



NO. S1910194  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF ENERGOLD DRILLING CORP., CROS-MAN DIRECT  
UNDERGROUND LTD., EGD SERVICES LTD., BERTRAM DRILLING CORP.,  
AND OMNITERRA INTERNATIONAL DRILLING INC.

PETITIONERS

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:** **FTI Consulting Canada Inc.**, in its capacity as the court-appointed monitor of the Petitioners (as defined in the Initial Order pronounced in these proceedings on September 13, 2019)

To: Service List (attached hereto as **Schedule "A"**)

TAKE NOTICE that an application will be made by the applicant to Mr. Justice Milman at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on **February 5, 2020 at 9:00 a.m.** for the orders set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"**.

**Part 2: FACTUAL BASIS**

1. On September 13, 2019, the Honourable Mr. Justice Milman granted an Initial Order pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**Initial Order**") in respect of the Petitioners.
2. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as the monitor in these proceedings ("**FTI**" or "**Monitor**") to monitor the business and financial affairs of the petitioners with the powers and obligations set out in the *Companies' Creditors Arrangement Act* or set forth in the Initial Order.

**Part 3: LEGAL BASIS**

**Approval of Fees and Accounts**

1. Factors courts will consider in assessing the reasonableness of a monitor's fees include the following:

- (a) the nature, extent and value of the assets;
- (b) the complications and difficulties encountered by the monitor;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent by the monitor;
- (e) the monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed by the monitor;
- (g) the responsibilities assumed;
- (h) the results of the monitor's efforts; and
- (i) the cost of comparable services.

Bennett on Receiverships  
3<sup>rd</sup> ed (Toronto: Carswell, 2011) at page 595

2. A monitor's fees must be "fair and reasonable, moderate and not generous, but sufficient to induce competent people to act as receivers."

*Vantreight v Vantreight*, 2007 BCSC 1345, at para 43

3. It is not necessary to go through the supporting documentation for the fees, line by line, in order to determine what the appropriate fees are. Nor is the court to second-guess the amount of time spent by a monitor unless it is clearly excessive or overreaching.

*Bank of Nova Scotia v Diemer*, 2014 ONSC 365, at para 19

4. Similar factors are considered on the assessment of the legal accounts of counsel to the Monitor, including:
- (a) the time expended;
  - (b) the complexity of the receivership;
  - (c) the degree of responsibility assumed by the lawyers;
  - (d) the amount of money involved, including the amount of proceeds after payments to the creditors;
  - (e) the degree and skill of the lawyers involved;
  - (f) the results achieved; and
  - (g) the client's expectations as to the fee.

*Bennett on Receiverships*, supra, at page 600

5. The Monitor submits that its fees are fair and reasonable in the circumstances, particularly in light of the significant time and effort expended by the Monitor in performing the activities detailed in the Monitor's Reports. Similarly, the Monitor submits that its counsel's fees and disbursements are fair, reasonable and consistent with the market for similar legal services in British Columbia.

6. All of the Monitor's invoices have been provided to counsel for the Petitioners on a weekly basis, as the party with the primary economic interest.
7. In further support of the relief sought in this application, the Monitor relies on the following:
  - (a) *Companies' Creditors Arrangement Act*, RSC 1985, c C-36;
  - (b) the inherent and equitable jurisdiction of this Honourable Court; and
  - (c) such further and other grounds as counsel may advise and this Honourable Court may deem just.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Tom Powell made February 3, 2020;
2. Affidavit #1 of Mary I.A. Buttery, Q.C. made February 3, 2020;
3. First Report of the Monitor filed October 7, 2019;
4. Second Report of the Monitor filed November 26, 2019;
5. Third Report of the Monitor filed December 18, 2019;
6. Fourth Report of the Monitor filed January 15, 2020;
7. Initial Order of Mr. Justice Milman made September 13, 2019; and
8. Such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the Application will take 10 minutes.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. The Honourable Justice Milman is seized of these proceedings, and this hearing has been arranged through Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this Application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed Application Response;
- (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: February 3, 2020



\_\_\_\_\_  
Signature of Lawyer for the Applicant  
Cassels Brock & Blackwell LLP  
(Mary I.A. Buttery, Q.C./H. Lance Williams)

To be completed by the Court only:

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

# SCHEDULE "A"

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PETITIONERS

## SERVICE LIST

[as at January 30, 2020]

<p><b>Borden Ladner Gervais LLP</b> 1200 Waterfront Centre 200 Burrard Street Vancouver, BC V7X 1T2 Tel: (604) 687-5744</p> <p>Attn: Lisa C. Hiebert and Ryan Laity</p> <p>Email: lhiebert@blg.com rlaity@blg.com cconto@blg.com</p> <p><b>Counsel for the Petitioners</b></p>	<p><b>FTI Consulting Canada Inc.</b> 555 Burrard Street Vancouver, BC V7X 1M8 Tel: (604) 484-9525</p> <p>Attn: Tom Powell and Toni Vanderlaan</p> <p>Email: toni.vanderlaan@fticonsulting.com tom.powell@fticonsulting.com mike.clark@fticonsulting.com robert.kleebaum@fticonsulting.com craig.munro@fticonsulting.com</p> <p><b>Monitor</b></p>
<p><b>Cassels Brock &amp; Blackwell LLP</b> Suite 2200 HSBC Building 885 West Georgia Street Vancouver, BC V6C 3E8 Tel: (604) 691-6100</p> <p>Attn: H. Lance Williams and Mary I.A. Buttery, Q.C.</p> <p>Email: lwilliams@cassels.com mbuttery@cassels.com sdanielisz@cassels.com</p> <p><b>Counsel for the Monitor</b></p>	<p><b>Gowling WLG</b> 550 Burrard Street Suite 2300-Bentall 5 Vancouver, BC V6C 2B5 Tel: (604) 683-3558</p> <p>Attn: Jonathan B. Ross and Jeffrey Bradshaw</p> <p>Email: jonathan.ross@gowlingwlg.com jeffrey.bradshaw@gowlingwlg.com michele.hay@gowlingwlg.com</p> <p><b>Counsel for Export Development Canada</b></p>

