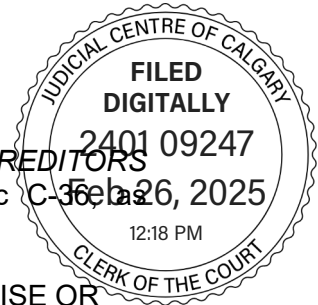


COURT FILE NUMBER 2401-09247
COURT COURT OF KING'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36, as
amended



AND IN THE MATTER OF COMPROMISE OR
ARRANGEMENT OF LONG RUN
EXPLORATION LTD. and CALGARY
SINOENERGY INVESTMENT CORP.

APPLICANT ORPHAN WELL ASSOCIATION
RESPONDENT LONG RUN EXPLORATION LTD.

**DOCUMENT BRIEF OF ARGUMENT OF THE ORPHAN
WELL ASSOCIATION**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT
MLT Aikins LLP
2100, 222 3rd Avenue SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/780.969.3501
Fax: 403.508.4349
Attention: Ryan Zahara/Molly McIntosh
Email: rzahara@mltaikins.com/
mmcintosh@mltaikins.com
File: 0148745.00007

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I. INTRODUCTION

1. This Brief is submitted on behalf of the Applicant, the Orphan Well Association (the “**OWA**” or the “**Applicant**”), in support of an application (the “**Receivership Application**”) to appoint PricewaterhouseCoopers Inc. (“**PwC**”) as receiver and manager (the “**Receiver**”) over the current and future assets, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof (collectively, the “**Property**”) of Long Run Exploration Ltd. (“**Long Run**”).
2. Long Run holds licenses for thousands of oil and gas wells, pipelines and facilities (collectively, the “**Licensed Assets**”) across Alberta issued and regulated by the Alberta Energy Regulator (the “**AER**”).
3. Long Run and Calgary Sinoenergy Investment Corp. (“**CSIC**”) are subject to proceedings pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), the stay of proceedings for which is currently set to expire on February 28, 2025 (the “**CCAA Proceedings**”).
4. The transaction between Long Run and Hiking Group Shandong Jinyue Int’t Trading Corporation, or its nominee (the “**Purchaser**”), in respect of the business of Long Run (the “**Transaction**”) was approved by the Honourable Justice D. Mah on November 21, 2024 (the “**ARVO**”), however, the Purchaser is unable to fund the purchase price of the Transaction due to challenges transferring money out of China due to regulations of the Chinese State Administration of Foreign Exchange and, as a result, the Transaction has been unable to close.
5. The Monitor has also been unable to access funds pursuant to the Interim Financing Term Sheet, dated July 23, 2024 (the “**Interim Financing**”) and has reported that unless those funds are received or the Transaction closes, Long Run will likely exhaust all availability liquidity to maintain its ongoing operations by the expiration of the stay of proceedings.
6. The OWA seeks to enforce the end of life obligations (the “**EOL Obligations**”) associated with the Licensed Assets in its *bona fide* regulatory capacity, and pursuant to its delegated authority under the *Orphan Fund Delegated Administration Regulation* (the

“Regulation”),¹ which is a regulation enacted under the *Oil and Gas Conservation Act* (the **“OGCA”**).²

7. Unlike a secured creditor, the OWA seeks to appoint the Receiver to facilitate its regulatory mandate to prevent the public from bearing the cost of Long Run’s EOL Obligations. The OWA further requires the Receivership Order to authorize the Receiver to sell and dispose of assets to cover the costs associated with Long Run’s EOL Obligations.
8. For the reasons set out herein, it is just and convenient, as well as necessary, that PwC be appointed as Receiver over the assets, undertakings, and property of Long Run located in Alberta (the **“Property”**).

II. ISSUES

9. The sole issue to be determined by this Honourable Court is whether it is appropriate to grant a Receivership Order over the Property of Long Run.

III. LAW AND ARGUMENT

A. The Court has Jurisdiction to Appoint a Receiver

10. The OWA brings this Receivership Application under the authority of three statutes:
 - (a) section 99(a) of the Alberta *Business Corporations Act* (the **“ABCA”**);³
 - (b) section 106.1 of the OGCA;⁴ and
 - (c) section 13(2) of the *Judicature Act*.⁵
11. The Court has jurisdiction to grant a Receivership Order pursuant to section 13(2) of the *Judicature Act*, which provides:

An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to

¹ [Orphan Fund Delegated Administration Regulation](#), Alta Reg 45/2001 [**Regulation**] at [s 3](#), at **TAB 1** of the Book of Authorities.

² [Oil and Gas Conservation Act, RSA 2000, c O-6](#), [**OGCA**], at ss [106.1](#) and [110.1](#) at **TAB 2**.

³ [Business Corporations Act](#), RSA 2000, c B-9 [**ABCA**], at [s 99\(a\)](#), at **TAB 3**.

⁴ OGCA, at [106.1](#) at **TAB 2**.

⁵ [Judicature Act](#), RSA 2000, c J-2 [**Judicature Act**], at [s 13\(2\)](#) at **TAB 4**.

be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.⁶

B. The OWA has Standing to Apply for a Receivership Order

12. The OWA is an “interested person” with standing to apply for a receivership order under the ABCA.
13. Section 99(a) of the ABCA provides that on an application by any “interested person”, the Court may make an order appointing a receiver.⁷ This Part of the ABCA does not define “interested person”, but elsewhere defines an “interested person” as including a person with a contractual relationship with the corporation in question or a person designated as an interested person by an order of the Court.⁸
14. The OWA has the legal status of a Society,⁹ which qualifies the OWA as a legal person. The OWA is an “interested person” due to its general statutory mandate to remediate orphaned wells, pipelines and facilities in Alberta.
15. In addition, section 106.1 of the OGCA provides:

The Regulator [AER] may, subject to the regulations, apply to the Court of King’s Bench for the appointment of a receiver, receiver-manager, trustee or liquidator of the property of a licensee.¹⁰
16. Pursuant to section 3(1) of the Regulations, the AER delegated this authority to appoint a receiver to the OWA.¹¹ The OWA has previously successfully exercised its delegated authority to appoint a receiver over a number of oil and gas companies, including, but not limited to, Sanling Energy Ltd.,¹² Everest Canadian Resources Corp.,¹³ Bow River Energy

⁶ *Judicature Act*, at s 13(2) at **TAB 4**.

⁷ ABCA, at s 99(a), at **TAB 3**.

⁸ ABCA, at s 206.1 at **TAB 3**.

⁹ Regulation, at s 2, at **TAB 1**.

¹⁰ OGCA, at s 106.1, at **TAB 2**.

¹¹ Regulation, at s 3(1), at **TAB 1**.

¹² *Sanling Energy Ltd*, [Receivership Order](#) of Justice Ho, granted in Alberta Court of King’s Bench Action No. 2101-05013 (“**SanLing Application**”) on April 23, 2021 at **TAB 13**.

¹³ *Everest Canadian Resources Corp.*, [Receivership Order](#) of Justice Burns, granted in Alberta Court of King’s Bench Action No. 2301-04480 on April 6, 2023 at **TAB 14**.

Ltd.¹⁴, Trident Exploration Corp,¹⁵ Tallahassee Exploration Inc.¹⁶ and Revitalize Energy Inc.¹⁷

17. In the SanLing Application, Justice Ho confirmed that the OWA had standing to apply for a receivership order under section 99(a) of the ABCA and section 106.1 of the OGCA.¹⁸
18. Lastly, section 13(2) of the *Judicature Act* provides that a receiver may be appointed by interlocutory order “in all cases in which it appears to the Court to be just and convenient that the order should be made”.¹⁹ This section does not restrict who can apply for a receivership order; the only requirement, discussed in further detail below, is that it is “just and convenient” to do so in the circumstances.
19. This Court has confirmed that parties who are not creditors have standing to apply for a Receivership Order.
20. In *Alberta Health Services v Networc Health Inc.* (“**Networc**”), this Court held that section 13(2) of the *Judicature Act* does not require the application for a receivership order be made by a creditor, and that Alberta Health Services (“**AHS**”) had standing to apply based on its interest in ensuring citizens of the Province of Alberta were not deprived of surgical services.²⁰
21. This Honourable Court recently applied the *Networc* decision in *Law Society of Alberta v Higgerty* (“**Higgerty**”) and found that the Law Society of Alberta (the “**Law Society**”) had standing to apply for a receiver to be put in place over a legal practice based on its interest in ensuring that: (i) the parties were acting in the public interest (ii) solicitor client privilege

¹⁴*Bow River Energy Ltd.*, [Receivership Order](#) of Justice D.L. Shelley, granted in Alberta Court of King’s Bench Action No. 2001-13391 on October 29, 2020 at **TAB 15**.

¹⁵*Trident Exploration Corp.*, [Receivership Order](#) of Justice C.M. Jones, granted in Alberta Court of King’s Bench Action No. 1901-06244 on May 3, 2019 at **TAB 16**.

¹⁶ *Tallahassee Exploration Corp.*, [Receivership Order](#) of Justice B. Johnston, granted in Alberta Court of King’s Bench Action No. 2401-14363 on October 23, 2024 at **TAB 17**.

¹⁷ *Revitalize Energy Inc.*, [Receivership Order](#) of Justice C.D. Simard, granted in Alberta Court of King’s Bench Action No. 2501 00481 on January 20, 2025 at **TAB 18**.

¹⁸ Transcript of Proceedings of SanLing Application, heard on April 23, 2021 (the “**SanLing Transcript**”), page 10 lines 7-10 at **TAB 19**.

¹⁹ *Judicature Act*, at s 13(2) at **TAB 4**.

²⁰ *Alberta Health Services v Networc Health Inc.*, 2010 ABQB 373 [**Networc**], at [paras 14](#) and [19](#) at **TAB 5**.

was preserved; and (iii) an appropriate party dealt with the obligation to settle, extend or compromise any indebtedness owing to or by the law firm in question.²¹

22. In the SanLing Application, Justice Ho also considered *Network* and further confirmed:

... a party may have standing provided that they act for the benefit of and on behalf of the Alberta public. I find that the OWA fulfills such a role in regards to the environment and end of life obligations of SanLing...²²

23. It is unnecessary to determine whether the OWA is a creditor of Long Run in the circumstances. The OWA acts for the benefit of, and on behalf of, the Alberta public and is a major stakeholder in seeing the EOL Obligations of Long Run satisfied to the fullest extent possible.

24. As was described by the Supreme Court of Canada ("**SCC**") in *Orphan Well Association v Grant Thornton Ltd.* ("**Redwater**"), the OWA is not acting as a creditor in this case:

...*Abitibi* cannot be understood as having changed the law as summarized by Laycraft C.J.A. I adopt his comments at paragraph 33 of *Northern Badger*:

The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life... But the obligations of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgement for money, nor is that the object of the whole process. Rather it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

Based on the analysis in *Northern Badger* it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims".²³

²¹ [Law Society of Alberta v Higgerty](#), 2023 ABKB 499 [*Higgerty*], at [para 32](#), at **TAB 6**.

²² SanLing Transcript, at page 10, lines 16-18 at **TAB 17**.

²³ [Orphan Well Association v Grant Thornton Ltd.](#), 2019 SCC 5, [paras 134](#) and [135](#) at **TAB 7**.

25. In these circumstances, the OWA is primarily acting under its provincial mandate to prevent the public from bearing the cost of an unsuccessful oil and gas company's EOL Obligations.
26. In *Redwater*, the SCC also definitively determined that an insolvent oil and gas licensee remains liable to satisfy its environmental obligations, regardless of its insolvency, and any proceeds of the sale of its assets must first be used satisfy those environmental obligations, before any of its creditors are entitled to be repaid.
27. Accordingly, until the EOL Obligations of Long Run are satisfied, the OWA remains the most significant stakeholder in respect of the estate of Long Run and its Property in order to ensure the satisfaction of the EOL Obligations.

C. General Test for Appointing a Receiver

28. Pursuant to section 13(2) of the *Judicature Act*, the underlying test for whether a receiver should be appointed considers whether it is “just and convenient” to do so in light of the circumstances.²⁴ Given the broad nature of this question, courts have developed additional factors to support their assessment of whether appointing a receiver is appropriate.
29. In *Higgerty*, this Court considered the Law Society’s application to appoint a receiver under section 13(2) of the *Judicature Act* and held that it should:
 - (a) explore whether there are other remedies that could serve to protect the applicants’ interests;
 - (b) balance the rights of both the applicants and the other stakeholders; and
 - (c) consider the effect of granting the receivership order.²⁵

²⁴ *Judicature Act*, at [s 13\(2\)](#); at **TAB 4**.

²⁵ *Higgerty*, at [para 25](#) at **TAB 6**.

30. The Court in *Higgerty* cited to Justice Romaine’s decision in *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.* (“**Paragon**”) for a non-exhaustive list of 16 factors to consider in any application to appoint a receiver.²⁶
31. Courts have also relied on the tripartite test for injunctive relief endorsed in *Murphy v Cahill* (“**Murphy**”) when considering applications to appoint a receiver, which considers:
- (a) there must be a serious issue to be tried;
 - (b) it must be determined that the applicant would suffer “irreparable harm” if its application were refused, noting that irreparable harm must go beyond financial loss; and
 - (c) the balance of convenience, or the balance of respective prejudices, must favour granting the receivership order.²⁷
32. In light of the factors relied on by the Courts in *Higgerty*, *Paragon* and *Murphy*, the following factors are relevant to this Receivership Application:
- (a) the risk to the public if a receiver is not appointed over the Property and what, if any, irreparable harm could result;
 - (b) whether there are any alternative measures that could be implemented to ensure Long Run complies with its obligations as a licensee or to ensure it satisfies its regulatory obligations;
 - (c) the respective prejudice to the parties if a receiver is appointed;
 - (d) Long Run’s standing as a licensee and ability to safely operate the Licensed Assets; and
 - (e) whether the value of Long Run’s Property is sufficient to satisfy the estimate of the outstanding abandonment and reclamation costs for which the estate of Long Run is currently responsible.

²⁶ *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.*, 2002 ABQB 430 [**Paragon**], at [para 27](#) at **TAB 8**.

²⁷ *Murphy v Cahill*, 2012 ABQB 446, at [para 40](#) at **TAB 9**.

(i) Risk of Irreparable Harm

33. If the Receiver is not appointed, there is a significant risk that Long Run will be forced to abandon the Licensed Assets and, as a result, the Alberta public is exposed to the long-term risk and cost of Licensed Assets that are not properly abandoned and remediated.
34. Without a Receiver in place, there is significant risk to the environment and surrounding communities that the Licensed Assets will not be properly reclaimed according to provincial regulatory requirements. There is also a risk that the Licensed Assets will not be properly transferred to a licensed operator in good standing with the AER with sufficient means to continue operations or satisfy the decommissioning and reclamation obligations of Long Run.
35. Additionally, if there is no stay of proceedings in place, other creditors may take steps to commence enforcement proceedings, seek relief against the property of Long Run, or terminate leases or other agreements associated with the Licensed Assets. This harm cannot be quantified in monetary terms.
36. Long Run has demonstrated a lack of ability or funding to safely maintain operations of its Licensed Assets or to monetize its assets.

(ii) No Alternative Measures Available

37. There are no alternative measures to the Receivership Order available to sufficiently protect the public from the risk of irreparable harm identified above.
38. The current stay is set to expire on February 28, 2025 and there is no application before the Court to extend the stay of Proceedings beyond the date of this Application.
39. Canadian Courts have terminated CCAA proceedings and appointed receivers where the CCAA proceeding will not result in a restructuring that will yield a beneficial outcome to both the debtor and the creditors, and where the moving party has lost faith in the ability of the debtor to run its business.²⁸

²⁸ [ITMO 2039882 Ontario Ltd.](#), 2024 ONSC 5153 [at para 33](#) at **TAB 10**.

40. The CCAA Proceedings have not yielded a long-term solution, nor has a suitable purchaser capable of funding a viable transaction been identified.
41. The OWA can exercise reasonable care and measures with respect to the Licensed Assets, but it cannot take any further steps in respect of the Property, including attempting to find other licensed operators to take over such property. Providing an opportunity for other operators to take on the EOL Obligations of Long Run minimizes the impact on the Orphan Well Fund and reduces the exposure of the public to the costs of fulfilling the EOL Obligations of Long Run.
42. The OWA requires the relief of a Receivership Order to appoint a receiver to sell or dispose of any of the Property in order to pay for amounts that will be incurred for the decommissioning and reclamation costs associated with the Licensed Assets upon the expiration of the CCAA Proceedings.

(iii) Respective Prejudice to the Parties

43. This factor requires the Court to assess which of the parties would suffer greater harm from granting or refusing the Receivership Order.²⁹
44. With respect to the positions of the parties, appointing a receiver would end Long Run's involvement in its own operations, which makes the Receivership Order a significant remedy. Long Run does not have the financial ability to comply with its regulatory obligations in respect of the Licensed Assets and has been unable to provide tangible or substantive evidence that it has the means or ability to fund the ongoing costs of its EOL Obligations in a safe and compliant manner.
45. On the other hand, the OWA's role is to act pursuant to its regulated authority and mandate to safely decommission abandoned well sites and facilities. The OWA seeks to protect the public from the risk of significant environmental damage and the costs to the public if Long Run's Licensed Assets cannot be properly remediated, abandoned, shut-in or sold to a more responsible licensed operator.

²⁹ [MTM Commercial Trust v Statesman Riverside Quays Ltd.](#), 2010 ABQB 647, at [para 59](#) at **TAB 11**.

46. In addition, pursuant to the Initial Order, the ARIO, and the SARIO, Long Run has not been operating the Licensed Assets since July 4, 2024, so appointing a receiver would not significantly alter the current status quo; rather appointing a receiver would ensure the public is protected from potentially significant risks associated with an abandonment of the Licensed Assets.

(iv) Long Run's Standing as a Licensee

47. Based on the OWA's understanding of Long Run's financial circumstances, it is not clear whether or how Long Run would be able to continue to comply with its regulatory obligations in the near term, or at all.

(v) Costs of Decommissioning and Reclamation Work Compared to Value of Assets

48. The OWA estimates that the cost of performing abandonment and reclamation work will far exceed the value of Long Run's Property, which makes the OWA the most significant stakeholder in the circumstances.
49. The AER estimates the deemed liability of Long Run's Licensed Assets to be \$476,834,036.95.³⁰ While there has been no appraisal commissioned of Long Run's Licensed Assets, it is highly unlikely that the value of the Licensed Assets will exceed the costs of the necessary decommissioning and reclamation work that might ultimately have to be expended.
50. In *Re Mantle Materials Group, Ltd.*, this Court confirmed the holding in *Redwater* and held that all end of life environmental remediation obligations must be paid before there can be any distribution to any secured or unsecured creditors.³¹ As a result, the OWA is the primary, if not only, interested stakeholder in the management and liquidation of the Licensed Assets post-*Redwater*.

D. Receivership is Appropriate in the Circumstances

51. Appointing a Receiver is just and convenient in the circumstances and in the public's best interest for the following reasons:

³⁰ De Pauw Affidavit, at para 10.

³¹ [Re Mantle Materials Group, Ltd.](#), 2023 ABKB 488, [at para 43](#) and aff'd in 2023 ABCA 302 at **TAB 12**.

- (a) the stay of proceedings in the CCAA proceedings is currently set to expire on February 28, 2025;
 - (b) Long Run does not appear to have the financial resources to continue to operate its assets in compliance with the applicable legislative and regulatory obligations, including providing emergency response, if necessary, past February 28, 2025;
 - (c) Long Run has been unable to close the Transaction contemplated by the ARVO;
 - (d) Long Run has had significant time to try and liquidate its business or to obtain funding to continue its operations and has provided no evidence to date that it has any financial operational resources available to it, absent the Interim Financing facility in the CCAA proceedings, for which the Monitor has been unable to access the necessary funds under to continue Long Run's operations;
 - (e) in the event the assets are abandoned and it is necessary for the OWA to provide reasonable care and measures respecting the Licensed Assets, the OWA does not have the power to sell or dispose of Long Run's Property to fund the operation, abandonment, reclamation, and remediation of the Licensed Assets where necessary; and
 - (f) the Licensed Assets pose a serious hazard to the public and significant environmental risk of the assets are not properly cared for.
52. It is imperative and in the interests of public safety that a receiver and manager be appointed to ensure that Long Run's assets are properly cared for, maintained, and shut-in where necessary. A receiver is necessary and best suited to oversee the sale of any assets to fund the necessary decommissioning and remediation costs and transfer the Licensed Assets to responsible operators.

IV. RELIEF REQUESTED

53. The Applicant respectfully requests that this Honourable Court grant an Order appointing the Receiver over the Property of Long Run.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2025.

MLT AIKINS LLP

A handwritten signature in blue ink, appearing to read "M. McIntosh", written over a horizontal line.

Ryan Zahara/Molly McIntosh
Counsel for the Orphan Well Association

LIST OF AUTHORITIES

LEGISLATION

1. [Orphan Fund Delegated Administration Regulation](#), Alta Reg 45/2001
2. [Oil and Gas Conservation Act, RSA 2000, c O-6](#),
3. [Business Corporations Act](#), RSA 2000, c B-9
4. [Judicature Act](#), RSA 2000, c J-2

CASE LAW

5. [Alberta Health Services v Network Health Inc.](#), 2010 ABQB 373
6. [Law Society of Alberta v Higgerty](#), 2023 ABKB 499
7. [Orphan Well Association v Grant Thornton Ltd.](#), 2019 SCC 5
8. [Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.](#), 2002 ABQB 430
9. [Murphy v Cahill](#), 2012 ABQB 446
10. [ITMO 2039882 Ontario Ltd.](#), 2024 ONSC 5153
11. [MTM Commercial Trust v Statesman Riverside Quays Ltd.](#), 2010 ABQB 647
12. [Re Mantle Materials Group, Ltd.](#), 2023 ABKB 488

COURT ORDERS & TRANSCRIPTS

13. *Sanling Energy Ltd.*, [Receivership Order](#) of Justice Ho, granted in Alberta Court of King's Bench Action No. 2101-05013 on April 23, 2021.
14. *Everest Canadian Resources Corp.*, [Receivership Order](#) of Justice Burns, granted in Alberta Court of King's Bench Action No. 2301-04480 on April 6, 2023
15. *Bow River Energy Ltd.*, [Receivership Order](#) of Justice D.L. Shelley, granted in Alberta Court of King's Bench Action No. 2001-13391 on October 29, 2020

16. *Trident Exploration Corp.*, [Receivership Order](#) of Justice C.M. Jones, granted in Alberta Court of King's Bench Action No. 1901-06244 on May 3, 2019
17. *Tallahassee Exploration Inc.*, [Receivership Order](#) of Justice B. Johnston, granted in Alberta Court of King's Bench Action No. 2401-14363 on October 23, 2024
18. *Revitalize Energy Inc.*, [Receivership Order](#) of Justice C.D. Simard, granted in Alberta Court of King's Bench Action No. 2501 00481 on January 20, 2025
19. *SanLing Energy Ltd*, Transcript of Proceedings of Receivership Application, heard on April 23, 2021

TAB 1

Alberta Regulations

Oil and Gas Conservation Act

Alta. Reg. 45/2001 — Orphan Fund Delegated Administration Regulation

Alta. Reg. 45/2001, s. 2

s 2. Establishment of delegated authority

Currency

2. Establishment of delegated authority

The Alberta Oil and Gas Orphan Abandonment and Reclamation Association incorporated under the *Societies Act* is hereby designated as a delegated authority for the purposes of Part 11 of the Act.

Amendment History

Alta. Reg. 251/2001, s. 235(6)

Currency

Alberta Current to Gazette Vol. 120:10 (May 31, 2024)

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Alberta Regulations

Oil and Gas Conservation Act

Alta. Reg. 45/2001 — Orphan Fund Delegated Administration Regulation

Alta. Reg. 45/2001, s. 3

s 3. Delegation

Currency

3. Delegation

3(1) The following powers, duties and functions of the Regulator are delegated to the Association:

- (a) all of the powers, duties and functions of the Regulator for the purpose of administering the payment of money for the purposes set out in [section 70\(1\) of the Act](#);
- (b) the powers, duties and functions of the Regulator under [sections 28\(b\), 41, 102\(1\), 104\(1\)\(b\) and \(2\)\(b\) and 106.1 of the Act](#) and, for the purposes of the enforcement of an order made by the Regulator, [section 105\(1\)\(a\), \(c\), \(d\) and \(e\) and \(3\) of the Act](#), subject to the following terms and conditions:
 - (i) the Association shall act under [section 28\(b\) of the Act](#) and, for the purposes of the enforcement of an order made by the Regulator, [section 105\(1\)\(a\), \(c\), \(d\) and \(e\) and \(3\) of the Act](#), in accordance with the overriding direction and authorization of the Regulator;
 - (ii) the powers, duties and functions of the Regulator under [sections 41, 102\(1\), 104\(1\)\(b\) and \(2\)\(b\) and 106.1 of the Act](#) and, for the purposes of the enforcement of an order made by the Regulator, [section 105\(1\)\(a\), \(c\), \(d\) and \(e\) and \(3\) of the Act](#) may be exercised and carried out only in relation to suspension, abandonment, remediation and reclamation in respect of orphan wells, facilities, well sites and facility sites, and only in relation to providing reasonable care and measures to prevent impairment or damage in respect of wells, facilities, well sites and facility sites;
 - (iii) the powers, duties and functions of the Regulator under [section 105\(1\)\(a\) and \(c\) and \(3\) of the Act](#) for the purposes of the enforcement of an order made by the Regulator must be exercised and carried out in accordance with [section 5.3\(3\) to \(8\) of this Regulation](#);
 - (iv) where the Association receives money on a sale or disposal carried out under [section 41 or 102\(1\) of the Act](#), it shall apply the money to the payment of the suspension costs, abandonment costs, remediation costs and reclamation costs it has incurred, and shall pay any amount remaining to the Regulator to be dealt with under [section 102\(3\) of the Act](#);
 - (v) where the Association receives money on the disposition of an escaped substance under [section 104\(2\)\(b\) of the Act](#), it shall, after applying the proceeds to pay its costs and expenses, pay any amount remaining to the Regulator.

