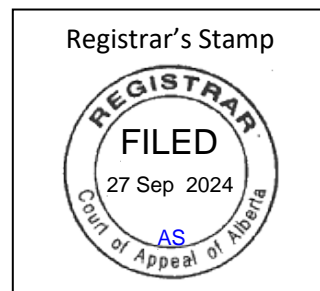


COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 2401-0253AC
TRIAL COURT FILE NUMBER: 2401-02680
REGISTRY OFFICE: CALGARY
PLAINTIFF/APPLICANT: ALBERTA PETROLEUM
MARKETING COMMISSION
STATUS ON APPEAL: APPLICANT
STATUS ON APPLICATION: APPLICANT
DEFENDANT/RESPONDENT: RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND
BLADE ENERGY SERVICES
CORP.
STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT
DOCUMENT: **MEMORANDUM OF ARGUMENT OF THE ALBERTA
PETROLEUM MARKETING COMMISSION FOR
PERMISSION TO APPEAL**
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Service List in Court of King's Bench
Action 2401-02680

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PART I: INTRODUCTION

1. The Applicant, Alberta Petroleum Marketing Commission ("APMC"), seeks permission to appeal, under sections 13 and 14 of the *Companies' Creditors Arrangement Act*¹ ("CCAA"), a portion of the decision of Justice M.E. Burns in Chambers dated September 6, 2024.²
2. The portion of the decision for which permission to appeal is sought is the Chamber Justice's determination in paragraph 28 that the February 28, 2024 initial order (the "Initial Order")³ stayed the APMC's authority to direct Razor Energy Corp. ("Razor") to physically deliver the Crown's royalty share of oil in kind after the Initial Order where there was an underdelivery in the month before that Order.
3. The APMC's application meets the requirements for permission to appeal under the CCAA as it raises serious and arguable grounds that are of real and significant interest to the parties. The issues raised by the appeal are significant to the practice and are of significance to the action itself. The proposed appeal is *prima facie* meritorious and not frivolous, and will not unduly hinder the progress of the action.

PART II: FACTS

A. The Alberta Petroleum Marketing Commission

4. The APMC is the Crown's agent responsible for receiving and dealing with Alberta's crude oil royalty volumes in the public interest of Alberta.⁴ The APMC derives authority from the *Petroleum Marketing Act*⁵ ("PMA"), the *Mines and Minerals Act*⁶ ("MMA") and a number of interrelated regulations. Under section 86(1) of the MMA and section 3 of the 2009 and the 2017 *Petroleum Royalty Regulations*,⁷ producers with agreements to produce oil from

¹ [R.S.C. 1985, c. C-36](#) [Authorities, Tab 1]

² *Razor Energy Corp., v Companies' Creditors Arrangement Act*, [2024 ABKB 534 \(CanLII\)](#) [Attached as APPENDIX I]

³ Order of Justice Whitling, pronounced February 28, 2024 [KB 2401-02680 Documents, Tab A]; A copy can be viewed on the Monitor's Website [here](#).

⁴ *Petroleum Marketing Act*, [RSA 2000, c P-10](#), in particular ss. 8 and 15; the Affidavit of Bradley Weicker sworn March 5, 2024 ("Weicker Affidavit #1") at para. 2 [KB 2401-02680 Documents, Tab B]

⁵ *Petroleum Marketing Act*, [RSA 2000, c P-10](#) [Authorities, Tab 2]

⁶ *Mines and Minerals Act*, [RSA 2000, c M-17](#) [Authorities, Tab 6]

⁷ *Petroleum Royalty Regulation*, 2009, [AR 222/2008](#) at s. 3 [Authorities, Tab 3]
Petroleum Royalty Regulation, 2017, [AR 212/2016](#) at s. 3 [Authorities, Tab 4]

the Crown's holdings must deliver the Crown's royalty share to APMC. Leases signed with the Crown incorporate the MMA and any other Acts of the Legislature that prescribe, apply to or affect the rights and obligations of a lessee of petroleum and natural gas rights that are the property of His Majesty.⁸

5. The *Petroleum Marketing Regulation*⁹ ("PMR") establishes a regulatory system for Crown crude oil royalty forecasting, delivery and settlement on a monthly basis.¹⁰ Inherent in this system, which deals with forecasting, delivering and then settling the volume of a commodity that flows continuously over time, is the establishment of time periods for delivery and adjustments between time periods for over and underdeliveries.¹¹ The APMC administers this regulatory system.

6. If a producer underdelivers the Crown's royalty share in any month, APMC can direct delivery of the underdelivered balance of that royalty share in another month. Section 12(1) of the *Petroleum Marketing Regulation* provides:

Direction to deliver royalty deficiency

12(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

(a) in the month in which the direction is given,

(b) in a particular subsequent month, or

(c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction.¹²

⁸ Weicker Affidavit #1 at para 3. **[KB 2401-02680 Documents, Tab B]**

Affidavit of Doug Bailey sworn April 5, 2024 ("Bailey Affidavit #5") at paras. 4 and 5 and Exhibit A, s. 2. **[KB 2401-02680 Documents, Tab C]**

⁹ *Petroleum Marketing Regulation*, [AR 174/2006](#) **[Authorities, Tab 5]**.

¹⁰ General principles described in Weicker Affidavit #1 at para. 6 **[KB 2401-02680 Documents, Tab B]** and the Affidavit of Bradley Weicker sworn March 6, 2024 ("Weicker Affidavit #2") at paras. 3 and 4 **[KB 2401-02680 Documents, Tab D]**; and in terms of Razor specifically described in Weicker Affidavit #1 at paras. 7 to 9 **[KB 2401-02680 Documents, Tab B]**; and in Weicker Affidavit #2 at para. 5. **[KB 2401-02680 Documents, Tab D]**

¹¹ *Petroleum Marketing Regulation*, [AR 174/2006](#), ss. 11, 12, and 15. **[Authorities, Tab 5]**

¹² *Petroleum Marketing Regulation*, [AR 174/2006](#) s. 12(1) **[Authorities, Tab 5]**

B. Razor Energy's refusal to deliver the Crown's royalty share for January 2024

7. In December 2023, Razor forecasted the delivery of Crown royalty oil to the APMC for the January 2024 delivery month. In January 2024, draft pipeline shipper balances, and final draft shipper balances continued to reflect Crown royalty oil deliveries to APMC from Razor. However, about February 12, 2024, when Razor filed final Crown royalty production splits for January 2024 it suddenly showed that no Crown royalty oil was delivered to the APMC in January 2024. Razor failed to deliver 934.8 cubic meters of Crown royalty oil to APMC in January 2024.¹³

8. On February 27, 2024, Alberta Energy and Minerals asked Razor to explain the lack of January royalty deliveries. Razor responded that it had commenced restructuring proceedings on January 30, 2024 under section 50.4(1) of the *Bankruptcy and Insolvency Act* ("BIA")¹⁴ and that it "was advised by its lawyers and FTI [the Trustee] that January oil royalties were stayed as part of this process and accordingly Razor did not deliver any royalty for January production."¹⁵

9. On February 28, 2024, general counsel for APMC gave Razor notice of Razor's continuing legal obligation to deliver the Crown's royalty share of production to APMC and noted Razor had failed to recognize the Crown's continuing estate, ownership and title to the Crown's royalty share. He asked that Razor confirm steps that it would take to rectify the suspended deliveries.¹⁶

10. On March 1, 2024, two separate things happened:

- a. Razor provided a copy of the Initial Order to the APMC for the first time.¹⁷
- b. APMC directed Razor to make up the underdelivery balance by the delivery in-kind to APMC of crude oil of an equal quantity and of like quality to the January royalty deficiency volumes as part of its February 2024 delivery month.¹⁸

¹³ Weicker Affidavit #1 at paras. 7 to 9. **[KB 2401-02680 Documents, Tab B]**

¹⁴ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#). **[Authorities, Tab 7]**

¹⁵ Weicker Affidavit #1 at para.10. **[KB 2401-02680 Documents, Tab B]**

¹⁶ Weicker Affidavit #1 at para 11 and Exhibit "C". **[KB 2401-02680 Documents, Tab B]**

¹⁷ APMC had not been served with notice of the application for the Initial Order order.

¹⁸ Weicker Affidavit #1, para. 11. **[KB 2401-02680 Documents, Tab B]**

11. Razor has complied with its obligation to deliver Crown royalty oil after the Initial Order, but has not delivered the January volumes.

12. On March 6, 2024, APMC filed an application that sought an order *inter alia* that declared the stay in paragraph 15 of the Initial Order did not apply to APMC's direction by virtue of section 11.1 of the CCAA.¹⁹ APMC's application was heard on April 10, 2024.

13. In a written decision issued on September 6, 2024, the Chamber's Justice dismissed the APMC's application.²⁰ In her decision, she determined *inter alia* that:

- a. The Crown owns and holds title to the royalty oil. (Para. 9)
- b. The CCAA applies with respect to the debtor's assets and does not permit a debtor to take and use that which they do not own. (Para. 15)
- c. Razor's relationship to the Crown's royalty share as a trustee or agent is not a deemed trust created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share. No deemed trust is necessary or has been created. There is already a proprietary interest. Razor does not hold the oil in a "trust" as one would find in a deemed trust. Razor is holding onto the Crown's oil. The Initial Order applies to creditors and to Razor's property, not the Crown's property. (Para. 22)
- d. It is clear that the Crown's rights to the royalty share are *in rem*. Razor never owned and was never entitled to own the Crown's royalty share of production. Neither the BIA nor the CCAA give Razor any ownership interest in the Crown's royalty share. (Para. 23)
- e. The reality is that the royalty is a tangible, physical quantity of oil but Razor no longer possesses the January 2024 royalty shares volume because it was likely transferred to third party oil marketers back in the beginning of the year (albeit in violation of section 11 of the Act) and the tangible assets are unrecoverable. As a result, the APMC cannot enforce its *in rem* rights with respect to that particular oil. (Para. 26)

¹⁹ Application of APMC, filed March 6, 2024. **[KB 2401-02680 Documents, Tab E]**

²⁰ *Razor Energy Corp., v Companies' Creditors Arrangement Act*, [2024 ABKB 534 \(CanLII\)](#) **[Attached as APPENDIX I]**

- f. Section 12 of the PMR is a statutory enforcement clause/remedy. Section 15 of the Initial Order is specific in providing that all rights and remedies of a government body, whether judicial or extra-judicial, statutory, or non-statutory, against or in respect of the Razor Entities, or affecting the Business or Property, are stayed. (Para. 28)
- g. Whether APMC could exercise its rights under section 13 (seeking a monetary amount) is irrelevant to this determination. (Para. 28)
- h. At its crux, even though the oil was wrongfully taken in January, and the Crown has title to any and all subsequent oil, subject to the terms of the leases, and even though the oil was held in a true trust, not a deemed trust, the Act allows, and the Initial Order provides, that all attempts at remedying the taken oil were stayed. Using the power in Section 12 is a remedial step that is stayed. (Para. 31)

PART III: QUESTION FOR WHICH PERMISSION TO APPEAL IS SOUGHT

14. APMC seeks leave with respect to the following question:

Did the Chamber's Justice err in determining the "Initial Order" stayed the APMC's authority to direct Razor to physically deliver the Crown's royalty share of oil in kind in a subsequent time period where there was an underdelivery in the month before the Initial Order?

