COURT FILE NUMBER	1401-02489
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	NATIONAL BANK OF CANADA
DEFENDANTS	COAST RESOURCES LTD., 101033165 SASKATCHEWAN LTD., VIEWFIELD OIL & GAS LTD. and COAST SERVICES INC. IN THE MATTER OF THE RECEIVERSHIP OF COAST RESOURCES LTD., 101033165 SASKATCHEWAN LTD., VIEWFIELD OIL & GAS LTD. and COAST SERVICES INC.
DOCUMENT	THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF COAST RESOURCES LTD., 101033165 SASKATCHEWAN LTD., VIEWFIELD OIL & GAS LTD. and COAST SERVICES INC. **June 15, 2018**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** FTI Consulting Canada Inc. Suite 1610, 520 Fifth Avenue S.W. Calgary, AB T2P 3R7 Deryck Helkaa / Brett Wilson Telephone: (403) 454-6031 / (403) 454-6033 Fax: (403) 232-6116 E-mail: deryck.helkaa@fticonsulting.com brett.wilson@fticonsulting.com **COUNSEL** McDougall Gauley LLP 1500 – 1881 Scarth Street Regina, SK S4P 4K9 Michael W. Milani, Q.C. / Erin M.S. Kleisinger Telephone: (306) 565-5117 / (306) 565-5149 Fax: (306) 359-0785 Email: mmilani@mcdougallgauley.com ekleisinger@mcdougallgauley.com

INTRODUCTION

1. On March 6, 2014 (the "**Date of Appointment**"), FTI Consulting Canada Inc. was appointed as receiver and manager (the "**Receiver**") of all the assets, undertakings and properties (the "**Property**") of Coast Resources Ltd. ("**Coast Resources**"), 101033165 Saskatchewan Ltd. ("**1010**"), Viewfield Oil & Gas Ltd. ("**Viewfield**") and Coast Services Inc. ("**Coast Services**") (sometimes collectively referred to as the "**Companies**") pursuant to an order of this Honourable Court (the "**Receivership Order**").

2. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Companies, to market and solicit offers to purchase the Property of the Companies, and to make such arrangements or agreements as deemed necessary by the Receiver.

3. The Receiver's reports and other information in respect of these proceedings (the "**Receivership Proceedings**") are posted on the Receiver's website at http://cfcanada.fticonsulting.com/coastresources/.

4. The Receiver filed its second report in respect of these proceedings on May 27, 2015 (the "**Second Report**"). All capitalized terms not otherwise defined herein shall have the meaning given to them in the Second Report of the Receiver.

5. On January 8, 2015 the Honourable Mr. Justice Blair Nixon granted, *inter alia*, the following Orders:

   (a) An Order authorizing and directing the Receiver to complete the Crescent Point APS (the "**Crescent Point Approval and Vesting Order**"). The Receiver subsequently closed the Crescent Point APS on January 15, 2015, and collected the net proceeds;

(b) An Order authorizing and directing the Receiver to complete the NBRI APS (the "**NBRI Approval and Vesting Order**"). The Receiver subsequently closed the NBRI APS on January 15, 2015, and collected the net proceeds; and

(c) An Order approving the Interim Distributions as set out in the First Report (the "**Interim Distribution Order**"). The Receiver completed the Interim Distributions on or about April 6, 2015.

6. On July 9, 2015 the Honourable Madam Justice J. Strekaf granted an order (the "**July 9 Order**" which, *inter alia*, authorizing and directing the Receiver to:

(a) retain the amount of $490,388 (the "**Disputed Amount**") on account of the amount of the lien claims by the Claimants Under the Remaining Liens (as defined in the July 9 Order) pending further Order of this Court or the Court of Queen's Bench for Saskatchewan;

(b) make a further distribution of $259,612 to National Bank of Canada (the "**National Bank**"); and

(c) retain holdbacks in the amount of $117,248.

7. The purpose of this report, which is the third report of the Receiver (the "**Third Report**"), is to provide an update and inform the Court on the following:

(a) The status of various aspects of the Receivership Proceedings;

(b) A summary of the Receiver's receipts and disbursements from the Date of Appointment to May 31, 2018;

(c) The Receiver's proposed distribution; and

(d) The Receiver's recommendations.

8. The Receiver is requesting in its application (the "**Receiver's Application**") the following relief from this Honourable Court:

(a) Authorization for the Receiver to make a final distribution to the National Bank (the "**Final Distribution**");

(b) Approval of the activities of the Receiver since the Date of Appointment, including its receipts and disbursements;

(c) Approval of the fees and expenses of the Receiver and the Receiver's Counsel;

(d) An order Discharging the Receiver and terminating the Receivership Proceedings upon the Receiver filing the Receiver's Certificate; and

(e) Authorizing the Receiver to destroy the Companies' corporate books and records if not claimed by the former directors within 30 days of being discharged.

TERMS OF REFERENCE

9. In preparing the Third Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Companies' books and records and discussions with various parties (collectively, the "**Information**").

10. Except as described in the Third Report:

(a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and

(b) The Receiver has not examined or reviewed financial forecasts and projections referred to in the Third Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

11. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecasts and such variations may be material.

12. The Receiver has prepared the Third Report in connection with the motion described in the Receiver's Application. The Third Report should not be relied on for other purposes.

13. Information and advice described in the Third Report has been provided to the Receiver by its counsel, McDougall Gauley LLP (the "**Receiver's Counsel**"), and has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.

14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

STATUS OF RECEIVERSHIP PROCEEDINGS

15. Each of the Companies is a private entity incorporated under the laws of the Province of Saskatchewan and was established to invest in and operate oil and gas properties in Saskatchewan. The operations of the Companies included the following three core oil and gas exploration and production areas (collectively, the "**Assets**"), which are described as follows:

    (a) Coast Resources, Viewfield, and Coast Services held various working interests in petroleum and natural gas leases on an operated and non-operated heavy oil property located near Luseland, Saskatchewan (the "**Luseland Property**");

    (b) 1010 held various working interests in petroleum and natural gas leases on an operated heavy oil property in southeastern Saskatchewan (the "**Glen Ewen Property**"); and

    (c) Coast Resources, Viewfield, and Coast Services hold various working interests in petroleum and natural gas leases in an undeveloped property located in eastern Saskatchewan (the "**Hoosier Property**").

ASSET RELIZATIONS AND DISTRIBUTION TO CREDITORS

16. In accordance with the Crescent Point Approval and Vesting Order and the NBRI Approval and Vesting Order, the Receiver completed each of the transactions and collected the net proceeds.

17. Realization of the Assets comprising the Luseland Property and the Glen Ewen Property is complete and there are no further Assets to be realized upon or recovered.

