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2001-05630

COURT

COURT OF QUEEN'S BENCH OF ALBERTA IN  
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DOMINION DIAMOND MINES ULC,  
DOMINION DIAMOND DELAWARE COMPANY LLC,  
DOMINION DIAMOND CANADA ULC, WASHINGTON  
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND  
HOLDINGS, LLC, DOMINION FINCO INC. and DOMINION  
DIAMOND MARKETING CORPORATION**

DOCUMENT

**BENCH BRIEF OF THE APPLICANTS  
(Assignment Order)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
3500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /  
Claire Hildebrand / Morgan Crilly  
Telephone No.: 604.631.3315 / 604.631.4218 /  
604.631.3331 / 403.260.9657  
Email: [peter.rubin@blakes.com](mailto:peter.rubin@blakes.com) /  
[peter.bychawski@blakes.com](mailto:peter.bychawski@blakes.com) /  
[claire.hildebrand@blakes.com](mailto:claire.hildebrand@blakes.com) /  
[morgan.crilly@blakes.com](mailto:morgan.crilly@blakes.com)

Fax No.: 604.631.3309

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## PART I - OVERVIEW

1. This Bench Brief is submitted on behalf of the Applicants in support of an application pursuant to section 11.3 of the *Companies' Creditors Arrangement Act* (Canada) for an order (the "**Assignment Order**"), among other things, assigning to Arctic Canadian Diamond Company Ltd. (the "**Purchaser**") certain Restricted Assigned Contracts (as defined below).
2. The relief sought by the Applicants is contemplated by and required to close the sale transaction approved by this Court's Approval and Vesting Order granted on December 11, 2020 (the "**Approval and Vesting Order**").
3. The Approval and Vesting Order approved, among other things:
  - (a) the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement (the "**Purchase Agreement**") dated as of December 6, 2020, by and among, Dominion Diamond Mines ULC, Dominion Diamond Holdings, LLC, Dominion Diamond Delaware Company ULC, Dominion Diamond Marketing Corporation, Dominion Diamond Canada ULC, and Dominion Finco Inc. (collectively, the "**Dominion Vendors**") and DDJ Capital Management, LLC and Brigade Capital Management, LP (together, the "**Contracting Purchasers**"); and
  - (b) vesting in one or more entities duly designated by the Contracting Purchasers (the "**Designated Purchaser**") all of the Dominion Vendors' right, title, and interest in and to the Acquired Assets (as defined in the Approval and Vesting Order), free and clear of all Encumbrances other than certain Permitted Encumbrances specified in the Approval and Vesting Order.
4. The Purchaser is the Contracting Purchasers' Designated Purchaser for the purpose of the Purchase Agreement.<sup>1</sup>
5. The Acquired Assets (as defined in the Purchase Agreement) to be acquired by the Purchaser as part of the Transaction include certain Assigned Contracts and all rights thereunder.<sup>2</sup>

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<sup>1</sup> Affidavit of Kristal Kaye sworn January 20, 2021 ("**Kaye Affidavit**") at para. 8.

<sup>2</sup> Kaye Affidavit at para. 9.

6. Certain of the Assigned Contracts require the applicable counterparty's consent for the Assigned Contract to be assigned to the Purchaser (collectively, the "**Restricted Assigned Contracts**").<sup>3</sup>

7. The Dominion Vendors are required under the Purchase Agreement to use commercially reasonable efforts to obtain all consents required to assign the Restricted Assigned Contracts to the Purchaser.<sup>4</sup>

8. With respect to the transfer of the Dominion Vendors' right, title, and interest in and to a Restricted Assigned Contract to the Purchaser, the Purchase Agreement provides that where the required counterparty consent has not been obtained prior to the Closing Date (January 29, 2021):<sup>5</sup>

- (a) the Dominion Vendors' rights, benefits, and interests in, to and under such Restricted Assigned Contract may be conveyed to the Purchaser pursuant to an Assignment Order;
- (b) the Dominion Vendors will use commercially reasonable efforts to obtain an Assignment Order in respect of such Restricted Assigned Contract on or prior to the Closing Date;
- (c) if an Assignment Order is obtained in respect of a Restricted Assigned Contract, the Purchaser shall accept the assignment of such Restricted Assigned Contract on such terms; and
- (d) to the extent that any Cure Amount is payable with respect to any Restricted Assigned Contract, the Dominion Vendors shall (where such Restricted Assigned Contract is assigned pursuant to an Assignment Order) pay such Cure Amount in accordance with such Assignment Order.

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<sup>3</sup> Kaye Affidavit at para. 14.

<sup>4</sup> Kaye Affidavit at para. 10.

<sup>5</sup> Kaye Affidavit at para. 11.

9. The delivery of an Assignment Order (where applicable) by the Dominion Vendors to the Purchaser is a condition to the closing of the Transaction.<sup>6</sup>

10. Since the granting of the Approval and Vesting Order, the Dominion Vendors have used, and continue to use, commercially reasonable efforts to obtain all consents and approvals required in respect of the Restricted Assigned Contracts. However, despite such efforts, as of the date of this Application there remain Restricted Assigned Contracts for which required consents have not been obtained.<sup>7</sup>

11. To ensure that the Transaction closes by the anticipated Closing Date of January 29, 2021, the Dominion Vendors are seeking the Assignment Order pursuant to section 11.3 of the CCAA to order the assignment of the Restricted Assigned Contracts for which required counterparty consent has not been obtained.<sup>8</sup>

12. Any Assigned Contracts under the Purchase Agreement that do not require consent from the applicable counterparty or for which consent has been obtained is not the subject of the relief sought in this Application.<sup>9</sup>

## **PART II - FACTS**

### **A. BACKGROUND**

13. The material terms of the Transaction, and events leading up to this Court's approval of the Transaction and Purchase Agreement on December 11, 2020, are discussed in detail in the affidavit of Brendan Bell sworn in these proceedings on December 7, 2020.

14. The facts relating to the Restricted Assigned Contracts are set out in the Kaye Affidavit sworn on January 20, 2021.

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<sup>6</sup> Kaye Affidavit at para. 12.

<sup>7</sup> Kaye Affidavit at para. 13.

<sup>8</sup> Kaye Affidavit at para. 15.

<sup>9</sup> Kaye Affidavit at para. 16.

**B. THE RESTRICTED ASSIGNED CONTRACTS**

15. As of this Application, despite the Dominion Vendors' efforts, there remain approximately eight (8) Restricted Assigned Contracts for which the required consents have not been obtained as of the date of this Bench Brief:<sup>10</sup>

<b>Agreement Counterparty</b>	<b>Agreement Description</b>	<b>Agreement Date</b>	<b>Cure Amount</b>
<b>1012986 B.C. Ltd</b>	Core Zone Joint Venture Agreement	17 April 1997	\$0
<b>1012986 B.C. Ltd</b>	Reclamation Liability Agreement	28 October 2019	\$0
<b>1012986 B.C. Ltd</b>	Sales Representation Agreement	21 December 2002	\$0
<b>NorthwesTel</b>	Tariffed Services Agreement – Enterprise Performance	31 May 2017	\$0
<b>Livingston International Inc.</b>	Corporate Brokerage Agreement	1 January 2019	\$0
<b>Bradley Air Services Limited (D/B/A/ First Air)</b>	Agreement for the Supply of Aircraft Services	13 July 2015	\$0
<b>Caterpillar Financial Services</b>	Financing Lease Agreement	19 January 2018	\$0
<b>Somerset Equipment Finance Ltd</b>	Capital Lease Agreement	18 June 2018	\$0

16. As indicated in the above table, there are no Cure Amounts payable with respect to the Restricted Assigned Contracts subject to the proposed Assignment Order.<sup>11</sup>

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<sup>10</sup> Kaye Affidavit at para. 19.

<sup>11</sup> Kaye Affidavit at para. 20.

### PART III – ISSUE

17. The sole issue before this Court is whether the proposed assignment of the Restricted Assigned Contracts to the Purchaser meets the requirements of section 11.3 of the CCAA.

### PART IV - LAW AND ARGUMENT

#### A. THIS COURT HAS THE JURISDICTION TO ORDER THE ASSIGNMENT OF THE RESTRICTED ASSIGNED CONTRACTS

18. Section 11.3(1) of the CCAA authorizes the Court, on application by a debtor company and on notice to every party to an agreement and the monitor, to make an order assigning the rights and obligations of the company pursuant to an agreement to any person who is specified by the Court and who agrees to the assignment.

