

COURT FILE NUMBER

B301-037330

B301-037334

B301-037338

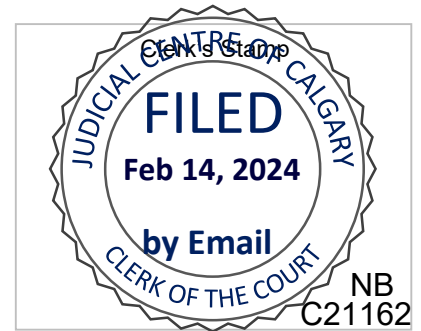
B301-037340

COURT

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

JUDICIAL CENTRE

CALGARY



COM Feb 16, 2024

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF RAZOR ENERGY CORP., RAZOR ROYALTIES
LIMITED PARTNERSHIP, RAZOR HOLDINGS GP CORP., AND
BLADE ENERGY SERVICES CORP.

DOCUMENT

APPLICATION

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

McCarthy Tétrault LLP
4000, 421 - 7 Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
Phone: 403-260-3531 / 3536 / 3534
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca /
nstewart@mccarthy.ca

NOTICE TO RESPONDENT(S)

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

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

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

Date: February 16, 2024
Time: 2:30 p.m.
Where: Edmonton Law Courts via Webex. Videoconference
details are enclosed as Schedule "A" to this Application
Before Whom: Honourable Justice Lema

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

Remedy Claimed or Sought: Razor Energy Corp. ("**Razor Energy**") applies for an order, a draft of which will be provided prior to the return of the within Application, seeking, among other things, the following relief:

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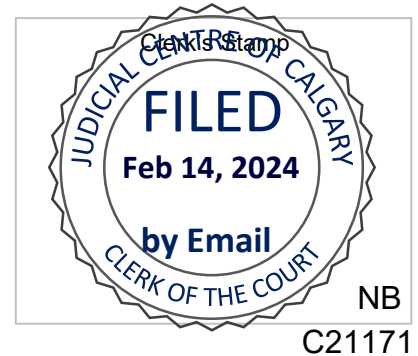
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COURT COURT OF KING'S BENCH OF ALBERTA
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C21175

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF RAZOR ENERGY CORP., RAZOR ROYALTIES LIMITED PARTNERSHIP, RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

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Remedy Claimed or Sought: Razor Energy Corp. ("**Razor Energy**") applies for an order, a draft of which will be provided prior to the return of the within Application, seeking, among other things, the following relief:

1. Declaring that the time for service of this application (the “**Application**”), and the Affidavit of Doug Bailey, sworn on February 13, 2024 (the “**Affidavit**”), is abridged, the Application is properly returnable on February 16, 2024, that service of the Application and the Affidavit on the service list created and maintained in respect of the within proceedings (the “**Service List**”) is validated, good, and sufficient and that no persons other than those on the Service List are entitled to service of the materials filed in connection with the within Application.

2. Declaring that Conifer Energy Inc. (“**Conifer**”) is in breach of the stay of proceedings (the “**Stay**”) under Section 69 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), with respect to Razor Energy and its property, and directing Conifer to immediately: (i) cease restricting Razor Energy’s access to the Judy Creek Gas Conservation Plant (the “**Judy Creek Gas Plant**”); and, (ii) resume processing Razor Energy’s gas and providing fuel gas to Razor Energy (collectively, the “**Services**”), on such terms as this Court may order.

3. Further or in the alternative to paragraph 2, declaring that Conifer is in breach of its obligations under Section 65.1 of the BIA, and directing that Conifer immediately: (i) cease restricting Razor Energy’s access to the Judy Creek Gas Plant; and, (ii) resume providing the Services on such terms as this Court may order.

4. Ordering and declaring that service of any orders arising from the Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, shall constitute good and sufficient service of such orders and that no persons other than those in attendance at the Application are entitled to be served with a copy of such orders.