18. The Receiver has made distributions to creditors in accordance with previous Orders of this Honourable Court and as more fully detailed in the schedule of receipts and disbursements set out below. Reserves are currently held for payment of the remaining Receivership costs and if any funds remain after the payment of these costs, such funds will be distributed to the National Bank on account of its secured claim prior to the discharge of the Receiver.

19. As previously reported, realizations will be insufficient to repay the claims of the secured creditors in full and there will be no amounts available for unsecured creditors of the Companies.

HOOSIER PROPERTY

20. As set out at paragraphs 49 to 51 of the First Report of the Receiver and paragraph 19 of Second Report of the Receiver, Sayer attempted to market and solicit offers to purchase the Hoosier Property; however, ultimately no transaction was completed.

21. In order to facilitate the transfer of licenses associated with the Luseland Property and the Glen Ewen Property the Receiver was required to post a security deposit in the amount of $22,200 with the Saskatchewan Ministry of the Economy (the "**SME**") securing the reclamation liability associated with the Hoosier Property.

22. Subsequently, the mineral and surface leases associated with the Hoosier Property have expired and the Receiver has not been made aware of any additional liabilities associated with the Hoosier Property. The SME has been served with a copy of the Receiver's Application.

CLAIMANTS UNDER THE REMAINING LIENS

23. As directed in the July 9 Order, the Receiver retained the Disputed Amounts pending further order from this Honourable Court or the Court of Queen's Bench for Saskatchewan.

24. The Court of Appeal for Saskatchewan released its reserved decision dated July 20, 2017 (the "**COA Decision**") in respect of the Claimants Under the Remaining Liens and the Disputed Amount. A copy of the COA Decision is attached hereto as Appendix A.

25. As described at paragraph 54 of the COA Decision the Lienholders were entitled to share in the Lien Fund to the extent of $90,000 (minus cost award). The remainder of the Disputed Amount was to be paid to the National Bank.

26. On or around November 8, 2017, the Receiver caused the amounts to be paid to respective counsel to the Lienholders and the National Bank in accordance with the COA Decision.

ADMINISTRATIVE MATTERS TO BE COMPLETED

27. The following administrative matters remain to be completed in the Receivership Proceedings:

    (a) Completion of certain statutory and administrative duties including filing the Receiver's final report with the Office of the Superintendent of Bankruptcy; and

    (b) Payment of final Receivership expenses.

SUMMARY OF RECEIPTS AND DISBURSEMENT

28. Receipts and Disbursements from the Date of Appointment to May 31, 2018, are summarized as follows:

Schedule of Receipts and Disbursements		Notes
Receipts		
Proceeds from the Sale of the Assets	5,445,583	a
Oil and Gas Revenue	2,535,969	b
Receiver Certificate	250,000	c
GST / PST Collected	173,081	
Other Receipts	107,195	d
Bank Account Transfer	38,127	e
Total - Receipts	**8,549,955**	
Disbursements		
Payment to Secured Creditor	3,796,680	f
Operating Expenses	2,025,199	g
Royalty and Lease Payments	578,330	h
Interim Distributions	499,318	i
Employee Costs	337,201	j
Legal Fees and Disbursements	330,590	
Receiver's Fees and Costs	251,781	
GST/PST Paid	163,963	
Bank Charges	132,288	k
Property Tax	120,957	l
Disbuted Amount	90,000	m
Other Disbursements	44,934	n
Rent and Utilities	27,871	
Other Professional Fees	24,977	o
GST Remitted	55,350	
Deemed Trust Claim	15,003	
Insurance	17,186	
Total - Disbursements	**8,511,629**	
Net Cash on Hand	**38,326**	

(a) Proceeds from the Sale of the Assets – net proceeds from the Crescent Point APS and NBRI APS;

(b) Oil and Gas Revenue – revenue collected by the Receiver in respect of the petroleum and natural gas;

(c) Receiver Certificate – amounts borrowed from the National Bank in accordance with the terms of the Receivership Order;

(d) Other Receipts – receipts from joint venture partners, GST refunds, settlement of final statement of adjustments and other miscellaneous collections;

(e) Bank Account Transfer – funds transferred from Coast Resources' and 1010's bank accounts to the Receiver's bank account in accordance with the Receivership Order;

(f) Payment to Secured Creditor – distributions to the National Bank based on its security and amounts borrowed under the terms of the Receivership Order and previously approved by this Honourable by Court;

(g) Operating expenses – operating expenses relating to the Assets;

(h) Royalty and Lease Payments – amounts disbursed in respect of the Companies' petroleum and natural gas leases;

(i) Interim Distributions – amounts disbursed under the terms of the Interim Distribution Order to creditors whose claims ranked in priority to the National Bank;

(j) Employee Costs – amounts paid by the Receiver to employees and consultants relating to wages and employee deductions;

(k) Bank Charges – amounts disbursed in respect of interest on amounts borrowed under the Receiver Certificate, wire payment fees, overdraft and interest in respect of the Companies' pre-Receivership accounts and other miscellaneous charges;

(l) Property Tax – amounts paid for 2013 and 2014 property taxes in accordance with the Interim Distribution Order;

(m) Disputed Amounts – amounts paid pursuant to the July 11 Order;

(n) Other Miscellaneous Expenses – amounts disbursed including the deposit to SME as described in the First Report, filing fees paid to the Official Receiver, off-site storage and employee benefits; and

(o) Other Professional Fees – pre-Receivership fees and disbursements relating to advisory services pursuant to the National Bank's credit agreement.

29. As at May 31, 2018, the Receiver held $38,326 in cash on hand. The Receiver is seeking authorization from this Honourable Court to distribute the amounts below, along with the distribution of any surplus funds to the National Bank (the "**Final Distribution**").

THE FINAL DISTRIBUTION

30. The table below summarizes the Final Distribution to the National Bank proposed by the Receiver.

Proposed Final Distribution	
Funds Available for Distribution	
Net Cash on Hand	38,326
Proposed Holdbacks	
Adminstrative Holdback	5,000
Receiver's Counsel Final Fees	7,332
Total - Holdbacks	**12,332**
Total - Proposed Distributions	**25,995**
Projected Ending Cash	-

PROFESSIONAL FEES

31. Invoices rendered by the Receiver from the Date of Appointment to May 31, 2018 for professional fees and expenses total $251,781.21 exclusive of GST (the "**Receiver's Fees**"). The accounts can be made available upon request of this Honourable Court.

32. Invoices rendered by the Receiver's Counsel from the Date of Appointment to August 31, 2017 for professional fees and disbursements total $330,590.13 exclusive of GST (the "**Receiver's Counsel Fees**"). The accounts can be made available upon request of this Honourable Court.