19. Section 11.3 of the CCAA has been described as an “extraordinary power” that “permits the court to require counterparties to an executory contract to accept future performance from somebody they never agreed to deal with.”<sup>12</sup>

20. Section 11.3, like bankruptcy and insolvency laws generally, is premised on the balancing of stakeholder interests. As noted by the Ontario Superior Court of Justice (Commercial List) in approving a section 11.3 application:<sup>13</sup>

Bankruptcy and insolvency always involves a balancing of a number of such competing interests. Creditors, contract counterparties - all of these have rights arising under agreements with the debtor that are either actually compromised or at risk of being compromised by insolvency. The CCAA and BIA regimes are predicated on facilitating a pragmatic approach to minimize the damage arising from insolvency more than they are concerned to advance the interests of one stakeholder over another.

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<sup>12</sup> *Dundee Oil and Gas Limited (Re)*, 2018 ONSC 3678, at para. 27 (“**Dundee**”), Applicants’ Book of Authorities at Tab 2.

<sup>13</sup> *Dundee*, at para. 29, Applicants’ Book of Authorities at Tab 2.

21. This Court has recently exercised its jurisdiction under section 11.3 to grant assignment orders substantially similar the Assignment Order in the CCAA proceedings of *Bellatrix Exploration Ltd.*<sup>14</sup> and *JMB Crushing Systems Inc.*<sup>15</sup>

22. Section 11.3(2) of the CCAA refers to specific agreements that may not be assigned pursuant to section 11.3, including: (a) an agreement entered on or after the day on which the CCAA proceedings in respect of the debtor company were commenced; (b) an eligible financial contract; or (c) a collective agreement. None of these types of agreements are at issue on this application.

23. Section 11.3(3) specifies that this Court is to consider three factors on an application for an assignment order: (a) whether the monitor approved the proposed assignment; (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and (c) whether it would be appropriate to assign the rights and obligations to that person.

24. Section 11.3(4) provides that this Court may not grant an assignment order under section 11.3(1) unless it is satisfied that all monetary defaults in relation to the agreement to be assigned, other than those arising by reason only of (a) the debtor company's insolvency, (b) the commencement of the debtor company's CCAA proceedings, or (c) the debtor company's failure to perform a non-monetary obligation, will be remedied on or before the day fixed by the Court pursuant to section 11.3(4) of the CCAA.

25. Section 11.3(5) requires an applicant seeking an assignment order to send a copy of an order granted under section 11.3(1) to every party to the agreement being assigned.

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<sup>14</sup> Assignment Order granted by the Honourable Justice Hollins dated May 22, 2020, ABQB Court File No. 1901-13767 ("**Bellatrix Assignment Order**"), Applicants' Book of Authorities at Tab 3.

<sup>15</sup> Assignment Order granted by the Honourable Justice K.M. Eidsvik dated October 16, 2020, ABQB Court File No. 2001-05482 (the "**JMB Assignment Order**"), Applicants' Book of Authorities at Tab 4.



**B. THE CRITERIA FOR THE ASSIGNMENT OF THE ASSIGNED CONTRACTS HAVE BEEN SATISFIED**

***i. Monitor's Approval***

26. The Monitor supported this Court's approval of the Transaction and is also supportive of the granting of the Assignment Order.<sup>16</sup>

***ii. Purchaser's Ability to Perform the Obligations***

27. The Contracting Purchasers will provide to the Purchaser new financing of US \$70 million to fund, among other things, the Purchaser's post-Closing operations at the Ekati Mine and general working capital and, as such, the Purchaser will have the financial ability to perform the obligations under the Restricted Assigned Contracts following the closing of the Transaction.<sup>17</sup>

***iii. Appropriateness to Assign the Assigned Contracts to the Purchaser***

28. The Purchase Agreement contemplates a going concern outcome for the Applicants' business, providing that the Purchaser will assume (subject to the terms of the Purchase Agreement) substantially all of the go-forward operating liabilities of the Dominion Vendors related to the Ekati Mine, including substantially all obligations (a) of the Dominion Vendors under Dominion's go-forward operational contracts and joint venture agreements; (b) to employees and unions (including obligations under Dominion's collective bargaining agreements and pension plan); (c) to Indigenous groups; and (d) to the Government of the Northwest Territories.<sup>18</sup>

29. It is the view of the Applicants that the Transaction, as approved by this Court, is in the best interests of Dominion's stakeholders generally, including but not limited to the interests of Northern communities, Northern Indigenous groups, employees, and contractors (and Northern-based employees and contractors in particular), the environment, and creditors.<sup>19</sup>

30. The Restricted Assigned Contracts form part of the Acquired Assets under the Transaction that was approved by this Court in the Approval and Vesting Order. The delivery of an Assignment Order (where applicable) by the Dominion Vendors to the Purchaser is a condition to the closing

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<sup>16</sup> Thirteenth Report of the Monitor dated January 25, 2021.

<sup>17</sup> Kaye Affidavit at para. 21.

<sup>18</sup> Kaye Affidavit at para. 5.

<sup>19</sup> Kaye Affidavit at para. 6.

of the Transaction. As such, the assignment of the Restricted Assigned Contracts to the Purchaser is required for the closing of the Transaction.<sup>20</sup>

31. Since the granting of the Approval and Vesting Order, the Dominion Vendors have used and continue to use commercially reasonable efforts to obtain all consents and approvals required in respect of the Assigned Contracts. The Dominion Vendors do not, however, control whether counterparties to the Assigned Contracts will consent to their assignment to the Purchaser or the timing of when such consent may be provided by each counterparty.<sup>21</sup>

32. The Applicants are accordingly requesting the proposed Assignment Order to facilitate completion of the Transaction for the benefit of the Applicants and their stakeholders generally by the Closing Date of January 29, 2021.<sup>22</sup>

33. None of the Restricted Assigned Contracts are (a) agreements that have been entered into after the commencement of these CCAA proceedings; (b) eligible financial contracts; or (c) collective agreements.<sup>23</sup>

34. All monetary defaults in respect of the Restricted Assigned Contracts, other than those arising by reason only of the insolvency of the Dominion Vendors, the initiation of these CCAA proceedings, or the failure to perform a non-monetary obligation under the Restricted Assigned Contracts, which in the circumstances are \$0, are required to be satisfied pursuant to the proposed Assignment Order.<sup>24</sup>

35. Each counterparty to the Restricted Assigned Contracts has been given notice of the Applicants' application for the Assignment Order.<sup>25</sup>

36. The Applicants are not presently aware of any objection by affected counterparties to the assignment of the Restricted Assigned Contracts to the Purchaser.

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<sup>20</sup> Kaye Affidavit at paras. 9, 12, and 29.

<sup>21</sup> Kaye Affidavit at para. 13.

<sup>22</sup> Kaye Affidavit at para. 15.

<sup>23</sup> Kaye Affidavit at para. 15.

<sup>24</sup> Proposed Assignment Order, para. 7.

<sup>25</sup> Affidavit of Kirbi Davis sworn January 25, 2021.

37. As noted in the Kaye Affidavit, 1012986 B.C. Ltd., ("**101 Corp.**"), an entity controlled by Mr. Stewart Blusson, who was involved in the original discovery of diamondiferous kimberlite at the site of the Ekati Mine,<sup>26</sup> and which presently holds an 11.1% participating interest in the "Core Zone" of the Ekati Mine's operations (which is the primary focus of mining operations),<sup>27</sup> had advised that it was objecting to the assignment of one of the three Restricted Assigned Contracts to which it is a counterparty.

38. The three Restricted Assigned Contracts to which 101 Corp. is a counterparty are:<sup>28</sup>

- (a) a Joint Venture Agreement – Core Zone Property dated April 17, 1997 (the "**Core Zone JVA**");
- (b) an Amended and Restated Reclamation Liability Agreement dated October 28, 2019 (the "**Reclamation Agreement**"), with respect to the parties' respective responsibilities for the Core Zone joint venture's liabilities, including reclamation liabilities, in proportion to each parties' participating interest; and
- (c) a Sales Representation Agreement dated December 21, 2002 (the "**Sales Agreement**"), pursuant to which Dominion Diamond Mines ULC acts as the Core Zone joint venture participants' exclusive sale agent for marketing diamonds produced from the Ekati Mine.

39. Collectively the Core Zone JVA, the Reclamation Agreement, and the Sales Agreement govern all aspects of the relationship between the Applicants and 101 Corp. with respect to the Ekati Mine.<sup>29</sup>

40. As noted in the Kaye Affidavit, 101 Corp. had advised that it was prepared to consent to the assignment of the Core Zone JVA and the Reclamation Agreement to the Purchaser but objected to the assignment of the Sales Agreement.<sup>30</sup> The Applicants presently understand that

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<sup>26</sup> Kaye Affidavit at para. 22.