PART IV: SUBMISSIONS

A. The Test for Permission to Appeal

15. An applicant for leave must demonstrate "serious and arguable grounds that are of real and significant interest to the parties" by reference to the following factors:

- a. whether the issues raised by the appeal are significant to the practice;
- b. whether the issues are of significance to the action itself;
- c. whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- d. whether the appeal will unduly hinder the progress of the action.²¹

²¹ *Griffon Partners Operation Corporation (Re)*, [2024 ABCA 279 \(CanLII\)](#) at [para. 4](#) [**Authorities, Tab 8**]

B. The Applicant meets the Test for Permission to Appeal

a) The issues raised by the proposed appeal are significant to the practice

16. The points on the proposed appeal are of significance to the practice as:
- a. The obligation to deliver Crown royalty oil affects a significant component of Alberta's energy industry.
 - b. There are no CCAA authorities on the issue of the right of the Crown to its royalty share *in rem* and the remedies available to the Crown to ensure that it receives the crude oil that belongs to it.
 - c. It will determine whether the CCAA countenances as part of its proceedings actions taken to wrongfully convert the property of the Crown while under BIA proceedings and on the eve of an application under the CCAA.

b) The issues are of significance to the action itself

17. The question raised by the proposed appeal is of significance to the action as it will determine whether Razor is required to deliver the Crown's royalty share for January to APMC while Razor is in CCAA proceedings.

c) The appeal is *prima facie* meritorious and is not frivolous

18. The Chamber's Justice correctly determined that Razor never owned and was never entitled to own the Crown's royalty share and that neither the BIA nor the CCAA give Razor any ownership interest in the Crown's royalty share.

19. However, the Chamber's Justice erred in determining that paragraph 15 of the Initial Order stayed the APMC's authority to require delivery in a subsequent period for the following reasons.

- a. In respect of the Crown's royalty share, APMC, as agent of the Crown, is not a creditor of Razor. Neither the CCAA nor the BIA, which constrains the ambit of the claims to which the CCAA applies, limits the Crown's ownership of its royalty share. The Crown royalty share belongs to the Crown absolutely.²²

²² *Excel Energy Inc. v. Alberta*, [1997 ABCA 24](#) at [para. 7](#). [Authorities, Tab 9]

- b. A fundamental principle of insolvency proceedings under the CCAA and the BIA is that it provides recourse to the debtor's assets only - only the debtor's own assets are available for distribution to its creditors -- *nemo dat non quod habet*. Where the asset in issue is not the "debtor's asset" the CCAA does not shield the asset from recovery by the owner. This is clear from the following passage from *Newfoundland and Labrador v. AbitibiBowater* ("AbitibiBowater"):
- One of the central features of the CCAA scheme is the single proceeding model, which ensures that most claims against a debtor are entertained in a single forum. Under this model, the court can stay the enforcement of most claims **against the debtor's assets** in order to maintain the status quo during negotiations with the creditors. [emphasis added]²³
- c. Until it is produced, the Crown's crude oil all belongs to the Crown. When the crude oil is produced the portion the Crown's royalty share continues to belong to the Crown including any amount of the required royalty share that was undelivered in a previous period.
- d. The Crown's right to require that Razor deliver the Crown's royalty share regardless of the time period in which it is produced is based on the principle that the royalty share is an *in rem* right to a fungible commodity.²⁴ The

²³ *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67 (CanLII), [2012] 3 SCR 443 at para. 21 [Authorities, Tab 10]. See also: *Quicksilver Resources Canada Inc (Re)* 2018 ABQB 653 at para. 57 [Authorities, Tab 11] and *8640025 Canada Inc. (Re)*, 2017 BCCA 303 at para. 58. [Authorities, Tab 12]

²⁴ See section 35 of the *Mines and Minerals Act* :

Crown as owner

35(1) The Crown in right of Alberta is the owner of its royalty share of the mineral at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown's title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee's share prior to or at the time of the disposal or transfer of title. (Emphasis added)

Section 35 is a statutory reflection of the common law right to ownership in an intermingled mass as set out in *Carter v. Long & Bisby*, 1896 CanLII 18 (SCC), 26 SCR 430 [Authorities, Tab 13]

Where the owner of chattels, having the legal property in them, has had his property mixed with similar chattels belonging to other persons so that out of the mass thus commingled the chattels originally belonging to each person are indistinguishable, as in the case which has so frequently happened of a quantity of saw-logs being thus mixed, the rule at common law is that where this has been done without fraud or wrong an original owner is entitled to take from the mass an equivalent in quantity and quality for the property which he has lost by the mixing, and he is treated as having a legal title to such property.

Cited with approval by the SCC in *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15 (CanLII), [2009] 1 SCR 504, at para. 85 [Authorities, Tab 14]

obligation to deliver the royalty share in kind is not swept away when a party, who continues to produce oil under a lease from the Crown, underdelivers on the Crown's share in a discrete time period, whether unintentionally or through the wrongful conversion of the Crown's oil. The obligation to deliver the Crown's royalty oil from the earlier period simply adheres to the next time period.

e. In this regard the Chamber's Justice erred in concluding that:

The reality is that the royalty is a tangible, physical quantity of oil but Razor no longer possesses the January 2024 royalty shares volume because it was likely transferred to third party oil marketers back in the beginning of the year (albeit in violation of section 11 of the Act) and the tangible assets are unrecoverable. As a result, the APMC cannot enforce its *in rem* rights with respect to that particular oil.(Para 26)

The tangible asset is not unrecoverable. The *in rem* rights to the Crown's royalty share adhere to the next cubic meter of crude oil produced from the Crown's holdings.

f. Section 12 of the PMR enables the Crown to ensure physical delivery of its own crude oil from the continuing flowing stream extracted from Crown's own resource. It is a tool for managing a continuous flow over time. It forms one aspect of the regulatory forecasting and settlement system where there can be overages and underages. It allows for the smoothing out of royalty obligations, which administratively are broken into specific time periods, but practically constitute a continuous flow. A section 12 direction is not the enforcement of a payment by the APMC, it is a direction that an undelivered amount of the Crown's royalty share in one period be delivered in a later period—the crude oil at issue is and always was the Crown's, until it is disposed of by or on behalf of the Crown.

g. Under section 11.1(2) of the CCAA, the stay in the Initial Order does not apply to the APMC's section 12 direction. Section 11.1(2) provides:

Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court. [Emphasis added]

- h. The APMC is a regulatory body for the purposes of section 11.1 of the CCAA. Its role is a unique one in that it acts in the public interest of Alberta to operate the system under which the Crown's property, its royalty share, is delivered to the Crown and dealt with on behalf of the Crown. When exercising its authority under section 12 APMC deals exclusively with delivery of the property of the Crown, it does not enforce a payment by the company. APMC enforces the obligation to deliver the Crown's property to the Crown's agent as part of the general law of Alberta.
- i. If a producer fails to deliver in accordance with a section 12 direction, the APMC is granted a discretion to either:
 - i. continue to require delivery of the Crown's royalty share in kind under section 12, or
 - ii. charge the producer with a sum in compensation for the Crown's royalty share that was not delivered under section 13 of the PMR.²⁵
- j. APMC has not exercised its discretion under section 13 of the PMR to convert the Crown's ownership of oil into a charge for an amount of money. Nothing in the CCAA compels the APMC to do so.²⁶ Contrary to the Chambers Justice's suggestion that "Whether APMC could exercise its rights under section 13 (seeking a monetary amount) is irrelevant to this determination", the election not to exercise the discretion is relevant. It reinforces the point that APMC is not seeking to enforce a payment. The APMC has directed that Razor deliver to it the Crown's royalty share in the course of observance of the general law of Alberta (which requires producers deliver the Crown royalty share to APMC).

²⁵ *Petroleum Marketing Regulation*, [AR 174/2006](#), s. 13 [**Authorities, Tab 5**].

²⁶ This principle was recognized by the Alberta Court of Appeal:

It is true that this Board has the power by statute to create in its own favour a statutory debt if it chooses to do so... But the Board has not done so in this case. Rather it is simply in the course of enforcing observance of a part of the general law of Alberta.

PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited, [81 DLR \(4th\) 280 \(1991\)](#) at [para. 34](#) [**Authorities, Tab 15**].

20. This is not a case like *AbitibiBowater*,²⁷ where the order at issue was a colourable attempt to create an obligation to pay money to the Crown.²⁸ Here, the direction is focused solely on reserving to the Crown the Crown's own property. The core function of the APMC is to accept delivery of the Crown's royalty share of hydrocarbon substances and deal with the Crown's royalty share of the hydrocarbon substance in a manner that is, in the APMC's opinion, in the public interest of Alberta.²⁹ The APMC has not penalized Razor in respect of its underdelivery. It has issued a direction under section 12 to correct the imbalance between the Crown's oil required to be delivered and that actually delivered. *AbitibiBowater* addressed a debt, liability or obligation to a creditor. At issue here is a regulatory system to manage the delivery of the Crown's own oil to it and specifically, in this case, to manage underdeliveries of Crown property. Not all regulatory obligations are claims proveable in bankruptcy; neither bankruptcy nor CCAA proceedings amount to a licence to disregard rules.³⁰ A direction under section 12 is essential to the execution of APMC's purpose.

d) The appeal will not unduly hinder the progress of the action

21. The proposed appeal will not unduly hinder the progress of the action as the APMC filed its application in the CCAA proceeding as quickly as reasonably possible and will pursue this application and any subsequent appeal with expedition.

PART V: CONCLUSION AND RELIEF SOUGHT

22. The Applicant meets the test for permission to appeal and seeks an order granting it permission to appeal the question set out above.

²⁷ *AbitibiBowater*, [2012 SCC 67 \(CanLII\)](#), [2012] 3 SCR 443. **[Authorities, Tab 16]**

²⁸ *Orphan Well Association v. Grant Thornton Ltd.*, [2019 SCC 5 \(CanLII\)](#), [2019] 1 SCR 150 at [paras. 127](#) and [128](#). **[Authorities, Tab 17]**

²⁹ *Petroleum Marketing Act*, [RSA 2000, c P-10, s. 15](#) **[Authorities, Tab 2]**.

