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2023-77047 / Court: 125

CAUSE NO. _____

BRIDGELAND RESOURCES, LLC AND ZARGON ACQUISITION, INC. **Plaintiffs,**	§	**IN THE DISTRICT COURT OF**
v.	§	**HARRIS COUNTY, TEXAS**
WINSTON & STRAWN LLP **Defendant.**	§	**___ JUDICIAL DISTRICT**

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs BRIDGELAND RESOURCES, LLC and ZARGON ACQUISITION, INC. allege as follows:

I. INTRODUCTION

1. This is a case about an oil and gas transaction that went terribly wrong because of the negligent conduct of the law firm hired to negotiate and document it.

2. In April 2021, Plaintiffs Bridgeland Resources, LLC ("Bridgeland") and Zargon Acquisition, Inc. ("Zargon") (together, Bridgeland and Zargon are referred to herein as "Bridgeland") hired the international, AmLaw100, law firm of Winston & Strawn, LLP ("Winston") to represent them in negotiating and documenting an oil and gas deal.

3. Bridgeland was planning to purchase oil and gas wells located in Southern California. The plan was for Bridgeland to put up all the financing to buy the wells, and for it to enter into a business partnership with an experienced oil and gas operator to run the wells on a day-to-day basis. Bridgeland identified E&B Natural Resources Management Corporation ("E&B") as that potential partner. E&B was an experienced, California-based, operator of oil and gas wells that was owned by Rotterdam Ventures, Inc. ("Rotterdam") a New York business

consortium.

4. Between April and mid-June 2021, Winston represented Bridgeland in negotiations with E&B and Rotterdam. Ultimately, the parties agreed on two intertwined contracts. In the first contract, Bridgeland agreed to give E&B/Rotterdam a 25% equity stake in Bridgeland, with an option to purchase an additional 25% equity stake under certain conditions. In the second contract, E&B/Rotterdam agreed to provide a full range of operations and managements services to Bridgeland at favorable prices, locked in for a number of years. Both sides stood to benefit if the two contracts were honored.

5. But two days before the deal was to close, E&B and Rotterdam changed the terms. Winston was unable to keep up with the changes E&B and Rotterdam sought, and made a number of critical drafting errors. When the dust settled, Winston had allowed its client, Bridgeland, to give away a 25% equity stake (with an option for another 25% equity stake) for nothing in return by advising it to sign the first contract without getting the second contract signed.

6. To make matters worse, Bridgeland discovered in early 2022 that the promises Bridgeland thought it had received from E&B and Rotterdam in lieu of them signing the second contract were potentially unenforceable because of the errors made by Winston in drafting and negotiating the contracts.

7. After the deal closed, E&B and Rotterdam failed to keep their promises in a number of ways. Ultimately, Bridgeland had to replace them with other contractors. E&B and Rotterdam then doubled down on their failures by trying to enforce the option to increase their ownership of Bridgeland from 25% to 50%, now that the company had more than tripled in value. When Bridgeland tried to say no, it found that Winston had left significant loopholes in the contracts that gave credence to the arguments of E&B and Rotterdam.

8. Ultimately, Bridgeland, E&B, and Rotterdam ended up in a vicious litigation that went on for nearly 18 months and cost Bridgeland tens of millions of dollars, with the fallout still being felt to this day. During the litigation, Winston's numerous errors and professional negligence became clear, and were exploited to maximum effect by E&B and Rotterdam, creating so much uncertainty about the outcome that a settlement was the only reasonable solution. The Court in the underlying lawsuit specifically noted that the vague drafting terms in the contracts of which Winston was in charge made it impossible to determine what the contract terms meant without a full trial, creating significant uncertainty about the outcome.

9. When all was said and done, Winston's errors and professional negligence cost Bridgeland tens of millions of dollars.

II. PARTIES

10. BRIDGELAND RESOURCES, LLC (hereafter "Bridgeland"), formerly known as WG Holdings SPV, LLC ("WGH") is a limited liability company registered in the State of Delaware, with its principal place of business in Houston, Texas and in Harris County.

11. ZARGON ACQUISITION, INC. (hereafter "Zargon") is a company registered in the State of Wyoming, with its principal place of business in Houston, Texas and in Harris County.

12. WINSTON & STRAWN LLP (hereafter "Winston") is an international law firm with nearly 1000 attorneys in 16 offices on four continents. Winston is registered as a Delaware limited liability partnership. Since 2011, Winston has had an office in Houston, Texas, located at 800 Capitol Street, Suite 400, which presently has approximately 60 attorneys. Since 2017, Winston has had an office in Dallas, Texas, located at 2121 N. Pearl Street, Suite 900, which presently has approximately 95 attorneys. Winston & Strawn LLP may be served by serving its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

III. JURISDICTION AND VENUE

13. This Court is a proper venue and has jurisdiction of this matter. Plaintiffs both have their principal place of business in Harris County, Texas. Defendant maintains an office in Harris County, Texas. Some or all of the errors made by Winston which constitute negligence were made by Winston partners and employees located in Harris County, Texas. The amount in controversy is over $150 million and is within the jurisdictional limits of this Court.

IV. DISCOVERY CONTROL PLAN

14. Plaintiffs intend to conduct discovery under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

V. FACTUAL BACKGROUND

A. Bridgeland And Zargon Identified Oil & Gas Properties To Purchase in Southern California

15. Scott Wood has been a successful entrepreneur in the oil and gas industry for more than 40 years. In that time, he has acquired numerous oil and gas assets (including from major oil companies) over the last several decades, running them profitably, and then selling them.

16. In late 2020 and into early 2021, Zargon Acquisition Inc. (hereafter "Zargon"), a Wyoming corporation owned solely by Wood, identified oil and gas properties for sale in Southern California, which included portions of the Santa Fe Springs, Sawtelle, Rosecrans, East Coyote, and Brea Olinda oil fields (hereafter, the "Oil & Gas Assets").

17. The seller of the Oil & Gas Assets was Breitburn Operating LP (hereafter "Breitburn"), which is a wholly-owned subsidiary of Maverick Natural Resources, LLC (hereafter "Maverick").

18. In sales materials provided to Zargon and Wood in early 2021, Breitburn/Maverick represented that the Oil & Gas Assets were producing approximately 1470 barrels of oil per day

from approximately 325 wells (hereafter, the "Wells"), and that there was a ready market to sell the light sweet crude oil extracted from the Wells to oil companies Lunday Thagard (now doing business as World Oil Refining) and Phillips 66.

19. In February 2021, Breitburn/Maverick agreed to sell the Oil & Gas Assets to Zargon for $25 million.

20. On April 1, 2021, Breitburn/Maverick and Zargon entered into a Purchase & Sale Agreement (hereafter, the "PSA") for Zargon to purchase the Oil & Gas Assets from Breitburn/Maverick for $25 million (subject to certain adjustments to be calculated by the parties at the closing). A cash deposit of $1,250,000 was paid to Breitburn/Maverick.

21. The original closing date in the PSA for Zargon to purchase the Oil & Gas Assets was May 26, 2021. On May 14, 2021, Breitburn/Maverick and Zargon entered into the First Amended PSA, which (i) changed the closing date from May 26, 2021, to June 17, 2021, and (ii) modified the entity purchasing the Oil & Gas Assets from Zargon to WGH (now known as Bridgeland).

22. Bridgeland (through Wood) arranged 100% of the financing needed to purchase the Oil & Gas Assets. Part of that money came from Wood personally, who sold personal assets, including a home in Carpinteria, California, to finance the transaction. The remaining money was financed by JGB Favorelle, LLC (hereafter "JGB"), which provided a loan to Bridgeland that was collateralized by personal guarantees from Wood and further supported by a pledge of Wood's personal and business assets, along with a pledge of Bridgeland's assets.

B. Wood Hired Winston & Strawn To Represent His Companies, Bridgeland And Zargon, In The Purchase Of The Oil & Gas Assets From Breitburn/Maverick

23. On April 5, 2021, Bridgeland (formerly known as WGH) signed a retainer agreement with Winston to represent Bridgeland in connection with its purchase of the Oil & Gas

Assets from Breitburn/Maverick. Michael Blankenship, currently the Managing Partner of Winston's Houston office, signed the engagement letter on behalf of Winston.

24. On May 19, 2021, Zargon Acquisition, Inc. ("Zargon") signed a retainer agreement with Winston to represent Zargon. Michael Blankenship again signed the engagement letter on behalf of Winston.

25. From the beginning of April 2021, until the transaction to purchase the Oil & Gas Assets closed on June 17, 2021, Winston acted as counsel to Bridgeland and Zargon in connection with their purchase of the Oil & Gas Assets.

26. Thereafter, Winston continued to act as counsel to Bridgeland and Zargon in various matters.

27. Michael Blankenship was the relationship partner in charge of Winston's engagement with Bridgeland and Zargon. Mr. Blankenship assigned a corporate associate named Christopher Cottrell to work on the engagement for Bridgeland and Zargon. Mr. Cottrell had been working as a corporate attorney for less than three years when Mr. Blankenship assigned him to work as counsel for Bridgeland and Zargon in April 2021. All tasks performed by Mr. Cottrell in the course of his work for Bridgeland and Zargon, including those that were the errors complained of herein, were within the scope of his authority, real or apparent, as an employee, lawyer and agent assigned to this representation by his employer, Winston.

28. In the final days leading up to the closing, there was a lot of activity and a number of major structural changes to the overall deal. Decisions were made by Winston, which were not communicated to Bridgeland, that ultimately had disastrous consequences for Bridgeland. Yet Bridgeland never heard from Winston partner Michael Blankenship during the final 72 hours before the deal closed. Their only contact was with the Winston associate, Mr. Cottrell. In fact,

it is unclear whether Mr. Blankenship reviewed any of the final agreements, weighed in on any of the crucial (and totally erroneous) decisions that Winston made in the final 72 hours of the deal, or had any idea what agreements Winston had recommended that its client sign (without providing any legal advice or guidance about the potential consequences). In connection with its recommendation to sign the deal documents, Winston failed to disclose material changes in the documentation that were material and ultimately proved damaging to its clients' position in the subsequent litigation and severely affected the value and profit of the deal to Winston's clients.

C. BRIDGELAND SEEKS A BUSINESS PARTNER TO OPERATE THE OIL & GAS ASSETS

29. In late 2020 and into early 2021, Bridgeland (through their sole owner, Scott Wood) began discussions with E&B Natural Resources Management Corporation ("E&B") to operate the Wells that Bridgeland was considering purchasing from Breitburn/Maverick.

30. E&B is a California-based operator of oil and gas wells, with extensive experience in operating assets like the Oil & Gas Assets. E&B is wholly owned by Rotterdam Ventures, Inc. ("Rotterdam"), a New York-based consortium with real estate, oil and gas, and other holdings.