<sup>27</sup> Kaye Affidavit at para. 23.

<sup>28</sup> Kaye Affidavit at para. 24.

<sup>29</sup> Kaye Affidavit at para. 26.

<sup>30</sup> Kaye Affidavit at para. 27.

101 Corp. is no longer objecting to the assignment of the Sales Agreement to the Purchaser together with the Core Zone JVA and Reclamation Agreement.

41. In any event, there is no legal basis for not assigning the Sales Agreement to the Purchaser pursuant to section 11.3 of the CCAA.

42. The Sales Agreement, like the related Core Zone JVA and the Reclamation Agreement, has been designated as an Essential Contract under the Purchase Agreement and as such is a Material Contract under the Purchase Agreement.<sup>31</sup>

43. The assignment of the Sales Agreement, like the Core Zone JVA, Reclamation Agreement, and the other Restricted Assigned Contracts, is a condition to the closing of the Transaction. The Purchaser, who will have the financial ability to perform the obligations under the Restricted Assigned Contracts following the closing of the Transaction, and who will be operating the Dominion Vendors' business as a going concern, is the appropriate assignee of the Sales Agreement, the Core Zone JVA, and the Reclamation Agreement as it is for the other Restricted Assigned Contracts.

**C. THE MECHANISM FOR ASSIGNMENT OF ADDITIONAL ASSIGNED CONTRACTS IS APPROPRIATE**

44. The Dominion Vendors have worked with the Purchaser to identify the Assigned Contracts included in Schedule A to the proposed Assignment Order. To the extent that there are any additional Restricted Assigned Contracts (the "**Additional Restricted Assigned Contracts**") with respect to which the Dominion Vendors and the Purchaser require relief under section 11.3 of the CCAA, the proposed Assignment Order provides for a mechanism to provide notice, receive any objections, assign any such Additional Restricted Assigned Contracts, and satisfy any applicable cure costs, in each case in accordance with the proposed Assignment Order and the CCAA.<sup>32</sup>

45. The treatment of Additional Restricted Assigned Contracts under the proposed Assignment Order, including the seven (7) day objection deadline to the proposed assignment, are consistent with the provisions of the Purchase Agreement approved by this Court relating to the treatment of Previously Omitted Contracts.<sup>33</sup>

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<sup>31</sup> Kaye Affidavit at para. 28.

<sup>32</sup> Proposed Assignment Order at paras. 12-16.

<sup>33</sup> Purchase Agreement, section 3.6(b).

46. The proposed mechanism in the Assignment Order is intended to provide the ability to assign Additional Restricted Assigned Contracts to the Purchaser without the requirement for an additional application before the Court, provided there has not been an objection to such assignment by the affected counterparty. Pursuant to the proposed Assignment Order, any such Additional Restricted Assigned Contracts would also be subject to the satisfaction of any applicable Cure Amount as required by Section 11.3 of the CCAA. Similar relief was previously granted by this Court in the CCAA proceedings of *Bellatrix Exploration Limited*<sup>34</sup> and *JMB Crushing Systems Inc.*<sup>35</sup>

#### **PART V - CONCLUSION**

47. For the reasons discussed above, the Applicants submit that the assignment of the Restricted Assigned Contracts (a) meets the statutory requirements of section 11.3 of the CCAA; (b) is required for the completion of the Transaction approved by this Court; and (c) is in the best interest of the Applicants and their stakeholders generally. For these reasons, the Applicants submit that the granting of the Assignment Order is appropriate in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January 2021.



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Peter L. Rubin/Peter Bychawski/Claire  
Hildebrand/Morgan Crilly  
Counsel to the Applicants

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<sup>34</sup> Bellatrix Assignment Order, Applicants' Book of Authorities at Tab 3.

<sup>35</sup> JMB Assignment Order, Applicants' Book of Authorities at Tab 4.

## TABLE OF AUTHORITIES

<b>Tab</b>	<b>Description</b>
1	<i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended
2	<i>Dundee Oil and Gas Limited (Re)</i> , 2018 ONSC 3678
3	Assignment Order granted by the Honourable Justice Hollins dated May 22, 2020, ABQB Court File No. 1901-13767
4	Assignment Order granted by the Honourable Justice K.M. Eidsvik dated October 16, 2020, ABQB Court File No. 2001-05482

**TAB 1**

Canada Federal Statutes  
Companies' Creditors Arrangement Act  
Part II — Jurisdiction of Courts (ss. 9-18.5)

R.S.C. 1985, c. C-36, s. 11.3

## S 11.3

### Currency

#### 11.3

##### 11.3(1) Assignment of agreements

On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

##### 11.3(2) Exceptions

Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement.

##### 11.3(3) Factors to be considered

In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

##### 11.3(4) Restriction

The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

##### 11.3(5) Copy of order

The applicant is to send a copy of the order to every party to the agreement.

#### Amendment History

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 29, s. 107; 2007, c. 36, ss. 65, 112(17)

#### Currency

Federal English Statutes reflect amendments current to December 10, 2020

Federal English Regulations are current to Gazette Vol. 154:25 (December 9, 2020)



**TAB 2**

**CITATION:** Dundee Oil and Gas Limited (Re), 2018 ONSC 3678  
**COURT FILE NO.:** CV-18-591908-00CL  
**DATE:** 20180613

**SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)**

**RE:** IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, C. C-36, AS AMENDED,  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DUNDEE OIL & GAS LIMITED

**BEFORE:** S.F. Dunphy J.

**COUNSEL:** *E. Patrick Shea and B. Arnold* for the Applicants

*Grant Moffat and Rachel Bengino*, for the Monitor FTI Consulting Canada Inc.

*J. Wallace* for purchaser Lagasco Inc.

*S. Kromkamp and B. McPherson* for HMQ in right of Ontario

*Aubrey E. Kauffman* for the National Bank of Canada

*M. P. Gottlieb* for Canadian Overseas Petroleum Limited

**HEARD at Toronto:** June 11, 2018

**REASONS FOR DECISION**

[1] Dundee Oil and Gas Limited brought an application, supported by the Monitor, seeking approval of a sale of substantially all of its assets before me on May 23, 2018. I approved the proposed sale subject to requiring further evidence regarding the requested assignment of executory contracts under s. 11.3 of the *Companies' Creditors Arrangement Act* on June 11, 2018.

[2] The matter came back before me on June 11, 2018 where, based upon the new evidence filed, I approved the transaction including the assignment of the executory contracts with reasons to follow. These are those reasons.

### **Background facts**

[3] Dundee entered into an Asset Purchase Agreement subject to court approval dated April 4, 2018. The sale was the result of a long process that began in August 2017 when Dundee was operating under the protection of the proposal provisions of the *Bankruptcy and Insolvency Act*. Those proceedings were continued under the CCAA on February 13, 2018.

[4] Dundee's assets consist primarily of a large number of petroleum and natural gas leases as well as associated equipment, gathering pipelines, etc. Many of the assets are in fact leased or are otherwise the subject of contractual arrangements between Dundee and the owner of the affected land. Accordingly, a significant aspect of the proposed sale transaction was a requirement that an assignment of the underlying contracts be accomplished by an order pursuant to s. 11.3 of the CCAA.

[5] On May 23, 2018 I indicated to the parties that I was satisfied with the necessity and advisability of ordering the requested relief and the process leading up to it save and except one aspect. In approving an assignment using the authority vested in me by s. 11.3 of the CCAA, I am required to inquire into a number of matters about which I found the record before me that day to be deficient. One landowner, Mr. Whittle, had made a formal objection and availed himself of the opportunity to express his concerns by telephone. He raised a number of objections to what he perceived to be concerns regarding the operational stability of the purchaser and their ability to see to eventual remediation obligations.

[6] During the course of the hearing, the Applicant indicated that the purchaser was prepared to proceed without an order compelling the assignment of agreements between Dundee and Mr. Whittle. The Applicant's position was that the form of agreements used in the case of Mr. Whittle's contracts at least required no consent for a valid assignment. The Purchaser was prepared to run the risk of that assessment proving accurate in Mr. Whittle's case.

[7] In the result, I adjourned the hearing until June 11, 2018 in order to grant the applicant additional time to address the concerns raised by me regarding s. 11.3 of the CCAA. I indicated that there were no other issues.

