



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

EVERGREEN CAPITAL MANAGEMENT  
LLC, SHIPYARD CAPITAL LP,  
SHIPYARD CAPITAL MANAGEMENT  
LLC, CEDAR CREEK PARTNERS LLC,  
ERIKSEN CAPITAL MANAGEMENT  
LLC, AND WALTER KEENAN,

Petitioners,

v.

PACIFIC COAST ENERGY COMPANY  
LP and BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,

Respondents.

C.A. No.

**VERIFIED PETITION TO APPOINT SUCCESSOR TRUSTEE, APPOINT  
TEMPORARY TRUSTEE, AND TO MODIFY TRUST**

Petitioners Evergreen Capital Management LLC (“Evergreen”), Shipyard Capital LP, Shipyard Capital Management LLC (together, “Shipyard”), Cedar Creek Partners LLC (“Cedar Creek”), Eriksen Capital Management LLC (“Eriksen”), and Walter Keenan (“Keenan”) (collectively, “Petitioners”), by and through their undersigned counsel, hereby move for the appointment of a successor Trustee for Pacific Coast Oil Trust (“PCOT” or the “Trust”), the appointment of a temporary Trustee, and to modify the Trust. In support of this application, Petitioners allege as follows:

1. The Trust's unitholders have resoundingly spoken. During a special meeting held on July 12, 2023 (the "Special Meeting"), a staggering 95.7% of PCOT units voted to remove The Bank of New York Mellon Trust Company, N.A. ("BONY") as Trustee. The Special Meeting was called following BONY's failure to protect unitholders from the brazen scheme of Pacific Coast Energy Company, LP ("PCEC" or the "Operator"), which operates the Trust's oil and natural gas properties, to force PCOT's dissolution, acquire its assets for pennies on the dollar, and strip the Trust's public unitholders of the value of their investments.

2. The Trust is a passive investment vehicle that owns the right to the majority of profits from certain oil and gas properties located in Southern California. The Trust was formed for the benefit of its unitholders, like Petitioners. PCOT's Amended and Restated Trust Agreement (the "Trust Agreement") and Conveyance of New Profit Interests and Overriding Royalty Interests (the "Conveyance Agreement") set forth various unitholder rights, including the terms for monthly cash distributions calculated based on the Trust's net profits. PCEC operates those oil fields, and BONY has been the Trustee.

3. Although the Trust is consistently profitable and had steadily paid profits distributions to unitholders for several years, PCEC cut off these distributions after Newbridge Resources LLC ("Newbridge") acquired a controlling interest in PCEC in 2019. In defiance of generally accepted accounting principles ("GAAP"),

the Trust Agreement, and the Conveyance Agreement, PCEC pulled forward decades' worth of future plugging and abandonment costs that are supposed to be distributed over the life of a property, requiring instead that these costs be satisfied upfront and before making any future distributions.

4. This change resulted in the implosion of the Trust's unit price and a delisting from the New York Stock Exchange ("NYSE"). PCEC made this change to trigger the dissolution of the Trust for a lack of distributions. In fact, PCEC's former Chief Executive Officer ("CEO"), Scott Wood, testified under oath that Newbridge and its Chairman, Klaus Hasbo, ordered him to breach the Trust Agreement and Conveyance Agreement as part of PCEC's plan to buy the Trust assets.

5. In July 2020, Evergreen filed an action in California Superior Court for the County of Los Angeles (the "California Court") that sought to enjoin the dissolution of the Trust. On December 16, 2021, following fact and expert discovery, the California Court granted Evergreen's application for a temporary restraining order and enjoined the Trust's dissolution. The California Court held, *inter alia*, that Evergreen had "demonstrated a likelihood of prevailing on the merits" and "offered sufficient evidence to show a likelihood of demonstrating that PCEC breached its obligations to the Trust by deducting all anticipated costs for the eventual plugging and abandonment of the oil and gas fields up front, rather than accruing those costs

over the useful life of the properties as required under generally accepted accounting principles (GAAP).”