31. Bridgeland (through Wood) began negotiating a business deal by which E&B would: (i) operate the Wells to extract crude oil; (ii) maintain and repair the Wells; (iii) provide accounting, bookkeeping, and other financial services to track the production of crude oil extracted from the Wells; (iv) pay invoices and maintain relationships with vendors, contractors, and consultants for the Oil & Gas Assets; (v) supply personnel to operate the Oil & Gas Assets and to handle all Human Resources, personnel, and employment functions with respect to those employees; (vi) interface with regulators and handle all compliance/regulatory requirements related to the Oil & Gas Assets; and (vii) calculate crude oil production from the Wells in order to assign the correct allocation of proceeds to the various royalty owners (together, these Operations & Management Services are defined as the "O&M Services").

32. In short, Bridgeland was negotiating a business relationship with E&B by which Bridgeland would provide all the financing needed to purchase the Oil & Gas Assets from Breitburn/Maverick, while E&B would provide all of the O&M Services needed to run, maintain, and monetize the Oil & Gas Assets.

D. BRIDGELAND RELIED ON WINSTON TO PREPARE AND FINALIZE CONTRACTS RELATED TO BOTH THE PURCHASE OF THE OIL & GAS ASSETS FROM BREITBURN/MAVERICK AND THE PARTNERSHIP DOCUMENTS WITH E&B/ROTTERDAM

33. Winston took the lead in negotiating the two related business deals between Bridgeland and E&B/Rotterdam. It was envisioned that the overall structure would include two separate, but related, agreements.

a. **First**, a nominee entity of E&B and/or Rotterdam (later identified as Triton LA, LLC ["Triton"]) representing the interests of E&B and/or Rotterdam, would receive a 25% equity stake in Bridgeland (and by extension, the Oil & Gas Assets) with an option to acquire an additional 25% under certain conditions (the "Triton Member Option"). This agreement would later be memorialized as the Amended and Restated Limited Liability Agreement of WGH (the "ARLLCA").

b. **Second**, in return for the equity provided to E&B and/or Rotterdam in the ARLLCA, E&B would enter into an Operations and Management Agreement with Bridgeland, by which E&B would agree to provide comprehensive O&M Services to Bridgeland for a fixed fee that was locked in for an extended period of time (the "O&M Agreement").

34. It was a primary consideration for Bridgeland in entering into the O&M Agreement with E&B that the agreement specified a comprehensive list of itemized services that E&B would provide to Bridgeland in connection with the Oil & Gas Assets for an extended period of time at a fixed price.

35. In fact, the only reason that Bridgeland was willing to consider entering into the

ARLLCA (and giving away a 25% equity stake of Bridgeland) was if an experienced, capable, oil & gas operator affiliated with E&B and/or Rotterdam was simultaneously signing an O&M Agreement to provide the O&M Services locked in at favorable pricing for an extended period of time.

36. In essence, both sides put "skin in the game." E&B and/or Rotterdam would make less money by having E&B provide O&M Services to Bridgeland for less than E&B could otherwise charge its other clients, but they benefitted by getting an equity stake in the Oil & Gas Assets that would be valuable if Bridgeland did well. By the same token, Bridgeland could have purchased the O&M Services from multiple vendors on the open market on an à la carte basis, but it would have been more expensive and complicated than the "one stop shopping" model offered by E&B.

37. In short, Bridgeland traded 25% equity in its company for an agreement by a well-respected oil & gas operator to provide comprehensive O&M Services that would be locked in for many years at favorable pricing. This would save Bridgeland a lot of money over the long term. Winston knew that these were Bridgeland's goals and intentions in the simultaneous negotiations of the ARLLCA and O&M Agreement.

38. On May 12, 2021, Winston formed and incorporated CW Children Holdings, LLC ("CWH"), a Delaware limited liability company, to represent Wood's interest in the pending acquisition of the Oil & Gas Assets. Wood is the sole Member and 100% owner of CWH.

39. On May 12, 2021, Winston formed and incorporated WG Holdings SPV, LLC ("WGH"), a Delaware limited liability company, to be the corporate entity that would purchase the Oil & Gas Assets from Breitburn/Maverick. WGH is now known as Bridgeland. CWH was the sole Member and 100% owner of WGH from the time of its formation until June 17, 2021.

40. On May 12, 2021, Bret Strong, the attorney for E&B, Rotterdam, and Triton, circulated a draft O&M Agreement to Winston, which outlined the three-page, comprehensive list of O&M Services that E&B would provide to Bridgeland in operating the Oil & Gas Assets. Mr. Strong stated that the O&M Agreement would "formalize the role of E&B in managing and operating the to be acquired Maverick Assets for WG Holdings SPV, LLC. The operating structure is as has been discussed where E&B and/or its affiliates provide management and operation of the assets for WG who takes title at the closing." In the May 12, 2021 draft of the O&M Agreement circulated by Mr. Strong, E&B agreed to provide the O&M Services through the end of 2030.

41. On May 17, 2021, Winston attorneys sent an email to Mr. Strong with a markup of the O&M Agreement between Bridgeland and E&B proposing: (i) a contract term of four years with unlimited extensions of one year if both sides agreed (the "Term"); (ii) a monthly base fee of $100,000 per month to E&B; and (iii) the same three-page list of comprehensive O&M Services to be provided by E&B that were identified in Mr. Strong's May 12, 2021 draft of the O&M Agreement.

42. On May 21, 2021, Mr. Strong sent a revised version of the O&M Agreement between Bridgeland and E&B to Winston attorneys. This draft made no changes to the Term, monthly base fee, or three-page list of comprehensive O&M Services to be provided by E&B. In his May 21, 2021 email, Mr. Strong requested a draft of the ARLLCA from Winston, which would specify the ownership interests of CWH and Triton in Bridgeland.

43. On May 21, 2021, Winston attorneys sent an email to Bret Strong with a draft of the ARLLCA. This draft included a discussion of the Triton Member Option, which permitted Triton to exercise the option to increase its equity stake in Bridgeland from 25% to 50% within six

months of the ARLLCA's Effective Date by providing an additional capital contribution in the form of cash.

44. On May 25, 2021, Winston attorneys sent an email to Bret Strong with a further markup of the O&M Agreement between Bridgeland and E&B. This May 25, 2021 draft made no changes to the core contract terms, which included the Term of the agreement, monthly base fee, and three-page list of comprehensive O&M Services to be provided by E&B.

45. On May 26, 2021, Mr. Strong sent a revised draft of the O&M Agreement between Bridgeland and E&B to Winston attorneys. This May 26, 2021 draft made no changes to the core contract terms, which included the Term of the agreement, monthly base fee, and three-page list of comprehensive O&M Services to be provided by E&B.

46. On May 26, 2021, Mr. Strong also sent a markup of the ARLLCA to Winston attorneys. This draft changed the Triton Member Option clause by giving Triton 12 months to exercise the option rather than six months, and by allowing Triton to exercise the option by providing an additional capital contribution of either cash or oil and gas properties.

47. On June 1, 2021, Rotterdam created Triton to hold its envisioned interest in Bridgeland.

E. THE DEAL TERMS CHANGE IN THE FINAL 72 HOURS BEFORE CLOSING

48. Since Winston's involvement began as of April 5, 2021, the proposed deal being negotiated was that E&B would enter into the O&M Agreement to provide the O&M Services to Bridgeland in connection with the Oil & Gas Assets. In return, Bridgeland would enter into the ARLLCA to give Triton (the E&B/Rotterdam nominee) a 25% equity stake in Bridgeland, with an option for another 25% to be exercised under certain conditions.

49. But on June 14 or 15, 2021, E&B informed Bridgeland for the first time that it could not provide the critical O&M Services under its own name, and therefore would not enter into the

O&M Agreement with Bridgeland.

50. Instead, E&B, Rotterdam, and Triton proposed an alternative arrangement as follows: (i) the same E&B personnel who were going to operate and manage the Oil & Gas Assets for E&B under the originally-conceived O&M Agreement would continue to do so, but under the name of either Excalibur Well Services Corporation ("Excalibur") or Zylstra & Associates Engineering ("Z&A"); and (2) Excalibur would enter into the exact same O&M Agreement that E&B had planned to sign, whereby Excalibur would provide the same comprehensive O&M Services to Bridgeland that E&B had previously agreed to provide.

51. Excalibur was a California-based company that was very closely tied to E&B, in essence, a sister company within the same organization. E&B, Rotterdam, Triton, and Excalibur assured Bridgeland that Excalibur could step into E&B's shoes to perform the same services with the same quality given their common ownership, leadership, and employees, specifically:

a. Excalibur and E&B were both wholly owned by Rotterdam.

b. Excalibur and E&B shared the same principal office address in Bakersfield, California.

c. Excalibur and E&B shared the same mailing address, which was also the address of Rotterdam's headquarters in Schenectady, New York.

d. Steve Layton was Chief Executive Officer of both E&B and Excalibur. Layton had been Mr. Wood's primary point of contact in discussing the proposed deal for E&B to provide the O&M Services to Bridgeland.

e. David Buicko, the President and Chief Executive Officer of Rotterdam, was a Board member of both E&B and Excalibur.

f. Gary Richardson, who was later appointed to serve as Corporate Secretary of

Bridgeland, was an officer of both E&B and Excalibur.

52. Z&A was a California company owned by Louis Zylstra, who was a senior executive at E&B.

53. E&B, Rotterdam, Triton, Excalibur, and Z&A assured Bridgeland that the same E&B personnel who were going to provide O&M Services to Bridgeland under the O&M Agreement the parties had been negotiating would continue to do so through Excalibur and/or Z&A. Bridgeland had no reason to disbelieve these assurances considering that E&B and Excalibur were both owned by Rotterdam and had a common business address, mailing address, CEO, directors, management, and employees, and that Z&A was owned by a senior E&B executive.

54. E&B, Rotterdam, Triton, Excalibur, and Z&A also assured Bridgeland and/or Zargon that Excalibur would provide the same comprehensive list of O&M Services that E&B had agreed to provide in the O&M Agreement that the parties had been negotiating since May 2021, and on the same terms.

55. To Bridgeland, this proposed change made no difference. Bridgeland was still trading an equity stake to Rotterdam/Triton in exchange for receiving the expertise of E&B's personnel to provide a comprehensive list of services for favorable pricing locked in for a number of years. The fact that those E&B employees would technically be working under the flag of E&B's sister companies was immaterial.

56. In the end, Bridgeland would still receive the same valuable benefits of: (i) the same E&B personnel; (ii) providing the same comprehensive O&M Services at the Oil & Gas Assets; (iii) pursuant to a contract that was identical in its terms to the one that Bridgeland had already negotiated with E&B, Rotterdam, and Triton.