[8] The specific concerns raised by me were these:

- a. The operation of a natural resource extraction business such as an oil and gas business is one that entails a degree of environmental risk that, in the event of insolvency of the lessee/contract holder may visit the remediation or well-capping costs upon the landowner, a factor that makes the capacity and ability of the proposed assignee to manage those

responsibilities a matter of concern when assessing the suitability of the proposed assignee; and

- b. The affidavit material at the motion provided no solid evidence of the expected financial stability or durability of the purchaser post-closing, a rather critical factor to assess in considering the suitability of a proposed assignee.

[9] Three things happened during the intervening delay, two planned one unexpected.

[10] Firstly, the Monitor arranged to notify the landowners of the delay. No further objections were received from that front. Mr. Whittle maintained his objection despite the Applicant's concession that it was not seeking to compel assignment of his agreements.

[11] Secondly, the Applicant filed a Supplementary Affidavit of Jane Lowrie, President and Chief Executive Officer of Lagasco Inc, the purchaser sworn June 5, 2018. This affidavit provided further details regarding the financial status of the purchaser.

[12] Lastly, one of the "runner-up" bidders (Canadian Overseas Petroleum Limited) sent a letter to the Monitor on June 7, 2018 which letter COPL decided to send directly to the court on June 8, 2018 when the Monitor did not agree to bring the letter to my attention directly.

[13] This intervention generated a flurry of reaction or overreaction, depending upon your point of view. It was, in the final analysis, a tempest in a teacup.

[14] The Applicant and National Bank (who strongly supports the sale and, despite the sale, will end up with a significant shortfall on its secured claim) were understandably taken aback by a last-second threat to a transaction they have worked very hard to bring to the threshold of completion and that, from their perspective at least, is clearly the best option available. They asked me not to consider the submissions of a mere "bitter bidder".

[15] They needn't have had so little faith in the editorial judgment of the court. COPL had experienced counsel who was well aware of the stiff currents flowing against any attempt of an unsuccessful bidder to gain standing to upset a transaction. There was no request for standing. The principal message of the communication was an opportunistic one perhaps, but not unfair. In light of the issues raised on May 23, 2018, COPL wanted to remind the Monitor and eventually the court that it remains ready willing and able to move forward with a transaction should Lagasco drop the ball. Of course, COPL did not resist ensuring that a few helpful bits of analysis/argument that might serve to persuade the court to think about moving in that direction also managed

to find their way into the communication. It was not an attempt to introduce fresh evidence through the back door.

[16] As I remarked during the hearing, I did not fall off the turnip truck yesterday. The motivation behind the communication was not cloaked nor was its simple object.

[17] A few take-away admonitions from this:

- a. Communications directly with the judge are to be discouraged generally;
- b. Where necessary, such communications should be copied to the service list generally absent some very compelling reason not to do so; but

[18] I would have preferred that this course of conduct had been followed here. The Monitor was copied and the integrity of the process was in no way compromised.

[19] The substantive question before me was whether I ought to approve the provisions of the requested approval and vesting order that would compel the assignment of certain executory contracts under s. 11.3 of the CCAA.

[20] Section 11.3 of the CCAA authorizes the court to assign “the rights and obligations of the company” to an agreement to any person specified in the court order that is willing to accept the assignment. Post-filing contracts, eligible financial contracts and collective agreements may not be assigned in this fashion.

[21] There was no issue in this case with the technical aspects of the case. Proper notice was given. No prohibited categories of contracts were proposed to be assigned. The terms of the proposed assignment were designed to ensure the payment of cure costs would be made. A procedure for resolving any disputes about cure costs was designed to avoid compromising the rights of affected parties.

[22] The issue to be decided was whether this was an appropriate case for me to exercise my jurisdiction to make the order under s. 11.3. Section 11.3 does not provide an exhaustive code of the factors for me to consider. Rather, s. 11.3(3) lists three factors that, among others, I am to consider:

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

[23] In the present case, the Monitor has approved the proposed assignments and has made detailed and thoughtful submissions to me outlining the basis of that approval. The concerns expressed by me on May 23, 2018 did not fall on deaf ears.

[24] The purchaser Lagasco is largely a shell company for the time being. It will own the business being purchased. The evidence before me indicates that substantially all of the purchase price is to be debt financed – partly through financing secured by the equipment to be purchased and partly through a credit facility. On day one there will be little to no equity in the purchaser and the significant leverage will have to be serviced entirely from cash flow.

[25] Taken in isolation, this factor raised grave concerns in my mind as to whether the assignee would be able to perform the obligations or whether, in light of the potential fragility of the assignee, it would be appropriate to compel the contract counterparties to accept the assignee.

[26] I still have those concerns. I think it helpful that I should elaborate somewhat on what the concerns are and how I have resolved them. The Monitor's dispassionate and frank analysis of the issues has been very helpful in this process.

[27] Section 11.3 of the CCAA is an extraordinary power. It permits the court to require counterparties to an executory contract to accept future performance from somebody they never agreed to deal with. But for s. 11.3 of the CCAA, a counterparty in the unfortunate position of having a bankrupt or insolvent counterpart might at least console themselves with the thought of soon recovering their freedom to deal with the subject-matter of the contract. Unlike creditors, the counterparty subjected to a non-consensual assignment will be required to deal with the credit-risk of an assignee post-insolvency and potentially for a long time. Creditors, on the other hand, will generally be in a position to take their lumps and turn the page.

[28] Of course, insolvency is not always a catastrophe for such counterparties. Sometimes it is a godsend. Assets locked into long-term contracts at advantageous prices may be freed up to allow the counterparty to re-price to current market. In such cases, the creditors are at risk of seeing the debtor lose critical assets while the counterparty receives an unexpected windfall. The business and value of the debtor's assets may evaporate in the process – be it from one large contract lost or many smaller ones.

[29] Bankruptcy and insolvency always involves a balancing of a number of such competing interests. Creditors, contract counterparties - all of these have rights arising under agreements with the debtor that are either actually compromised or at risk of being compromised by insolvency. The CCAA and BIA regimes are predicated on facilitating a pragmatic approach to minimize the damage arising from insolvency more than they are concerned to advance the interests of one stakeholder over another.

[30] It seems to me that a fundamental condition precedent to requiring a contract counterpart to be locked into an involuntary assignment post-insolvency is that the court sanctioning the assignment is able to conclude that the assignee will, in the words of s. 11.3(3)(b) of the CCAA, “be able to perform the obligations”. This does not imply iron-clad guarantees. It does not give license to the counterparty to demand the receipt of financial covenants or assurances that it did not previously enjoy under the contract it originally negotiated with the debtor.

[31] A proposed purchaser starting life with close to 100% leverage gives this judge a considerable degree of heartburn when it comes to answering the question of whether the assignee is a person who will be able to perform the obligations. That concern is amplified when one adds the prospect of landowners being made liable for environmental remediation caused by lessees and others on their land.

[32] So, if that is my concern, by what process have I allayed it?

[33] Firstly, the financial information before me is that cash flow from these operations has been quite solid. Dundee’s insolvency has not been a result of operating losses.

[34] Secondly, while any projection of future business results will always be subject to a number of contingencies and imponderables outside of the control of the parties, the forecast reserves prepared by Deloitte in this case have been prepared under NI 51.01 which means at the very least that they have been prepared to reviewable standards of reasonableness. The forecasts, such as they are, justify the inference that there is a *reasonable basis* to conclude that the cash flow from the acquired assets will sustain operations and the acquisition debt. It will be a while before an equity cushion will be built though.

[35] Thirdly, the purchaser has a plan to reduce G&A and operating costs to provide a further margin of safety and a level of institutional experience to make such a plan credible.

[36] Fourthly, the environmental risk is mitigated somewhat by the fact that Ontario’s regulatory model operates on a “pay as you play” basis requiring the building of reserves to handle capping costs as wells move past their expected lives. Dundee has had no trouble in the past funding capping expenses from operations and these expenses are accounted for in the cash flow forecasts used.

[37] Finally, the MNR has agreed to a voluntary assignment of its leases (off-shore) while no on-shore landowners have seen fit to object to the proposed assignments despite quite adequate notice being given.

[38] I must also be mindful that contract counterparties are not expected to *improve* their situation by reason of an assignment. A counterpart to an executory contract that is subject to involuntary assignment under s. 11.3 of the CCAA has managed to find

itself contractually bound to an insolvent debtor notwithstanding whatever contractual safeguards were negotiated to avoid that outcome. The debtor is now insolvent. The desire to ensure the assignee is a reasonably fit and proper one should not morph into an exercise in patching up contracts previously negotiated by requiring financial covenants and safeguards never before required.