6. Following the California Court’s ruling, Evergreen’s action shifted to arbitration where the parties were to proceed with full merits litigation. However, the arbitration panel abandoned the California Court’s ruling on a threshold procedural issue and determined that Evergreen lacked standing to bring a derivative claim on the Trust’s behalf. Instead, according to the arbitration panel, only the Trustee could bring such claims and act to protect the rights of the Trust and its unitholders. Inexplicably, BONY refused to do so, and the Trust was again heading toward an improper dissolution.

7. With BONY taking no action to prevent PCEC from usurping the value of the Trust’s assets, Shipyard and Eriksen, who together own more than 10% of the Trust’s outstanding units, exercised their right to call the Special Meeting and proposed that unitholders vote out BONY as Trustee. Their proposal was a resounding success. In fact, not only was the proposal approved, but less than 2.3% of PCOT’s outstanding units voted to keep BONY as Trustee.

8. Therefore, Evergreen, Shipyard, Cedar Creek, Eriksen, and Keenan now petition the Court to appoint a new Trustee and propose Barclay Leib, who has more than 34 years of global capital markets and financial advisory experience.

Petitioners further request certain related modifications of the Trust Agreement to facilitate his appointment and effective service as Trustee.

### **THE PARTIES**

9. Petitioners are beneficial owners of approximately 8.67 million Trust units. PCOT is a statutory trust formed in January 2012 under the Delaware Statutory Trust Act pursuant to the Trust Agreement among PCEC, as Trustor, The Bank of New York Mellon Trust Company, N.A., as Trustee, and Wilmington Trust, National Association, as Delaware Trustee (the “Delaware Trustee”). A copy of the Trust Agreement is attached hereto as Exhibit A.

10. Respondent PCEC is the trustor for the Trust and provides operational and administrative services to the Trust. PCEC is headquartered in Los Angeles, California, and it manages oil wells in the Santa Barbara area of California.

11. Respondent BONY is a bank and the current Trustee of the Trust.

12. Trust unitholders recently held a meeting through which they voted to remove BONY as Trustee. This Petition follows, seeking the appointment of a temporary Trustee, the appointment of a successor Trustee, and a modification of the Trust Agreement to facilitate the ability to find competent individuals or firms to serve in these roles.

### **JURISDICTION**

13. This Court has jurisdiction pursuant to 12 *Del. C.* §3804(g) because the Trust is a Delaware statutory trust created pursuant to the Delaware Statutory Trust Act, Title 12, Chapter 38 of the Delaware Code, Section 3801, *et seq.* Further, Section 12.7 of the Trust Agreement provides:

This Agreement and the Trust shall be governed by the laws of the State of Delaware (without regard to the conflict of laws principles thereof) in effect at any applicable time in all matters, including the validity, construction and administration of this Agreement and the Trust, the enforceability of the provisions of this Agreement, all rights and remedies hereunder, and the services of the Delaware Trustee and Trustee hereunder.

### **THE TRUST**

14. PCOT was created to acquire and hold net profits and royalty interests in certain oil and natural gas properties located in California for the benefit of the Trust unitholders. The Trust and PCEC entered into the Conveyance Agreement, pursuant to which PCEC conveyed to the Trust the net profits interests (“Net Profits Interests”) and a royalty interest (“Royalty Interest”) in certain oil and natural gas properties located onshore in California – which are collectively referred to herein as the “Conveyed Interests.”<sup>1</sup> A copy of the Conveyance Agreement is attached hereto as Exhibit B.

---

<sup>1</sup> In the context of “Net Profits Interests,” the specified share of net profits from oil and gas properties accumulates in a “Net Profits Account.” Additionally, the term “NPI Calculation” refers to the computation of these accrued profits.

15. Between 2012 and 2014, PCEC received more than \$600 million from investors through the sale of Trust units to the public.

16. Each Trust unit represents a unit of beneficial interest in the Trust assets and is entitled to receive cash distributions from the Trust on a *pro rata* basis.