3(2) In exercising and carrying out the powers, duties and functions delegated to it under subsection (1), the Association shall act in accordance with

- (a) [the Act](#), regulations, rules and any other applicable law,
- (b) applicable requirements, guidelines, directions and orders of the Regulator, and

TAB 2

Alberta Statutes

Oil and Gas Conservation Act

Part 15 — Provisions of General Application (ss. 96-112)

R.S.A. 2000, c. O-6, s. 106.1

s 106.1 Appointment of receiver, receiver-manager, trustee, liquidator

Currency

106.1 Appointment of receiver, receiver-manager, trustee, liquidator

The Regulator may, subject to the regulations, apply to the Court of King's Bench for the appointment of a receiver, receiver-manager, trustee or liquidator of the property of a licensee.

Amendment History

2020, c. 4, s. 1(20); Alta. Reg. 217/2022, s. 165(2)

Currency

Alberta Current to Gazette Vol. 120:22 (November 30, 2024)

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Alberta Statutes

Oil and Gas Conservation Act

Part 15 — Provisions of General Application (ss. 96-112)

Regulations [Heading added 2020, c. 4, s. 1(21).]

R.S.A. 2000, c. O-6, s. 110.1

s 110.1 Regulations

Currency

110.1 Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting an application by the Regulator or a delegated authority under Part 11 to the Court of King's Bench for the appointment of a receiver, receiver-manager, trustee or liquidator of the property of a licensee;
- (b) defining any term that is used but not defined in this Act;
- (c) qualifying the exclusion of facilities as defined in the *Geothermal Resource Development Act* or the *Mineral Resource Development Act* from the definition of facility in section 1(1)(w);
- (d) qualifying the exclusion of wells as defined in the *Geothermal Resource Development Act* or the *Mineral Resource Development Act* from the definition of well in section 1(1)(eee);
- (e) respecting the application of this Act to a well or facility as defined in the *Geothermal Resource Development Act* or the *Mineral Resource Development Act*.

Amendment History

2020, c. G-5.5, s. 32(5); 2020, c. 4, s. 1(21); 2021, c. M-16.8, s. 59(5); Alta. Reg. 217/2022, s. 165(2)

Currency

Alberta Current to Gazette Vol. 120:22 (November 30, 2024)

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TAB 3

Alberta Statutes

Business Corporations Act

Part 8 — Receivers and Receiver-Managers (ss. 93-100)

R.S.A. 2000, c. B-9, s. 99

s 99. Powers of the Court

Currency

99. Powers of the Court

On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving the receiver's or receiver-manager's accounts;
- (b) an order determining the notice to be given to any person or dispensing with notice to any person;
- (c) an order fixing the remuneration of the receiver or receiver-manager;
- (d) an order
 - (i) requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
 - (ii) relieving any of those persons from any default on any terms the Court thinks fit;
 - (iii) confirming any act of the receiver or receiver-manager;
- (e) an order that the receiver or receiver-manager make available to the applicant any information from the accounts of the receiver's or receiver-manager's administration that the Court specifies;
- (f) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Currency

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Alberta Statutes

Business Corporations Act

Part 17 — Liquidation and Dissolution (ss. 206.1-229)

R.S.A. 2000, c. B-9, s. 206.1

s 206.1 Definition

Currency

206.1 Definition

In this Part, "**interested person**" means

- (a) a shareholder, a director, an officer, an employee and a creditor of a dissolved corporation,
- (b) a person who has a contractual relationship with a dissolved corporation,
- (c) a trustee in bankruptcy for a dissolved corporation, or
- (d) a person designated as an interested person by an order of the Court.

Amendment History

2005, c. 8, s. 48

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TAB 4

Alberta Statutes
Judicature Act
Part 2 — Powers of the Court (ss. 10-22)

R.S.A. 2000, c. J-2, s. 13

s 13. Part performance

Currency

13.Part performance

13(1) Part performance of an obligation either before or after a breach thereof shall be held to extinguish the obligation

- (a) when expressly accepted by a creditor in satisfaction, or
- (b) when rendered pursuant to an agreement for that purpose though without any new consideration.

13(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.

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(c) generally accepted engineering and operating practices.

Amendment History

Alta. Reg. 251/2001, s. 235(7)-(9); 35/2007, s. 1; 89/2013, s. 21(b); 88/2020, s. 3

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TAB 5

2010 ABQB 373

Alberta Court of Queen's Bench

Alberta Health Services v. Network Health Inc.

2010 CarswellAlta 1017, 2010 ABQB 373, [2010] 11 W.W.R. 730, [2010] A.W.L.D. 4119, [2010] A.W.L.D. 4120, [2010] A.W.L.D. 4121, [2010] A.W.L.D. 4122, [2010] A.J. No. 627, 118 Alta. L.R. (5th) 118, 189 A.C.W.S. (3d) 939, 28 Alta. L.R. (5th) 118

Alberta Health Services (Applicant) and Network Health Inc. (Respondent)

B.E. Romaine J.

Heard: May 3, 11, 2010

Judgment: June 1, 2010

Docket: Calgary BK01-094004

Counsel: Josef G.A. Krüger, Q.C., R.J. Daniel Gilborn, Rahim N. Punjani for Applicant, Alberta Health Services
C. Michael Smith, Smith Mack LaMarsh, Richard Dixon for Cambrian Group
David LeGeyt, David G. Loader for Respondent, Network Health Inc.
Howard A. Gorman, Anne L. Kirker for Interim Receiver, PricewaterhouseCoopers
J. Alexander Kotkas, John Grieve for Healthcare Property Holdings Ltd.
Darren R. Bieganeck for Clark Builders

Subject: Insolvency; Civil Practice and Procedure

Headnote

Bankruptcy and insolvency --- Receivers — Appointment

Status to apply — N Inc. provided surgical services for public, paid for by Alberta Health Services (AHS) pursuant to contract — N Inc. was petitioned into bankruptcy by creditor company — AHS brought application under [s. 46\(1\) of Bankruptcy and Insolvency Act](#) and [s. 13\(2\) of Judicature Act](#) for appointment of interim receiver of financial records and accounts of N Inc. and applied to continue receivership — AHS submitted that it was contingent creditor of N Inc. due to filing of Statement of Claim against N Inc. alleging it breached its agreement with AHS by committing act of insolvency and claiming unquantified damages — AHS's applications granted on other grounds — Although AHS submitted that it had status to apply for receivership order as "contingent creditor," such standing was not required under [s. 46](#) or [s. 13\(2\)](#) — Whether AHS was contingent creditor was not determinative of its status — AHS was major stakeholder with respect to operations and financial health of N Inc. — AHS's interest in ensuring that citizens of province who required surgical services performed in facility provided by N Inc. were not deprived of those services gave it an interest far greater than that of mere customer of goods or services.

Bankruptcy and insolvency --- Bankruptcy petitions for receiving orders — Withdrawal of petition

N Inc. provided surgical services for public, paid for by Alberta Health Services (AHS) pursuant to contract — N Inc. was petitioned into bankruptcy by creditor company — AHS brought application under [s. 46\(1\) of Bankruptcy and Insolvency Act](#) and [s. 13\(2\) of Judicature Act](#) for appointment of interim receiver of financial records and accounts of N Inc. — Creditor applied for leave to withdraw bankruptcy application — AHS applied to continue interim receivership, and opposed creditor's application for leave to withdraw bankruptcy application — AHS's applications granted; receivership order granted and continued — Creditor's application dismissed — Creditor did not establish that its application to withdraw petition for receiving order should be allowed — Creditor did not prove solvency of N Inc., lack of prejudice to other creditors or that withdrawal would not undermine integrity of process.

Bankruptcy and insolvency --- Bankruptcy petitions for receiving orders — Stay of petition — Miscellaneous

N Inc. provided surgical services for public, paid for by Alberta Health Services (AHS) pursuant to contract — N Inc. was petitioned into bankruptcy by creditor company — AHS brought application under [s. 46\(1\) of Bankruptcy and Insolvency Act \(BIA\)](#) and [s. 13\(2\) of Judicature Act](#) for appointment of interim receiver of financial records and accounts of N Inc. — N Inc.

filed affidavit denying its indebtedness to creditor — Creditor brought application for leave to withdraw its petition — AHS applied to continue interim receivership and opposed creditor's application to withdraw — AHS's applications granted; creditor's application dismissed — Applying tri-partite test for injunctive relief, it was established that there were several serious issues to be tried — There might be irreparable harm to public interest if existing application was terminated and AHS was required to reapply under different provision of BIA — Balance of convenience favoured AHS's interest in having creditor's application remain in place and be stayed as opposed to creditor's application to have it withdrawn.

Bankruptcy and insolvency --- Bankruptcy and receiving orders — Miscellaneous

N Inc. provided surgical services for public, paid for by Alberta Health Services (AHS) pursuant to contract — N Inc. was petitioned into bankruptcy by creditor company — Fact of receivership gave rise to default under N Inc.'s lease with its landlord which, but for stay created by receivership order, would entitle landlord to terminate lease — AHS brought application for appointment of interim receiver of financial records and accounts of N Inc. — Interim receiver was appointed — N Inc. filed affidavit denying indebtedness to creditor — Creditor sought to withdraw its bankruptcy application — AHS applied to continue interim receivership and opposed creditor's application for leave to withdraw its application — Landlord brought application to require interim receiver to adopt remainder of lease with N Inc. or abandon premises or allow landlord to terminate lease — AHS's applications granted and creditor's application dismissed on other grounds — Landlord's application to lift stay to allow termination of lease dismissed; application to compel receiver to affirm or disclaim lease dismissed — Landlord was not prejudiced, except to extent that its right to terminate lease for breach of covenant not to be insolvent was stayed during course of receivership — Rent would continue to be paid — Allowing landlord to terminate lease and evict N Inc. would destroy purpose of receivership: to ensure that surgical services provided by N Inc. to public in Alberta were not interrupted — Strong public policy issues were involved in present receivership.

APPLICATIONS by Alberta Health Services for appointment of interim receiver and continuation of receivership; COUNTER-APPLICATIONS by various interested parties.

B.E. Romaine J.:

Introduction

1 On May 3, 2010 Alberta Health Services applied for the appointment of an interim receiver of the financial records and accounts of Network Health Inc. ("Network"). On May 11, 2010, Alberta Health applied to continue the receivership. Various interested parties opposed these applications and brought counter-applications. I granted a receivership order on May 3, 2010 and continued it on May 11, 2010. These are my reasons.

Facts

2 Network operates an accredited non-hospital surgical facility in Calgary under the name of the Health Resource Centre. In December, 2006, Network and the Calgary Health Region (now Alberta Health Services) entered into an agreement whereby Network would provide orthopaedic surgical services to the public in Alberta, the cost of which would be covered by Alberta Health. This agreement expires on March 31, 2012. Alberta Health submits that this arrangement was intended as an interim measure to assist it in dealing with capacity constraints until a new Alberta Health-owned surgical facility could be constructed. Currently, it is expected that this new facility will be operational in January, 2011. The agreement between Network and Alberta Health limits the maximum annual number of procedures that can be performed at the Health Resource Centre, but Alberta Health has no obligation to fund any minimum number of procedures.

3 Network also performs surgeries for the Alberta Workers' Compensation Board and out-of-province or federal insurers, but Alberta Health is its primary source of income. According to the first report of the Interim Receiver, the surgeons and anaesthetists who perform the procedures are not employees of Network and bill Alberta Health directly for their services, but the Health Resource Centre employs about one hundred other staff members.

4 Network planned to expand its surgical capacity and in 2008 and 2009 entered into various lease and construction agreements related to two new facilities which are not yet completely constructed.

13 Alberta Health based its original application for an interim receiver on [section 46\(1\) of the BIA](#) and section 13(2) of the *Judicature Act*. These statutory provisions are set out in Appendix A to this decision.

14 Neither of these provisions requires that an application for a receivership be made by a creditor, but it is clear from case authority that it is usually a creditor that makes such an application. [Section 46](#) follows the sections of the BIA that deal with an application made by a creditor against a debtor for a bankruptcy order, and it requires that such an application has been filed before an application for an interim receiver can be made. There do not appear to be any reported decisions of an application under [section 46](#) being made by a party other than a creditor, although applications under [section 47.1 of the BIA](#), which allows the appointment of a receiver in different circumstances, have been made by trustees in bankruptcy and even by debtors themselves on occasion: for example, *Bruce Agra Foods Inc. v. Everfresh Beverages Inc. (Receiver of)* (1996), 45 C.B.R. (3d) 169 (Ont. Gen. Div.)

15 As noted by Professor Jacob Ziegel in Part II of "The Personal Liabilities of Insolvency Practitioners under Insolvency Legislation: A Comparative Analysis of the Canadian, English and American Positions" in J. Sarra, ed., 2006 Annual Review of Insolvency Law (Toronto: Carswell 2007) at 277-338, receivers are creations of equitable origin and have served a variety of functions in many different contexts. In determining whether Alberta Health had status to apply for the appointment of an interim receiver, it was helpful to look briefly at the history of the development of receiverships under the BIA.

16 [Section 46 of the BIA](#) has long provided for the appointment of an interim receiver where an application for a bankruptcy order has been filed if the court is satisfied that such appointment is shown to be necessary for the protection of the estate of a debtor, and an undertaking with respect to damages is provided by the applicant. The appointment of an interim receiver under [section 46](#) is for conservatory purposes and is limited specifically by [section 46\(2\)](#) such that the interim receiver shall not unduly interfere with the debtor except to the extent necessary for such conservatory purposes or to comply with the order of appointment. Sections 47 and 47.1 were added to the BIA in 1992 and were intended to give greater protection and flexibility to secured creditors during the period of time when they were in the process of enforcing their security. An interim receiver appointed under these sections may exercise broader powers.

17 As noted by Professor Ziegel, these 1992 amendments radically transformed insolvency administrations, as they became very popular with secured creditors. Orders were granted that gave receivers extensive powers and remained in effect, not on an interim basis, but for lengthy periods of time. Some courts and commentators were critical of this broad use of what was described as an interim remedy under the BIA, and, in September 2009, amendments to sections 47 and 47.1 came into effect that had the result of limiting the period of time of an interim receiver appointment under these sections unless otherwise ordered by a court, and limiting the powers available to such interim receivers. However, a new provision was added to the BIA, [section 243](#), which is available to secured creditors and allows a court to give such receiver (commonly referred to as a "national receiver") broad powers equivalent to those previously available to interim receivers under sections 47 and 47.1. It is noteworthy that these amendments did not affect [section 46](#), either in terms of scope of powers or duration of appointment.

18 [Section 13\(2\)](#) of the *Judicature Act* does not require even the pre-requisite of the filing of an application for bankruptcy, as required under [section 46 of the BIA](#), nor does it appear to limit the scope of powers of a receiver appointed under the section, requiring that it must appear to a court to be "just and convenient that the order be made." It is clear, however, that the appointment of a receiver under this provision should not be lightly granted, that alternate remedies should be explored short of a receivership, and that the rights of both an applicant and the respondent debtor must be carefully balanced before an appointment is made: *BG International Ltd. v. Canadian Superior Energy Inc.*, 2009 ABCA 127, 2009 CarswellAlta 469 (Alta. C.A.).

19 In summary, although Alberta Health submitted when it originally applied for a receivership order that it had status to do so as a "contingent creditor", such standing was not required under [section 46 of the BIA](#) or under [section 13\(2\)](#) of the *Judicature Act* and the issue of whether or not Alberta Health was in fact a contingent creditor is not determinative of its status. Alberta Health is clearly a major stakeholder with respect to the operations and financial health of Network. While counsel for the Cambrian Group suggested that Alberta Health had only the status of a "customer" of Network, and that to allow a mere customer the use of the remedy of a receivership would open the proverbial floodgates, Alberta Health's interest in ensuring that

citizens of the Province who require the surgical services performed in the facility provided by Network were not deprived of those services gives it an interest far greater than that of a mere customer of goods or services. The requirements set out in the authorities with respect to interim receiverships, both under the BIA and under the *Judicature Act*, (that an appointment must be necessary for the protection of an estate of the debtor and that a receiver should not be appointed lightly, but only after careful consideration of the equities) serve as a curb on the inappropriate or overly-broad use of the remedy. It is neither necessary nor advisable to impose a limitation that is not found in the legislation.

20 The BIA is remedial legislation. It is clear that it should be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects": *Interpretation Act, R.S.C., 1985, c. I-21* at section 12. In *A. Marquette & fils Inc. v. Mercure*, [1977] 1 S.C.R. 547 (S.C.C.) at 556, the Supreme Court commented:

Before going on to another point it is perhaps not inappropriate to recall that the *Bankruptcy Act*, while not business legislation in the strict sense, clearly has its origins in the business world. Interpretation of it must take these origins into account. It concerns relations among businessmen, and to interpret it using an overly narrow, legalistic approach is to misinterpret it.

Initial Application

21 The focus of the case law interpreting section 46 of the BIA is on protecting the debtor against unwarranted intrusion from petitioning creditors. The courts have recognized the serious consequences that the appointment of an interim receiver has on the business of a debtor, and thus, section 46 requires that the applicant establish that:

- a) on the balance of probabilities, the creditor petitioning the debtor into bankruptcy (in this case, the Cambrian Group), is likely to succeed in obtaining a receiving order in bankruptcy, and
- b) there is an immediate need for the protection of the debtor's estate.

22 Network consented to Alberta Health's application to appoint a receiver at the initial application. The Cambrian Group, while it opposed the application, was vehement, at least on May 3, 2010, with respect to the strength of its application for an order petitioning Network into bankruptcy.

23 Alberta Health deposed that there was an immediate need for the protection of Network's estate. It submitted that if the bankruptcy threatened by the Cambrian Group's application occurred, a trustee in bankruptcy would face huge obstacles to the continuance of Network's operations, including exposure to liability, problems arising from the fact that the agreement between Network and Alberta Health was not assignable without the consent of Alberta Health and the Minister of Health and the dearth of potential assignees that could properly be designated and accredited to run the facility. If Network had to cease operations, surgeries would be disrupted, highly-skilled employees would be left jobless and physicians would be left without facilities in which to operate. Alternatively, allowing Network to operate under the supervision of an interim receiver would alleviate this disruption and would allow Network to generate income for the benefit of creditors.

24 The Cambrian Group applied for an adjournment of the application in order to file further materials and to cross-examine on the affidavits. Initially, given the careful consideration that a court must give to the appointment of a receiver, I considered granting a brief adjournment to May 11, 2010 without appointing an interim receiver, contingent upon the Cambrian Group agreeing not to proceed further with the bankruptcy application during this period of time. Counsel for Alberta Health submitted that in the absence of a stay, there were other parties that may take action during the week's adjournment. I asked counsel to identify this risk when the hearing recommenced in the early afternoon of May 3, 2010. At that time, Alberta Health produced an affidavit that indicated that the publicity of the proceedings had caused significant disruption to Network's operations and uncertainty among patients, employees and suppliers, providing additional evidence of an immediate need for the protection of Network's estate.

25 Alberta Health also indicated that it would agree to adjourn its application for a stay of the Cambrian Group's bankruptcy proceedings and had removed any reference to that relief from its application for an interim receivership order. I was satisfied that

TAB 6

2023 ABKB 499

Alberta Court of King's Bench

Law Society of Alberta v. Higgerty

2023 CarswellAlta 2316, 2023 ABKB 499, [2023] 11 W.W.R. 511, [2023] A.W.L.D. 4668, 2023 A.C.W.S. 4382, 62 Alta. L.R. (7th) 78, 9 C.B.R. (7th) 59

**Law Society of Alberta and Richard E. Harrison
(Applicants) and Patrick B. Higgerty (Respondent)**

D.B. Nixon J.

Heard: June 1, 2023

Judgment: August 31, 2023

Docket: Calgary 2301-03188

Counsel: Eleanor Platt, for Applicant, Law Society of Alberta

Richard E. Harrison, for Custodian for Law Practices of Higgerty Law

Derek Pontin, for Third Party, Easy Legal Finance Inc

Scott Chimuk, for McLeod Law LLP, HMC Lawyers LLP, James & McCall Barristers, O'Fee Law, Guardian Law and Cumming & Gillespie Lawyers

Michael Loberg, for Patrick B. Higgerty

Douglas Nishimura, for Clint Docken, Clint Docken Professional Corporation, James H. Brown & Associates and Gordon Koop

Subject: Civil Practice and Procedure; Corporate and Commercial; Insolvency; Public

Headnote

Debtors and creditors --- Receivers — Appointment — General principles

Respondent personal injury and class-action focused law firm, who had substantial number of creditors, was placed under custodianship — Applicant provincial Law Society and individual applied for order appointing receiver and manager over certain undertakings, personal property, real property and assets of law firm — Application granted — [Section 13\(2\) of Judicature Act](#) allowed for granting of receivership order to party that was not creditor — Test to appoint receiver and manager was whether it was just or convenient to do so in light of circumstances — Law Society was major stakeholder in law firm — Law Society as regulator of legal profession needed to ensure that parties were acting in public interest, solicitor-client privilege was preserved, and that appropriate party dealt with obligation to settle law firm's indebtedness — There were trust account improprieties in range of \$419,000 and no reasonable prospect of law firm repaying loan to secured creditor — Protection of solicitor-client privilege took precedence over rights and entitlements that secured creditor asserted in its capacity as secured lender — Risk to public was greater if there were breach of solicitor-client privilege than if there were breach of secured creditor's interest in security that law firm provided in respect of its property — Risk associated with nature of property was part of business risk that secured creditor assumed when it engaged in loan arrangement — Relief that Law Society and custodian sought did not strip secured creditor of its capacity — Balance of convenience favoured applicants — It was just or convenient for court to grant receivership order — Unique circumstances of case called for receiver and manager to be appointed under s. 13(2) of Act to best ensure protection of solicitor-client privilege [Judicature Act, R.S.A. 2000, c. J-2, s 13\(2\)](#).

APPLICATION by Law Society and individual for appointment of receiver to law firm.

D.B. Nixon J.:

I. Introduction

21 An aspect of the trade in the Higgerty Law context would be the proposed dealing with the "Property" as that term is defined in the Custodian Order. It includes the file material of Higgerty Law.

22 The draft "receiver order" provided by the Applicants (the "Draft Receiver Order") includes in clause 4 a number of powers that are granted to the proposed receiver, including the power to: (i) take possession of the Property; (ii) negotiate payment for the Property; and (iii) settle, extend or compromise any indebtedness owing to or by Higgerty Law.

23 Based on my review of the scope of the powers in the Draft Receiver Order, I find they include elements of trade, albeit much will involve the transfer of Property in the form of legal files. I further note that the powers include a number of initiatives that are beyond the passive scope asserted by ELFCo. Based on the foregoing, if I conclude that any such appointment is appropriate in the circumstances of this case, I find it prudent to appoint a receiver and manager, rather than just a receiver.

B. The Test — Just or Convenient

24 The test to appoint a receiver and manager is whether it is just or convenient to do so in light of the circumstances: *Judicature Act, RSA 2000, c J-2, s. 13(2)*; *Servus Credit Union v Proform Management Inc*, 2020 ABQB 316 at para 65.

25 A receivership order "should not be lightly granted": *Kasten Energy Inc v Shamrock Oil & Gas Ltd*, 2013 ABQB 63 at para 20, citing *BG International Limited v Canadian Superior Energy Inc*, 2009 ABCA 127 at paras 16-17. The court must carefully balance the rights of both the applicant and the respondent as justice and convenience can only be established by considering and balancing the position of both parties: *BG International* at para 17. When considering the issue of whether a receiver and manager should be appointed, the court should: (i) explore whether there are other remedies that could serve to protect the interests of the applicant; (ii) balance the rights of both the Applicants and the other stakeholders (including the secured and unsecured creditors); and, (iii) consider the effect of granting the Draft Receiver Order: *Kasten Energy* at para 20, citing *BG International* at paras 16.

26 A wide array of factors should be taken into consideration when considering the appointment of a receiver and manager. A non-exhaustive list of the factors I may consider prior to any such appointment are set out in *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*, 2002 ABQB 430 at para 27 as follows:

- a. whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b. the risk to the security holder, taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i. the principle that the appointment of a receiver is extraordinary relief, which should be granted cautiously and sparingly;

- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties;
- p. the goal of facilitating the duties of the receiver.

VI. Application of Law to Facts

27 The LSA is one of the Applicants in this case. It regulates the legal profession in the public interest by promoting and enforcing a high standard of professional and ethical conduct by Alberta lawyers. As part of my analysis of whether it is just or convenient to appoint a receiver and manager of Higgerty Law, I infer that the LSA is making this application on an objective basis given its status as a regulator.

A. Does the Law Society of Alberta have status necessary to apply for a receivership order?

28 The Applicants assert their authority to apply for the Draft Receiver Order is legislated under [section 13\(2\) of the Judicature Act](#). Unlike certain provisions in the *BIA*, a receivership order may be granted under the *Judicature Act* following an application by a party that is not a creditor. Further, it may be granted in circumstances outside the normal course of bankruptcy.

29 In this case, neither Applicant relies upon its status as a creditor in applying for the Draft Receiver Order. The Applicants assert that receivership orders have been granted before in similar unique circumstances: see *Alberta Health Services v Network Health Inc*, 2010 ABQB 373.