[39] In all the circumstances, I was led to the conclusion that it would be appropriate to assign Dundee's rights and obligations to the purchaser and that the purchaser is someone who will be able to perform the obligations assigned. I have carefully reviewed the proposed order and am satisfied that the method of ascertaining cure costs and, if needs be, resolving disputes arising about the quantum satisfies the requirements of s. 11.3(4) and s. 11.3(3)(c). There is a fair process to resolve disputes about quantum should they arise.

[40] In the result, I approved the transaction and the form of Approval and Vesting Order presented to me subject to minor amendments made at the hearing.

---

S.F. Dunphy J.

**Date:** June 13, 2018



**TAB 3**

Clerk's Stamp:



COURT FILE NUMBER

1901-13767

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

52138

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

AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
BELLATRIX EXPLORATION LTD.

APPLICANT

BELLATRIX EXPLORATION LTD.

DOCUMENT

ASSIGNMENT ORDER

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**Goodmans LLP**  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Attn: Robert J. Chadwick / Caroline Descours  
Tel: 416.597.4285 / 416.597.6275  
Fax: 416.979.1234  
Email: [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca) /  
[cdescours@goodmans.ca](mailto:cdescours@goodmans.ca)

**DATE ON WHICH ORDER  
WAS PRONOUNCED:**

May 22, 2020

**LOCATION WHERE ORDER  
WAS PRONOUNCED:**

Calgary, Alberta

**NAME OF JUSTICE WHO  
MADE THIS ORDER:**

The Honourable Justice Hollins

**UPON THE APPLICATION** by Bellatrix Exploration Ltd. (the “**Applicant**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order (this “**Order**”), among other things, assigning the rights and obligations of the Applicant under and to the Assigned Contracts (as defined below) and any Additional Assigned Contracts (as defined below) to Winslow Resources Inc. (the “**Purchaser**”);

**AND UPON HAVING READ** the Application, the Affidavit of Shane K. Abel sworn May 15, 2020 (the “**Abel Affidavit**”), the Affidavit of Service of Andrew Harmes sworn May 19, 2020, and the seventh report of PricewaterhouseCoopers Inc. in its capacity as Court-appointed monitor of the Applicant (the “**Monitor**”), each filed; **AND UPON HEARING** the submissions of counsel for the Applicant, the Monitor, the Interim Lenders (as defined in the Abel Affidavit), the First Lien Agent and the First Lien Lenders (each as defined in the Abel Affidavit), and such other parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this Application for this Order and supporting materials is hereby declared to be good and sufficient, 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.

**CAPITALIZED TERMS**

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in the Abel Affidavit.

**ASSIGNMENT OF ASSIGNED CONTRACTS**

3. Upon the delivery by the Monitor to the Applicant and the Purchaser of the Monitor’s Certificate (as defined in the Approval and Vesting Order of this Court dated May 8, 2020 (the “**Approval and Vesting Order**”)), all of the rights and obligations of the Applicant under and to the Miscellaneous Interests (as defined in the Purchase Agreement) listed in

Schedule “A” hereto (collectively, the “**Assigned Contracts**”) shall be assigned, conveyed and transferred to, and assumed by, the Purchaser pursuant to section 11.3 of the CCAA.

4. The assignment of the Assigned Contracts is hereby declared valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment and transfer of the Assigned Contracts shall be subject to the provisions of the Approval and Vesting Order directing that the Applicant’s rights, title and interests in the Purchased Assets shall vest absolutely in the Purchaser free and clear of all Encumbrances (as defined in the Approval and Vesting Order) other than the Permitted Encumbrances (as defined in the Approval and Vesting Order) in accordance with the provisions of the Approval and Vesting Order.
6. No counterparty under any Assigned Contract, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Assigned Contracts hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy under any Assigned Contract against the Purchaser relating to:
  - (a) the Applicant having sought or obtained relief under the CCAA;
  - (b) the insolvency of the Applicant; or
  - (c) any failure by the Applicant to perform a non-monetary obligation under any Assigned Contract;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the Closing (as defined in the Purchase Agreement) under the Assigned Contracts other than in respect of items (a) – (b), above.

## CURE COSTS

7. All monetary defaults in relation to the Assigned Contracts existing prior to the Closing, if any, other than those arising by reason only of the insolvency of the Applicant, the commencement of these CCAA proceedings or the failure to perform a non-monetary obligation under any Assigned Contract, shall be remedied as follows:

- (a) the portion of monetary defaults in relation to an Assigned Contract relating to the period prior to the commencement of these CCAA proceedings (the “**Pre-Filing Cure Costs**”), if any, shall be paid by the Purchaser to the applicable counterparty on Closing (or to the Monitor in trust on Closing for distribution to the applicable counterparty as soon as practicable thereafter);
- (b) the portion of monetary defaults in relation to an Assigned Contract relating to the period from and after the commencement of these CCAA proceedings up to but excluding the Closing Date, other than the Purchaser Post-Filing Cure Costs (as defined below) (the “**Bellatrix Post-Filing Cure Costs**”), if any, shall be paid by or on behalf of the Applicant to the applicable counterparty within four (4) months following the Closing or such later date as may be agreed to by the Applicant, the Monitor and the applicable counterparty; and
- (c) the portion of monetary defaults in relation to an Assigned Contract relating to the period from and after the commencement of these CCAA proceedings up to but excluding the Closing Date that constitute Assumed Liabilities under Section 3.1(c) of the Purchase Agreement (the “**Purchaser Post-Filing Cure Costs**” and collectively with the Pre-Filing Cure Costs and the Bellatrix Post-Filing Cure Costs, the “**Cure Costs**”), if any, shall be paid by the Purchaser to the applicable counterparty within four (4) months following the Closing or such later date as may be agreed to by the Purchaser and the applicable counterparty,

and all payments of Cure Costs hereunder shall be in accordance with the Purchase Agreement.

## **ADDITIONAL ASSIGNED CONTRACTS**

8. Following the date of this Order, including, for greater certainty, following the Closing, the Applicant is authorized to provide to the counterparty or counterparties to any additional Miscellaneous Interests not listed on Schedule "A" hereto which is to be assigned to the Purchaser pursuant to the Purchase Agreement and in respect of which counterparty consent is required thereunder but not obtained (each an "**Additional Assigned Contract**") a notice of the assignment to and assumption by the Purchaser of such Additional Assigned Contract (each an "**Additional Assignment Notice**").
9. Any counterparty to an Additional Assigned Contract who receives an Additional Assignment Notice shall have seven (7) Business Days from the date of such Additional Assignment Notice (the "**Objection Deadline**") to provide notice to the Monitor and the Applicant of any objection it has to such assignment to and assumption by the Purchaser of the applicable Additional Assigned Contract.
10. If the Monitor and the Applicant do not receive any notice of objection to the assignment to and assumption by the Purchaser of an Additional Assigned Contract by the Objection Deadline, the Applicant shall be authorized to assign such Additional Assigned Contract to the Purchaser subject to paragraphs 3 to 7, inclusive, of this Order, which shall apply *mutatis mutandis* to the assignment and assumption of any Additional Assigned Contracts without any further Court order.
11. The applicable date of assignment and assumption of any Additional Assigned Contracts shall be the later of the date of service of the Additional Assignment Notice or delivery of the Monitor's Certificate.
12. If notice of an objection to the assignment to and assumption by the Purchaser of an Additional Assigned Contract is received by the Monitor and Applicant from the counterparty to such Additional Assigned Contract by the Objection Deadline, the Applicant is authorized to schedule an application with this Court for the resolution of such objection.