³⁰ *Orphan Well Association v. Grant Thornton Ltd.*, [2019 SCC 5 \(CanLII\)](#), [2019] 1 SCR 150 at [para. 118](#) **[Authorities, Tab 17]**

PART VI: TABLE OF AUTHORITIES

Legislation and Case Law

1. *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#)
2. *Petroleum Marketing Act*, [RSA 2000, c P-10](#)
3. *Petroleum Royalty Regulation*, 2009, [AR 222/2008](#)
4. *Petroleum Royalty Regulation*, 2017, [AR 212/2016](#)
5. *Petroleum Marketing Regulation*, [AR 174/2006](#)
6. *Mines and Minerals Act*, [RSA 2000, c M-17](#)
7. *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#)
8. *Griffon Partners Operation Corporation (Re)*, [2024 ABCA 279 \(CanLII\)](#)
9. *Excel Energy Inc. v. Alberta*, [1997 ABCA 24](#)
10. *Newfoundland and Labrador v. AbitibiBowater Inc.*, [2012 SCC 67 \(CanLII\)](#), [2012] 3 SCR 443
11. *Quicksilver Resources Canada Inc (Re)* [2018 ABQB 653](#)
12. *8640025 Canada Inc. (Re)*, [2017 BCCA 303](#)
13. *Carter v. Long & Bisby*, [1896 CanLII 18 \(SCC\)](#), 26 SCR 430
14. *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, [2009 SCC 15 \(CanLII\)](#), [2009] 1 SCR 504
15. *PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited*, [81 DLR \(4th\) 280 \(1991\)](#)
16. *Newfoundland and Labrador v. AbitibiBowater Inc.*, [2012 SCC 67 \(CanLII\)](#)
17. *Orphan Well Association v. Grant Thornton Ltd.*, [2019 SCC 5 \(CanLII\)](#)

Documents filed in Court of King's Bench Action 2401-02680

- A. Order of Justice Whitling pronounced February 28, 2024
- B. Affidavit of Bradley Weicker sworn March 5, 2024
- C. The Affidavit of Doug Bailey sworn April 5, 2024
- D. Affidavit of Bradley Weicker sworn March 6, 2024
- E. Application of Alberta Petroleum Marketing Commission, filed March 6, 2024

APPENDIX I

Court of King's Bench of Alberta

Citation: **Razor Energy Corp., v Companies' Creditors Arrangement Act, 2024 ABKB 534**



Date: 20240906

Docket: 2401 02680

Registry: Calgary

In the Matter of the Companies Creditors Arrangement Act, RSC 1985, c C-36

Between:

Razor Energy Corp., Razor Holdings Gp Corp, Blade Energy Services Corp.



Applicants

- and -

Companies' Creditors Arrangement Act

Respondents

Corrected judgment: A corrigendum was issued on September 9, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Reasons for Decision
of
M.E. Burns, Registrar in Bankruptcy**

[1] Razor is in the business of the development and production of oil and gas.

[2] Alberta (the "Crown") owns and holds legal title to most mines and minerals and natural resources in the province and enters into agreements under the *Mines and Minerals Act*, RSA c M-17 (the "*Act*") that grants rights in respect of minerals, which includes petroleum and oils as provided in Section 1(1)(p)(i) and section 16 of the *Act*.

[3] The *Act* provides that a royalty determined under the *Act* is reserved to the Crown on a mineral recovered pursuant to an agreement. The royalty is prescribed from time to time by the Lieutenant Governor in Council (section 34).

[4] The Alberta Petroleum Marketing Commission (“APMC”) was created and appointed to act as the Crown’s agent to receive and market crude oil royalty volumes and includes tasks related to crude oil royalty forecasting, deliveries, and settlement of Crown oil royalties under the *Petroleum Marketing Act* and its’ regulations.

[5] Razor has entered into approximately 321 “Petroleum and Natural Gas Leases” with the Crown. Each of the agreements are substantially identical other than the location and “leased substance.” As a result, Razor is obligated to deliver to the Crown a royalty share of the leased substance produced by delivering such share to APMC.

[6] The royalty owing to the Crown in respect of the leased substance produced by Razor in January 2024 was not delivered to the APMC by Razor.

[7] On January 30, 2024, Razor commenced insolvency proceedings by filing notices of intention to make proposals to their creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“*BIA*”), consequently there was a stay of proceedings respecting Razor and its property.

[8] On February 28, 2024, Razor converted its proposal proceedings to proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“*CCAA*”), with an (“initial order”) being granted the same day. Amongst other things, a Monitor was appointed and the stay of proceedings under the proposal continued with respect to preventing parties from commencing or continuing proceedings or exercising any rights or remedies against Razor.

[9] On February 28th, APMC notified the Monitor and Razor Energy of the Crown’s ownership and title to royalty oil, including the January royalty deficiency volumes (estimated to be 934.8 m³ of crude oil). APMC advised Razor Energy it was in a bailment and trust relationship with respect to the Crown’s royalty share of crude oil production, and there was no right to seize and convert the Crown’s property for the use of Razor Energy and its creditors and the royalty oil could not form part of the property of Razor Energy.

[10] On March 1, 2024, the APMC directed Razor Energy (“the Direction”), pursuant to section 12(1) of the *Petroleum Marketing Regulation*, to deliver, in kind, to APMC, as part of the February 2024 royalty deliveries, crude oil of an equal quantity and like quality to the January 2024 royalty deficiency volumes that were not delivered.

[11] The Monitor’s position, as stated in its First Report, was that as the Direction from APMC was directly related to the January royalty amounts, it appeared to the Monitor that the Direction was in breach of the prohibition on the exercise of rights and remedies contained in paragraph 15 of the Initial Order.

[12] APMC, on behalf of the Crown, argues that it has a proprietary right in the oil that it reserves as royalties. This right applies to the monthly oil royalty and the oil it directs to be paid under section 12(1) of the *Act*. APMC argues that the Crown does not become a creditor when a royalty is not paid – it has a proprietary right that it may seek over subsequent oil production. APMC is not seeking the enforcement of a payment, it is seeking to have the Crown’s royalty share delivered to it.

[13] Razor, and its primary creditor, Arena Investors LP, argue that while the Crown may have a proprietary right to the oil in the month the royalties are due, if the oil is not provided, the Crown becomes a creditor with respect to the outstanding royalty deficiency volumes and the usual priorities will apply to the Crown in the context of the bankruptcy. The fact that APMC is directing Razor's pre-filing obligations be paid in kind rather than cash is still enforcing a missed payment – an outstanding liability to a creditor.

What is the scope of the stay?

[14] The Initial Order, as amended and extended, contains provisions mandating a stay. It provides, in part, that:

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. Until and including March 8, 2024, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court [...]

[15] Razor asserts that all financial and payment obligations relating to the pre-filing period are stayed under the *CCAA* and failure to pay a pre-filing royalty deficiency volume does not give rise to an enforceable remedy during the applicable stay period. The *CCAA* is clear that it is binding upon the Crown. It is also clear that the *CCAA* applies with respect to the debtor's assets and does not permit a debtor to take and use that which they do not own.

Is this a deemed trust?

[16] Razor argues that while the *Mines and Minerals Act* uses language of "ownership," APMC's claim is akin to or in fact a statutory deemed trust. Section 37(1) of the *CCAA* provides:

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

[17] Razor argues that the Crown's royalty share of the mineral produced in a given month is commingled with all the produced minerals which are property of Razor Energy. Razor asserts

that section 3(b) of the *Marketing Regulation* implicitly recognizes this and states that “when crude oil recovered pursuant to an agreement is delivered to a field delivery point during a delivery month, the Crown’s royalty share of that crude oil is deemed to be delivered first”. Presumably, Razor’s position is that the Crown’s oil, deemed to be delivered first, would then engage the protection of s 37(1) of the *CCAA*.

[18] The Crown’s position is that this is different because here there is no question that the Crown holds the propriety interest in all of the crude subject to Razor’s interest. Razor’s interest is governed by a contract and the provisions of the *Act*. Section 37 applies to “property of a debtor company” being held in trust for Her Majesty. The Crown’s royalty share is not and never was the “property of the debtor” which was deemed by statute to be held for the Crown. It was always the property of the Crown. At most, Razor is “a trustee or agent” in respect of the Crown royalty share. This is not a deemed trust created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share.

[19] The Alberta Court of Appeal considered the *Act* and the Crown’s interest in the mineral production in the decision of *Excel Energy Inc v Alberta*, 1997 ABCA 24 at paragraphs 6 and 7, where the court noted:

... under Alberta law, the Crown royalty is an *in rem* right. To establish the required statutory obligation, Excel relied upon provisions in the *Mines and Minerals Act*, RSA 1980, c M-15, s 34 provides that “A royalty ... is reserved to the Crown in right of Alberta on any mineral recovered pursuant to an agreement.” S. 35(3) provided that the royalty interest was deliverable in kind. S. 36 provides that title remains in Alberta even though the royalty is commingled during the extraction and refining process, and indeed remains until the Alberta interest is “disposed of by or on behalf of the Crown”. If then, the producer ever sells the royalty it can only do so as agent for Alberta.

It first must be said that this attempt by Canada to treat an obligation as income is, of course, the creation of a fiction. Nobody but Alberta ever in fact had that royalty or received a penny by way of proceeds from it. Alberta held an *in rem* interest in the hydrocarbons as they came out of the ground, and, when they were sold, the proceeds, under the scheme of the Alberta *Act*, went straight to Alberta. The producer could never be anything more than a trustee or agent.

[20] Consequently, this is not a case such as *British Columbia v. Henfrey Samson Belair Ltd.*, [1989] 2 S.C.R. 24, where a person collects a tax (cash or similar), and the legislation deems a trust over the tax collector’s property for the amount of the tax collected.

[21] Further, in *Canada v. Canada North Group Inc.*, 2021 SCC 30, the question was whether a deemed trust created by statute had a priority over priming (administrative) charges in the context of the *CCAA*. The SCC found that the deemed trust did not create a beneficial interest that could be considered a proprietary interest and did not give the Crown a property interest as a common law trust would, reasoning that the trust lacked the quality that allowed a court to refer to a beneficiary as a beneficial owner.

[22] Here, the Court of Appeal recognized the *in rem* ownership interest in the hydrocarbons. Razor’s relationship to the Crown’s royalty share as a trustee or agent is not a deemed trust created by statute but rather a recognition of the fundamental *in rem* rights the Crown has in the royalty share. No deemed trust is necessary or has been created. There is already a proprietary

interest. Razor does not hold the oil in a “trust” as one would find in a deemed trust. Razor is holding onto the Crown’s oil. The Initial Order applies to creditors and to Razor’s property, not the Crown’s property.

But does the Crown become a creditor when a royalty is not delivered?

[23] Given the decision in *Excel*, it is clear that the Crown’s rights to the royalty share are *in rem*. Razor never owned and was never entitled to own the Crown’s royalty share of production. Neither the *BIA* nor the *CCAA* give Razor any ownership interest in the Crown’s royalty share.

