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COURT

COURT OF KING'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF
MANITOK ENERGY INC.



COM
March 7, 2023
Justice Horner

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF
RAIMOUNT ENERGY CORP.

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF
CORINTHIAN OIL CORP.

DOCUMENT

**BENCH BRIEF RE: DISCHARGE OF
RECEIVER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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INTRODUCTION

1. This Bench Brief is submitted on behalf of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver and manager (the **Receiver**) of of Manitok Energy Inc. (**Manitok**) and Raimount Energy Corp. (**Raimount**) in support of its application for a discharge order.

2. The Receiver relies on the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended,¹ and the common law, in support of the relief sought in this application, which is scheduled to be heard on March 7, 2023.
3. Capitalized terms used herein and not otherwise defined have the same meanings as indicated in the Eighteenth Report of the Receiver, filed (the **Eighteenth Report**).

FACTS

4. On February 20, 2018 (the **Receivership Date**), the Court granted an Order in these proceedings (the **Consent Receivership Order**) appointing Alvarez & Marsal Canada Inc. as receiver and manager, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, including but not limited to real property wherever situate including all proceeds thereof (the **Property**) of Manitok and Raimount pursuant to section 243(1) of the BIA and section 13(2) of the *Judicature Act*, RSA 2000, c J-2.
5. Concurrently with the granting of the Consent Receivership Order, Manitok, Raimount and Manitok's other wholly owned subsidiary, Corinthian Oil Corp. (**Corinthian**), were deemed bankrupt and Alvarez & Marsal Canada Inc. became the Licensed Insolvency Trustee of each of them.
6. The valuable assets of Manitok and Raimount were sold by the Receiver after its implementation of a Court-approved sales process, in a series of Court-approved transactions.,
7. The most significant stakeholders in these Receivership proceedings are now:
 - i. the senior secured creditor, National Bank of Canada (**NBC**);
 - ii. the Alberta Energy Regulator (**AER**), representing the public interest in the satisfaction of abandonment and reclamation obligations.
8. All priority claims (with the exception of a priority claim with Yangarra, a settlement of which is pending approval) have been satisfied, and multiple preliminary distributions have been made to NBC and AER.
9. The Receivership proceedings are now substantially complete, with the only substantive matters being the distribution of remaining funds and the discharge of the Receiver and certain CRA filing matters.
10. As described in the Eighteenth Report, subject to the Holdback for Yangarra and any remaining professional fees and other costs required to complete the administration of the estate, the Receiver proposes to make a Final Distribution to NBC and the AER in accordance with the confidential Distribution Agreement between them (as described in the Receiver's Eleventh Report).
11. This Application seeks a Discharge Order that, among other things:

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the **BIA**), ss 243(1)(c) and 246(3) [Tab 1].

- i. approves of the professional fees, disbursements and costs of the Receiver and those of the Receiver's legal counsel;
- ii. approves of the Forecast Fees and Costs, described at paragraph 28 of the Eighteenth Report, and permits, subject to the Receiver obtaining the approval of NBC and the AER, for such amounts to be paid by the Receiver in the manner therein proposed without further order of the Court;
- iii. approves of the actions of the Receiver to date;
- iv. authorizes the Receiver to have all of the remaining books and records of Manitok and Raimount, except for those books and records required by the Receiver or Licensed Insolvency Trustee of Manitok and Raimount, destroyed;
- v. declares that the Receiver has satisfied its obligations under and pursuant to the terms of the Consent Receivership Order and that the Receiver shall not be liable for any act or omission on its part, save any liability arising from fraud, gross negligence or wilful misconduct;
- vi. authorizes the Receiver to distribute the Holdbacks and Final Distribution in the manner described in the Eighteenth Report;
- vii. discharges Alvarez & Marsal Canada Inc. as Receiver of Manitok and Raimount upon the conclusion of the remaining administrative duties as described in paragraph 32 of the Eighteenth Report and the filing of a Completion Certificate substantially in the form appended as Appendix "A" to the proposed form of Order, and included in duplicate as Appendix "D" to the Eighteenth Report (the **Completion Certificate**);
- viii. requests the aid of any court, tribunal, regulatory or administrative body, to recognize the terms of the within Discharge Order; and
- ix. grants leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of the Order sought.