## MISCELLANEOUS MATTERS

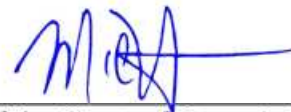
13. For greater certainty and without limiting the effectiveness of paragraph 16 of the Approval and Vesting Order, notwithstanding:
- (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “**BIA**”), in respect of the Applicant, and any bankruptcy order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of the Applicant; and
  - (d) the provisions of any federal or provincial statute:

the assignment of the Assigned Contracts, and any Additional Assigned Contracts, to the Purchaser in accordance with this Order and the Purchase Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. Notwithstanding any other provisions of this Order, the Applicant shall continue to be entitled to exercise all of its rights to set-off (or any other contractual rights) and apply any and all post-filing amounts which the Applicant owes or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the Applicant.
15. The Applicant and the Monitor shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary, to effect the transfer of the Assigned Contracts and any Additional Assigned Contracts (including any transfer of title registrations in respect of such Assigned Contracts and any Additional Assigned

Contracts), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

16. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
17. Service of this Order shall be deemed good and sufficient by: (a) serving this Order upon those interested parties attending or represented at the within Application, and (b) posting a copy of this Order on the Monitor's website at: <http://www.pwc.com/ca/Bellatrix>, and service of this Order on any other person is hereby dispensed with.
18. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



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Justice of the Court of Queen's Bench of  
Alberta



**SCHEDULE A**

**ASSIGNED CONTRACTS**

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
1.	ALTAGAS PROCESSING PARTNERSHIP	ALTAGAS TIE-IN AGREEMENT (ALDER FLATS AREA)	\$0
2.	BACCALIEU ENERGY INC.	CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	\$26.33
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
3.	BONAVISTA ENERGY CORPORATION	WILLESDEN GREEN CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	\$252,433.19
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
		WESTEROSE AREA FACILITIES GAS HANDLING AGREEMENT	
		TIE IN OF 100/13-08-044-06W5 (PROD FAC) TO THE 11-17-44-0W5 (TRUE FACILITIES)	
4.	BONTERRA ENERGY CORP.	PEMBALTA NO. 2 10-15-47-7W5M GAS FACILITIES GAS HANDLING AGREEMENT	\$23,877.73
		BAPTISTE AREA GAS HANDLING AGREEMENT	
		BAPTISTE AREA TIE-IN AGREEMENT (03-36-043-09W5M BATTERY)	
5.	CABOT ENERGY INC.	GAS HANDLING AGREEMENT	\$0
6.	CANADIAN NATURAL RESOURCES LIMITED, CANADIAN NATURAL RESOURCES NORTHERN ALBERTA PARTNERSHIP	CLARESHOLM AREA GAS HANDLING AGREEMENT	\$267,128.63
		FERRIER NORTH SOLUTION GAS HANDLING AGREEMENT	
		WILLESDEN GREEN TRANSMISSION LINE GAS HANDLING AGREEMENT	
		EFFLUENT PROCESSING AGREEMENT - FROG LAKE AREA	
		SLAWA AREA GAS HANDLING AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
		FROG LAKE AREA GAS HANDLING AGREEMENT	
		WESTLOCK AREA GAS HANDLING AGREEMENT	
		ALAMEDA AREA EMULSION AND WATER HANDLING AGREEMENT	
		GALLOWAY GAS TRANSPORTATION AND PROCESSING AGREEMENT	
7.	CANLIN RESOURCES PARTNERSHIP, CANLIN ROYALTY PROPRERTIES PARTNERSHIP	FERRIER GAS PLANT GAS TRANSPORTATION AND PROCESSING AGREEMENT	\$28,457.22
		WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	
		DRAFT FERRIER INTERRUPTIBLE GAS HANDLING AGREEMENT	
		BURSTALL / SCHULER AREA GAS HANDLING AGREEMENT	
8.	CENOVUS ENERGY INC.	CONTRACT WELLS/FACILITIES OPERATING AGREEMENT (FERRIER AREA)	\$5,477.93
		O'CHIESE-SAND CREEK GATHERING SYSTEM GAS HANDLING AGREEMENT	
		FERRIER AREA GAS HANDLING AGREEMENT	
		SAND CREEK AREA NGL TRANSPORTATION AGREEMENT	
		HOMEGLLEN / RIMBEY AREA GAS HANDLING AGREEMENT	
		CONTRACT WELLS/FACILITIES OPERATING AGREEMENT (ALDER FLATS AREA)	
		CARNWOOD AREA RECEIPT POINT ADMINISTRATION AGREEMENT	
		ALDER FLATS 10-09-045-08 W5M GAS PLANT AND GATHERING SYSTEM GHA	

	Counterparty(ies)	Agreement	Pre-Filing Cure Costs
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
		N.G.L. TRANSPORTATION AGREEMENT ALDER N.G.L. PIPELINE	
		ALDER FLATS AND CARNWOOD AREA GAS HANDLING AGREEMENT (RECEIPT POINT)	
		FERRIER AREA GAS HANDLING AGREEMENT	
		SAND CREEK AND LODGEPOLE AREA GAS HANDLING AGREEMENT	
		GAS GATHERING AND PROCESSING AGMT - LODGEPOLE GATHERING SYSTEM & PLANT	
		WESTEROSE SOUTH AREA GAS HANDLING AGREEMENT	
		ALDER FLATS AREA GAS HANDLING AGREEMENT	
		CONTRACT WELLS/FACILITIES OPERATING AGREEMENT (SAND CREEK AREA)	
		CONTRACT WELLS/FACILITIES OPERATING AGREEMENT (SAND CREEK AREA)	
		WILLESDEN GREEN AREA RECEIPT POINT ADMINISTRATION AGREEMENT	
		BAPTISTE 06-21-043-09W5M FACILITY GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
		BAPTISTE 06-21-043-09W5M FACILITY EMULSION AND WATER HANDLING AGREEMENT	
		TIE IN AGREEMENT (045-09W5M WELLS)	
		ALDER FLATS AREA RECEIPT POINT ADMINISTRATION AGREEMENT	