57. Essentially, E&B, Rotterdam, and Triton were swapping out Excalibur for E&B as

the entity that would sign the O&M Agreement to provide the same O&M Services, using the same E&B personnel to perform those services, on the same terms that Bridgeland and E&B/Rotterdam had already negotiated. In return, Bridgeland would still give Triton a 25% equity stake, with the possibility of a 50% equity stake if the Triton Member Option was exercised.

58. In other words, the parties agreed that the ARLLCA would still be executed (and the equity stake transferred to Triton) in return for promises that: (i) Excalibur would execute the same O&M Agreement that E&B had planned to execute; (ii) Excalibur would provide the same comprehensive O&M Services to Bridgeland on the same pricing and other terms that E&B had agreed to provide; and (iii) Excalibur and/or Z&A would utilize the same E&B personnel to perform those O&M Services.

F. E&B Insists On Another Last-Minute Change

59. Between June 15 and June 17, 2021, the parties agreed that Excalibur would sign the same O&M Agreement that E&B had planned to sign, on the same terms, to provide the same comprehensive services to Bridgeland using the same E&B personnel.

60. But all parties understood that it was not possible to have Excalibur finalize and sign the O&M Agreement by the morning of June 17, 2021, which was less than 48 hours after E&B first told Bridgeland it could not sign the O&M Agreement in its own name. Breitburn/Maverick had already informed Bridgeland that the transaction had to close by June 17, 2021, or else Bridgeland would not be able to purchase the Oil & Gas Assets and would lose its $1.25 million deposit.

61. Accordingly, the parties discussed E&B formally providing the O&M Services under its own name for a short period of time, on a "bridge" basis, until Excalibur could enter into a full O&M Agreement with Bridgeland, at which time the E&B personnel would provide the O&M Services under the name of Excalibur and/or Z&A rather than E&B.

62. On the evening of June 16, 2021, Mr. Strong sent an email to Winston attorneys saying that E&B would agree to provide "bridge" O&M Services to Bridgeland under its own name from June 17, 2021, until August 31, 2021.

63. But E&B, Rotterdam, Triton, Excalibur, and Z&A insisted that Bridgeland sign a release agreement first. Mr. Strong's June 16, 2021 email attached a draft agreement, which provided that E&B would provide O&M Services under its own name from June 17, 2021, through August 31, 2021, but which also gave E&B and its affiliates, including but not limited to Rotterdam, Excalibur, Z&A, Triton, and all of their officers, directors, and employees (together, the "E&B Affiliated Parties") full releases for any conduct occurring before June 17, 2021, which by definition would include any conduct related to the pre-June 17, 2021 contract negotiations of the O&M Agreement and the ARLLCA and any promises made during those negotiations (the "June 17 Letter Agreement").

64. The June 17 Letter Agreement, which was only two pages long, provided extremely broad releases to the E&B Affiliated Parties. As the E&B Affiliated Parties later argued in the Underlying Litigation, a broad reading of the releases in the June 17 Letter Agreement meant that Bridgeland had no legal recourse if it later learned of issues (whether intentional or not) with the conduct of the E&B Affiliated Parties in connection with any due diligence, promises, assurances, or contract negotiations up to June 17, 2021.

65. In essence, the June 17 Letter Agreement was a "Get Out of Jail Free Card" for the very broad group of E&B Affiliated Parties, and on paper did nothing more than promise that E&B would provide O&M Services to Bridgeland for six weeks.

66. Taken together, the ARLLCA and the June 17 Letter Agreement were like the two jaws of a vise to Bridgeland. The ARLLCA required Bridgeland to give up 25% of its equity to

the E&B Affiliated Parties' nominee (Triton). But instead of getting in return a contract to receive comprehensive O&M Services locked in at favorable pricing for many years, all Bridgeland got via the June 17 Letter Agreement was a commitment by E&B to provide O&M Services for six weeks. While the E&B Affiliated Parties had made a number of promises to Bridgeland in the days leading up to June 17, 2021, they were not making any commitments to Bridgeland in writing.

67. The working concept throughout the entire negotiation, which Winston spearheaded for Bridgeland, was that Bridgeland would give up a 25% equity stake in exchange for the simultaneous signing of the O&M Agreement, by which E&B would commit to provide comprehensive O&M Services to Bridgeland on favorable terms locked in for many years. Those two things (the swap of equity in Bridgeland in return for a signed contract by E&B to provide O&M Services) were supposed to happen at the same time as the consideration for each other.

68. But the net effect of Winston advising Bridgeland to sign the ARLLCA and June 17 Letter Agreement on June 17, 2021, was that only one half of the "swap" happened. Bridgeland gave up a very valuable equity stake in its company but got nothing more in writing from the E&B Affiliated Parties than an agreement for E&B to provide O&M Services for six weeks. The promises by the E&B Affiliate Parties that Excalibur would eventually enter into an O&M Agreement and that E&B personnel would continue to provide O&M Services after August 31, 2021, were unwritten. In short, the E&B Affiliated Parties documented what they wanted to receive (the equity stake in Bridgeland) but did not have to document what they were supposed to in return.

69. More importantly, Winston failed to advise Bridgeland that the verbal, unwritten promises by the E&B Affiliated Parties -- namely, that the same E&B personnel would continue to provide the same comprehensive O&M Services via an O&M Agreement that Excalibur would

sign with Bridgeland at some undetermined time in the future -- were potentially unenforceable due to the ARLLCA and June 17 Letter Agreement that Winston advised Bridgeland to sign.

70. Specifically, Winston did not advise Bridgeland that the ARLLCA it had drafted included an integration and merger clause (Sect. 16.10 of the ARLLCA, entitled "Entire Agreement" clause) that could be used by the E&B Affiliated Parties to evade any responsibility for: (i) E&B to have its personnel continue working on the Oil & Gas Assets past August 31, 2021; or (ii) Excalibur to enter into a formal O&M Agreement of the type Bridgeland had negotiated with E&B. Yet these promises were the key inducement for Bridgeland to enter into the ARLLCA. The only contact that Bridgeland had with Winston in 72 hours leading up to the deal was with Mr. Cottrell. It is unclear whether the Winston partner, Michael Blankenship, ever reviewed or was aware of any of these critical, deal-defining changes.

71. Winston also did not advise Bridgeland that the June 17 Letter Agreement's broad releases could be used as an argument to shield the E&B Affiliated Parties from any liability in connection with their failure to follow through on promises for (i) E&B to have its personnel continue working on the Oil & Gas Assets past August 31, 2021; or (ii) Excalibur to enter into a formal O&M Agreement of the type Bridgeland had negotiated with E&B. Yet these promises were the key inducement for Bridgeland to enter into the ARLLCA. Again, the only contact Bridgeland had with Winston in the days leading up to the deal was with Mr. Cottrell. It is unclear whether the Winston partner, Michael Blankenship, ever reviewed or was aware of any of these critical, deal-defining changes.

G. WINSTON FAILED TO ADEQUATELY DRAFT DEAL DOCUMENTS PROPERLY DESCRIBING HOW THE TRITON MEMBER OPTION COULD BE EXERCISED

72. In the ARLLCA, Triton had the opportunity to increase its equity stake in Bridgeland from 25% to 50% by exercising what the ARLLCA defined as the Triton Member

Option.

73. It was always the intention of Bridgeland that Triton would only be able to exercise the Triton Member Option if: (i) a super majority of Bridgeland's Board of Managers approved the exercise of the Triton Member Option; and (ii) Triton contributed additional capital that was equal to 50% of the fair market value of Bridgeland at the time the Triton Member Option was exercised.

74. In other words, it was always the intention of Bridgeland that, if Triton wanted to exercise the Triton Member Option to increase its stake to 50% of Bridgeland, it had to satisfy two conditions: (i) convince a "super majority" of Bridgeland's Board to approve Triton's exercise of the Triton Member Option; and (ii) if so approved, then Bridgeland would value the company and determine the amount of additional capital Triton needed to contribute based on the assessed fair market value of the additional equity that Triton wanted to acquire.

a. The first condition meant that Bridgeland's Board **always** had the right to decline the exercise of the Triton Member Option for any reason, not just because of issues about valuing the additional capital contribution. If a super majority of Bridgeland's Board did not think it was in the company's best interest for Triton to be a 50% owner, then it always had the right to say no, regardless of what Triton offered by way of additional capital.

b. The second condition meant that, if Bridgeland's Board did approve the exercise of the Triton Member Option, Triton had to contribute additional capital based on the **fair market value of Bridgeland at the time the Triton Member Option was exercised**. For example, if a super majority of Bridgeland's Board approved the Triton Member Option, and a fair market valuation showed that Bridgeland was worth $100 million at the time of the exercise, then 50% of that amount would be $50 million (less Triton's initial capital contribution valued at $666,500), which is

the amount of additional capital that Triton would have to contribute (by way of either cash or oil and gas properties) in order to increase its ownership in Bridgeland.

75. But during the course of negotiating the ARLLCA, Winston made at least two critical drafting errors regarding the Triton Member Option, both of which served to deprive Bridgeland of the protections it thought it was getting about how the Triton Member Option was to be exercised.

76. **The first drafting error** centered around a stray parenthesis. On the afternoon of June 16, 2021 (the day before the deal closing), Bret Strong sent an email to Winston attorneys attaching a draft of the ARLLCA. Sect. 4.2(c) of that draft stated that Triton could exercise the Triton Member Option "in the form of a cash or Contributed Oil and Gas properties valued at Fair Market Value (subject to (i) approval by a Super Majority of the Board and (ii) if required by any existing agreements of the Company, approvals or consents of any third parties required by such agreements, such additional Capital Contribution cash amount and/or Fair Market Value, plus the Triton Member's initial Capital Contribution, shall equal the CW Member's Initial Capital Contribution." (Emphasis and colorization added).

77. The stray parenthesis before the word "subject" (which had no closing parenthesis at any later point in Sect. 4.2(c)) had the effect of creating ambiguity where there should have been none. It was possible to interpret the sentence to mean that a contribution of ***either*** cash or oil and gas properties was subject to Board approval. But it was also possible to interpret the sentence to mean that ***only*** the contribution of oil and gas properties was subject to Board approval (since the stray opening parenthesis immediately followed that phrase), in which case Triton did not need Board approval if it made its additional capital contribution in cash.

78. This stray opening parenthesis had been in Sect. 4.2(c) for many days, and in many

drafts of the ARLLCA that went back and forth before June 16, 2021, however it was never flagged or addressed by Winston.

79. But when Winston associate Christopher Cottrell sent a markup of the ARLLCA to opposing counsel on the morning of June 17, 2021, he added a *closing parenthesis* in Sect. 4.2(c) so that it read that Triton could make its additional capital contribution "in the form of a cash or Contributed Oil and Gas properties valued at Fair Market Value (subject to (i) approval by a Super Majority of the Board and (ii) if required by any existing agreements of the Company, approvals or consents of any third parties required by such agreements)…." (Emphasis and blue coloring in original). The only contact Bridgeland had with Winston on June 16 and 17, 2021 was with Mr. Cottrell. It is unclear whether the Winston partner, Michael Blankenship, ever reviewed or was aware of any of these issues.

