brought about by reason only of a redistribution of income between two or more persons, as contemplated by subsection 96(3). These types of gains include savings that result solely from a reduction in output, service, quality or product choice, as well as from increases in bargaining leverage and reductions in taxes."
>
> **Fourth Screen:** "filters out claimed efficiency gains that would be achieved outside Canada and would not flow back to shareholders in Canada as well as any savings from operations in Canada that would flow through to foreign shareholders."

[30] MEGs, ¶ 12.20.
[31] Tervita Tribunal, Commissioner of Competition v. CCS Corp., 2012 Trib. conc. 14, 2012 Comp. Trib. 14 ("Tervita 2012"), ¶ 261.

Fifth Screen: "filters out claimed efficiencies that either (a) would likely be attained through alternative means if the Tribunal were to make the order that it determines would be necessary to ensure that the merger in question does not prevent or lessen competition substantially, or (b) would likely be attained through the Merger even if that order were made."[32]

VI. ANALYSIS OF THE CLAIMED EFFICIENCIES IN THE HARINGTON REPORT

28. In conducting my analysis of Secure's claimed efficiencies, I reviewed the Harington Report, including the schedules to the report, and the underlying supporting documents listed in footnotes to his report, schedules, and noted within his Appendix D – Scope of Review. I have also reviewed internal documents of Secure and Tervita, including versions of their internal synergy trackers and integration plan.

29. Mr. Harington claims that the Transaction will result in [redacted][3] in total efficiency gains over a ten-year discounted period,[34] or [redacted] in run rate efficiencies.[35] Mr. Harington identifies four main categories of efficiencies: Full Service Terminal (FST) and Standalone Water Disposal (SWD) Facility Rationalization Cost Savings, Landfill Facility Rationalization Cost Savings, Geographic-Based Operating Cost Savings, and Corporate Cost Savings.[36] Mr. Harington identifies [redacted] in claimed FST and SWD Facility Rationalization run rate efficiencies, which he expects to [redacted][7] Mr. Harington identifies [redacted] in claimed Landfill Facility Rationalization run rate efficiencies, which he expects to [redacted][8] Mr. Harington identifies [redacted] in claimed run rate Geographic-Based Operating Cost efficiencies, which he expects to be [redacted][39] Lastly, Mr. Harington identifies [redacted] in claimed Corporate Cost run rate efficiencies, which he expects to [redacted][40] Below I have prepared a replication of Mr. Harington's Table 6, as he

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[32] Tervita 2012, ¶¶ 262–264.
[33] All amounts presented herein are in Canadian Dollars as stated in the cited documents.
[34] Mr. Harington's analysis assumes a discount rate of 8%. *See* Harington Report, ¶ 15.
[35] Harington Report, Schedule 3.
[36] Harington Report, ¶ 92.
[37] Harington Report, Table 6.
[38] Harington Report, Table 6.
[39] Harington Report, Table 6.
[40] Harington Report, Table 6.

sourced from his Schedule 3 to the Harington Report, which includes Mr. Harington's estimates of claimed efficiencies arising from the Transaction:

[redacted]

30. In the following sections I provide my opinions and analysis of claimed efficiencies. In the section that follows, I discuss my opinions and analysis regarding the impact of the hypothetical divestiture orders on the claimed efficiencies.

A. Claimed Efficiencies That Result from Facility Closures Are Not Productive Efficiencies to the Extent the Closures Are Differentiated Products

31. As described in the MEGs at paragraph 12.20, and in Tervita 2012, savings that result from a reduction in "product choice"[41] should be "generally excluded,"[42] and are not cognizable.[43] In this matter, I understand that Dr. Nathan Miller will address the issue of whether the facilities in question should be considered differentiated products. As such, I have not assessed and do not provide any opinion on this issue. However, to the extent the facilities represent differentiated products, the savings resulting from removing such product choices do not represent productive efficiencies.

32. The following categories of Mr. Harington's claimed efficiencies result directly or indirectly from the closure of Secure and Tervita facilities:

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[41] MEGs, ¶ 12.20, and Tervita 2012, ¶¶ 261-262.
[42] MEGs, ¶ 12.20.
[43] Tervita 2012, ¶ 262.

a. Secure and Tervita TRDs and FSTs (collectively referred to hereafter as FSTs), and SWDs resulting in [redacted] of run-rate savings;[44]

b. [redacted] landfill closures resulting in [redacted] of run-rate savings;[45]

c. Secure and Tervita Geographic Savings related to the closure of [redacted] resulting in [redacted] of run-rate savings, and elimination of [redacted] resulting in [redacted] of run-rate savings.[46]

33. To the extent the closure of the FST, SWD, and landfill facilities is determined to be a reduction in product choice, these claimed efficiencies described above totaling [redacted] should likely be excluded from qualifying as cognizable efficiencies. Even if the closure of the facilities is not determined to be a reduction in product choice, Mr. Harington's claimed efficiencies are not cognizable or are overstated, as described below.

B. Mr. Harington's Volume Analysis Does Not Address for Potential Capacity Constraints at Absorbing FST and SWD Facilities Which Could Result in Diseconomies of Scale

34. Mr. Harington claims that the Transaction allows Secure to integrate facilities in overlapping geographic markets where capacity exists to provide the same services to customers.[47] Prior to the merger, Secure and Tervita operated independent networks of midstream infrastructure facilities, or FSTs.[48] Secure and Tervita also operated SWDs.[49] Following the merger, a number of midstream infrastructure facilities ceased operations, either in whole or in part, as proximate facilities are claimed to have sufficient capacity to absorb the demand from waste volume previously routed to closed facilities. Additional facilities are expected to cease operations in the coming years.[50]

35. Mr. Harington claims these efficiencies will arise as a result of the savings in fixed costs at the closed facilities[51] based on the integration plan prepared by management to determine which

[44] Harington Report, Table 8.
[45] Harington Report, Table 20.
[46] Harington Report, Schedule 3.3, Rows 18 and 23.
[47] Harington Report, ¶ 95.
[48] Secure Energy Services Inc., Annual Information Form for the year ended December 31, 2020, February 25, 2021, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/secure-energy-2020-aif.pdf, pp. 7, 23; Tervita Corporation Presentation, "Investor Presentation," March 2021, p. 6.
[49] Harington Report, ¶¶ 41, 47.
[50] Harington Report, Table 7. *See also*, Blundell Affidavit, ¶¶49–120.
[51] Harington Report, ¶ 95.