[24] The Crown argues that Alberta is not acting as a creditor, but the steward of natural resources owned by and for the benefit of all Albertans, which it develops in the public interest, but in the context of oil that was not provided when required, is the Crown then a creditor with respect to the non-delivered amount? And if so, is it the type of “claim” covered by the Initial Order or the statutes?

[25] Arena argues that APMC is fundamentally seeking relief in relation to a pre-filing claim which has been stayed by virtue of the Initial Order. The APMC is utilizing the enforcement mechanisms available to it under provincial legislation to seek recovery of the January 2024 royalty shares.

[26] The reality is that the royalty is a tangible, physical quantity of oil but Razor no longer possesses the January 2024 royalty shares volume because it was likely transferred to third party oil marketers back in the beginning of the year (albeit in violation of section 11 of the *Act*) and the tangible assets are unrecoverable. As a result, the APMC cannot enforce its *in rem* rights with respect to that particular oil.

Can AMPC demand the royalty under s 12?

[27] Section 12(1) of the Petroleum Marketing Regulation provides:

12(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

- (a) in the month in which the direction is given,
- (b) in a particular subsequent month, or
- (c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction (emphasis added).

[28] Section 12 is a statutory enforcement clause/remedy. Section 15 of the Initial Order is specific in providing that all rights and remedies of a government body, whether judicial or extra-judicial, statutory, or non-statutory, against or in respect of the Razor Entities, or affecting the Business or Property, are stayed.

[29] Whether APMC could exercise its rights under section 13 (seeking a monetary amount) is irrelevant to this determination.

[30] Further, there is no paramountcy issue here. There is no conflict between the Act and *Petroleum Marketing Regulation* and the *CCAA* or *BIA*. The Initial Order was made within the power, authority, and jurisdiction of the Court. The Crown is bound by it.

[31] At its crux, even though the oil was wrongfully taken in January, and the Crown has title to any and all subsequent oil, subject to the terms of the leases, and even though the oil was held in a true trust, not a deemed trust, the act allows, and the Initial Order provides, that all attempts at remedying the taken oil were stayed. Using the power in Section 12 is a remedial step that is stayed.

[32] APMC's application is dismissed.

Heard on the 10 day of April, 2024.

Dated at the City of Calgary, Alberta this 6th day of September, 2024.



M.E. Burns
J.C.K.B.A.

Appearances:

William Shores,
Shores Jardine LLP
for the Applicant

Pantellis Kyriakakis,
McCarthy Tetrault LLP,
for the Respondent Razor Energy Razor Holdings GP Corp.,
and Blade Energy Services Corp.

Jessica Cameron,
Fasken Martineau DuMoulin LLP
for the Respondent Arena Investors LP

Kelly Bourassa,
Blake, Cassels & Graydon LLP
counsel to the court-appointed Monitor,
for FTI Consulting Canada Inc.

Mick Wall,
Attorney General of Alberta
for the Respondents

**Corrigendum of the Reasons for Decision
of
M.E. Burns M.E. Burns, Registrar in Bankruptcy**

A Corrigendum was issued to correct one counsel's law firm.

TAB

A

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of the
document digitally filed on Mar 1, 2024

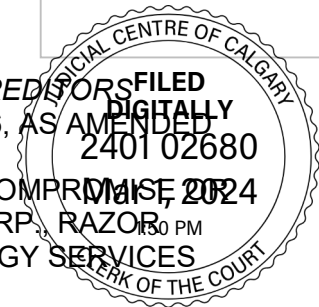
Clerk's Stamp

COURT FILE NUMBER 2401-02680

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF *THE COMPANIES' CREDITORS' ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.



DOCUMENT **CCAA INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
4000, 421 - 7 Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
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DATE ON WHICH ORDER WAS PRONOUNCED: February 28, 2024

NAME OF JUDGE WHO MADE THIS ORDER: Justice N.J. Whitling

LOCATION OF HEARING: Edmonton, Alberta

UPON the application of Razor Energy Corp., Razor Holdings GP Corp., and Blade Energy Services Corp. (collectively, the "**Applicants**"); **AND UPON** having read the Originating Application, the Affidavit of Doug Bailey, sworn on February 20, 2024 (the "**Initial CCAA Affidavit**"), filed; **AND UPON** reading the consent of FTI Consulting Canada Inc. ("**FTI**") to act as the monitor of the Applicants (the "**Monitor**"); **AND UPON** having read the pre-filing report of the Monitor, filed; **AND UPON** hearing from counsel for the Applicants, counsel for the Monitor, and counsel to all other 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**”) and the Initial CCAA Affidavit is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) applies.
3. The proceedings (such proceedings being, the “**Proposal Proceedings**”) commenced by the Applicants and Razor Royalties Limited Partnership (“**Razor Royalties LP**”, and collectively with the Applicants, the “**Razor Entities**”) under Division I of Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and are hereby taken up and continued under the CCAA and the provisions of Division I of Part III of the BIA shall have no further application to the Razor Entities, the Notices of Intention to File a Proposal filed by each of the Razor Entities, on January 30, 2024, are and shall be deemed for all purposes to be withdrawn, and the Proposal Proceedings are hereby terminated.

PLAN OF ARRANGEMENT

4. The Applicants shall have the authority to and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. The Applicants shall:
 - (a) remain in possession and control of their respective current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons

(collectively, the “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

- (d) be entitled to continue to utilize the cash management and reconciliation systems currently in place as described in the Initial CCAA Affidavit.
6. To the extent permitted by law, the Applicants shall be entitled but not required to make advances or payments on account of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order;
7. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. The Applicants shall remit, in accordance with legal requirements:
 - (a) all amounts which could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or any similar provision of the *Canada Pension Plan*, the *Employment Insurance Act*, or any provision of any provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act* or that refers to subsection 224(1.2) of the *Income Tax Act* in respect of any amounts that arise and are payable on or after January 30, 2024;
 - (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes accrued or were collected on or after January 30, 2024, or, where such Sales Taxes accrued or were collected prior to January 30, 2024 but were not required to be remitted until after January 30, 2024; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.
9. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
10. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. The Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. Until and including March 8, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall

be commenced or continued against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Razor Entities (including, for greater certainty, Razor Royalties LP) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court; provided that nothing in this Order shall:
 - (a) empower the Razor Entities (including, for greater certainty, Razor Royalties LP) to carry on any business that they are not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Razor Entities (including, for greater certainty, Razor Royalties LP) from compliance with statutory or regulatory provisions relating to health, safety or the environment.

16. Nothing in this Order shall prevent any party from taking an action against the Razor Entities (including, for greater certainty, Razor Royalties LP) 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 RIGHTS

17. During the Stay Period, 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 Razor Entities (including, for greater certainty, Razor Royalties LP), except with the written consent of the Razor Entities (including, for greater certainty, Razor Royalties LP) and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. During the Stay Period, 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 Applicants, 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 Business or the Applicants

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 Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their 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 Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order nor shall any Person, where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, except as permitted by subsection 11.03(2) of the CCAA and paragraph 16 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Razor Entities with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Razor Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. The Razor Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property and current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of the Applicants, which charge shall not exceed an aggregate amount of \$335,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraph 35 herein.

23. Notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
- (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. FTI is hereby appointed, pursuant to the CCAA, as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Razor Entities with the powers and obligations set out in the CCAA or set forth herein and that the Razor Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Razor Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Razor Entities receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) advise the Applicants in its development of the Plan and any amendments to the Plan;
 - (d) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Razor Entities to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Razor Entities or to perform its duties arising under this Order;
 - (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and

performance of its obligations under this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

- (g) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Razor Entities and any other Person; and,
- (h) perform such other duties as are required by this Order or by this Court from time to time.

26. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

27. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Razor Entities as part of the costs of these proceedings. The Razor Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis and, in addition, the Applicants are hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the respective amounts of \$225,000 (with respect to the Applicants' counsel), and \$100,000 (with respect to the Monitor and the Monitor's counsel), to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
30. The Monitor and its legal counsel shall pass their accounts from time to time.
31. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Razor Entities' Property and current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of the Razor Entities, which Administration Charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 35 hereof.

SISP

32. The sales and investment solicitation process (the "**SISP**") described in the Initial Affidavit is hereby approved and the Applicants, the Monitor, Peters & Co. Limited (the "**Sales Agent**"), and their respective advisors, are hereby authorized and directed to carry out the SISP and to take such steps and execute such documents as they consider necessary or desirable in carrying out each of their obligations thereunder.

33. The engagement letter, dated January 25, 2024 (the "**Sale Agent Agreement**"), between Razor Energy Corp. and the Sales Agent, is hereby approved, including, without limitation, the payment by Razor Energy Corp. of the fees and expenses therein, and Razor Energy Corp. is authorized and directed, *nunc pro tunc*, to execute and deliver the Sale Agent Agreement, and to pay all corresponding fees and expenses owed thereunder to the Sale Agent, in accordance with the terms of the Sale Agent Agreement.
34. Each of the Monitor and the Sales Agent and their respective affiliates, partners, directors, employees, advisors, agents, shareholders, and controlling persons, shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of any of the foregoing in performing their obligations under the SISP.

VALIDITY AND PRIORITY OF CHARGES

35. The priorities of the Administration Charge and the Directors' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000); and,

Second – Directors' Charge (to the maximum amount of \$335,000).
36. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
37. Each of the Administration Charge and the Directors' Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
38. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the Directors' Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the

Administration Charge and the Directors' Charge, as applicable, or further order of this Court. Notwithstanding the aforementioned, the consent of the beneficiaries of the Directors' Charge shall not be required in connection with the Applicants seeking and obtaining any Charge in connection with or which otherwise secures any interim financing and which ranks ahead of the Directors' Charge.

39. The Directors' Charge and the Administration Charge, shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that bind the Razor Entities, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (iii) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

- 40. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property, as may be applicable.

SERVICE AND NOTICE

- 41. The Monitor shall (i) without delay, publish in the Daily Oil Bulletin and/or the BOE Report, as the Monitor may deem advisable, a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
- 42. The Razor Entities and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Razor Entities creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor shall establish and maintain a website in respect of these proceedings at <http://cfcanada.fticonsulting.com/Razor-Blade/> 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 or other materials filed in these proceedings by or on behalf of the Monitor, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

GENERAL

43. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

44. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor 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 Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

45. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Razor Entities, the Business or the Razor Entities' Property.

46. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

47. Each of the Applicants and the Monitor are at liberty and are 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 Monitor is authorized and empowered to act as the foreign representative of the Applicants in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. Any interested party (including the Razor Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



Justice of the Court of King's Bench of Alberta

TAB

B



Clerk's Stamp:

COURT FILE NUMBER: 2401-02680

NB
C30376
COM March 6, 2024

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: IN THE MATTER OF *THE COMPANIES' CREDITORS*
(Respondents on Application) *ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE ENERGY SERVICES
CORP.

