

AFFIDAVIT OF QUENTIN JAMES OLDE DATED [DATE]

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 2016/159205

DIVISION: EQUITY
LIST: CORPORATIONS
REGISTRY: SYDNEY

In the matter of Antares Energy Limited ACN 009 230 835

Quentin James Olde and Michael Joseph Ryan
Plaintiffs

I, **Quentin James Olde**, of FTI Consulting, Level 15, 50 Pitt Street, Sydney, in the State of New South Wales, Chartered Accountant, say on oath:

1. I am a chartered accountant, a registered liquidator and Senior Managing Director of FTI Consulting.
2. Mr Michael Joseph Ryan and I are the plaintiffs in this proceeding (**Deed Administrators**). During the period 21 December 2016 to 23 March 2018, Mr Ryan and I were the joint and several Deed Administrators of Antares Energy Limited (**Antares**).
3. I make this affidavit in support of an interlocutory process seeking orders under section 449E(1A)(c) of the *Corporations Act 2001* (Cth) for the determination of the Deed Administrators' remuneration in respect of the deed administration of Antares during the period 10 May 2017 to 23 March 2018.
4. I became a registered liquidator in 2 July 2004, and an official liquidator on 4 September 2006. I am a full member of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**). In administering any formal appointment, I observe the principles and standards of conduct that are prescribed by the ARITA Code of Professional Practice (**ARITA Code**). I have adhered to the requirements of the Code in conducting the work the subject of this remuneration application.
5. Except as otherwise expressly stated, the matters I depose to in this affidavit are matters

Filed on behalf of the plaintiffs

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which are within my own knowledge or belief, or are otherwise taken from my review of the books and records maintained in respect of the deed administration of Antares.

6. Shown to me at the time of swearing my affidavit is a paginated, tabulated folder of documents which is Exhibit "QJO-1" to my affidavit. When I refer to a document behind a tab number in this affidavit, I am referring to the documents behind the tabs in the exhibit marked "QJO-1".

Background to appointments

7. Antares is an Australian Securities Exchange (**ASX**)-listed entity which was an oil and gas producer focussed on upstream projects in the Permian Basin, West Texas, United States of America. An Australian Securities and Investments Commission (**ASIC**) current and historical extract in respect of Antares is at **Tab 1** of exhibit **QJO-1**.
8. Antares was placed into voluntary administration by resolution of its directors on 28 April 2016, and Messrs Hughes and Bredenkamp of Pitcher Partners in Perth were appointed as its voluntary administrators. At around the time of the appointment of the voluntary administrators:
 - (a) Antares had issued 23.75 million convertible notes, each with a face value of \$2 (for a total value of \$47.5 million), held by approximately 350 individual and institutional noteholders.
 - (b) Antares had about 6 unsecured creditors with total claims of about \$600,000.
 - (c) Antares had 240 million ordinary shares on issue.
 - (d) Antares was the sole shareholder of Santa Energy Pty Limited (**Santa Energy**), an Australian proprietary company. Santa Energy was the sole shareholder of Antares Energy Company (**AEC**), a corporation incorporated in Delaware, USA.
 - (e) AEC owned various exploration rights and operating oil wells of varying quality in the Permian Basin, West Texas. The value of these rights and operating wells was approximately US\$3.7m.
9. On 11 May 2016, at Antares' first meeting of creditors, creditors resolved to appoint Mr Ryan and I as replacement voluntary administrators of Antares.
10. On 25 May 2016, by orders made in this proceeding, the convening period for the second meeting of creditors of Antares to be held under s 439A of the Corporations Act was extended by 6 months to 26 November 2016.

11. On 2 December 2016, the second meeting of creditors of Antares was held and, at that meeting, Antares' creditors resolved that Antares should execute a Deed of Company Arrangement. That Deed of Company Arrangement was executed on 21 December 2016 (**Antares DOCA**) and provided for, among other things:
- (a) the recapitalisation and subsequent relisting of Antares through a share issuance;
 - (b) the settling of a creditors' trust;
 - (c) the preservation of certain claims by Antares against its former directors, Mr James Cruickshank and Mr Gregory Shoemaker (the **Director Claims**).

A copy of the Antares DOCA is located at **Tab 2** of exhibit **QJO-1**. A copy of the Creditors' Trust Deed is located in exhibit at **Tab 3** of exhibit **QJO-1**.