5. Such further and other relief as counsel for Razor Energy may advise and this Honourable Court may permit.

Grounds for Making this Application: The grounds for the Application are as follows:

Overview of Razor Entities

6. Razor Energy is a publicly traded junior oil and gas development and production company, incorporated pursuant to the laws of the Province of Alberta.

7. As at the Filing Date: (i) Razor Energy had approximately thirty-five (35) employees; (ii) Blade had approximately twenty-five (25) employees; and, (iii) the Razor Entities, collectively, had engaged approximately twenty (20) contractors for field operations.

8. On January 30, 2024 (the “**Filing Date**”), Razor Energy, along with its related parties, Razor Royalties Limited Partnership (“**Razor Royalties LP**”), Razor Holdings GP Corp. (“**Razor Holdings**”), and Blade Energy Services Corp. (“**Blade**”, and collectively with Razor Energy, Razor Royalties LP, and Razor Holdings, the “**Razor Entities**”), filed Notices of Intention to Make a Proposal (the “**NOIs**”) under and pursuant to section 50.4 of the BIA.

9. FTI Consulting Canada Inc. is the proposal trustee (the “**Proposal Trustee**”, when referred to in such capacity) in the Razor Entities’ NOIs.

10. Razor Energy holds various producing assets and exploration and production rights. Such interests can be broken down as follows: (i) assets related to the Swan Hills Beaverhill Lake formation (the “**South Swan Hills Assets**”), located in the Swan Hills region of Alberta and which forms part of the Beaverhill Lake Group, a geologic unit located in northern Alberta; (ii) assets related to a formation referred to as Kaybob, located in northern Alberta (the “**Kaybob Assets**”); and, (iii) assets related to formations in southern Alberta (the “**District South Assets**”).

11. Razor Energy’s Application concerns the South Swan Hills Assets.

12. The South Swan Hills Assets account for a significant portion of Razor Energy’s production. The South Swan Hills Assets, impacted by Conifer’s decision to continue to lock Razor Energy out the Judy Creek Gas Plant, normally produce approximately: (i) forty three percent (43%) of Razor Energy’s liquid natural gas production; (ii) seven percent (7%) of Razor Energy’s conventional natural gas production; and, (iii) twenty two percent (22%) of Razor Energy’s crude oil production.

13. Historically, South Swan Hills production has constituted a significant portion of Razor Energy’s production. For example:

(a) as set out in Razor Energy’s most recently filed Management Discussion and Analysis, for the three and nine months ended September 30, 2023 (the “**2023Q3 MD&A**”), in the third quarter of 2023, Razor Energy had an estimated average production volume of 3,787 barrels of oil equivalent per day (“**boe/d**”) across all of its assets. For the three months ended September 30, 2023, Razor Energy’s production volumes by area, expressed in boepd, were as follows:

(i) South Swan Hills Assets: 2,456 boe/d;

- (ii) Kaybob Assets: 849 boe/d; and,
- (iii) District South As: 482 boe/d.

The Ownership and Operating Agreement and the Judy Creek Gas Plant

14. Razor Energy (as successor to PennWest Energy Corporation) and Conifer (as successor to Pengrowth Energy Corporation) are parties to the Agreement for the Ownership and Operation of the Judy Creek Gas Plant, dated effective March 1, 2011 (the “**Ownership and Operating Agreement**”), among the various parties.

15. The ownership structure of the Judy Creek Gas Plant is set out in Appendix I to the Operating Procedure (as defined below) and is as follows: (i) Razor Energy holds a 38.10813% interest in the facility participation and ownership of the Judy Creek Gas Plant; (ii) Conifer holds a 54.789910% interest in the facility participation and ownership of the Judy Creek Gas Plant; and, (iii) the remaining interests are held by eight (8) other arm’s length parties.

16. All of Razor Energy’s natural gas and oil production from the South Swan Hills Assets are processed at and tied to the Judy Creek Gas Plant.