**DOCUMENT: AFFIDAVIT IN SUPPORT OF APPLICATION OF
ALBERTA PETROLEUM MARKETING COMMISSION**

ADDRESS FOR SERVICE AND CONTACT Shores Jardine LLP
INFORMATION OF PARTY 2250, 10104 – 103 Avenue
FILING THIS DOCUMENT Edmonton, Alberta T5J 0H8
William W. Shores, K.C.
Telephone: 780-448-9275
Facsimile: 780-423-0163
File No. 2352-00005 WWS

AFFIDAVIT OF BRADLEY WEICKER

Sworn on March 5, 2024.

I, Bradley Weicker, of the City of Calgary, of the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Marketing Manager of the Alberta Petroleum Marketing Commission (APMC). I have personal knowledge of the facts and matters sworn in this Affidavit, except where information was received from someone else or some other source of information, as identified herein. Where that information contained herein was received from another source, I believe such information to be true.
2. Under the *Petroleum Marketing Act*, APMC is created and appointed to act as the Crown's agent to receive and market crude oil royalty volumes. APMC's statutory responsibilities include administering various aspects of the *Petroleum Marketing Regulation* related to crude oil royalty forecasting, deliveries and settlements of Crown royalty oil.
3. For their part, producers have, among their responsibilities, an obligation under Section 86(1) of the *Mines and Minerals Act* and Section 3 of the *Petroleum Royalty Regulation* to deliver the Crown crude oil royalty volumes to APMC. That producer obligation is further established as a condition of each mineral lease from the Crown under Section 86(1) of the *Mines and Minerals Act*. To determine royalty entitlement, the legislative framework calculates prescribed royalty quantities on a monthly basis through production calculations and par prices that are set under the *Petroleum Royalty Regulation* as a proxy of market value.
4. In order to manage the logistics of actual deliveries and address the practicalities of crude oil trade cycles, which happen in advance of a delivery month, the legislative framework requires producers to forecast the Crown's royalty share of production for delivery to APMC. The *Petroleum Marketing Regulation* reflects the intention that normal oil industry practice is followed by producers when forecasting Crown volumes, with subsection 16(4) giving APMC the discretion to determine what constitutes normal oil industry practice. Actual final deliveries are determined through Crown royalty production splits which are settled by producers usually between the tenth and twelfth day of the month following the delivery month.
5. Razor Energy Corp. (Razor Energy) has obligations through this legislative structure and the terms of its leases, to properly forecast and deliver the Crown's royalty share of production to APMC.
6. APMC works with producers and pipelines to track, balance and manage its delivery and shipping positions throughout a delivery month. APMC also works closely with Alberta Energy's Delivery and Reconciliation and Royalty Calculations team to identify and manage underdelivery balances which are caused when the prescribed royalty quantity for a battery exceeds the actual deliveries from the battery during that deliver month. Section 1(t) of the

Petroleum Marketing Regulation allows the underdelivery balance quantity to be determined according to the records of the APMC.

7. For the January 2024 production month, Razor Energy settled forecasts in December 2023 reflecting the anticipated delivery of Crown royalty oil to the APMC. During the January 2024 production month, draft pipeline shipper balances, and final draft shipper balances, continued to reflect Crown royalty oil deliveries to APMC from Razor Energy based on production forecasts.
8. On or about February 12, 2024, Razor Energy filed final Crown royalty production splits for January 2024 resulting in zero volumes of the Crown's royalty oil being delivered to the APMC for the delivery month of January 2024.
9. According to the records of APMC, the aggregate underdelivery balance of Crown royalty oil by Razor Energy for the delivery month of January 2024 is 934.8 cubic meters of crude oil, set out by battery location as follows:

Delivery Month	Operator Id - Name	Div Facility	Calculated Royalty Volume (m ³)	Confirmed Delivery Volume (m ³)	Net Balance Volume (m ³)
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0046304	0.4	0.0	0.4
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0090060	0.0	0.0	0.2
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0093531	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0107818	14.0	0.0	14.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0120702	73.7	0.0	73.7
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0131305	23.5	0.0	23.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0142356	3.1	0.0	3.1
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0144707	1.8	0.0	1.8
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0152603	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0154311	12.6	0.0	12.6
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0900019	24.3	0.0	24.3
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 5140017	446.9	0.0	446.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870059	0.5	0.0	0.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870076	95.0	0.0	95.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8890004	221.0	0.0	221.0
Total Outstanding:					934.8

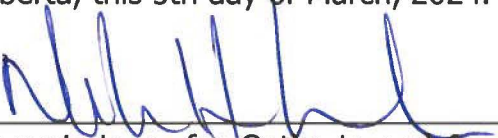
10. In correspondence dated February 27, 2024, Razor Energy Corp. stated the reason for not allocating production to the Crown, was as a result of the Notice of Intention proceedings commenced by Razor Energy under *the Bankruptcy and Insolvency Act* on January 30, 2024, and that "Razor Energy was advised by it's lawyers and FTI that January oil royalties were stayed as part of this process [Notice of Intention] and accordingly Razor did not deliver any royalty for January production." Attached here to and marked as Exhibit "A" is a true copy of an email from Razor Energy referring to the Notice of Intention process

and their own legal advice as the noted basis for staying the Crown's in-kind deliveries.

11. On February 28, 2024, APMC responded to Razor Energy putting Razor Energy and FTI on notice of the continuing legal obligation to deliver the Crown's royalty share of production to APMC. Attached here to and marked as Exhibit "B" is a true copy of an email from N. Hindmarsh to FTI cc'd to Razor Energy. By notice dated March 1, 2024, APMC directed Razor Energy to make up the underdelivery balance by the delivery in-kind to APMC, as part of the February 2024 production month, crude oil of an equal quantity and of like quality to the January royalty deficiency volumes. Attached here to and marked as Exhibit "C" is a true copy of APMC's records of the underdelivery balance for Razor Energy in January 2024 and the directive to Razor Energy to deliver the deficiency to APMC in-kind as part of the February 2024 deliveries.
12. Crown royalty production splits for the February 2024 delivery month to allocate Crown production to APMC will be determined by Razor Energy as part of the regular schedule of forecasting and delivery activities, which is on or before the twelfth day of March 2024.
13. APMC became aware on March 5, 2024 that the Monitor takes the position that the APMC direction of March 1, 2024 was in breach of the Order made February 28, 2024. APMC received no notice of the application that led to the February 28, 2024 order and only received the order on March 1, 2024. In issuing the direction, the APMC was of the view that it was simply protecting the Crown's right to its own property in the Crown's royalty share and following up on the position taken by APMC in Exhibit "B", the email of February 28, 2024, from N. Hindmarsh to FTI cc'd to Razor Energy.
14. APMC has now reviewed the position of the Monitor and the Order in detail and understands that given the scope of the Order it may have inadvertently stepped outside its literal terms. If it has, APMC apologizes to the Court and humbly requests the right to withdraw the March 1, 2024 Direction and seeks leave to issue a new direction to Razor Energy under section 12 of the *Petroleum Marketing Regulation* despite the application by the Respondents to extend the stay.
15. The APMC's counsel will draw the Court's attention to section 11.1 of the CCAA in relation to the Monitor's position that it has breached the Order. In this regard, the APMC affirms that it is not seeking the enforcement of a payment ordered by a court or a regulatory body; it is seeking to direct that the Crown's royalty share be delivered to it.

- 16. APMC will be prejudiced if this application is not heard and determined before March 12, 2024 as the Crown's right as owner of the resource to require its royalties be delivered in kind and the regulatory obligation to deliver royalties in kind will be defeated by requested extension of the stay and the passage of time.
- 17. I make this affidavit in support of the relief sought on behalf of the APMC in the application submitted for filing March 5, 2024.

SWORN BEFORE ME at
the City of Calgary, in the Province of
Alberta, this 5th day of March, 2024.



Commissioner for Oaths in and for the
Province of Alberta

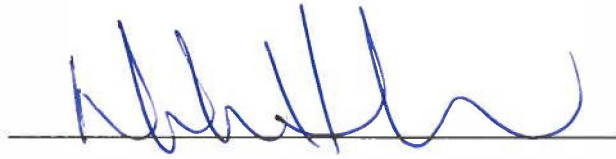


BRADLEY WEICKER

NOLAN HINDMARSH
Barrister & Solicitor

This is Exhibit "A" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5th day of March, 2024

A handwritten signature in blue ink, appearing to read 'Nolan Hindmarsh', written over a horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

NOLAN HINDMARSH
Barrister & Solicitor

Classification: Protected A

From: Linda Kerbrat <lkerbrat@razor-energy.com>

Sent: February 27, 2024 4:39 PM

To: Oil Royalty DAR <OilRoyaltyDAR@gov.ab.ca>

Subject: RE: 2024-01 Crown under deliveries

CAUTION: This email has been sent from an external source. Treat hyperlinks and attachments in this email with care.

Good afternoon

Please be advised that on January 30, 2024, the Razor Energy Corp. and Blade Energy Services Corp. (collectively the "Company") commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* ("BIA"). FTI Consulting Canada Inc. ("FTI") has been appointed as the Trustee under the NOI ("Trustee").

Although the NOI proceeding is pursuant to the BIA, it is important to note that the Company is not bankrupt and intends to continue operating during the proceedings.

At present, creditors are not required to file a proof of claim. The Trustee will provide you with further information and a proof of claim form, if necessary, at a later date.

During the proceedings:

- No person may terminate or amend any agreement with the Company, or claim an accelerated payment, or a forfeiture of the term, under any agreement with Company, by reason only that the Company is insolvent or by reason of filing of the Notice of Intention, pursuant to Section 65.1(1) of the BIA;
- No creditor has any remedy against the Company or its property, or shall commence or continue any action, or other proceedings against the Company pursuant to Section 69.1(1) of the BIA; and
- The Company requires ongoing support from its creditors while undertaking these proceedings. In accordance with Section 65.1 (4) of the BIA no supplier is prohibited from requiring immediate payment for services provided going forward within these proceedings. Suppliers should discuss directly with their usual Company contact the terms of payment for goods and/or services that they provide to the Company or contact the Proposal Trustee at the contact details below with questions.

Further information with respect to these proceedings will be made available on the Trustee's website: <http://cfcanada.fticonsulting.com/razor-blade>

If you have any questions please contact a representative of the Trustee, Cameron Browning at (403) 454-6037 or via email: cameron.browning@fticonsulting.com

Razor Energy was advised by it's lawyers and FTI that January **oil royalties were stayed as part of this process** and accordingly Razor did not deliver any royalty for January production.