	Counterparty(ies)	Agreement	Pre-Filing Cure Costs
		WESTEROSE LEDUC (D-3) UNIT 04-03-046-28W4M FACILITY EMULSION & WATER HAND	
		ALDERFLATS AREA RECEIPT POINT ADMINISTRATION AGREEMENT	
		WILLESDEN GREEN AREA TIE-IN AGREEMENT	
		FERRIER AREA GAS HANDLING AGREEMENT	
		ALDERFLATS AREA GAS HANDLING AGREEMENT	
		HOMEGLEN / RIMBEY LEDUC UNIT #1 GAS HANDLING AGREEMENT	
		PROPANE PLUS (C3+) SALE AT THE LODGEPOLE GAS PLANT (RELATED TO JS00918)	
		PROPANE PLUS (C3+) SALE AT THE LODGEPOLE GAS PLANT (RELATED TO JS00946)	
		ALDERFLATS AREA RECEIPT POINT ADMINISTRATION AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
9.	CONOCOPHILLIPS CANADA (BRC) PARTNERSHIP	TIE IN AGREEMENT 04-31-052-16W5M	\$73,403.05
10.	ENERPLUS CORPORATION	FERRIER AREA GAS HANDLING AGREEMENT	\$90.87
		WILLESDEN NORTH GAS HANDLING AGREEMENT	
		WILLESDEN GREEN 04-29-042-08 W5M FACILITY GAS HANDLING AGREEMENT	
		WILLESDEN GREEN 04-29-042-08 W5M BATTERY EMULSION AND WATER HANDLING AGT	
		GAS GATHERING AGREEMENT O'CHIESE GATHERING SYSTEM	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
11.	HARVEST OPERATIONS CORP., Harvest Operations Corp. (formerly HOC ENERGY CORP., formerly HUNT ENERGY)	WEST ROSE CREEK GAS GATHERING SYSTEM GAS HANDLING AGREEMENT	\$55,975.42
		TIE IN AND ENCROACHMENT AGREEMENT 04-17-053-15W5M	
12.	HIGH ENERGY ULC	WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	\$0
13.	HUSKY LIMITED, HUSKY OIL OPERATIONS LTD.	WILDMERE COMPRESSOR STATION LOCATED AT 08-02-050-07W4	\$699.69
		TIE IN AND ENCROACHMENT AGREEMENT 01-28-052-17W5M	
14.	INPLAY OIL CORP.	WILLESDEN GREEN AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	\$0
		WILLESDEN GREEN 04-29-042-08W5M OIL BATTERY WELL EFFLUENT AND WATER DISP	
		WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	
15.	INTERWEST PETROLEUMS LTD.	WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	\$20,205.39
		FERRIER AREA GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
16.	JAYHAWK RESOURCES LTD.	JAYHAWK MINNEHIK GAS HANDLING AGREEMENT	\$22,712.61
17.	KEYERA PARTNERSHIP	NORDEGG AREA GAS HANDLING AGREEMENT	\$0
		BRAZEAU RIVER AREA GAS HANDLING AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
		RIMBEY GAS PLANT CO2 EXTRACTION LETTER AGREEMENT	
		WEST PEMBINA AREA GAS HANDLING AGREEMENT	
		MINNEHIK BUCK LAKE (IT) GAS HANDLING AGREEMENT	
		STRACHAN AREA GAS HANDLING AGREEMENT	
		MIDSTREAM SOLUTION PROPOSAL TO BELLATRIX (TOP PROPOSAL)	
		DRAFT RIMBEY AREA GAS HANDLING AGREEMENT	
18.	LONG RUN EXPLORATION LTD.	SADDLE LAKE AREA TIE-IN AGREEMENT (00/06-02-058-13W4/00, 00/04-33-057-13W4/03)	\$516.27
		SADDLE LAKE AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		SADDLE LAKE AREA GAS HANDLING AGREEMENT	
19.	LYNX ENERGY ULC	TWINING GAS HANDLING AGREEMENT	\$9,942.36
20.	OBSIDIAN ENERGY LTD., OBSIDIAN ENERGY PARTNERSHIP	WILLESDEN GREEN 14-1-42-7W5M (FARAWAY) GAS FACILITIES GAS HANDLING AGMT	\$313,016.83
		WILLESDEN GREEN AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
		WIL GREEN 13-27-42-8W5M (CRIMSON LAKE) GAS FACILITIES GAS HANDLING AGMT	
		CONTRACT WELLS AND FACILITIES OPERATING AGREEMENT (WILLESDEN GREEN AREA)	
		WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
21.	PEYTO EXPLORATION & DEVELOPMENT CORP.	SUNDANCE OLDMAN NORTH GAS PLANT GAS TRANSPORTATION & PROCESSING AGMT	\$6,976.64
22.	PINE CLIFF ENERGY LTD.	THREE HILLS PLANT GAS PROCESSING AGREEMENT	\$36,839.27
		TROCHU AREA GAS HANDLING AGREEMENT	
		HUXLEY NORTH GAS HANDLING AGREEMENT	
		HUXLEY SOUTH GAS HANDLING AGREEMENT	
		SOUTH HUXLEY A06-17-034-24W4 GAS FACILITY GAS HANDLING AGREEMENT	
23.	RIDGEBACK RESOURCES INC.	BRAZEAU AREA GAS HANDLING AGREEMENT	\$37,066.27
		BRAZEAU 14-30-045-11W5 MULTI-WELL OIL BATTERY & COMPRESSOR STATION AGMT	
		WILLESDEN GREEN 04-29-042-08 W5M FACILITY GAS HANDLING AGREEMENT	
		WILLESDEN GREEN 04-29-042-08 W5M BATTERY EMULSION AND WATER HANDLING AGT	
		PEMBINA 8-35-48-11W5 FACILITIES WELL EFFLUENT PROCESSING AGREEMENT	
		BRAZEAU 02-10-045-11W5M BATTERY EMULSION AND WATER HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
24.	SEMCAMS MIDSTREAM ULC	KAYBOB SOUTH PLANT NO. 3 GAS PROCESSING AGREEMENT	\$14,645.66
25.	SEQUOIA RESOURCES CORP., C/O PRICEWATERHOUSECOOPERS LT.D	HAIRY HILL AREA GAS HANDLING AGREEMENT	\$0
		UKALTA AREA WATER DISPOSAL AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
26.	SHANGHAI ENERGY CORPORATION	WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	\$163.15
		WILLESDEN GREEN 04-29-042-08W5M OIL BATTERY WELL EFFLUENT AND WATER DISP	
		WILLESDEN GREEN GATHERING SYSTEM GAS HANDLING AGREEMENT	
		WILLESDEN GREEN FACILITY WELL EMULSION PROCESSING, GATHERING & WD AGMT	
		WILLESDEN GREEN AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		WILLESDEN GREEN AREA TIE-IN AGREEMENT	
27.	SIFTON PETROLEUM INC.	WILLESDEN GREEN AREA TIE-IN AGREEMENT	\$0
		WILLESDEN GREEN AREA FACILITIES AND PIPELINE GAS HANDLING AGREEMENT	
28.	SINOPEC DAYLIGHT ENERGY LTD.	BRAZEAU 02-10-045-11W5M FACILITIES WELL EFFLUENT PROCESSING AND WD AGMT	\$0
		PEMBINA AREA GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
29.	SPROTT ENERGY HOLDCO LTD.	NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	\$199.45
		FERRIER AREA GAS HANDLING AGREEMENT	
30.	TAMARACK ACQUISITION CORP.	FERRIER AREA GAS HANDLING AGREEMENT	\$0
		WILLESDEN GREEN GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	



	Counterparty(ies)	Agreement	Pre-Filing Cure Costs
		WILLESDEN GREEN AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
31.	TAQA NORTH	SUNCHILD 10-2-45-11W5M COMPRESSION AND GAS HANDLING AGREEMENT	\$60,937.34
		FERRIER AREA GAS HANDLING AGREEMENT	
		WILLESDEN GREEN CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		CONTRACT WELL/FACILITIES OPERATING AGREEMENT (SUNCHILD AREA)	
		WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	
		FERRIER 5-10-42-9W5M COMPRESSOR & GATHERING SYSTEM GAS HANDLING AGMT	
		SUNCHILD 05-33-043-09W5M COMPRESSOR & GAS GATHERING SYSTEM GHA	
		ALDER AREA GAS HANDLING AGREEMENT	
		CONTRACT WELL/FACILITIES OPERATING AGREEMENT (FERRIER AREA)	
		BAPTISTE 06-21-043-09W5M FACILITY GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
		SUNCHILD AREA GAS HANDLING AGREEMENT	
		CARBON AREA GAS HANDLING AGREEMENT	
		SWALWELL W. FACILITIES GAS HANDLING AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
32.	TIDEWATER MIDSTREAM AND INFRASTRUCTURE LTD.	FERRIER AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	\$0
		BRAZEAU RIVER AREA GAS HANDLING, FEED GAS PROCESSING & OUTLET SUBSTANCE	
33.	TORC OIL & GAS LTD.	PEMBINA AREA EMULSION & WATER HANDLING AGREEMENT	\$0
34.	TOURMALINE OIL CORP.	MEDICINE LODGE GGS AND SUNDANCE 15-7-54-21W5M GAS HANDLING FACILITIES GHA	\$19,629.14
		WILD RIVER GAS HANDLING AGREEMENT	
35.	TRIDENT EXPLORATION (ALBERTA) CORP., C/O PRICEWATERHOUSECOOPERS INC.	WOOD RIVER 10-30 COMPRESSOR GAS HANDLING AGREEMENT	\$0
36.	VERMILION RESOURCES	WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	\$78,805.64
		FERRIER AREA GAS HANDLING AGREEMENT	
		BAPTISTE AREA CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
		BRAZEAU RIVER CONTRACT WELLS/FACILITIES OPERATING AGREEMENT	
		BRAZEAU 02-10-045-11W5 FACILITIES GAS HANDLING AGREEMENT	
37.	WESTBRICK ENERGY LTD.	BRAZEAU AREA GAS HANDLING AGREEMENT	\$77,246.24
		BRAZEAU AREA GAS HANDLING AGREEMENT	
		FERRIER AREA TIE-IN AGREEMENT	

	<b>Counterparty(ies)</b>	<b>Agreement</b>	<b>Pre-Filing Cure Costs</b>
		FERRIER 13-05-045-09W5 COMPRESSORS GAS HANDLING AGREEMENT	
		NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	
		WILLESDEN GREEN AREA GAS HANDLING AGREEMENT	
38.	WHITECAP RESOURCES INC.	WILLESDEN GREEN OIL BATTERY WELL EFFLUENT PROCESSING AND WATER DISPOSAL	\$0
		WILLESDEN GREEN 08-04-044-07W5 FACILITY GAS HANDLING AGREEMENT	
39.	YANGARRA RESOURCES LTD.	NEES-OHPAWGANU'CK FACILITIES GAS HANDLING AGREEMENT	\$74,393.38
		FERRIER AREA GAS HANDLING AGREEMENT	

**TAB 4**

Clerk's Stamp

COURT FILE NO. 2001-05482  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended  
AND IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and  
2161889 ALBERTA LTD.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB  
CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP,  
LTD. UNDER THE *COMPANIES' CREDITORS ARRANGEMENT  
ACT*, RSC 1985, c C-36, as amended, and the *BUSINESS  
CORPORATIONS ACT*, SBC 2002, c 57, as amended

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **ASSIGNMENT ORDER**  
(pursuant to section 11.3 of the CCAA)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Gowling WLG (Canada) LLP**  
1600, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews**  
Phone: 403.298.1938/403.298.1992/403.298.1018  
Fax: 403.263.9193  
File No.: A163514