17. The Trust had 38,583,158 units outstanding as of December 31, 2018. The Trust units are publicly traded over-the-counter. Prior to August 5, 2020, the Trust units traded on the NYSE.

18. The Trust continues to have significant value. The Company's latest Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") attaches a report valuing the Conveyed Interests owned by the Trust at \$135 million. Further, per the terms of the Conveyance Agreement, the Trust is entitled to tens of millions of dollars PCEC has not paid the Trust, in violation of the Trust Agreement and Conveyance Agreement. A copy of PCOT's Form 10-K from March 8, 2019 (the "Form 10-K"), is attached hereto as Exhibit C. As explained further below, the Company has not filed a Form 10-K with the SEC since then.

### **EVENTS GIVING RISE TO THE PRESENT PETITION**

19. The events giving rise to this petition started in 2019, when PCEC was sold to a new owner, Newbridge. At the direction of Newbridge and its principal, Klaus Hasbo, PCEC breached its obligations under the Conveyance and Trust Agreements and stopped paying the Trust its due profits.

20. The Conveyance Agreement protects the Trust and its assets by defining the manner in which profits will be calculated and paid to it by PCEC. Specifically, per Sections 2.2 and 4.2-4.4 of the Conveyance Agreement, money due to the Trust is to be accounted, recorded, and paid on a monthly basis.

21. Furthermore, the Conveyance Agreement states that “[f]or each Payment Period,” PCEC “shall deliver to” the Trust “a statement (‘Monthly Statement’) showing the Developed Properties NPI Calculation and the Remaining Properties NPI Calculation (or the calculation of the Overriding Royalty Interest Proceeds, if such amount is payable for the Payment Period).” Ex. B, §4.6. And PCEC “shall maintain true and correct books, records and accounts of (a) all transactions required or permitted by this Conveyance (including all financial information necessary to reflect such transactions), and (b) the financial information necessary to make the [NPI Calculation] with respect to each Payment Period.” *Id.*, §4.7.

22. Section 4.1 provides that profits due to the Trust under the Conveyance Agreement shall be calculated in accordance with accepted accounting principles:

In order to account for, track and make the payments associated with the Net Profits Interests and the Overriding Royalty Interest, Grantor shall establish and maintain true and correct books and records in order to determine the credits and debits to a Developed Properties Net Profits Account, a Remaining Properties Net Profits Account, and an Overriding Royalty Account to be maintained by Grantor at all times during the term hereof. The Developed Properties Net Profit Account, the Remaining Properties Net Profits Account and the Overriding

Royalty Account will be maintained in accordance with the terms of this Conveyance and prudent and accepted accounting principles.

*Id.*, §4.1(a).

23. In September 2019, Newbridge closed its acquisition of PCEC.

24. On October 4, 2019, PricewaterhouseCoopers LLP (“PwC”) stepped down as the independent registered public accounting firm of the Trust. After this decision, BONY stated that “PwC informed The Bank of New York Mellon Trust Company, N.A., the Trustee of the Trust . . . that its resignation [was] the result of the change of ownership of PCEH.”<sup>2</sup>

25. On November 13, 2019, BONY announced that “PCEC has informed the Trustee that its current undiscounted estimate of total future amount of plugging and abandonment costs [ARO] attributable to the Trust is approximately \$56.7 million, net of estimated equipment salvage value” and that PCEC planned to deduct these costs from the profits due to the Trust.<sup>3</sup> BONY further stated that “the amount PCEC has estimated appears likely to eliminate the likelihood of significant payments to the Trust under its Net Profits Interest beginning in January 2020.” The statement caused the public trading price of the Trust units to plummet by more than

---

<sup>2</sup> “PCEH” refers to Pacific Coast Energy Holdings, LLC, which is the sole member of the general partner of PCEC. *See* [https://www.sec.gov/Archives/edgar/data/1538822/000110465919053711/a19-19914\\_18k.htm](https://www.sec.gov/Archives/edgar/data/1538822/000110465919053711/a19-19914_18k.htm).

