

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 **NINTH REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER AND
MANAGER OF TWIN BUTTE ENERGY LTD.**

June 21, 2017

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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. On June 7, 2017 the Receiver filed its eighth report (“**Eighth Report**”) which provided, among other things;
 - (a) An update on the status of the claims process (“**Claims Process**”);

 - (b) An estimate of the potential distributions to creditors through the Claims Process; and

 - (c) Advised this Honourable Court regarding an application (“**Subordination Application**”) scheduled by an ad hoc group (“**Ad Hoc Group**”) of unsecured subordinate convertible debenture holders (“**Subordinate Debenture Holders**”) for June 30, 2017. The purpose of the subordination Application is for the Ad Hoc Group to present arguments supporting their position that the debenture holders claim (“**Debenture Holders’ Claim**”) should rank pari passu with all other unsecured creditors of Twin Butte as opposed to the Debenture Holders’ Claim ranking subordinated to the other unsecured creditors (the “**Subordination Issue**”). The Debenture Holders’ Claim is based on a convertible debenture indenture between Twin Butte and Valiant Trust Company, now known as Computershare (the “**Debenture Trustee**”) dated December 13, 2013 (the “**Indenture**”) that provided for the issuance of 6.25% convertible unsecured subordinated debentures.

3. The purpose of this report (“**Ninth Report**”) is to provide this Honourable Court with the following:
 - (a) An update on the activities of the Receiver since the Receiver’s Eighth Report;
 - (b) An update with respect to the status of the Claims Process;
 - (c) Advise this Honourable Court with respect to 5 claims received after the claims bar date; and
 - (d) The position of the Receiver on the Subordination Issue based on further review and consideration on this matter.

4. 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

5. In preparing this Ninth 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 Ninth 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 Ninth Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.

- 6. Future oriented financial information reported or relied on in preparing this Ninth Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.

- 7. The Receiver has prepared this Ninth Report in connection with the Ad Hoc Group's Subordination Application scheduled to be heard at 9:00 am on June 30, 2017. This Ninth Report should not be relied on for other purposes.

- 8. Information and advice described in this Ninth 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.

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

RECEIVER'S ACTIVITIES SINCE THE EIGHTH REPORT

- 10. Since filing the Eighth Report the Receiver has, among other things:
 - (a) Continued to work on post-closing items related to the HOC Sale including working on finalizing the final statement of adjustments with the purchaser. The Receiver anticipates having the final statement of adjustments completed by the end of June 2017;

- (b) On June 14, 2017 completed and filed the 2016 Federal and Provincial corporate tax returns for Twin Butte;
- (c) Continued to reconcile claims submitted in accordance with the Claims Process. A full summary of the status of the Claims Process is provided below;
- (d) Report on certain outstanding information and requests from the Ad Hoc Group including:
- i. the results of the Receiver’s review of transactions that occurred in the 90 days before the receivership proceedings; and
 - ii. The Receiver’s findings with respect to whether any creditors requested a confirmation of subordination from the Indenture Trustee pursuant to section 5.7 of the Indenture.

UPDATE ON THE CLAIMS PROCESS

11. The table below summarizes the status of the claims submitted in the Claims Process and the results of the Receiver’s review and reconciliation to date.

Type of Claim	Total of Claims		Accepted		Revised			Disallowed		Under Review		
	#	\$	#	\$	#	Original POC	Accepted	Disallowed	#	\$	#	\$
	a+b+c+d	e+f+g+h+i	a	e	b	f	g	c	h	d	i	
Trust	2	828,869	-	-	-	-	-	-	-	-	2	828,869
Secured	14	887,566	5	255,426	8	577,511	106,011	33,311	1	54,629	-	-
Unsecured	340	26,183,409	238	5,457,229	32	924,605	1,266,723	96,072	43	10,304,894	27	9,496,681
Unsecured - Debentures	1	92,671,925	-	-	-	-	-	-	-	-	1	92,671,925
Late	6	590,250	-	-	-	-	-	-	1	500,000	5	90,250
Total	363	121,162,020	243	5,712,655	40	1,502,116	1,372,734	129,383	45	10,859,523	35	103,087,726

12. The Receiver notes the following with respect to the table below:

- (a) “Accepted” claims – reflects the number of claims that were determined to be valid proven claims and accordingly accepted by the Receiver as filed. Column (e) represents the dollar value of the accepted claims;
- (b) “Revised: claims - reflect claims that the Receiver determined were not correctly proven as filed. The Receiver has sent notices of revision¹ for these claims either revising the amount of the claim or classifying the claim (i.e. unsecured versus secured). The “Original POC” column in the table above sets out the original proof of claim amount/classification filed by the creditor. Column (f) represents the amount the Receiver has accepted as a proven claim and column (g) the amount the Receiver has disallowed. Note that \$438,189.30 in secured claims included in the “Original POC” column have been disallowed as secured claims but approved by the Receiver as unsecured claims.
- (c) “Disallowed” claims – reflect claims that were determined to have no merit and accordingly fully disallowed by the Receiver¹. Notices of disallowance have been sent for all of these claims. Column (h) represents the dollar value of disallowed claims.
- (d) Under Review – reflects claims that the Receiver is in the process of reviewing/reconciling however a final determination has not yet been made. Column (i) represents the dollar value of the claims that are currently under review.