30 *Network* provides instructive judicial guidance in granting a receivership order under [section 13\(2\) of the Judicature Act](#) at paragraphs 18 - 19 of the decision:

[18] [Section 13\(2\) of the Judicature Act](#) does not require even the pre-requisite of the filing of an application for bankruptcy, as required under [section 46 of the BIA](#), nor does it appear to limit the scope of powers of a receiver appointed under the section, requiring that it must appear to a court to be "just and convenient that the order be made." It is clear, however, that the appointment of a receiver under this provision should not be lightly granted, that alternate remedies should be explored short of a receivership, and that the rights of both an applicant and the respondent debtor must be carefully balanced before an appointment is made: *BG International Ltd. v. Canadian Superior Energy Inc.*, 2009 ABCA 127, 2009 CarswellAlta 469.

[19] In summary, although Alberta Health submitted when it originally applied for a receivership order that it had status to do so as a "contingent creditor", such standing was not required under [section 46 of the BIA](#) or under [section 13\(2\) of the Judicature Act](#) and the issue of whether or not Alberta Health was in fact a contingent creditor is not determinative of its status. Alberta Health is clearly a major stakeholder with respect to the operations and financial health of Network. While counsel for the Cambrian Group suggested that Alberta Health had only the status of a "customer" of Network, and that to allow a mere customer the use of the remedy of a receivership would open the proverbial floodgates, Alberta Health's interest in ensuring that citizens of the Province who require the surgical services performed in the facility provided by Network were not deprived of those services gives it an interest far greater than that of a mere customer of goods or services. The requirements set out in the authorities with respect to interim receiverships, both under the *BIA* and under the *Judicature Act*, (that an appointment must be necessary for the protection of an estate of the debtor and that a receiver should

not be appointed lightly, but only after careful consideration of the equities) serve as a curb on the inappropriate or overly-broad use of the remedy. It is neither necessary nor advisable to impose a limitation that is not found in the legislation.

[Emphasis added]

31 ELFCo has asserted that Higgerty Law is not insolvent. I infer that ELFCo advances this assertion on a balance sheet basis because when viewed from the cash flow perspective, there is a strong indication that Higgerty Law is insolvent. While I am not making a finding at this time concerning the solvency of Higgerty Law, this inference is supported by the fact that Mr. Herscu stated in the Herscu Affidavit that he believed there was no reasonable prospect of Higgerty Law repaying the ELFCo Loan.

32 Based on the evidence, the circumstances in this case are analogous to those of Alberta Health Services in *Networc*. The LSA is a major stakeholder in the wind up of Higgerty Law. The LSA in its capacity as the regulator of the legal profession in Alberta needs to make sure that: (i) the parties are acting in the public interest; (ii) solicitor-client privilege is preserved over the file information; and (iii) an appropriate party deals with the obligation to settle, extend or compromise any indebtedness owing to or by Higgerty Law: see clause 4(f) of the Draft Receiver Order. Given the foregoing, I find that the LSA has the status necessary to apply for a receivership order.

B. Is protecting solicitor-client privilege an essential element of this custodianship?

33 Custodianship orders are granted pursuant to sections 95 and 96 of the Legal Profession Act, RSA 2000, c L-8, which grant the LSA the authority to apply for an Order appointing a custodian in certain circumstances.

34 Custodians are appointed to protect the interests of clients. In doing so, custodians protect the larger public interest.

35 Section 95(1)(g) of the Legal Profession Act provides that a custodian may be appointed "when there is reason to believe that the trust money held by a member is not sufficient to meet the member's trust liabilities".

36 The evidence in this case is that: (i) there are Trust Account Improprieties in the range of \$419,000; and (ii) there is no reasonable prospect of the Applicants repaying the ELFCo Loan. Insofar as the President of ELFCo stated in the Herscu Affidavit that he believed there was no reasonable prospect of Higgerty Law repaying the ELFCo Loan, I infer that the deficiencies in the Higgerty Law trust accounts (because of the Trust Account Improprieties) are in jeopardy.

37 By virtue of being members of the LSA, custodians can maintain solicitor-client privilege over files and information within their custody. Both the LSA and the Custodian are stakeholders in ensuring the maintenance of solicitor-client privileged information.

38 The British Columbia Court of Appeal in *de Stefanis (Re)*, 2005 BCCA 156 at paragraphs 18 and 21 draws an important distinction between secured creditors, who are interested in protecting themselves and usually do so through a receiver that they appoint, and a custodian who is typically interested in protecting the clients of the financially troubled law firm and their respective rights and entitlements, including their respective rights to solicitor client-privilege:

[18] From the perspective of the secured creditors the results which flow from the appointment of a custodian are no happier. A custodian is obliged by the *Act* to protect the interests of clients of the firm, including confidentiality, and is consequently unable to collect accounts receivable either efficiently or economically.

...

[21] RBC further submits that the task of the custodian is significantly dissimilar from that of the receiver in that the primary objective of the custodian is the protection of clients' interests. Receivers, by contrast, act in accordance with the interests of creditors. Any benefit enjoyed by creditors which results from the appointment of the custodian is merely incidental to the primary function of the custodian, which is the protection of the clients:

See also *Kennedy (Re)*, 1997 CanLII 14921 at para 47.

TAB 7

2019 SCC 5, 2019 CSC 5
Supreme Court of Canada

Orphan Well Association v. Grant Thornton Ltd.

2019 CarswellAlta 141, 2019 CarswellAlta 142, 2019 SCC 5, 2019 CSC 5, [2019] 1 S.C.R. 150, [2019] 1 R.C.S. 150, [2019] 3 W.W.R. 1, [2019] A.W.L.D. 879, [2019] A.W.L.D. 880, [2019] A.W.L.D. 881, [2019] A.W.L.D. 941, [2019] A.W.L.D. 942, [2019] S.C.J. No. 5, 22 C.E.L.R. (4th) 121, 301 A.C.W.S. (3d) 183, 430 D.L.R. (4th) 1, 66 C.B.R. (6th) 1, 81 Alta. L.R. (6th) 1, 9 P.P.S.A.C. (4th) 293

Orphan Well Association and Alberta Energy Regulator (Appellants) and Grant Thornton Limited and ATB Financial (formerly known as Alberta Treasury Branches) (Respondents) and Attorney General of Ontario, Attorney General of British Columbia, Attorney General of Saskatchewan, Attorney General of Alberta, Ecojustice Canada Society, Canadian Association of Petroleum Producers, Greenpeace Canada, Action Surface Rights Association, Canadian Association of Insolvency and Restructuring Professionals and Canadian Bankers' Association (Interveners)

Wagner C.J.C., Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown JJ.

Heard: February 15, 2018
Judgment: January 31, 2019
Docket: 37627

Proceedings: reversing *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171, 2017 CarswellAlta 695, 2017 ABCA 124, Frans Slatter J.A., Frederica Schutz J.A., Sheilah Martin J.A. (Alta. C.A.); affirming *Grant Thornton Ltd. v. Alberta Energy Regulator* (2016), 33 Alta. L.R. (6th) 221, 37 C.B.R. (6th) 88, [2016] 11 W.W.R. 716, 2016 CarswellAlta 994, 2016 ABQB 278, Neil Wittmann C.J.Q.B. (Alta. Q.B.)

Counsel: Ken Lenz, Q.C., Patricia Johnston, Q.C., Keely R. Cameron, Brad Gilmour, Michael W. Selnes, for Appellants
Kelly J. Bourassa, Jeffrey Oliver, Tom Cumming, Ryan Zahara, Danielle Maréchal, Brendan MacArthur-Stevens, Chris Nyberg, for Respondents

Josh Hunter, Hayley Pitcher, for Intervener the Attorney General of Ontario

Gareth Morley, Aaron Welch, Barbara Thomson, for Intervener, Attorney General of British Columbia

Richard James Fyfe, for Intervener, Attorney General of Saskatchewan

Robert Normey, Vivienne Ball, for Intervener, Attorney General of Alberta

Adrian Scotchmer, for Intervener, Ecojustice Canada Society

Lewis Manning, Toby Kruger, for Intervener, Canadian Association of Petroleum Producers

Nader R. Hasan, Lindsay Board, for Intervener, Greenpeace Canada

Christine Laing, Shaun Fluker, for Intervener, Action Surface Rights Association

Caireen E. Hanert, Adam Maerov, for Intervener, Canadian Association of Insolvency and Restructuring Professionals

Howard A. Gorman, Q.C., D. Aaron Stephenson, for Intervener, Canadian Bankers' Association

Subject: Civil Practice and Procedure; Environmental; Estates and Trusts; Insolvency; Natural Resources

Headnote

Bankruptcy and insolvency --- Priorities of claims — Unsecured claims — Priority with respect to secured creditors

Provincial legislation imposed environmental obligations with respect to abandonment and remediation of "end of life" oil wells — Trustee-in-bankruptcy G Ltd. sought to disclaim R Corp.'s interest in wells where costs of remediation exceeded wells' value (disclaimed wells), but sought to keep and sell valuable wells to maximize recovery of secured creditor — Orphan Wells Association (OWA) and Regulator applied for declaration that G Ltd.'s disclaimer of licensed wells was void and G Ltd. cross-

applied for approval of sales process that excluded renounced wells — Chambers judge dismissed main application and granted cross-application — Appeals by OWA and Regulator were dismissed — [Section 14.06 of Bankruptcy and Insolvency Act \(BIA\)](#) did not exempt environmental claims from general bankruptcy regime, other than super priority in [s. 14.06\(7\)](#) — Role of G Ltd. as "licensee" under Oil and Gas Conservation Act and Pipeline Act was in operational conflict with provisions of BIA — OWA and Regulator appealed — Appeal allowed — There was no conflict between Alberta's regulatory regime and BIA requiring portions of former to be rendered inoperative in context of bankruptcy — "Disclaimer" did not empower trustee to simply walk away from "disclaimed" assets when bankrupt estate had been ordered to remedy any environmental condition or damage — No operational conflict was caused by fact that G Ltd., as licensee, remained responsible for abandoning renounced assets — End-of-life obligations binding on G Ltd. were not claims provable in R Corp. bankruptcy, so they did not conflict with general priority scheme in [BIA Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s 14.06](#).

Bankruptcy and insolvency --- Administration of estate — Trustees — Miscellaneous

Provincial legislation imposed environmental obligations with respect to abandonment and remediation of "end of life" oil wells — Trustee-in-bankruptcy G Ltd. sought to disclaim R Corp.'s interest in wells where costs of remediation exceeded wells' value (disclaimed wells), but sought to keep and sell valuable wells to maximize recovery of secured creditor — Orphan Wells Association (OWA) and Regulator applied for declaration that G Ltd.'s disclaimer of licensed wells was void and G Ltd. cross-applied for approval of sales process that excluded renounced wells — Chambers judge dismissed main application and granted cross-application — Appeals by OWA and Regulator were dismissed — [Section 14.06 of Bankruptcy and Insolvency Act \(BIA\)](#) did not exempt environmental claims from general bankruptcy regime, other than super priority in [s. 14.06\(7\)](#) — Role of G Ltd. as "licensee" under Oil and Gas Conservation Act and Pipeline Act was in operational conflict with provisions of BIA — OWA and Regulator appealed — Appeal allowed — There was no conflict between Alberta's regulatory regime and BIA requiring portions of former to be rendered inoperative in context of bankruptcy — No operational conflict was caused by fact that G Ltd., as licensee, remained responsible for abandoning renounced assets — Bankruptcy is not licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy.

Bankruptcy and insolvency --- Administration of estate — Trustee's possession of assets — Miscellaneous

Provincial legislation imposed environmental obligations with respect to abandonment and remediation of "end of life" oil wells — Trustee-in-bankruptcy G Ltd. sought to disclaim R Corp.'s interest in wells where costs of remediation exceeded wells' value (disclaimed wells), but sought to keep and sell valuable wells to maximize recovery of secured creditor — Orphan Wells Association (OWA) and Regulator applied for declaration that G Ltd.'s disclaimer of licensed wells was void and G Ltd. cross-applied for approval of sales process that excluded renounced wells — Chambers judge dismissed main application and granted cross-application — Appeals by OWA and Regulator were dismissed — [Section 14.06 of Bankruptcy and Insolvency Act \(BIA\)](#) did not exempt environmental claims from general bankruptcy regime, other than super priority in [s. 14.06\(7\)](#) — Role of G Ltd. as "licensee" under Oil and Gas Conservation Act and Pipeline Act was in operational conflict with provisions of BIA — OWA and Regulator appealed — Appeal allowed — There was no conflict between Alberta's regulatory regime and BIA requiring portions of former to be rendered inoperative in context of bankruptcy — No operational conflict was caused by fact that G Ltd., as licensee, remained responsible for abandoning renounced assets — Bankruptcy is not licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy — End-of-life obligations binding on G Ltd. were not claims provable in R Corp. bankruptcy, so they did not conflict with general priority scheme in [BIA](#).

Natural resources --- Oil and gas — Constitutional issues — Miscellaneous

Provincial legislation imposed environmental obligations with respect to abandonment and remediation of "end of life" oil wells — Trustee-in-bankruptcy G Ltd. sought to disclaim R Corp.'s interest in wells where costs of remediation exceeded wells' value (disclaimed wells), but sought to keep and sell valuable wells to maximize recovery of secured creditor — Orphan Wells Association (OWA) and Regulator applied for declaration that G Ltd.'s disclaimer of licensed wells was void and G Ltd. cross-applied for approval of sales process that excluded renounced wells — Chambers judge dismissed main application and granted cross-application — Appeals by OWA and Regulator were dismissed — [Section 14.06 of Bankruptcy and Insolvency Act \(BIA\)](#) did not exempt environmental claims from general bankruptcy regime, other than super priority in [s. 14.06\(7\)](#) — Role of G Ltd. as "licensee" under [Oil and Gas Conservation Act \(OGCA\)](#) and [Pipeline Act \(PA\)](#) was in operational conflict with provisions of BIA — OWA and Regulator appealed — Appeal allowed — There was no conflict between Alberta's regulatory regime and BIA requiring portions of former to be rendered inoperative in context of bankruptcy by inclusion of trustees in definition of "licensee" in [OGCA](#) and [PA](#) — Under either branch of paramountcy analysis, Alberta legislation authorizing Regulator's use

of its disputed powers would be inoperative to extent that use of those powers during bankruptcy altered or reordered priorities established by [BIA](#) — In test set out in 2012 Supreme Court case, court clearly stated that not all environmental obligations enforced by regulator would be claims provable in bankruptcy — On proper understanding of "creditor" step, it was clear that Regulator acted in public interest and for public good and that it was not creditor of R Corp.

Natural resources --- Oil and gas — Statutory regulation — General principles

Provincial legislation imposed environmental obligations with respect to abandonment and remediation of "end of life" oil wells — Trustee-in-bankruptcy G Ltd. sought to disclaim R Corp.'s interest in wells where costs of remediation exceeded wells' value (disclaimed wells), but sought to keep and sell valuable wells to maximize recovery of secured creditor — Orphan Wells Association (OWA) and Regulator applied for declaration that G Ltd.'s disclaimer of licensed wells was void and G Ltd. cross-applied for approval of sales process that excluded renounced wells — Chambers judge dismissed main application and granted cross-application — Appeals by OWA and Regulator were dismissed — [Section 14.06 of Bankruptcy and Insolvency Act \(BIA\)](#) did not exempt environmental claims from general bankruptcy regime, other than super priority in [s. 14.06\(7\)](#) — Role of G Ltd. as "licensee" under [Oil and Gas Conservation Act \(OGCA\)](#) and [Pipeline Act \(PA\)](#) was in operational conflict with provisions of [BIA](#) — OWA and Regulator appealed — Appeal allowed — There was no conflict between Alberta's regulatory regime and [BIA](#) requiring portions of former to be rendered inoperative in context of bankruptcy by inclusion of trustees in definition of "licensee" in [OGCA](#) and [PA](#) — In test set out in 2012 Supreme Court case, court clearly stated that not all environmental obligations enforced by regulator would be claims provable in bankruptcy — On proper understanding of "creditor" step, it was clear that Regulator acted in public interest and for public good and that it was not creditor of R Corp.

Faillite et insolvabilité --- Priorité des créances — Réclamations non garanties — Priorité par rapport aux créanciers garantis
Législation provinciale imposait des obligations de fin de vie en matière environnementale relativement à l'abandon et la remise en état de puits de pétrole — Syndic de faillite G Ltd. a voulu renoncer aux intérêts de R Corp. dans des puits lorsque les coûts de remise en état outrepassaient la valeur des puits (les puits ayant fait l'objet d'une renonciation), mais a cherché à conserver et à vendre des puits ayant une valeur afin de maximiser le recouvrement d'un créancier garanti — Association de puits orphelins et un organisme de réglementation ont déposé une requête visant à faire déclarer que la renonciation de G Ltd. à l'égard de puits autorisés était nulle et G Ltd. a déposé une demande reconventionnelle en vue de faire approuver le processus de vente qui excluait les puits ayant fait l'objet d'une renonciation — Juge siégeant en son cabinet a rejeté la requête principale et a accueilli la demande reconventionnelle — Appels interjetés par l'association et l'organisme de réglementation ont été rejetés — Article 14.06 de la Loi sur la faillite et l'insolvabilité ([LFI](#)) n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7) — Rôle de G Ltd. en tant que « titulaire de permis » en vertu de l'[Oil and Gas Conservation Act](#) et de la [Pipeline Act](#) engendrait un conflit d'application avec les dispositions de la [LFI](#) — Association et l'organisme de réglementation ont formé un pourvoi — Pourvoi accueilli — Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la [LFI](#) en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite — « Renonciation » n'habilitait pas le syndic à tout simplement délaissier les biens « faisant l'objet de la renonciation » quand on l'enjoignait à réparer un fait ou dommage lié à l'environnement — Aucun conflit d'application n'était imputable au fait que G Ltd. demeurait, en qualité de titulaire de permis, tenu d'abandonner les biens faisant l'objet de la renonciation — Obligations de fin de vie incombant à G Ltd. n'étaient pas des réclamations prouvables dans la faillite de R Corp. et n'entraient donc pas en conflit avec le régime de priorité général instauré dans la [LFI](#).

Faillite et insolvabilité --- Administration de l'actif — Syndics — Divers

Législation provinciale imposait des obligations de fin de vie en matière environnementale relativement à l'abandon et la remise en état de puits de pétrole — Syndic de faillite G Ltd. a voulu renoncer aux intérêts de R Corp. dans des puits lorsque les coûts de remise en état outrepassaient la valeur des puits (les puits ayant fait l'objet d'une renonciation), mais a cherché à conserver et à vendre des puits ayant une valeur afin de maximiser le recouvrement d'un créancier garanti — Association de puits orphelins et un organisme de réglementation ont déposé une requête visant à faire déclarer que la renonciation de G Ltd. à l'égard de puits autorisés était nulle et G Ltd. a déposé une demande reconventionnelle en vue de faire approuver le processus de vente qui excluait les puits ayant fait l'objet d'une renonciation — Juge siégeant en son cabinet a rejeté la requête principale et a accueilli la demande reconventionnelle — Appels interjetés par l'association et l'organisme de réglementation ont été rejetés — Article 14.06 de la Loi sur la faillite et l'insolvabilité ([LFI](#)) n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7) — Rôle de G Ltd. en tant que « titulaire de permis » en vertu de l'[Oil and Gas Conservation Act](#) et de la [Pipeline Act](#) engendrait un conflit d'application avec les dispositions de

la LFI — Association et l'organisme de réglementation ont formé un pourvoi — Pourvoi accueilli — Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la LFI en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite — « Renonciation » n'habilitait pas le syndic à tout simplement délaissier les biens « faisant l'objet de la renonciation » quand on l'enjoignait à réparer un fait ou dommage lié à l'environnement — Aucun conflit d'application n'était imputable au fait que G Ltd. demeurait, en qualité de titulaire de permis, tenu d'abandonner les biens faisant l'objet de la renonciation — Faillite n'est pas un permis de faire abstraction des règles, et les professionnels de l'insolvabilité sont liés par les lois provinciales valides au cours de la faillite.

Faillite et insolvabilité --- Administration de l'actif — Possession de l'actif par le syndic — Divers

Législation provinciale imposait des obligations de fin de vie en matière environnementale relativement à l'abandon et la remise en état de puits de pétrole — Syndic de faillite G Ltd. a voulu renoncer aux intérêts de R Corp. dans des puits lorsque les coûts de remise en état outrepassaient la valeur des puits (les puits ayant fait l'objet d'une renonciation), mais a cherché à conserver et à vendre des puits ayant une valeur afin de maximiser le recouvrement d'un créancier garanti — Association de puits orphelins et un organisme de réglementation ont déposé une requête visant à faire déclarer que la renonciation de G Ltd. à l'égard de puits autorisés était nulle et G Ltd. a déposé une demande reconventionnelle en vue de faire approuver le processus de vente qui excluait les puits ayant fait l'objet d'une renonciation — Juge siégeant en son cabinet a rejeté la requête principale et a accueilli la demande reconventionnelle — Appels interjetés par l'association et l'organisme de réglementation ont été rejetés — Article 14.06 de la Loi sur la faillite et l'insolvabilité (LFI) n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7) — Rôle de G Ltd. en tant que « titulaire de permis » en vertu de l'Oil and Gas Conservation Act et de la Pipeline Act engendrait un conflit d'application avec les dispositions de la LFI — Association et l'organisme de réglementation ont formé un pourvoi — Pourvoi accueilli — Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la LFI en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite — Aucun conflit d'application n'était imputable au fait que G Ltd. demeurait, en qualité de titulaire de permis, tenu d'abandonner les biens faisant l'objet de la renonciation — Faillite n'est pas un permis de faire abstraction des règles, et les professionnels de l'insolvabilité sont liés par les lois provinciales valides au cours de la faillite — Obligations de fin de vie incombant à G Ltd. n'étaient pas des réclamations prouvables dans la faillite de R Corp. et n'entraient donc pas en conflit avec le régime de priorité général instauré dans la LFI.

Ressources naturelles --- Pétrole et gaz — Questions d'ordre constitutionnel — Divers

Législation provinciale imposait des obligations de fin de vie en matière environnementale relativement à l'abandon et la remise en état de puits de pétrole — Syndic de faillite G Ltd. a voulu renoncer aux intérêts de R Corp. dans des puits lorsque les coûts de remise en état outrepassaient la valeur des puits (les puits ayant fait l'objet d'une renonciation), mais a cherché à conserver et à vendre des puits ayant une valeur afin de maximiser le recouvrement d'un créancier garanti — Association de puits orphelins et un organisme de réglementation ont déposé une requête visant à faire déclarer que la renonciation de G Ltd. à l'égard de puits autorisés était nulle et G Ltd. a déposé une demande reconventionnelle en vue de faire approuver le processus de vente qui excluait les puits ayant fait l'objet d'une renonciation — Juge siégeant en son cabinet a rejeté la requête principale et a accueilli la demande reconventionnelle — Appels interjetés par l'association et l'organisme de réglementation ont été rejetés — Article 14.06 de la Loi sur la faillite et l'insolvabilité (LFI) n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7) — Rôle de G Ltd. en tant que « titulaire de permis » en vertu de l'Oil and Gas Conservation Act (OGCA) et de la Pipeline Act (PA) engendrait un conflit d'application avec les dispositions de la LFI — Association et l'organisme de réglementation ont formé un pourvoi — Pourvoi accueilli — Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la LFI en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite par l'ajout des syndics à la définition légale de « titulaire de permis » dans l'OGCA et la PA — Dans l'un ou l'autre volet de l'analyse relative à la prépondérance, la loi albertaine autorisant l'organisme de réglementation à exercer ses pouvoirs contestés sera inopérante, dans la mesure où l'exercice de ces pouvoirs pendant la faillite modifie ou réarrange les priorités établies par la LFI — Dans une décision de la Cour suprême rendue en 2012 dans laquelle elle a établi le test applicable, la Cour a clairement déclaré que les obligations environnementales appliquées par un organisme de réglementation ne sont pas toutes des réclamations prouvables en matière de faillite — D'après le sens qu'il convient de donner à l'étape « créancier », il était clair que l'organisme de réglementation a agi dans l'intérêt public et pour le bien public et qu'il n'était pas un créancier de R Corp.

Ressources naturelles --- Pétrole et gaz — Réglementation statutaire — Principes généraux

Législation provinciale imposait des obligations de fin de vie en matière environnementale relativement à l'abandon et la remise en état de puits de pétrole — Syndic de faillite G Ltd. a voulu renoncer aux intérêts de R Corp. dans des puits lorsque les coûts de remise en état outrepassaient la valeur des puits (les puits ayant fait l'objet d'une renonciation), mais a cherché à conserver et à vendre des puits ayant une valeur afin de maximiser le recouvrement d'un créancier garanti — Association de puits orphelins et un organisme de réglementation ont déposé une requête visant à faire déclarer que la renonciation de G Ltd. à l'égard de puits autorisés était nulle et G Ltd. a déposé une demande reconventionnelle en vue de faire approuver le processus de vente qui excluait les puits ayant fait l'objet d'une renonciation — Juge siégeant en son cabinet a rejeté la requête principale et a accueilli la demande reconventionnelle — Appels interjetés par l'association et l'organisme de réglementation ont été rejetés — Article 14.06 de la Loi sur la faillite et l'insolvabilité (LFI) n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7) — Rôle de G Ltd. en tant que « titulaire de permis » en vertu de l'Oil and Gas Conservation Act (OGCA) et de la Pipeline Act (PA) engendrait un conflit d'application avec les dispositions de la LFI — Association et l'organisme de réglementation ont formé un pourvoi — Pourvoi accueilli — Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la LFI en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite par l'ajout des syndics à la définition légale de « titulaire de permis » dans l'OGCA et la PA — Dans une décision de la Cour suprême rendue en 2012 dans laquelle elle a établi le test applicable, la Cour a clairement déclaré que les obligations environnementales appliquées par un organisme de réglementation ne sont pas toutes des réclamations prouvables en matière de faillite — D'après le sens qu'il convient de donner à l'étape « créancier », il était clair que l'organisme de réglementation a agi dans l'intérêt public et pour le bien public et qu'il n'était pas un créancier de R Corp.