12. The terms of the Discharge Order are substantially consistent with the Court of King's Bench of Alberta template.²

LAW AND ARGUMENT

i. Approval of Receiver's Activities and Receiver's and Counsel's Accounts

13. The Receiver seeks approval of its activities, as well as approval of the Receiver's accounts, and the Receiver's legal counsel's accounts for fees, disbursements and costs that have been incurred by the Receiver since the commencement of the Receivership proceedings.

14. This Court previously approved the Receiver's professional fees, disbursements and costs, and those of its counsel, through April 30, 2020. Fees, disbursements and costs

² Alberta Template Discharge Order [Tab 2].

since May 1, 2020 are described in the Eighteenth Report. All fees reflect the prevailing rates of Alvarez & Marsal Canada Inc. and the firms of its counsel. The Receiver respectfully submits these fees are fair and reasonable given the activities undertaken by the Receiver as set out in the Receiver's Eighteenth Report.

15. This Court possesses the jurisdiction under common law to approve a receiver's activities and fees.³
16. The Receiver has conducted itself appropriately since the outset of these proceedings and, in particular, since its activities were last approved through April 30, 2020. Its activities through to the completion of the Receivership should now be approved.

ii. Discharge of Receiver

17. The BIA addresses the discharge of a receiver and manager appointed pursuant to section 243(1) only incidentally. As such, receivers turn to the common law to address the full relief required of a receiver at the discharge stage.⁴
18. Courts have held that a receiver may seek its discharge and release once it has completed the "substance of its mandate." The discharge and release of a receiver is further appropriate where a court is satisfied with the reports, where no party is opposed to the requested discharge, where the requested fees and disbursements appear reasonable in the circumstances, and the receiver has substantially completed its duties.⁵
19. The discharge, subject to filing of a Completion Certificate, sought in this instance is appropriate in the circumstances. It provides for the standard terms of the discharge of a receiver while allowing the Receiver to complete outstanding administrative tasks while minimizing the costs to the estate. It is accompanied by a receiver's final report and statement of accounts as required by section 246(3) of the BIA. Opposition is not anticipated.
20. The Receiver's proposed Discharge Order contemplates that the Receiver shall be protected from liabilities incurred in the carrying out of its duties, except if arising out of any fraud, gross negligence, or wilful misconduct. This protection is reflected in the template Discharge Order and, indeed, is a commercial necessity for receivers to take on the management of business operations.

iii. Destruction of records

21. Sets of books and records have already been delivered by the Receiver to purchasers and the Orphan Well Association. As the directors of Manitok and Raimount resigned in proximity to the Receiver's appointment, more than five years ago, there are no directors to whom the remaining, miscellaneous books and records in the Receiver's possession should reasonably be delivered. The Receiver is therefore seeking authorization to destroy the remaining books and records of Manitok and Raimount in its possession, except as required by the Receiver or the Trustee in Bankruptcy of Manitok and Raimount.

³ *Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc.*, [2009] OJ No 4265, 2009 CanLII 55113, at paras 8-9 [Tab 3].

⁴ *Ed Mirvish*, *ibid* at para 9.

⁵ *Ed Mirvish*, *ibid* at paras 8-9 [Tab 2]; *West Face Capital Inc v Chieftain Metals Inc*, 2020 ONSC 5161 at para 11 [Tab 4].

CONCLUSION

22. The Receiver seeks a Discharge Order substantially in the form attached as Appendix "A" to the proposed form of Order submitted with the within Application, and provided in duplicate as Appendix "D" to the Eighteenth Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF February, 2023

Norton Rose Fulbright Canada LLP



Per: _____
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Counsel for the Applicant, Alvarez & Marsal Canada Inc.

AUTHORITIES

- Tab 1 [*Bankruptcy and Insolvency Act*, RSC 1985, c B-3](#)
- Tab 2 Alberta Template Discharge Order
- Tab 3 [*Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc*, \[2009\] OJ No 4265](#)
- Tab 4 [*West Face Capital Inc v Chieftain Metals Inc*, 2020 ONSC 5161](#)