12. Also at that creditors' meeting, creditors resolved to approve the Deed Administrators' prospective remuneration in the amount of \$150,000 (plus GST). The Deed Administrators have drawn that amount, and the remuneration the subject of this application represents additional remuneration claimed which exceeds that prior approval. A copy of minutes of the second creditors meeting of Antares is annexed to my affidavit at **Tab 4** of exhibit **QJO-1**.
13. The Antares DOCA was originally intended to be effectuated on 31 May 2017, and the Deed Administrators' prospective fee approval was obtained on the basis that the Antares DOCA would be effectuated by 31 May 2017. It was not effectuated by 31 May 2017, and was effectuated on 28 March 2018. I deal with the reasons for the delay in its effectuation below.
14. The Deed Administrators had taken steps to ensure that the DOCA was effectuated as soon as possible and as such, a meeting of creditors had not been convened in time for the purpose of obtaining approval for additional remuneration. Consequently, the Deed Administrators are required to make this application for additional remuneration approval.

Activities of the Deed Administrators

15. Prior to 10 May 2017, the Deed Administrators completed various transactions in the United States by which AEC disposed of various interests it held in the exploration rights and operating wells I refer to at paragraph 8(e) above. The work done in connection with those transactions is not the subject of this remuneration application, as it falls with the remuneration already approved and drawn as I describe in paragraph 12 above.
16. The Deed Administrators' activities since 10 May 2017 have primarily been directed to the following matters:

- (a) attending to steps required in connection with the recapitalisation and re-listing under the Antares DOCA, including assisting the proponent of the Antares DOCA (being **Pager Partners**) in those steps, and progressing toward effectuation of that instrument; and
- (b) the prosecution and resolution of the Director Claims in the District Court of Dallas County, Texas, USA.

17. These activities involved extensive communications between my staff and I with our local and foreign lawyers, with the ASX and ASIC, with Pager Partners and its representatives and with other stakeholders.

Satisfaction of the conditions precedent to effectuation of the Antares DOCA

18. As I have said above, the Antares DOCA was originally due to be effectuated by 31 May 2017. There were a number of conditions precedent to its effectuation, including:

- (a) obtaining ASX approval for the transaction and obtaining the ASX's agreement to the waiver of various listing rules. This necessitated a large amount of engagement with the ASX and Pager Partners through in-person meetings, by telephone and correspondence, which my staff participated in; and
- (b) obtaining the approval of Antares' shareholders for the proposed share issuance and recapitalization. My staff engaged in extensive communications with the proponent of the Antares DOCA concerning the preparation of the necessary documents, along with communications with our solicitors.

19. Separately, the Deed Administrators were informed by Pager Partners that Pager Partners required the Director Claims to be discontinued prior to effectuation of the Antares DOCA so that, upon transfer of control of Antares and AEC to Pager Partners, there would be no extant litigation on foot to which Antares or AEC were party. Again, this involved extensive communication between my staff and I, on the one hand, and our local and foreign lawyers.

20. Completion of each of those steps required work to be done by the Deed Administrators, and by Pager Partners. As there were delays in completing those steps, the Deed Administrators and Pager Partners extended the "*sunset date*" for effectuation of the Antares DOCA by mutual agreement on several occasions.

21. The delays in completing the steps in paragraphs 18 and 19 arose principally because of the following:

- (a) *first*, a prolonged period of negotiation between the DOCA proponent and the ASX (in which my staff and I were involved) in relation to various recapitalisation requirements. In the course of those negotiations, the ASX notified Pager Partners on 25 July 2017 of the conditions for reinstatement. Those conditions included, relevantly, a requirement to lodge all outstanding pre-appointment financial accounts of Antares, which amounted to 2 years of half-yearly accounts. My staff oversaw the preparation and completion of those half-yearly accounts. The completion of this exercise took longer than the Deed Administrators anticipated, due to difficulties in obtaining historical financial books and records of Antares and AEC which were essential in order to complete those accounts. The accounts were completed on 17 October 2017;
- (b) *secondly*, delays in the discontinuation of the Director Claims, which I discuss in paragraphs 24 to 26 below.
22. Once the financial accounts for Antares were completed, the Deed Administrators, in conjunction with Pager Partners, prepared the Notice of Meeting (**NOM**) to convene and hold meeting of Antares' shareholders to approve the share issuance and recapitalisation. Finalisation of the NOM took a number of months and, during those months, my staff and I were involved in liaising with the ASX and ASIC. The EGM was held on 23 January 2018, and the necessary resolutions approving the recapitalisation and share issuance were passed on that day. Throughout this period, my staff and I prepared and released updates to the ASX on progress towards, and ultimately satisfaction of, the conditions precedent to the Antares DOCA.
23. In addition to those matters, my staff and I carried out work in engaging with the former auditors of Antares, Ernst & Young, and assisting in the engagement of new auditors.