<p><b>Clark Wilson LLP</b> 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 Tel: (604) 643-3176</p> <p>Attn: Christopher Ramsay and Katie Mak</p> <p>Email: cramsay@cwilson.com kmak@cwilson.com dhamann-trou@cwilson.com</p> <p><b><i>Counsel for Extract Advisors LLC as administrative agent to the secured Noteholders</i></b></p>	<p><b>McCarthy Tétrault LLP</b> 421 7th Avenue SW Suite 4000 Calgary, AB T2P 4K9 Tel: (403) 260-3500</p> <p>Attn: Pantelis Kyriakakis</p> <p>Email: pkyriakakis@mccarthy.ca</p> <p><b><i>Counsel for Royal Bank of Canada</i></b></p>
<p><b>Stikeman Elliott LLP</b> 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Tel: (416) 869-5500</p> <p>Attn: Marie Garneau</p> <p>Email: mgarneau@stikeman.com</p> <p><b><i>Counsel for Energold DIP Lender, LLC</i></b></p>	<p><b>Ernst &amp; Young Inc.</b> Pacific Centre, 700 West Georgia Street Vancouver, BC V7Y 1C7 Tel: (604) 891-8200</p> <p>Attn: Mike Bell and Rob Withers</p> <p>Email: mike.bell@ca.ey.com robert.withers@ca.ey.com</p> <p><b><i>Financial Advisor for the Petitioners</i></b></p>
<p><b>Portage Point Partners LLC</b> 300 North LaSale, Suite 4925 Chicago, IL 60654</p> <p>Attn: Mark Berger and Ryan Williams</p> <p>Email: mberger@pppllc.com rwilliams@pppllc.com</p> <p><b><i>Chief Restructuring Officer</i></b></p>	<p><b>Extract Advisors LLC</b> Suite 423, 379 West Broadway New York, NY 10012</p> <p>Attn: Darin Milmeister and Ethan Park</p> <p>Email: darin@extractcapital.com ethan@extractcapital.com</p> <p><b><i>Administrative agent to the secured Noteholders</i></b></p>
<p><b>Downtown Capital Partners, LLC</b> Suite 1110, 360 Hamilton Avenue White Plains, NY 10601</p> <p>Attn: Gary Katz</p> <p>Email: gkatz@downtownlp.com</p>	<p><b>Energold Drilling Corp.</b></p> <p>Attn: Matt Freeman Director of Finance</p> <p>Email: matthew@energold.com brian.mittman@hotmail.com</p>



**SCHEDULE "B"**

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AND OMNITERRA INTERNATIONAL DRILLING INC.

PETITIONERS

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE )  
MR. JUSTICE MILMAN ) WEDNESDAY, THE 5<sup>TH</sup> DAY OF  
 ) FEBRUARY, 2020

ON THE APPLICATION OF FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of the Petitioners (as defined in the Initial Order pronounced in these proceedings on September 13, 2019) (the "**Monitor**"), coming on for hearing at Vancouver, British Columbia on Wednesday, February 5, 2020, AND ON HEARING Mary I.A. Buttery, Q.C., counsel for the Monitor, and those other counsel listed on Schedule "A" hereto, AND ON READING the Fourth Report of the Monitor, filed January 15, 2020 (the "**Monitor's Report**"); AND ON READING Affidavit #1 of Thomas Powell, made February 3, 2020 (the "**Powell Affidavit**"); AND ON READING Affidavit #1 of Mary I.A. Buttery, Q.C., made February 3, 2020 (the "**Buttery Affidavit**"); AND ON READING the Fourth Report of the Monitor, filed January 15, 2020 (the "**Monitor's Report**");

THIS COURT ORDERS THAT:

1. The activities and accounts of the Monitor and the accounts of its counsel Cassels Brock & Blackwell LLP, as described in the Powell Affidavit, the Buttery Affidavit, and the Monitor's Report, are hereby approved.

2. Endorsement of this Order by counsel appearing on this application other than the Monitor is hereby dispensed.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

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Signature of Lawyer for FTI Consulting Canada Inc.  
Cassels Brock & Blackwell LLP  
(Mary I.A. Buttery, Q.C. / H. Lance Williams)

BY THE COURT

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REGISTRAR



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PETITIONERS

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**ORDER MADE AFTER APPLICATION**

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**CASSELS BROCK & BLACKWELL LLP**

Barristers & Solicitors  
2200 – 885 West Georgia Street  
Vancouver, B.C. V6C 3E8  
Telephone: (604) 691-6100  
Facsimile: (604) 691-6120

Attention: Mary I.A. Buttery, Q.C.

Matter No. 45306-8

MB/sd

**\* RETURN BY FILING AGENT: DYE & DURHAM \***