33. The Receiver's Counsel anticipates issuing a final invoice in the amount of approximately $7,331.60 ("**Receiver's Counsel's Final Fees**") in connection with an outstanding invoice and unbilled time and additional time expected to be incurred preparing for and attending the final distribution and discharge application.

34. The Receiver is of the opinion that the Receiver's Fees and the Receiver's Counsel's Fees are appropriate and reasonable in the circumstances.

CORPORATE BOOKS AND RECORDS

35. The Companies' books and records are currently located at an offsite storage facility. The Receiver is seeking authorization from this Honourable Court to destroy the remaining corporate books and records unless they are claimed by former directors within thirty days of the Receiver providing notification of same to the former directors. The Receiver proposes to notify the former directors at the address listed on a search of the Saskatchewan Corporate Registry.

TERMINATION OF RECEIVERSHIP PROCEEDINGS

36. As described in the Third Report, the Receivership Proceedings are substantially complete, with the exception of a small number of administrative matters. To avoid the costs associated with additional Court appearances, and with the support of the National Bank, the Receiver seeks an Order terminating the Receivership Proceedings and discharging the Receiver upon the filing of the Receiver's Certificate.

RECEIVER'S RECOMMENDATIONS

37. The Receiver respectfully recommends that this Honorable Court authorize and approve the following:

(a) the activities of the Receiver since the Date of Appointment, including its receipts and disbursements;

(b) the fees and expenses of the Receiver and the Receiver's Counsel;

(c) the Final Distribution;

(d) the destruction of the corporate books and records if unclaimed by the former directors within 30 days following the notice provided in respect of same; and

(e) Discharging the Receiver and terminating the Receivership Proceedings upon the Receiver filing the Receiver's Certificate;

All of which is respectfully submitted this 15 day of June, 2018.

FTI Consulting Canada Inc.
in its capacity as Court Appointed Receiver and Manager of Coast Resources Ltd., 101033165 Saskatchewan Ltd., Viewfield Oil & Gas Ltd. and Coast Services Inc. and not in its personal capacity

Name: Deryck Helkaa
Title: Senior Managing Director,
FTI Consulting Canada Inc.

Appendix A

Court of Appeal for Saskatchewan
Docket: CACV2987

Citation: ***National Bank of Canada v KNC Holdings Ltd.*****, 2017 SKCA 57**
Date: 2017-07-20

Between:

National Bank of Canada

Appellant
(Respondent)

And

KNC Holdings Ltd., Baker Hughes Canada Company, Trican Partnership, Rounded Energy Services Ltd., Cru Well Servicing Ltd., Cal-Gas Inc., and FTI Consulting Canada Inc.

Respondents
(Applicant/Respondents)

Before:	Richards C.J.S., Ottenbreit, Caldwell, Whitmore and Ryan-Froslie JJ.A.
Disposition:	Allowed
Written reasons by:	The Honourable Chief Justice Richards
In concurrence:	The Honourable Mr. Justice Ottenbreit The Honourable Mr. Justice Caldwell The Honourable Mr. Justice Whitmore The Honourable Madam Justice Ryan-Froslie
On Appeal From:	2016 SKQB 349, Saskatoon
Appeal Heard:	April 11, 2017
Counsel:	Howard Gorman, Q.C. for the Appellant Michael Milani, Q.C. for the Respondent, FTI Consulting Canada Inc. Jared Epp for the Respondent, KNC Holdings Ltd. Craig Frith for the Respondent, Cru Well Servicing Ltd.

Richards C.J.S.

I. INTRODUCTION

[1] This appeal concerns the assets of an oil and gas company that was placed into receivership. More specifically, it concerns the priority of certain liens filed against those assets under *The Builders' Lien Act*, SS 1984-85-86, c B-7.1, relative to a security interest held by National Bank of Canada.

[2] In resolving the priorities issue, the Chambers judge considered himself bound by *Canada Trust Co. v Cenex Ltd.* (1982), 131 DLR (3d) 479 (Sask CA) [*Cenex*]. That case had dealt with the interpretation of a section of *The Mechanics' Lien Act*, RSS 1978, c M-7 (repealed), which is the predecessor of s. 22 of *The Builders' Lien Act*, the provision at issue in these proceedings. Relying on *Cenex*, the Chambers judge held that s. 22 gave the lienholders priority over National Bank in relation to a variety of assets.

[3] National Bank asks this Court to take a different view of the priorities question. It suggests *Cenex* was wrongly decided and that, as a result, the Chambers judge's reading of s. 22 of *The Builders' Lien Act* was incorrect. National Bank contends its security interests have priority over those of the lienholders.

[4] I conclude that National Bank's appeal must be allowed. As explained below, *Cenex* should not be followed. Section 22 of *The Builders' Lien Act* clarifies the nature of the assets to which liens attach. It does not prescribe priorities.

II. BACKGROUND

[5] Coast Resources Ltd. was engaged in the exploration and development of oil and gas properties near Luseland, Saskatchewan.

[6] National Bank provided various loans to Coast Resources beginning in 2004, through a series of loan agreements. Coast Resources granted security to National Bank for the amounts advanced pursuant to the loan agreements. This included a fixed and floating charge demand debenture.

[7] It is common ground that National Bank had a valid security interest in Coast Resources' real and personal property. National Bank registered its security interest in personal property with the Personal Property Registry on July 6, 2004. It registered its real property security interest in Coast Resources' oil and gas interests at the Saskatchewan Ministry of the Economy on February 14, 2014, and at the Land Titles Registry on February 19, 2014.

[8] The total indebtedness of Coast Resources to National Bank was approximately $5,400,000, plus interest and other charges. In March of 2014, National Bank successfully sought the appointment of FTI Consulting Canada Inc. (the "Receiver") as receiver and manager over the assets, undertakings and property of Coast Resources pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

[9] In the course of the Receiver's administration of the receivership estate, it became aware that several builders' liens had been registered against the property of Coast Resources. The Receiver determined those liens met the requirements of *The Builders' Lien Act* and were valid.

[10] The Receiver decided that three liens totalling $142,302 had priority over National Bank's security because they had been registered before National Bank's security was registered. Those liens have been paid. The remaining liens (the "Liens") were registered after National Bank's security was registered. They can be summarized as follows:

Lienholders	Amount
Trican Partnership	$8,613
Cru Well Servicing Ltd.	$224,715
Rounded Energy Services Ltd.	$15,737
Cal-Gas Inc.	$46,052
Baker Hughes Canada Company	$33,694
KNC Holdings Ltd.	$160,056

[11] I will refer to Trican Partnership, Cru Well Servicing Ltd., Rounded Energy Services Ltd., Cal-Gas Inc., Baker Hughes Canada Company and KNC Holdings Ltd., collectively, as the "Lienholders".