Linda Kerbrat | **Razor Energy**

From: Oil Royalty DAR <OilRoyaltyDAR@gov.ab.ca>

Sent: Tuesday, February 27, 2024 2:11 PM

To: Linda Kerbrat <lkerbrat@razor-energy.com>

Subject: 2024-01 Crown under deliveries

CAUTION: This email originated from outside of the organization.

Good Afternoon,

The following batteries did not deliver any royalty for January production.
Can you provide a reason for this?

Dlv Facility	Calculated Royalty Volume (m ³)	Confirmed Delivery Volume (m ³)
AB BT 0046304	0.4	0
AB BT 0093531	8.9	0
AB BT 0107818	14	0
AB BT 0120702	73.7	0
AB BT 0131305	23.5	0
AB BT 0142356	3.1	0
AB BT 0144707	1.8	0
AB BT 0152603	8.9	0
AB BT 0154311	12.6	0
AB BT 0900019	24.3	0
AB BT 5140017	446.9	0
AB BT 8870059	0.5	0
AB BT 8870076	95	0
AB BT 8890004	221	0

Thank you,

Jenna Maunu

Operational Analyst

Alberta Energy and Minerals | Oil Royalty Operations

7th Floor, North Petroleum Plaza | 9945 - 108 Street | Edmonton, AB T5K 2G6

Phone: (780) 422-9122 (direct)



This is Exhibit "B" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5th day of March, 2024



A Commissioner for Oaths in and for the Province of Alberta

NOLAN HINDMARSH
Barrister & Solicitor

From: Nolan Hindmarsh
Sent: February 28, 2024 3:08 PM
To: cameron.browning@fticonsulting.com
Cc: lkerbrat@razor-energy.com; Cate Howell <Cate.Howell@apmc.ca>
Subject: FW: 2024-01 Crown under deliveries

Attention: Cameron Browning, Trustee
 And Razor Energy Corp.

We are aware of the communication below from Razor Energy Corp advising of the NOI process under the BIA. The correspondence states that: *“Razor Energy was advised by it’s lawyers and FTI that January oil royalties were stayed as part of this process and accordingly Razor did not deliver any royalty for January production.”*

APMC is the Crown agent responsible for accepting delivery and dealing with the Crown’s royalty share of production under the *Petroleum Marketing Act*. We dispute the advice provided and put Razor Energy and FTI on strict notice of the continuing legal obligation to deliver the Crown’s royalty share of production to APMC.

The BIA may have the effect of suspending obligations to make payments, including payments of cash royalty amounts in some circumstances. However, unlike other mineral royalties, crude oil royalties are not taken in cash, but are taken in-kind and are legislatively structured as the Crown retaining ownership in its royalty share of production. At no point does Razor Energy acquire an ownership interest in the Crown’s royalty share of crude oil production that could make it part of Razor’s estate and property for the purpose of BIA proceedings. At all times, the Crown retains actual ownership and title to its share of production, notwithstanding that its royalty share may be co-mingled with Razor Energy production. Razor Energy is in a bailment and trust relationship with respect to the Crown’s royalty share of crude oil production, and there is no right to seize and convert the Crown’s property for the use of Razor Energy’s and its creditors.

For reference, I would direct you to Section 35(1) of the *Mines and Minerals Act* which confirms Crown ownership and title to the Crown’s royalty share of production notwithstanding that it may be co-mingled with, and indistinguishable from, a lessee’s share. Whereas the regulations to the *Mines and Minerals Act* provide for the deemed sale and transfer of the Crown’s royalty share of natural gas and bitumen production to the lessee – thereby transferring title and creating a cash royalty payment obligation for the lessee on these products – the legislative structure for crude oil production and royalties is entirely different and does not work to transfer the Crown’s ownership interest in the royalty share to the lessee in return for a cash payment. Producers have, among their responsibilities, an obligation under Section 86(1) of the *Mines and Minerals Act* and Section 3 of the *Petroleum Royalty Regulation* to deliver the Crown’s royalty share of crude oil royalty volumes to APMC, as agent of the Crown. Under the *Petroleum Marketing Regulation*, the Crown’s royalty share of crude oil production is deemed to be delivered first (section 2(3)(b)).

The advice to withhold the Crown’s royalty share of crude oil production fails to recognize the Crown’s continuing estate, ownership and title to that royalty share. It mistakenly assumes that Razor Energy has somehow acquired title to the Crown share and simply owes a cash royalty obligation in return, which is not true.

We would ask for your immediate attention to clarify this issue, rescind the former advice to withhold the Crown's royalty share deliveries, and confirm steps that will be taken to rectify the suspended deliveries.

I look forward to your response.

Thanks,

Nolan Hindmarsh

General Counsel

Tel: 403-297-4563

Cell: 587-227-0395

Nolan.Hindmarsh@apmc.ca



Classification: Protected A

This is Exhibit "C" referred to in the Affidavit of Bradley Weicker

Sworn before me this 5th day of March, 2024

A handwritten signature in blue ink, consisting of several tall, vertical strokes followed by a series of smaller, connected loops and a final upward stroke.

A Commissioner for Oaths in and for the Province of Alberta

NOLAN HINDMARSH
Barrister & Solicitor



Centennial Place, West Tower
250 – 5th Street SW
Calgary, Alberta T2P 0R4
Email: APMC-Marketing@apmc.ca

March 1, 2024

VIA EMAIL

FTI Consulting Canada Inc. (the “Monitor”)
520 Fifth Avenue S.W.
Suite 1610
Calgary, AB T2P 3R7

And

Razor Energy Corp.(“Razor Energy”)
500 5th Avenue S.W.
Suite 800
Calgary, AB T2P 3L5

**Attn: Cameron Browning
Linda Kerbrat**

DIRECTIVE TO DELIVER JANUARY ROYALTY DEFICIENCY VOLUMES-IN-KIND

Razor Energy failed to deliver the prescribed royalty quantity of Crown oil to the Alberta Petroleum Marketing Commission (“APMC”) for the January 2024 delivery month. According to the records of APMC, the underdelivery balance for each Razor Energy battery for the delivery month of January 2024 is set out below (and collectively referred to as the “January Royalty Deficiency Volumes”):

Delivery Month	Operator Id - Name	Div Facility	Calculated Royalty Volume (m ³)	Confirmed Delivery Volume (m ³)	Net Balance Volume (m ³)
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0046304	0.4	0.0	0.4
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0090060	0.0	0.0	0.2
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0093531	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0107818	14.0	0.0	14.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0120702	73.7	0.0	73.7
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0131305	23.5	0.0	23.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0142356	3.1	0.0	3.1
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0144707	1.8	0.0	1.8
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0152603	8.9	0.0	8.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0154311	12.6	0.0	12.6
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 0900019	24.3	0.0	24.3
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 5140017	446.9	0.0	446.9
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870059	0.5	0.0	0.5
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8870076	95.0	0.0	95.0
2024-01	A7L1 - RAZOR ENERGY CORP.	AB BT 8890004	221.0	0.0	221.0
Total Outstanding:					934.8

On February 28th, APMC notified the Monitor and Razor Energy of the Crown's ownership and title to royalty oil, including the January Royalty Deficiency Volumes, which cannot form part of the property of Razor Energy.

In accordance with the *Petroleum Marketing Regulation*, APMC now directs Razor Energy to deliver in kind to APMC, as part of deliveries for February 2024, crude oil of an equal quantity and of like quality to the January Royalty Deficiency Volumes (the "Make-Up Volumes").

Please ensure that all forecasts and final shipper balances for the February 2024 delivery month are updated to reflect Crown oil deliveries to APMC for both: (i) the Make-Up Volumes, and (ii) the prescribed royalty quantities for the February 2024 delivery month. Please also ensure that deliveries recorded in Petrinex reflect these new Crown pipeline splits, and that all forecast reports are amended promptly to reflect the changes.

Thank you for your cooperation with this matter.

Sincerely,



Brad Weicker
Senior Manager, Marketing
Alberta Petroleum Marketing Commission

cc. Nolan Hindmarsh, APMC
Lindsay Rowlands, Alberta Energy and Minerals

TAB

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COURT FILE NUMBER 2401-02680
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANTS IN THE MATTER OF THE COMPANIES' CREDITORS' FILED
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED DIGITALLY
2401 02680
AND IN THE MATTER OF THE PLAN OF COMPANIES' ARRANGED
ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE ENERGY SERVICES
CORP.

DOCUMENT **AFFIDAVIT #5 OF DOUG BAILEY**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
Tel: 403-260-3531 / 3536 / 3534
Fax: 403-260-3501
Email: scollins@mccarthy.ca /
pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

AFFIDAVIT #5 OF DOUG BAILEY
Sworn on April 5, 2024

I, Doug Bailey, of the City of Calgary, of the Province of Alberta, **SWEAR AND SAY THAT:**

1. I am the CEO of Razor Energy Corp. ("**Razor Energy**"), Razor Holdings GP Corp. ("**Razor Holdings**"), and Blade Energy Services Corp. ("**Blade**", Razor Energy, Blade, and Razor Holdings are collectively referred to as, the "**Applicants**"). Razor Energy is the sole limited partner, and Razor Holdings is the sole general partner, of Razor Royalties Limited Partnership ("**Razor Royalties LP**", and collectively with the Applicants, the "**Razor Entities**"). I am also a member of the board of directors of, each of, Razor Energy, Razor Holdings, and Blade. I have reviewed the books and records prepared and maintained by the Razor Entities, in the ordinary course of business, including business and operational information and the most recently available annual audited and unaudited financial statements. I have personal knowledge of the facts and matters sworn to in this Affidavit, except where information was received from someone else or some other source of information, as identified herein. Where the information contained herein was received from another source, I believe such information to be true.

2. On March 4, 2024, I swore an affidavit (the "**Bailey #2 Affidavit**"), filed in the within proceedings (the "**CCAA Proceedings**"). On March 6, 2024, I swore an affidavit (the "**Bailey #3 Affidavit**", the Bailey #2 Affidavit and the Bailey #3 Affidavit are collectively referred to as, the "**Bailey Affidavits**"), filed in the CCAA Proceedings. Among other things, the Bailey Affidavits describe: (i) the details concerning the Alberta Petroleum Marketing Commission's ("**APMC**") Application, served on March 5, 2024 (the "**APMC Application**"); and, (ii) details concerning Razor Energy's Forecast March 2024 Crude Oil Production. Capitalized terms used in this affidavit (this "**Affidavit**"), but not otherwise defined, shall have the meaning(s) ascribed to such terms in the Bailey Affidavits.

3. I am authorized to swear this Affidavit:
 - (a) in response to the APMC Application, seeking, among other relief, an Order: (i) directing Razor Energy to deliver, as part of future production splits, the Crown's royalty share of unremitted royalties, for the month of January 2024, to APMC, as required under the direction of APMC, dated March 1, 2024 (the "**Direction**"), under the Petroleum Marketing Regulation, Alta Reg 174/2006; and, (ii) an order that, by virtue of section 11.1 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 (the "**CCAA**"), c. C-36, the stay of proceedings, as contemplated under the Amended and Restated Initial Order, granted on March 6, 2024, by the Honourable Justice M.E. Burns, does not apply to the Direction; and,
 - (i) in support of the Applicants' cross-application, seeking a declaration that APMC is seeking "to enforce its rights as a creditor" and is therefore stayed, pursuant to section 11.1(4) of the CCAA.

