

COURT FILE NUMBER 1601-01675

COURT COURT OF QUEEN'S BENCH OF ALBERTA

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 ARRANGEMENT OF  
ARGENT ENERGY TRUST, ARGENT ENERGY (CANADA)  
HOLDINGS INC. and ARGENT ENERGY (US) HOLDINGS  
INC.

DOCUMENT **THIRD REPORT OF FTI CONSULTING CANADA INC., IN  
ITS CAPACITY AS MONITOR OF ARGENT ENERGY  
TRUST, ARGENT ENERGY (CANADA) HOLDINGS INC.  
and ARGENT ENERGY (US) HOLDINGS INC.**

**June 21, 2016**

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## **Third Report of the Monitor**

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## INTRODUCTION

1. On February 17, 2016, Argent Energy Trust (the “Trust”), Argent Energy (Canada) Holdings Inc. (“Argent Canada”) and Argent Energy (US) Holdings Inc. (“Argent US”) (collectively the “Applicants” or “Argent”) sought and obtained protection under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) pursuant to an order granted by this Honourable Court (the “Initial Order”).
2. The Initial Order granted, inter alia, a stay of proceedings against Argent until March 18, 2016, (the “Initial Stay Period”), appointed FTI Consulting Canada Inc. (“FTI”) as Monitor (the “Monitor”) and approved a sale solicitation process (the “Sale Solicitation Process”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the CCAA proceedings (the “CCAA Proceedings”).
3. Also on February 17, 2016, the Monitor as duly appointed Foreign Representative for Argent Canada and Argent US (the “Chapter 15 Debtors”) filed petitions under Chapter 15 (the “US Proceedings”) in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “US Court”).
4. In connection with the US Proceedings, the Monitor also filed, among other pleadings, an Emergency Application for Provisional Relief Pursuant to Sections 105(a) and 1519 of the US Bankruptcy Code (the “Application for Provisional Relief”) and an Expedited Petition for Recognition as a Foreign Main Proceeding, or in the Alternative Foreign Non-main Proceeding, Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief (the “Petition for Recognition”). A hearing on the Application for Provisional Relief and to consider the Monitor’s expedited request for a hearing on the Petition for Recognition was originally set by the US Court for February 19, 2016 (the “Chapter 15 Recognition Hearing”) and was ultimately heard on February 22, 2016.

5. On February 22, 2016, the US Court held a hearing to consider the Monitor's Application for Provisional Relief and the Ad Hoc Group's objection thereto. At that hearing, the Monitor, the Chapter 15 Debtors, the Syndicate, and the Ad Hoc Committee negotiated the terms of an agreed Order Granting Emergency Application for Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code (the "Provisional Relief Order"), which was ultimately entered by the US Court on February 24, 2016.
6. On March 9, 2016, this Honourable Court granted an Order (the "Stay Extension Order") extending the Initial Stay of Proceedings to and including May 17, 2016. Also on March 9, 2016, counsel for an Ad Hoc Committee of unsecured debenture holders objected to certain relief that was granted in the Initial Order. As a result of the objections raised by the Ad Hoc Committee, the Initial Order was amended and restated on March 17, 2016 (the "Amended and Restated Initial Order").
7. On March 10, 2016, the U.S. Bankruptcy Court granted an order recognizing the Amended and Restated Initial Order.
8. On May 10, 2016, the Court approved the sale transaction set out in a purchase and sale agreement between Argent US and BXP Partners IV, L.P. ("BXP") dated April 14, 2016. The transaction with BXP closed on May 17, 2016, as discussed in further detail below.
9. Also on May 10, 2016, the Court approved an Interim Distribution Order that provided for a distribution to the Bank of Nova Scotia as administrative agent for the syndicate (the "Syndicate"), subject to the maintenance of a holdback of funds (the "Holdback") for the following:
  - (a) Completions costs;
  - (b) Amounts payable to the Oil & Gas Clearinghouse, LLC ("OGAC");

- (c) Amounts necessary to satisfy claims or potential claims under the court ordered Charges;
  - (d) Lien amounts registered against the assets sold by Argent US to BXP;
  - (e) Cure amounts as set out in the BXP Transaction; and
  - (f) Tax claims.
10. The Interim Distribution Order provided that the Monitor, on instruction from the Applicants, is authorized to disburse amounts from the Holdback amount, subject to notification to the Agent.