The Director Claims

24. On around November 2016, the Deed Administrators (as the then voluntary administrators) caused Antares and AEC to commence proceedings against James Cruickshank and Gregory Shoemaker, former directors and senior executives of Antares and AEC. Those proceedings were commenced in the District Court of Dallas County, Texas, USA. In those proceedings, Antares and AEC alleged that the defendants had misappropriated and dissipated company funds, and breached the trust placed in them as directors and company insiders. The Administrators sought to recover approximately US\$1.37 million. A copy of the Complaint filed by the plaintiffs in that proceeding is at **Tab 5** of exhibit **QJO-1**.

25. The Deed Administrators pursued those proceedings up to approximately January 2018 before determining that further conduct of the proceeding was uncommercial and not in the interests of creditors of Antares. I made that determination having regard to:
- (a) the significant legal costs which would be incurred in litigating the matter to judgment in a foreign jurisdiction, in circumstances where the proceeding was defended;
 - (b) the defendants' personal asset position suggesting the recoverability of any judgment may be difficult. In this regard, I formed the view in the course of my investigations that the defendants had limited personal assets which could be used to satisfy a judgment (excluding their personal residences which are protected under Texas law); and
 - (c) Pager Partners' desire to have the Director Claims discontinued prior to effectuation of the Antares DOCA, as I set out in paragraph 19 above.
26. For those reasons, in February 2018, the Deed Administrators sought to discontinue the Director Claims. The negotiations for a discontinuance were protracted, and the defendants were not cooperative with the Deed Administrators' efforts to discontinue the proceedings. Those negotiations ultimately resulted in an agreement which was recorded in a Deed of Settlement, executed on 21 March 2018. The completion of all of those steps required extensive involvement from me and my staff, including instructing our lawyers throughout the proceeding and then in negotiating, documenting, reviewing and finalising the terms of the discontinuance. My staff and I were involved in reviewing drafts of the Deed of Settlement, providing instructions on amendments, and communicating (by telephone and email) with our local and US legal representatives. A copy of the Compromise Settlement Agreement and Mutual General Release dated 21 March 2018 is at **Tab 6** of exhibit **QJO-1**. A copy of the orders made by the District Court of Dallas County, Texas is at **Tab 7** of exhibit **QJO-1**.

Staff, workstreams and basis of time recording

27. As I note above, my appointment as Deed Administrator was joint and several with Mr Ryan. As I had carriage of the Deed Administration (with the assistance of FTI Consulting's staff, described below), the remuneration now claimed does not include any time of Mr Ryan.
28. In carrying out the work the subject of this application, I have been assisted by the following personnel employed by FTI Consulting:
- (a) Liam Healey, Managing Director;
 - (b) Jonathan Chee, Director;

- (c) Deidre Bryant, Consultant II;
 - (d) Samantha Rieger, Associate II;
 - (e) Henry Lister, Associate I;
 - (f) Cristina Mangraviti, Administration I;
 - (g) Darcie Coey, Administration I.
29. I have a detailed understanding of which tasks are suitable for allocation to each staff member, and I allocate tasks according to each staff member's ability and experience.
30. FTI Consulting's staff are required to record their time spent on their professional activities in a computerised time recording system, using 6-minute units. The remuneration claimed in this application is on a time basis.
31. From time to time, and generally at the end of each calendar month, I will review the time entries recorded by my staff in order to determine that time recorded is commensurate with the nature of the work performed. If, in the course of that review, I consider that a time entry is not reasonable (for example, because too long has been spent on a task, or because work has been performed by a more senior staff member where a more junior staff member could discharge the work), I will reduce it to reflect the reasonable amount that I consider ought be charged, based on my experience. I do not "write up" time recorded by me or my staff members.
32. In recording time, my team and I allocate our time spent to workstreams. Those workstreams, and a summary of the tasks that are performed within each workstream, are set out in Schedule 1 to the Deed Administrators' Remuneration Approval Report, which appears at **Tab 8** of exhibit **QJO-1**.
33. I have been significantly assisted by two staff members in the conduct of the Deed Administration:
- (a) Mr Liam Healey, a Managing Director employed by FTI Consulting. Mr Healey oversaw the Deed Administration including the progression and finalisation of the legal action, effectuation of the Deed which included liaising with Pager Partners, ASIC, the ASX and other interested parties. Accordingly, a significant proportion of the work the subject of this application was performed by Mr Healey.
 - (b) Mr Jonathan Chee, a Director employed by FTI Consulting. Mr Chee managed the majority of the day-to-day conduct of the Deed Administration including