In order to exploit oil and gas resources in Alberta, a company needs a property interest in the oil or gas, surface rights and a licence issued by the Alberta Energy Regulator. The Regulator administers the licensing scheme and enforces the abandonment and reclamation obligations of the licensees. The Regulator has delegated to the Orphan Wells Association (OWA) the authority to abandon and reclaim "orphans". On application by a creditor, G Ltd. was appointed receiver for R Corp. G Ltd. informed the Regulator that it was taking possession and control only of R Corp.'s 17 most productive wells, three associated facilities and 12 associated pipelines, and that it was not taking possession or control of any of R Corp.'s other licensed assets. The Regulator issued an order under the Oil and Gas Conservation Act (OGCA) and the Pipeline Act (PA) requiring R Corp. to suspend and abandon the renounced assets. The Regulator and the OWA filed an application for a declaration that G Ltd.'s renunciation of the renounced assets was void, an order requiring G Ltd. to comply with the abandonment orders and an order requiring G Ltd. to fulfill the statutory obligations as licensee in relation to the abandonment, reclamation and remediation of all of R Corp.'s licensed properties. G Ltd. brought a cross-application seeking approval to pursue a sales process excluding the renounced assets. A bankruptcy order was issued for R Corp. and G Ltd. was appointed as trustee. G Ltd. sent another letter to the Regulator invoking s. 14.06(4)(a)(ii) of the Bankruptcy and Insolvency Act (BIA) in relation to the renounced assets.

The chambers judge found an operational conflict between s. 14.06 of the BIA and the definition of "licensee" in the OGCA and the PA, and approved the proposed sale procedure. Appeals by the Regulator and the OWA were dismissed. The majority of the court stated that the constitutional issues in the appeals were complementary to the primary issue, which was the interpretation of the BIA. Section 14.06 of the BIA did not exempt environmental claims from the general bankruptcy regime, other than the super priority in s. 14.06(7). Section 14.06(4) of the BIA did not limit the power of the trustee to renounce properties to those circumstances where it might be exposed to personal liability. In terms of constitutional analysis, the majority concluded that the role of G Ltd. as a "licensee" under the OGCA and the PA was in operational conflict with the provisions of the BIA that exempted trustees from personal liability, allowed them to disclaim assets and established the priority of environmental claims. The dissenting judge would have allowed the appeal on the basis that there was no conflict between Alberta's environmental legislation and the BIA. The dissenting judge was of the view that s. 14.06 of the BIA did not operate to relieve G Ltd. of R Corp.'s obligations with respect to its licensed assets and that the Regulator was not asserting any provable claims, so the priority scheme in the BIA was not upended. The Regulator and the OWA appealed.

Held: The appeal was allowed.

Per Wagner C.J.C. (Abella, Karakatsanis, Gascon, Brown JJ. concurring): There is no conflict between Alberta's regulatory regime and the BIA requiring portions of the former to be rendered inoperative in the context of bankruptcy. Although G Ltd. remained fully protected from personal liability by federal law, it could not walk away from the environmental liabilities of the bankrupt estate by invoking s. 14.06(4) of the BIA. Section 14.06(4) of the BIA was clear and unambiguous when read on its own. There was no basis on which to read the words "the trustee is not personally liable" in s. 14.06(4) of the

BIA as encompassing the liability of the bankrupt estate. "Disclaimer" did not empower a trustee to simply walk away from the "disclaimed" assets when the bankrupt estate had been ordered to remedy any environmental condition or damage. The operational conflicts between the **BIA** and the Alberta legislation alleged by G Ltd. arose from its status as a "licensee" under the **OGCA** and the **PA**. In light of the proper interpretation of **s. 14.06(4) of the BIA**, no operational conflict was caused by the fact that, under Alberta law, G Ltd. as "licensee" remained responsible for abandoning the renounced assets utilizing the remaining assets of the estate. The burden was on G Ltd. to establish the specific purposes of **ss. 14.06(2) and 14.06(4) of the BIA** if it wished to demonstrate a conflict. Based on the plain wording of the sections and the Hansard evidence, it was evident that the purpose of these provisions was to protect trustees from personal liability in respect of environmental matters affecting the estates they were administering. This purpose was not frustrated by the inclusion of trustees in the definition of "licensee" in the **OGCA** and the **PA**.

Under either branch of the paramountcy analysis, the Alberta legislation authorizing the Regulator's use of its disputed powers would be inoperative to the extent that the use of those powers during bankruptcy altered or reordered the priorities established by the **BIA**. Only claims provable in bankruptcy must be asserted within the single proceeding. Other claims are not stayed upon bankruptcy and continue to be binding on the estate. In the test set out in a 2012 Supreme Court case, the court clearly stated that not all environmental obligations enforced by a regulator would be claims provable in bankruptcy. On a proper understanding of the "creditor" step, it was clear that the Regulator acted in the public interest and for the public good and that it was not a creditor of R Corp. No fairness concerns were raised by disregarding the Regulator's concession. The end-of-life obligations binding on G Ltd. were not claims provable in the R Corp. bankruptcy, so they did not conflict with the general priority scheme in the **BIA**. Requiring R Corp. to pay for abandonment before distributing value to creditors did not disrupt the priority scheme of the **BIA**. In crafting the priority scheme set out in the **BIA**, Parliament intended to permit regulators to place a first charge on real property of a bankrupt affected by an environmental condition or damage in order to fund remediation. Bankruptcy is not a licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy.

Per Côté J. (dissenting) (Moldaver J. concurring): The appeal should be dismissed. Two aspects of Alberta's regulatory regime conflict with the **BIA**. First, Alberta's statutes regulating the oil and gas industry define the term "licensee" as including receivers and trustees in bankruptcy. The effect of this definition was that insolvency professionals were subject to the same obligations and liabilities as R Corp. itself, including the obligation to comply with the abandonment orders and the risk of personal liability for failing to do so. G Ltd. validly disclaimed the non-producing assets and the result was that it was no longer subject to the environmental liabilities associated with those assets. Because Alberta's statutory regime did not recognize these disclaimers as lawful, there was an unavoidable operational conflict between federal and provincial law. Alberta's legislation governing the oil and gas sector should be held inoperative to the extent that it did not recognize the legal effect of G Ltd.'s disclaimers. **Section 14.06 of the BIA**, when read as a whole, indicated that **s. 14.06(4)** did more than merely protect trustees from personal liability. Parliament did not make the disclaimer power in **s. 14.06(4) of the BIA** conditional on the availability of the Crown's super priority. There was an operational conflict to the extent that Alberta's statutory regime held receivers and trustees liable as "licensees" in relation to disclaimed assets.

Second, the Regulator has required that G Ltd. satisfy R Corp.'s environmental liabilities ahead of the estate's other debts, which contravened the **BIA**'s priority scheme. Because the abandonment orders were "claims provable in bankruptcy" under the three-part test outlined in the 2012 Supreme Court of Canada case, the Regulator could not assert those claims outside of the bankruptcy process. To do so would frustrate an essential purpose of the **BIA** of distributing the estate's value in accordance with the statutory priority scheme. Nor could the Regulator achieve the same result indirectly by imposing conditions on the sale of R Corp.'s valuable assets. The province's licensing scheme effectively operated as a debt collection mechanism in relation to a bankrupt company. It should be held inoperative as applied to R Corp. under the second prong of the paramountcy test, frustration of purpose. G Ltd. and the creditor had satisfied their burden of demonstrating a genuine inconsistency between federal and provincial law under both branches of the paramountcy test. The Court should continue to apply the "creditor" prong of the test as it was clearly articulated in the 2012 Supreme Court of Canada decision. Under that standard, the Regulator plainly acted as a creditor with respect to the R Corp. estate. It was sufficiently certain that either the Regulator or the OWA would ultimately perform the abandonment and reclamation work and assert a monetary claim for reimbursement.

Pour exploiter des ressources pétrolières et gazières en Alberta, une société a besoin d'un intérêt de propriété sur le pétrole ou le gaz, des droits de surface et d'un permis délivré par un organisme de réglementation, l'Alberta Energy Regulator. Cet organisme administre le régime de délivrance de permis et s'assure du respect des engagements d'abandon et de remise en état des titulaires

de permis. L'organisme a délégué une association de puits orphelins, l'Orphan Wells Association, le pouvoir d'abandonner et de remettre en état les « orphelins ». À la demande d'un créancier, G Ltd. a été nommé séquestre de R Corp. G Ltd. a informé l'organisme de réglementation qu'il prenait possession et contrôle seulement des 17 puits les plus productifs de R Corp., ainsi que de trois installations et de 12 pipelines connexes, et qu'il ne prenait pas possession ou contrôle de tous les autres éléments d'actif de R Corp. visés par des permis. L'organisme de réglementation a rendu une ordonnance en vertu de l'Oil and Gas Conservation Act (OGCA) et de la Pipeline Act (PA) enjoignant à R Corp. de suspendre l'exploitation des biens faisant l'objet de la renonciation et de les abandonner. L'organisme de réglementation et l'association ont déposé une demande en vue d'obtenir un jugement déclaratoire portant que l'abandon par G Ltd. des biens faisant l'objet de la renonciation était nul, une ordonnance obligeant G Ltd. à se conformer aux ordonnances d'abandon, de même qu'une ordonnance enjoignant à G Ltd. de remplir les obligations légales en tant que titulaire de permis concernant l'abandon, la remise en état et la décontamination de tous les biens de R Corp. visés par des permis. G Ltd. a présenté une demande reconventionnelle visant à obtenir l'autorisation de poursuivre un processus de vente excluant les biens faisant l'objet de la renonciation. Une ordonnance de faillite a été rendue à l'égard de R Corp., et G Ltd. a été nommé syndic. G Ltd. a envoyé une autre lettre à l'organisme de réglementation dans laquelle il invoquait l'art. 14.06(4)a(ii) de la Loi sur la faillite et l'insolvabilité (LFI) à l'égard des biens faisant l'objet de la renonciation.

Le juge siégeant en son cabinet a conclu à un conflit d'application entre l'art. 14.06 de la LFI et la définition de « titulaire de permis » que l'on trouve dans l'OGCA et la PA et a approuvé la procédure de vente proposée. Les appels interjetés par l'organisme de réglementation et l'association ont été rejetés. Les juges majoritaires de la cour ont déclaré que les questions constitutionnelles soulevées dans les appels étaient complémentaires à la question principale, soit l'interprétation de la LFI. L'article 14.06 de la LFI n'a pas soustrait les réclamations environnementales au régime général de faillite, à l'exception de la superpriorité prévue à l'art. 14.06(7). L'article 14.06(4) de la LFI n'a pas limité le pouvoir du syndic de renoncer aux biens dans des circonstances où il pourrait s'exposer à une responsabilité personnelle. Sur le plan de l'analyse constitutionnelle, les juges majoritaires ont conclu que le rôle de G Ltd. en tant que « titulaire de permis » au sens de l'OGCA et de la PA était en conflit d'application avec les dispositions de la LFI qui dégageaient les syndics de toute responsabilité personnelle, qui leur permettaient de renoncer à des biens et qui établissaient la priorité des réclamations environnementales. La juge dissidente aurait accueilli l'appel au motif qu'il n'y avait aucun conflit entre la législation albertaine sur l'environnement et la LFI. La juge dissidente était d'avis que l'art. 14.06 de la LFI n'a pas eu pour effet de libérer G Ltd. des obligations de R Corp. à l'égard de ses biens visés par des permis et que l'organisme de réglementation ne faisait valoir aucune réclamation prouvable, de sorte que le régime de priorité de la LFI n'était pas renversé. L'organisme de réglementation et l'association ont formé un pourvoi.

Arrêt: Le pourvoi a été accueilli.

Wagner, J.C.C. (Abella, Karakatsanis, Gascon, Brown, JJ., souscrivant à son opinion) : Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la LFI en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite. Bien que G Ltd. demeure entièrement dégagé de toute responsabilité personnelle par le droit fédéral, il ne peut se soustraire aux engagements environnementaux qui lient l'actif du failli en invoquant l'art. 14.06(4) de la LFI. À la simple lecture de ses termes, l'art. 14.06(4) était clair et sans équivoque. Il n'y avait aucune raison de considérer que les mots « le syndic est [. . .] dégagé de toute responsabilité personnelle » figurant à l'art. 14.06(4) de la LFI visaient la responsabilité de l'actif du failli. La « renonciation » n'habilitait pas le syndic à tout simplement délaissier les biens « faisant l'objet de la renonciation » quand on l'enjoignait à réparer un fait ou dommage lié à l'environnement. Les conflits d'application entre la LFI et la législation albertaine allégués par G Ltd. résultaient de sa qualité de « titulaire de permis » au sens de l'OGCA et de la PA. Vu l'interprétation qu'il convenait de donner à l'art. 14.06(4) de la LFI, aucun conflit d'application n'était imputable au fait que, suivant le droit albertain, G Ltd. demeure, en qualité de « titulaire de permis », tenu d'abandonner les biens faisant l'objet de la renonciation et d'utiliser les autres éléments de l'actif. Il incombait à G Ltd. d'établir les objectifs précis des art. 14.06(2) et (4) s'il souhaitait démontrer qu'il y avait conflit. Compte tenu du libellé clair des art. 14.06(2) et (4) et des débats parlementaires, l'objectif de ces dispositions était manifestement de dégager les syndics de toute responsabilité personnelle à l'égard de questions environnementales touchant l'actif qu'ils administrent. Cet objectif n'a pas été entravé par l'ajout des syndics à la définition de « titulaire de permis » dans l'OGCA et la PA.

Dans l'un ou l'autre volet de l'analyse relative à la prépondérance, la loi albertaine autorisant l'organisme de réglementation à exercer ses pouvoirs contestés sera inopérante, dans la mesure où l'exercice de ces pouvoirs pendant la faillite modifie ou réarrange les priorités établies par la LFI. On doit faire valoir uniquement les réclamations prouvables en matière de faillite dans le cadre de la procédure unique. Les réclamations non prouvables ne sont pas suspendues à la faillite et elles lient toujours l'actif.

Dans une décision de la Cour suprême rendue en 2012 dans laquelle elle a établi le test applicable, la Cour a clairement déclaré que les obligations environnementales appliquées par un organisme de réglementation ne sont pas toutes des réclamations prouvables en matière de faillite. D'après le sens qu'il convient de donner à l'étape « créancier », il était clair que l'organisme de réglementation a agi dans l'intérêt public et pour le bien public et qu'il n'était pas un créancier de R Corp. Aucune préoccupation n'a été soulevée en matière d'équité en ne tenant pas compte de la concession faite par l'organisme de réglementation. Les obligations de fin de vie incombant à G Ltd. n'étaient pas des réclamations prouvables dans la faillite de R Corp. et n'entraient donc pas en conflit avec le régime de priorité général instauré dans la LFI. Obliger R Corp. à payer l'abandon avant de répartir la valeur entre les créanciers ne perturbait pas le régime de priorité établi dans la LFI. Au moment d'élaborer ce régime, le Parlement voulait permettre aux organismes de réglementation d'imposer une charge prioritaire sur le bien réel du failli touché par un fait ou dommage lié à l'environnement en vue de financer la décontamination. La faillite n'est pas un permis de faire abstraction des règles, et les professionnels de l'insolvabilité sont liés par les lois provinciales valides au cours de la faillite.

Côté, J. (dissidente) (Moldaver, J., souscrivant à son opinion) : Le pourvoi devrait être rejeté. Deux aspects du régime de réglementation albertain entraînent en conflit avec la LFI. D'abord, les lois albertaines qui réglementent l'industrie pétrolière et gazière précisent que le terme « titulaire de permis » vise les séquestres et syndics de faillite. Cette définition avait pour effet d'assujettir les professionnels de l'insolvabilité aux mêmes obligations et responsabilités que R Corp. elle-même, notamment l'obligation de se conformer aux ordonnances d'abandon et le risque d'engager sa responsabilité personnelle pour ne pas l'avoir fait. G Ltd. ayant valablement renoncé aux biens inexploités, il n'était donc plus assujetti aux engagements environnementaux liés à ces biens. Étant donné que le régime législatif albertain ne reconnaissait pas la légalité de ces renonciations, il y avait un conflit d'application inévitable entre la loi fédérale et la loi provinciale. La loi albertaine régissant l'industrie pétrolière et gazière devrait donc être déclarée inopérante dans la mesure où elle ne reconnaissait pas l'effet juridique des renonciations de G Ltd. Lu dans son ensemble, l'art. 14.06 indiquait que l'art. 14.06(4) ne se bornait pas à dégager les syndics de toute responsabilité personnelle. Le Parlement n'a pas rendu le pouvoir de renonciation prévu à l'art. 14.06(4) conditionnel à la possibilité pour la Couronne de se prévaloir de sa superpriorité. Il y avait un conflit d'application dans la mesure où le régime législatif albertain tenait les séquestres et les syndics responsables en tant que « titulaires de permis » relativement aux biens faisant l'objet d'une renonciation.

Ensuite, l'organisme de réglementation a exigé que G Ltd. acquitte les engagements environnementaux de R Corp. avant les autres dettes de l'actif, ce qui contrevenait au régime de priorité établi par la LFI. Comme les ordonnances d'abandon sont des « réclamations prouvables en matière de faillite » selon le test à trois volets énoncé par la Cour suprême du Canada dans une décision rendue en 2012, l'organisme de réglementation ne pouvait faire valoir ces réclamations en dehors du processus de faillite. Agir ainsi entraverait la réalisation d'un objet essentiel de la LFI : le partage de la valeur de l'actif conformément au régime de priorités établi par la loi. L'organisme de réglementation ne pouvait pas non plus atteindre indirectement le même résultat en imposant des conditions à la vente des biens de valeur de R Corp. Le régime provincial de délivrance de permis servait en fait de mécanisme de recouvrement de créances à l'endroit d'une société en faillite. Il devrait être déclaré inopérant en ce qui concernait R Corp., suivant le second volet du critère de la prépondérance, l'entrave à la réalisation d'un objet fédéral. G Ltd. et le créancier se sont acquittés de leur fardeau de démontrer qu'il existait une incompatibilité véritable entre la loi fédérale et la loi provinciale selon les deux volets du test de la prépondérance. La Cour devrait continuer d'appliquer l'analyse relative au « créancier » telle qu'elle a été clairement formulée dans la décision rendue en 2012 par la Cour suprême du Canada. Suivant ce critère, l'organisme de réglementation a clairement agi comme créancier relativement à l'actif de R Corp. Il était suffisamment certain que l'organisme de réglementation ou l'association effectuerait ultimement les travaux d'abandon et de remise en état et ferait valoir une réclamation pécuniaire afin d'obtenir un remboursement.

APPEAL from judgment reported at *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 2017 ABCA 124, 2017 CarswellAlta 695, 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171 (Alta. C.A.), dismissing appeal from judgment dismissing application for declaration that trustee-in-bankruptcy's disclaimer of licensed wells was void and granting cross-application for approval of sales process that excluded renounced wells.

POURVOI formé à l'encontre d'une décision publiée à *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 2017 ABCA 124, 2017 CarswellAlta 695, 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171 (Alta. C.A.), ayant rejeté un appel interjeté à l'encontre d'un jugement ayant rejeté une demande visant à faire déclarer que la renonciation du syndic

certain circumstances. It does not stand for the proposition that a regulator exercising its enforcement powers is always a creditor. The reasoning in *Northern Badger* was simply not applicable on the facts of *Abitibi*, given the actions of the Province as outlined above.

132 In *Abitibi*, Deschamps J. noted that insolvency legislation had evolved in the years since *Northern Badger*. That legislative evolution did not, however, change the meaning to be ascribed to the term "creditor". In this regard, I agree with the conclusion in *Strathcona (County) v. Fantasy Construction Ltd. Estate (Trustee of)* 2005 ABQB 559256 D.L.R. (4th) 536Alta. Q.B., that the amendments to the *BIA* dealing with environmental matters in the years following *Northern Badger* cannot be interpreted as having overturned the reasoning in that case. As should be clear from the earlier discussion of s. 14.06, the amendments to the *BIA* do not speak to when a regulator enforcing an environmental claim is a creditor.

133 The conclusion that the reasoning in *Northern Badger* continues to be relevant since *Abitibi* and the amendments to insolvency legislation also finds support in the writings of academic commentators. Stewart's position is that, while *Abitibi* discussed *Northern Badger*, it did not overturn it. He urges this Court to clarify that there remains "a distinction between a regulatory body that is a creditor because it is enforcing a debt, and a regulatory body that is not a creditor because it is enforcing the law" (p. 221). Similarly, Lund argues that a court should "consider the importance of the public interests protected by the regulatory obligation when deciding whether the debtor owes a debt, liability or obligation to a creditor" (p. 178).

134 For the foregoing reasons, *Abitibi* cannot be understood as having changed the law as summarized by Laycraft C.J.A. I adopt his comments at para. 33 of *Northern Badger*:

The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life ... But the obligation of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgment for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

135 Based on the analysis in *Northern Badger*, it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims". I do not intend to suggest, however, that a regulator will be a creditor only where it acts exactly as the province did in *Abitibi*. There may very well be situations in which a regulator's actions fall somewhere between those in *Abitibi* and those in the instant case. Notably, unlike some previous cases, the Regulator has performed no environmental work itself. I leave such situations to be addressed in future cases in which there are full factual records. Here, it is clear that the Regulator is seeking to enforce Redwater's public duties, whether by issuing the Abandonment Orders or by maintaining the LMR requirements. The Regulator is not a creditor within the meaning of the *Abitibi* test.

136 I reject the suggestion that the foregoing analysis somehow overrules the first prong of the *Abitibi* test. The facts in *Abitibi* were not comparable to the facts of this appeal. Although this Court discussed *Northern Badger* in *Abitibi*, it merely referenced the subsequent amendments to the *BIA*, and did not overturn the earlier decision. The Court was clear that the ultimate outcome "must be grounded in the facts of each case" (para. 48). The dissenting reasons claim that, given the foregoing analysis, it will be nearly impossible to find that regulators are ever creditors. *Abitibi* itself shows this not to be the case. Furthermore, as I have said, there may well be cases that fall between *Abitibi* and the present case. However, if *Abitibi* is read as requiring only a determination of whether the regulator has exercised an enforcement power, it will in fact be impossible for a regulator *not* to be a creditor. The dissenting reasons do not seriously deny this, merely suggesting that regulators can publish guidelines or issue licences. The Regulator does both, yet, under the approach taken in the dissenting reasons, it is powerless to take any practical steps in the public interest regarding its guidelines or licences without qualifying as a creditor. As I have explained, *Abitibi* clearly contemplates a place for regulators who are not creditors.

TAB 8

2002 ABQB 430

Alberta Court of Queen's Bench

Paragon Capital Corp. v. Merchants & Traders Assurance Co.

2002 CarswellAlta 1531, 2002 ABQB 430, 316 A.R. 128, 46 C.B.R. (4th) 95

PARAGON CAPITAL CORPORATION LTD. (Plaintiff) and MERCHANTS & TRADERS ASSURANCE COMPANY, INSURCOM FINANCIAL CORPORATION, 782640 ALBERTA LTD., 586335 BRITISH COLUMBIA LTD. AND GARRY TIGHE (Defendants)

Romaine J.

Judgment: April 29, 2002

Docket: Calgary 0101-05444

Counsel: Judy D. Burke for Plaintiff
Robert W. Hladun, Q.C. for Defendants

Subject: Corporate and Commercial; Civil Practice and Procedure; Insolvency

Headnote

Receivers --- Appointment — General

Ex parte order was granted in 2001 appointing receiver and manager of property and assets of two of defendant companies, including certain assets pledged by those companies to plaintiff creditor — Defendants brought application to set aside, vary or stay that order — Application dismissed — Evidence at time of ex parte application provided grounds for believing that delay caused by proceeding by notice of motion might entail serious mischief — Evidence existed that assets that had been pledged to plaintiff as security for loan were at risk of disappearance or dissipation — Plaintiff did not fail to make full and candid disclosure of relevant facts in ex parte application — Security agreement provided for appointment of receiver — Conduct of primary representative of defendants contributed to apprehension that certain assets were of less value than was originally represented to plaintiff or that they did not in fact exist — Balance of convenience favoured plaintiff.

Annotation

This decision canvasses the difficult issue of the appropriateness of granting *ex parte* court orders in an insolvency context. Specifically, the facts of this case revolve around the proper exercise of Romaine J.'s jurisdiction pursuant to [Rule 387 of the Alberta Rules of Court](#)¹ to grant an *ex parte*, without notice, order appointing a receiver over the assets of two debtor companies. This rule provides that an order can be made on an *ex parte* basis in cases where the evidence indicates "serious mischief". Such jurisdiction is also granted to courts in Ontario² and in the context of interim receivership orders under the *Bankruptcy and Insolvency Act*.³ The guiding principles that govern the granting of *ex parte* orders generally were summarized in *B. (M.A.), Re*⁴ where it was concluded that the court's discretion to grant such orders should only be exercised in cases where it is found that an emergency exists and where full disclosure has been provided to the court by the applicant. It is generally considered that an emergency is a circumstance where the consequences that the applicant is attempting to avoid are immediate⁵ and that such consequences would have irreparable harm.⁶ Insolvency situations are, by their very nature, crisis oriented. Debtors and creditors alike are typically faced with urgent circumstances and must move quickly to preserve value for all stakeholders. The special circumstances encountered in insolvency proceedings have been acknowledged by the Ontario Court of Appeal in *Algoma Steel Inc., Re*⁷ where it was recognized that *ex parte* court orders and the lack of adequate notice is often justified in an insolvency context due to the often "urgent, complex and dynamic" nature of the proceedings. However, there is nonetheless a recognition that despite the "real time" nature of insolvency proceedings, the remedy of appointing a receiver is so drastic that

doing so without notice to the debtor is to be considered only in extreme cases. In *Royal Bank v. W. Got & Associates Electric Ltd.*,⁸ the Alberta Court of Appeal cited the following passage from *Huggins v. Green Top Dairy Farms*⁹ with approval:

Appointment of a receiver is a drastic remedy, and while an application for a receiver is addressed in the first instance to the discretion of the court, the appointment *ex parte* and without notice to take over one's property, or property which is *prima facie* his, is one of the most drastic actions known to law or equity. It should be exercised with extreme caution and only where emergency or imperative necessity requires it. Except in extreme cases and where the necessity is plainly shown, a court of equity has no power or right to condemn a man unheard, and to dispossess him of property *prima facie* his and hand the same over to another on an *ex parte* claim.