## **PURPOSE**

11. The Purpose of this report is to:
- (a) Report on the Monitor's counsels' review of the validity of pre-CCAA security granted by Argent in favour of the Syndicate (the "Pre-Filing Credit Facility");
  - (b) Provide an update of the distributions made by the Monitor under the Interim Distribution Order and the remaining Holdback amounts;
  - (c) Provide an update on the recent activities of the Applicants and the Monitor and the remaining steps to be completed in connection with completing these CCAA proceedings; and
  - (d) Support Argent's request to extend the stay of proceedings up to and including August 31, 2016.

12. Further background and information regarding the Applicants and these CCAA Proceedings can be found on the Monitor's website at <http://cfcanada.fticonsulting.com/argent>.

## **TERMS OF REFERENCE**

13. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with various parties, including senior management ("Management") of the Applicants (collectively the "Information").
14. The Monitor 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 Chartered Professional Accountants of Canada Handbook.
15. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook. Future oriented financial information reported or relied on in preparing this report is based on Management's assumptions regarding future events and actual results may vary from forecast and such variations may be material.
16. The Monitor has prepared this report in connection with the Applicants' application scheduled for June 27, 2016. This report should not be relied on for other purposes.
17. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. dollars. All capitalized terms not otherwise defined herein have the meanings given to them in prior reports of the Monitor.

## **CLOSING OF THE SALE TO BXP**

18. On May 10, 2016, the Court of Queen's Bench of Alberta ("Court") issued an order ("Sale Approval Order") approving the sale agreement ("Sale Agreement") dated April 14, 2016 between Argent US and BXP. Also on May 10, 2016 the Court issued a second Order approving an interim distribution to the Syndicate ("Interim Distribution Order"). On May 11, 2016 the U.S. Bankruptcy Court granted an Order recognizing the Sale Approval Order and the Interim Distribution Order within the Chapter 15 Proceedings.
  
19. On May 17, 2016, the sale to BXP closed pursuant to the terms of the Sale Agreement. The Monitor received the remainder of the proceeds from the Sale Agreement into its trust account and delivered the Monitor's Certificate according to the terms of the Sale Approval Order stating:
  - (a) BXP (or its nominee) has paid and the Monitor has received the purchase price as contemplated in the Sale Agreement;
  
  - (b) The closing conditions as set out in Article VIII of the Sale Agreement have been satisfied or waived by Argent US and BXP (or its nominee); and
  
  - (c) The sale transaction has been completed to the satisfaction of the Monitor.
  
20. Upon delivery of the Monitor's Certificate, the Sale Approval Order provided for all of Argent US' right, title and interest in its oil and gas assets sold to vest in BXP (or its nominee) free and clear of all claims.

## **PRIORITY OF SYNDICATE'S SECURITY**

21. The Syndicate advanced funds post-filing to the Applicants under the Interim Financing Credit Agreement and advanced amounts to the Applicants prior to the commencement of these proceedings under the Pre-Filing Credit Facility.
22. The Applicants borrowed approximately \$4.9 million secured under the Interim Financing Credit Agreement (approved in the Initial Order and the Amended and Restated Initial Order) and, prior to any distributions of the proceeds of the Sale Agreement being made, the Syndicate was owed approximately a further \$51.9 million plus accrued interest in relation to the amounts advanced under the Pre-Filing Credit Facility.

### **Borrowings under the Interim Financing Credit Agreement**

23. Pursuant to paragraph 35 of the of the Amended and Restated Initial Order an Interim Lender's Charge was granted to secure all borrowings and obligations incurred under the Interim Credit Facility. The Interim Lender's Charge provided for a first secured priority interest over all of the Applicants' Property, subject always to section 34(11) of the CCAA and to the Administration Charge and Ad Hoc Committee First Charge, as described in paragraph 40 of the Amended and Restated Initial Order.

### **Priority of borrowings under the Pre-Filing Credit Facility**

24. The Monitor instructed its counsel, Norton Rose Fullbright U.S. LLP ("Norton Rose") to review the Syndicate's Pre-Filing Credit Facility in order to determine the validity and enforceability as against Argent US's personal and real property ("Pre-Filing Security"). Norton Rose has advised the Monitor that the following was completed:

## **Personal Property**

- (a) Reviewed the description of the collateral covered by the Syndicate's Pre-Filing Security with Argent US;
- (b) Confirmed that the Pre-Filing Credit Facility granted the Syndicate a valid security interest on all of Argent US's personal property;
- (c) Reviewed the Delaware Secretary of State's Office for UCC filings related to Argent US;
- (d) Confirmed that the Syndicate's UCC filing adequately perfected the Syndicate's security interest in all of Argent US's personal property with the exceptions of: deposit accounts, money, and motor vehicles; and
- (e) Confirmed that no party recorded a UCC filing with the Delaware Secretary of State's Office prior in time to the Syndicate's UCC filing.