FSTs and SWDs locations will be closed or partially closed.[52] To evaluate the likelihood of the closures, Mr. Harington assesses each geographic region with the following steps:

a. "summarized the services provided by each of the facilities and the historic volumes processed by each facility of each service";
b. "summarized the intended integration plan for each service in each geographic region and the intended infrastructure construction to implement those plans";
c. "analyzed the absorption capacity that will likely exist for each service in each geographic region taking into account, where applicable, the expansion in capacity that will occur as a result of the infrastructure spend that management has indicated they intend to do"; and
d. "then compared that forecast absorption capacity to the historic volumes processed for each service in that region and have compared my findings to those of SECURE management and reviewed their assessment of the future demand for each service in that region."[53]

36. Mr. Harington describes the facilities and analysis in detail in Appendix F of his report. According to the Affidavit of Keith Blundell dated March 25, 2022 ("Blundell Affidavit"), Corporate Development Manager at Secure, as of February 28, 2022, [redacted][4] Mr. Harington concludes that with the additional capital expenditure that management "indicated they intend to do" that "there will be sufficient capacity in remaining facilities to absorb the likely future volumes."[55] Mr. Harington claims that annual savings resulting from a combined facility network will total [redacted] of run-rate savings by [redacted] of the Transaction,[56] including [redacted] in labour and [redacted] in operating run rate cost savings, offset by increased customer transport costs of [redacted][57] In calculating claimed efficiencies

[52] Blundell Affidavit, ¶¶ 49–120.
[53] Harington Report, ¶¶ 72–73.
[54] Blundell Affidavit, ¶¶ 49–120.
[55] Harington Report, ¶ 75.
[56] Harington Report, Schedule 3.1.
[57] Harington Report, Schedules 3.1.1, 3.1.2, 3.1.3.

arising from the closure of FSTs and SWDs, Mr. Harington assumes that volumes at both closing and absorbing facilities will not change.[58]

37. As I explain below, Mr. Harington's analysis does not appear to address changes in the current and forecasted future economic and oil production environments. In particular, Mr. Harington's analysis does not appear to incorporate the impact of these changes on Secure's product volumes and in turn, how increased product volumes could impact the capacity constraints at FSTs and SWDs. Such factors could reshape Mr. Harington's facility rationalization analysis and claimed efficiencies on a forward-looking basis. As Mr. Harington's analysis does not appear to adequately address these forward-looking impacts, or offer any sensitivity analysis to support his figures, it is likely he underestimates the post-merger volume impact on capacity constraints at the remaining facilities. In addition, his analysis does not account for related diseconomies of scale that are likely to result as absorbing FST and SWD facilities approach or even exceed capacity.[59]

1. Mr. Harington Does Not Appear to Address the Impact of Changes in the Current and Future Economic Environments on Product Volumes

38. As noted above, Mr. Harington's analysis does not appear to address the impact of changes in the current and future economic environments on product volumes, which in turn could reshape his facility rationalization and his calculation of claimed efficiencies. In his analysis, Mr. Harington

[58] Harington Report, ¶ 111. I understand that customers could respond to closed facilities by planning, permitting, constructing, and operating their own facilities. Any planning, permitting, construction, and fixed-operating costs incurred with respect to these self-service facilities would represent a reduction in the productive efficiencies. [redacted]

[59] I note that Mr. Harington does include assumptions for certain additional capacity requirements, in particular at the [redacted] However, I would find more certainty from items other than "discussions with management," such as Secure capital budget forecasts and/or third party bids for the identified items. *See* Harington Report, Table 18, Appendix F.

asserts that he compared "forecast absorption capacity to the historic volumes processed for each service in that region and compared [his] findings to those of SECURE management and reviewed their assessment of the future demand for each service in that region."[60] As support for his assumption, he cites to Secure management conclusions that production in a number of areas is not expected to increase.[61] However, such conclusions are inconsistent with public statements made by Secure management regarding current economic conditions,[62] as well as with the Affidavit of Rory Johnston, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022, Exhibit A ("Johnston Report") on oil production in the Western Canadian Sedimentary Basin.[63]

39. Secure Management described in its Management's Discussion & Analysis ("MD&A") of its fourth quarter 2021 ("Q4 2021") earnings report, that "higher oil prices resulted in increased activity levels" in the Company's FSTs, SWDs, and landfills:

> Strong oil prices, in part due to increased demand for oil as COVID-19 pandemic impacts lessen, are supporting the economics for producers to increase capital spending which has had a positive impact on drilling and completions activity throughout the year.[64]
>
> In addition, higher oil prices resulted in increased activity levels in the Corporation's operating areas, which led to higher processing and disposal volumes at our Midstream Infrastructure facilities and landfills and increased demand for drilling and completion services within the Environmental and Fluid Management segment.[65]

40. Secure also noted in the MD&A section of its Q4 2021 report that it believes that higher prices and broader economic factors will increase production levels and that "industry fundamentals remain favourable":

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[60] Harington Report, ¶ 73.
[61] *See, e.g.,* Harington Report, Appendix F, ¶¶ 31, 47, 71, 82, 95, 126, 176, 205.
[62] Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf, p. 6.
[63] *See* Johnston Report, ¶¶ 3, 4. Specifically, Johnston notes, "it is highly unlikely that WCSB oil production will peak before 2030" and that "[t]here is broad agreement amongst the assessed Forecasts from the CER, AER and CAPP that production will continue to gradually increase through the end of 2030" and "[i]ndeed, given the relatively low prices assumed by the Forecasts even in their base case outlooks, in my opinion there is a higher probability that oil production in the WCSB exceeds rather than undershoots the average of the base case forecasts under consideration."
[64] Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf, p. 2.
[65] Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf, p. 6.

> The Corporation's 2021 results exceeded expectations as rising crude oil, liquids and natural gas prices and producer cash flows drove industry activity, including increased demand for drilling and completion services, incremental facility volumes, increased recovered oil revenue and crude oil marketing opportunities. Benchmark crude oil prices recently reached seven-year highs, with macroeconomic factors including significant inflationary pressures, geopolitical risk premium due to current world events, as well as lessening COVID-19 demand impacts, supporting current prices. The higher prices and broader economic factors lead us to believe that oil and gas producers will spend capital on both maintaining and growing production levels. In early 2022, industry fundamentals have continued to be very strong and SECURE anticipates significantly higher discretionary free cash flow for 2022 based on the following expectations…[66]
>
> In summary, industry fundamentals remain favourable and provide support for our business outlook in 2022. Our priorities are to achieve the remaining $35 million of run-rate synergies impacting Adjusted EBITDA and to use our discretionary free cash flow to strengthen our balance sheet. With our efforts to date and the continuing hard work of our employees, we believe we are well positioned to achieve both of these priorities in 2022.[67]

41. In addition, while Mr. Harington does address the Johnston Report, which projects that oil production in the Western Canadian Sedimentary Basin will increase,[68] Mr. Harington concludes that the forecasts would not affect the intended integration.[69]

42. Mr. Harington's capacity analysis does not appear to adequately address these forward-looking impacts. The historical average volume data that he relies on is depressed by 2020 and 2021 activity, from a period impacted by the COVID-19 pandemic ("COVID-19 Period"). Therefore, the data relied on does not appear representative of current and potential volumes. Moreover, Mr. Harington's analysis does not account for the impact of variability in volumes on facility utilization as discussed further below.

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[66] Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf, p. 9.

[67] Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf, p. 11.

[68] Harington Report, ¶ 87; Johnston Report, ¶¶ 3, 4. Specifically, Johnston notes, "it is highly unlikely that WCSB oil production will peak before 2030" and that "[t]here is broad agreement amongst the assessed Forecasts from the CER, AER and CAPP that production will continue to gradually increase through the end of 2030" and "[i]ndeed, given the relatively low prices assumed by the Forecasts even in their base case outlooks, in my opinion there is a higher probability that oil production in the WCSB exceeds rather than undershoots the average of the base case forecasts under consideration."

[69] Harington Report, ¶ 87.

43. I provide a summary of the historical volume data for integration groupings assessed by Mr. Harington to evaluate the reasonableness of the facility rationalization capacity analysis, in Table 1, below.