¹ Note the 15 day period for creditors to respond/dispute the notices of revision/disallowance have not yet passed, if creditors do not respond within the 15 day period the Receiver’s notice of revision/disallowance will be deemed to have been accepted by the creditor. If creditors disagrees with the notice of revision/disallowance, they must file a notice of dispute with the Receiver and then follow the dispute procedures as outlined in the Claims Procedure Order

LATE CLAIMS

13. The Receiver has received 6 claims totaling \$590,250 that were submitted after the claims bar date (“**Late Claims**”). The Receiver has completed its review of one of the Late Claims which was submitted for \$500,000 and has disallowed it in its entirety on the grounds that the Receiver determined it to have no merit in addition to being submitted passed the claims bar date. The Receiver is in the process of reviewing the remaining 5 Late Claims to determine if they are valid and proven. The Receiver will report further to this Honourable Court in respect of the Late Claims once it has completed its review.

SUBORDINATION ISSUE

14. As set out in the Receiver’s Eighth Report, counsel to the Ad Hoc Group advised that in their view, the Receiver need not and should not take a position with respect to the Subordination Issue as it is an inter-creditor issue.
15. Since the Eighth Report, the Receiver has further reviewed the Debenture Holders’ Claim, the materials filed by the Ad Hoc Group in relation to the Subordination Application and various documents relevant to the Subordination Issue. The Receiver has also been contacted by various other significant unsecured creditors (“**Contacting Creditors**”) since the Ad Hoc Group filed their Subordination Application Materials advising that, in their view, it was the Receiver’s duty to provide its view to the Court with respect to the Subordination Issue.

16. After further review of the Subordination Issue, including a review of the Indenture and Short Form Prospectus, and considering the positions of the Contacting Creditors and the Ad Hoc Group, the Receiver determined that it is necessary and appropriate for it to provide its views on the Indenture and Subordination Issue. The Receiver made this determination given the divergent interpretations of the Indenture. The Receiver also considered the impact of the Subordination Issue upon the recovery to Twin Butte's remaining creditors, to whom, like the Subordinated Debt Holders, the Receiver owes a duty to maximize distributions in an impartial, fair manner. Furthermore, the Indenture is the basis for the Subordinated Debenture Holders' claim which is to be assessed by the Receiver in accordance with the Claims Process.
17. Accordingly, in consultation with the Receiver's Counsel, the Receiver has prepared a brief dated June 20, 2017 ("**Receiver's Brief**"). The Receiver's Brief was served on June 20, 2017
18. Based on the Receiver's and its counsels review of the Subordination Issue as more fully set out in the Receiver's views are that the claims of the Subordinate Debenture Holders are subordinate to the general class of unsecured creditors of Twin Butte for purposes of distribution or dividend payments made by the Receiver.

OTHER MATTERS

19. In the Receiver's Sixth Report, the Receiver advised that the Ad Hoc Group had requested a review of payments made by Twin Butte in the 3 months before the receivership ("**Pre-filing Payments**") and that the Receiver would report the results of its review to this Honourable Court. The Receiver obtained a list of Pre-filing Payments and has reviewed payments greater than or equal to \$75,000. Amongst the Pre-filing Payments the Receiver noted nothing unusual: all payments reviewed appeared to be in the normal course of business and related to hedging settlements, bank interest, royalties, taxes, payroll, property taxes, rent, regulatory payments to the Alberta Energy Regulator, joint venture payments, trade creditor payments and professional fees related to the failed Canadian Business Corporations Act plan of arrangement. No transactions were noted that were unusual and, furthermore, the Receiver notes that further evaluation of any transactions should be considered after the determination of the Subordination Issue.

20. The Ad Hoc Group also requested that the Receiver investigate whether there were any confirmation of subordination of the Subordinated Debentures executed by any creditors and the Indenture Trustee with respect to clause 5.7 of the Indenture. To address the request, the Receiver inquired with Twin Butte's former Chief Financial Officer and the Debenture Trustee as to the existence of any such subordination agreements.

21. Twin Butte's management advised that they were not aware of any such confirmation of the subordination of the Subordinated Debentures.

22. The Debenture Trustee provided one subordination agreement between National Bank of Canada in its capacity as administrative agent to the senior secured banking syndicate and the Debenture Trustee dated December 13, 2013. This agreement was not fully executed as it was only signed by the Debenture Trustee and the Debenture Trustee advised that they could not confirm if it was ever fully executed by the agent.

RECEIVER'S RECCOMENDATIONS

23. Based on the reasons outlined in the Receiver's Brief the Receiver has concluded the following;
- (a) The Receiver's involvement in the Subordination Issue is necessary;
 - (b) The Receiver disagrees with the Ad Hoc Group's position on the Subordination Issue; and
 - (c) Upon making distributions to creditors the Receiver should effect distributions to holders of Senior Indebtedness (as defined in the Indenture) first and to the fullest extent possible before making any distribution to the Subordinated Debenture Holders.

All of which is respectfully submitted this 21st day of June, 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
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