

COURT FILE NUMBERS	25-2332583 25-2332610 25-2335351
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PROCEEDINGS	IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANITOK ENERGY INC. 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 OF THE RECEIVER
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**APPLICATION BEFORE JUSTICE B.E.C. ROMAINE
NOVEMBER 25, 2020 AT 9:00 A.M. ON THE COMMERCIAL LIST**

1. This is the bench brief of Alvarez & Marsal Canada Inc. in its capacity as receiver and manager of Manito Energy Inc. (the "**Receiver**") in response to the bench brief of Orlen Upstream Canada Ltd. ("**Orlen**") dated November 18, 2020.
2. Orlen seeks to intervene in the Receiver's application for an Order dismissing the claim to certain funds being advanced by Yangarra Resources Inc. ("**Yangarra**"), filed October 5, 2020.
3. The Receiver's application was heard on October 15, 2020 and opposed by Yangarra. On October 21, 2020, while the Court's decision was on reserve, Orlen sought leave to provide evidence and submissions with respect to the Receiver's application. That leave subsequently was granted by this Honourable Court.

FACTUAL BACKGROUND

4. The facts relating to the Yangarra Claim are set forth in the Sixteenth Report of the Receiver, dated October 5, 2020 (the “**Receiver’s Report**”).¹ These facts also are relevant to the Orlen Claim. Capitalized terms not otherwise defined herein have the meaning set forth in the Receiver’s Report.
5. As noted in the Receiver’s Report, Yangarra commenced the Orlen Action on December 4, 2018.² Orlen filed a Statement of Defence together with a Counterclaim seeking damages from Yangarra in the amount of \$94,975.³ Yangarra filed a Statement of Defence to the Orlen Counterclaim.⁴
6. Yangarra subsequently filed an Amended Third Party Claim against the Receiver in the Orlen Action.⁵ In that Amended Third Party Claim (referred to in the Receiver’s Report as the “Yangarra Claim”), Yangarra seeks contribution and indemnity in respect of any liability for the amount being sought in the Orlen Counterclaim,⁶ as well as recovery of the Proceeds and Winter Service Fees, as those terms are defined in the Yangarra Claim.⁷
7. Although Yangarra was required by Court Order in the Orlen Action to bring an application regarding the Yangarra Claim in the within proceedings, that was never done.⁸ Accordingly, the Receiver brought the within application for an Order dismissing the Yangarra Claim.
8. Orlen now appears to be seeking payment by Yangarra of the Winter Service Fees,⁹ which are the subject of its Counterclaim in the Orlen Action and also form part of the Yangarra Claim.

¹ Receiver’s Report, paragraphs 10-24.

² Receiver’s Report, paragraph 13, Appendix “A”.

³ Receiver’s Report, paragraph 14, Appendix “B”.

⁴ Receiver’s Report, paragraph 15, Appendix “C”.

⁵ Receiver’s Report, paragraph 17, Appendix “F”.

⁶ Receiver’s Report, paragraph 18.

⁷ Receiver’s Report, paragraph 19.

⁸ Receiver’s Report, paragraphs 17, 19.

⁹ Orlen bench brief, paragraphs 14, 34.

RESPONSE TO ORLEN SUBMISSIONS

9. Orlen appears to be seeking to piggyback on the Receiver's application in an effort to recover the amount of its Counterclaim in the Orlen Action. However, this is not the appropriate forum for the determination of the issues as between Orlen and Yangarra.
10. As noted above, Orlen is seeking payment of a portion of the Yangarra Claim. Accordingly, the provisions of the Yangarra APA (referred to in the Orlen bench brief as the "Ferrier APA") that are of particular relevance to the Yangarra Claim, as summarized at paragraphs 20-24 of the Receiver's Report, are equally applicable to the amounts sought by Orlen. These include the following provisions:¹⁰

2.2 Transfer of Assets

Provided that Closing occurs, and subject to the terms and conditions of this Agreement, possession, risk, beneficial and legal ownership of the Assets shall transfer from Vendor to Purchaser on the Closing Date.

...

2.4 Assumed Obligations

Provided that Closing occurs and subject to the terms and conditions of the Court Approval, Purchaser shall assume all past, present and future obligations in respect of all rents, royalties, taxes (other than Income taxes) and other periodic payments which accrue to the Assets (including without limitation, unpaid surface lease rentals, mineral lease rentals, Crown royalties and freehold royalties) and any Environmental Liabilities pertaining to the Assets (the "Assumed Obligations"). For the avoidance of doubt, Purchaser shall be responsible to pay and discharge in a timely fashion all of the Assumed Obligations which are outstanding as of the Closing Date.

...

2.6 Adjustments

Subject to Section 2.6(a), all costs and expenses relating to the Assets shall be apportioned as of the Effective Date between Vendor and Purchaser on an accrual basis in accordance with generally accepted accounting principles, with Vendor bearing and paying the costs and expenses accruing on the Closing Date, and Purchaser bearing costs and expenses accruing thereafter[.]

¹⁰ Receiver's Report, paragraph 23, Appendix "G".

...

7.4 Conveyances

- (b) Any Conveyancing Document assigning a Title and Operating Document shall provide that notwithstanding the Court Approval and such Conveyancing Document, Purchaser shall have assumed such Title and Operating Document upon it giving notice in writing to the Third Party that is party to such Title and Operating Agreement of such assumption.

11. In addition, the General Conveyance executed and delivered at closing reads as follows:¹¹

5. Effective Time

This General Conveyance and the transfer of title to and possession of Vendor's interest in and to the Assets will, subject to the terms of the Agreement, be effective as of the Closing Date.

12. Notwithstanding all of this, Orlen states in its bench brief that Yangarra is entitled to the benefits of the Operating Agreements, including the Production, as of October 1, 2017, being the Effective Date of the Yangarra APA.¹² The Receiver states as follows in response to this assertion:

- (a) The amounts claimed by Orlen are pre-receivership and pre-bankruptcy amounts that ManitoK was obligated to pay to Orlen. Accordingly, they constitute an unsecured claim and do not have a priority status. As such, there is no basis for the Receiver to pay these amounts.
- (b) Neither Orlen nor Yangarra have registered claims in the ManitoK bankruptcy proceedings with respect to these amounts. Also, this is the first time Orlen has sought to make a claim in the within proceedings since the Receiver was appointed in February, 2018.
- (c) The Yangarra APA was between ManitoK and Yangarra. The SAVO, which approved the Yangarra APA, was obtained by ManitoK as debtor in possession. The Yangarra APA clearly states that the Vendor was ManitoK,

¹¹ Receiver's Report, paragraph 24, Appendix "G".

¹² Orlen bench brief, paragraph 33.

not the Receiver or the Proposal Trustee. Accordingly, this was a pre-receivership SAVO approving a pre-receivership transaction that was not sought or obtained by the Receiver.

13. In short, it is submitted that largely for the same reasons why the Yangarra Claim should be dismissed, the Orlen Claim should also be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24TH DAY OF NOVEMBER, 2020

SCOTT VENTURO RUDAKOFF LLP



EUGENE J. BODNAR

Solicitors for the Receiver