[redacted]

44. [redacted][71] [redacted]

[70] I also note that utilizing the current volume data, for example through year-end 2021 or into 2022, would likely improve the level of information used to assess the capabilities of the facilities to absorb volumes now, and into the future.
[71] Harington Report, Appendix F.

[redacted]"[72] However, Mr. Harington does not perform an analysis of volumes on a forward-looking basis, and he does not conduct any sensitivity analysis regarding potential volume increases in this integration grouping. [redacted][73]

2. Mr. Harington Likely Underestimates the Post-Merger Volume Impact on Capacity Constraints at the Remaining Facilities

45. I have assessed the specific geographic groupings presented in Mr. Harington's Report in order to evaluate the ability of locations to absorb capacity. [redacted] I also note that certain closures at the [redacted][75] which, given uncertainty that exists for the oil and gas industry as a whole, adds uncertainty to Mr. Harington's analysis. Table 2 below presents 2018 and 2019 average monthly volumes and January – October 2021 average monthly maximum capacities of absorbing facilities for all volume types in each of these integration groupings, including increases to the [redacted] to account for the proposed capacity expansions described by Mr. Harington. [redacted]

[72] Harington Report, Appendix F, ¶ 47.

[73] [redacted]

[74] As noted below, I have calculated the 2021 average monthly maximum capacity of absorbing facilities, based on the most recent available capacity data. I have also adjusted capacities to account for the planned expansions described by Mr. Harington.

[75] *See* Harington Report, ¶ 107, Table 11. [redacted]

[redacted]

46. [redacted] When the price of oil rises, certain oil drilling and production activities become economically feasible, as demonstrated by Secure management's statements. Thus, an increase in price could yield a return of market participants or new entrants and result in an increase in overall volumes beyond what Mr. Harington used in his analysis, and even higher than those recent historical volumes.

3. Mr. Harington's Analysis Does Not Account for Related Diseconomies of Scale That Are Likely to Result as Absorbing FST and SWD Facilities Approach or Even Exceed Capacity

47. Mr. Harington's analysis also does not appear to consider the potential diseconomies of scale that would likely result from increases in volume, particularly as facilities are approaching or exceeding capacity. Diseconomies of scale for these facilities would lead to reductions in production efficiency and higher marginal costs, driven by a number of potential factors. For instance, Secure may incur increased repairs and maintenance costs, to accommodate additional capacity at absorbing facilities. Additionally, potential "bottlenecks" may arise as customers will be directing volumes to fewer locations, resulting in increased wait times and additional costs to customers (also discussed below). General inefficiencies in facility management may also arise, as absorbing facilities will be operating at higher capacities for extended periods of time. As a result, Secure may need to hire additional logistical staff, incur additional information systems costs, and respond to decreased performance and increased turnover of overextended staff. The impact of diseconomies of scale is particularly concerning given that Mr. Harington's analysis asserts that the fixed and variable cost structures at the closing and absorbing facilities are the same and will remain the same. As discussed further below, Mr. Harington provides no analysis to assess this potential impact on fixed or variable cost of production at each absorbing facility.

48. In my opinion, Mr. Harington's analysis falls short by failing to fully consider the impact of increased volumes at absorbing FSTs and SWDs. Therefore, it is difficult to determine the impact of increased volumes, as Mr. Harington has not fully performed this analysis. Mr. Harington also does

not address the potential for further diseconomies of scale. As a result, Mr. Harington's estimates of claimed FST and SWD facility rationalization efficiencies are not verifiable.

C. Claimed Fixed Costs Savings at FSTs, SWDs, and Landfills Relies on an Incomplete Analysis of the Fixed and Variable Cost Structures of the Closing and Absorbing Facilities

49. As discussed above, Mr. Harington's volume analysis fails to fully consider the concurrent increase in product volumes, which renders his analysis of the FST and SWD facility rationalization incomplete. Setting this aside, I have also analyzed Mr. Harington's claimed FST, SWD, and landfill efficiencies, particularly his analysis of labour and non-labour facility rationalization fixed cost savings.

50. Mr. Harington claims that annual savings resulting from a combined FST and SWD facility network will total [redacted] comprised of annual labour cost savings of [redacted] and annual non-labour cost savings of [redacted] offset by increased annual customer transport costs of [redacted][76] Mr. Harington estimates that annual savings resulting from landfill closures will total run-rate [redacted] and will comprise labour and operating cost savings of [redacted]y, offset by increased customer transport costs of [redacted] and total labour termination costs of [redacted][77]

51. To determine the portion of fixed costs attributable to labour for FSTs and SWDs, Mr. Harington computes the actual labour cost savings at the facilities that have already been closed as a percentage of actual labour costs incurred at these closed facilities. He concludes that the dollar value of reduced labour as a result of headcount reductions represents [redacted] on average, of the actual labour costs incurred at the closed facilities.[78] Mr. Harington then assumes this same percentage of labour cost savings will be achieved as a result of closing the remaining FST and SWD facilities.[79]

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[76] Harington Report, Schedules 3.1, 3.1.1, 3.1.2, 3.1.3.
[77] Harington Report, Schedules 3.2, 3.2.3. [redacted]. *See* Harington Report, ¶ 164.
[78] Harington Report, ¶ 105.
[79] Harington Report, ¶ 106.

52. Mr. Harington performs a separate analysis to determine the portion of fixed costs attributable to labour at landfills and non-labour expense line items at FSTs, SWDs, and landfills. To calculate these claimed cost savings, Mr. Harington prepares a quantitative and qualitative analysis[80] by cost category for the Secure and Tervita FST, SWD, and landfill income statements (excluding FST and SWD labour savings). His quantitative analysis utilizes a correlation analysis that compares each grouping's (FST, SWD, landfill) monthly cost categories and monthly product volumes. He asserts that when he is able to identify a positive correlation between the volume of activity and the cost category, this would imply that there is a variable component to that cost.[81] For example, [redacted]

53. Mr. Harington's analysis of labour and non-labour facility rationalization cost savings fails to consider the variability in ratios of fixed versus variable expenses across closing and absorbing facilities. Mr. Harington's approach uses an average ratio of fixed and variable costs for each facility, but does not provide verification that this average is appropriate for each specific facility for which he has claimed efficiencies. Mr. Harington has combined facilities that appear to have meaningful variation in their fixed and variable cost structures. Therefore, it is not possible to verify whether there will be any productive efficiencies arising from shifting volumes from closed or closing facilities to absorbing facilities. To the extent volumes are shifted among facilities with significantly different cost structures, this may result in a loss of productive efficiency. Consequently, based on Mr. Harington's analysis, not only am I unable to verify the claimed efficiencies, it is also unclear whether the facility rationalization would lead to any productive efficiencies.

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[80] A qualitative analysis is "often inductive," and "often relies on the categorization of data (words, phrases, concepts) into patterns," while a quantitative analysis is "often deductive," involving precise measurement, mathematical formula, and testing hypotheses. *See* "Qualitative or Quantitative Research?" *McGill*, https://www.mcgill.ca/mqhrg/resources/what-difference-between-qualitative-and-quantitative-research.

[81] Harington Report, ¶ 114.

[82] Harington Report, Tables 12 and 13.