[12] The Receiver continued the oil and gas operations of Coast Resources in order to facilitate the sale of its assets. On January 8, 2015, the Receiver was granted an approval and vesting order by Nixon J. of the Alberta Court of Queen's Bench which, among other things, ordered the sale of property including petroleum and natural gas rights and various depreciable

assets to Northern Blizzard Resources Inc. for $1,960,000. The order provided for the discharge of the Liens on the condition that their value be held back by the Receiver pending the determination of priority between National Bank and the Lienholders. The Receiver duly held back the amount of $490,388 out of the proceeds of the sale (the "Lien Funds").

[13] On July 9, 2015, Strekaf J. of the Alberta Court of Queen's Bench (as she then was) held that the Court of Queen's Bench for Saskatchewan was the proper forum to determine the priority between National Bank and the Lienholders with respect to the Lien Funds.

III. THE RELEVANT STATUTORY PROVISIONS

[14] The key provision of *The Builders' Lien Act* in issue here is s. 22(2). It deals with the application of liens in the context of mineral extraction operations. Section 22 reads as follows:

> 22(1) A person who provides services or materials on or in respect of an improvement for an owner, contractor or subcontractor, has, except as otherwise provided in this Act, a lien on the estate or interest of the owner in the land occupied by the improvement, or enjoyed therewith, and on the materials provided to the improvement for as much of the price of the services or materials as remains owing to him.
>
> (2) Where services or materials are provided:
>
> (a) preparatory to;
>
> (b) in connection with; or
>
> (c) for an abandonment operation in connection with;
>
> the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the services or materials, the lien given by subsection (1) is also a lien on:
>
> (d) all the estates or interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding that fee simple has expressly requested the services or materials;
>
> (e) the mineral when severed and recovered from the land while it is in the hands of the owner, and to the proceeds of the mineral and to the amounts to be paid in lieu of the proceeds of the mineral to the owner by a person that operates the mine, oil well or gas well;
>
> (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines, mining claim or land, oil or gas well and the appurtenances thereto;
>
> but, in all other respects, this Act applies to the lien existing by virtue of this subsection notwithstanding that the lien extended by clauses (e) and (f) is a lien on an interest in personal property.

[15] Sections 71 and 78 of *The Builders' Lien Act* deal with priorities. They are also relevant:

> 71(1) The liens arising from an improvement have priority over all mortgages, conveyances or other agreements registered after a claim of lien is registered.
>
> (2) In the case of an agreement for sale of land where the purchase money or part of the purchase money is unpaid and no transfer of title for the parcel of land has been made to the purchaser, for the purposes of this Act the purchaser shall be deemed to be a mortgagor and the seller a mortgagee whose mortgage was registered on the date of the agreement for sale.
>
> (3) Subject to Part II:
>
> > (a) a lien has priority in respect of all payments or advances made on account of any conveyance or mortgage after written notice of a lien has been given to the person making the payments or advances or after a claim of lien is registered; and
> >
> > (b) if no written notice of a lien is given or if no claim of lien is registered, all of the payments or advances have priority over the lien.
>
> ...
>
> 78 Where an estate or interest in land is sold or leased pursuant to an order of the court or by a trustee appointed under this Part, the proceeds received as a result of that disposition, together with any amount paid into court under subsection 96(5), shall be distributed in accordance with the priorities set out in Part VI.

IV. THE DECISION UNDER APPEAL

[16] One of the Lienholders, KNC Holdings Ltd., brought an application in the Court of Queen's Bench for an order determining "[t]he priorities among the parties to the Lien Fund".

[17] *Cenex* was the central consideration in the Queen's Bench proceedings. It had interpreted s. 12 of *The Mechanics' Lien Act*, the legislative antecedent of s. 22 of *The Builders' Lien Act*, not merely as clarifying the reach of builders' liens in relation to the assets of debtors in the mineral industries but as creating priorities between those liens and other security interests.

[18] The Lienholders took the position that the priorities issue should be resolved on the basis of *Cenex* and several Queen's Bench decisions that had purported to take the approach prescribed by *Cenex* when interpreting s. 22(2) of *The Builders' Lien Act*. The Lienholders argued that, even though National Bank's security interest had been registered before the Liens were registered, the Liens took priority pursuant to s. 22(2). National Bank took a contrary position. It contended *Cenex* had been decided incorrectly and argued that, properly interpreted,

s. 22(2) did no more than extend the category of interests affected by a lien on minerals to include the interests of all parties with an ownership interest in those minerals.

[19] The Chambers judge observed that the facts of this case are very similar to those in *Cenex*. As a result, he concluded the interpretation of the wording presently found in s. 22(2) of *The Builders' Lien Act* was controlled by *Cenex* and that, accordingly, the Lienholders' interests had priority over those of National Bank.

[20] The Chambers judge then went on to hold that, in light of *Boomer Transport Ltd. v Prevail Energy Canada Ltd.*, 2014 SKQB 368, 461 Sask R 184 [*Boomer Transport*], the Lienholders had a priority interest not just in Coast Resources' oil inventory as it stood at the time of the appointment of the Receiver and the proceeds from the sale of that inventory, but that the Lienholders also had a priority interest in Coast Resources' oil leases and its "well assets". That said, the Chambers judge found he was not able to determine the value of those assets based on the material filed. In so concluding, he operated on the assumption that there had been no accounting of the inventory and assets of Coast Resources at the time the Receiver was appointed.

[21] The Chambers judge held that this lack of accounting and valuation did not nullify or extinguish the Lienholders' priority. Relying again on *Boomer Transport*, he said National Bank was not entitled to benefit from the Receiver's failure to prepare a proper inventory and declared the total sum of $490,388 held in the Lien Fund to be subject to the Lienholders' priority as *per* s. 22(2) of *The Builders' Lien Act*. He ordered that those funds be paid out to the Lienholders as follows:

Trican Partnership	$8,613
Cru Well Servicing Ltd.	$224,715
Rounded Energy Services Ltd.	$15,737
Cal-Gas Inc.	$46,052
Baker Hughes Canada Company	$33,694
KNC Holdings Ltd.	$160,056

V. ANALYSIS

[22] National Bank appeals from the decision of the Chambers judge and argues that the judge erred in relying on *Cenex*. It says *Cenex* was wrongly decided and contends that its security interest had priority over the security interests of the Lienholders. In order to deal with this submission, it is necessary to begin by determining how s. 22(2) of *The Builders' Lien Act* should be interpreted. That done, I will turn to the application of s. 22 in the circumstances of this case.

A. The Interpretation of s. 22(2) of *The Builders' Lien Act*

[23] As noted, *Cenex* lies at the heart of this appeal. It is useful, therefore, to start with an examination of that decision.