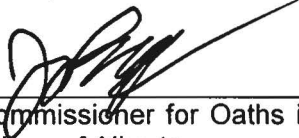
4. Razor Energy, has entered into and is listed as Payor, in approximately three hundred and twenty one (321) Crown Petroleum and Natural Gas Leases, with His Majesty in right of Alberta, as represented by the Minister of Energy and Minerals of the Province of Alberta (collectively, the "**Crown Leases**").

5. The terms and conditions of each of the Crown Leases, other than the applicable "Location" and "Leased Substances" definitions therein, are substantially identical. Attached hereto and marked as **Exhibit "A"**, to this my Affidavit, is a true copy of Petroleum and Natural Gas Lease No. 0524030045, dated March 7, 2024, with His

Majesty in right of Alberta, as represented by the Minister of Energy and Minerals of the Province of Alberta.

6. I make this Affidavit in support of the Applicant's cross-application.

SWORN BEFORE ME in the City of)
Calgary, in the Province of Alberta, this 5th)
day of April, 2024.)



A Commissioner for Oaths in and for the)
Province of Alberta)

Jonathan P. Brisebois
Student-At-Law



DOUG BAILEY

This is Exhibit "A" referred to in the Affidavit #5 of Doug Bailey
sworn before me this 5th day of April, 2024.

A handwritten signature in black ink, appearing to read 'Jonathan P. Brisebois', is written over a horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

Jonathan P. Brisebois
Student-At-Law



PETROLEUM AND NATURAL GAS LEASE

NO. 0524030045

Term Commencement Date: March 07, 2024

Lessee:

RAZOR ENERGY CORP.

100.0000000%

WHEREAS His Majesty is the owner of the minerals in respect of which rights are granted under this Lease;

THEREFORE, subject to the terms and conditions of this Lease, His Majesty grants to the Lessee, insofar as His Majesty has the right to grant the same, the exclusive right to drill for and recover the Leased Substances within the Location, together with the right to remove from the Location any Leased Substances recovered, for the term of five years computed from the Term Commencement Date and, subject to the *Mines and Minerals Act*, for so long after the expiration of that term as this Lease is permitted to continue under that Act.

RESERVING AND PAYING to His Majesty,

- (a) in respect of each year during which this Lease remains in effect, a clear yearly rental computed at the rate prescribed by, and payable in accordance with, the *Mines and Minerals Act*, and
 - (b) the royalty on all Leased Substances recovered pursuant to this Lease, that is now or may hereafter from time to time be prescribed by, and that is payable in accordance with, the *Mines and Minerals Act*, such royalty to be calculated free of any deductions except those that are permitted under the *Mines and Minerals Act*.
- 1(1) In this Lease, a reference to the *Mines and Minerals Act* or to any other Act of the Legislature of Alberta referred to in section 2(2)(b) of this Lease shall be construed as a reference to
- (a) that Act, as amended from time to time,
 - (b) any replacement of all or part of that Act from time to time enacted by the Legislature, as amended from time to time, and
 - (c) any regulations, orders, directives or other subordinate legislation from time to time made under any enactment referred to in clause (a) or (b), as amended from time to time.
- (2) In this Lease,
- (a) "His Majesty" means His Majesty in right of Alberta, as represented by the Minister of Energy and Minerals of the Province of Alberta;
 - (b) "Leased Substances" means the minerals described under the heading "Description of Location and Leased Substances" in the Appendix to this Lease;
 - (c) "Location" means the subsurface area or areas underlying the surface area of the Tract and described in the Appendix to this Lease under the heading "Description of Location and Leased Substances";

- (d) "Oil Sands Area" means an oil sands deposit designated by the Alberta Energy and Minerals and Utilities Board under section 7 of the *Oil Sands Conservation Act*, c. O-5.5;
- (e) "Term Commencement Date" means the date shown on the first page of this Lease as the Term Commencement Date;
- (f) "Tract" means the tract or tracts of land described under the heading "Description of Location and Leased Substances" in the Appendix to this Lease.

2. This Lease is granted upon the following conditions:

- (1) The Lessee shall pay to His Majesty the rental and royalty reserved under this Lease.
- (2) The Lessee shall comply with the provisions of
 - (a) the *Mines and Minerals Act*, and
 - (b) any other Acts of the Legislature of Alberta that prescribe, apply to or affect the rights and obligations of a lessee of petroleum and natural gas rights that are the property of His Majesty, or that relate to, apply to or affect the Lessee in the conduct of its operations or activities under this Lease.
- (3) The provisions of the Acts referred to in subsection (2) of this section are deemed to be incorporated in this Lease.
- (4) In the event of conflict between a provision of this Lease and a provision referred to in subsection (2) of this section, the latter provision prevails.
- (5) The Lessee shall not claim or purport to exercise any rights, prerogatives, privileges or immunities that would otherwise exempt the Lessee from compliance with any of the provisions of the *Mines and Minerals Act* or of any other Act of the Legislature of Alberta referred to in subsection (2)(b) of this section.
- (6) Natural gas produced pursuant to this Lease shall be used within Alberta unless the consent of the Lieutenant Governor in Council to its use elsewhere is previously obtained.
- (7) The Lessee shall keep His Majesty indemnified against
 - (a) all actions, claims and demands brought or made against His Majesty by reason of anything done or omitted to be done, whether negligently or otherwise, by the Lessee or any other person in the exercise or purported exercise of the rights granted and duties imposed under this Lease, and
 - (b) all losses, damages, costs, charges and expenses that His Majesty sustains or incurs in connection with any action, claim or demand referred to in clause (a).

- (8) The use in this Lease of the word "Lessee", "Lease", "Leased Substances" or "rental," or of any other word or expression,
 - (a) does not create any implied covenant or implied liability on the part of His Majesty, and
 - (b) does not create the relationship of landlord and tenant between His Majesty and the Lessee for any purpose.
- (9) This Lease is also subject to the special provisions, if any, contained in the Appendix to this Lease.

APPENDIX

TO

PETROLEUM AND NATURAL GAS LEASE NO. 0524030045

TERM COMMENCEMENT DATE:

MARCH 07, 2024

AGGREGATE AREA:

64 HECTARES

DESCRIPTION OF LOCATION AND LEASED SUBSTANCES:

5-12-064: 22NW

PETROLEUM AND NATURAL GAS

SPECIAL PROVISIONS:

NIL

Continued ...

PETROLEUM AND NATURAL GAS LEASE NO. 0524030045

NOTICE TO LESSEE

THE LAND(S) IN THIS LEASE IS/ARE WITHIN A SENSITIVE HABITAT AREA.

SURFACE ACCESS IS SUBJECT TO SPECIFIC RESTRICTIONS

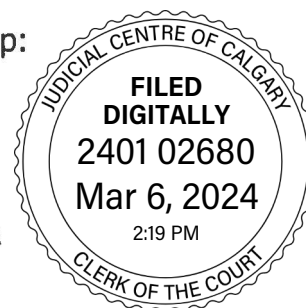
FOR FURTHER INFORMATION, PLEASE CONTACT:

GAVIN BERG
PROVINCIAL WILDLIFE HABITAT SPECIALIST
EDMONTON OFFICE - RESOURCE STEWARDSHIP DIVISION - ALBERTA ENVIRONMENT AND
PARKS
FISH & WILDLIFE STEWARDSHIP
9920 108 ST NW FLOOR 6
EDMONTON AB T5K 2M4 (780) 422 3412

TAB

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Clerk's Stamp:



COURT FILE NUMBER: 2401-02680

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: **(Respondents on Application)** IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

DOCUMENT: AFFIDAVIT #2 OF BRADLEY WEICKER IN SUPPORT OF APPLICATION OF ALBERTA PETROLEUM MARKETING COMMISSION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Shores Jardine LLP
Barristers and Solicitors
2250, 10104 – 103 Avenue
Edmonton, Alberta T5J 0H8
William W. Shores, K.C.
Telephone: 780-448-9275
Facsimile: 780-423-0163
File No. 2352-00005 WWS

AFFIDAVIT #2 OF BRADLEY WEICKER

Sworn on March 6, 2024.

I, Bradley Weicker, of the City of Calgary, of the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Marketing Manager of the Alberta Petroleum Marketing Commission (APMC). I have personal knowledge of the facts and matters sworn in this Affidavit, except where information was received from someone else or some other source of information, as identified herein. Where that information contained herein was received from another source, I believe such information to be true.
2. Under the *Petroleum Marketing Act*, APMC is created and appointed to act as the Crown's agent to receive and market crude oil royalty volumes. APMC's statutory responsibilities include administering various aspects of the *Petroleum Marketing Regulation* related to crude oil royalty forecasting, deliveries and settlements of Crown royalty oil.
3. In order to manage the logistics of actual deliveries and address the practicalities of crude oil trade cycles, which happen in advance of a delivery month, the legislative framework requires producers to forecast the Crown's royalty share of production for delivery to APMC. The *Petroleum Marketing Regulation* reflects the intention that normal oil industry practice is followed by producers when forecasting Crown volumes, with subsection 16(4) giving APMC the discretion to determine what constitutes normal oil industry practice.
4. The normal oil industry process for settling forecasts and delivering production can be described as follows:
 - a. Oilfield facility operators provide forecasts of crude oil production (and splits for the Crown) for each delivery month to downstream transporters and terminals to which those volumes will be delivered in accordance with the Crude Oil Logistics Committee (COLC) processes, as adapted and supplemented by practices generally accepted in the Alberta oil and gas industry (Accepted Practice).
 - b. At some point in the process of transacting and handling crude that is bought and sold, the quantities that are to be transacted in a delivery month have to be determined or set (or become "firm") so that the downstream facilities and others can plan their operations for the delivery month appropriately. This is done using processes where Form A production estimates are prepared by field operators and then aggregated into Form C's that are used as the final shipping numbers for the Notices of Shipment on the downstream facilities.
 - c. While the Form A forecasts are changeable for a period in the month preceding the month of delivery, such volumes become definitive (or "firm") per Accepted Practice for a delivery month upon the Form C and related Notice of Shipment document becoming final (subject to downstream

facility apportionment), such occurring around the tenth day of the month preceding the delivery month.