80. So instead of "fixing" the stray parenthesis issue by taking out the opening parenthesis (which would have made clearer that Bridgeland's Board approval was required for an additional capital contribution by Triton of ***both*** cash and oil and gas property contributions), Mr. Cottrell instead added a closing parenthesis, which made the meaning of the clause even murkier and bolstered Triton's later argument in the Underlying Litigation that ***only*** a contribution of oil and gas properties required Board approval, and that a contribution in cash did not.

81. In so doing, Winston created significant ambiguity about whether Bridgeland's Board still had the right to approve or decline a cash contribution by Triton to exercise the Triton Member Option or if Triton could unilaterally exercise the Triton Member Option by providing cash, whether Bridgeland's Board approved or not.

82. **The second drafting error** pertained to the amount of additional capital that Triton had to provide in order to exercise the Triton Member Option. In earlier drafts of the ARLLCA,

Sect. 4.2(c) stated that Triton's additional capital contribution only had to equal the amount of CWH's initial capital contribution, which was valued in the ARLLCA as $2 million, less the value of Triton's initial capital contribution, which was valued in the ARLLCA at $666,500. Under that analysis, Triton only had to provide $1,333,500 as an additional capital contribution in order to exercise the Triton Member Option.

83. However, Bridgeland never intended for Triton to be able to increase its equity ownership from 25% to 50% for a mere $1,333,500, and Winston was aware of that.

84. Late on the evening of June 16, 2021 (less than 12 hours before final deal documents were signed), Winston attorneys sent an email to Bridgeland, which attached a redline draft of the ARLLCA. In this draft, the language for the Triton Member Option was modified to state that Triton's additional capital contribution had to be cash or oil and gas properties equaling the **"fair market value" of CWH's ownership interest in Bridgeland** at the time the Triton Member Option was exercised. In other words, Triton would have to make an additional capital contribution equivalent to 50% of Bridgeland's fair market value if it wanted a 50% ownership stake in the company. The only contact Bridgeland had with Winston on June 16 and 17, 2021 was with Mr. Cottrell. It is unclear whether the Winston partner, Michael Blankenship, ever reviewed or was aware of any of these critical, deal-defining issues.

85. In short, Winston sent its client, Bridgeland, a draft ARLLCA that fixed the issue that Bridgeland wanted fixed. Before, Triton only had to contribute $1,333,500 to exercise the Triton Member Option. But in the draft sent by Winston to its client hours before the closing, Triton had to contribute additional capital that was equal to the fair market value of CWH's 50% ownership interest. For example, if Bridgeland was valued at $100 million at the time Triton wanted to exercise the Triton Member Option, then Triton would have to contribute $50 million

(less the initial capital contribution valued at $666,500) in additional capital if it wanted to be a 50% owner.

86. A few hours after sending the ARLLCA draft to Bridgeland on the evening of June 16, 2021, Winston attorneys sent Bret Strong (counsel for the E&B Affiliated Parties) an email at 7:34 a.m. on June 17, 2021, attaching the version of the ARLLCA that they recommended should be signed by all parties as the final version. Astonishingly, the ARLLCA draft that Winston attorneys sent to Mr. Strong on the morning of June 17, 2021, no longer included the language identified above about Triton having to contribute additional capital based on 50% of the fair market value of Bridgeland. Instead, Sect. 4.2(c) of the ARLLCA that Winston circulated for signing on the morning of June 17, 2021, reverted back to older language stating that Triton's additional capital contribution when exercising the Triton Member Option only had to equal CWH's initial capital contribution of $2 million, *i.e.*, $1,333,500.

87. In other words, just a few hours after sending a draft to their client that fixed a prior error and ensured that Triton had to add capital equivalent to 50% of Bridgeland's fair market value (as valued at the time the Triton Member Option was exercised), Winston sent a draft to opposing counsel for signature that omitted this critical language, and which arguably permitted Triton to increase its equity ownership from 25% to 50% for only $1,333,500, as it argued at later Bridgeland Board meetings and in the Underlying Litigation.

88. Winston never informed Bridgeland that it had removed this vital language about the amount Triton would have to provide as its additional capital contribution when exercising the Triton Member Option. So without telling its client, Winston drastically altered the final deal terms that their client thought it was getting based on what Winston told it the night before. The only contact Bridgeland had with Winston on June 16 and 17, 2021 was with Mr. Cottrell. It is

unclear whether the Winston partner, Michael Blankenship, ever reviewed or was aware of any of these critical, deal-defining issues.

II. WINSTON MADE A FURTHER DRAFTING MISTAKE ABOUT TRITON'S CONSIDERATION FOR THE ARLLCA

89. Winston made a further, egregious drafting mistake when it came to the ARLLCA's description of the initial consideration Triton was to contribute to the deal.

90. Before June 16, 2021, all draft versions of the ARLLCA included a chart outlining the Initial Capital Contribution of Triton, which was described as "Intangible Assets" and valued at $666,500, although the term "Intangible Assets" was not otherwise defined in the ARLLCA. In fact, the only identification of "Intangible Assets" was found in Exhibit B of the ARLLCA, which was a simple, two-row chart identifying the types and amounts of initial capital contributions by CWH and Triton.

91. However, when E&B informed Bridgeland on June 15, 2021, that it could no longer be formally involved to provide O&M Services to Bridgeland for the Oil & Gas Assets, the situation changed radically and quickly.

92. Up until June 15, 2021, the understanding was that E&B would be the "Operator of Record" of the Oil & Gas Assets. This designation meant that E&B would be formally responsible for compliance and regulatory matters associated with the Oil & Gas Assets. It also meant that the regulators would look to E&B if there were any environmental or other problems associated with the Oil & Gas Assets.

93. Further, the specialized nature of oil and gas properties requires that the Operator of Record obtain certain bonds, which provide a financial guarantee or backstop if there are ever any environmental or regulatory issues at the oil wells (such as a spill or fire). The bonds are issued by surety companies, which stand behind the bonds and provide assurances to federal, state, and local

regulators and/or utilities that the Operator of Record will pay for any issues that may arise.

94. In the case of the Oil & Gas Assets, there were seven bonds with various federal, state, and local regulators and/or utilities that were in the name of Breitburn/Maverick, and that needed to be transferred to the name of the Operator of Record of the Oil & Gas Assets on June 17, 2021, the date of the transfer of the Oil & Gas Assets to Bridgeland.

95. It was agreed during the contract negotiations that E&B, as the intended Operator of Record, would make all arrangements for the seven required bonds (the "Bonds") through its existing surety company, and would pay the premiums for those Bonds. In fact, obtaining the Bonds was among the obligations itemized among E&B's myriad responsibilities in the comprehensive, three-page list of O&M Services in the draft O&M Agreement that the parties had negotiated in May and June 2021.

96. But when E&B pulled out of the parties' overall agreement, it meant that E&B would no longer be able to serve as the Operator of Record, and could no longer have the Bonds issued in its name.

97. The E&B Affiliated Parties wanted to salvage the deal so they would still get the 25% equity stake in Bridgeland. In order to accomplish that, they agreed to arrange for the Bonds to be issued in the name of Bridgeland, using the E&B Affiliated Parties' existing surety company, which was backed by the financial guarantees and collateral of Rotterdam.

98. As the E&B Affiliated Parties explained it to Bridgeland in the final 48 hours before the deal had to close, the Bonds would be issued by the E&B Affiliated Parties' surety company in the name of Bridgeland, but the E&B Affiliated Parties would take care of all the arrangements to obtain the Bonds and to pay the premiums for the Bonds.

99. Arranging for the Bonds was not a substitute for the extremely-important

consideration to be provided by the E&B Affiliated Parties in exchange for the 25% equity stake in Bridgeland, which remained as follows: (i) Excalibur would execute the same O&M Agreement that E&B had planned to execute; (ii) Excalibur would provide the same comprehensive O&M Services to Bridgeland on the same pricing and other terms that E&B had agreed to provide; and (iii) Excalibur and/or Z&A would utilize the same E&B personnel to perform those O&M Services beyond August 31, 2021. Rather, the E&B Affiliated Parties agreed to arrange for the Bonds and pay the Bond premiums in recognition of the fact that it was their last-minute change to the deal dynamics that precluded E&B from acting as Operator of Record, which was the only reason for a "fire drill" about the Bonds.

100. In addition, the E&B Affiliated Parties' surety company needed certain financial guarantees before issuing the Bonds. While the surety company might have been able to use the assets of Bridgeland and its affiliates or owners as collateral to guarantee the Bonds, there was not enough time to arrange that given the very tight deadline. So the E&B Affiliated Parties agreed that they would provide the necessary financial guarantees to permit the surety company to issue the Bonds in the name of Bridgeland (the "Guaranties").

101. Providing Guaranties for the Bonds was not a substitute for the extremely-important consideration to be provided by the E&B Affiliated Parties, which remained as follows: (i) Excalibur would execute the same O&M Agreement that E&B had planned to execute; (ii) Excalibur would provide the same comprehensive O&M Services to Bridgeland on the same pricing and other terms that E&B had agreed to provide; and (iii) Excalibur and/or Z&A would utilize the same E&B personnel to perform those O&M Services beyond August 31, 2021. Rather, the E&B Affiliated Parties agreed to provide the Guaranties in recognition of the fact that it was their last-minute change to the deal dynamics that precluded E&B from acting as Operator of

Record, which was the only reason for a "fire drill" about the Bonds and Guaranties.

102. However, because of Winston's drafting mistakes and professional negligence, the ARLLCA was amended at the last minute to change the description of Triton's initial capital contribution in ways that Bridgeland neither wanted nor intended.

103. On the morning of June 17, 2021, Winston sent a final redline of the ARLLCA to Mr. Strong before the final deal documents were signed later that morning. In that draft, the ARLLCA ***should have been changed*** to specifically say that the initial capital contribution provided by the E&B Affiliated Parties now included Bonds and Guaranties along with promises that: (i) Excalibur would execute the same O&M Agreement that E&B had planned to execute; (ii) Excalibur would provide the same comprehensive O&M Services to Bridgeland on the same pricing and other terms that E&B had agreed to provide; and (iii) Excalibur and/or Z&A would utilize the same E&B personnel to perform those O&M Services beyond August 31, 2021.