correspondence with shareholders and creditors, preparation for and convening of the Extraordinary General Meeting of shareholders and other tasks associated with the effectuation of the Deed. Accordingly, a significant proportion of the work the subject of this application was performed by Mr Chee.

34. The allocation of a significant proportion of the work performed in this Deed Administration to Mr Healey and Mr Chee as senior staff members under my supervision was appropriate, in my opinion, due to the complexity of the issues involved and the significance of those issues to the conduct and completion of the Deed Administration.

The remuneration claimed

35. The total amount of remuneration claimed in relation to the deed administration of Antares for the period 10 May 2017 to 23 March 2018 is \$121,573.30 plus GST in the amount of \$12,157.33. This amount reflects the difference between the amount of remuneration for the Deed Administrators which creditors resolved to approve on 2 December 2017, and the actual remuneration incurred.
36. The work performed by my staff and I may be broken down by reference to 6 workstreams, as follows. As I set out below, only 4 of those workstreams are the subject of this application:

Workstream	Estimate (excl GST) \$ (see Note 1)	Billed (excl GST) \$ (see Note 2)	Remuneration claimed (excl GST) \$ (see Note 3)	Total WIP (excl GST) \$
Assets	35,000.00	32,562.00	31,767.50	64,329.50
Creditors	45,000.00	28,866.30	34,055.50	62,921.80
Trade On	0.00	6,777.00	0.00	6,777.00
Investigation	20,000.00	16,366.00	510.00	16,876.00
Dividend	25,000.00	0.00	0.00	
Administration	25,000.00	65,428.70	55,240.30	120,669.00
Total	150,000.00	150,000.00	121,573.30	271,573.30

Note 1: Amounts in the original remuneration report for Deed Administrators' approval.

Note 2: Amounts previously billed and paid relating to Deed Administrators' remuneration.

Note 3: Amounts previously billed which have not been paid and are the subject of this application.

37. The following table records time spent by each staff-member on each workstream, along with their hourly rate and the total time spent on each workstream:

Employee	Position	Rate/hour excl GST \$	Total actual hours	Total (excl GST) \$	Task Area			
					Assets \$	Creditors \$	Investigation \$	Administration \$
Quentin Olde	Sr Managing Dir	625.00	18.30	11,437.50	0.00	1,625.00	0.00	9,812.50
Liam Healey	Managing Dir	575.00	111.19	63,935.30	23,862.50	0.00	0.00	40,072.80
Jonathan Chee	Director	425.00	101.10	42,967.50	7,905.00	30,685.00	510.00	3,867.50
Deirdre Bryant	Consultant II	350.00	2.10	735.00	0.00	0.00	0.00	735.00
Samantha Rieger	Associate II	255.00	2.20	561.00	0.00	25.50	0.00	535.50
Henry Lister	Associate I	260.00	6.00	1,560.00	0.00	1,430.00	0.00	130.00
Cristina Mangraviti	Admin I	145.00	0.60	87.00	0.00	0.00	0.00	87.00
Darcie Coey	Administrative	145.00	2.00	290.00	0.00	290.00	0.00	0.00
Total			243.49	121,573.30	31,767.50	34,055.50	510.00	55,240.30
GST				12,157.33				
Total (including GST)				133,730.63				
Average hourly rate (excluding GST)				499.3	385.5	341.3	425.0	919.1

38. In the following sub-paragraphs, I set out brief details on the nature of the tasks carried out in each of the 4 workstreams identified above in respect of which remuneration is claimed. I also set out the total amount claimed in this remuneration application and the number of hours spent on each workstream.