<sup>3</sup> “ARO” is a line-item on a balance sheet reflecting the cost of remediating oil wells in the distant future. *See* Petition, ¶21.

80%, from over \$1 to around \$0.25. The trading price never recovered, and because it spent the entire time since November 2019 under \$1 per share, it was delisted by the NYSE in August 2020.

26. On March 4, 2020, it was announced that PCEC had revised down its estimated ARO to \$45.7 million. PCEC further claimed that the Trust's share of this ARO was \$29.6 million.

27. Thereafter, PCEC did not pay the Trust any of the profits due to it under the Conveyance Agreement, based on PCEC's contention that the Trust had to pay the entirety of the estimated ARO – 30 years' worth of costs – from monthly profits *before* any profits were due to the Trust.

28. PCEC's conduct in deducting the entirety of the Trust's ARO from its monthly profits violates the Conveyance Agreement. While the Conveyance Agreement allows PCEC to deduct ARO from profits due to the Trust, any such deductions must conform to "prudent and accepted accounting principles."

29. Charging the Trust's entire ARO upfront violates GAAP and industry standards. ARO is a line-item on a balance sheet reflecting the cost of remediating oil wells in the distant future. Under GAAP, companies account for ARO as an expense by taking total expected ARO and allocating those total estimated costs on a monthly basis over the useful life of the well.

30. Here, the Trust's ARO pertains to wells that, in large part, are projected to be economically viable for another 30 years. But rather than breaking the ARO into a monthly cost that would properly provide for the ARO over the 30-year life of the wells, PCEC imposed the entirety of 30 years of ARO upfront as part of the profit calculation that determines the money due to the Trust. This is indefensible.

31. In compliance with GAAP, the maximum ARO expense attributed to the Trust was approximately \$124,000 per month, totaling around \$1.5 million for the year 2021. For 2022, the ARO cost was, at most, \$132,000 per month, or \$1.6 million for the year.<sup>4</sup> But rather than applying these ARO costs as required by the Conveyance Agreement and GAAP, PCEC deducted the entire ARO – *i.e.*, \$29.6 million – from monthly profits. In other words, in 2021, PCEC imposed ARO costs that were 238 times greater than the maximum ARO deduction allowed by the Conveyance Agreement and GAAP to determine the monthly profit calculation.

32. Since Newbridge acquired PCEC, the Trust has failed to file its required Form 10-K annual report with the SEC. As of the date of this Petition, the Trust's annual filings are more than four years past due. The Trust's failure to file its Form 10-K with the SEC is likely caused in part by the fact that it cannot file a GAAP-compliant set of financial statements.

---

<sup>4</sup> There are grounds to argue that ARO charges should be significantly lower.

33. Since March 4, 2020, PCEC also has announced three increases in the amount of ARO it contends that the Trust owes, despite the rising oil prices during this period that should have extended the useful life of the oil wells. PCEC increased the total ARO it contends is owed by the Trust from \$29.6 million to \$37.6 million.

34. But for PCEC’s flagrant violation of the Conveyance Agreement, the Trust would have received tens of millions of dollars in profits.

35. In 2021, oil prices recovered after the Covid-19 crisis. The Trust’s monthly Form 8-Ks, which reported the Trust’s monthly operating income for the Developed Properties and from the Overriding Royalty Trust, show enormous profits that should have been paid to the Trust.

**Summary of Trust’s SEC Form 8-K Data for April 2021 to the Present**

<b>Month</b>	<b>Reported Operating Income for Developed Properties</b>	<b>Overriding Profit Interest</b>	<b>Total</b>
April 2021	\$2.3 million	\$69,000	\$2.369 million
May 2021	\$1.2 million	\$72,000	\$1.272 million
June 2021	\$1.1 million	\$73,000	\$1.173 million
July 2021	\$1 million	\$84,000	\$1.084 million

