

COURT FILE NUMBER 1601-11552
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT NATIONAL BANK OF CANADA, IN ITS
CAPACITY AS ADMINISTRATIVE AGENT
RESPONDENTS TWIN BUTTE ENERGY LTD.
DOCUMENT ELEVENTH REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER AND
MANAGER OF TWIN BUTTE ENERGY LTD.

November 13, 2017

VOLUME 1 OF 2

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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INTRODUCTION

1. On September 1, 2016 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Twin Butte Energy Ltd. (“**Twin Butte**” or the “**Company**”) pursuant to an Order of the Honourable Madam Justice Romaine (the “**Receivership Order**”).
2. The Receiver recovered sufficient funds from operations and the sale of the assets to pay the secured banking syndicate in full with additional funds being available for distribution as described herein.
3. On May 1, 2017, an order (“**Claims Procedures Order**”) was granted directing the Receiver to implement a claims process (“**Claims Process**”) in order to determine the amount, classification and validity of claims against Twin Butte.
4. During the Claims Process a claim (“**Geocap Claim**”) in the amount of \$2,040,927 was submitted by Sutton Energy Ltd. and GeoCap Energy Corporation (collectively the “**Claimants**”). After its review the Receiver disallowed the Geocap Claim and subsequently the Claimants disputed the Receiver’s disallowance. To date the Receiver and the Claimants have not been able to agree on or settle the Geocap Claim.
5. The purpose of this report (“**Eleventh Report**”) is to:
 - (a) provide this Honourable Court with additional background and information relevant to the Geocap Claim; and

- (b) seek a declaration from this Honourable Court that the effect of clause 401 of the 1990 CAPL Operating Procedure (“**Operating Procedure**”) governing the contract between Twin Butte and the Claimants prohibits the Claimants from seeking damages for lost profits. Lost profits represent \$1,593,000 or 78% of the Geocap Claim and therefore such declaration would significantly reduce the Geocap Claim and likely result in avoiding a lengthy trial.
6. This report is supplemented by and should be read in conjunction with the Receiver’s brief of law and argument filed on November 13, 2017 (“**Receiver’s Brief**”).
7. The Receiver’s reports and other publically available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/twinbutte> (the “**Receiver’s Website**”).

TERMS OF REFERENCE

8. In preparing this Eleventh Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company’s books and records and discussions with various parties (collectively, the “**Information**”).

Except as described in this Eleventh Report:

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

- (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Eleventh Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
9. Future-oriented financial information reported or relied on in preparing this Eleventh Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
10. The Receiver has prepared this Eleventh Report in connection with its Application in respect of the Geocap Claim scheduled to be heard at 2:00 p.m. on December 13, 2017. This Eleventh Report should not be relied on for other purposes.
11. Information and advice described in this Eleventh Report that has been provided to the Receiver by its legal counsel, Norton Rose Fulbright Canada LLP (the “Receiver’s Counsel”), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND

13. Prior to the receivership of Twin Butte, the Claimants commenced litigation against Twin Butte, as operator, of an oil well located at Swan Hills 102/01-35-090-13W5M (the “1-35 Well”). The lawsuit claimed damages alleging that Twin Butte was grossly negligent in performing a gas lift that resulted in a surface casing vent flow and in the remedial action it took to attempt to repair the well. The well is now inoperable.

14. The lawsuit was stayed by the receivership.
15. The Claimants submitted the Geocap Claim as an unsecured claim against the Twin Butte receivership estate pursuant to the Claims Procedure Order. The proof of claim (“Geocap POC”) submitted by the Claimants to the Receiver is attached as Appendix A. The claim against the estate mirrors what was asserted in the pre-receivership lawsuit and is summarized as follows:

Summary of Geocap Claim	
Damages Claim - Lost Profits	1,593,000
Damages Claim - Abandonment Costs	124,088
Total Damages Claimed	1,717,088
Bissett Fees	134,830
GLJ Fees	7,000
Legal Fees and Disbursements	100,023
Total Expert and Legal Fees	241,853
Interest - pre-judgement	81,986
Total Interest	81,986
Total Claim	2,040,927

RECEIVER’S REVIEW OF GEOCAP POC

16. The Receiver has reviewed the Geocap POC that comprised certain pleadings, affidavit evidence, and two expert reports. In addition, the Receiver has assessed all the pleadings in the action, the questioning transcripts, and has discussed the claim with Twin Butte personnel. The Receiver also considered the claim in light of the Operating Procedure which is the governing contract. In its review the Receiver determined various pieces of information were relevant for this Honourable Court to consider when assessing the Receiver’s position on the Geocap Claim. These items have been included as appendices to this Eleventh Report:

- (a) Appendix A – Geocap POC
 - (b) Appendix B – ABQB 1001-02577 Statement of Claim, Counterclaim and Statement of Defence
 - (c) Appendix C – ABQB 1001-06764 Statement of Claim
 - (d) Appendix D – The Affidavit of William Tobman, sworn July 19, 2017
 - (e) Appendix E – Affidavit of Bryan Joa, sworn July 17, 2017
17. After its review of the Geocap POC the Receiver determined that the Geocap claim was without merit and should be disallowed in its entirety and accordingly filed a notice of disallowance. It is Twin Butte’s position that they acted reasonably as operator of the 1-35 Well and at no time were grossly negligent and therefore the Claimants’ do not have a claim. However, the Receiver is not asking this Honourable Court to rule on the negligence issue at this application.
18. In the Receiver’s view there is a threshold issue that should be addressed first before contemplating lengthy, costly litigation over gross negligence. The Receiver’s view is that proceeding in this manner will result in a much more efficient determination and settlement of the Geocap Claim.
19. The Receiver is requesting a declaration from this Honourable Court that the effect of clause 401 of the Operating Procedure, which governs the contract between Twin Butte and the Claimants, prohibits the Claimants from seeking damages for lost profits (even if the operator was grossly negligent which is denied). Since \$1,593,000 or 78% of the Geocap Claim relates to a claim for damages due to lost profits and the claim includes pre-judgement interest and fees associated with these lost profit damages, this declaration would materially reduce the Geocap claim and likely avoid a lengthy litigation.

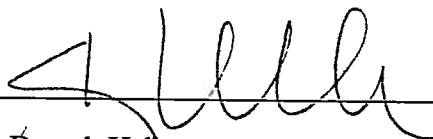
20. The Receiver has outlined its reasons and arguments with respect to why effect of clause 401 of the Operating Procedure prohibits the Claimants from seeking damages for lost profits in detail in the Receiver's Brief.

REQUEST FOR DECLARATION


1. The Receiver respectfully requests that this Honourable Court provide a declaration that the effect of clause 401 of the Operating Procedure prohibits the Claimants from seeking damages for lost profits and accordingly bars the Claimants from recovering \$1,593,000 of the claimed damages and they may only recover the remaining damages for incremental abandonment costs if they can establish that Twin Butte was grossly negligent.

All of which is respectfully submitted this 13th day of November, 2017.

FTI Consulting Canada Inc.,
in its capacity as receiver and manager
of the assets, undertakings and properties of
Twin Butte Energy Ltd.



Deryck Helkaa
Senior Managing Director, CA, CPA, CIRP



Dustin Olver
Managing Director, CA, CPA