[83] *See* Harington Report, ¶ 114, Tables 12–15. [redacted]

54. In his correlation analysis for labour costs at landfills and non-labour operating costs at FSTs, SWDs, and landfills, Mr. Harington computes the average correlation of volumes and expenses line items across Secure and Tervita's FSTs, SWDs, and landfills, and he uses these average correlations as the basis for his determination of certain fixed and variable component splits.[84] The correlation results of these facilities show that there is meaningful variability in these cost categories across closing and absorbing facilities. In other words, the variability in the correlations shown in his analysis demonstrates that these entities have meaningful variation in their fixed and variable cost structures as they respond to volume. Because Mr. Harington applies the average to the facilities, he disregards these different fixed and variable cost structure across location, as well as the variability in operating efficiency.

55. To demonstrate that there is variability in operating efficiency by facility type, I calculated ratios of revenues, wages, and total costs to volumes for landfills listed in Harington's Table 5, *Summary of Integration Plan-Landfills*.[85] Results are presented in Table 3 below.[86] For the period spanning January 2020 to December 2020, [redacted] These figures demonstrate that certain facilities were much more operationally efficient than others in 2020.

[84] *See, e.g.*, Harington Report, Tables 12, 13, 14, 15, 21.
[85] My analysis of landfills is meant to provide a simple example of the variability across these locations. As the FST and SWDs have multiple revenue drivers and associated costs I have not performed such an analysis, nor am I aware of whether the cost data necessary to perform this analysis is available.
[86] I note that complete 2021 data was unavailable for Tervita, hence the use of 2020 figures.

[redacted]

56. To demonstrate that there is variability in the fixed cost structure across locations, I have reviewed Mr. Harington's schedules including correlation calculations for Secure and Tervita's FSTs, SWDs, and landfills. As demonstrated in his schedules, the correlation between volumes and expense line items varies significantly across facilities. For instance, the salaries and wages to volume correlation at Secure FSTs range from [redacted] and utilities that range from [redacted] while salaries and wages at Tervita FSTs that range from [redacted] and utilities that range from [redacted][87] Further, the correlation between utilities expenses and volumes at Secure SWDs ranges from [redacted] while Tervita SWDs ranges from [redacted][88] The correlation between chemicals expenses and volumes at Secure SWDs ranges from [redacted] while Tervita SWDs ranges from [redacted][89]

57. Regarding the landfill locations, the correlation of volumes to wages and salaries expenses at Secure range from [redacted] while Tervita facilities range from [redacted][0] The landfill correlation of volumes to utilities expenses at Secure range from [redacted] while Tervita landfill facilities range from [redacted][91]

[87] *See* Harington Report, Appendices G1.1 and G1.2.
[88] *See* Harington Report, Appendices G4.2 and G4.3.
[89] *See* Harington Report, Appendices G4.2 and G4.3.
[90] *See* Harington Report, Appendices I1 and I2.
[91] *See* Harington Report, Appendices I1 and I2.

58. As noted above, the results of Mr. Harington's analysis include instances of negative correlations. It is not clear from Mr. Harington's analysis why these negative correlations have occurred. For example, if a cost category consisted of fixed costs, it should have a correlation of zero, as changes in output would not affect the fixed (unchanging) cost. If a cost category consisted of all variable costs, it should have a positive correlation, as changes in output would affect the amount of variable costs incurred. It is not clear from Mr. Harington's analysis how to interpret the cost structure of expense line items for which there is a negative correlation between costs and volumes. The fact that his methodology indicates that there is a negative relationship between volume and expenses demonstrates that his methodology may not be reliable. Due to the lack of documentation and unexplained outputs, I am not able to verify this analysis.

59. Further, as described above, Mr. Harington assumes that the dollar value of reduced labour as a result of headcount reductions represents [redacted] on average, of the actual labour costs incurred at the closed facilities.[92] He further assumes, without appropriate support for his assumption, that this same percentage of labour cost savings will be achieved as a result of closing the remaining FST and SWD facilities.[93]

60. [redacted]

61. As described above, Mr. Harington's analysis fails to consider the variability in ratios of fixed versus variable expenses across facilities. Because Mr. Harington's analysis fails to consider the variability in ratio of fixed versus variable expenses on a location-by-location basis, I am unable to

[92] Harington Report, ¶ 105.
[93] Harington Report, ¶ 106.
[94] *See, for example,* Blundell Affidavit, p. 66.

verify Mr. Harington's assumption that the comparable closing and absorbing facilities would have the same fixed versus variable split.

62. In addition, Mr. Harington's basis for categorizing expenses as fixed or variable appears unclear. [redacted][95] Further, he fails to explain why the results of his correlation analysis are not meaningful for certain expenses [redacted] He also does not explain why his correlation analysis yielded negative correlations between volume and expenses such as [redacted] which one would expect to increase in relation to volume.[96] Mr. Harington's methodology of leveraging a correlation analysis for certain expenses and assigning other expenses as either fixed or variable lacks documentation and support.

63. As Mr. Harington's analysis does not appear to sufficiently support his assumptions or address the limitations noted above, I am unable to verify these fixed cost savings.

D. Incremental Customer Transport Costs Resulting from Facility Closures Are Likely Understated

64. Mr. Harington recognizes that the FST and SWD facility rationalization and landfill closures will result in a "negative efficiency," resulting from incremental customer transport costs.[97] He estimates these negative efficiencies at FSTs and SWDs to be [redacted][98] and negative efficiencies at landfills to be [redacted][99] To calculate this additional cost, Mr. Harington relies on an analysis prepared by Dr. Renée Duplantis that calculates the additional amount of time and/or distance required by customers to transport product to the Secure and Tervita that will remain open, instead of those that have closed.[100] Mr. Harington states that Dr. Duplantis's analysis "is conducted based on customer shipment data for 2020."[101]

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95 *See, e.g.*, Harington Report, Table 13.
96 Harington Report, Table 13. [redacted]
97 Harington Report, ¶ 133.
98 *See* Harington Report, Schedule 3.1.3.
99 *See* Harington Report, Schedule 3.2.3.
100 *See* Harington Report, ¶¶ 134–137, Schedules 3.1.3, 3.2, and 3.2.3, and Affidavit of Dr. Renée M. Duplantis, *The Commissioner of Competition v. Secure Energy Services Inc*., March 25, 2022.
101 *See* Harington Report, ¶¶ 134, Schedules 3.1.3, 3.2, and 3.2.3, and Affidavit of Dr. Renée M. Duplantis, *The Commissioner of Competition v. Secure Energy Services Inc*., March 25, 2022.

65. While I understand that Dr. Nathan Miller has calculated the impact of these incremental customer transport costs, I have performed my own review of Mr. Harington's analysis. Based on my review, it appears Mr. Harington's quantitative analysis likely understates the proposed incremental customer transport costs for two primary reasons. First, Mr. Harington's analysis does not include the impact of increased wait times that may result from increased volumes as a result of facility closures, whereby Secure is directing increased customer volumes to fewer locations, causing potential "bottlenecks" that may increase wait times for customers. Second, the data used by Harington to model the transport costs is from 2020, a period of time with depressed product volumes, potentially understating the impact of total customer product inflow.