August 2021	\$838,000	\$84,000	\$922,000
September 2021	\$1.5 million	\$85,000	\$1.585 million
October 2021	\$1.6 million	\$109,000	\$1.709 million
November 2021	\$1.2 million	\$102,000	\$1.302 million
December 2021	\$602,000	\$93,000	\$695,000
January 2022	\$1.4 million	\$109,000	\$1.59 million
February 2022	0	\$109,000	\$109,000
March 2022	\$2.5 million	\$161,000	\$2.61 million
April 2022	\$2.1 million	\$143,000	\$2.243 million
May 2022	\$2.4 million	\$159,000	\$2.559 million
June 2022	\$2.4 million	\$145,000	\$2.545 million
July 2022	\$2.3 million	\$143,000	\$2.43 million
August 2022	\$2.1 million	\$250,000	\$2.35 million

September 2022	\$1.3 million	\$150,000	\$1.45 million
October 2022	\$1.5 million	\$233,000	\$1.733 million
November 2022	\$1.4 million	\$240,000	\$1.64 million
December 2022	\$1.8 million	\$116,000	\$1.916 million
January 2023	-\$448,000	\$28,000	-\$420,000
February 2023	\$26,000	\$67,000	\$93,000
March 2023	-\$67,000	\$65,000	-\$2,000
April 2023	\$516,000	\$55,000	\$571,000
May 2023	\$239,000	\$48,000	\$287,000
June 2023	\$740,000	\$70,000	\$810,000

36. As shown in the foregoing chart, the publicly reported profit calculations by BONY reflect that since April 2021, the Conveyed Interests have generated \$36.625 million. During this time, GAAP ARO costs were approximately \$4 million, the Trust incurred \$2.522 million in administrative costs, and paid PCEC

\$2.66 million in operating expenses. Thus, but for PCEC's breach, the Trust would have been paid at least tens of million dollars since April 2021.<sup>5</sup>

37. PCEC's purpose in breaching the Conveyance Agreement is two-fold. First, PCEC seeks to unlawfully withhold for its own use the tens of millions of dollars in profit that it owes the Trust. Second, by withholding distributions for several years, PCEC hopes to force the dissolution of the Trust. When the Trust dissolves, PCEC plans to purchase its assets for pennies on the dollar. In July 2021, PCEC's former CEO, Scott Wood, testified under oath that he was ordered by Klaus Hasbo and Newbridge to breach the Conveyance and Trust Agreements for the express purpose of effectuating this scheme. PCEC's own documents evidence its plan to force the dissolution of the Trust and acquire its assets. A copy of Evergreen's publicly available California state court complaint, which summarizes the evidence of PCEC's scheme, is attached hereto as Exhibit D.

38. In December 2021, the California Court granted Evergreen's application for a temporary restraining order enjoining the dissolution of the Trust (the "California TRO Order"). A copy of the California TRO Order is attached

---

<sup>5</sup> Further, pursuant to Section 4.5(b) of the Conveyance Agreement, the Trust is entitled to years of interest on these unpaid amounts. Additionally, discovery may show that some or all of the Trust's expenses and PCEC's fees should be reimbursed as well.

hereto as Exhibit E. As part of the order, the California Court found that the Trust had a substantial likelihood of success on the merits on its claims.

39. Subsequently, pursuant to the arbitration provision in the Trust Agreement, the Trust's contract claims were moved to arbitration, where Evergreen sought to assert the claims of the Trust on a derivative basis. In April 2022, the arbitration panel ruled that unitholders did not have standing to assert the derivative claims of the Trust and that only the Trustee could assert those claims. A copy of the arbitration panel's ruling, which was publicly filed in the California Court, is attached hereto as Exhibit F.

40. On October 11, 2022, Shipyard and Cedar Creek sent BONY a letter demanding that it take action to address PCEC's breach of its obligations or face being removed by unitholders. A copy of this letter is attached hereto as Exhibit G.

41. During the first six months of 2023, BONY continued to incur costs and expenses as Trustee at an average rate of \$135,000 per month. In the normal course, pursuant to Section 6.02 of the Trust Agreement, the Trust would reimburse BONY for these expenses and fees. However, because PCEC has withheld, and continues to withhold, the profits due to the Trust, there is no money available to the Trust. Since Newbridge's takeover of PCEC, PCEC has "loaned" the Trust money to cover BONY's monthly expenses.

