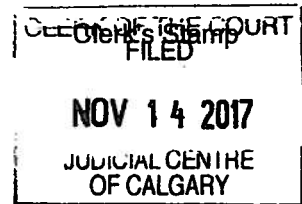


COURT FILE NUMBER 1601-11552
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



PLAINTIFF NATIONAL BANK OF CANADA IN ITS CAPACITY AS ADMINISTRATIVE AGENT UNDER THAT CERTAIN AMENDED AND RESTATED CREDIT AGREEMENT DATED JANUARY 15, 2016, AS AMENDED

DEFENDANT TWIN BUTTE ENERGY LTD.

IN THE MATTER OF THE RECEIVERSHIP OF TWIN BUTTE ENERGY LTD.

APPLICANT FTI CONSULTING CANADA INC. in its capacity as Court-appointed Receiver of the current and future assets, undertakings and properties of TWIN BUTTE ENERGY LTD.

DOCUMENT **APPLICATION**
(Declaration re: Clause 401 of CAPL Agreement and GeoCap/Sutton Claim)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Attention: Howard A. Gorman, Q.C. / Aditya M. Badami
File No.: 01020497-0005

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: December 13, 2017
Time: 2:00 p.m.
Where: Calgary Courts Centre
Before Whom: The Honourable Madam Justice K. Horner

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. FTI Consulting Canada Inc. in its capacity as Court-appointed receiver and manager (the **Receiver**) of the current and future assets, undertakings and properties of Twin Butte Energy Inc. (**Twin Butte**) seeks the following relief:
 - a. declaring service of this Application and supporting materials to be good and sufficient; and
 - b. an Order, substantially in the form attached hereto as **Schedule "A"**, seeking a declaration and confirmation that Clause 401 of the 1990 CAPL Operating Procedure (**Operating Procedure**) disallows claims for lost profit such that the claim of Geo Cap Energy Corporation (**GeoCap**) and Sutton Energy Corporation (**Sutton**) asserted in the Claims Process approved by this Honourable Court and initiated in this proceeding is reduced by the amount of \$1,593,000.00.

Grounds for making this application:

Receiver's Powers

2. On September 1, 2016, FTI Consulting Canada Inc. was appointed as Receiver over the current and future assets, undertakings, and properties of Twin Butte pursuant to a Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine (**Receivership Order**).
3. Pursuant to paragraph 25 of the Receivership Order the Receiver is authorized to apply to this Honourable Court for advice and directions in the discharge of its powers and duties.

Claims Procedure

4. Pursuant to a Claims Procedure Order granted by the Honourable Madam Justice K. M. Horner dated May 1, 2017, (the **Claims Order**) this Court approved a claims procedure overseen by the Receiver for the determination of claims asserted against the Twin Butte estate (the **Claims Procedure**).
5. GeoCap and Sutton submitted a Proof of Claim (the **Claim**) pursuant to and in accordance with the Claims Procedure.

GeoCap's and Sutton's Claim

6. The Claim concerns allegations made against Twin Butte by the claimants in litigation commenced before the receivership which was stayed by the Receivership Order.
7. The claimants allege that Twin Butte was grossly negligent in its operation of a particular oil well jointly owned by Twin Butte, GeoCap, Sutton and other parties not asserting claims in this receivership proceeding.
8. The Claim quantifies the alleged losses and claims the following heads of damages:
 - a. lost profits of \$1,593,000.00;
 - b. abandonment costs of \$124,088.00;
 - c. expert and legal fees of \$241,853.41; and
 - d. pre-judgment interest of \$81,986.01.

The Receiver's Review and Assessment

9. The Receiver reviewed and assessed the Claim. The Receiver analyzed the pleadings and documents produced in the underlying litigation, and spoke with Twin Butte management familiar with the matter.
10. The Receiver reviewed the binding contracts between GeoCap, Sutton, and Twin Butte governing the joint-operatorship of the disputed well.
11. Based upon its review of the binding contracts, and in particular the Operating Procedure, the Receiver determined that Clause 401 of the Operating Procedure disallows any claims for lost profit suffered as a result of gross negligence by the operator, in this case Twin Butte.
12. The Receiver issued a Notice of Disallowance to GeoCap and Sutton in light of its determination.
13. The Receiver's view is that the Operating Procedure should be given its plain and reasonable interpretation in the circumstances of the Claim: GeoCap and Sutton are not entitled to claim \$1,593,000.00 in lost profits and such portion of the Claim should be disallowed.
14. The Receiver communicated its position to the claimants. The claimants disagreed with the Receiver.
15. The Receiver seeks advice, direction, and a declaration from this Honourable Court as to the proper interpretation and application of Clause 401 of the Operating Procedure in the context of the Claim.
16. The Receiver's view is that a determination from this Honourable Court as to the interpretation of Clause 401 of the Operating Procedure will dispose of the vast majority of the claimed amount and avoid the need for a protracted, costly trial which would be to the detriment of Twin Butte's stakeholders.
17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence to be relied on:

18. The Receivership Order;
19. The Eleventh Report of the Receiver;
20. The pleadings, orders, and applications filed in the within proceeding;
21. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

22. Rules 6.3(1), 6.9(1), and 6.28 - 6.36 of the *Alberta Rules of Court*.
23. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

24. The *Alberta Rules of Court*.
25. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

26. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

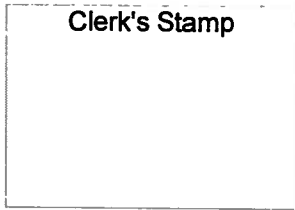
27. Oral and written submissions by counsel.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is heard or considered.

SCHEDULE "A"

COURT FILE NUMBER 1601-11552
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NATIONAL BANK OF CANADA in its capacity
as Administrative Agent under that certain
amended and restated credit agreement
dated January 15, 2016, as amended



DEFENDANT TWIN BUTTE ENERGY LTD.

IN THE MATTER OF THE RECEIVERSHIP
OF TWIN BUTTE ENERGY LTD.

APPLICANT FTI CONSULTING CANADA INC. in its
capacity as Court-appointed Receiver of the
current and future assets, undertakings and
properties of TWIN BUTTE ENERGY LTD.

DOCUMENT **ORDER**
**(Effect of Clause 401 of Operating
Procedure)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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aditya.badami@nortonrosefulbright.com

Attention: Howard A. Gorman, Q.C. / Aditya M. Badami
File No.: 01020497-0005

DATE ON WHICH ORDER WAS PRONOUNCED: December 13, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Madam Justice K. M. Horner

UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as Court-appointed receiver and manager (**Receiver**) of the current and future assets, undertakings and properties of Twin Butte Energy Ltd. (**Twin Butte**); **AND UPON HAVING READ** the Receivership Order dated September 1, 2016 (the **Receivership Order**), the briefs filed by the parties, and the Eleventh Report of the Receiver filed November 14, 2017 (**Eleventh Report**); **AND UPON NOTING THAT** capitalized terms not defined herein are as defined in the Eleventh Report; **AND UPON HEARING** counsel for the Receiver, counsel

for GeoCap and Sutton, and any other interested parties that may be present; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application; **AND UPON** having read the pleadings, proceedings, orders and other materials filed in this action;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. Clause 401 of the Operating Procedure disallows any claims for lost profits.
3. The Claim of GeoCap and Sutton is reduced by the amount of \$1,593,000.00 being the amount claimed by GeoCap and Sutton as lost profits, and by virtue of Clause 401 of the Operating Procedure.
4. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

J.C.Q.B.A.