## **Real Property**

- (a) Reviewed the Syndicate's Deeds of Trust filed in the real property records of each Texas, Wyoming, and Colorado county in which Argent's real property was located to confirm that the leases (as identified on Ex. A-1 to the Sale Agreement) and other real property (as identified on Ex. A-3 to the Sale Agreement) that were subject to the sale approved by this Court and the US Court were adequately described in the applicable recorded Deeds of Trust;

- (b) Confirmed that all but 15 of Argent US's leases along with two parcels of real property (two tracts located in Newton County and one tract located in Polk County) subject to the approved sale were appropriately and adequately identified and described in the Deeds of Trust filed in the appropriate counties;
- (c) Based on additional information provided by the Syndicate's counsel, determined that Deeds of Trust were properly recorded with respect to two of the 15 above-described leases, leaving 13 leases unaccounted for (the "Excepted Leases");
- (d) Subsequently reviewed the real property records of each county in which Argent US's real property was located to identify any tax liens, judgments, or fixture filings with respect to Argent's real property;
- (e) Confirmed that no tax liens, judgments, or fixture filings had been recorded with respect to Argent US's real property other than those previously disclosed on Schedule B to the Vesting Order or otherwise asserted in the US Proceedings;
- (f) Reviewed the grantor/grantee indexes for each county in which Argent US's real property was located to identify any deeds of trust or mines and minerals ("M&M") liens filed with respect to Argent's real property; and
- (g) Confirmed that no M&M, tax, or other liens had been asserted with respect to Argent's real property other than those previously disclosed on Schedule B to the Vesting Order or otherwise asserted in the US Proceedings.

## **Conclusion on Security Review**

25. Norton Rose concluded that the Syndicate has a properly perfected and secured interest in all of Argent US's personal property, except for deposit accounts, money (which can only be perfected by possession), and motor vehicles ("Rolling Stock") which can only be perfected by properly notating on the title documents (which was not completed by the Syndicate).
26. The Rolling Stock is comprised of 23 light duty trucks and 13 pieces of miscellaneous construction equipment/trailers.
27. Norton Rose concluded that the Syndicate has a properly perfected and secured interest in all of the real property assets that were sold to BXP except for
  - (a) the Excepted Leases; and
  - (b) one parcel / two tracts of land identified on Ex. A-3 to the Sale Agreement located in Newton County (the "Excepted Land")

## **Rolling Stock, Excepted Leases and Excepted Land (collectively "Excepted Items")**

28. The Monitor reviewed the underlying value of the Rolling Stock, Excepted Leases and Excepted Land and notes the following:
  - (a) The Kelly Blue Book value of the Rolling Stock indicates an estimated value to be approximately \$550,000; however, per review of the Sale Agreement, the Monitor notes that BXP ascribed no value to the Rolling Stock;
  - (b) The Excepted Land was appraised by the applicable taxing authorities in 2015 at approximately \$200,000; however BXP ascribed no value to the Excepted Lands according to Exhibit C of the Sale Agreement; and

- (c) With respect to the Excepted Leases, the Monitor reviewed the value of the underlying leases in consultation with Argent by considering the asset value ascribed in the Sale Agreement. The total value ascribed to the Excepted Leases was \$15,000 to \$25,000.
29. For the purposes of the initial Interim Distribution discussed in further detail below, the Monitor withheld \$525,000 in order to address the value of the Excepted Items. Nonetheless, the Amended and Restated Initial Order granted the Syndicate an “Interim Lenders’ Charge” sufficient to cover the estimated value of the Excepted Items. Accordingly, as discussed in further detail below, the Monitor proposes to distribute to the Syndicate the funds retained by the Monitor for the Excepted Items from the proceeds of the Sale Agreement, as the assets would be covered by the Interim Financing Credit Facility.

#### **DISTRIBUTIONS OF NET PROCEEDS**

30. Paragraph 3 of the Interim Distribution Order required the Monitor to make an interim distribution (“Interim Distribution”) to the Syndicate of the net proceeds from the Sale Agreement less various holdbacks. The Interim Distribution was not to exceed the total debt owed to the Syndicate and was subject to the Monitor completing its review that the Syndicate’s security was valid and enforceable.
31. Following the confirmation from the Monitor’s counsel that the Syndicate’s security was valid and enforceable (as discussed above), the following distributions were made by the Monitor in accordance with the Interim Distribution Order.