42. There are two actions that relate to the subject matter of the Trust and its beneficiaries: *Evergreen Cap. Mgmt. LLC v. Bank of New York Mellon Trust Co., N.A.*, Case No. 20STCV26290 (Cal. Super. Ct., Los Angeles Cnty.). The case has been dismissed. Additionally, on March 31, 2023, PCEC submitted a demand for arbitration against the Trustee, seeking, among other things: (1) an order compelling the Trustee to commence the process of dissolving the Trust pursuant to the provisions of the Trust Agreement; (2) a declaration that the Conveyance Agreement permits the legal fees and costs that PCEC, as Operator, incurred in defending the *Evergreen* litigation and arbitration proceedings described above to be deducted from the proceeds from the Net Profits Interests; and (3) a declaration that the Trust must repay, with interest, the legal fees and costs that PCEC paid on behalf of the Trust to defend claims against the Trustee in the *Evergreen* proceedings or, alternatively, that PCEC may deduct such legal fees and costs from the proceeds from the Net Profits Interests. The total amount of legal fees at issue is approximately \$5 million. In its answer to the arbitration panel, the Trustee has denied that PCEC is entitled to the relief it seeks. It was disclosed for the first time on August 23, 2023 that the hearing before the arbitration panel was concluded on August 2, 2023, and that the panel is expected to announce its award by the end of September 2023.

## **COUNT I**

### **Appointment of Temporary Trustee**

43. On July 12, 2023, a Special Meeting of Trust unitholders occurred to vote on whether to remove BONY as Trustee. Unitholders comprising a supermajority of the outstanding units (totaling 23,459,554 units) voted to remove BONY. The units voting in favor of removing BONY accounted for 60.7% of all outstanding units and 95.7% of the Trust units present in person or by proxy at the Special Meeting.

44. Section 6.05 of the Trust Agreement provides:

Notwithstanding any provision herein to the contrary, in the event that a new Trustee has not been approved within 60 days after a notice of resignation, a vote of Trust Unitholders removing a Trustee or other occurrence of a vacancy, a successor Trustee may be appointed by any State or Federal District Court having jurisdiction in New Castle County, Delaware, upon the application of any Trust Unitholder, PCEC or the Entity tendering its resignation or being removed as Trustee filed with such court, and in the event any such application is filed, such court may appoint a temporary Trustee at any time after such application is filed, which shall, pending the final appointment of a Trustee, have such powers and duties as the court appointing such temporary Trustee shall provide in its order of appointment, consistent with the provisions of this Agreement.

45. In the 60 days since the July 12, 2023 Special Meeting where unitholders voted to remove BONY, no new Trustee has been approved.

46. With this petition, Petitioners make an application to appoint a successor Trustee pursuant to Section 6.05 of the Trust Agreement.

47. Therefore, this Court has authority, pursuant to Section 6.05, to appoint a temporary Trustee which has “such powers and duties” as this Court deems appropriate.

48. Given PCEC’s ongoing breach of the Conveyance Agreement, improper misappropriation of tens of millions of dollars due to the Trust, and the attendant risk of dissolution, there is an exigent need to appoint a temporary Trustee who can begin the process of asserting the claims of the Trust.

49. Petitioners, who successfully called for the meeting to remove BONY, request that the Court appoint Barclay Leib. As set forth in the attached Exhibit H, Barclay Leib is well-qualified to serve in a fiduciary capacity and act as temporary Trustee.

50. Section 7.01 of the Trust Agreement provides that the Trustee shall be paid \$200,000 annually as compensation for its services. Petitioners request that the Court allocate \$100,000 of this compensation to Barclay Leib for his work as temporary Trustee prosecuting the claims of the Trust against PCEC and other related parties, payable on a bi-annual basis with the first payment in January 2024.<sup>6</sup>

51. Petitioners request that the Court provide Barclay Leib with the following powers:

---

<sup>6</sup> The other \$100,000 would remain for BONY to the extent BONY performs other functions of the Trustee while Barclay Leib is the temporary Trustee with a defined set of powers and responsibilities.