104. Instead, Winston changed the description of Triton's initial capital contribution to something much more ambiguous, opaque, and imprecise. The June 17, 2021 draft of the ARLLCA circulated by Winston for final signature simply grafted vague language onto the two-line chart of the ARLLCA's Exhibit B. Before, Triton's initial capital contribution was defined as "Intangible Assets", which made sense when the O&M Agreement (which was the driving force behind the grant of a 25% equity stake in Triton) was being signed at the same time. But now, Triton's initial capital contribution was simply described as "Intangible Assets, Bonds, and Guaranties" with a footnote describing the payee and bond number of the seven Bonds.

105. In so doing, Winston created at least three significant errors through its negligent and imprecise drafting of the ARLLCA.

106. **First**, Winston did not specify that the E&B Affiliated Parties not only had to

arrange for the Bonds, but also had to pay the Bond premiums. As Bridgeland later discovered, the E&B Affiliated Parties simply placed a phone call to their bond broker, who called the surety company. And while the surety company did issue the Bonds in Bridgeland's name in time for the deal to close, the E&B Affiliated Parties then directed the surety company to invoice Bridgeland for the premiums of the Bonds.

107. When Bridgeland discovered that the E&B Affiliated Parties had not provided the consideration they promised as an inducement for Bridgeland to enter into the ARLLCA, it terminated and rescinded the ARLLCA via written correspondence on August 26, 2022 (the "ARLLCA Rescission").

108. The issue about paying Bond premiums took on outsized importance in the subsequent litigation between Bridgeland and the E&B Affiliated Parties from May 2022 to October 2023 (the "Underlying Litigation"), in which Bridgeland sought judicial confirmation that it was legally entitled to void and terminate the ARLLCA for failure of consideration via the ARLLCA Rescission because the E&B Affiliated Parties failed to provide the required initial capital consideration, arguing (among other things) that the E&B Affiliated Parties had not paid for the premiums of the Bonds. Rather than pay for the Bond premiums, all the E&B Affiliated Parties did was make a phone call to their bond broker and then stuck Bridgeland with the bill. But because of Winstons' sloppy and imprecise drafting, the ARLLCA did not specify who had to pay the premiums for the Bonds, leaving that question open to interpretation and significant debate in the Underlying Litigation from May 2022 through October 2023.

109. **Second,** Winston did not specify that the E&B Affiliated Parties had to fully guarantee the Bonds without Bridgeland's involvement. The idea was that the E&B Affiliated Parties would use their existing surety company, with whom they already had an established

bonding line, to issue the Bonds. But the surety company insisted that Bridgeland be added as a guarantor to the overall bonding line. The E&B Affiliated Parties then surreptitiously added Bridgeland as a guarantor on the E&B Affiliated Parties' overall bonding line, without Bridgeland's knowledge. As a result, Bridgeland found out during the course of the Underlying Litigation between May 2022 and October 2023 that it was not only a guarantor on the seven Bonds it needed, but it was also a guarantor on the entire bonding line of the E&B Affiliated Parties, making Bridgeland financially responsible for approximately $10 million in bonds having nothing to do with the Oil & Gas Assets.

110. The E&B Affiliated Parties' failure to properly provide the Guaranties was another form of failed consideration justifying the ARLLCA Rescission.

111. This Guaranties issue also took on outsized importance in the Underlying Litigation, in which Bridgeland sought judicial confirmation that it was legally entitled to void and terminate the ARLLCA for failure of consideration via the ARLLCA Rescission because the E&B Affiliated Parties failed to provide the required initial capital consideration, arguing (among other things) that the E&B Affiliated Parties failed to guarantee the Bonds as they promised, but instead made Bridgeland guarantee not only its own Bonds, but also $10 million of other bonds issued to the E&B Affiliated Parties that had nothing to do with Bridgeland. Because of Winstons' sloppy and imprecise drafting, the ARLLCA did not specify how the E&B Affiliated Parties were to guarantee the Bonds, or what the word "Guaranties" even meant, leaving that question open to interpretation and significant debate in the Underlying Litigation between May 2022 and October 2023.

112. **Third**, and most importantly, Winston failed to specify what was meant by "Intangible Assets" in the ARLLCA. It was always the intention of Bridgeland that the consideration for giving a 25% equity stake to the E&B Affiliated Parties was the reciprocal O&M

Agreement (to be signed simultaneously) by which E&B would commit to provide comprehensive O&M Services for an extended period of time locked in at a favorable price.

113. But when E&B pulled out at the last minute, Winston did not respond appropriately or in a way that protected Bridgeland. Before June 15, 2021, there was never any need to extensively define "Intangible Assets" in the ARLLCA because E&B intended to sign the O&M Agreement at the same time, meaning the two forms of consideration would be exchanged simultaneously. But when E&B pulled out of the deal on June 15, 2021, the E&B Affiliated Parties promised Bridgeland that: (i) Excalibur would enter into the O&M Agreement at some unspecified future date to provide the same O&M Services on the same terms as the parties had negotiated for E&B to provide; and (ii) the same E&B personnel would continue providing the O&M Services to Bridgeland beyond the August 31, 2021 date specified in the June 17 Letter Agreement through Excalibur and/or Z&A. Yet Winston did not document any of this in the ARLLCA, either in a separate clause or as a clearer definition of the term "Intangible Assets" in Exhibit B.

114. Winston failed to specify in the ARLLCA that the E&B Affiliated Parties would ensure that: (i) Excalibur entered into the O&M Agreement to provide the same O&M Services on the same terms as the parties had negotiated for E&B to provide; and (ii) the same E&B personnel would continue providing the O&M Services to Bridgeland beyond the August 31, 2021 date specified in the June 17 Letter Agreement through Excalibur and/or Z&A. This failure was used against Bridgeland throughout the Underlying Litigation between May 2022 and October 2023, when the E&B Affiliated Parties took the position that they were not obliged to have Excalibur enter into the O&M Agreement or have E&B personnel provide the same O&M Services that E&B would have beyond August 31, 2021.

115. Instead, the E&B Affiliated Parties took the position in the Underlying Litigation

between May 2022 and October 2023 that "Intangible Assets" had nothing to do with Excalibur providing the O&M Services or entering into the O&M Agreement. In fact, the E&B Affiliated Parties offered a variety of definitions of "Intangible Assets" throughout the Underlying Litigation. One person said it meant E&B's general reputation as an oil and gas operator. Another said it meant the due diligence work that the E&B Affiliated Parties did on the Oil & Gas Assets before June 17, 2021. Another said it meant the work the E&B Affiliated Parties did in the final 72 hours before the deal closing to convince regulators to approve Bridgeland as the Operator of Record when E&B pulled out.

116. The confusion over what "Intangible Assets" the E&B Affiliated Parties were required to provide was a major component of the Underlying Litigation between May 2022 and October 2023. Bridgeland sought judicial confirmation that it was legally entitled to void and terminate the ARLLCA for failure of consideration via the ARLLCA Rescission because the E&B Affiliated Parties failed to provide the required initial capital consideration, arguing (among other things) by failing to have Excalibur sign the O&M Agreement and for E&B personnel to continue providing the O&M Services beyond August 31, 2021. But because of Winstons' sloppy and imprecise drafting, the ARLLCA did not specify what "Intangible Assets" the E&B Affiliated Parties were supposed to provide, leaving that question open to interpretation and significant debate in the Underlying Litigation.

I. WINSTON MADE A FURTHER DRAFTING MISTAKE ABOUT THE INITIAL CONSIDERATION

117. Winston made another fateful error in the way Triton's Initial Capital Contribution was identified in the ARLLCA. As described above, the first mistake was that Winston failed to include a future obligation for the E&B Affiliated Parties to sign the O&M Agreement and have E&B personnel provide O&M Services beyond August 31, 2021 anywhere in the ARLLCA. The second mistake was the sloppy and imprecise language about "Intangible Assets, Bonds, and

Guaranties" as described above.

118. The third mistake occurred in Sect. 4.1 of the ARLLCA, in which Bridgeland acknowledged that "as of the Effective Date of this Agreement that the Triton Member's Initial Capital Contribution in the form of intangible assets has been made available to the Company in the amount indicated on Exhibit B as good and valuable consideration as a Capital Contribution to the Company."

119. This mistake was a bombshell in the Underlying Litigation between May 2022 and October 2023. Throughout the Underlying Litigation, Bridgeland sought to prove that the true "Intangible Assets" the E&B Affiliated Parties were supposed to provide were for Excalibur to sign the O&M Agreement and for E&B personnel to continue providing the O&M Services beyond August 31, 2021.

120. But because of Winston's sloppy and imprecise drafting, Winston allowed its clients to sign the ARLLCA in a way that acknowledged that the E&B Affiliated Parties had ***already provided*** the "Intangible Assets" as of June 17, 2021. Of course, that was nonsense. The E&B Affiliated Parties were going to provide most of their consideration in the future, when Excalibur signed the O&M Agreement and when E&B personnel continued providing the O&M Services beyond August 31, 2021. This fact was understood and negotiated by Bridgeland and the E&B Affiliated Parties. It was therefore a grave mistake for Winston to allow the ARLLCA to acknowledge that all "Intangible Assets" had already been provided by June 17, 2021. The E&B Affiliated Parties made this argument repeatedly in the Underlying Litigation between May 2022 and October 2023.

121. Moreover, Winston never informed Bridgeland that ARLLCA Sect. 4.1's language had the potential to preclude any later argument by Bridgeland that the E&B Affiliated Parties had

not provided their promised consideration. There was no evaluation by Winston of this risk or discussion with Bridgeland about it. There was no advice to Bridgeland about the potential risk or effort by Winston to mitigate it. And the risk turned out to be more than theoretical and was used persistently by the E&B Affiliated Parties in the Underlying Litigation.

J. WGH Purchased The Oil & Gas Assets From Breitburn/Maverick

122. In order to provide the necessary financing to purchase the Oil & Gas Assets, Mr. Wood had to sell his home in Carpinteria, California.

123. On June 17, 2021, Bridgeland entered into a secured promissory note with JGB to borrow $20,666,667 for the purchase of the Oil & Gas Assets (hereafter "JGB Note"). The JGB Note required Bridgeland to pay JGB annual interest of 10%, with a maturity date for full repayment of June 30, 2022. In addition, the JGB Note included an Original Issue Discount of $2,066,667, meaning that JGB did not fund the entire $20,666,667 in cash, but instead retained $2,066,667 as a fee. Consequently, JGB only funded $18,600,000 of cash towards the purchase of the Oil & Gas Assets.

124. On June 17, 2021, Mr. Wood personally entered into a separate agreement with JGB Collateral, LLC (the designated security agent of JGB in connection with the JGB Note) and provided a personal guarantee of Bridgeland's obligations under the JGB Note to repay $20,666,667.

125. On June 17, 2021, Bridgeland and Breitburn/Maverick closed the deal for Bridgeland to purchase the Oil & Gas Assets from Breitburn/Maverick.