- (a) **Assets** (\$31,767.50 / 60.1 hours): This workstream involved work concerning:
- (i) the finalisation of AEC's operations, the review of cashflow of operations and outstanding payables, and conducting investigations into potential tax refunds;
 - (ii) the effectuation of the Antares DOCA; and
 - (iii) the Director Claims.
- (b) **Creditors** (\$34,055.50 / 82.4 hours): This workstream involved communicating with (by telephone and email) and reporting to creditors and shareholders; the preparation of the final report to creditors; preparing, reviewing and updating the estimated outcome statement; preparing and lodging ASX announcements.
- (c) **Investigation** (\$510.00 / 1.2 hours): This workstream involved reviewing Antares' books and records; investigating the nature and history of the company; obtaining and reviewing statutory searches; preparing comparative financial statements and investigating specific transactions that warranted investigation.
- (d) **Administration** (\$55,240.30 / 99.8 hours): This workstream involved a broad range of tasks, which included the preparation of correspondence and the maintenance of files; carrying out bank account reconciliations and procuring, reviewing and communicating in respect of bank account statements and transactions; rendering assistance to the Antares DOCA proponent (as I have set out above); attending to the

preparation of ASIC forms and lodgements; preparation of ASX announcements concerning the Antares DOCA; taxation matters (including the lodgement of Business Activity Statements); meetings concerning the status of the Deed Administration; and the organisation and storage of books and records.

39. The following bills of costs, which have been extracted from FTI Consulting's timekeeping records:
- (a) at **Tab 9** of exhibit **QJO-1**, a bill of costs which is arranged by timekeeper; and
 - (b) at **Tab 10** of exhibit **QJO-1**, a bill of costs which is arranged by workstream.
40. Those bills of costs accurately set out the work that I performed, and that my staff performed under my supervision, which are the subject of this application. The bills of costs were prepared under my supervision, and I consider that the bills of costs are accurate. To the best of my knowledge, those bills of costs accurately and completely record the time that I, and the staff working under my supervision, have spent on the Deed Administration.
41. Having regard to my experience as an insolvency practitioner, and my knowledge of the Deed Administration and the work performed by my staff and me, I am satisfied that:
- (a) the length of time spent by me, and by my staff, was reasonably necessary for the nature of the work that has been carried out;
 - (b) all of the work performed was carried out by professional staff who were appropriately qualified and appropriately experienced;
 - (c) all of the work was carried out in a timely fashion, to a consistently high standard and without unnecessary duplication; and
 - (d) all of the work performed was reasonably necessary for the proper conduct of the Deed Administration.
42. The hourly rates reflected in the bills of costs are at the hourly rates applicable to FTI Consulting's professional staff. A schedule of applicable rates is set out in Schedule 2 to the Deed Administrators' Remuneration Approval Report, which appears at **Tab 11** of exhibit **QJO-1**. Those rates applied throughout the period 21 December 2016 to 23 March 2018.
43. In my opinion, those hourly rates are reasonable having regard to the following matters:
- (a) the experience and professional qualifications of each staff member;

- (b) the work actually performed in relation to the Deed Administration;
- (c) the nature and complexity of the work performed;
- (d) the responsibility of each staff member in relation to the work performed by each of them;
- (e) the costs incurred by FTI Consulting in performing the work the subject of the Deed Administrators' appointment;
- (f) the risks undertaken by FTI Consulting in allowing me to accept the appointment as Deed Administrator, and then conducting the work the subject of my appointment; and
- (g) the rates charged by comparable insolvency practices in New South Wales.

Recoveries, distributions and proportionality

44. At **Tab 12** of **QJO-1** is a copy of the Deed Administrators' final report to creditors. In that final report to creditors:
- (a) I have informed the unsecured creditors of Antares that I do not expect there will be any distribution to Antares' unsecured creditors. I have set out the factors in the Deed Administrators which have led to that result in the 'Estimated Outcome Scenario' on page 15.
 - (b) Also in the 'Estimated Outcome Scenario', I have set out the realisations made in the course of the Deed Administration through the sale of assets in the United States and proceeds of the recapitalisation of Antares. I estimate that total asset realisations (including distributions by AEC to Antares) are approximately \$2,656,852.00.
45. In light of the matters set out in the 'Estimated Outcome Scenario':
- (a) the remuneration claimed in this application represents approximately 4.58% of gross realisations in the external administration of Antares;
 - (b) total remuneration claimed represents approximately 32.96% of gross realisations in the external administration of Antares.

Sworn at Sydney

on

Signature of deponent

 Quentin James Olde

Name of witness

Capacity of witness

 Solicitor / Justice of the Peace

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 # I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
 # I have confirmed the deponent's identity using the following identification document:

 Identification document relied on (may be original or certified copy)⁺

Signature of witness

[⁺ "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit".]