17. The Judy Creek Gas Plant is currently operated by Conifer.

18. The Ownership and Operating Agreement governs the ownership, and certain aspects of the operation, of the Judy Creek Gas Plant. The key terms of the Ownership and Operating Agreement include, among others, that:

- (a) it is the intention of the “**Owners**” (as defined in the Ownership and Operating Agreement and including, *inter alios*, Conifer and Razor Energy) that the Owners’ substances will have priority over substances produced by non-Owners;
- (b) each Owner shall own an undivided percentage interest in each Functional Unit (a specific component of the Judy Creek Gas Facility, as set out in the Operating Procedures (as defined below)) equal to its Functional Unit Participation (as defined in the Operating Procedures, being 38.10813% in the case of Razor Energy and 54.789910% in the case of Conifer). The operator, Conifer, shall hold such interests in trust for the Owners subject to the provisions of the Ownership and Operating Agreement; and,

- (c) each Owner shall have the right to use “**Capacity Ownership**”, which is defined in the Operating Procedures (as defined below), as “an Owner’s share of Capacity equal to its Functional Unit Participation”.

19. The Ownership and Operating Agreement incorporates Exhibit “A” to the 1999 PJVA Model Construction, Ownership and Operating Agreement, with certain amendments and modifications thereto, as Exhibit “A” to the Ownership and Operating Agreement (as so amended and modified, the “**Operating Procedures**”).

Dispute with Conifer

20. Between May 1, 2023 until Conifer locked Razor Energy out of the Judy Creek Plant, in each applicable production month, Conifer had been processing and marketing Razor Energy’s gas and natural gas liquids sales, and would set-off amounts due and owing for handling and processing fees to Conifer from the proceeds of sale.

21. Conifer alleges that Razor Energy owes it \$8.2 million with respect to amounts payable under the Ownership and Operating Agreement. As set out below, Razor Energy has advised Conifer that it disputes the quantum of the arrears for reasons including:

- (a) improperly calculated billings accruing over time;
- (b) 13 month adjustments not prepared on a timely basis; and,
- (c) turnaround and non-routine capital costs significantly in excess of budget.

22. Razor Energy disputes the quantum of the arrears for various reasons, including, but not limited to, as a result of Conifer’s refusal to provide information, which is necessary to assess whether any arrears are owing. Razor Energy is entitled to such information under the Ownership and Operating Agreement.

23. On or around December 24, 2023, Conifer unilaterally locked out the Judy Creek Gas Plant and ceased providing the Services, on the basis of non-payment of the alleged arrears.

Prejudice and Impact

24. Conifer’s decision to restrict Razor Energy’s access to the Judy Creek Gas Plant and cease providing the Services was a significant factor in Razor Energy’s decision to file an NOI.

25. As a result of Conifer's decision to restrict access to the Judy Creek Gas Plant and cease providing Services, Razor Energy has been forced to shut-in production of approximately 900 boe/d, including approximately 626 boe/d of light oil and approximately 387 boe/d of natural gas liquids.

26. With the assistance of the Proposal Trustee, Razor Energy has prepared:

- (a) a cash flow forecast, which evidences the economic impact of Conifer's decision to cease providing Services; and,
- (b) a cash flow forecast, for the same period, which forecasts Razor Energy's estimates with respect to the Judy Creek Gas Plant and its profitability, the operating costs of same, and the anticipated cash balance of any set-off or cash collateral (the "**Judy Creek Cash Flow Forecast**").

27. Without access to the Judy Creek Gas Plant and Conifer's resumption of the Services, the Razor Entities' restructuring will be significantly impeded.

28. Razor Energy has commenced a public mergers and acquisitions process in which it is soliciting offers to purchase its assets and property, including the oil and gas properties shut-in, as a result of Conifer locking Razor Energy out of the Judy Creek Gas Plant. The South Swan Hills Assets cannot be tied in to any other processing plant. Selling and marketing the South Swan Hills Assets, in the midst of Conifer's actions and while such properties remain shut in, is likely to depress their values and corresponding realizations, to the detriment of all of Razor Energy's creditors and stakeholders.