[24] *Cenex* was decided before the introduction of *The Builders' Lien Act*, at a time when *The Mechanics' Lien Act* was the governing legislation. The key statutory provision was s. 12 of that Act. In relevant terms, it read as follows:

> 12.—(1) Any person who does or causes any work to be done or services rendered upon or in respect of an improvement or furnishes any material to be used or on an improvement for an owner, contractor or subcontractor has, except as otherwise provided in this Act, a lien upon the estate or interest of the owner in the land occupied by the improvement or enjoyed therewith for so much of the price of the work, services or material as remains owing to him.
>
> (2) Where work is done, services are rendered or materials are furnished:
>
> *(a)* preparatory to;
>
> *(b)* in connection with; or
>
> *(c)* for an abandonment operation in connection with;
>
> the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the work to be done, the services to be rendered or the material to be furnished, the lien given by subsection (1) attaches to all the estates and interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding the fee simple estate in the mines and minerals has expressly requested the work or services or the furnishing of materials in which case the lien also attaches to the estate in fee simple in the mines and minerals but not to the person's estate or interest, if any, in the remainder of the land.
>
> (3) A lien attaching to an estate or interest in mines and minerals attaches also to the minerals when severed and recovered from the land while they are in the hands of the owner, and to the proceeds thereof and to the amounts to be paid in lieu thereof to the

> owner by a person that operates the mine, oil well or gas well in accordance with an order or regulation made under *The Mineral Resources Act.*
>
> (4) A person who has a lien under subsection (1) in respect of any mine, mining claim, mining land, oil well or gas well shall also have a lien upon the interest of the owner in the fixtures, machinery, tools, appliances, equipment and other property in or on the mine, mining claim, mining land, oil well or gas well, and the appurtenances thereto.

[25] As an aside, I note there are some minor differences between this language and the language presently found in s. 22 of *The Builders' Lien Act.* As well, of course, there are formatting differences between the two provisions. However, those are not matters of consequence. It is common ground that the variations between the two provisions are not material to the issues at stake in this appeal. Accordingly, for the purposes of this proceeding, the two provisions are effectively the same. With that clarification having been made, I return to *Cenex* itself.

[26] Cenex Limited operated a uranium mine. Its creditors were Royal Bank claiming under s. 88 of the *Bank Act*, RSC 1970, c B-1, debenture-holders (including Royal Bank) and various parties with liens. Cenex Limited defaulted under the terms of the debentures and a receiver was appointed. The assets taken over by the receiver included a quantity of ore that had been extracted from the mine, mining leases and equipment and other physical assets. In the Court of Queen's Bench, Halvorson J. held that the debentures had priority over the liens by virtue of s. 25(1) of *The Mechanics' Lien Act*, the equivalent of the current s. 77 of *The Builders' Lien Act.* In his view, s. 12 of *The Mechanics' Lien Act* was aimed only at prescribing the circumstances in which a lien could arise, not at establishing priorities between competing security interests. See: (1980), 116 DLR (3d) 731 (Sask QB).

[27] On appeal, this Court took a different approach. Speaking through Hall J.A., it concluded that the lienholders had priority over Royal Bank and the other secured parties in relation to the severed ore. This was said to be the case because, by virtue of s. 12(2) of *The Mechanics' Lien Act*, the liens attached to "all the estates and interests in the mineral concerned" and those "estates and interests" included the equity of the debenture-holders and Royal Bank in the ore. The essential passages of Hall J.A.'s decision dealing with s. 12(2) and the lienholders' priority in Cenex Limited's ore are reproduced below:

> A general lien created under s. 12(1) is subject to the priority ranking provided for by s. 25(1). For the purposes of s. 12(1) the appellants' liens would not have priority over the debentures if the debentures were properly registered.
>
> However, in the instant case, the appellants' liens also come within s. 12(2). For the purposes of this application it has been assumed that the work done, services rendered or materials supplied by the appellants, were preparatory to or in connection with recovery of a mineral. Their liens therefore attached to all the estates and interests in the mineral concerned. The "mineral concerned" is the mineral which has been recovered. "All the estates and interest" in the mineral concerned embraces the equity of the debenture-holders and the bank. Therefore, as to the severed ore extracted from the mine and taken over by the receiver, the claims of the appellant lienholders have priority over those of the debenture-holders and the bank. However, no priority is given by s. 12(2) alone to the appellant lienholders over the other assets of Cenex Limited.
>
> ...
>
> To summarize, s. 12(2) refers to a special type of lien as defined therein, and in effect gives the lienholder a priority over all other estates and interest, excepting in stated cases the estate in fee simple in the mine and minerals, to a specific asset only, namely, the severed or extracted ore.
>
> ...
>
> This legislation does not, in the ordinary way, deprive the debenture-holders of pre-existing rights. Before the ore was extracted their security covered the mine and minerals *in situ*. The work and materials supplied by the lienholders have transformed the mineral *in situ* into readily marketable ore and have greatly enhanced its value. The Legislature has recognized that this entitles the lienholders to first claim upon the severed ore.
>
> (Pages 482–483)

[28] Justice Hall went on, at page 484 of the decision, to find that he did not have to consider the debenture-holders' claims to the rest of Cenex Limited's assets. In his opinion, the security of Royal Bank under the *Bank Act* took priority over the mechanics' liens on that property, including the mine, equipment and other physical assets. This was because it had been registered prior to the registration of the liens.

[29] As noted, National Bank submits that the interpretation of s. 12(2) found in *Cenex* is wrong. It says s. 12(2) was included in *The Mechanics' Lien Act* because farm-ins, joint ownerships and so forth often complicate the concept of ownership in the mineral extraction industries. As a result, National Bank contends that s. 12(2), for purposes of the sorts of issues at stake in this appeal, should have been read as doing no more than extending the categories of assets subject to attachment by builders' liens so as to ensure that all ownership interests in minerals fell within the reach of such liens.

[30] Section 22(2) must, of course, be interpreted with resort to the principle of statutory interpretation endorsed by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21:

> ... Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[31] Before turning to s. 22(2) itself, it is useful to begin with s. 22(1). It explains when builders' liens arise and confirms their scope, *i.e.*, it prescribes the assets to which such liens attach. Thus, s. 22(1) indicates that, when a person provides services or materials in respect of an improvement, a lien attaches to the "estate or interest of the owner in the land occupied by the improvement" and to "the materials provided to the improvement" for the amount of the unpaid price of the services or materials. For ease of reference, I again reproduce s. 22(1):

> 22(1) A person who provides services or materials on or in respect of an improvement for an owner, contractor or subcontractor, has, except as otherwise provided in this Act, a lien on the estate or interest of the owner in the land occupied by the improvement, or enjoyed therewith, and on the materials provided to the improvement for as much of the price of the services or materials as remains owing to him.