**Receipts and Disbursements (USD)****Receipts**

|                                  |                          |
|----------------------------------|--------------------------|
| Gross Purchase Price             | \$ 45,575,000            |
| Interim statement of adjustments | 722,952                  |
| <b>Net received by Monitor</b>   | <b><u>46,297,952</u></b> |

**Disbursements**

|  |                            |
|--|----------------------------|
| OGAC success fee   | (505,750)                  |
| Escrow fund for final statement of adjustments held by Wells Fargo | (505,025)                  |
| KERP/KEIP payments   | (1,435,041)                |
| Cure payments  | (1,033,247)                |
| Wind-down funds  | (1,129,194)                |
| Interim distribution to Syndicate                                  | (39,100,000)               |
| <b>Total distributed</b>   | <b><u>(43,708,257)</u></b> |
| <b>Cash currently held by Monitor</b>                              | <b><u>\$ 2,589,695</u></b> |

32. The Monitor is continuing to hold back funds for items that have not yet been fully resolved or have not yet been incurred (i.e. completion costs). Revised estimated holdbacks for these amounts have been identified in the table below. Note the below holdbacks do not include a holdback for the Excepted Items as it is the Monitor's view that the Syndicate has security for the Interim Financing over the Excepted Items. Accordingly, the Monitor is proposing to make a second interim distribution ("Second Interim Distribution") to the Syndicate in the amount of \$500,000, as set out below. The Monitor seeks the Court's approval of the Monitor's proposed Second Interim Distribution to the Syndicate, in accordance with the Interim Distribution Order.

**Proposed Second Interim Distribution and Holdbacks (USD)**

|  |                            |
|--|----------------------------|
| <b>Cash currently held by Monitor</b>                    | <b><u>\$ 2,589,695</u></b> |
| <b>Holdbacks</b>   |                            |
| Remaining Completion Costs                               | (882,010)                  |
| Admin Charge   | (500,000)                  |
| Ad-Hoc Charge  | (300,000)                  |
| Director Charge  | (200,000)                  |
| Lien reserve   | (160,737)                  |
| Tax reserve  | (4,650)                    |
| Remaining Cure reserve                                   | (42,298)                   |
| <b>Proposed Second Interim Distribution to Syndicate</b> | <b><u>\$ 500,000</u></b>   |

## **WIND-DOWN INITIATIVES**

33. Since the closing of the Sale Agreement, the Monitor, working with the Applicants' management, has completed or is in the process of completing the following:
- (a) The majority of the Applicants' employees have either been retained by BXP or terminated. The Completion Cost currently estimates an average of four staff being retained until the end of August, which will facilitate the wind-down of the Applicants' operations as well as allow sufficient staff to complete the final statement of adjustments as required under the Sale Agreement which is scheduled to be completed within 90 days of closing (outside date of August 20, 2016);
  - (b) Work on remaining BXP post-closing items including transfer of operatorship to BXP and release of various letters of credit. These items are not fully completed and are currently ongoing; and
  - (c) Disclaimed Argent US's Houston Office lease and re-located the office to temporary space.

## **ENHANCED POWERS OF THE MONITOR**

34. As further set out in the Affidavit of Mr. Sean Bovingdon sworn June 17, 2016, the directors of Argent Energy Ltd. ("AEL"), the administrator of the Trust, intend to resign on June 30, 2016. Argent is seeking an Order to enhance the powers of the Monitor to act on behalf of the administrator of the Trust and directing the Monitor to assign the Trust into bankruptcy at such time that the Monitor deems appropriate.

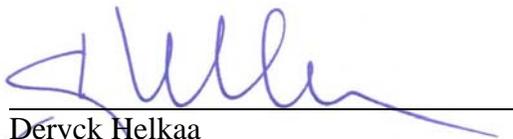
## **EXTENSION OF STAY PERIOD**

35. On May 5, 2016, this Honourable Court extended the Stay Period until June 30, 2016. The Applicants are seeking a further extension to the Stay period up to August 31, 2016 in order to provide sufficient time to complete the wind-up of their operations and the completion of the final statement of adjustment in relation to the closing of the Sale Agreement.
36. The Monitor supports the requested stay extension.

## **CONCLUSIONS AND RECOMMENDATIONS**

37. The Monitor respectfully recommends that this Honourable Court grant the Applicants' request for:
- (a) an extension to the stay of proceedings to August 31, 2016;
  - (b) approval of the Monitor's proposed Second Interim Distribution to the Syndicate; and
  - (c) the enhanced powers to the Monitor with respect to the Trust and directing the Monitor to assign the Trust into bankruptcy at such time as the Monitor deems appropriate.
  - (d) All of which is respectfully submitted this 21<sup>st</sup> day of June, 2016.

FTI Consulting Canada Inc.  
in its capacity as the Monitor of Argent



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Deryck Helkaa  
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