- d. Once that volume is “firm” (unchangeable) per the above process, it is the volume intended to be transacted. Downstream marketing and transportation commitments (including for APMC) are settled based on these firm volumes in the Notice of Shipment.
 - e. Throughout the delivery month, pipelines, in fact, directly manage shipper obligations and track deliveries to the pipeline within the delivery month using their own draft shipper balance forms and processes.
 - f. Final draft shipper balances are published by the pipelines at the end of the delivery month showing final expected deliveries. Actual final deliveries are determined through Crown royalty production splits which are settled by producers usually between the tenth and twelfth day of the month following the delivery month.
5. According to the records of APMC, Razor Energy settled forecasts in February 2024 reflecting the anticipated delivery of Crown royalty oil in aggregate volumes of only 47 cubic meters for the March 2024 delivery month. Set out below are APMC’s records of all forecasts of Crown royalty oil deliveries for Razor Energy in the March 2024 delivery month, with the Form C forecasts showing the aggregation of Razor Energy’s Form A forecasts for the month.

Bow River South:

Producer	Op Code	Battery Code	LSD or UWI	Original Form C	Facility Stream	From Facility 1 Code	From Facility 1 Name	From Facility 2 Code	From Facility 2 Name	To Pipeline Code	To Pipeline Name	Standard Stream ID
Razor Energy Corp	A7N1	ABBT0144707	100/06-01-008-15W4/00		BRS	ABPL0000113	Bow River River Pipeline South			ABPL0000195	Bow River Hardisty South	ABPL0000096 Milk River BRS
Razor Energy Corp	A7L1	ABBT0900019	100/13-19-016-17W4/00	40.0	BRS	ABTM0000801	Hays Truck Terminal			ABPL0000195	Bow River Hardisty South	ABPL0000096 Milk River BRS
Razor Energy Corp	A7L1	ABBT0144707	100/06-01-008-15W4/00	5.0	BRS	ABTM0000801	Hays Truck Terminal			ABPL0000195	Bow River Hardisty South	ABPL0000096 Milk River BRS

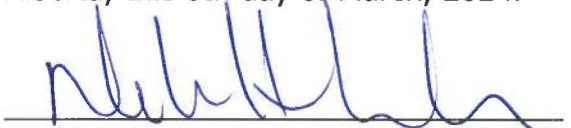
CAL:

Producer	Op Code	Battery Code	LSD or UWI	Original Form C	Facility Stream	From Facility 1 Code	From Facility 1 Name	From Facility 2 Code	From Facility 2 Name	To Pipeline Code	To Pipeline Name	Standard Stream ID
Razor Energy Corp	A7L1	ABBT0600001	100/14-13-020-20W4/00	2.0	CAL	ABTM0000835	West Drumheller TT			ABPL0000032	Central Alberta	CAL

- 6. Based on the Razor Energy forecasts reflected in APMC records, Razor Energy is not expected to have enough production in March 2024 to satisfy the current underdelivery balance of 934.8 cubic meters in Crown royalty oil that was caused by the failure of Razor Energy to deliver the Crown’s royalty share of January 2024 production.
- 7. APMC received information from Razor Energy on March 6, 2024 through non-standard channels, and very recently an affidavit, that Razor Energy has recently updated its forecasts to reflect an increased allocation of Crown royalty oil for the March 2024 delivery month; however, APMC has not yet confirmed this information with the pipelines.

8. I make this affidavit in support of the relief sought on behalf of the APMC in the application submitted for filing March 6, 2024.

SWORN BEFORE ME at
the City of Calgary, in the Province of
Alberta, this 6th day of March, 2024.



Commissioner for Oaths in and for the
Province of Alberta



BRADLEY WEICKER

NOLAN HINDMARSH
Barrister & Solicitor

TAB

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Clerk's Stamp:



COURT FILE NUMBER: 2401-02680

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: IN THE MATTER OF *THE COMPANIES' CREDITORS*
(Respondents on Application) *ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

**DOCUMENT: APPLICATION OF ALBERTA PETROLEUM MARKETING
COMMISSION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Shores Jardine LLP
Barristers and Solicitors
2250, 10104 – 103 Avenue
Edmonton, Alberta T5J 0H8
William W. Shores, K.C.
Telephone: 780-448-9275
Facsimile: 780-423-0163
File No. 2352-00005 WWS

NOTICE TO RESPONDENT(S)

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

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

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

Date: March 6, 2024
Time: 3:00pm

Where: Edmonton Law Courts via Webex.
<https://albertacourts.webex.com/meet/virtual.courtroom86>
 Before Whom: Honourable Justice M.E. Burns

REMEDY CLAIMED OR SOUGHT

1. An order abridging time for the service of this Application and the Affidavit of Bradley Weicker on Razor Energy Corp., Razor Holdings GP Corp., And Blade Energy Services Corp (the "Respondents") and deeming that Service is validated, good, and sufficient, and that no persons, other than those on the Service List provided by the Respondents, are entitled to service of the materials filed in connection with this Application.
2. An order directing the Respondent, Razor Energy Corp., to deliver, on or before March 12, 2024 as part of the Crown royalty production splits for the February 2024 delivery month, the Crown's royalty share in respect of the Respondents' January 2024 production ("the Crown's January 2024 royalty share") to the applicant, Alberta Petroleum Marketing Commission ("APMC"), the agent of the Crown in right of Alberta ("the Crown"), as required under the direction of the APMC made under section 12 of the *Petroleum Marketing Regulation*, AR 174/2006.
3. An order determining that by virtue of section 11.1 of the CCAA, the stay in paragraph 15 of the order of February 28, 2024 does not apply to the direction issued by the APMC, which direction does not seek to enforce a payment ordered by a regulatory body or a court but is a direction that the Crown's property be delivered to it.
4. Alternatively, an interim order pending final determination of this Application that requires the Respondent, Razor Energy Corp., to deliver the January 2024 royalty share to the APMC on or before March 12, 2024 as part of the Crown royalty production splits for the February 2024 delivery month, on the following terms:
 - a. the APMC markets that royalty share in the ordinary course of its operations under the *Petroleum Marketing Act* and *Petroleum Marketing Regulation*;
 - b. APMC holds in trust the proceeds of marketing the Crown's January 2024 royalty share pending further direction of this Court or agreement between the APMC and the Respondents; and
 - c. the Court sets an early date for a return of this application.
5. Such further and other relief that this honourable Court may permit.
6. Costs.

GROUNDS FOR MAKING THIS APPLICATION

7. The Respondent, Razor Energy Corp., is compelled to deliver the Crown's January 2024 royalty share to the APMC. Nothing in the *Companies' Creditors Arrangements Act*, the *Bankruptcy and Insolvency Act* or the Order of Whitling J. made February 28, 2024 can or does authorize the conversion of the Crown's January 2024 royalty share to the use or benefit of the Respondents.
8. The Crown owns the rights to minerals, including conventional crude oil, in most of Alberta.
9. Under the terms of the *Mines and Minerals Act*:
 - a. there can be no disposition of an estate in a mineral, including conventional crude oil, owned by the Crown unless the disposition is specifically authorized by that Act or another Act (s.11);
 - b. the Minister of Energy and Minerals may issue an agreement permitting the production of conventional crude oil by an operator (s. 16);
 - c. a royalty determined under that Act is reserved to the Crown on any conventional crude oil recovered pursuant to an agreement (s.33);
 - d. in respect of conventional crude oil, the royalty reserved to the Crown is deliverable in kind (s. 34); and
 - e. the Crown is the owner of its royalty share of the conventional crude oil at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown's title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee's share prior to or at the time of the disposal or transfer of title (s. 35).
10. For their part, producers have, among their responsibilities, an obligation under Section 86(1) of the *Mines and Minerals Act* and Section 3 of the *Petroleum Royalty Regulation* to deliver the Crown crude oil royalty volumes to APMC. That producer obligation is further established as a condition of each mineral lease from the Crown under Section 86(1). To determine royalty entitlement, the legislative framework calculates prescribed royalty quantities on a monthly basis through production calculations and par prices that are set under the Petroleum Royalty Regulation as a proxy of market value.
11. Under the *Petroleum Marketing Act*, the APMC is an agent of the Crown (s. 8) that accepts delivery of the Crown's royalty share of conventional crude oil, and deals with the Crown's royalty share of that oil in a manner that is, in the APMC's opinion, in the public interest of Alberta (s. 15).

12. Under the *Petroleum Marketing Regulation*, the APMC is empowered, if there is an underdelivery balance, according to the records of the APMC, to direct delivery in the month in which the direction is given or in a subsequent month (s. 12).
13. Razor Energy Corp. held agreements issued by the Minister under the *Mines and Minerals Act* for the production of conventional crude oil from Alberta's oil reserves, all on the condition that the Respondents deliver to the Crown its royalty share.
14. In their forecasts of Crown production in January 2024, the Respondent, Razor Energy Corp., led the APMC to believe that it would deliver the Crown's January 2024 royalty share to the APMC as required.
15. However, on or about February 12, 2024 the Respondent, Razor Energy Corp., filed final Crown royalty production splits for January 2024 resulting in zero volumes of the Crown's January 2024 royalty share to the APMC and has subsequently refused to deliver the Crown's January 2024 royalty share to the APMC.
16. On March 1, 2024 APMC issued a direction under section 12 of the *Petroleum Marketing Regulation* that the Respondents deliver the Crown's January 2024 royalty share to the APMC as part of the deliveries for February 2024.
17. The Respondents have advised the APMC that they do not intend to deliver the Crown's January 2024 royalty share to the APMC as part of the deliveries for February 2024 or at all.
18. The Respondents have confirmed in their filing with this Court and in representations to the APMC that they will deliver the Crown's royalty share to the APMC for their February 2024 production so this application does not apply to that delivery.
19. This application is brought on an urgent basis in response to the Application first served by Respondents on the APMC on March 4, 2024.
20. APMC will be prejudiced if this application is not heard and determined before March 12, 2024 as the Crown's right as owner of the resource to require its royalties be delivered in kind and the regulatory obligation to deliver royalties in kind will be defeated by requested extension of the stay and the passage of time.

MATERIAL OR EVIDENCE TO BE RELIED UPON:

21. APMC intends to rely upon the following materials:
- a. Affidavit of Brad Weicker, sworn March 5, 2024, to be filed;
 - b. Such other materials as counsel may advise and this honourable Court permit.

APPLICABLE ACTS AND REGULATIONS

22. APMC will rely upon and refer to the following:
- a. the *Companies' Creditors Arrangement Act*, including but not limited to section 11.1 of that Act;
 - b. the *Judicature Act*, RSA 2000, c J-2 and the inherent and equitable jurisdiction of this Honourable Court;
 - c. The *Constitution Act, 1867 section 92(A)* and the *Constitution Act 1930* (formerly the *British North America Act, 1930*, 20-21 Geo. V, c. 26 (U.K.))
 - d. *Alberta Rules of Court*, Alta. Reg. 124/2010 and in particular Rules 11.27 and 13.5; and
 - e. such further and other Acts and regulations as counsel may advise.

WARNING

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