The courts in Ontario have also been mindful of this need to be extra vigilant in granting *ex parte* orders in an insolvency context. It is generally recognized that in cases where rights are being displaced or affected, short of urgency, applicants should be given advance notice. In *Royal Oak Mines Inc., Re*,¹⁰ Farley J. stated the following:

I appreciate that everyone is under immense pressure and have concerns in a CCAA application. However, as much advance notice as possible should be given to all interested parties ... At a minimum, absent an emergency, there should be enough time to digest material, consult with one's client and discuss the matter with those allied in interest — and also helpfully with those opposed in interest so as to see if a compromise can be negotiated ... I am not talking of a leisurely process over weeks here; but I am talking of the necessary few days in which the dedicated practitioners in this field have traditionally responded. Frequently those who do not have familiarity with real time litigation have difficulty appreciating that, in order to preserve value for everyone involved, Herculean tasks have to be successfully completed in head spinning short times. All the same everyone is entitled the opportunity to advance their interests. This too is a balancing question.

In light of this balancing of interests, the practice in Ontario has developed to a point that, short of exceptional circumstances, the parties affected by the applicant's proposed order, whether an order pursuant to *Companies' Creditors Arrangement Act*¹¹ or receivership orders, are typically given some advance notice of the pending application. This is particularly true in cases where there is a known solicitor of record for the interested party. In the present case, it is difficult to say whether sufficient and adequate evidence was proffered to demonstrate that urgent circumstances and a real risk of dissipation of assets existed. As Romaine J. indicated in her reasons, "...it [was] regrettable that the application did not take place in open chambers so that a record would be available."¹² Accordingly, in such circumstances, deference is accorded to the trier of fact. Romaine J. was in the best position to determine whether the test to grant an *ex parte* receivership order was met. Also, it is not clear from Romaine J.'s reasons why given the existence of a solicitor of record for the debtors that prior notice, of any kind, was not given to the debtors in this case. The granting of a receivership order is a serious remedy and those subject to it should, to the extent possible, have a right to due process.

Marc Lavigne *

APPLICATION by defendants to set aside, vary or stay order appointing receiver.

Romaine J.:

INTRODUCTION

1 On March 20, 2001, I granted an *ex parte* order appointing a receiver and manager of the property and assets of Merchants & Traders Assurance Company ("MTAC") and 586335 British Columbia Ltd. ("586335"), including certain assets pledged by MTAC and 586335 to Paragon Capital Corporation Ltd. MTAC, 586335 and the other defendants in this action brought an application to set aside this *ex parte* order. I declined to set aside, vary or stay the *ex parte* order and these are my written reasons for that decision.

SUMMARY

2 The *ex parte* order should not be set aside on any of the grounds submitted by the Defendants, including an alleged failure to establish emergent circumstances, a lack of candour or any kind of non-disclosure or misleading disclosure by Paragon. Hearing the motion to appoint a receiver and manager *de novo*, I am satisfied that the receivership should continue on the terms originally ordered, and that the Defendants have not established that a stay of that receivership should be granted.

FACTS

3 On March 15, 2000, Paragon loaned MTAC \$2.4 million. The loan was for a term of six months with an interest rate of 3% per month, and matured on September 15, 2000. MTAC was to make interest-only payments to Paragon in the amount of \$72,000.00 per month.

4 The purpose of the loan was to allow MTAC to acquire 76% of the shares of Georgia Pacific Securities Corporation ("Georgia Pacific"), a Vancouver-based brokerage business. That transaction was completed. As security for the loan, MTAC pledged the following:

- a) an assignment of all of the property of MTAC and 586335, including the Georgia Pacific shares;
- b) a general hypothecation of the shares of Georgia Pacific owned by MTAC;
- c) a power of attorney granted by MTAC to Paragon appointing an agent of Paragon to be the attorney of MTAC with the right to sell and dispose of any shares held by MTAC;
- d) an assignment of mortgage-backed debentures;
- e) an assignment of a \$200,000 US term deposit, which was stated to be held in the trust account of a lawyer by the name of Jamie Patterson;
- f) \$250,000 to be held in trust by Paragon's counsel; and
- g) \$986,000 in an Investment Cash Account at Georgia Pacific.

Paragon filed a General Security Agreement executed by MTAC by way of a financing statement at the Personal Property Registry on March 15, 2000. In addition, Paragon obtained personal guarantees of the loan from Garry Tighe, Insurcom Financial Corporation, 586335 and 782640 Alberta Ltd.

5 The loan was not repaid and, pursuant to the terms of the General Security Agreement, Paragon appointed a private receiver in January, 2001.

6 Subsequently, the parties entered into discussions resulting in a written Extension Agreement. The Extension Agreement acknowledged the balance outstanding under the loan on January 9, 2001 of \$2,629,129.99 with a then per diem rate of \$2,528.28 and acknowledged delivery of numerous demands and a Notice of Intention to Enforce Security pursuant to [Section 244 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3](#), as amended

7 MTAC agreed pursuant to the Extension Agreement that all monies due and outstanding would be repaid by February 22, 2001. If the funds were not repaid, Paragon would be at liberty to enforce its security and take all steps it deemed necessary to collect the debt. MTAC agreed it would not oppose Paragon's realization of its security, including the appointment of a receiver over its assets, and that it would, if requested, work with Paragon and any person designated by Paragon to attempt to realize on the value of the Georgia Pacific shares in a commercially reasonable manner.

8 Pursuant to the terms of the Extension Agreement, the shares of Georgia Pacific owned by MTAC were delivered to counsel for Paragon.

9 It was also a term of the Extension Agreement that a discontinuance of the pending action would be filed and the appointment of the private receiver would be revoked. Both of these actions were undertaken by Paragon.

10 The loan was not repaid by February 22, 2001. As of June 26, 2001, \$2,850,192.62 was outstanding. Paragon issued a new Statement of Claim on March 2, 2001. On March 16, 2001 counsel for MTAC, Insurcom, 782640, 586335, and Tighe filed a Statement of Defence and served it upon Paragon's counsel.

11 On March 20, 2001, Paragon applied for and was granted an *ex parte* order appointing Hudson & Company as receiver and manager of all of the assets and property of MTAC and 586335, including, specifically, the mortgage-backed debentures, \$986,000 in a cash account, \$200,000 in trust with a lawyer, the \$250,000 paid to Paragon's counsel and the Georgia Pacific shares. The application was made in private chambers, and no court reporter was present. However, counsel for Paragon made his application based on affidavit evidence of Mr. Hudson and others and supported by a written "Bench Brief", all of which has been disclosed to the Defendants. All of the above-noted facts and additional information contained in the affidavits and Bench Brief were disclosed to me at the time of the *ex parte* application.

ANALYSIS

Should the ex parte receivership order have been granted?

12 Rule 387 of the *Alberta Rules of Court* provides that the court may make an *ex parte* order if it is satisfied that the delay caused by proceeding by notice of motion might entail serious mischief. The applicant must act in good faith and make full, fair, and candid disclosure of the facts, including those that are adverse to his position: *Hover v. Metropolitan Life Insurance Co.* (1999), 237 A.R. 30 (Alta. C.A.) at paragraph 23, referring to *Royal Bank v. W. Got & Associates Electric Ltd.* (1994), 150 A.R. 93 (Alta. Q.B.), at 102-3; (1997), 196 A.R. 241 (Alta. C.A.); leave to appeal granted (S.C.C.).

13 The Defendants submit that there was no urgency requiring an *ex parte* application. There was, however, affidavit evidence that led me to believe that the assets of MTAC and 586335 that had been pledged as security for the loan to Paragon were at risk, and that mischief could occur if an *ex parte* order was not granted.

14 There was, by way of example, evidence that the mortgage-backed debentures were not what they seemed.

15 There was evidence that Mr. Hudson had been advised by Mr. Tighe that his intention was to pay out the Paragon loan by transactions involving Georgia Pacific. Without elaborating on the status of Georgia Pacific at the time, as it is not a party to this litigation, the evidence with respect to potential activities involving this company was troubling, and justified a concern that the shares that comprised this asset may be at risk.

16 Further, Mr. Hudson deposed that Mr. Tighe was at first agreeable to Mr. Hudson and Paragon's counsel speaking to various parties, including officers of Georgia Pacific and Deloitte & Touche, to gather information. However, he withdrew that consent when Mr. Hudson and Paragon's counsel were actually in Vancouver, intending to speak to those parties.

17 There were also concerns arising over whether or not there actually was \$200,000 held in trust by Mr. Patterson, who had ceased practising law and left the country.

18 There was evidence that the shares of Insurcom Financial Corporation, one of the guarantors of the Paragon loan, had been halted in trading and that the \$986,000 that was supposed to be held in a Georgia Pacific cash account as security for the Paragon loan was missing.

19 The Defendants also submit that Paragon and its counsel and the proposed receiver failed to be candid and make full disclosure of the facts in the application. However, it is clear from the affidavits filed and from the Bench Brief that the disclosure given at the time of the *ex parte* order was extensive. It included reference to the fact that the proposed receiver, Mr. Hudson, had previously been appointed a private receiver for Paragon under the loan documentation, and that he and Paragon's counsel had been involved in negotiating and finalizing the Extension Agreement. In addition, counsel to Paragon disclosed that a defence

to the Statement of Claim had been filed by counsel for the Defendants, and described the nature of the defences. I cannot find that there was any breach by the applicant for the *ex parte* order of its obligation of candour and frankness.

20 In hindsight, it is regrettable that the application did not take place in open chambers so that a record would be available. However, on the basis of the strength of the evidence before me, including evidence of the loan documentation and events that had transpired since the loan was put in place, together with the extensive affidavits and Bench Brief, I was satisfied that there was a reasonable basis on which I could hear the application on an *ex parte* basis. I was satisfied that there was reasonable apprehension of serious mischief and risk of disappearance or dissipation of assets. These concerns included the concern of interference with the activities of a regulated firm in a sensitive industry, where third party rights may well be affected. I therefore chose to exercise my discretion to grant the order *ex parte*, as is "within the prerogative of a judge to do in Alberta under our rules": *Canadian Urban Equities Ltd. v. Direct Action for Life*, [1990] A.J. No. 253 (Alta. Q.B.) at pages 7 and 8.

21 The *ex parte* order contains the usual provision allowing any party to apply on two clear days notice for a further or other order. The Defendants' right to bring their position before the court on very short notice was therefore reasonably protected. The Notices of Motion seeking orders to set aside or stay the *ex parte* order were not filed until May 8, 2001, and the motions were heard on their merits at the earliest time available to counsel to the parties and the court.

Should the receiver and manager appointed under the ex parte order been precluded from acting in this case due to conflict?

22 This issue is moot, given that on June 8, 2001 an order was granted replacing Hudson & Company as receiver and manager with Richter Allen and Taylor Inc. This was done with the consent of all parties other than the Defendants, who objected to the replacement, while continuing to maintain that Hudson & Company had a conflict. The Defendants make the same complaint about counsel to the former receiver and manager, who did not continue as counsel for the new receiver.

23 Despite the complaint of conflict of interest, the Defendants have not raised any evidence that the former receiver and manager or its counsel preferred Paragon to other creditors, or failed in a receiver's duty as a fiduciary or its duty of care, other than to submit that the receiver should not have been granted the power in the *ex parte* order to sell the assets covered by the order. This power of sale was, of course, subject to court approval, and also subject to review at the time the application was heard on its merits. It was not exercised during the time the *ex parte* order was in place, and representations were heard on its propriety for inclusion in the affirmed receivership order. While there may have been a potential for conflict in Hudson & Company's appointment, there is no evidence that Hudson & Company showed any undue preference to Paragon while serving as a receiver, or failed in its duties as receiver in any way.

24 The Defendants also submit that the Bench Brief used by Paragon's counsel in making the application for the *ex parte* order showed that such counsel was not impartial, but acted as an advocate on this application. Paragon's counsel did indeed advocate that a receiver should be appointed by the court, as he was retained to do, and there was nothing improper in him doing so. I have already said that full disclosure was made of the material facts in that application, including the previous involvement of both the proposed receiver and Paragon's counsel in this matter.

25 I therefore find that there was nothing wrong or improper in the appointment of Hudson & Company as receiver or in Paragon's previous counsel acting as receiver's counsel, or in their administration of the receivership. It may be preferable to avoid an appearance of conflict in these situations, but a finding of conflict or improper preference requires more than just the appearance of it. In situations where it is highly possible that the creditors will not be paid out in full, the use of a party already familiar with the facts to act as receiver may be attractive to all creditors. I note that it is not the creditors who raise the issue of conflict in this case, but the debtors.

Should the ex parte order now be set aside?

26 The general rule is that when an application to set aside an *ex parte* order is made, the reviewing court should hear the motion *de novo* as to both the law and the facts involved. Even if the order should not have been granted *ex parte*, which is not the case here, I may refuse to set it aside if from the material I am of the view that the application would have succeeded on notice: *Edmonton Northlands v. Edmonton Oilers Hockey Corp.* (1993), 15 Alta. L.R. (3d) 179 (Alta. Q.B.) (paragraphs 30 and 31).

- 27 The factors a court may consider in determining whether it is appropriate to appoint a receiver include the following:
- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
 - b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - c) the nature of the property;
 - d) the apprehended or actual waste of the debtor's assets;
 - e) the preservation and protection of the property pending judicial resolution;
 - f) the balance of convenience to the parties;
 - g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
 - h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
 - i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
 - j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
 - k) the effect of the order upon the parties;
 - l) the conduct of the parties;
 - m) the length of time that a receiver may be in place;
 - n) the cost to the parties;
 - o) the likelihood of maximizing return to the parties;
 - p) the goal of facilitating the duties of the receiver.

Bennett, Frank, *Bennett on Receiverships*, 2nd edition, (1995), Thompson Canada Ltd., page 130 (cited from various cases)

28 In cases where the security documentation provides for the appointment of a receiver, which is the case here with respect to the General Security Agreement and the Extension Agreement, the extraordinary nature of the remedy sought is less essential to the inquiry: *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5088 (Ont. Gen. Div. [Commercial List]), paragraph 12.

29 It appears from the evidence before me that the Georgia Pacific shares may be the only asset of real value pledged on this loan. Shares are by their nature vulnerable assets. These shares are in a business that is itself highly sensitive to variations in value. At the time of the application, the business appeared to have been suffering certain financial constraints. The business is situated in British Columbia, and regulated by the Investment Dealers Association of Canada and other entities, giving additional force to the argument of the necessity of a court-appointed receiver. I also note the possibility that there will be a sizeable deficiency in relation to the loan, increasing the risk to Paragon as security holder.

30 The conduct of Mr. Tighe, the primary representative of the Defendants, supports the appointment of a receiver. Although the Defendants submit that the assets that are the subject of the order are secure, there is troubling evidence that the mortgage-backed debentures appear to have questionable value, that the \$200,000 that was supposed to be in Mr. Patterson's trust account does not exist, that the Georgia Pacific cash account that was supposed to contain \$986,000 is not actually a cash account at all, but rather a trading account. Mr. Tighe's affidavits and cross-examination on affidavits do little to clear-up these matters, and instead add to the apprehension that these assets are of less value than represented to Paragon or that they in fact do not exist.

31 The balance of convenience in these circumstances rests with Paragon, which is owed nearly \$3 million. There is no plan to repay any of this indebtedness, and no persuasive evidence that the appointment would cause undue hardship to the Defendants. As stated by Ground, J. in *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.*, [1995] O.J. No. 144 (Ont. Gen. Div. [Commercial List]) at paragraph 31, the appointment of a receiver always causes some hardship to a debtor who loses control of its assets and risks their sale. Undue hardship that would prevent the appointment of a receiver must be more than this usual unfortunate consequence. Here, any proposed sale of an asset by the receiver must be brought before the court for approval and its propriety and necessity will be fully canvassed on its merits.

32 I am satisfied that the order appointing a receiver and manager should continue to stand on the same terms as the initial order.

Should the order be stayed?

33 To be granted a stay of an order pending appeal, an applicant must establish:

- a) that there is a serious issue to be tried on appeal;
- b) that the applicant would suffer irreparable harm and no fair or reasonable redress would be available if the stay is not granted; and
- c) that the balance of convenience is in favour of granting the stay after taking into consideration all of the relevant factors.

RJR-MacDonald Inc. v Canada (Attorney General) (1994), [1994] S.C.J. No. 17 (S.C.C.); *Schacher v. National Bailiff Services*, [1999] A.J. No. 599 (Alta. Q.B.).

34 On the issue of whether there is a serious issue to be tried, the Defendants have filed a defence to the claim raising several issues, the major one being that the effective rate of interest under the loan exceeds 60% and is therefore usurious. Affidavit evidence purporting to indicate such an illegal rate of interest was filed and served on Paragon the day before this application was heard. Counsel for Paragon submitted that the evidence is defective on its face, but I was not able to make a determination of that question on the basis of the sworn evidence before me. Another factor affecting this issue is that Paragon has brought an application for summary judgment, which had not been heard at the time of this application. Given my decision on the second and third parts of the test, I have assumed that there is a triable issue relating to the loan and, therefore, to the appointment of a receiver, despite the uncertainty existing at the time of the application.

35 With respect to irreparable harm, the Defendants submit that company assets are being tied up while the order is in force, and that therefore no payments are being made, allowing liabilities to inflate. The main assets that are the subject of this order are assets that were already pledged as security for the loan to Paragon and therefore no irreparable harm can be said to arise from this factor. The Defendants also submit that irreparable harm has been, and continues to be done to, Georgia Pacific's assets as a result of the order. The order affects only the Defendants' shares in Georgia Pacific, and counsel for the Defendants does not represent Georgia Pacific. No objection to the order has been taken by Georgia Pacific itself, although management for Georgia Pacific is aware of the receivership. There is no evidence that the order is responsible for any harm to Georgia Pacific, aside from harm that may have arisen from the Defendants' precarious financial situation and the current status of this regulated business with the IDA.

36 The balance of convenience in this case favours Paragon. The only asset that appears to have any real value at this stage in the proceedings is the shares in Georgia Pacific, an asset that is vulnerable by its nature, in a highly regulated business carried on in another jurisdiction. The order serves to maintain the status quo of that asset and prevent mischief caused by the possibility of illegal or imprudent manipulation or interference with the affairs of Georgia Pacific.

37 Finally, the Defendants submit that, if a stay is not granted, the order be varied to maintain the status quo of the three major assets. By requiring court approval of a sale of any of the assets, the right of the Defendants to argue their position on a sale at an appropriate time is reasonably protected.

38 I therefore decline to grant a stay, or to vary the order as granted.

39 If the parties are unable to agree on the matter of costs, they may be spoken to.

Application dismissed.

Footnotes

1 [Alta. Reg. 390/68.](#)

2 See rule 37.07(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

3 R.S.C. 1985, c. B-3. See rule 77 of the *Bankruptcy and Insolvency Rules*, C.R.C. 1978, c. 368.

4 (1992), 126 A.R. 276 (Alta. Prov. Ct.) at 286.

5 *John Doe v. Canadian Broadcasting Corp.*, [1993] B.C.J. No. 1875 (B.C. S.C.).

6 *Imperial Broadloom Co., Re* (1978), 22 O.R. (2d) 129 (Ont. Bkcty.).

7 (2001), 25 C.B.R. (4th) 194 (Ont. C.A.) at 196.

8 (1997), [1997] A.J. No. 373 (Alta. C.A.) at para. 21.

9 (1954), 273 P.2d 399 (Id. S.C.) at 404.

10 [1999] O.J. No. 864 (Ont. Gen. Div. [Commercial List]) at para. 6.

11 R.S.C. 1985, c. C-36.

12 Para. 20.

* Associate in the Insolvency and Restructuring Group of Torys LLP. The author wishes to thank Sean Keating, student-at-law, for his invaluable research assistance in the preparation of this annotation.

TAB 9

2012 ABQB 446
Alberta Court of Queen's Bench

Murphy v. Cahill

2012 CarswellAlta 1198, 2012 ABQB 446, [2012] A.W.L.D. 4496,
[2012] A.W.L.D. 4499, 219 A.C.W.S. (3d) 326, 95 C.B.R. (5th) 116

**Gerald Murphy and Gerald Murphy In His Capacity As Trustee of the Gerald
Murphy's Children's Parallel Life Interest Settlement Trust (Applicants) and
Margaret Cahill, Christopher Cahill, 1248429 Alberta Ltd., 554168 Alberta Ltd.,
1247738 Alberta Ltd., and Canadian Consolidated Salvage Ltd. (Respondents)**

Donald Lee J.

Heard: July 4, 2012

Judgment: July 6, 2012

Docket: Edmonton 1203-04666

Counsel: Sandeep K. Dhir, Lindsay E. Miller for Applicants
Rostyk Sadownik for Respondent, Margaret Cahill
Terrence M. Warner for Respondent, Christopher Cahill

Subject: Corporate and Commercial; Estates and Trusts; Insolvency

Headnote

Business associations --- Specific matters of corporate organization — Shareholders — Shareholders' remedies — Investigation orders — Appointment of inspector

Shareholder GM owned more than 80 per cent of group of companies — MC and CC were other shareholders who operated companies — GM and MC acted as directors for entire group of companies — Unanimous shareholders agreement provided neither director had deciding vote — GM and MC became involved in dispute and were unable to agree on resolutions — GM learned companies had various unpaid liabilities and were involved in various types of litigation — GM had not received audited financial statements since 2008 — GM commenced application for relief for oppression — GM brought application for order appointing inspector pursuant to [Part 18 of Business Corporations Act](#) — Application granted — Appointment of inspector was necessary to provide GM and court with accurate assessment of companies' historical and current financial position — Despite efforts to obtain information about companies, GM had been denied certain information — Appointment of inspector was most practical way to get this information — Further, this application was brought in context of originating application that did not allow for access to records through discovery process — Cost of inspection would not be prohibitively expensive given MC's assertion that value of companies had increased — GM was actually willing to pay initial costs himself.

Business associations --- Specific matters of corporate organization — Shareholders — Shareholders' remedies — Relief from oppression — Orders for relief — Interim orders

Shareholder GM owned more than 80 per cent of group of companies — MC and CC were other shareholders who operated companies — GM and MC acted as directors for entire group of companies — Unanimous shareholders agreement provided neither director had deciding vote — GM and MC became involved in dispute and were unable to agree on resolutions — GM learned companies had various unpaid liabilities and were involved in various types of litigation — GM had not received audited financial statements since 2008 — GM commenced application for relief for oppression — GM brought application for order appointing interim receiver-manager — Application dismissed — There was obviously serious issue to be tried but GM failed to establish irreparable harm if order was not granted — Further, balance of convenience favoured allowing companies to continue to operate unimpeded — Various financial concerns had already been addressed — Companies continued to meet liabilities as they become due and were not incurring significant debt — Inspector had already been appointed pursuant to

40 The case law is clear that the appointment of a receiver - manager is an extraordinary remedy, and is a remedy that should be used sparingly, having regard to all of the circumstances. The test for the appointment of a receiver - manager is comparable to that of the test for injunctive relief. The test for an injunctive relief involved the tripartite test which consists of the following 3 components:

a) there must be a serious issue to be tried;

b) it must be determined that the Applicant would suffer "irreparable harm" if its application was refused; and

c) an assessment must be made to determine which of the parties would suffer greater harm on the granting or the refusal of the appointment of a receiver -manager pending a decision on the merits, otherwise known as the "balance of convenience" test.

Serious Issue to be Tried

41 There is obviously a serious issue to be tried in this matter with respect to the ongoing dispute between the parties so the first part of the test has been met by the Applicants.

Irreparable Harm

42 As for irreparable harm to the Applicant in the event that a receiver - manager is not appointed in the present circumstances, I note that a number of the specific financial concerns originally cited by the Applicant have now been satisfied. The Applicant referred to a default judgment obtained by Finning (Canada), a division of Finning International Inc., but that judgment has now been paid. Similarly with respect to various Garage Keeper Liens, they have been paid. The largest debt outstanding at the time this application was first brought was with respect to unpaid property taxes, but those have been paid. The largest financial loss was incurred with respect to the Shear, but that loss has already been capped.

43 The Applicant cites serious accounting deficiencies, many unanswered questions with respect to financial disclosure in the ongoing financial operation of the businesses, and the operation of those businesses without legal authority. While these matters do involve serious matters that need to be dealt with at some point, they fall short of his evidence of irreparable harm necessitating the appointment of a receiver - manager to remedy. This is not a case where a receiver - manager is necessary to preserve or protect the property of the companies as the companies continue to carry on business on a basis in which it generally meets its liabilities as they become due. The company continues to increase in value, although its cash resources are admittedly limited. The companies are involved in certain ongoing litigation in which major claims are being made against it, but those matters, at this stage are either unproven allegations, or involve relatively small sums of money compared to the value of the companies. The company continues to manage to operate without incurring significant debt.

Balance of Convenience

44 The Applicant obviously has made a substantial investment in the present business operations that are the subject matter of this application. However I conclude that there is no evidence that the Applicant's substantial investment is at any real risk at this point based on the present evidence before me. Accordingly I conclude that there is no real urgency to do with the appointment of a receiver - manager at this time. The oppression action has been scheduled at the end of September 2012 and while it may take some time to resolve that matter, the risk to the Respondents outweigh the risk to the Applicant if a receiver - manager were now to be appointed. The Respondents would be ousted from their present role in running these companies, and there is a clear risk of loss of value to the companies, which has increased under their direction.