**DATE ON WHICH ORDER WAS PRONOUNCED:** October 16, 2020

**LOCATION AT WHICH ORDER WAS MADE:** Calgary Court House

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice K.M. Eidsvik

**UPON THE APPLICATION** of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the “**Applicants**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and pursuant to the Amended and Restated Asset Purchase Agreement dated September 28, 2020 (the “**APA**”) between the Applicants and Mantle Materials

Group, Ltd. (“**Mantle**”) for an order (this “**Order**”), *inter alia*, assigning to Mantle the rights and obligations of the Applicants under and to the Restricted Agreements (as defined below) and any Additional Restricted Agreements (as defined below); **AND UPON** hearing read the Application, the Affidavit of Byron Levkulich sworn September 29, 2020, and the Seventh Report of FTI Consulting Canada Inc., the Court-appointed Monitor of the Applicants (in such capacity, the “**Monitor**”), all to be filed, and the pleadings and proceedings in this Action, including the Initial Order granted in the within proceedings on May 1, 2020 (the “**Filing Date**”), which was amended and restated on May 11, 2020, filed; **AND HAVING HEARD** the application by the Monitor for an order approving the sale transaction contemplated by the APA (the “**SAVO**”); **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those parties present;

**IT IS HEREBY ORDERED THAT:**

**Service**

1. Service of this Application and supporting materials is hereby deemed to be good and sufficient, the time for notice is hereby abridged to the time provided, this application is properly returnable today, and no other person other than those listed on the service list attached as an exhibit to the Service Affidavit are entitled to service of is required to have been served with notice of the Application.

**Defined Terms**

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in the APA.

**Assignment of Restricted Agreements**

3. Upon the delivery by the Monitor to the Applicants and Mantle of the Monitor’s Certificate (as defined in the SAVO), all of the rights and obligations of the Applicants under and to the Restricted Agreements, which are listed in **Schedule “A”** to this Order, shall be assigned, conveyed and transferred to, and assumed by, Mantle pursuant to section 11.3 of the CCAA.

4. The assignment of the Restricted Agreements is hereby declared valid and binding upon all of the counterparties to the Restricted Agreements notwithstanding any restriction, condition or prohibition contained in any such Restricted Agreements relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment and transfer of the Restricted Agreements shall be subject to the provisions herein directing that the Applicants' rights, title and interests in the Acquired Assets shall vest absolutely in Mantle free and clear of all Encumbrances other than the Permitted Encumbrances in accordance with the provisions of this Order.
6. No counterparty under any Restricted Agreement, nor any other person, upon the assignment and transfer to, and assumption by, Mantle of any Restricted Agreement hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy under such Restricted Agreement against Mantle relating to:
  - (a) the Applicants having sought or obtained relief under the CCAA;
  - (b) the insolvency of the Applicants; or
  - (c) any failure by the Applicants to perform a non-monetary obligation under any Restricted Agreement;and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty:
  - (i) nothing herein shall limit or exempt Mantle in respect of obligations accruing, arising or continuing after the Closing under the Restricted Agreements other than in respect of items (a) to (b), above; and
  - (ii) any Permitted Encumbrances shall continue to have the priority and entitlement attaching thereto notwithstanding this Order.
7. All monetary defaults in relation to the Restricted Agreements existing prior to the Closing, if any, other than those arising by reason only of the insolvency of the Applicants, the

commencement of these CCAA proceedings or the failure to perform a non-monetary obligation under any Restricted Agreement, shall be paid to the Monitor on Closing as part of the Purchase Price and in accordance with the APA. Provided the Cure Costs are paid to the Monitor, then the Monitor shall make payment of Cure Costs to the Counterparties to the Restricted Agreements within 20 days of Closing.

8. Immediately following the assignment and transfer of the Restricted Agreements no counterparty under any Restricted Agreement shall have any claim, whatsoever against the Applicants or the Monitor.

#### **Additional Restricted Agreements**

9. Following the date of this Order, including, for greater certainty, following the Closing, the Applicants are authorized to provide to the Counterparty or Counterparties to any additional Restricted Agreements not listed on **Schedule "A"** to this Order that are to be assigned to Mantle pursuant to the APA and in respect of which Counterparty consent is required thereunder but not obtained (each an "**Additional Restricted Agreement**") a notice of the assignment to and assumption by Mantle of such Additional Restricted Agreement (each an "**Additional Assignment Notice**").
10. Any counterparty to an Additional Restricted Agreement who receives an Additional Assignment Notice shall have seven (7) Business Days from the date of such Additional Assignment Notice (the "**Objection Deadline**") to provide notice to the Monitor and the Applicants of any objection it has to such assignment to and assumption by Mantle of the applicable Additional Restricted Agreement.
11. If the Monitor and the Applicants do not receive any notice of objection to the assignment to and assumption by Mantle of an Additional Restricted Agreement by the Objection Deadline, the Applicants shall be authorized to assign such Additional Restricted Agreement to Mantle subject to paragraphs 3 to 7, inclusive, of this Order, which shall apply *mutatis mutandis* to the assignment and assumption of any Additional Restricted Agreements without any further Court order.



12. The applicable date of assignment and assumption of any Additional Restricted Agreements shall be the later of the date of service of the Additional Assignment Notice or delivery of the Monitor's Certificate.
13. If notice of an objection to the assignment to and assumption by Mantle of an Additional Assigned Contract is received by the Monitor and Applicants from the Counterparty to such Additional Assigned Contract by the Objection Deadline, the Applicants are authorized to schedule an application with this Court for the resolution of such objection.

### **Unrestricted Agreements**

14. For certainty, it is hereby declared that the transfer and vesting of the Unrestricted Agreements, which are listed in **Schedule "B"** to this Order, in Mantle is free and clear of any liabilities or monetary claims owing to or accruing in favour of the counterparties to such Unrestricted Agreements which arose prior to May 1, 2020, the Filing Date.

### **Pendency of Bankruptcy Proceedings**

15. For greater certainty, notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), in respect of the Applicants, and any bankruptcy order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of the Applicants; and
  - (d) the provisions of any federal or provincial statute:

the assignment of the Restricted Agreements, and any Additional Restricted Agreements, to Mantle in accordance with this Order and the APA shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer

at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. Notwithstanding any other provisions of this Order, the Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual rights) and apply any and all post-filing amounts that the Applicants owes or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the Applicants.

### **Advice and Directions**

17. The Applicants and the Monitor shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary, to effect the transfer of the Restricted Agreements and any Additional Restricted Agreements (including any transfer of title registrations in respect of such Restricted Agreements and any Additional Restricted Agreements), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

### **Aid and Recognition**

18. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

**Service**

19. Service of this Order shall be deemed good and sufficient by:

- (a) serving this Order upon those interested parties attending or represented at the within Application;
- (b) posting a copy of this Order on the Monitor's website at <http://cfcanda.fticonsulting.com/jmb/>; and
- (c) posting a copy of the Order to CaseLines in accordance with the CaseLines Order granted on May 29, 2020,

and service of this Order on any other person is hereby dispensed with.



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J.C.C.Q.B.A.

**SCHEDULE "A"**  
**RESTRICTED AGREEMENTS**

<b>Counterparties</b>	<b>Agreement</b>
Canadian Western Bank	Commitment Letter dated January 8, 2018
	Letter of credit issued in connection with SML 080085
	Letter of credit issued in connection with SML 100085
	Letter of credit issued in connection with SML 110025
	Letter of credit issued in connection with SML 110026
	Letter of credit issued in connection with SML 110045
	Letter of credit issued in connection with SML 110046
	Letter of credit issued in connection with SML 120006
	Letter of credit issued in connection with SML 120100
	Letter of credit issued in connection with SML 110047
	Letter of credit issued in connection with SML 120005
Enterprise Fleet Management	Master Equity Lease Agreement
Lafarge Canada Inc.	Moose River Royalty Agreement
Lafarge Canada Inc.	Oberg Royalty Agreement
Municipal District of Bonnyville No. 87	Supply Agreement, as amended by the first, second, and third amendment, and the amendment to agreement
Northbridge General Insurance Corporation	Bond issued in connection with the Buksa Royalty Agreement
	Bond issued in connection with the Havener Royalty Agreement
	Bond issued in connection with the Shankowski Royalty Agreement

**SCHEDULE "B"**  
**UNRESTRICTED AGREEMENTS**

Counterparties	Agreement
302016 Alberta Ltd. c/o Rose Short	Buksa Royalty Agreement
Darren Andrychuk & Daphne Andrychuk	Andrychuk Royalty Agreement
Gail Havener & Helen Havener	Havener Royalty Agreement
Jerry Shankowski (945441 Alberta Ltd.)	Shankowski Royalty Agreement