29. There is no other viable method by which Razor Energy can process its South Swan Hills Assets, as: (i) all of the Swan Hills production is tied-in to the Judy Creek Gas Plant; and, (ii) there is no nearby alternative facility which can process Razor Energy's production from the South Swan Hills Assets.

Necessity of Relief

Breach of the Stay

30. Upon filing the NOI, the Stay automatically extended to Razor Energy and its Property, in accordance with Section 69 of the BIA.

31. Under the Stay, no creditor has any remedy against Razor Energy or Razor Energy's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

32. Conifer has not provided any Services to Razor Energy after the Filing Date. All of the disputed amounts, which Conifer asserts it is owed, relate to circumstances and obligations in existence as of or prior to the Filing Date. As a result, any such amounts are a "claim provable in bankruptcy" under the BIA.

33. Following the Filing Date, on February 1, 2024, Razor Energy advised Conifer, through their respective counsel, that Conifer's continued exercise of remedies, in relation to alleged obligations which accrued entirely prior to the Filing Date, constitute a breach of the Stay.

34. Conifer has refused to cease restricting Razor Energy's access to the Judy Creek Gas Plant, or to resume providing the Services.

35. If Conifer is permitted, under the Ownership and Operating Agreement or the Operating Procedures, to restrict Razor Energy's access to the Judy Creek Gas Plant, due to non-payment of pre-filing arrears, then:

- (a) Conifer's continued lock out of the Judy Creek Gas Plant, in which Razor Energy holds an ownership interest, as a remedy for the payment of amounts which accrued prior to the Filing Date, constitutes the exercise of a right or remedy against Razor Energy and its properties for the recovery of a claim provable in bankruptcy, in violation of the Stay. Specifically: (i) any amounts owed to Conifer relate to obligations accruing prior to the Filing Date, all of which are claims provable in bankruptcy; (ii) Conifer is exercising a purported remedy in connection with such claims against Razor Energy and/or its property; and, (iii) Razor Energy has an ownership interest in the Capacity Ownership and the Judy Creek Gas Plant, which form part of its "property" as contemplated by the BIA; and,
- (b) Conifer's conduct is a continuing, ongoing exercise of rights or remedies and, to the extent Conifer was entitled to take these steps prior to the Filing Date, it is no longer entitled to do so.

Conifer Is In Breach of Section 65.1 of the BIA

36. Further, or in the alternative, Conifer's refusal to continue processing Razor Energy's gas, in exchange for payment by set-off from the proceeds, in accordance with the parties' historical conduct, constitutes an amendment of the Ownership and Operating Agreement by reason of Razor Energy's insolvency, which is prohibited by Section 65.1 of the BIA.

37. Such further and other grounds as counsel for Razor Energy may advise and this Honourable Court may permit.

Material or evidence to be relied upon:

38. Razor Energy intends to rely upon the following materials:

- (a) Affidavit of Doug Bailey, sworn on February 13, 2024, to be filed;
- (b) the First Report of the Proposal Trustee, to be filed; and,
- (c) such further and other material or evidence as counsel to Razor Energy may advise and this Honourable Court may permit.

Applicable Rules:

39. Rules 6.3(1), 6.9, 6.28, 11.27 of the *Alberta Rules of Court*.

40. Such further and other rules as counsel for Razor Energy may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

41. Razor Energy will rely upon and refer to the following during the making of the Application:

- (a) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, sections 65.1, 69, and 183; and,
- (b) such further and other Acts and regulations as counsel to Razor Energy may advise.

Any Irregularity Complained of or Objection Relied On:

42. There are no irregularities complained of, or objections relied on.

How the Application is Proposed to be Heard or Considered:

43. Razor Energy propose that the Application be heard by way of WebEx videoconference with one, some, or all of the parties present.

WARNING

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

SCHEDULE "A" TO THE APPLICATION WEBEX INFORMATION

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted.
3. Click on the Open **Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.