45 In the absence of any exigent circumstances requiring the appointment of the receiver -manager as requested by the Applicants pending the disposition of the ongoing actions in this matter, a significant prejudice to the companies and their shareholders exists if they were to have to bear the costs of a receiver - manager at this time.

TAB 10

2024 ONSC 5153

Ontario Superior Court of Justice [Commercial List]

In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove

2024 CarswellOnt 14145, 2024 ONSC 5153

**IN THE MATTER OF COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 2039882 ONTARIO LIMITED o/a SHELTER COVE

2039882 Ontario Limited (Applicant)

Peter J. Osborne J.

Heard: July 19, 2024

Judgment: July 19, 2024

Docket: CV-24-00713069-00CL

Counsel: Jessica Wuthmann, Sharon Kour, for Applicant
Domenico Magisano, S. Jones, for KHL Investments USA Inc.
R. Graham Phoenix, for Northpoint Commercial Finance Canada Inc.
Patrick Corney, for Envirosearch
Haddon Murray, for Basic Holdings Limited
Kristi M. Ross, Adrienne Ho, for Proposed Receiver
Michael Shakra, for Monitor, PwC
David Filice — Proposed Receiver

Subject: Insolvency

Headnote

Bankruptcy and insolvency --- Receivers — Appointment

MOTION to appoint receiver.

Peter J. Osborne J.:

ENDORSEMENT

1 KHL Investments USA, Inc. ("KHL") seeks an order appointing The Fuller Landau Group Inc. as Receiver without security over the Property of the Company and real property at 38 Cheapside Rd., Selkirk, ON. KHL is both the senior secured lender, and the DIP Lender.

2 The Company operates as Shelter Cove and owns and operates a land lease community in Selkirk consisting of 389 lots, of which approximately 160 have been serviced and leased to the Residents who have purchased modular homes installed on the lots. Many of those Residents are present in Court today and I recognize the importance of these matters to them and their community.

3 KHL relies upon the affidavit of Martin Brodigan sworn July 17, 2024, together with exhibits thereto, as well as the Pre-Filing Report of the Proposed Receiver dated July 18, 2024.

4 The Company relies on the affidavit of Mario Bevacqua sworn July 18, 2024 together with exhibits thereto. As confirmed at the hearing of this motion by counsel to the Company, the Company takes no position on the relief sought by KHL and counsel advise that they are not instructed to consent or oppose in the circumstances. Mr. Bevacqua is the sole director and officer of the Company.

5 However, both Mr. Bevacqua and Mr. Barry Racippo were present in Court and advised that they, and each of them, in their respective personal capacities, were requesting an adjournment of the motion in order that they could have additional time to consider their positions. They filed an affidavit from Derek McNamara sworn July 17, 2024. Mr. McNamara, a retired barrister and solicitor (permission to resign granted by the Law Society) is a financial consultant. Messrs. Bevacqua and Racippo are guarantors of the indebtedness owed by the Company to KHL. KHL opposes the request for an adjournment, as does the Monitor.

6 In addition, Northpoint Commercial Finance Canada Inc. ("Northpoint") brings a motion for an order lifting the stay of proceedings for the purpose of permitting Northpoint to access and repossess four prefabricated modular home units in the possession of the Company and on-site but currently unused, unserviced and unoccupied. No party opposes the relief sought by Northpoint.

7 The Court-appointed Monitor has also filed the Fifth Report dated July 18, 2024. In the circumstances, the Monitor supports the relief sought by KHL.

8 Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Fifth Report of the Monitor, and/or the Pre-Filing Report of the Proposed Receiver.

9 Having heard from all affected parties, I declined the request for an adjournment and granted the relief sought by KHL and Northpoint. In my view, and in the particular if somewhat unique circumstances of this case, there was little practical alternative.

10 The Company sought and was granted protection under the *CCAA* on January 18, 2024. The Court subsequently approved a *SISP*. Unfortunately, the *SISP* did not yield any Qualified Bid, and while the Company continued to market the Property for sale, it has not received any bid that, according to the Monitor, is capable of closing.

11 The Company and therefore the Shelter Cove community, does not receive municipal services with the result that it owns a sewage treatment plant and a water treatment plant operated by Envirosearch. The evidence is to the effect that both plants are in a state of disrepair. In fact, presently the Company is trucking in potable water for residents and trucking out raw sewage.

12 The simple yet fundamental reality is that the current stay of proceedings expires today. I observe that there is no motion before me for an extension of that stay. The Company submits candidly that in the circumstances, it is not in a position to seek an extension of the stay or indeed a continuation of the *CCAA* proceedings.

13 Moreover, the *DIP* Facility expires in one week and the *DIP* Lender has confirmed that it is not prepared to extend the *DIP* Facility. I pause to observe that the *DIP* Facility is largely drawn down in any event. All of this yields the practical result that there is no funding available to continue operations of the Company or a restructuring proceeding. There is no Plan of Arrangement, nor is there even any germ of a plan.

14 In my view, an adjournment of this matter would not be in the interests of the residents of the community generally. There is no funding to continue operations, even for a short period of time. Adjourning the motion for the appointment of a receiver, in circumstances where the current stay of proceedings under the *CCAA* expires and there is no available *DIP* financing, would lead to chaos, the possibility of multiple proceedings, and complete disruption to the lives and homes of the residents.

15 Moreover, KHL confirms that no relief is being sought today, and indeed, none is granted, as against the guarantors in their respective capacities as such.

16 Accordingly, and weighing all of the factors, I denied the adjournment request.

17 For many of the same reasons as described above, I granted the receivership.

18 The parties appeared on July 3, 2024 at a case conference on which date I scheduled the return of this motion for today, which KHL indicated it would be bringing.

19 As noted above, the SISF did not yield a Qualified Bid, with the result that KHL was authorized to complete the transaction contemplated by its own credit bid. The indebtedness of the Company to KHL has been in default since July, 2023. Subsequent negotiations about a forbearance agreement were not successful.

20 One of the reasons for allowing that period of approximately two weeks for the hearing of this motion was that on July 3, 2024, the Company was in negotiations with MILP, and the Company was optimistic that it might be able to complete negotiations, such that MILP could provide a viable offer. That did not occur, and on July 15, 2024, counsel for the Company advised that MILP had withdrawn its offer.

21 Accordingly, KHL seeks the appointment of the Receiver today.

22 The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?

23 In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258 ("*Freure Village*").

24 Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

25 As set out in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited* 2022 ONSC 6186, the Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;

- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

26 How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

27 It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.

28 Where the conduct of the debtor has led directly to a receivership application, the Court should place limited to no weight on objections from the debtor as to whether a receivership is the best remedy for the secured creditor: *GE Commercial Distribution Finance Canada v. Sandy Cove Marine Co.*, 2011 ONSC 3851 at para. 23.

29 Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

30 In my view, it is.

31 The security granted by the Company to KHL in this case expressly provides that upon default, KHL is entitled to appoint a receiver.

32 The Monitor has confirmed that it will be seeking a termination of the CCAA Proceeding and a discharge of the Monitor, in the very near future following a brief period to facilitate a transition to a receivership, which, as noted above, the Monitor does not oppose.

33 Courts have terminated CCAA proceedings and appointed receivers where the CCAA proceeding will not result in a restructuring that in turn will yield a beneficial outcome to both the debtor and creditors, and where the creditors have lost faith in the ability of the debtor to run its business, as is the case here: *Canadian Imperial Bank of Commerce v. Community Pork Ventures Inc.*, 2005 SKQB 294 and *General Electric Capital Canada Inc. v. Euro United Corp.* 1999 CanLII 14848 ONSC.

34 The overall intent of KHL is to complete a credit bid with the Receiver as soon as practicable, having lost faith in the current management of the Debtor.

35 Of paramount importance is the continuation of services to the residents, which involve on an interim basis the trucking in of water and the trucking out of sewage, and the repairs to the treatment plants which are ongoing, with the support of Envirosearch (indeed, repairs will be made this weekend, with funding from KHL and work by Envirosearch).

36 Regrettably, the *CCAA* has not yielded a long-term solution to the water and sewage treatment issues, and nor has a suitable buyer capable and funded to close the transaction been identified. I am satisfied for these reasons, together with the immediate imperative of the expiry of the stay of proceedings and the lack of DIP financing, that it is not only just *or* convenient, but just *and* convenient that a Receiver be appointed.

37 The Fuller Landau Group is qualified to act as a Receiver, has no disqualifying conflict of interest and has confirmed its consent to act in such a capacity.

38 The appointment will stabilize the community and address the issues noted above, while providing funding as necessary for receiver certificates with a view to completing the KHL agreement of purchase and sale.

39 The draft receivership order is consistent with the Model Order of the Commercial List. While not determinative of the issue, that is of assistance to me in concluding, having reviewed all of the evidence in the record, that the terms and scope of the proposed receivership are appropriate.

40 I have also advised the Receiver that the Court expects it to maintain excellent communications and dialogue with the residents to keep them apprised of what is occurring with respect to their community.

41 The relief sought by Northpoint is unopposed. While the repossession of the four modular home units represents in practical terms, execution, there is no opposition, the units are unserviced and unoccupied, and are simply physically sitting on the site unused. Northpoint recognizes its obligation to report back to the Receiver with respect to the units and any proceeds thereof, and will fulfil that obligation.

42 For all of these reasons, I have signed the receivership order and the Northpoint order, both of which are effective immediately and without the necessity of issuing and entering.

Motion granted.

TAB 11

2010 ABQB 647

Alberta Court of Queen's Bench

MTM Commercial Trust v. Statesman Riverside Quays Ltd.

2010 CarswellAlta 2041, 2010 ABQB 647, [2010] A.J. No. 1189, [2011] A.W.L.D. 35, [2011] A.W.L.D. 37, [2011] A.W.L.D. 5, [2011] A.W.L.D. 66, [2011] A.W.L.D. 8, 193 A.C.W.S. (3d) 1284, 70 C.B.R. (5th) 233, 98 C.L.R. (3d) 198

**MTM Commercial Trust and Matco Investments Ltd. (Applicants)
and Statesman Riverside Quays Ltd., Riverside Quays Limited
Partnership and Statesman Master Builders Inc. (Respondents)**

B.E. Romaine J.

Judgment: October 12, 2010

Docket: Calgary 1001-09828

Counsel: Blair C. Yorke-Slader, Q.C., Kelsey J. Drozdowski for Applicants
Robert W. Calvert, Q.C., Larry B. Robinson, Q.C., Sharilyn C. Nagina for Respondents

Subject: Corporate and Commercial; Insolvency

Headnote

Alternative dispute resolution --- Relation of arbitration to court proceedings — Stay of court proceedings — General principles
Debtors and creditors --- Receivers — Appointment — General principles

M Trust and M Ltd. (collectively applicants) and S Ltd. and S Inc. (collectively respondents) entered into series of agreements regarding residential development project — Partnership was created — Applicants alleged respondents breached various agreements, were guilty of misconduct that amounted to fraud and dishonesty, and commenced phase 2 of construction on project without proper approvals — Applicants applied for, inter alia, appointment of receiver manager of Partnership and S Ltd. — Respondents cross-applied for various declarations — Respondents voluntarily halted construction on project and undertook not to recommence construction without court order — Application granted in part on other grounds; cross-application dismissed — Applicants' concession that receiver was not necessary as long as construction on project did not recommence was consistent with principle that court considering appointment of receiver must carefully explore remedies short of receivership that could protect interests of applicant — Applicants acknowledged that cessation of construction due to voluntary undertaking served same purpose and was adequate remedy — Question became less whether receiver should be appointed and more whether voluntary undertaking to cease construction should be replaced by court-imposed injunction restraining respondents from further construction on project pending resolution of matters between parties.

Contracts --- Remedies for breach — Injunction

M Trust and M Ltd. (collectively applicants) and S Ltd. and S Inc. (collectively respondents) entered into series of agreements regarding residential development project — Partnership was created — Applicants alleged respondents breached various agreements, were guilty of misconduct that amounted to fraud and dishonesty, and commenced phase 2 of construction on project without proper approvals — M brought application for appointment of receiver manager of partnership and other relief; respondents cross-applied for various declarations — Application granted in part; cross-applications dismissed on other grounds — Respondents enjoined from continuing construction on project until issues of alleged breach of contract and other misconduct could be resolved on merits or until parties agreed otherwise — Applicants established strong prima facie case of breach of contract on question whether respondents proceeded with construction of phase 2 of project without necessary approvals of applicants as required under various agreements — Breaches amounted to breach of negative obligation, which was in substance obligation not to proceed to next phase of construction without obtaining Management Committee approval or approval of all S Ltd. directors under Unanimous Shareholders Agreement — If project were to fall into financial distress as result of untimely or imprudent commitments to proceed, it would be very difficult to quantify loss suffered — Applicants established that, on balance, failure to enjoin further contractual breaches would give rise to irreparable harm — Balance of convenience favoured

applicants, as failure to grant injunction would nullify its contractual right to be part of decision to proceed — If remedy was withheld, that right would be so impaired by time issues could be ultimately determined on their merits by unilateral action by respondents that it would be too late to afford applicants complete relief.

Contracts --- Construction and interpretation — Miscellaneous

M Trust and M Ltd. (collectively applicants) and S Ltd. and S Inc. (collectively respondents) entered into series of agreements regarding residential development project — Partnership was created — Under Development Management Agreement (DMA), S Inc. was appointed as Manager of intended development — DMA provided that it shall terminate if Manager "misappropriates any monies or defrauds Partnership in any manner whatsoever" — Applicants alleged respondents breached various agreements — Applicants alleged that S Inc. misappropriated partnership funds and commenced phase 2 of construction on project without proper approvals — Applicants brought application for, inter alia, order confirming termination of S Inc. as Manager of Project; respondents brought cross-application for, inter alia, declaration that S Inc. remained Manager — Application granted in part on other grounds; cross-application dismissed — While applicants established strong prima facie case of contractual breach, issue of whether alleged breach was misappropriation was not entirely without doubt — It would also not be clear until issue of whether S Ltd. remained General Partner of Partnership who had authority to act for Partnership in order to instigate termination of DMA — Issue of removal and replacement of General Partner remained to be determined on its merits — No final determination made with respect to this issue.

Business associations --- Creation and organization of business associations — Partnerships — Relationship between partners — Membership — Introduction and expulsion

M Trust and M Ltd. (collectively applicants) and S Ltd. and its affiliate S Inc. (collectively respondents) entered into series of agreements regarding residential development project — Partnership was created — By terms of Limited Partnership Agreement, S Ltd. was appointed General Partner — Applicants alleged that S Ltd.'s actions in starting over \$2 million of phase 2 construction and committing partnership to over \$12.5 million of phase 2 construction contracts without approval of directors of S Ltd. as required by agreement and without meeting bank's requirements for funding of phase 2 credit facility, S Ltd.'s involvement in alleged "dummy trades" scheme and use of S Ltd. as co-signatory on promissory note unrelated to project all justified removal of S Ltd. as General Partner of partnership — Applicants brought application for, inter alia, order confirming removal of S Ltd. as General Partner; respondents cross-applied for various declarations, including declaration confirming S Ltd. as General Partner — Application granted in part on other grounds; cross-application dismissed — Interlocutory injunction granted in present application achieved purpose of enjoining further alleged breaches while preserving respondents' rights to fully present evidence and argument on issues of contractual authority — While applicants established strong prima facie case, there were ambiguities in agreements and submissions made with respect to contractual interpretation that did not make matter entirely without doubt — At present stage of proceedings, removal of S Ltd. as General Partner not confirmed — Confirmation of appointment and confirmation of new General Partner was premature — S Ltd. not confirmed as General Partner.

APPLICATION for appointment of receiver manager of Partnership and General Partner and other relief; CROSS-APPLICATION by respondents for various declarations.

B.E. Romaine J.:

Introduction

1 By Originating Notice filed July 8, 2010, the Applicants MTM Commercial Trust and Matco Investments Ltd. (collectively, "Matco") applied for:

- (a) the appointment of a receiver and manager of Riverside Quays Limited Partnership (the "Partnership") and of its initial General Partner Statesman Riverside Quays Ltd. ("SRQL");
- (b) an order confirming the termination of Statesman Master Builders Inc. ("SMBI") as Manager of the Riverside Quays multi-family residential construction project (the "Project") pursuant to the terms of the Development Management Agreement (the "DMA");

show that it would suffer irreparable harm, Matco must establish either that failure to enjoin Statesman's continued breach of contract would give rise to harm that either cannot be quantified in monetary terms or that cannot be subsequently cured.

57 Matco submits that allowing Statesman to continue to construct Phase 2 without its consent gives rise to grave risks, given the current economy, of the Project falling into financial distress. It submits that Statesman's actions in launching into commitments for approximately \$12.5 million of Phase 2 contracts without the approval of its development partner and without confirmation of Bank funding are reckless and irresponsible and put the interests of Matco and other Project investors at risk. If the Project were to fall into financial distress as a result of untimely or imprudent commitments to proceed, it would be very difficult to quantify the loss that may be suffered by, not only by Matco, but by other investors. In the context of this situation, I find that Matco has established that, on balance, the failure to enjoin further contractual breaches would give rise to irreparable harm.

58 In the usual case of an application for injunctive relief, the moving party would provide an undertaking in damages in the event it is not ultimately successful. Given the manner in which this application has proceeded, Matco has not had an opportunity to address this requirement. If Matco is unwilling to supply the usual undertaking as to damages, it has leave to apply to be relieved from such an obligation. Such an undertaking should be supplied or an application to relieve from the undertaking should be made within two weeks, and Statesman will of course be allowed an opportunity to respond to the application.

(iii) Balance of Convenience

59 This factor requires the Court to consider which of the parties would suffer the greater harm from the granting or refusal of an interlocutory injunction.

60 It is clear that failure to enjoin Statesman from continuing to breach the agreements by continuing construction on Phase 2 of the Project would nullify Matco's right to a say in whether construction on the Project should continue at this time. As noted by Matco, Statesman has indicated no commitment to discontinue the alleged breaches: rather, by its response to the application, it asserts its right to proceed without consultation or approval and applies to be relieved of its voluntary undertaking to stop construction and for confirmation of what it says is its right to proceed.

61 The enforcement of the negative obligation not to continue construction on Phase 2 without Matco's consent would not require Court supervision and has in fact already been effected through the voluntary shut-down of the Project. It is possible to readily define what Statesman should be enjoined from doing. There is no issue that permanent injunctive relief may not have been an available remedy to Matco after trial, given the nature of the obligation as a negative obligation.

62 Statesman alleges that it has significant financial exposure in the event that construction on the Project does not continue and that, the longer the Project is delayed, the more likelihood that the loss of momentum will be highly detrimental to the ongoing success of the Project. What Statesman complains of is the loss of immediate opportunity. Matco clearly does not agree with the submission that delay will prejudice the Project. It also does not agree that it has little financial exposure with respect to the Project, pointing out that Matco and related parties have a significant investment as unitholders in the trust in addition to other financial obligations and its share of fees and profits.

63 It is noteworthy that Matco does not propose that the Project be abandoned or that development cease on a permanent basis: what is involved is a difference of opinion between two experienced partners to a development with respect to the timing of development, the structure and availability of financing and the use of funds. Whether Matco or Statesman is correct with respect to these matters is not a question to be decided by this Court. What the Bank may do in the face of a failure to recommence construction on Phase 2, what various tradespeople or purchasers who have entered into pre-sale agreements may do is only speculative at this point, and does not tip the balance of convenience in favour of one party or the other.

64 It is likely that existing owners of Phase 1 units will be unhappy with a delay in construction, and likely that tradespeople that were anticipating immediate employment opportunities on the Project will likewise be disappointed. This does not justify ignoring Matco's contractual right to be part of the decision on timing of the commencement of construction of the next phase of the Project.

TAB 12

2023 ABKB 488
Alberta Court of King's Bench

Re Mantle Materials Group, Ltd

2023 CarswellAlta 2276, 2023 ABKB 488, [2023] 10 W.W.R. 453,
2023 A.C.W.S. 4298, 61 Alta. L.R. (7th) 406, 9 C.B.R. (7th) 86

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 Mantle Materials Group, Ltd

Colin C.J. Feasby J.

Heard: August 15, 2023

Judgment: August 28, 2023

Docket: Calgary 2301-10358

Counsel: Tom Cumming, Stephen Kroeger, for Mantle Materials Group, Ltd.

Alexis Teasdale, Joel Schachter, for Travelers Capital Corp

Pantelis Kyriakakis, for Proposal Trustee, FTI Consulting Canada Inc.

Doug Nishimura, for Alberta Environment and Protected Areas

Darren Bieganek, for 945441 Alberta Ltd

Subject: Civil Practice and Procedure; Environmental; Insolvency

Headnote

Bankruptcy and insolvency --- Priorities of claims — Secured claims — Forms of secured interests — Miscellaneous
Debtor operated gravel pits on public land pursuant to surface material leases issued by Alberta Environment and Protected Areas (AEPA) — Secured lender (creditor) loaned debtor money for acquisition of equipment used in its operation — Debtor granted creditor money security interest over equipment — Pursuant to agreement between creditor, debtor and private debt fund which held general security interest in debtor's present and after acquired property, creditor's security interest was designated to have first priority — Debtor filed notice of intention to make proposal under [s. 50.1 of Bankruptcy and Insolvency Act](#) — Extension of stay period was granted and creation and priority and ranking of various restructuring changes "restructuring charges" was approved — Issue arose as to creditor's rank — Creditor's security interest was subordinate to restructuring charges — Restructuring charges were necessary to completion of environmental remediation work that was important part of pending proposal — Creditor could not realize on its security until environmental reclamation work was completed to AEPA's satisfaction — Only way debtor could perform such work was with support of debtor's officers and directors, lawyers and insolvency professionals, and interim lender who were all protected by restructuring charges.

DETERMINATION of creditor's rank in debtor's proposal.

Colin C.J. Feasby J.:

Introduction

1 Mantle Materials Group, Ltd. applied for an extension of time to make a proposal pursuant to the Bankruptcy and Insolvency Act, RSC 1985, c B3 s 50.4(8), approval of various charges on the bankrupt estate ("Restructuring Charges") including the priority of those charges, and approval of the payment of certain pre-filing debts to creditors whose support is required to perform environmental reclamation work that will be integral to the pending proposal. The application was granted with a temporary proviso with respect to the priority of the Restructuring Charges over certain equipment to ensure that Travelers Capital Corp, a secured lender, was not prejudiced prior to the release of these Reasons.

environmental obligations pertain in the sense that the equipment is used in gravel production, it is not necessary to explore these policy arguments.

42 Though I decline to debate the wisdom of the policy of effectively subordinating secured creditors to environmental obligations in these Reasons, it is noteworthy that the evidential record shows that Travelers conducted due diligence prior to entering the financing arrangement with Mantle. Among the materials available to Travelers as part of that due diligence process were documents indicating the existence of Mantle's environmental reclamation obligations and the security posted by Mantle with AEPA. Prior to entering the financing arrangement, Travelers had the opportunity to assess the risk of doing business with Mantle, make an informed decision whether to do business with Mantle, and to negotiate a cost of borrowing that reflected the risk inherent in Mantle's business.

Conclusion

43 The Travelers security interest in the equipment must be subordinated to the Restructuring Charges because the Restructuring Charges are necessary to the completion of the environmental remediation work that is an important part of the pending proposal. Travelers cannot realize on its security until the environmental reclamation work is completed to AEPA's satisfaction and the only way that such work can be done is with the support of the officers and directors of Mantle, lawyers and insolvency professionals, and the interim lender who are all protected by the Restructuring Charges.

44 Paragraph 10 of the Order dated August 15, 2023 shall be amended to provide that the Restructuring Charges have priority over the Travelers security interest in the equipment identified in the Travelers security registration.

Order accordingly.

Footnotes

- 1 For a discussion of the restructuring of JMB and the use of a reverse vesting order in that case, see Candace Formosa, "Dampening the Effect of Redwater Through a Reverse Vesting Order," in Jill Corrani & D. Blair Nixon, eds., *Annual Review of Insolvency Law*, (Toronto: Thomson Reuters, 2021) 697.

TAB 13

COURT FILE NUMBER: 2101-05013

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS ORPHAN WELL ASSOCIATION and BRITISH COLUMBIA OIL AND GAS COMMISSION

RESPONDENT SANLING ENERGY LTD.

DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
2100, 222 - 3rd Ave SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4311
Fax: 403.508.4349
Attention: Ryan Zahara/Kaitlin Ward
File: 0148745.00002



DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 23, 2021

LOCATION OF HEARING OR TRIAL: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE L. B. HO

UPON the application of the Orphan Well Association (the “**OWA**”) and the BC Oil & Gas Commission (the “**BCOGC**”, and together with the OWA, the “**Applicants**”) in respect of SanLing Energy Ltd. (the “**Debtor**”); **AND UPON** having read the Application, the Affidavit of Lars De Pauw sworn on April 15, 2021, ^{LBHo} and April 22, 2021, ^{LBHo} the Affidavit of Brian Murphy sworn on April 15, 2021, and the Affidavit of Service of Nishaljeet Khangura, sworn April 23, 2021; ^{LBHo} **AND UPON** reading the consent of PricewaterhouseCoopers Inc., LIT (“**PwC**”) to act as receiver and manager (the “**Receiver**”) of the Debtor, filed; **AND UPON** hearing counsel for the Applicants and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9, section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, and section 39 of the *Law and Equity Act*, RSBC 1996, c 253 or Rule 10-2 of the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009, PwC is hereby appointed as the Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof (the “**Property**”).

