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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTER

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF FREE REIN RESOURCES LTD.

DOCUMENT

Bench Brief of the Applicant

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**APPLICATION BEFORE JUSTICE K. FETH
JULY 11, 2023 AT 10:00 AM ON THE COMMERCIAL LIST**

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I. INTRODUCTION

1. This is the Bench Brief of the Applicant, Free Rein Resources Ltd. ("**Free Rein**" or the "**Applicant**") in support of its application (the "**Application**") seeking Orders, among other things:

- (a) pursuant to section 64.2 of the *Bankruptcy and Insolvency Act*,¹ granting a first priority charge over Free Rein's Property which shall not exceed the amount of \$200,000 (the "**Administration Charge**") in favour of the Applicant's counsel, FTI Consulting Canada Inc. in its capacity as the proposal trustee of Free Rein (the "**Proposal Trustee**") and the Proposal Trustee's counsel (collectively, the "**Administrative Professionals**"); and
- (b) pursuant to section 50.4 of the *BIA*,² extending the period of time within which Free Rein is required to file a proposal to its creditors (the "**Proposal Period**") up to and including August 25, 2023 (the "**Stay Extension**").

II. BACKGROUND

2. On June 12, 2023, Free Rein commenced the within proceedings (the "**NOI Proceedings**") by filing a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *BIA* with the Office of the Superintendent of Bankruptcy.

3. Free Rein is a private corporation, incorporated pursuant to the laws of the Province of Alberta with its registered office located in Calgary, Alberta.

4. Free Rein is an oil and gas company headquartered in Calgary, Alberta. Free Rein's core operations are located in Central Alberta in the Golden Spike area, focused on multi zone, light oil and gas plays.

III. FACTS

5. The facts in support of Free Rein's Application are set forth in Affidavit No. 1 of Terry McCallum, sworn July 4, 2023 ("**McCallum Affidavit No. 1**"). Capitalized terms not otherwise defined herein have the meaning set forth in McCallum Affidavit No.1., Free Rein's Application, or the First Report of the Proposal Trustee (the "**First Report**").

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, at s. 64.2 ("**BIA**") [Tab 1]

² *BIA* at s. 50.4 [Tab 1]

A. Administration Charge

6. Free Rein seeks the Administration Charge over its Property to secure the fees and disbursements of the Administrative Professionals in the aggregate amount of \$200,000. The amount of the Administration Charge contemplates that the Administrative Professionals will be paid on a current basis during the NOI Proceedings.

B. Stay Extension

7. The Proposal Period is set to expire on July 12, 2023. Free Rein requests the Stay Extension to August 25, 2022, which would provide it with the time needed to, among other things, advance the terms of a proposal for to be considered by Free Rein's creditors.

8. The Stay Extension is critical to Free Rein's ability to make a viable proposal to its creditors.

9. The Proposal Trustee supports the Stay Extension.

IV. ISSUES

10. This Bench Brief addresses the following issues at the Application, namely whether this Honourable Court should:

- (a) grant the Administration Charge; and
- (b) grant the Stay Extension.

V. LAW AND ARGUMENT

A. The Administration Charge

11. Free Rein seeks the Administration Charge to secure the fees of the Administrative Professionals, whose services are critical to these proceedings. This Administrative Charge is to rank in priority to all other security interests in Free Rein's Property and assets.

12. The *BIA* confers the statutory jurisdiction on this Court to grant the Administration Charge:

64.2 (1) Court may order security or charge to cover certain costs:

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed

under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2 (2) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.³

13. Administration Charges have been approved in *BIA* proposal proceedings where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the *BIA* and the debtor has limited means to obtain such professional assistance.⁴

14. Free Rein submits that this is an appropriate circumstance for this Honourable Court to grant the Administration Charge with priority over any pre-existing security interests and other encumbrances. The quantum of the proposed Administration Charge is both fair and reasonable given the size and complexity of Free Rein's business. The Administrative Professionals have played, and will continue to play, a critical role in these proceedings.

15. Accordingly, Free Rein respectfully submits that this Honourable Court should exercise its discretion to grant the Administration Charge.

B. Stay Extension

16. Free Rein filed the NOI on June 12, 2023. By operation of section 50.4(8) of the *BIA*, Free Rein is required to file a proposal within 30 days unless it otherwise obtains an extension of time from the Court within that 30-day period.

³ *BIA*, at s. 64.2 [Tab 1].

⁴ *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at paras 32-33 [Tab 2]

17. Pursuant to section 50.4(9) of the *BIA*, before the expiry of the Proposal Period, a debtor in a proposal proceeding may apply to the court for an order extending the time to file a proposal by a maximum of 45 days and the court may extend the time if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.⁵

18. In order to advance a proposal to present to Free Rein's creditors, Free Rein is seeking the Stay Extension to August 25, 2023. Free Rein respectfully submits that the Stay Extension ought to be approved for, among others, the following reasons:

- (a) Free Rein is acting in good faith and with due diligence, in particular, as set out in the McCallum Affidavit, Free Rein has (i) gained the support of the majority of its creditors, (ii) made progress in finding new financing to repay its secured creditors and fund a proposal, and (iii) cooperated with the Proposal Trustee to advance these proceedings;
- (b) the Stay Extension is required in order to advance a proposal for the benefit of Free Rein's stakeholders;
- (c) without the Stay Extension, Free Rein will have no ability to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the Stay Extension is granted;
- (d) Free Rein has proactively engaged with the Proposal Trustee and its stakeholders; and
- (e) the Proposal Trustee supports the Stay Extension.

⁵ *BIA* at s.50(9) [Tab 1].

19. Free Rein respectfully submits that this Honourable Court should exercise its discretion to grant the Stay Extension.

VI. CONCLUSION

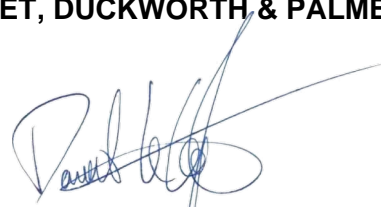
20. For the reasons above, Free Rein respectfully requests this the Honourable Court grants:

- (a) the Administration Charge;
- (b) the Stay Extension; and
- (c) such other ancillary relief as may be sought by Free Rein at the hearing of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF JULY, 2023

BURNET, DUCKWORTH & PALMER LLP

Per:



David LeGeyt / Ryan Algar
Solicitors for Free Rein Resources Ltd.

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<u><i>Bankruptcy and Insolvency Act, RSC 1985, c B-3</i></u>
2.	<u><i>Mustang GP Ltd. (Re), 2015 ONSC 6562</i></u>