There is nothing in this language to suggest that s. 22(1) is somehow concerned with the *priority* of builders' liens relative to other kinds of security interests.

[32] What then of s. 22(2)? It too, at least on the regular surface meaning of its terms, says nothing about priorities. Rather, it speaks to the reach of builders' liens in the specific context of mineral extraction operations. Section 22(2) provides that, when services or materials are provided in connection with the recovery of a mineral, a lien attaches (with specified exceptions) to all of the "estates or interests" in the mineral, to the mineral after it is severed from the land and to the interests of the owner in fixtures, machinery, tools and appliances. Again, s. 22(2) reads as follows:

> (2) Where services or materials are provided:
>
> (a) preparatory to;
>
> (b) in connection with; or
>
> (c) for an abandonment operation in connection with;
>
> the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the services or materials, the lien given by subsection (1) is also a lien on:

> (d) all the estates or interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding that fee simple has expressly requested the services or materials;
>
> (e) the mineral when severed and recovered from the land while it is in the hands of the owner, and to the proceeds of the mineral and to the amounts to be paid in lieu of the proceeds of the mineral to the owner by a person that operates the mine, oil well or gas well;
>
> (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines, mining claim or land, oil or gas well and the appurtenances thereto;
>
> but, in all other respects, this Act applies to the lien existing by virtue of this subsection notwithstanding that the lien extended by clauses (e) and (f) is a lien on an interest in personal property.

[33] Thus, on the basis of the ordinary and grammatical meaning of its own terms, I see nothing to suggest that s. 22, and s. 22(2) in particular, is in any way concerned with the priority of builders' liens *vis-à-vis* other kinds of security interests. In short, s. 22 reads like an "attachment" provision, not like a "priorities" provision.

[34] This reading of s. 22 is entirely consistent with the overall scheme and organization of *The Builders' Lien Act*. It is broken into the following nine parts:

> PART I – Title and Interpretation
>
> PART II – Trust Provisions
>
> PART III – The Lien
>
> PART IV – The Holdback
>
> PART V – Expiry, Registration and Discharge of Liens
>
> PART VI – Priorities
>
> PART VII – Additional Remedies
>
> PART VIII – Jurisdiction and Procedure
>
> PART IX – General Rules

[35] As is obvious from this organizational framework, *The Builders' Lien Act* speaks to the nature and scope of liens in Part III, where s. 22 is found, and it speaks to priorities in Part VI. Section 71(1), located in Part VI, is of particular interest here. As noted above at paragraph 15, it deals directly with the priority of a lien *vis-à-vis* other kinds of security.

[36] Accordingly, the scheme of *The Builders' Lien Act* strongly confirms and reinforces the plain and ordinary meaning of the words used in s. 22(2), *i.e.*, it confirms and reinforces the idea that s. 22(2) is concerned with the scope or reach of builders' liens, not with priorities.

[37] This takes the analysis back to *Cenex*. In my very respectful view, that case was decided incorrectly. There are two main problems with the reasoning employed by Hall J.A.

[38] The first problem concerns the interpretation of the phrase "all the estates and interests in the mineral concerned" and Hall J.A.'s view that it included the equity of other creditors. The obvious meaning of "all the estates and interests in the mineral concerned" is much more straightforward. Specifically, it is more naturally and readily understood as being aimed at ensuring that arrangements such as farm-ins and joint ownerships, common in the oil and gas industry in particular, do not frustrate the builders' lien regime. The point was well explained by LoVecchio J. in *Smoky River Coal Ltd., Re*, 1999 ABQB 204 at para 32, [1999] 6 WWR 98, dealing with the parallel provision in the *Builders' Lien Act*, RSA 1980, c B-12:

> We are then only concerned with the Court's conclusion that the interest of the debenture holders was "attached" by the liens which were registered later. The purpose and the effect of subsection (2) is, in my view, only to eliminate the requirement for a request by each of the parties with ownership interests in the assets which benefit from the work in order for their interests to be attached by the lien. This conclusion accommodates the multiple ownership structures utilized in the oil and gas industry. These might consist of conventional ownership interests, royalty interests, working interests and even the contingent interest of a farmee where the farmee has yet to earn its interest. If only one of these stakeholders dealt with a contractor they would be the only one to fit the definition of owner in section 1(g) and the contractor would only have a lien against that stakeholder's interest, an interest which might be negligible. Accordingly subsection (2) was created to encumber the other interests without a direct request from them.
>
> (Emphasis added)

[39] Significantly, this same rationale for s. 12(2) is revealed in the Report of a Commission that inquired into *The Mechanics' Lien Act*, RSS 1953, c 249, in the early 1960s (*Report of the Commission Before the Honourable Harold Francis Thomson, Q.C., Commissioner, and D. G. McLeod, Q.C., Counsel to the Commission : in the Matter of the Mechanics' Lien Act, Chapter 249 of the Revised Statutes of Saskatchewan, 1953, and Amendments Thereto* (Regina: The Commission, 1963). In that Report, Harold Thomson, Q.C. proposed the statutory language that emerged as s. 12(2) of the version of *The Mechanics' Lien Act* considered by the Court in *Cenex*.

At pages 31–32 of the Report, Mr. Thomson explained the rationale for what became s. 12(2) in these terms:

> The petroleum industry has now assumed a position of great importance in this province. ...
>
> There is a good deal of difference between the petroleum industry and the construction industry and the Mechanics' Lien Act of this province was originally designed to take care of the construction industry and comparatively little attention has been paid to the petroleum industry. ... [T]hose who have obtained [petroleum or natural gas leases] become concerned about getting someone to drill a test well to prove the field and enter into many different kinds of arrangements or schemes for that purpose. Under certain pooling arrangements or schemes for the sharing of expenses several persons may end up with an interest in the minerals in the same parcel of land. That can create complications.
>
> If instructions for the drilling of the test well are given by one of the group it may well be that some one or more of the group have never made any direct request for work to be done or materials to be furnished for the drilling of the well but the well is nevertheless drilled for the direct benefit of all of those who have an interest in the minerals and will benefit if the well turns out to be a producer. The liens of those who do the work or furnish the materials for the drilling of the well should therefore be a charge upon all of the estates or interests in the minerals concerned other than the estate in fee simple in the mines and minerals unless the owner of that estate is one of the group and has expressly requested the work to be done or the materials to be furnished.
>
> (Emphasis added)

It appears that this Report was not drawn to the attention of the Court when *Cenex* was argued.