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor’s personal or real property;
 - (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000.00, provided that the aggregate consideration for all such transactions does not exceed \$3,000,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the Alberta *Personal Property Security Act*, RSA 2000, c P-7, section 59(1) of the British Columbia *Personal Property Security Act*, RSBC 1996, c 359, or any other similar legislation in any other province or territory shall not be required.

- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, the Land Title and Survey Authority of British Columbia or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to assign the Debtor into bankruptcy without further Order of this Court; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall

require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided

by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:
 - (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or section 18(1)(o) of the *Personal Information Protection Act*, SBC 1003, c 63, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or

- (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000.00 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, including the Supreme Court of British Columbia, or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, including the Supreme Court of British Columbia, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Applicants shall have their costs of this application, up to and including entry and service of this Order on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. This Order is issued and shall be filed in Court of Queen's Bench Action No. 2101-05013.
35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/sanling (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the British Columbia *Supreme Court Civil Rule*; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.
37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., LIT, the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of SanLing Energy Ltd., appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated April 23, 2021 (the "**Order**") made in action number 2101-05013, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of **[\$]**, being part of the total principal sum of **[\$]** that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of **[●]** per cent above the prime commercial lending rate of Bank of **[●]** from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at **[●]**.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

PricewaterhouseCoopers Inc., LIT solely in its capacity as Receiver of the Debtor (as defined in the Order), and not in its personal or corporate capacity,

Per: _____
Name:
Title:

TAB 14

COURT FILE NUMBER 2301-04480
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ORPHAN WELL ASSOCIATION
DEFENDANT EVEREST CANADIAN RESOURCES CORP.



DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
2100, 222 - 3rd Ave SW
Calgary, AB T2P 0B4
Telephone: 403.693.5420
Fax: 403.508.4349
Attention: Ryan Zahara
File: 0147836.00003

DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 5, 2023
LOCATION OF HEARING: EDMONTON, ALBERTA
NAME OF JUSTICE WHO GRANTED THIS ORDER: **JUSTICE M.E. BURNS**

UPON the application of the Orphan Well Association (the “**OWA**”) in respect of Everest Canadian Resources Corp. (the “**Debtor**”); AND UPON having read the Application, the Affidavit of Lars De Pauw sworn on April 4, 2023, the Affidavit of Lars De Pauw sworn on March 30, 2023, in Action No. 2301-04293, the Supplemental Affidavit of Lars De Pauw, sworn on April 3, 2023, in Action No. 2301-04293; and the Affidavit of Service of Joy Mutuku, filed; AND UPON reading the consent of PricewaterhouseCoopers Inc. to act as receiver and manager (the “**Receiver**”) of the Debtor, filed; AND UPON hearing counsel for the OWA, counsel for the proposed Receiver, counsel for Greenfire Resources Inc. (“**Greenfire**”), and any other counsel or other interested parties present; IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of the notice of application for this order (the “Order”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

Appointment

2. Pursuant to sections 13(2) of the *Judicature Act*, RSA 2000, c.J-2, 99(a) of the *Business Corporations Act*, RSA 2000, c.B-9, and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, PricewaterhouseCoopers Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability:
 - i. to abandon, dispose of, or otherwise release any interest in any of the Debtor's real or personal property, or any right in any immovable; and
 - ii. upon further order of the Court, to abandon, dispose of, or otherwise release any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;¹
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

Duty to Provide Access and Co-operations to the Receiver

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons

in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Debtor or the Property

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

No Exercise of Rights of Remedies

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or

the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that this stay and suspension does not apply in respect of any “eligible financial contract” (as defined in the BIA), and further provided that nothing in this Order shall:

- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

No Interference with the Receiver

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

Continuation of Services

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor,

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Receiver, or as may be ordered by this Court.

Receiver to Hold Funds

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 (“**WEPPA**”).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitations on Environmental Liabilities

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- i. before the Receiver's appointment; or
 - ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or

- B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Limitation on the Receiver's Liability

- 17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

Receiver's Accounts

- 18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Funding of the Receivership

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,500,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

Allocation

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property

General

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order. ²

Filing

34. This Order is issued and shall be filed in Court of King's Bench Action No. 2301- 04480.
35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/everestcanadianresources (the "**Receiver's Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

A handwritten signature in blue ink, appearing to read "M. B. ...", is written over a solid black horizontal line.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Everest Canadian Resources Corp. appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta (collectively, the "Court") dated the 5th day of April, 2023 (the "**Order**") made in action number 2301-04480, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the [DAY] day of each month after the date hereof at a notional rate per annum equal to the rate of 5% per cent above the prime commercial lending rate of the Orphan Well Association from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at:

Orphan Well Association
1800, 222-3rd Avenue S.W.
Calgary, AB, T2P0B4.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2023

PricewaterhouseCoopers Inc., solely in its capacity
as Receiver of the Property (as defined in the Order),
and not in its personal or corporate capacity,

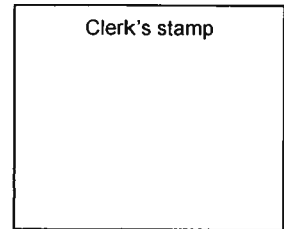
Per: _____

Name:

Title:

TAB 15

COURT FILE NUMBER: 2001-
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT ORPHAN WELL ASSOCIATION
RESPONDENT BOW RIVER ENERGY LTD.



DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
2100, 222 - 3rd Ave SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4347
Fax: 403.508.4349
Attention: Ryan Zahara/Catrina Webster
File: 0147836.00001

DATE ON WHICH ORDER WAS PRONOUNCED: OCTOBER 29, 2020
LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA
NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE D.L. SHELLEY

UPON the application of the Orphan Well Association (the "OWA" or the "Applicant") and supported by the Alberta Energy Regulator (the "AER") in respect of Bow River Energy Ltd. (the "Debtor"); **AND UPON** having read the Application, the Affidavit of Lars Depauw sworn on October 21, 2010, the Affidavit of Maria Lavelle sworn on October 21, 2020, and the Affidavit of Service of Joy Mutuku, sworn October 28, 2020; **AND UPON** reading the consent of BDO Canada Limited to act as receiver and manager (the "Receiver") of the Debtor, filed; **AND UPON** hearing counsel for the OWA and the AER and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today. To the extent necessary, the stay of proceedings provided for in Alberta Court of Queen’s Bench Action No. 1901-16581 regarding the Debtor (“**CCAA Proceedings**”) is lifted *nunc pro tunc* solely to allow for the commencement of the within action.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9, and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, BDO Canada Limited is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and located in the Province of Alberta, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor’s personal or real property;
 - (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c P-7 or any other similar legislation in any other province or territory shall not be required.

- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be

disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor

or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:
- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that

exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000.00 as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000.00 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall

be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

CONTINUATION OF STAY OF PROCEEDINGS, CHARGES AND PRIORITIES OF CHARGES

26. For clarity, the stay of proceedings established in the CCAA Proceedings shall continue uninterrupted pursuant to the terms of this Receivership Order.
27. Each of the Administration Charge and Directors' Charge (each as defined in the orders granted in the CCAA Proceedings) shall continue to constitute valid and enforceable charges on the Property.
28. The priority of the charges created in the CCAA Proceedings (and continued by this Order) in relation to the Receiver's Charge and the Receiver's Borrowing Charge created hereunder, shall be as follows:

First — the Receiver's Charge;

authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

35. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
36. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

37. This Order is issued and shall be filed in Court of Queen's Bench Action No. 2001-_____.
38. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.bdo.ca/en-ca/extranets/bowriver/> (the "Receiver's Website") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
39. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;and

Second — the Receiver's Borrowings Charge;

Third — the Administration Charge as defined in the CCAA Proceedings; and

Fourth — the Directors' Charge as defined in the CCAA Proceedings.

ALLOCATION


29. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

30. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
31. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
32. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
33. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
34. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is

(b) posting a copy of this Order on the Receiver's Website
and service on any other person is hereby dispensed with.

40. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.


Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Bow River Energy Ltd. appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the October 29, 2020 (the "**Order**") made in action number 2001-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [\$], being part of the total principal sum of [\$] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20____.

BDO Canada Limited solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

TAB 16

Clerk's Stamp:



COURT FILE NUMBER **1901-06244**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT: ORPHAN WELL ASSOCIATION

RESPONDENT(S): TRIDENT EXPLORATION CORP., TRIDENT EXPLORATION (WX) CORP., TRIDENT EXPLORATION (ALBERTA) CORP., TRIDENT LIMITED PARTNERSHIP, TRIDENT EXPLORATION (AURORA) LIMITED PARTNERSHIP I, TRIDENT EXPLORATION (2004) LIMITED PARTNERSHIP I, TRIDENT EXPLORATION (2006) LIMITED PARTNERSHIP I, and FENERGY CORP.

DOCUMENT **RECEIVERSHIP ORDER**

CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: Borden Ladner Gervais LLP
1900, 520 3rd Avenue S.W.
Calgary, AB T2P 0R3
Attention: Robyn Gurofsky
Telephone No.: 403-232-9774
Email: RGurofsky@blg.com
File No.: 444444-444444

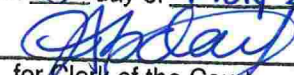
DATE ON WHICH ORDER WAS PRONOUNCED: May 3, 2019

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice C.M. Jones

LOCATION OF HEARING: Calgary Courts Centre

I hereby certify this to be a true copy of the original Order

Dated this 3 day of May 2019


for Clerk of the Court

UPON the application of the Orphan Well Association (the "OWA") in respect of Trident Exploration Corp., Trident Exploration (WX) Corp., Trident Exploration (Alberta) Corp., Trident Limited Partnership, Trident Exploration (Aurora) Limited Partnership 1, Trident Exploration (2004) Limited Partnership 1, Trident Exploration (2006) Limited Partnership 1, and Fenergy Corp. (collectively, the "Debtors"); AND UPON hearing counsel for the OWA and other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, R.S. A. 2000, c.J-2, PricewaterhouseCoopers Inc. ("PwC") is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability to abandon, dispose of or otherwise release any interest in any of the Debtors' real property, or any right in any immovable, and any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority, in respect of such interest in real property or immovable, including pursuant to section 14.06(4) of the BIA, notwithstanding the provisions of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, the *Pipeline Act*, RSA 2000 or any other similar provincial legislation;

- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of any transaction not exceeding **\$1,000,000**, provided that the aggregate consideration for all such transactions does not exceed **\$2,500,000**; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.
- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
- 5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require

the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the

Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and operating agreement, joint venture agreement or any such similar agreement or agreements to which the Debtors are a party that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Debtors, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no circumstances shall the Debtors be replaced as operator pursuant to any such agreements without further order of this Court provided, however, that this stay and suspension does not apply in respect of any “eligible financial contract” (as defined in the *Bankruptcy and Insolvency Act*) (“**BIA**”), and further provided that nothing in this Order shall:
- (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

12. All persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts

from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("WEPPA").
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or

- (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of **\$1,000,000**, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed **\$5,000,000** (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The

whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in

affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Applicant shall have its costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.pwc.com/ca/en/services/insolvency-assignments/> (the "Receiver's Website") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order. .
35. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.
36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

" C. Jones "

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the Receiver and Manager (the "**Receiver**") of all of the assets, undertakings and properties of Trident Exploration Corp., Trident Exploration (WX) Corp., Trident Exploration (Alberta) Corp., Trident Limited Partnership, Trident Exploration (Aurora) Limited Partnership I, Trident Exploration (2004) Limited Partnership I, Trident Exploration (2006) Limited Partnership I, and Fenergy Corp. (collectively, the "**Debtors**") appointed by Order of the Court of Queen's Bench of Alberta (the "**Court**") dated the 1st day of May, 2019 (the "**Order**") made in Action No. ●, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [\\$], being part of the total principal sum of [\\$] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any

person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2019.

PricewaterhouseCoopers Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name:

Title:

TAB 17

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of
the document digitally filed on Oct
23, 2024

COURT FILE NUMBER: 2401 - 14363

COURT COURT OF KING'S BENCH
OF ALBERTA

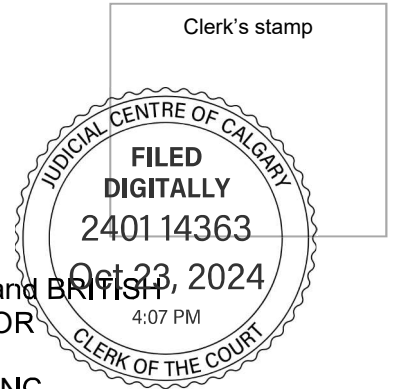
JUDICIAL CENTRE CALGARY

APPLICANT ORPHAN WELL ASSOCIATION and BRITISH
COLUMBIA ENERGY REGULATOR

RESPONDENT TALLAHASSEE EXPLORATION INC.

DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT MLT AIKINS LLP
2100, 222 - 3rd Ave SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/780.969.3501
Fax: 403.508.4349
Attention: Ryan Zahara/Molly McIntosh
File: 0148745.00004



DATE ON WHICH ORDER WAS PRONOUNCED: OCTOBER 23, 2024

LOCATION OF HEARING OR TRIAL: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE B. JOHNSTON

UPON the application of the Orphan Well Association (the “**OWA**”) and the British Columbia Energy Regulator (the “**BCER**” and together with the OWA, the “**Applicants**”) in respect of Tallahassee Exploration Inc. (the “**Debtor**”); **AND UPON** having read the Application, the Affidavit of Lars De Pauw sworn on October 15, 2024, the Affidavit of Michael Janzen, sworn on October 15, 2024, and the Affidavit of Service of Regie Agcaoili, sworn October 23, 2024; **AND UPON** reading the consent of PricewaterhouseCoopers Inc. to act as receiver and manager (the “**Receiver**”) of the Debtor, filed; **AND UPON** hearing counsel for the Applicants and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9 and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, and section 39 of the *Law of Equity Act*, RSBC 1996, c 253 or Rule 10-2 of the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009, PricewaterhouseCoopers Inc. is hereby appointed as the Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof, but excluding any of the licensed oil and gas assets of the Debtor located in the Province of Manitoba (collectively, the “**Property**”).

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor’s personal or real property;
 - (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000.00, provided that the aggregate consideration for all such transactions does not exceed \$3,000,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the Alberta *Personal Property Security Act*, RSA 2000, c P-7, section 59(1) of the British Columbia *Personal Property Security Act*, RSBC 1996, c 359, or any other similar legislation in any other province or territory shall not be required.

- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, the Land Title and Survey Authority of British Columbia or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to assign the Debtor into bankruptcy without further Order of this Court; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall

require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided

by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:
 - (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, or section 18(1)(o) of the *Personal Information Protection Act*, SBC 2003, c 63, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or

- (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, including the Supreme Court of British Columbia, or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, including the Supreme Court of British Columbia, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Applicants shall have their costs of this application, up to and including entry and service of this Order on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. This Order is issued and shall be filed in Court of King's Bench Action No. 2401- 14363.
35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/Tallahassee (the "**Receiver's Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the British Columbia *Supreme Court Civil Rule*; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Websiteand service on any other person is hereby dispensed with.

37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

BB Johnston

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Tallahassee Exploration Inc., appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated October 23, 2024 (the "**Order**") made in action number 2401 - 14363 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of [\$], being part of the total principal sum of [\$] that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

PricewaterhouseCoopers Inc., solely in its capacity as Receiver of the Debtor (as defined in the Order), and not in its personal or corporate capacity,

Per: _____
Name:
Title:

TAB 18

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of
the document digitally filed on Jan
20, 2025

COURT FILE NUMBER: 2501-00481

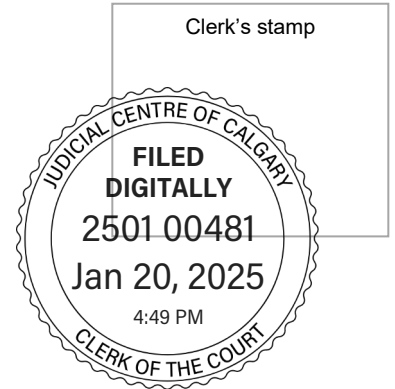
COURT COURT OF KING'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ORPHAN WELL ASSOCIATION

RESPONDENT REVITALIZE ENERGY INC.

DOCUMENT **RECEIVERSHIP ORDER**



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Ave SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/780.969.3501
Fax: 403.508.4349
Attention: Ryan Zahara/Molly McIntosh
File: 0148745.00009

DATE ON WHICH ORDER WAS PRONOUNCED: JANUARY 20, 2025

LOCATION OF HEARING OR TRIAL: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE C.D. SIMARD

UPON the application of the Orphan Well Association (the "**OWA**") in respect of Revitalize Energy Inc. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Lars De Pauw sworn on January 13, 2025, and the Affidavit of Service of Ameena Quazi, sworn January 17, 2025; **AND UPON** reading the consent of PricewaterhouseCoopers Inc. to act as receiver and manager (the "**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicants and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9 and section 106.1 of the *Oil and Gas Conservation Act*, RSA 2000, c O-6, PricewaterhouseCoopers Inc., LIT is hereby appointed as the Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof, but excluding any of the licensed oil and gas assets of the Debtor located in the Province of Saskatchewan (the “**Property**”).

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to abandon, dispose of, transfer or otherwise release any interest in any of the Debtor’s personal or real property;
 - (c) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (d) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (l) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000.00, provided that the aggregate consideration for all such transactions does not exceed \$3,000,000.00; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the Alberta *Personal Property Security Act*, RSA 2000, c P-7, or any other similar legislation in any other province or territory shall not be required.

- (n) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to take any necessary steps to assign the Debtor into bankruptcy without further Order of this Court; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto,

provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing

agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided, however, that nothing in this Order shall:
- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

NO INTERFERENCE WITH THE RECEIVER

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver, or leave of this Court.

CONTINUATION OF SERVICES

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver or exercising any other remedy provided under such agreements or arrangements. The Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47.
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, or section 18(1)(o) of the *Personal Information Protection Act*, SBC 2003, c 63, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or

- (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
32. The Applicants shall have their costs of this application, up to and including entry and service of this Order on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

34. This Order is issued and shall be filed in Court of King's Bench Action No. 2501-00481.

35. The Receiver shall establish and maintain a website in respect of these proceedings at www.pwc.com/ca/Revitalize (the “**Receiver’s Website**”) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
36. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver’s Website,
- and service on any other person is hereby dispensed with.
37. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King’s Bench of Alberta

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., LIT, the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Revitalize Energy Inc., appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated January 20, 2025 (the "**Order**") made in action number 2501-00481, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of **[\$]**, being part of the total principal sum of **[\$]** that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly after the date hereof at a notional rate per annum equal to the rate of **[●]** per cent above the prime commercial lending rate of Bank of **[●]** from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at **[●]**.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

PricewaterhouseCoopers Inc., LIT solely in its capacity as Receiver of the Debtor (as defined in the Order), and not in its personal or corporate capacity,

Per: _____
Name:
Title:

TAB 19

Action No.: 2101-05013
E-File Name: CVQ21ORPHAN
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ORPHAN WELL ASSOCIATION and
BRITISH COLUMBIA OIL AND GAS COMMISSION

Plaintiffs

and

SANLING ENERGY LTD.

Defendant

PROCEEDINGS

Calgary, Alberta
April 23, 2021

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2

3 April 23, 2021 Morning Session

4

5 The Honourable Court of Queen's Bench of Alberta

6 Madam Justice Ho (remote appearance)

7

8 R. Zahara (remote appearance) For Orphan Well Association and British

9 Columbia Oil and Gas Commission

10 K. Ward (remote appearance) For Orphan Well Association and British

11 Columbia Oil and Gas Commission

12 J. Cameron (remote appearance) For SanLing Energy Ltd.

13 K. Meyer (remote appearance) For the Receiver

14 C. Ross (remote appearance) For the Alberta Energy Regulator

15 S. Poitras (remote appearance) For the Alberta Energy Regulator

16 M. Khedri Court Clerk

17

18

19 THE COURT: Good morning, everyone.

20

21 MR. ZAHARA: Good morning, Madam Justice Ho.

22

23 THE COURT: Mr. Zahara, do you want to do roll call of all
24 counsel or do you wish to have everyone introduce themselves?

25

26 MR. ZAHARA: I'm happy to do a quick roll call, Madam Justice.

27 And then --

28

29 THE COURT: Okay.

30

31 MR. ZAHARA: -- we can get through it. If I miss anybody -- if
32 anybody else wants to chime in, I'll let them do so.

33

34 THE COURT: Okay.

35

36 MR. ZAHARA: So, in front of you today you have myself and
37 Kaitlyn Ward from MLT Aikins LLP on behalf of the Orphan Well Association and the
38 British Columbia Oil and Gas Commission. You have Ms. Jessica Cameron from the BLG
39 firm who is on behalf of SanLing Energy Ltd. You have Ms. Candice Ross from the Alberta
40 Energy Regulator and she's also joined by Scott Poitras who's legal counsel at the AER,
41 as well.

1
2 Ms. Kelsey Meyer from Bennett Jones who is proposed counsel to the proposed receiver,
3 PricewaterhouseCoopers. I would note there's two representatives from
4 PricewaterhouseCoopers; Mr. Paul Darby and Ms. Dana Gaspar that are on the line. As
5 well, you have Mr. Aaron Welch and Cindy Cheuk who are legal counsel from the Ministry
6 of the Attorney General and legal counsel to the British Columbia Oil and Gas
7 Commission, as well. And they are in attendance today.
8

9 THE COURT: Okay.

10
11 MR. ZAHARA: You have Mr. Lars DePauw from the Orphan
12 Well Association. And then, I think the only party on the phone was Ms. -- Toni or -- Toni
13 Mastrofrancesco -- if I didn't butcher that name and I believe they're from Karve Energy
14 and I don't know that they -- if they'll be making submissions today or not but that is
15 certainly all the parties that we have expected, and we haven't been advised by any other
16 parties that they would be attending.
17

18 (PORTION OF PROCEEDINGS NOT RECORDED)

19
20 **Submissions by Mr. Zahara**

21
22 MR. ZAHARA: ... BC designates as orphaned sites. The BC
23 OGC directly collects funds for the Orphan Fund by way of a levy from the permit holders
24 of in industry.
25

26 Just quickly on SanLing, Your Lady. SanLing has approximately 2,279 wells, 2,170
27 pipelines, and 267 other facilities across Alberta. Currently, SanLing has an outstanding
28 order for payment of an amount to the AER, \$67,600,996.47 for (INDISCERNIBLE)
29 security or the licencing management rating security which has not been paid in respect of
30 the assets.
31

32 In BC, SanLing has approximately 94 well permits, 40 facility permits, and 53 pipeline
33 permits issued by BC OGC. So, as you can see there's a -- probably a disproportionate
34 weighting of assets between Alberta and BC. And BC, while not an insignificant number
35 of assets, has a much smaller ratio of the assets of SanLing in this matter and that will
36 become I think relevant to later discussion regarding appointment of the receiver in both
37 provinces.
38

39 Both BC OGC and AER has issued compliance orders to SanLing. Some of these orders
40 go back to 2018 from BC OGC and back to January 9th of 2020 for the AER. The relevant
41 -- the more relevant one was on February 21st -- February 1st, 2021, the BC OGC issued

1 the section 26 decision. That's Exhibit G to the Murphy affidavit that was sworn in support
2 of this application which suspended the permits held by SanLing for the permitted assets
3 and to the best of the knowledge of BC OGC, SanLing has shut in its operations pursuant
4 to that section 26 provision.

5
6 Similarly, the AER issued the March 4th AER order which is Exhibit E to that first DePauw
7 affidavit. That March 4th order suspended all of SanLing's licences, suspended all of its
8 wells and facilities, and ordered that they be shut in. So, that -- as of that time SanLing
9 wasn't able to continue operations pursuant to the regulatory orders of the Ministry.

10
11 On April 13th SanLing advised AER and OWA and BC OGC by way of a letter, and that's
12 attached, or described at paragraph 25 of the DePauw affidavit that a number of things have
13 occurred. They've intended to cease operations as of April 30th, 2021. There will be no
14 remaining directors after April 30th, 2021. There would be no remaining employees and
15 contractors of SanLing after that date. It would cooperate with the receiver -- regulators
16 efforts and the regulator is defined as both the BC OGC, and the AER, and the OWA to
17 appoint a receiver. And then SanLing is advised that only maintain care and conduct
18 custody of its assets until April 30th or the earlier appointment of a receiver. And the
19 remaining number of wells and facilities within the licenced assets that are capable of
20 production.

21
22 So, the final piece of the puzzle came in, as you noted, My Lady, yesterday which was the
23 April 22nd letter from the AER. That letter was received by Mr. DePauw and was a
24 direction to the AER that if a receiver was not appointed that the AER would take steps to
25 abandon, reclaim, and remediate all of the licenced assets of SanLing located in Alberta.
26 Obviously, the - the appointment of a receiver today, should it be granted, would obviate
27 the need for the AER to take -- or the OWA to take those steps. But that letter was
28 referenced at paragraph 22 of the affidavit of Mr. DePauw, that was originally sworn was
29 expected to come at some point in time before the application.

30
31 Just turning quickly to the law, My Lady. We set this out in our brief obviously during
32 analysis. I won't go into it in - in the minutiae but I'm happy to answer specific questions
33 you have on any of the case law and the issues.

34
35 THE COURT:

36 I think the only question that arose for me in
37 regards to the law was at paragraph -- there is the paragraph in the brief where you make
38 reference to Madam Justice Romaine's decision in *Alberta Health Services v. Networc* and
39 it -- relating to standing and - and then there is a paragraph where you cite -- in footnote 35
40 you make reference to additional cases where the Court has said you don't have to be a
41 creditor in order to have standing to apply as long as there is some sort of public interest
or - or component to your position. Do you know whether or not there are any comparable

1 cases from BC?