126. The ARLLCA specified that Bridgeland would be controlled by a three-member Board of Managers. One Manager was appointed by CWH (Mr. Wood), one Manager was appointed by Triton (David Buicko), and a third, independent Manager (William Nicholson) was nominated by CWH and approved with Triton's written consent.

127. In the months following the ARLLCA's execution, Excalibur did not follow through on the promises made by the E&B Affiliated Parties that Excalibur would enter into an O&M Agreement with Bridgeland whereby the same E&B personnel would provide the same comprehensive O&M Services to Bridgeland for the same Term and same monthly base fee that E&B had negotiated to do in the weeks during which Winston negotiated the ARLLCA and O&M Agreement with the E&B Affiliated Parties.

128. Instead, Excalibur surreptitiously connived to have Bridgeland enter into a stripped-down Master Services Agreement, dated July 1, 2021 (the "MSA").

a. **First**, the MSA did not commit Excalibur to provide nearly the same level of comprehensive O&M Services that E&B had previously negotiated to provide, and which the E&B Affiliated Parties assured Bridgeland that Excalibur would provide in the days before the ARLLCA was signed. As Bridgeland had learned by the end of January 2022, Excalibur was unable to provide a full range of operational and management services for oil and gas wells. Rather, it was an oil-field, service-rig company that was not in the business of managing oil and gas producing assets in the same way E&B was. As it later turned out, Excalibur was never equipped to provide the specialized and sophisticated O&M Services that Bridgeland required.

b. **Second**, the MSA was achieved by subterfuge. Gary Richardson was a long-time senior executive of both E&B and Excalibur. He was also made an officer of Bridgeland after the ARLLCA was executed. Wearing his hat as a Bridgeland executive, Richardson signed the MSA on Bridgeland's behalf, without bringing the MSA to the attention of Bridgeland's CEO, or getting the approval of Bridgeland's Board of Managers. In essence, Richardson was on both sides of the

deal in that he used his Bridgeland authority to sign a favorable deal for Excalibur, for which he was also an executive.

129. Moreover, the E&B Affiliated Parties ultimately did not have the same E&B personnel who were going to provide the O&M Services to Bridgeland continue to do so. E&B personnel worked on the Oil & Gas Assets between June 17, 2021, and February 28, 2022. But by the end of February 2022, those E&B employees were no longer providing the O&M Services, at which time Bridgeland realized that the E&B Affiliated Parties were not following through on their promises.

130. All of these issues came to light during the Underlying Litigation between May 2022 and October 2023, when Bridgeland learned that, because of Winston's drafting errors and failure to advise, the net effect of signing the ARLLCA (which contained an integration and merger clause) along with the June 17 Letter Agreement (which included broad release language), meant that Bridgeland had limited, if any, legal recourse if the E&B Affiliated Parties simply never followed through on their promises to provide a first-class operator to provide comprehensive O&M Services to Bridgeland for an extended period of time on favorable pricing terms and to continue making the E&B personnel available to Bridgeland after August 31, 2021.

K. AFTER BRIDGELAND CLOSED ON THE OIL & GAS ASSETS, THE E&B AFFILIATED PARTIES PROVIDED INADEQUATE O&M SERVICES

131. Moreover, in the months following the ARLLCA's execution, the E&B Affiliated Parties provided only some (but not all) of O&M Services to Bridgeland, and did so in a substandard, incompetent, inadequate, costly, and ineffective manner. This reckless and dangerous circumstance has caused Bridgeland significant cost and damage.

132. The E&B Affiliated Parties failed to properly: (i) get financial records from Breitburn/Maverick, making it impossible for Bridgeland to properly calculate royalty payments

to the company's royalty owners; (ii) obtain vital geologic data about the Oil & Gas Assets from Breitburn/Maverick; (iii) transfer third-party vendor and utility company relationships from Breitburn/Maverick to Bridgeland, leading to unpaid bills and tax obligations; (iv) provide the O&M Services; (v) keep the company's books and records; (vi) perform accounting functions; (vii) provide sufficient staffing to operate the Wells; (viii) perform testing on the Wells, which affected production allocations; (ix) repair Wells and gas pipelines, resulting in fields being closed and lowering production than should have been the case; (x) resolve regulatory citations, and ran the Wells so badly that Bridgeland was assessed many more regulatory citations, paying significant and unnecessary fines; (xi) submit a Spill Prevention Plan with California Department of Fish and Wildlife (Office of Spill Prevention and Response) to reflect new ownership, creating a material risk of Bridgeland being shut down; (xii) purchase Regional Clean Air Incentives Market Program credits for Bridgeland, risking the company being shut down by South Coast Air Quality Management District; (xiii) obtain permits to operate some of the Wells; (xiv) file regulatory reports; and (xv) perform "plug and abandonment" services to shut down a Well in safe and environmentally-compliant ways (collectively, the "Operational Failures").

133. By the end of January 2022, it had become clear to Bridgeland that the E&B Affiliated Parties were not capable of providing the O&M Services through Excalibur, thus leading to the Operational Failures.

134. Bridgeland was left with no choice but to hire other vendors and contractors to assume most of the services that the E&B Affiliated Parties were supposed to provide.

L. TRITON SEEKS TO UNILATERALLY EXERCISE THE TRITON MEMBER OPTION BY CONTRIBUTING ONLY $1,333,500

135. By January 2022, it had become clear to Bridgeland that the E&B Affiliated Parties were not the business partners they had hoped for. The E&B Affiliated Parties had failed to follow

through on their promises to provide a comparable substitute for E&B to provide the comprehensive O&M Services that Bridgeland required, and for which Bridgeland had agreed to give a 25% equity stake to Triton. To make matters worse, the E&B Affiliated Parties had badly bungled their efforts to operate the Oil & Gas Assets, leading to the Operational Failures, meaning that Bridgeland had no choice but to spend significant money to hire one-off vendors and consultants to do the jobs that the E&B Affiliated Parties had already agreed to do (and for which they were being paid with a 25% equity stake in Bridgeland).

136. But a bad situation became truly intolerable when, in January and February 2022, the worst possible scenario played out. The E&B Affiliated Parties (through their nominee Triton) informed Bridgeland that they wanted to exercise the Triton Member Option.

137. This was hardly surprising given that, despite the Operational Failures, Bridgeland had become a much more valuable company in the six months since the ARLLCA was executed. And it was poised to become even more valuable upon the outbreak of the Russian war offensive in Ukraine, which put a significant strain on traditional oil resources from the Black Sea area, making the value of domestic oil and gas producers much higher than before.

138. In January and February 2022, the E&B Affiliated Parties took the position that: (i) Triton could unilaterally exercise the Triton Member Option by offering cash as its additional capital contribution, which did not require approval by a super majority of Bridgeland's Board of Managers; and (ii) the required additional capital contribution Triton had to make was only $1,333,500.

139. To be clear, the E&B Affiliated Parties had brought nothing to the table to justify the 25% ownership interest they already claimed in Bridgeland. They had not followed through on their promises to have E&B sign the O&M Agreement. They had not followed through on their

promises to have Excalibur sign the O&M Agreement in E&B's place. By the end of January 2022, they had run the Oil & Gas Assets so poorly as to lead to the Operational Failures. By February 2022, they had not followed through on their promises to have E&B personnel provide the O&M Services. And yet they now wanted to move from owning 25% of Bridgeland (which had at least tripled in value in the 7-8 months since Bridgeland purchased the Oil & Gas Assets) to 50% ownership for the absurdly-low price of $1,333,500.

140. In short, the E&B Affiliated Parties had not put any money into Bridgeland in return for their 25% equity stake (which held a value of at least $6.25 million on the date of purchase where the Oil & Gas Assets were valued at $25 million), and now they wanted to own a 50% equity stake in a company that was worth more than $75 million by simply contributing another $1,333,500.

141. Even without that issue, Bridgeland had no interest in having Triton become a 50% equity owner by February 2022. Bridgeland only gave Triton a 25% equity stake in return for the E&B Affiliated Parties agreeing to provide comprehensive O&M Services that were locked in for many years at favorable pricing. Had the E&B Affiliated Parties followed through on that promise, then the 25% equity stake might have been justified. But in just the first 7-8 months, it was clear that was never going to happen, and in fact, by the end of January 2022, Bridgeland was already using expensive, one-off contractors and vendors to fill the gaps of what the E&B Affiliated Parties were unable to do. And by the end of February 2022, E&B personnel were not working on the Oil & Gas Assets anymore.

142. A super majority of Bridgeland's Board of Managers was not in favor of approving Triton's exercise of the Triton Member Option. At a Board of Managers meeting on February 24, 2022, David Buicko (representing the E&B Affiliated Parties) sought the Board's approval of the

Triton Member Option. The Board had three Managers – David Buicko, Scott Wood, and William Nicholson. Messrs. Buicko and Wood both recused themselves from the vote, and Mr. Nicholson voted against exercise of the Triton Member Option.

143. Not content with this response, the E&B Affiliated Parties moved into action, hiring litigation counsel from Norton Rose Fulbright in February 2022 to advise on potential litigation against Bridgeland for not approving the exercise of the Triton Member Option.

144. The E&B Affiliated Parties also tendered, or attempted to tender, $1,333,500 in cash to Bridgeland to satisfy what it claimed was its additional capital contribution for the additional 25% of equity. Their basis for this claim was the sloppy, imprecise, and inaccurate drafting by Winston, which left significant ambiguity in how the Triton Member Option was to be exercised and how much had to be contributed.

M. BRIDGELAND AND THE E&B AFFILIATED PARTIES ENGAGE IN ALL-OUT LITIGATION

145. Perhaps inevitably, when confronted with contract language drafted as poorly and ambiguously as Winston did, matters quickly devolved into the pitched battle of litigation.

146. In May 2022, Bridgeland brought a lawsuit in the Los Angeles County Superior Court against certain of the E&B Affiliated Parties, claiming that they fraudulently induced Bridgeland into entering the ARLLCA and giving them a 25% equity stake in the company.

147. Triton promptly responded, filing a cross-complaint against Bridgeland, Scott Wood, and William Nicholson for, among other things, failing to honor the Triton Member Option.

148. Scott Wood and CWH brought a cross-complaint against the E&B Affiliated Parties, seeking (among other things) a judicial declaration that CWH was justified in voiding and terminating the ARLLCA via the ARLLCA Rescission because the E&B Affiliated Parties failed to provide the consideration that had been bargained for. Namely, the E&B Affiliated Parties failed to: (i) have an E&B Affiliated Party sign the O&M Agreement to provide comprehensive

O&M Services to Bridgeland; (ii) have E&B personnel continue providing O&M Services beyond August 31, 2021 through Excalibur and/or Z&A; (iii) pay the premiums for the Bonds; and (iv) guarantee the Bonds without Bridgeland's involvement (and in fact used subterfuge to have Bridgeland guarantee the E&B Affiliated Parties' entire bonding line).