[40] The second, and most difficult, aspect of the decision in *Cenex* is that it read what was then s. 12 of *The Mechanics' Lien Act* as creating a priority for lienholders somehow restricted to severed ore. This result was explained by Hall J.A., at page 483, as being a function of the fact that the services and materials provided by lienholders had transformed the ore *in situ* into a readily marketable product and had thereby greatly increased its value. While there might be some broad policy logic in this view, it cannot be reconciled with the plain wording of s. 12. In other words, if the lienholders had a priority over other creditors in relation to the severed ore because their liens attached to the other creditors' equity, then the lienholders should also have had priority in relation to *all* of Cenex's assets, not just the ore. Justice Hall did not explain, on the plain wording of s. 12, how priorities could operate in the way that was unique to severed ore.

[41] All of that said, there is an aspect of the history of s. 22 of *The Builders' Lien Act* that requires some additional comment. I refer here to the work of the Special Advisory Committee

on Builders' Liens which reported in the 1980s. Cru Well and KNC Holdings suggest that the Legislature's reaction to the Committee's recommendations must inform the interpretation of s. 22(2). In effect, they suggest that the real question at this point in the story is not whether *Cenex* was correctly decided because, correctly decided or not, the Legislature decided to build *Cenex*'s view of the relevant statutory language into s. 22(2) of *The Builders' Lien Act*.

[42] The Special Advisory Committee was established by the Minister of Justice in 1983 to review *The Mechanics' Lien Act*. It conducted a thorough study of the legislation and, in 1984, released a report entitled "Liens in the Construction Industry". In the course of the Report, the Committee examined both s. 12 of *The Mechanics' Lien Act* and the *Cenex* decision. The Committee was critical of *Cenex* and observed that "[t]urning subsection 12(2) into a section establishing a priority rule creates serious consequences for financers of mining and oil and gas interests" (page 112). It went on to explain as follows:

> ...When there is default in the oil and gas industry, there is little for the lien claimants to attach in the way of an improvement and resort must be had to the personal property of the owner. However, this lien should only be an extension and not a different lien from the lien currently created by subsection 12(1) as found by the *Cenex* case. The priority rules for all liens would then continue to apply. The only priority a lien claimant would have in relation to severed minerals or equipment would be priority over unsecured creditors. To attempt to give priority over secured creditors would seem to be an expensive intrusion into the priority structure relating to personal property. It would be unfair to confer priority without requiring registration of the lien in the Personal Property Registry and providing for the giving of and the effect of notice to secured parties. ...
>
> (pages 113–114)

[43] The Committee accepted the approach taken in *Cenex* in relation to assets other than severed ore. With respect to s. 12(4) of *The Mechanics' Lien Act* in particular, it endorsed the idea that property of an owner should be attached by a builders' lien but, as *Cenex* itself had held, the Committee offered the view that such liens should not have any special priority over other security interests. At page 113 of its Report, the Committee said, "... there was a justification for extending the lien on land and materials to severed minerals and to the equipment of the owner".

[44] In the course of its work, the Committee drafted language for a proposed Builders' Lien Act. Part of its efforts in this regard involved the development of wording designed to reverse the special priority status *Cenex* had given lienholders by virtue of the interpretation it had placed on

s. 12(2) of *The Mechanics' Lien Act*. More specifically, the Committee suggested a s. 20(2) for a Builders' Lien Act which would have read as follows, in relevant part:

> (2) Where services or materials are provided:
>
> (a) preparatory to;
>
> (b) in connection with; or
>
> (c) for an abandonment operation in connection with;
>
> the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the services or materials, the lien given by subsection (1) is also a lien on:
>
> (d) all the estates or interests of persons holding a real property interest in the mines and minerals, in addition to the owner, other than the fee simple estate, unless the person holding the fee simple estate has expressly requested the services or materials;
>
> (e) the mineral when severed and recovered from the land while it is in the hands of the owner, and to the proceeds thereof and to the amounts to be paid in lieu thereof to the owner by a person that operates the mine, oil well or gas well in accordance with an order or regulation made under *The Mineral Resources Act* or *The Oil and Gas Conservation Act*;
>
> (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines, mining claim or land, oil or gas well and the appurtenances thereto;
>
> and, in all other respects, this Act applies to the lien existing by virtue of this subsection.
>
> (Emphasis added)

In an explanatory note, the Committee said "[t]his subsection is amended to make it clear that the lien is imposed upon real property interests and is not intended to affect any pre-existing financing on the mineral or proceeds derived from the mineral".

[45] When the Bill that became *The Builders' Lien Act* was subsequently introduced in the Legislative Assembly, it did not contain the clarifying words "holding a real property interest" in what had emerged, through the drafting process, as the present s. 22(2). The Bill passed through the Assembly without debate because it was considered to be non-controversial. Hence, there is nothing in *Hansard* by way of ministerial explanation as to why the Committee's suggested wording had not been adopted. The only comment of any sort made about s. 22(2) in the Bill's journey through the Assembly was in the Standing Committee on Non-Controversial Bills where, with respect to s. 22, a Department of Justice official who had served on the Special Advisory Committee said, "With respect to section 22, there are no material changes" (Saskatchewan, Legislative Assembly, *Standing Committee on Non-Controversial Bills*, 20th

Leg, 4th Sess (18 June 1985) at 114). Nothing was said about *Cenex* or the *Cenex* interpretation of the wording found in s. 22(2).

[46] As noted, the position advanced by Cru Well and KNC Holdings is that the Legislature should be taken to have adopted *Cenex*'s interpretation of the wording now found in s. 22(2) of *The Builders' Lien Act*. This line of argument reflects the approach taken at common law. The view there was to the effect that, if statutory language was interpreted by the courts and then at some point re-enacted without changes, the Legislature was presumed to have adopted the judicial interpretation. See: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 716.

[47] The reality, however, is that the common law has been modified in this jurisdiction by s. 36(2) of *The Interpretation Act, 1995*, SS 1995, c I-11.2. It provides that re-enactments do not imply the adoption of judicial interpretations:

> (2) The re-enactment, revision, consolidation or amendment of a provision in an enactment does not imply an adoption of any judicial or other interpretation of the language used in the provision or of similar language.

[48] This is not to say that re-enactment against the background of judicial interpretation is not part of the context relevant to the interpretation of statutory language. But, s. 36(2) precludes the drawing of a straight and uninterrupted line from the judicial interpretation of statutory language to its meaning when or if that language is re-enacted.

[49] I am not persuaded that, on the basis of the thin and ambiguous legislative record relating to the enactment of s. 22(2), the Legislature should be taken to have endorsed *Cenex* and carried its interpretation of s. 12(2) of *The Mechanics' Lien Act* forward into *The Builders' Lien Act*. As explained above, it is not possible to reconcile the plain meaning of the words of s. 22(2) with the result in *Cenex*. As a consequence, in the absence of a very clear indication that the Legislature intended otherwise, s. 22(2) should be read as meaning what it says, *i.e.*, it should be read as clarifying the nature of the assets to which builders' liens attach, not as establishing priorities between builders' liens and other kinds of security.