66. Mr. Harington's analysis also does not fully address the impact of increased volumes as a result of facility closures. As noted in the discussion above and discussed in detail in the Harington Report, the FST/SWD rationalization and the landfill closures are intended to divert volumes from the closed locations to the absorbing facilities.[102] In many of these locations, the amount of volume is expected [redacted] at the FSTs and SWDs. This may result in increased wait time and bottlenecks. For example, as shown in Table 2 above, volume at the absorbing facilities in the [redacted] integration groupings is expected to [redacted] historical amount of volume at certain absorbing facilities.[103]

67. Mr. Harington does not appear to have assessed the potential cost of increased wait times at these locations. Similar to the increased driving time caused by diverting customers to locations farther away, wait times can amount to additional costs to customers, including for example, additional wages for moving the product and the potential impacts of backlog to customers needing to unload their product. As stated in the Witness Statement of ConocoPhillips, companies "may incur 'standby' charges with its third-party trucking companies if waste disposal facilities lack sufficient offloading capacity to process loads as they arrive."[104] Mr. Harington asserts that in the

[102] Harington Report, ¶¶ 83, 95.
[103] *See also,* Harington Report, Appendix F. For example, in 2019, volumes at Judy Creek FST (absorbing facility) totaled [redacted] cubic meters for water, waste, oil, and treating, respectively, while volumes across all three facilities at the Judy Creek integration grouping totaled [redacted] cubic meters for water, waste, oil, and treating, a 1.72x, 1.73x, 2.12x, and 2.07x increase, respectively.
[104] Witness Statement of ConocoPhillips, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 23, 2022, ¶ 16. *See also*, Witness Statement of Chad Hayden (Galatea), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 9, 2022, ¶ 11; Witness Statement of Crew Energy Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 14, 2022, ¶¶ 9, 11–12; Witness Statement of David Hart (CNRL), *The Commissioner of Competition v. Secure Energy Services Inc.*,

event there are higher wait times, they can divert "the customer to travel to an alternative nearby facility with lower wait times or more capacity."[105] If that is the case, it appears Mr. Harington has not accounted for this additional incremental cost if these customers are going to be diverted farther.

68. There is also the possibility that the increased capacity utilization could result in more downtime, as the facility is being more fully utilized resulting in even slower flow of customer traffic or increased product diversion to other locations. Customers have experienced increased transportation costs and decreased service as a result of the Transaction. For instance, [redacted] For example, correspondence between individuals at Secure indicate that wait times at the [redacted] facilities have been long.[107] Additionally, correspondence between customers and individuals at Secure demonstrates that there have been capacity constraints and long customer wait times following facility closure in the [redacted][08] Mr. Harington does not address these issues in his calculation of incremental customer costs.

69. Relatedly, Mr. Harington also relies on Dr. Duplantis's data when estimating the incremental cost to customers for diverted landfill used to accelerate the closure of certain identified landfills.[109] In these circumstances, Secure intends to divert the volumes of waste from the non-closing landfills to the planned closure facilities.[110] As described above, Mr. Harington accounts for incremental costs

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February 22, 2022, ¶¶ 15–16; Witness Statement of Halo Exploration Ltd, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022, ¶¶ 10–12, 14, 21; Witness Statement of LB Energy Services Ltd, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 23, 2022, ¶¶ 13–15; Witness Statement of Jarred Anstett (Murphy), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 22, 2022, ¶¶ 16, 17; Witness Statement of Nigel Wiebe (TAQA), *The Commissioner of Competition v. Secure Energy Services Inc.*, January 27, 2022, ¶¶ 12, 13.

[105] Harington Report, ¶ 203.

[106] Reply Witness Statement of Paul Dziuba (Chevron), *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022, ¶ 12. *See also*, Witness Statement of David Hart (CNRL), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 22, 2022, ¶ 40; Witness Statement of Halo Exploration Ltd, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022, ¶ 21.

[107] [redacted]

[109] Harington Report, ¶ 160.

[110] Harington Report, ¶¶ 160–161.

to customers as the amount of additional drive time incurred by customers as a result of customers traveling further to the landfill locations after the planned closures. Mr. Harington simply assumes that incremental costs to customers as a result of accelerated landfill closures would be the same as those incremental costs arising from planned closures. Mr. Harington performed no analysis of the quantity of volumes that would be diverted, and he has not evaluated the incremental time or distance that would be incurred by the customer. I recognize that this cost to the customer is short-lived; however, Mr. Harington has performed no analysis of such additional costs, and it is unknown whether these costs would exceed all of the cost savings in those interim periods before the landfills are closed.[111]

70. Second, the data used by Dr. Duplantis is based on a period of time when volumes were depressed by factors related to COVID-19.[112] It does not appear that Mr. Harington assessed the incremental cost to customer for those volumes in periods outside of the COVID-19 pandemic. As discussed above, this increase in volume is particularly relevant as the volume of customer product has likely increased and may likely continue to remain elevated relative to the COVID-19 Period as a result of the increased price of oil. This increase in customer product volume is also consistent with Mr. Harington's report where he states "[redacted]" citing to the affidavit of Dave Engel.[113]

71. For the reasons described above, Mr. Harington's analysis of incremental costs to customers does not provide sufficient information to verify his estimates, and is therefore not verifiable.

72. In addition to the limitations associated with Mr. Harington's analysis of claimed efficiencies arising from facility closures, there exist limitations to Mr. Harington's analysis of claimed geographic based operating cost and corporate cost efficiencies. I describe the limitations in the sections that follow.

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[111] I also note that Mr. Harington's analysis of landfill closures, and specifically of landfill cell construction and capping costs, does not appear to account for the cost of related asset retirement obligations ("AROs"), as the timing of landfill closures has a meaningful impact on the net present value of the ARO recorded on the Company's income statement.

[112] Harington Report, ¶ 134.

[113] Harington Report, footnote 61.

E. Claimed Geographic Based Operating Cost Savings Associated with Construction of [redacted] Pipelines Fails to Account for Certain Costs

73. Mr. Harington claims that Secure will achieve operating cost efficiencies from operation consolidation in certain geographies,[114] including [redacted][115] He estimates that the merged entity will incur a one-time capital expenditure of [redacted][116]

74. Mr. Harington's analysis does not provide sufficient information to verify the estimated run rate pipeline access savings.[117] For example, Mr. Harington's analysis does not appear to fully consider the increased operating costs of the pipeline, which would likely reduce the estimated efficiencies resulting from construction of [redacted] pipelines. For operating costs, Mr. Harington does not provide any information related to the cost of mechanical maintenance required for the pipeline other than "[redacted]"[118] Mr. Harington also does not appear to account for any ARO (asset retirement obligation) associated with this project.[119] Thus, Mr. Harington's analysis does not provide sufficient information to assess the amount of any cognizable efficiencies arising from the proposed pipeline access savings, and such claimed efficiencies are therefore not verifiable.