- a. the power to prosecute and defend against, and to settle by arbitration or otherwise, any claim of or against the Trustee, the Trust or the Trust Estate, to waive or release rights of any kind, and to settle any dispute with PCEC or any other Person that relates to or arises out of PCEC's breach of its obligations under the Trust and Conveyance Agreements;
- b. the power to make any decisions or take any action regarding the dissolution of the Trust;
- c. the right to receive all records and files of BONY in connection with its administration of the Trust;
- d. the right to retain such counsel and experts as he deems necessary and proper to prosecute the claims of the Trust; and
- e. the right to be reimbursed by PCEC for costs incurred in connection with his prosecution of claims.

52. Petitioners further request that the Court order BONY to “account to [Barclay Leib] for [his] administration of the Trust” as provided for in Section 6.05 of the Trust Agreement.

53. To ensure that sufficient resources are available to cover the costs of the Trust, Petitioners request that the Court order PCEC to set aside funds to cover the Trustee's prospective costs. In 2023, BONY billed the Trust an average of \$135,000 per month in expenses (or \$1.62 million per annum). Per Article XI(d) of

the Trust Agreement, arbitrations between the Trustee and PCEC must proceed to the merits hearing no later than 180 days from initiation. Based on the foregoing, and even accounting for some time needed to organize after appointment, it is conceivable that the dispute between the Trust and PCEC will be resolved within 12 months. Therefore, Petitioners request that the Court order that \$1.62 million be set aside in escrow by PCEC.

## COUNT II

### Modification of Trust Agreement

54. Petitioners request that the Court modify the Trust by excising the bolded sentence from Section 6.05 of the Trust Agreement:

Appointment of Successor Delaware Trustee or Trustee. In the event of the resignation or removal of the Entity serving as the Delaware Trustee or the Trustee or if any such Entity has given notice of its intention to resign as the Delaware Trustee or the Trustee, (i) with respect to the Delaware Trustee, the Trustee may appoint a successor Delaware Trustee, or (ii) with respect to either the Delaware Trustee or the Trustee, the Trust Unitholders represented at a meeting held in accordance with the requirements of Article VIII may appoint a successor Trustee. Nominees for appointment may be made by (i) PCEC, (ii) the resigned, resigning or removed Trustee or (iii) any Trust Unitholder or Trust Unitholders owning of record at least 10% of the then outstanding Trust Units. ***Any successor to the Trustee shall be a bank or trust company having combined capital, surplus and undivided profits of at least \$100,000,000.*** Any successor to the Delaware Trustee shall be a bank or trust company having its principal place of business in the State of Delaware and having combined capital, surplus and undivided profits of at least \$20,000,000. Notwithstanding any provision herein to the contrary, in the event that a new Trustee has not been approved within 60 days after a notice of resignation, a vote of Trust Unitholders removing a Trustee or other occurrence of a

vacancy, a successor Trustee may be appointed by any State or Federal District Court having jurisdiction in New Castle County, Delaware, upon the application of any Trust Unitholder, PCEC or the Entity tendering its resignation or being removed as Trustee filed with such court, and in the event any such application is filed, such court may appoint a temporary Trustee at any time after such application is filed, which shall, pending the final appointment of a Trustee, have such powers and duties as the court appointing such temporary Trustee shall provide in its order of appointment, consistent with the provisions of this Agreement. Any such temporary Trustee need not meet the minimum standards of capital, surplus and undivided profits otherwise required of a successor Trustee under this Section 6.05. Nothing herein shall prevent the same Entity from serving as both the Delaware Trustee and the Trustee if it meets the qualifications thereof.