2

3 MR. ZAHARA: And, My Lady, I think just to take it back one
4 step. So, the distinction here is the OWA is not a creditor of the --

5

6 THE COURT: Understood. Understood.

7

8 MR. ZAHARA: And the BC OGC has said it is a creditor up to a
9 certain amount because the - the two -- the AER function and the OWA function in Alberta
10 are combined under the roof --

11

12 THE COURT: Right.

13

14 MR. ZAHARA: So, I used in fact amounts owed to the BC OGC.

15

16 THE COURT: Okay.

17

18 MR. ZAHARA: There - there -- I would say they're not
19 substantive and they're not the entire amount of the reclamation but they would relate to
20 the order to pay additional security to the BC OGC. An amount --

21

22 THE COURT: Right.

23

24 MR. ZAHARA: -- due and owing for the levy as I understand it
25 that has not been paid.

26

27 THE COURT: Okay. That is helpful. Thank you.

28

29 MR. ZAHARA: So, I think that's the distinction there. I - I can
30 tell you to answer your question directly, I'm not presently aware of any cases where -- in
31 - in BC that a receiver has been appointed under a similar provision or a similar
32 circumstance in respect of licence or permitted assets in BC where standing is not
33 accredited.

34

35 THE COURT: Okay.

36

37 MR. ZAHARA: So, that -- we weren't able to locate any case law
38 on that. Obviously, I think most of the action to date so far -- not necessarily in the future,
39 has been in Alberta on the regulator taking these types of steps to protect the public interest
40 and - and that licence for permitted assets of an oil and gas company.

41

1 THE COURT: Okay. Okay. Thank you. That is helpful.

2
3 Okay. Go ahead.

4
5 MR. ZAHARA: Okay. Thank you, My Lady.

6
7 So, as you've noted from our brief, appointing a receiver under section 13.2 of the
8 *Judicature Act* in Alberta and the *Business Corporations Act*, as well as section 106.1 of
9 the *Oil and Gas Conservation Act* and we have set out how the OWA gets that authority
10 through the regulation that delegates the AER's powers to it. I believe the first order granted
11 under that provision of the *Oil and Gas Conservation Act* was the Bow River Energy order,
12 which we attached a copy of. So, I think that legislation just came into effect I think April
13 of last year is my recollection and that order would've come out very shortly thereafter
14 appointing the receiver under that section. So, it's a relatively new provision in terms of an
15 appointment of a receiver, but the tests, we would submit under those provisions as well as
16 the *BC Law and Equity Act* is the just and convenient test. And the two provisions under
17 the *Judicature Act* and *Law and Equity Act* are substantially similar. We believe that --

18
19 THE COURT: Can I just - can I just ask, Mr. Zahara, why the
20 application is made under the *Judicature Act* and *Law and Equity Act* as opposed to the
21 provisions of the *Bankruptcy and Insolvency Act* for a national?

22
23 MR. ZAHARA: Certainly. So, under section 243 of the *BIA*
24 you're required to be a secured creditor of the debtor in order to make an application under
25 that section.

26
27 THE COURT: Oh, okay. Okay.

28
29 MR. ZAHARA: And so, we probably could've delved further in
30 nuance and tried to figure out if either of the - the BC OGC (INDISCERNIBLE) creditor
31 is somehow secured or not, but it certainly seemed a more straightforward to advance this
32 under other provisions. And so, I have not seen a way that -- and certainly the OWA takes
33 the position it's not a creditor, and it's certainly just enforcing public duties so it wouldn't
34 have access to that provision.

35
36 THE COURT: Understood. Okay.

37
38 MR. ZAHARA: We - we can advise under section 243(2) I
39 believe it is, that a receiver appointed under provincial statute is a receiver, quote unquote,
40 as defined in the *BIA* and is entitled to the same protections and powers as a receiver
41 appointed under that provision. But - but as Your Ladyship noted, they don't have a - a

1 national scope.

2

3 THE COURT: Right.

4

5 MR. ZAHARA: And so that's why there was a bit of the
6 additional -- I could think law and authority in this for the receiver to be appointed over
7 the BC assets for really, I - I think administrator efficiency purposes to assure that there's
8 not parallel proceedings being run and there's no necessity to do so. You know, and we
9 understand that most of - of any concerns about this would be mitigated by recognition of
10 any order you grant today by the British Columbia Supreme Court which Ms. Meyer's
11 advised that her offices will undertake to do if they're so appointed in Alberta. So, they'll
12 take that order in accordance with paragraphs 30 and 31 of the draft form of order to the
13 British Columbia Supreme Court and have that recognized.

14

15 THE COURT: Okay.

16

17 MR. ZAHARA: So, we - we don't have any concerns about the
18 authority for you to grant this under -- order under the BC legislation, the *Law and Equity*
19 *Act*, or the *Judicature Act*. We submit that the OWA and the BC OGC satisfy the tripartite
20 test for the appointment of a receiver. This is obviously more relevant I think in Alberta as
21 the BC legislation just focuses on a just and convenient. But effectively just going through
22 that test quickly, Your Ladyship, for the record there's a serious issue to be tried in this
23 case. Namely, without a receiver in place there's a high likelihood that the regulated
24 property, as that term is defined in the brief, would be abandoned and there would be no
25 one to exercise care and control over the regulated property after April 30th.

26

27 There's potentially irreparable harm that without a receiver there's significant risk to the
28 environment and surrounding communities if the regulated property will not be either
29 properly maintained or reclaimed according to the provincial regulatory requirements. And
30 we would submit that the balance of convenience in this case weighs in favour of the
31 appointment of the receiver. Particularly as SanLing's not opposing the receivership order.
32 They've advised that they will only continue to take care and control of the property until
33 April 30th when it will completely cease operations, including having no directors, officers,
34 or employees, and in this case the decision to cease operations has already been made by
35 SanLing. The appointment of the receiver is not one of these situations where it will have
36 devastating affects on SanLing's business so the balance of convenience, we would submit,
37 heavily weighs in favour of the appointment and on the side of the applicants in this case.

38

39 We would also submit that receivership is appropriate in these circumstances. The nature
40 of the regulated properties is that if it is not properly maintained and if the proper licensee
41 is not found to resume control of the regulated property or to properly abandon or reclaim

1 it that the regulated property won't be sold and that - that -- there is a risk that property
2 could be wasted, or it'll all simply get dumped into the Orphan Well Fund and remediate
3 and reclaim. And so, in very significant value in terms of appointing a receiver here to
4 manage this process, to try to sell any producing properties that could potentially be sold
5 to generate revenue to satisfy the obligations, the abandonment and reclamation
6 obligations, of SanLing Energy.

7
8 Subject to any questions or comments that you have on the case law I'm happy to take you
9 through any of that in more detail. I think it was fairly well set out in our brief. Well, we
10 certainly believe that this Court has the authority to make this order today. Subject to any
11 questions you have, My Lady.

12
13 THE COURT: Okay. Thank you. I have no questions.

14
15 Okay. Is there anyone else that wishes to address this matter at this time?

16
17 **Submissions by Ms. Ross**

18
19 MS. ROSS: Good morning, My Lady. I just wanted to make
20 a brief comment for the AER. It's Candice Ross for the AER.

21
22 THE COURT: Yes.

23
24 MS. ROSS: The AER supports the OWA's application as
25 well as the application by the BC OGC. It's our view that the appointment of a receiver
26 represents the best way to ensure that reasonable care and measures are taken to ensure the
27 safety of the public and the environment. And the appointment also supports responsible
28 development in Alberta since a receiver will potentially allow for the assets to be
29 transferred to other responsible operators rather than go to waste.

30
31 Those are all my submissions. Thank you, My Lady.

32
33 THE COURT: Thank you, Ms. Ross.

34
35 Anyone else?

36
37 **Submissions by Ms. Cameron**

38
39 MS. CAMERON: My Lady, Jessica Cameron with Borden Ladner
40 Gervais for the record. We represent the respondent, SanLing Energy Limited and just for
41 the record I can confirm that SanLing takes no position on the application today.

1
2 THE COURT: Okay. Thank you.

3
4 Any other submissions?

5
6 **Submissions by Ms. Meyer**

7
8 MS. MEYER: My Lady, Kelsey Meyer for -- from Bennett
9 Jones on behalf of the proposed receiver, PricewaterhouseCoopers Inc. I will reserve any
10 submissions with respect to the form of receivership order itself in case you have any
11 questions about that.

12
13 THE COURT: Okay.

14
15 MS. MEYER: Otherwise, of course, the receiver has submitted
16 its consent to act.

17
18 **Decision**

19
20 THE COURT: Okay. Thank you very much, Ms. Meyer.

21
22 Anyone else wish to address this matter? Okay. Hearing none.

23
24 The Orphan Well Association and BC OG -- Oil and Gas Commission jointly apply for the
25 appointment of a receiver in relation to the respondent, SanLing Energy Ltd. SanLing is a
26 corporation incorporated under the laws of Alberta and extra-provincially registered under
27 the laws of British Columbia. It operates as an oil and gas company and holds licences and
28 permits to operate wells, pipelines, and related facilities.

29
30 SanLing operates 2,279 wells, 2,170 pipelines, and 267 other facilities in Alberta and holds
31 94 well permits, 94 facility permits, and 53 pipeline permits for infrastructure in BC.
32 SanLing has a history of non-compliance with orders issued by the Alberta Energy
33 Regulator as well as the BC OGC. This history is outlined in the affidavits of Brian
34 Murphy, executive director Orphans and Liabilities of the BC OGC and Lars DePauw,
35 executive director of the OWA. This evidence of non-compliance is uncontroverted.
36 SanLing further owes the AER over \$67 million for liability management rating security
37 and owes the BC OGC in excess of \$2.75 million for various orders for security and
38 administrative penalties.

39
40 The applications have been filed under section 13(2) of Alberta's *Judicature Act*, section
41 99(a) of the *Alberta Business Corporations Act*, section 106.1 of the *Oil and Gas*

1 *Conservation Act*, as well as section 39 of BC's *Law and Equity Act*, and rule 10-2 of the
2 BC Supreme Court's civil rules. The applications seek the appointment of
3 PricewaterhouseCoopers to act as receiver manager over all current and future assets,
4 undertakings, and property of SanLing located in both Alberta and British Columbia. PWC
5 has provided its consent to act as receiver.

6
7 SanLing wrote a letter dated April 13, 2021, advising the BC OGC, AER, and OWA that
8 it intended to cease all operations effective April 30, 2021 and would cooperate with any
9 efforts to have a receiver appointed over its assets. SanLing's counsel today confirmed that
10 it takes no position in respect of today's application.

11
12 In addition, the AER has written a letter dated April 22, 2021, expressing its support for
13 the OWA's application. Similarly, the AER's counsel today confirmed in her submissions
14 that the AER supports the application brought by the OWA and BC OGC.

15
16 It is in that context that I must determine whether it is just and convenient to appoint PWC
17 as receiver manager over SanLing's property. Before turning to that question there are
18 some preliminary issues that need to be addressed. In respect of service, I am satisfied that
19 service is in order. Notwithstanding that the timing is short, there are significant public
20 interest considerations at stake particularly in view of SanLing's letter of April 13, 2021. I
21 am satisfied that the applicants have undertaken reasonable efforts to affect service on
22 interested parties and any order granted today will reflect that service is deemed adequate
23 and sufficient.

24
25 Second, I must be satisfied that I have the jurisdiction to grant a receivership order in
26 relation to SanLing's property located in both Alberta and British Columbia. In view of the
27 fact that the applications are brought under provincial statutes and enactments. Having
28 reviewed the materials in the brief provided by applicant's counsel, I am satisfied that I
29 have the jurisdiction to issue the requested order. The language of section 13(2) of the
30 *Judicature Act* is substantially similar to that found in section 39(1) of BC's *Law and*
31 *Equity Act*. Courts have interpreted statutes from other provinces as long as the extra-
32 provincial statute is sufficiently similar to the language found in the statute from the courts
33 home jurisdiction.

34
35 While the cases of *McCutcheon v. Cash Store* and *Corless v. Bell Mobility* relate to class
36 actions I see no reason why the same principle may not be followed in this situation. The
37 applicants bring this application under similar legislative provisions that require the same
38 just and convenient test to be met. I agree that making a receivership order today that
39 applies to SanLing's property in both Alberta and BC, avoids duplication of proceedings,
40 and also ensures that an order may be in place by the April 30 date that SanLing has
41 indicated that it plans to cease operations.

1
2 It should be noted that I was advised that if I grant today's order PWC intends to bring an
3 application to have this, and any order granted by me, recognized by the Supreme Court of
4 British Columbia.

5
6 Next, I must be satisfied that the OWA and BC OGC have standing to bring the within
7 applications. Again, the applicant's material has been very helpful, and I am satisfied that
8 the OWA has the standing to apply for a receivership order under section 99(a) of the
9 ABCA and that the AER has authority to delegate its ability to apply for receivership order
10 outlined in section 106.1 of the OGCA which they have done to the OWA.

11
12 I have also reviewed Justice Romaine's decision in *Alberta Health Services and Network*
13 *Health Inc.* wherein she held that section 13(2) of the *Judicature Act* does not require a
14 creditor to bring a receivership application. And in that case AHS had standing in light of
15 its interest in ensuring citizens of Alberta were not deprived of surgical services. In other
16 words, a party may have standing provided that they act for the benefit of and on behalf of
17 the Alberta public. I find that the OWA fulfills such a role in regards to the environment
18 and end of life obligations of SanLing and that the BC OGC fills a similar role in regards
19 to SanLing's property located in BC. Given the similarity in the language between the
20 *Judicature Act* and *Law and Equity Act* I am prepared to apply a similar interpretation to
21 the BC statute although I understand that the BC OGC is, in any event, a creditor to
22 SanLing.

23
24 Importantly, when SanLing ceases operations effective April 30, there is no other party
25 expressing a willingness to step in and take responsibility for maintaining and caring for
26 SanLing's regulated assets. Therefore, I am satisfied that both the OWA and BC OGC have
27 the requisite standing to bring today's application.

28
29 That then takes me to the substance of today's application, the just and convenient test.
30 Justice Romaine outlined the factors a court may consider when determining whether it is
31 appropriate to appoint a receiver in *Paragon Capital Corp. v. Merchants and Traders*
32 *Assurance Co.* Among the factors identified in *Paragon* is whether irreparable harm might
33 be caused if no order is made and the balance of convenience being the second and third
34 aspects of the tripartite test outlined by the Supreme Court of Canada in *RJR-MacDonald*
35 *Inc. v. Canada*. Consistent with this, Justice Romaine observed in *MTM Commercial Trust*
36 *and Statesman Riverside Quays Ltd.* at paragraph 11 citing a decision of the Ontario
37 Supreme Court that, and I quote: (as read)

38
39 The test for the appointment of receiver is comparable to the test
40 for injunctive relief. Determining whether it is just and convenient
41 to grant a receivership requires the Court to consider and attempt

1 to balance the rights of both the applicant and the respondent with
2 the onus on the applicant to establish that such an order is required.
3 The factors set out to be considered in a receivership application
4 are focused on the same ultimate question that the Court must
5 determine in considering an application for an interlocutory
6 injunction. What are the relative risks to the parties of granting or
7 withholding the remedy?
8

9 As already noted, SanLing has expressed an indication that it will cease operations
10 effective no later than April 30, 2021. There is no indication as to who may step in after
11 April 30 to look after SanLing's property and all officers and directors will be removed as
12 of this date. There is a chance that the property will be abandoned and left without a
13 responsible operator. This will pose a significant risk to the environment and surrounding
14 communities.
15

16 Further, I consider that a stay of proceeding may be required to ensure the orderly treatment
17 of and dealings with any potential creditors or counter-parties. It is possible that some of
18 SanLing's assets may be sold which may reduce liabilities associated with SanLing's
19 abandonment and reclamation obligations. This would clearly be of benefit to the ultimate
20 stakeholders of the OWA and Orphan Fund maintained by the BC OGC. I am satisfied that
21 the balance of convenience weighs in favour of granting a receivership order particularly
22 for the purposes of protecting the public interest. And having regard for the nature of
23 SanLing's current circumstances and property and public interest considerations, I am
24 satisfied that it would be just and convenient to appoint a receiver. I am prepared to grant
25 a receivership order today.
26

27 So, with that, Mr. Zahara and Ms. Meyer, I know you also wanted to make submissions in
28 respect of the form of order, I think we can turn to that now unless anyone has any questions
29 at this juncture.
30

31 MR. ZAHARA: Nothing from me, My Lady. I think what I would
32 propose to do is just take you quickly through the black line of the order we're seeking to
33 its model template.
34

35 THE COURT: Okay. Let me just see ... Let me just try and pull
36 that up on my screen. I did review the order this morning and I didn't have too many
37 questions about it but I'm happy to have you walk me through it, Mr. Zahara.
38

39 MR. ZAHARA: Certainly, My Lady. And what I propose to do is
40 just take you through the high level changes to that template. Not the - the minutiae of the
41 grammatical and other changes. So, I will --

1
2 THE COURT: And certainly, I appreciate the changes that have
3 been made in order to reflect that the order applies in both Alberta and BC. So, those are
4 fine, as well.

5
6 MR. ZAHARA: Okay. Certainly, My Lady. I'll skip over those,
7 as well.

8
9 So, I think the first change that we included from the template was in 3(b) was just the
10 power of the receiver to abandon, dispose of, transfer, or otherwise release any interest in
11 any of the debtors personal or real property. This allows the - the receiver in this case, it
12 can't sell or anything to really relinquish that interest of the debtor. That is one of the
13 options under the model template, as I understand it. That was the first change.

14
15 The next change that's made to the substantive divisions would be the monetary amounts
16 included in paragraph 3(m)(1) --

17
18 THE COURT: Yes.

19
20 MR. ZAHARA: And so, those are the amounts that the receiver
21 can dispose of property in respect of a transaction for (INDISCERNIBLE) -- in a single
22 transaction \$500,000 is the limit and provided that the aggregate consideration for all does
23 not go over \$3 million. So --

24
25 THE COURT: And can we just - can we just have a discussion
26 about that for a minute? Because I just --

27
28 MR. ZAHARA: Sure.

29
30 THE COURT: -- need to understand how those numbers were -
31 were identified for the purposes of this.

32
33 And Ms. Meyer, if - if you want to jump in here, I understand that. But are these numbers
34 required? Are they typical? Can you give me any information about this?

35
36 MR. ZAHARA: Yeah, I can certainly give you my view. These
37 numbers would fall I think along a spectrum. Certainly, in some of the orders that were
38 granted, you can look at the *Lexin* one and the *Bow River* ones as examples, My Lady.

39
40 THE COURT: M-hm.

41

1 MR. ZAHARA: The *Lexin* ones were much smaller. The *Bow*
2 *River* ones, because of the nature of the assets were much higher. So, for example on
3 Theisen (phonetic) Oil and Gas, these numbers were set at 1 million and 5 million. So,
4 higher than the present ones sought.
5

6 THE COURT: M-hm.
7

8 MR. ZAHARA: In the *Bow River* ones the numbers were
9 \$100,000 and 1 million, respectively. And so, again, these would be somewhere in between
10 those two orders, Your Ladyship. And I believe the receiver would've looked at the -- or
11 the proposed receiver would've looked at the numbers and the assets and made a
12 determination and certainly that was done with the input of the receiver. So, I'll let Ms.
13 Meyer provide any comments other than she has on that.
14

15 THE COURT: Okay.
16

17 Ms. Meyer?
18

19 MS. MEYER: Thank you, My Lady.
20

21 Yes, part of the intent of having these figures included in the paragraph -- subparagraph M
22 of this part of the receivership order is to allow for the receiver to dispose of certain of the
23 assets without the time and expense of applying to the court for court approval. And so, in
24 particular what PricewaterhouseCoopers Inc. has also acted and continues to act as the
25 receiver of *Trident Exploration* and related entities in that receivership that threshold has
26 proven to be efficient in allowing the receiver to monetize some of the assets of the debtor
27 company without the time and expense of applying for court approval in consideration of
28 the type of assets that are being monetized which, of course, are oil and gas assets similar
29 to what we see in this receivership. So, that was part of the consideration with regards to
30 these threshold amounts. I agree with Mr. Zahara's comments that there isn't a set amount
31 that is determinative in each case but certainly we think that those amounts are appropriate.
32

33 THE COURT: Okay. Thank you very much. That is helpful to
34 understand. Thank you.
35

36 MR. ZAHARA: Thank you, My Lady.
37

38 The next substantive change to that form of order is at paragraph 3(t) and this was the
39 paragraph that was inserted at the request of the receiver which was the power to assign
40 the debtor into bankruptcy without further - further order of this Court -- simplifying the
41 procedure to place, should the receiver choose to do so, the debtor into bankruptcy. We

1 would submit that this is -- sometimes shows up in receivership orders, sometimes it does
2 not. It is not an uncommon provision in these types of matters and I'm happy to let --
3 answer any questions you have on that or let Ms. Meyer's speak further to it as well.
4

5 THE COURT: Okay. Can I just understand, because that
6 provision did jump out at me, I just would like to understand why it would be appropriate
7 or is required in this circumstance?
8

9 MS. MEYER: Certainly, My Lady, and I can speak to that.
10 Again, for the record, Kelsey Meyer on behalf of the proposed receiver.
11

12 SanLing's counsel, of course, as you know has advised that all of its directors and officers
13 will be resigning, and so that will leave the company in the circumstance where there will
14 be no party that actually can voluntarily assign the company into bankruptcy. And so by
15 seeking that authority at this time for the receiver to do so that's -- addresses a potential
16 gap there without the receiver having to come back to seek that authority separately. And
17 so, that may enable the receiver or ultimately acting as a trustee in bankruptcy to enhance
18 recoveries to the estate without the further cost of applying for a bankruptcy order.
19

20 Particularly in this situation where this is not - this is an abandonment and reclamation
21 obligation driven receivership. This isn't a situation of - of flipping of priorities with
22 respect to claims that have different priorities under receivership than they would under a
23 bankruptcy. For example, GST being one where GST as it being trust under receivership
24 but an unsecured claim under a bankruptcy. However, that isn't the driver of this situation
25 in that, again, the impetus for this application is the abandonment and reclamation
26 obligations and ensuring that the assets are properly dealt with and potentially sold to
27 purchasers that can then operate them.
28

29 I did note as well that Canada Revenue Agency has been served with notice of this
30 application and hasn't appeared or, as I understand from Mr. Zahara, hasn't otherwise
31 indicated any position on the application nor do we see any reason for them to object in the
32 circumstances where this isn't driven by that sort of priority issue.
33

34 There are as Mr. Zahara mentioned precedence for this type of language being included in
35 a receivership order. To give you some of those, My Lady, *Anterra Energy* and I can give
36 you the court file numbers for these if it would be helpful, and I can certainly send you
37 copies of the receivership orders by email if that would help, as well. The *Anterra Energy*
38 matter is court file 1701 07686 that was filed June 7th, 2017, Justice Campbell and it's
39 paragraph 3(s) of that receivership order. Also, Justice Macleod granted similar language
40 in the *Petrowest Corporation* receivership. That is court file 1701 10732, filed August 15th
41 of 2017. And more recently the *Boulder Creek Golf Course Limited Partnership* matter of

1 receivership filed under court file number 1901 11183, filed December 12th of 2019 and
2 granted by Mr. Justice Macleod at again paragraph 3(s) in that receivership order also
3 authorizes the receiver to assign the debtor into bankruptcy.
4

5 THE COURT: Okay. I don't think I need you to send those to
6 me though I appreciate the offer, Ms. Meyer. The rationale that you have offered makes
7 good sense given the impetus of the applications. So, thank you for that explanation.
8

9 MS. MEYER: Thank you, My Lady.
10

11 MR. ZAHARA: Thank you, My - My Lady. And then there was
12 one last final substantive change to the template which is at paragraph 21 and it is the
13 amount of the receiver's borrowing charge which was included to be \$1 million. And that's
14 in the circumstances of where the borrower -- the receiver needs to borrow funds to
15 (INDISCERNIBLE) maintain the assets, take steps to do any work or prevent any
16 environmental conditions. So, again that number is consistent with other orders that have
17 been granted including ones that are attached to our brief. I believe in *Houston Oil and*
18 *Gas*, and *Bow River* and we didn't have any concerns, being the applicants, with - with the
19 amount of that number.
20

21 THE COURT: Okay.
22

23 Ms. Meyer, do you have any submissions to make in respect of that?
24

25 MS. MEYER: No, My Lady. Certainly, that number seems
26 appropriate to us and I can tell you further submissions with respect to the black line on
27 the receivership order. Subject to any questions you may have.
28

29 THE COURT: Okay. No, I think that is everything I had.
30

31 Okay. Did anyone else want to address the form of receivership order?
32

33 Okay. Hearing no one, I am satisfied with the explanations and submissions that I have
34 received from counsel in regards to the changes of the proposed receivership order in
35 relation to the template order that is issued by the Court of Queen's Bench and I am
36 prepared to grant the form of order as submitted with no changes required.
37

38 MR. ZAHARA: Thank you, My Lady.
39

40 That concludes all of the business that I had today in terms of the application. So, unless
41 there's any further questions or comment I think that is everything for today.

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THE COURT: Okay. Anyone else with -- anything else I can do to assist any counsel today in regards to this matter?

No? Okay. Mr. Zahara, I will attend to executing that form of order electronically. Send it to my assistant right away so she will send it to you. I would expect you will have it very - very soon. And I think that is everything. Thank you everyone for attending. I appreciate everyone's submissions.

MS. MEYER: Thank you, My Lady.

MR. ZAHARA: Thank you, My Lady.

THE COURT: Thank you. Have a good day everyone. Stay safe and well.

PROCEEDINGS CONCLUDED

1 **Certificate of Record**

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4 Court of Queen’s Bench, held in courtroom 1201 on April 23rd, 2021, and I was the court
5 official in charge of the sound-recording machine during the proceedings.

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4

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