F. Claimed Corporate Labour Cost Savings Include Headcount Reductions That Are Not Verifiable and Likely Not Merger Specific

75. Mr. Harington claims that the Transaction will bring about cost savings from reducing duplicated costs related to corporate operations.[120] Mr. Harington estimates that annual savings will

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[114] Harington Report, ¶ 169.
[115] Harington Report, ¶¶ 170–71.
[116] Harington Report, ¶ 171, Schedule 3.3.1.
[117] I also note that Mr. Harington's analysis does not appear to account for ongoing maintenance costs at warm and cold shut-in facilities. He does not appear to provide an estimate for these potential costs or account for them as negative efficiencies offsetting the claimed run-rate efficiencies.
[118] Harington Report, Schedule 3.3.1; Pipeline Estimate Sheet - Fox to Kaybob 3 Inch (03-03-2022).pdf.
[119] *See, for example,* Secure Energy Services Inc., Consolidated Financial Statements for the years ended December 31, 2021 and 2020, March 2, 2022, https://www.secure-energy.com/hubfs/pdfs/Q4-2021-FS.pdf, p. 12. "Asset retirement obligations associated with well sites, facilities, pipelines and landfills are measured at the present value of the expenditures expected to be incurred. … The estimated future costs of the Corporation's asset retirement obligations are reviewed at each reporting period and adjusted as appropriate."
[120] Harington Report, ¶ 191.

total [redacted] and will comprise [redacted] annual savings from a reduction in [redacted] corporate headcount that have already been terminated, offset by [redacted] in one-time severance costs;[121] [redacted] annual savings from a reduction in [redacted] corporate headcount to be terminated; and [redacted] annual savings from other corporate costs.[122] Mr. Harington's analysis finds that the largest cost savings have resulted from elimination of redundant positions in [redacted][123]

76. Mr. Harington has identified that [redacted] roles have already been eliminated, and he includes by [redacted][124] As shown in schedules to the Harington Report, these positions were eliminated between April 2021 and February 2022.

77. Notably, [redacted] of the [redacted] corporate employees were terminated in April and May 2021, prior to the closing of the Transaction. Mr. Harington provides no support or justification for these terminations, and it is not clear from the available documentation why these [redacted] corporate employees were terminated prior to the closing of the Transaction. Particularly, it is not clear if those roles were eliminated under the authority of Tervita in contemplation of the Transaction or if these roles would have been eliminated absent the Transaction.

78. As Mr. Harington does not provide support for the termination of the [redacted] corporate employees, the claimed [redacted] of corporate headcount efficiencies related to those [redacted] employees are not verifiable. In addition, based on the information made available, it appears that these savings may also not be merger specific, although because the information is not available I am unable to make that determination.

VII. IMPACT OF AN ORDER ON CLAIMED EFFICIENCIES

79. As noted in Section V above, the Tribunal applies five screens to eliminate efficiencies that are not cognizable under Section 96 of the Act. The fifth screen filters out claimed efficiencies that

[121] Harington Report, ¶¶ 192–93, Schedules 3.4, 3.4.1, 6.2.
[122] Harington Report, Table 26, Schedules 3.4, 6.4.
[123] Harington Report, Schedule 6.
[124] Harington Report, ¶¶ 192–93, Schedule 6.2.

would likely be attained in the event of an order.[125] In this case, an order would involve a divestiture of certain Secure/Tervita assets.

80. The Harington Report presents analyses of the claimed efficiencies that would be lost in two hypothetical divestiture orders.[126] He presents lists of facilities assumed to be divested in each of the two hypothetical divestiture order scenarios in Appendix C to the Harington Report, and estimates that the run rate efficiencies lost under each hypothetical divestiture order would be [redacted] or [redacted][127] Mr. Harington relies on information about the potential needs of a hypothetical purchaser from the Blundell Affidavit, in which Mr. Blundell was asked to assume one hypothetical buyer that has a limited existing presence in the Western Canadian market.[128] He also relies on the assumption that a single buyer would purchase essentially all of the assets listed under order option one.[129]

81. I understand based on the witness statement provided by Cameron McLean, Vice President of Clean Harbors Canada, Inc. that "Clean Harbors would be interested in acquiring some or all of the facilities that Secure is required to divest."[130] Clean Harbors Canada has existing operations in Western Canada, and "[a]s a result, Clean Harbors has the necessary back office support to integrate the divested assets in its network. Clean Harbors would be able to realize efficiencies by leveraging its' existing legal, IT, human resource, health & safety, regulatory compliance, logistics, and finance resources."[131]

82. It is also possible that a single purchaser may not exist in either hypothetical divestiture order scenario and that the facilities may be sold to a number of individual purchasers. Mr. Harington himself concedes that it is not clear that a single purchaser exists and that the facilities may be sold piecemeal.[132] In such a scenario, it is likely that less cost savings would be lost than claimed by Mr. Harington, in particular corporate-based cost savings, as it is likely that the individuals at the

[125] Tervita 2012, ¶ 264.
[126] *See* Harington Report, ¶ 10, Appendix C.
[127] Harington Report, Table 27.
[128] Harington Report, ¶¶ 218–220; Blundell Affidavit, ¶ 123.
[129] Blundell Affidavit, ¶123 ("For the purposes of this exercise, I was asked to consider a scenario where the hypothetical buyer would acquire 5 to 10 landfills, up to 5 SWDs and 20 to 25 FSTs. I was also asked to assume that the hypothetical buyer is a company that operates in the waste disposal industry but does not have its own extensive network of FSTs, SWDs and landfills in Western Canada.") *See also* Harington Report, Appendix C.
[130] Reply Witness Statement of Clean Harbors Canada, Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022, ¶ 7.
[131] Reply Witness Statement of Clean Harbors Canada, Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022, ¶ 9.
[132] Harington Report, ¶ 217.

absorbing companies would have adequate capacity to be able to manage and operate these additional facilities. Mr. Blundell assumes a single purchaser that does not have adequate operational and management oversight in the Western Canadian market, whereas if there are multiple purchasers with an existing presence in this geography, this additional corporate headcount may not be needed. Based on my review of witness statements of White Owl, [redacted] Clean Harbors, Catapult, and Green Impact, it appears that these potential purchasers are likely to have the capacity and infrastructure to absorb more of the corporate costs than are estimated in Mr. Harington's analysis.[133]

A. Assessment of Claimed FST, SWD, and Landfill Facility Rationalization and Geographic Based Savings Lost in a Hypothetical Divestiture Order

83. As noted in Sections VI.A–C above, Mr. Harington estimates that FST, SWD, and landfill facility rationalization savings would result in reductions in overall labour and non-labour costs. Mr. Harington estimates that annual savings resulting from FST and SWD facility closures will total run-rate savings by year [redacted] of [redacted] and that annual savings resulting from landfill closures will total run-rate savings by year [redacted] of [redacted][34] Further, Mr. Harington estimates that geographic based cost savings would result from pipeline access savings for landfills, reducing certain field operating costs, and reducing headcount of field office related functions, totaling run-rate savings of [redacted][135] Mr. Harington estimates that either [redacted] or [redacted] in FST and SWD facility rationalization run rate savings would be lost in a hypothetical divestiture order, along with either [redacted] or [redacted] in landfill rationalization run rate savings, and [redacted] in geographic based operating cost run rate savings.[136]

84. Notwithstanding the shortcomings of Mr. Harington's analysis discussed in Sections VI.B–D above, it is not likely that any properly claimed efficiencies arising from closure of a FST, SWD, or landfill facility would remain in the event the related facility is divested as a result of an Order.