55. This Court has authority to modify the terms of the Trust where continuation of the Trust on its existing terms is “impractical” or “wasteful.” *Matter of Mary R. Latimer Trust*, No. 17254-N-VCL, 2013 WL 4463388, at \*7-\*8 (Del. Ch. Aug. 2, 2013); *see also Hurd v. Hurd*, No. 4675-MG, 2020 WL 504980, at \*1 (Del. Ch. Jan. 31, 2020); *PNC Bank, Delaware v. New Jersey State Society for the Prevention of Cruelty to Animals*, 2008 WL 2891150, at \*7 (Del. Ch. July 14, 2008) (citing *Univ. of Delaware v. Warrington*, No. 12440, 1993 Del. Ch. LEXIS 101 (Del. Ch. June 9, 1993)); *see also In re Trust Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182 (Del. Ch. 2015); THE RESTATEMENT (THIRD) OF TRUSTS, §66(1).

56. Here, it would be impractical to require that the successor Trustee have \$100,000,000 in capital. There are very few financial institutions that serve as Trustees for publicly traded trusts like PCOT. There are likely few, if any, other companies in this line of work that have capital in excess of \$100,000,000.

Therefore, unless the Trust Agreement is modified as requested herein, it will not be possible to appoint a permanent successor Trustee to replace BONY.

### **COUNT III**

#### **Appointment of Successor Trustee**

57. Petitioners request that the Court appoint Barclay Leib as successor Trustee to BONY. In support of their request, Petitioners reincorporate paragraphs 42 to 53 alongside the rights set out in Section 7.01 of the Trust Agreement.

58. Petitioners request that the Court order that Barclay Leib be paid the entire \$200,000 Trust-mandated compensation.

59. Petitioners request that this appointment take effect on January 1, 2024.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners respectfully request the Court to grant the following:

- A. Appoint Barclay Leib as temporary Trustee in accordance with Section 6.05 of the Trust Agreement and bestow upon him rights and powers described herein;
- B. Instruct BONY to provide a detailed account of its administration of the Trust to Barclay Leib;
- C. Modify Section 6.05 of the Trust Agreement;
- D. Appoint Barclay Leib as successor Trustee to BONY as of January 1, 2024;

- E. Order PCEC to reimburse Barclay Leib’s costs and expenses incurred in his role as temporary Trustee or successor Trustee;
- F. Order PCEC to put \$1.62 million in escrow to cover the Trustee’s and temporary Trustee’s costs and expenses;
- G. Grant Petitioners’ motion for Temporary Restraining Order as a directive to prevent imminent, irreparable harm to the Trust;
- H. Enjoin BONY and PCEC from taking action with respect to the March 2023 Arbitration or dissolving the Trust until the Court resolves this Petition;
- I. Retain jurisdiction to address future issues regarding this matter; and
- J. Grant any other relief that the Court deems just and proper.

**Of Counsel**

**SCOTT+SCOTT ATTORNEYS  
AT LAW LLP**

Maxwell R. Huffman (*pro hac  
vice* forthcoming)  
600 W. Broadway Suite 3300  
San Diego, CA 92101  
Telephone: (619) 233-4565  
Facsimile: (619) 233-0508  
mhuffman@scott-scott.com

**CHRISTENSEN & DOUGHERTY  
LLP**

/s/ Joseph L. Christensen

Joseph L. Christensen (#5146)  
1000 N. West Street, Suite 1200  
Wilmington, DE 19801  
(302) 212-4330

*Counsel for Petitioners*

**SCOTT+SCOTT ATTORNEYS  
AT LAW LLP**

Thomas L. Laughlin (*pro hac vice*  
forthcoming)

Justin O. Reliford (*pro hac vice*  
forthcoming)

Jing-Li Yu (#6483)

The Helmsley Building

230 Park Avenue, 17th Floor

New York, NY 10169

[tlaughlin@scott-scott.com](mailto:tlaughlin@scott-scott.com)

[jreliford@scott-scott.com](mailto:jreliford@scott-scott.com)

[jyu@scott-scott.com](mailto:jyu@scott-scott.com)

*Counsel for Petitioners*

DATED: September 12, 2023