149. The Underlying Litigation went on for nearly 18 months, between May 2022 and October 2023, and was ferocious in its intensity. More than one million pages of documents were exchanged. More than 25 depositions were taken. Thousands of discovery requests were exchanged. Huge law firms such as Paul Hastings, Norton Rose Fulbright, and Crowell & Moring were pitched against each other. Bridgeland suffered the inevitable fallout of such major litigation, both in terms of litigation cost (which reached tens of millions of dollars) and the reputational damage and drain on its employees and executives that comes from "scorched earth" litigation.

150. In October 2023, the Underlying Litigation settled. Although the terms of the settlement agreement are confidential, by the time it concluded, there was a significant cost to Bridgeland related to the Underlying Litigation and/or its resolution.

151. Throughout the Underlying Litigation, a number of legal arguments, claims, and defenses of the E&B Affiliated Parties became clear, all of which were made possible due to Winston's mistakes:

152. **First**, the E&B Affiliated Parties argued in the Underlying Litigation between May 2022 and October 2023 that Bridgeland and CWH were barred from claiming fraudulent inducement because (1) the ARLLCA included an integration and merger clause, which prevented Bridgeland from trying to enforce the promises made by the E&B Affiliated Parties in the fateful three-day period between June 14, 2021 (when E&B said it could not formally sign the O&M Agreement) and June 17, 2021 (when the ARLLCA was signed), and (2) the June 17 Letter

Agreement included broad releases that prevented such claims against the E&B Affiliated Parties. As alleged herein, the E&B Affiliated Parties made promises to Bridgeland during that three-day window that (i) Excalibur would enter into the O&M Agreement at some unspecified future date, and (ii) the same E&B personnel would continue providing the O&M Services to Bridgeland beyond the August 31, 2021 date specified in the June 17 Letter Agreement through Excalibur and/or Z&A.

153. But when Bridgeland argued in the Underlying Litigation between May 2022 and October 2023 that it had been lied to and those promises were unfulfilled, the E&B Affiliated Parties claimed that any such arguments were nullified by the ARLLCA's integration clause and the June 17 Letter Agreement's broad releases.

154. Yet Winston never advised Bridgeland that signing the ARLLCA and June 17 Letter Agreement meant that they would have no legal recourse if the E&B Affiliated Parties did not follow through on their promises used to induce the deal (or even warned of that possibility). Instead, Winston just let its clients sign one half the anticipated deal without providing any protection that they would get the other half in the future (or had any legal recourse if they did not get the other half).

155. Throughout the Underlying Litigation between May 2022 and October 2023, the E&B Affiliated Parties sought extensive discovery and argued in court filings that Bridgeland and CWH could not claim that they were fraudulently induced to enter into the ARLLCA (and could not seek to have the court ratify the ARLLCA Rescission), because of the contractual language in the ARLLCA's merger and integration clause the June 17 Letter Agreement's broad releases.

156. Summary judgment motions were brought in the Underlying Litigation seeking a judicial determination whether the June 17 Letter Agreement's releases precluded claims by the

parties for pre-June 17, 2021 promises. The Court in the Underlying Litigation denied the motion on September 8, 2023, stating there was enough ambiguity about the releases in the June 17 Letter Agreement to constitute a triable issue of fact, writing, "A reasonable trier of fact may find instead that the parties agreed to waive claims or disputes against each other up to a certain date . . .".

157. Accordingly, Bridgeland was left with the possibility that the June 17 Letter Agreement's broad releases could have acted to forestall all of its claims for fraudulent inducement against the E&B Affiliated Parties, creating risk that it could not pursue those claims or seek to enforce the promises made by the E&B Affiliated Parties. In short, Winston's failure to properly negotiate the June 17 Letter Agreement (and/or to warn its clients of the potential effect the broad releases in that agreement could have on their later claims) meant that a trial would occur on that issue in the Underlying Litigation.

158. **Second**, discovery in the Underlying Litigation about the E&B Affiliated Parties' required consideration for receiving 25% of Bridgeland was ferocious. Bridgeland always understood that they only reason it would give the E&B Affiliated Parties an equity stake in Bridgeland was if (i) Excalibur would enter into the O&M Agreement at some unspecified future date, and (ii) the same E&B personnel would continue providing the O&M Services to Bridgeland beyond the August 31, 2021 date specified in the June 17 Letter Agreement through Excalibur and/or Z&A.

159. But Winston never articulated in any of the final deal documents that the E&B Affiliated Parties had to sign an O&M Agreement or that E&B personnel would provide the O&M Services beyond the August 31, 2021 date specified in the June 17 Letter Agreement.

160. Winston knew that Bridgeland was only giving up an equity stake in exchange for the O&M Agreement and O&M Services to be performed by E&B personnel. In fact, the central

concept throughout the contract negotiations was that the ARLLCA and O&M Agreement would be signed simultaneously so that the consideration would be exchanged at the same time. But that intention changed in the final 48 hours of the deal, when it was decided that Bridgeland would provide its half of the deal via the ARLLCA on June 17, 2021, even though the E&B Affiliated Parties could not provide their half of the deal on that same day by signing the O&M Agreement. Yet incredibly, Winston did not take any of this into account and allowed its client to sign away its consideration (via the ARLLCA) without getting any written promises that the E&B Affiliated Parties would provide their consideration by a certain date and in a certain form. Winston did not even warn Bridgeland about the possibility that the E&B Affiliated Parties were not obligated to do anything after having gotten the valuable stake in Bridgeland that they wanted.

161. Throughout the Underlying Litigation between May 2022 and October 2023, the E&B Affiliated Parties sought extensive discovery and argued in court filings that Bridgeland and CWH could not claim that they were fraudulently induced to enter into the ARLLCA (and could not seek to have the court ratify the ARLLCA Rescission), because the E&B Affiliated Parties never had any obligation for Excalibur to sign the O&M Agreement to provide the same services as E&B had negotiated to provide on the same terms, or for E&B personnel to continue providing the O&M Services beyond August 31, 2021.

162. Summary judgment motions were brought in the Underlying Litigation arguing that the E&B Affiliated Parties failed to provide "Intangible Assets" because they did not enter into the O&M Agreement or have E&B personnel provide the O&M Services beyond August 31, 2021. The E&B Affiliated Parties argued that there was no written agreement for them to provide an O&M Agreement or O&M Services beyond August 31, 2021, and that those concepts were never part of the ARLLCA. The E&B Affiliated Parties were only able to make this argument because

of Winston's sloppy and imprecise drafting, which did not nail down that the E&B Affiliated Parties had to sign an O&M Agreement and provide O&M Services beyond August 31, 2021.

163. On September 8, 2023, the Court denied the summary judgment motions, ruling that "evidence does not establish as a matter of law that the O&M agreement was part of Triton's consideration under the ARLLCA" and finding, "there is a triable issue over whether an O&M agreement was part of Triton's consideration under the ARLLCA."

164. Accordingly, Bridgeland was left with the possibility that it could not enforce the promises made by the E&B Affiliated Parties between June 15 and June 17, 2021, to have Excalibur sign the O&M Agreement and for the same E&B personnel to provide the O&M Services beyond August 31, 2021. In short, Winston's failure to properly negotiate the ARLLCA and final deal documents (and/or to warn its clients that the E&B Affiliated Parties' promises might not be enforceable since they were not included in the final deal documents) meant that a trial would occur on that issue in the Underlying Litigation.

165. **Third**, Bridgeland argued in the Underlying Litigation that the "Intangible Assets" included promises for Excalibur to sign the O&M Agreement at some time after June 17, 2021, and for the same E&B personnel to provide the O&M Services beyond August 31, 2021.

166. In the Underlying Litigation, Bridgeland argued that those promises were the core of the "Intangible Assets" that the E&B Affiliated Parties had to provide. But in the Underlying Litigation between May 2022 and October 2023, the E&B Affiliated Parties sought extensive discovery and argued in court filings that, via Sect. 4.1 of the ARLLCA, Bridgeland acknowledged that the E&B Affiliated Parties had already provided their "Intangible Assets" as of June 17, 2021. The E&B Affiliated Parties argued in the Underlying Litigation this meant that Bridgeland could not argue about some future consideration being part of the "Intangible Assets."

167. Summary judgment motions were brought in the Underlying Litigation arguing that the E&B Affiliated Parties had failed to provide the bargained-for consideration because they did not follow through on the promises for Excalibur to sign the O&M Agreement at some time after June 17, 2021, and for the same E&B personnel to provide the O&M Services beyond August 31, 2021. But the Court in the Underlying Litigation denied the motions on September 8, 2023, writing that Bridgeland and CWH "cannot purport to foreclose a triable issue over 'intangible assets' if they do not even know what 'intangible assets' are. Additionally, Section 4.1 of the ARLLCA acknowledges that Triton provided intangible assets as part of its [initial capital contribution]. In conclusion, there are triable issues of material fact as to whether Triton adequately furnished consideration under the ARLLCA."

168. Accordingly, Bridgeland was left with the possibility that it could not enforce the promises made by the E&B Affiliated Parties between June 15 and June 17, 2021, to have Excalibur sign the O&M Agreement and for the same E&B personnel to provide the O&M Services beyond August 31, 2021. In short, Winston's failure to properly negotiate the ARLLCA (and/or to warn its clients that Sect. 4.1 of the ARLLCA could mean that the E&B Affiliated Parties' promises might not be enforceable) meant that a trial would occur on that issue in the Underlying Litigation.

169. **Fourth,** in the Underlying Litigation between May 2022 and October 2023, the E&B Affiliated Parties claimed that the "equity stake in return for an O&M Agreement" deal never existed. Instead, the E&B Affiliated Parties claimed that they only had to provide "Intangible Assets, Bonds, and Guaranties" in return for their 25%.

170. Of course, no one knew what those terms meant because Winston drafted the ARLLCA so badly as to not define them.

171. As to Bonds, the E&B Affiliated Parties claimed in the Underlying Litigation between May 2022 and October 2023 that they were only obliged to arrange for the Bonds, but Bridgeland had to pay for them. The E&B Affiliated Parties claimed in the Underlying Litigation that they performed that requirement by making a phone call to their bond broker and having the Bonds issued in Bridgeland's name, even though the invoices to pay for the premiums of the Bonds were sent to Bridgeland. Because of Winston's sloppy and imprecise drafting, it was not made clear in the ARLLCA that the E&B Affiliated Parties were supposed to pay for the Bonds.

172. Summary judgment motions were brought in the Underlying Litigation arguing that the E&B Affiliated Parties had failed to provide their initial capital contribution because they did not pay for the Bonds.