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[133] Witness Statement of Ryan Kaminski (Catapult), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 23, 2022, ¶¶ 32–34; Witness Statement of Clean Harbors Canada Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 17, 2022, ¶¶ 11–14; Witness Statement of White Owl Energy Services Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 17, 2022, ¶¶ 10–11; [redacted] Witness Statement of Green Impact Partners Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 25, 2022, ¶ 8.

[134] Harington Report, Schedules 3.1, 3.2.

[135] Harington Report, ¶169, Schedule 3.3.

[136] Harington Report, Schedules 4 and 5.

85. Additionally, the transportation cost dis-synergies to customers resulting from facility closures are likely to decrease in the event of an Order, as customers would then regain the opportunity to utilize divested facilities once they are reopened.

86. Regarding geographic based operating cost savings, it is likely that properly claimed efficiencies achieved from building the pipeline from [redacted] would not remain in the event that [redacted] is divested.

87. With respect to the claimed field lease office and headcount cost savings, it is not clear whether the costs associated with occupying this space would be required in the event of an Order, given the lack of available information regarding the nature of a potential divestiture and the ability of a potential purchaser to absorb the field office-related costs.

B. Amount of Lost Corporate Cost Savings Is Overstated

88. Mr. Harington's claimed corporate cost savings comprise corporate labour savings, [redacted][137] In contrast to savings from facility closures and operating cost savings, the quantity of realizable corporate cost savings that would be retained in the event of an order is largely independent of the geographic distribution or number of facilities divested. Thus, assuming a potential purchaser has the capacity to absorb many of the duplicative back or head-office functions, most corporate cost savings are likely to be retained in the event of an Order.

89. Mr. Harington estimates that [redacted] of the [redacted] in corporate headcount run rate savings would be lost in a hypothetical divestiture order, offset by an additional [redacted] in corporate headcount run rate savings achieved.[138] He further estimates that [redacted] of the [redacted] in corporate non-labour run rate savings would be lost in a hypothetical divestiture order.[139]

90. Based on the information presented in the Schedules to the Harington Report, as well as my understanding of the terms of a hypothetical divestiture order, it is my opinion that less corporate efficiencies would be lost in a hypothetical divestiture order. In other words, Mr. Harington's estimate represents the maximum amount of corporate labour efficiencies that would be lost in a hypothetical divestiture order.

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[137] Harington Report, Schedules 3.4, 3.4.1, 3.4.2.
[138] Harington Report, ¶ 225, Schedules 3.4, 4, 5, 6.5. *See* Table 4.
[139] Harington Report, Schedules 3.4, 3.4.2, 4, 5. *See* Table 4.

91. First, Mr. Harington assumes that [redacted] of the [redacted] already-terminated corporate headcount, along with [redacted] of the [redacted] corporate headcount to be terminated, would need to be rehired in the event of a hypothetical divestiture order, totaling [redacted] headcount and [redacted] in lost run rate efficiencies.[140] The specific positions and associated labour savings of the [redacted] headcount are presented in Table 4 below.

92. Mr. Harington assumes that a potential purchaser would be a hypothetical strategic purchaser with some existing corporate infrastructure, but not in the Western Canada market.[141] He relies on estimates from Mr. Blundell for the number of already-terminated employees who would need to be rehired.[142] However, I understand based on the Clean Harbors Reply Witness Statement that "Clean Harbors would be interested in acquiring some or all of the facilities that Secure is required to divest" and that it "has the necessary back office support to integrate the divested assets in its network" and thus would not have to rehire all [redacted] positions.[143] As noted above, it is likely that less efficiencies would be lost than claimed by Mr. Harington, in particular corporate based cost efficiencies, as it is likely that the individuals at the absorbing company or companies would have adequate capacity to be able to manage and operate these additional facilities. In addition to the Clean Harbors Reply Witness Statement, the witness statements of White Owl, [redacted] Catapult, and Green Impact appear to show that these potential purchasers are likely to have the capacity and infrastructure to absorb more of the corporate costs than are estimated in Mr. Harington's analysis.[144]

93. In this regard, it is reasonable to assume that a potential acquirer or set of acquirers would likely not need to rehire [redacted] roles as assumed by Mr. Harington. Additionally, it is likely that a potential acquirer or set of acquirers would not have to rehire the [redacted] roles for headcount to be terminated. Such [redacted] roles are common roles that exist in corporate

[140] *See* Table 3. *See also*, Harington Report, Schedules 6.2, 6.4.
[141] Harington Report, ¶ 219.
[142] Harington Report, ¶ 220, citing to Blundell Affidavit, ¶¶ 122–124.
[143] Reply Witness Statement of Clean Harbors Canada, Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022, ¶¶ 7, 9.
[144] Witness Statement of Ryan Kaminski (Catapult), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 23, 2022, ¶¶ 32–34; Witness Statement of White Owl Energy Services Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 17, 2022, ¶¶ 10–11; [redacted] Witness Statement of Green Impact Partners Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 25, 2022, ¶ 8.

divisions of many organizations. A potential acquirer or set of acquirers would thus likely have existing roles in their respective corporate divisions and would not need to rehire these [redacted] headcount. For example, I understand from the Clean Harbor Reply Witness Statement that Clean Harbors states it would not need to hire additional employees in the senior management, human resources, and finance and legal departments in the event that Clean Harbors acquired facilities as a result of an order.[145] As a result, run rate corporate labour efficiencies lost under a hypothetical divestiture Order would be at least [redacted] lower than Mr. Harington claims. I present a summary of my analysis of the difference in estimated efficiencies lost in Table 4.

94. Second, Mr. Harington assumes that all the lease savings associated with one of the two floors of Tervita's head office would be lost in a hypothetical divestiture order. Such lost efficiencies total [redacted] annually beginning in year [redacted][146] Based on my understanding that a single purchaser may not exist in either hypothetical divestiture order scenario and that the facilities may be sold to a number of individual purchasers, it is unclear why the acquiring party or parties would require all of the incremental leased space. Mr. Harington does not provide an analysis to demonstrate why it is reasonable to assume that such leased space would be required in a hypothetical divestiture order. Thus, Mr. Harington's estimate of head office lease savings lost in a hypothetical divestiture order is likely overstated.[147]

95. In the following table, I present the Harington's claimed corporate efficiencies lost under both of his proposed divestiture orders in the same column (as these do not differ in his analysis).

[145] Reply Witness Statement of Clean Harbors Canada, Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022, ¶ 12.
[146] *See* Table 4.
[147] *See* Table 4. Mr. Harington calculates that just $0.2 million in non-labour, non-lease corporate cost savings would be lost in a hypothetical divestiture order. I do not take exception to these being lost in the event of an order.

[redacted]

96. Based on the above considerations, and as shown in Table 4 it is my opinion that the amount of run rating savings lost in a hypothetical divestiture order is at least [redacted] lower than Mr. Harington estimates.

J. Gregory Eastman, Ph.D.

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 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 section 92 of the *Competition Act.*

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

SECURE ENERGY SERVICES INC.