[50] It follows that National Bank's appeal on this point must succeed and that the decision of the Chambers judge with respect to the priority of the Lienholders' claims must be set aside.

B. The FHI Working Interests

[51] National Bank also asks the Court to make findings about the priority of the Lienholders' security in relation to various working interests previously held by Fedirko Holdings Inc. (FHI) in certain oil and gas leases belonging to companies, including Coast Resources, that were put into receivership at the same time. This issue was not addressed by the Chambers judge. In order to deal with it, some further background is necessary.

[52] FHI held working interests under oil and gas leases owned by Coast Resources and other companies. It was indebted to one or more of the companies in the amount of approximately $1.2 million dollars as a result of joint venture billings. The FHI working interests were included in various offers to purchase the property being administered by the Receiver and the Receiver therefore required the working interests to accept the offers. As a result, FHI and the Receiver entered into an agreement whereby FHI assigned its working interests to the Receiver for the amount of FHI's indebtedness. The Liens had attached to the working interests before they were assigned to the Receiver.

[53] In its Second Report, the Receiver estimated the value of the FHI working interests as being between $90,000 and $113,000 and recommended a holdback of $90,000 pending the resolution of claims by National Bank and the Lienholders with respect to the working interests. It appears that no separate fund was established in respect of the FHI holdbacks. Rather, the Lienholders' claims in relation to those holdbacks were in effect folded into the Lien Fund in the sense that the Lien Fund was made large enough to satisfy the full extent of Coast Resources' liability to the Lienholders should the Liens be eventually proven to rank in priority to the security interests of National Bank.

[54] National Bank acknowledges, in its factum, that the Lienholders had a priority interest in the FHI working interests and that, in consequence, they have a priority claim to the Lien Fund in the amount of the value of those interests, *i.e.*, to the amount of $90,000. It suggests the $90,000 should be distributed as follows:

Lienholders	Amount	Adjustment	Distribution
Cru Well Servicing Ltd.	$192,591	$192,087	$41,014.63
Rounded Energy Services Ltd.	$13,847	$13,847	$2,956.67
Cal-Gas Inc.	$21,820	$21,820	$4,659.03

Baker Hughes Canada Company	$33,694	$33,694	$7,194.38
KNC Holdings Ltd.	$161,074	$160,056	$34,175.38
Total			$90,000.00

[55] The Lienholders took no exception to the particulars of this approach in either their facta or oral submissions. It follows that the Lienholders are entitled to share in the Lien Fund to the extent of $90,000 as *per* the above table.

[56] I should perhaps also add here that KNC Holdings, in a supplemental written submission nominally aimed at responding to some questions presented to the parties through the Registrar after the conclusion of oral argument, has raised a new argument concerning the FHI working interests. It suggests that the Receiver failed to properly or clearly value the working interests and that, relying on the approach taken in *Boomer Transport*, the Court should therefore find that the Receiver's shortcomings in this regard cannot prejudice the Lienholders. The result of this line of analysis, according to KNC Holdings, is that the Lienholders are entitled to priority claims in the full amount of the Lien Fund.

[57] The essence of KNC Holdings' argument is that the Receiver's work with respect to the valuation of the FHI working interests was inadequate because the Receiver did not include, in the sale agreement with Northern Blizzard, a specific breakdown indicating how much Northern Blizzard was paying for individual leases and, more particularly, how much Northern Blizzard was paying for the FHI working interests. In light of this, the Receiver undertook, after the fact, to estimate the value of the FHI working interests by way of a calculation that related oil production to particular land descriptions. KNC Holdings contends all of this was badly done and, seeking to invoke the approach taken in *Boomer Transport*, it says the Lienholders should therefore be entitled to realize against the Lien Fund to the full extent of their claims.

[58] I am not prepared to give effect to KNC Holdings' argument for three reasons. First, it is new. Not only was it not presented to the Chambers judge or in its factum, it was raised only *after* oral argument by way of a supplementary written submission. Even then, it was included in an answer to questions posed by the Court that were not directed to issues concerning the FHI working interests. Second, I doubt that KNC Holdings' argument can be dealt with properly on the basis of the record before the Court. Receivers are not held to a standard of perfection. Rather, they must act with reasonable prudence. The evidence as to the circumstances of the sale

to Northern Blizzard is so shallow that it cannot support a proper analysis of the question of whether the Receiver somehow acted inappropriately by proceeding as it did. Third, I have, at a minimum, some questions about the approach taken in *Boomer Transport*, *i.e.*, about the idea that a failure by a receiver to conduct a proper valuation or inventory should automatically redound to the exclusive benefit of lienholders. This is a significant question of law and principle and it would be unwise to tackle it in the context of a submission essentially made after the door was closed on the appeal.

C. The "Trust" Argument

[59] Finally, I note that Cru Well Servicing Ltd. also sought to raise a wholly new argument in this Court. It is based on the idea that the Lienholders have a claim on the Lien Fund grounded in the trust provisions found in s. 6 of *The Builders' Lien Act*. I am not prepared to deal with that submission either.

[60] The receivership proceedings involving Coast Resources have been ongoing since early 2014. Cru Well had full knowledge of those proceedings and participated in them. As a result, it had ample opportunity to advance a trust claim in addition to its lien claim. For whatever reason, it did not do so. In my view, National Bank quite properly objects to Cru Well attempting to bring forward this fresh line of attack at such a late stage of the game.

[61] Moreover, I agree with National Bank that, in effect, Cru Well's trust argument amounts to a collateral attack on the "Order Respecting Retention of Funds, Additional Distribution and Holdbacks" made by Strekaf J. in July of 2015. As noted above, that Order directed the retention by the Receiver of $490,388 "on account of the amount of the *lien claims* by the Claimants Under the Remaining Liens" (emphasis added). It made no provision for Cru Well or anyone else to advance trust-based claims against the Lien Fund. If Cru Well had wanted that opportunity, it should have appealed the Order.

VI. CONCLUSION

[62] I conclude that National Bank's appeal must be allowed. The Lienholders are entitled to $90,000 from the Lien Fund. That amount is to be paid out as described in paragraph 54, above.

[63] National Bank is entitled to costs in the usual way.

"Richards C.J.S."
Richards C.J.S.

I concur.

"Ottenbreit J.A."
Ottenbreit J.A.

I concur.

"Caldwell J.A."
Caldwell J.A.

I concur.

"Whitmore J.A."
Whitmore J.A.

I concur.

"Ryan-Froslie J.A."
Ryan-Froslie J.A.