173. In its ruling denying the motions on September 8, 2023, the Court noted there was no "evidence that the ARLLCA required Triton to pay the bond premiums as part of the 'bonds' aspect of the [initial capital contribution]. In fact, Wood and CWII's own evidence acknowledges that 'the ARLLCA is silent about who will pay for the Bonds.'" The Court concluded, "[u]ltimately, it is a triable issue whether [Bridgeland] knowingly and voluntarily paid the bond premiums. Interpreting the evidence in Triton's favor, there is a reasonable inference that [Bridgeland] was fairly responsible for the premiums. If this is true, then Triton would not have been required to pay the premiums as part of its consideration under the ARLLCA."

174. As to the Guaranties, the E&B Affiliated Parties claimed in the Underlying Litigation between May 2022 and October 2023 that they were only obliged to arrange for the Bonds, and that they provided the necessary guaranties through their existing bonding arrangement with the surety company to ensure the Bonds were issued in time. Because of Winston's sloppy and imprecise drafting, it was not made clear in the ARLLCA that the E&B Affiliated Parties were

not supposed to include Bridgeland and its assets as collateral to guaranty the Bonds, which is what ended up happening.

175. Summary judgment motions were brought in the Underlying Litigation arguing that the E&B Affiliated Parties had failed to provide their initial capital contribution because they did not properly guaranty the Bonds since they included Bridgeland as a guarantor (and its assets as collateral) not only for the Bonds, but also for the E&B Affiliated Parties' entire bonding line.

176. In its ruling denying such motions on September 8, 2023, the Court wrote, "[u]ltimately, it is undisputed that Triton caused the Trusts, E&B, and E&B's affiliates to indemnify the bonds, that the surety would not have issued the bonds without such guaranties in place, and that the bonds and guaranties remain in effect currently. Interpreting this evidence in Triton's favor, a reasonable trier of fact may find that Triton adequately supplied 'guaranties' as required by the [initial capital contribution]. Wood and CWH contend that in order for the 'guaranties' to have any significance, Triton needed to guarantee the bonds without [Bridgeland] involvement. Otherwise, [Bridgeland] could have simply obtained the bonds on its own. However, as with the other aspects of Triton's [initial capital contribution], 'guaranties' is not defined, and there is no evidence that the ARLLCA required Triton to guarantee the bonds on its own without WGH involvement."

177. As to Intangible Assets, the E&B Affiliated Parties had a field day in the Underlying Litigation between May 2022 and October 2023 of offering different definitions, which was made possible because Winston's sloppy and imprecise drafting failed to define in the ARLLCA what "Intangible Assets" the E&B Affiliated Parties were supposed to provide. And without a definition, the E&B Affiliated Parties could claim in the Underlying Litigation almost anything they did counted towards "Intangible Assets" without any way to disprove it.

178. Summary judgment motions were brought in the Underlying Litigation seeking a declaratory judgment from the Court that the E&B Affiliated Parties had failed to provide their initial capital contribution because they did not provide the "Intangible Assets."

179. In its ruling denying the motions on September 8, 2023, the Court wrote, "Lastly, the 'intangible assets' are undefined under the ARLLCA, leaving a triable issue as to what they are and whether Triton furnished them. Wood and CWH argue that Triton simply creates its own definition of 'intangible assets' to manufacture a triable issue. However, Wood and CWH notably do not have their own definition either, nor any evidence indicating what the ARLLCA meant by 'intangible assets.' Wood and CWH cannot purport to foreclose a triable issue over 'intangible assets' if they do not even know what 'intangible assets' are."

180. Accordingly, Bridgeland was left with the possibility that it could not void or terminate the ARLLCA for the E&B Affiliated Parties' failure to provide the initial capital contribution since the terms "Intangible Assets, Bonds, and Guaranties" were never defined. In short, Winston's failure to properly negotiate the ARLLCA (and/or to warn its clients about the consequences of not better defining "Intangible Assets, Bonds, and Guaranties") meant that a trial would occur on these issues in the Underlying Litigation.

181. **Fifth**, the E&B Affiliated Parties argued (beginning in February 2022 and then throughout the Underlying Litigation) that they could unilaterally exercise the Triton Member Option without getting the approval of a super majority of Bridgeland's Board of Managers so long as they used cash. To justify this position in the Underlying Litigation, the E&B Affiliated Parties pointed to the parenthetical clause in Sect. 4.2(c) of the ARLLCA (which was so unhelpfully "fixed" in favor of the E&B Affiliated Parties by Winston the morning that the deal closed in a way that completely contradicted what Winston had told its client the deal terms would

be a few hours before).

182. The E&B Affiliated Parties argued in the Underlying Litigation that the way the parentheses were used in Sect. 4.2(c) meant that Bridgeland's Board of Managers only had the right to approve Triton's exercise of the Triton Member Option if Triton used oil and gas properties as its additional capital contribution. The E&B Affiliated Parties further argued in the Underlying Litigation that if they tendered cash as their additional capital contribution, then the approval of Bridgeland's Board was not required and Bridgeland had no say in the matter.

183. Triton filed a motion for summary judgment in the Underlying Litigation predicated on that very argument, which was only made possible by the drafting error of Winston in adding in the parentheses in Sect. 4.2(c) rather than taking them out.

184. In its ruling, the Court held that "[t]he issue surrounds the phrase 'subject to (i) approval by a Super Majority of the Board'" in Sect. 4.2(c), which it ruled raised a triable issue of fact about what the parenthetical clause in Sect. 4.2(c) meant. On the one hand, the Court said it could mean that the Board was only allowed to approve an additional capital contribution by Triton of oil and gas properties. On the other hand, the Court said it could mean that the Board was allowed to approve an additional capital contribution by Triton of both cash and oil and gas properties. The Court found that the "parenthetical could reasonably be interpreted" both ways.

185. Winston knew that Bridgeland would not have agreed to Triton having the right to exercise the Triton Member Option unilaterally and without its Board having the right to approve. Yet Winston never informed Bridgeland that the changes that it made to Sect. 4.2(c) of the ARLLCA in the 12 hours before the final agreement was signed meant that Bridgeland had lost that control, which the E&B Affiliated Parties began claiming in February 2022 and throughout the Underlying Litigation

186. Accordingly, Bridgeland was left with the possibility that the E&B Affiliated Parties could unilaterally increase their ownership from 25% to 50% because Winston's failure to properly negotiate the ARLLCA (and/or to warn its clients about the consequences of Sect. 4.2(c)'s ambiguity) meant that a trial would occur on these issues in the Underlying Litigation.

187. **Sixth**, Triton argued that it only had to tender $1,333,500 in order to make the required additional capital contribution when exercising the Triton Member Option. Triton claimed (starting in February 2022 and throughout the Underlying Litigation) that Sect. 4.2(c) of the ARLLCA stated that Triton's additional capital contribution only had to equal CWH's **initial** capital contribution (which was only $2 million), minus the value of Triton's initial capital contribution (which was $666,500). But Winston knew that Bridgeland was only willing to agree to the Triton Member Option if the additional capital contribution was valued as 50% of the **fair market value** of Bridgeland at the time of the exercise. Late on the evening of June 16, 2021 (less than 12 hours before final deal documents were signed) Winston drafted Sect. 4.2(c) of the ARLLCA in a way that required the additional capital contribution to be equal to 50% of Bridgeland's fair market value. Winston sent its client a draft with that language in it, which was satisfactory to Bridgeland. But then inexplicably, Winston did not send the draft with that language in it to opposing counsel a few hours later for signatures. Instead, Winston circulated a different version of the ARLLCA, which reverted to the language about Triton only needing to contribute $1,335,000 and did so without informing Bridgeland. Winston never notified its client of this change from what it had circulated the prior evening.

188. Bridgeland only came to learn of these issues once Triton attempted to exercise the Triton Member Option in February 2022, and then later in the Underlying Litigation that began in May 2022.

VI. CAUSES OF ACTION AND DAMAGES

189. Based on the foregoing, Plaintiffs Bridgeland and Zargon assert that Defendant Winston was negligent and the proximate cause of extensive damages to Plaintiffs as alleged, including expenses incurred in connection with the Underlying Litigation, losses on the business deal that was the subject matter of the underlying transaction, and other business opportunities that were lost because of the cascading effect of the failed transaction, which fell apart as a result of Defendant's negligence

190. Furthermore, Plaintiffs assert that Defendant breached its fiduciary duty to Plaintiffs, and that Plaintiffs are entitled to recover their damages and disgorgement of all fees and expenses paid to Defendant over the course of the events recited herein which relate in any way to Underlying Litigation and the negotiation, drafting and review of the subject materials.

191. Damages proximately caused to Plaintiffs by Defendant's professional negligence and breach of fiduciary duty are asserted to total not more than $175 million dollars.

VII. JURY DEMAND

192. Plaintiffs hereby demand a jury trial in accordance with the Texas Rules of Civil Procedure. The jury fee is being paid at this time.

VIII. USE OF DISCOVERY PRODUCED IN DISCOVERY

193. Plaintiffs hereby give notice of intention to use items produced by all parties in discovery at any pretrial proceeding or at trial of this matter and the authenticity of such items is self-proven pursuant to Rule 193.7 of The Texas Rules of Civil Procedure.

IX. PRESERVATION OF EVIDENCE

194. Defendant is hereby given notice that any document or other material, including electronically stored information, that may be evidence or relevant to any issue, claim or defense in this case is to be preserved in its present form until this litigation is concluded. Failure to

maintain such items will constitute "spoliation" of evidence, for which Plaintiff will seek appropriate sanctions and remedies.

X. PRAYER FOR RELIEF

Wherefore premises considered, Plaintiffs pray that they have judgment from Defendant for the damages as alleged, in the sum of no more than $175 million, disgorgement of all fees paid Defendant in relation to the negotiation, drafting and research of the defective contracts related to the Underlying Litigation, attorney's fees and other related expenses incurred by Defendant in the Underlying Litigation, pre- and post-judgment interest as provided by Texas law, court costs allowed, together with such other and further relief as may be allowed, in law or equity.

Respectfully submitted,

WERNER AYERS, L.L.P.

By: *s Philip Werner*

Philip Werner
State Bar No. 21190200
pwerner@wernerayers.com
David P. Ayers
State Bar No. 00783576
dayers@wernerayers.com
2011 Milford
Houston, TX 77098
Tel: (713) 626-2233
Fax: (713) 626-9708

ATTORNEYS FOR PLAINTIFFS

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Philip Werner on behalf of Philip Werner
Bar No. 21190200
pwerner@wernerayers.com
Envelope ID: 81308187
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Filing Description: Plaintiffs' Original Petition
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Associated Case Party: BRIDGELAND RESOURCES, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Philip Werner		pwerner@wernerayers.com	11/3/2023 8:07:24 PM	SENT
David Ayers		dayers@wernerayers.com	11/3/2023 8:07:24 PM	SENT