Respondent

EXPERT REPORT OF EXPERT REPORT
J. GREGORY EASTMAN, Ph.D.
Dated April 11, 2022

Documents Relied Upon

Annual Reports and Regulatory Filings

- Secure Energy Services Inc., Annual Information Form for the year ended December 31, 2020, February 25, 2021 (Exhibit 6 of Affidavit of Dave Engel, March 25, 2022).
- Secure Energy Services Inc., Annual Report 2018, February 26, 2019 (Exhibit 4 of Affidavit of Dave Engel, March 25, 2022).
- Secure Energy Services Inc., Management's Discussion & Analysis: 2021 Annual and Fourth Quarter Report, https://f.hubspotusercontent10.net/hubfs/6144363/pdfs/Q4%202021%20MDA.pdf.
- Secure Energy Services Inc., Consolidated Financial Statements for the years ended December 31, 2021 and 2020, March 2, 2022, https://www.secure-energy.com/hubfs/pdfs/Q4-2021-FS.pdf.
- Tervita Corporation, Annual Information Form for the fiscal year ended December 31, 2019, March 8, 2020, https://tervita.com/files/public-files/basic-financial-reports-documents/1Yu9W5JmSEFGxvjF.pdf.
- Tervita Corporation, Notifiable Transaction Form, March 8, 2021.

Expert Reports

- Affidavit of Andrew Harington, *The Commissioner of Competition v. Secure Energy Services Inc.*, March 25, 2022.
- Affidavit of Rory Johnston, *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022.
- Affidavit of Dr. Renée M. Duplantis, *The Commissioner of Competition v. Secure Energy Services Inc.*, March 25, 2022.

Corporate and Government Documents

- Competition Bureau Canada, "Merger Enforcement Guidelines," October 6, 2011.
- Secure Energy Services Inc., "Pipeline Estimate Sheet - Fox to Kaybob Interconnect, Revision 3," September 13, 2019.
- Tervita Corporation Presentation, "Investor Presentation," March 2021.
- U.S. Department of Justice and the Federal Trade Commission, "Horizontal Merger Guidelines," August 19, 2010.

Legal Documents

- Affidavit of Dave Engel, *The Commissioner of Competition v. Secure Energy Services Inc.,* March 25, 2022.
- Affidavit of Keith Blundell, *The Commissioner of Competition v. Secure Energy Services Inc.*, March 25, 2022.
- *Canada (Commissioner of Competition) v. CCS Corp.*, 2013 CAF 28, 2013 FCA 28, Federal Court of Appeal.
- Tervita Tribunal, *Commissioner of Competition v. CCS Corp.*, 2012 Trib. conc. 14, 2012 Comp. Trib. 14.
- Competition Act, R.S.C., 1985, c. C-34, current to November 11, 2021, last amended July 1, 2020.

Press Releases

- Prime Minister of Canada, Justin Trudeau, Press Release, "Prime Minister announces new actions under Canada's COVID-19 response," March 16, 2020, https://pm.gc.ca/en/news/news-releases/2020/03/16/prime-minister-announces-new-actions-under-canadas-covid-19-response.
- Secure Energy Services Inc. Press Release, "SECURE Energy Services Inc. Completes Merger with Tervita Corporation," July 2, 2021, https://secure-energy.mediaroom.com/2021-07-02-SECURE-Energy-Services-Inc-completes-merger-with-Tervita-Corporation.

Produced Documents

- RBBC00003_000000017
- SESL0028018
- SESL0029197
- SESL0031094
- SESL0031284
- SESL0036362
- SESL0040157

Websites

- “Leading SECURE forward," *Secure Energy*, 2022, https://www.secure-energy.com/leadership?hsLang=en.
- “Statistics,” *The Canadian Association of Petroleum Producers (CAPP)*, https://www.capp.ca/resources/statistics.
- “Qualitative or Quantitative Research?” *McGill*, https://www.mcgill.ca/mqhrg/resources/what-difference-between-qualitative-and-quantitative-research.

Witness Statements

- Reply Witness Statement of Clean Harbors Canada, Inc., *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022.
- Reply Witness Statement of Paul Dziuba (Chevron), *The Commissioner of Competition v. Secure Energy Services Inc.*, April 8, 2022.
- Witness Statement of Aqua Terra Water Management, *The Commissioner of Competition v. Secure Energy Services Inc*., February 2022.
- Witness Statement of Chad Hayden (Galatea), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 9, 2022,
- Witness Statement of Clean Harbors Canada Inc., *The Commissioner of Competition v. Secure Energy Services Inc*., February 17, 2022.
- Witness Statement of ConocoPhillips, *The Commissioner of Competition v. Secure Energy Services Inc*., February 23, 2022.
- Witness Statement of Crew Energy Inc., *The Commissioner of Competition v. Secure Energy Services Inc*. February 14, 2022,
- Witness Statement of David Hart (CNRL), *The Commissioner of Competition v. Secure Energy Services Inc*., February 22, 2022.
- Witness Statement of Green Impact Partners Inc., *The Commissioner of Competition v. Secure Energy Services Inc*., February 25, 2022.
- Witness Statement of Halo Exploration Ltd., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022.
- Witness Statement of Jarred Anstett (Murphy), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 22, 2022.
- Witness Statement of LB Energy Services Ltd., *The Commissioner of Competition v. Secure Energy Services Inc.*, February 23, 2022

- Witness Statement of Nigel Wiebe (TAQA), *The Commissioner of Competition v. Secure Energy Services Inc.*, January 27, 2022,
- Witness Statement of Paul Dziuba (Chevron), *The Commissioner of Competition v. Secure Energy Services Inc.*, February 24, 2022.
- Witness Statement of Ryan Kaminski (Catapult), *The Commissioner of Competition v. Secure Energy Services Inc*., February 23, 2022.
- Witness Statement of White Owl Energy Services Inc., *The Commissioner of Competition v. Secure Energy Services Inc*., February 17, 2022.

Raha Mohammad

This is Exhibit B to the Affidavit of
J. Gregory Eastman
Affirmed on April 11, 2022

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

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ACADEMIC BACKGROUND

1992 – 1997 **Harvard University** Cambridge, MA
Ph.D. Economics

1988 – 1992 **The University of Kansas** Lawrence, KS
B.A., Economics and Mathematics

PROFESSIONAL EXPERIENCE

2001 – Present **Cornerstone Research, Inc.** Washington, D.C.
Senior Vice President

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 **The Brattle Group** Washington, D.C.
Associate

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.

- *The Commissioner of Competition v. Secure Energy Services Inc. and Tervita Corporation*, The Competition Tribunal, 2021. (Affidavit). For a challenged merger, reviewed efficiencies and proposed facilities closure.
- *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 transfer pricing dispute related to medical devices, analyzed the cardiac rhythm management industry, analyzed the value of patents and cross-licensed and the value quality manufacturing know how for plaintiffs in *Medtronic, Inc & Consolidated Subsidiaries v. Commissioner of Internal Revenue*.
- 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 dimunition 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)

This is Exhibit C to the Affidavit of
J. Gregory Eastman
Affirmed on April 11, 2022

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

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 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*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

TERVITA CORPORATION

Respondents

ACKNOWLEDGEMENT OF EXPERT WITNESS
J. GREGORY EASTMAN, Ph.D.

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.

April 11, 2022 — Date

Greg Eastman — J. Gregory Eastman, Ph.D.

CT-2021-002

THE COMPETITION TRIBUNAL

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

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BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

SECURE ENERGY SERVICES INC.
TERVITA CORPORATION

Respondents

ACKNOWLEDGEMENT OF EXPERT WITNESS
J. GREGORY EASTMAN, Ph.D.
