

COURT FILE NUMBER 25-2719774
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GS E&R CANADA INC.

APPLICANTS MNP LTD., IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF GS
E&R CANADA INC., AND NOT IN ITS PERSONAL
CAPACITY

DOCUMENT **APPLICATION (Interim Distribution and Approval of
Activities)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTIES FILING THIS
DOCUMENT

LAWSON LUNDELL LLP
Barristers and Solicitors
Suite 1100, 225 – 6 Avenue SW
Calgary, AB T2P 1N2
Attention: Alexis Teasdale
Telephone: (403) 218-7564
Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 38143-154610

NOTICE TO RESPONDENTS

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:	January 18, 2022
Time:	10:00 a.m.
Where:	Virtual WebEx Hearing on the Calgary Commercial List https://albertacourts.webex.com/meet/virtual.courtroom60
Before Whom:	The Honourable Madam Justice K.M. Horner

Introduction

1. This application is made by MNP Ltd. (“**MNP**”) in its capacity as trustee under the proposal (in such capacity, the “**Trustee**”) of GS E&R Canada Inc. (“**E&R Canada**”) dated August 17, 2021 (the “**Proposal**”). All capitalized terms used but not otherwise defined in this Notice of Application have the meaning given to them in the Proposal.
2. This Notice of Application also refers to the Sale Approval and Vesting Order and Enhanced Trustee’s Powers order granted in these proceedings on August 16, 2021 (the “**Enhanced Powers Order**”), the Approval Order granted in these proceedings on September 17, 2021 (the “**Approval Order**”), the Sixth Report of the Trustee dated November 22, 2021 (the “**Sixth Report**”), and the Seventh Report of the Trustee dated January 12, 2022 (the “**Seventh Report**”).

Remedy Claimed or Sought:

3. An Order substantially in the form attached hereto as Schedule “A”:
 - (a) if necessary, abridging the time for service of this application and deeming service good and sufficient;
 - (b) authorizing the Trustee to pay dividends to all Unsecured Creditors with Proven Claims as at the date of the Seventh Report in accordance with the Proposal as detailed in the Statement of Receipts and Disbursements and Dividend Sheet appended to the Seventh Report; and
 - (c) ratifying and approving the Sixth Report and the Seventh Report and the activities of the Trustee as set out therein, provided that only the Trustee, in its personal capacity and with respect to its own personal liability, shall be entitled to rely on or utilize in any way such approval.
4. Such further and other relief as this Honourable Court may deem just and appropriate.

Grounds for Making this Application:

Procedural Background

5. E&R Canada is a corporation incorporated pursuant to the *Business Corporations Act*, RSA 2000, c B-9 (the “**ABCA**”). It is the wholly owned subsidiary of the Shareholder, which is a Korean corporation. As a result of ongoing losses and its unsuccessful attempts to restructure its affairs, on March 11, 2021, E&R Canada filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) with the Office of the Superintendent of Bankruptcy. MNP Ltd. (“**MNP**”) consented to act as trustee of E&R Canada under the NOI.
6. On March 24, 2021, this Honourable Court pronounced an Order, which, among other things, extended the stay of all proceedings against E&R Canada until May 25, 2021 and authorized E&R Canada to engage in a sales investment solicitation process (the “**SISP**”), with the assistance of Sayer Energy Advisors and the Trustee.
7. Pursuant to the SISP, E&R Canada negotiated and executed a Purchase and Sale Agreement with Bench Creek, dated as of July 30, 2021 (the “**APA**”).
8. On July 2, 2021, this Honourable Court pronounced an Order, which, among other things, extended the stay of all proceedings against E&R Canada until August 23, 2021.
9. On August 16, 2021, the Honourable Mr. Justice Dunlop granted the Enhanced Powers Order, which, among other things:
 - (a) approved the Transaction contemplated by the APA and vested all right, title and interest held by E&R Canada in the Assets set out in the APA to Bench Creek, free and clear of any and claims and subject to certain Permitted Encumbrances; and
 - (b) granted certain enhanced powers to the Trustee, including the power to pay post-filing claims, to deal with all surplus proceeds remaining in E&R Canada after implementation of the Proposal, and to take steps to dissolve E&R Canada.
10. On August 17, 2021, the Trustee filed E&R Canada’s Proposal with the Office of the Superintendent of Bankruptcy Canada, and at the Creditors’ Meeting held on September 7,

2021 to consider the Proposal, the requisite majorities of E&R Canada's Unsecured Creditors accepted the Proposal. The Unsecured Creditors present at the Creditors' Meeting did not appoint any Inspectors.

11. On September 17, 2021, this Honourable Court granted the Approval Order, which, *inter alia*, approved the Proposal and authorized the Trustee to take all further actions or steps necessary or appropriate to implement and complete the Proposal.

Proven Claims and Anticipated Pre- and Post-Filing Claims

12. Since this Honourable Court granted the Approval Order, the Trustee has taken steps to implement the Proposal, including but not limited to issuing the Notice Required Person to Prove Claim under Section 149 of the *BIA* (the "**Section 149 Notice**") reviewing and determining all Proofs of Claim received prior to the Claims Deadline in accordance with the *BIA*, and paying Proven Claims of Source Deduction Creditors.
13. As of the date of the Seventh Report, the Trustee had received seventeen proofs of claim, sixteen of which the Trustee determined to be Proven Claims totalling \$209,357.33, and one of which the Trustee disallowed, which was not appealed. There were fifteen other creditors shown on the Statement of Affairs, with claims totalling approximately \$44,930, who did not file proofs of claims. The Trustee understands it may receive a further pre-filing Claim from CRA in respect of GST, subject to CRA completing a GST audit, as described below, but does not anticipate any Claim received in that regard to be material.
14. The Trustee also received a proof of claim from the Canada Revenue Agency ("**CRA**") for pre-filing source deductions. The CRA's claim for source deductions was determined to be a Proven Claim, the bulk of which was a deemed trust claim, which amount the Trustee paid in full in accordance with section 6.3 of the Proposal.
15. In terms of Post-Filing Claims, the Trustee has paid various post-filing creditors in respect of goods and services received, and levies and other amounts accruing, after the Filing Date. The Trustee anticipates further Post-Filing Claims from the CRA in respect of source deductions (approximately \$13,100) and GST (approximately \$15,600), and from the British Columbia Ministry of Finance ("**BC Finance**") in respect of post-filing carbon taxes (approximately \$7,380), for an estimated approximate total of \$36,080.

16. Pursuant to the Proposal, E&R Canada assigned all funds remaining in E&R Canada following closing of the sale to Bench Creek and after deduction of certain amounts specified in the Proposal. The Trustee took possession of all other funds held by E&R Canada pursuant to the Enhanced Powers Order. The total amount of funds held by the Trustee under the Proposal and pursuant to the Enhanced Powers Order, which funds comprise all of E&R Canada's remaining property, is \$2,057,691.42.

Proposed Interim Distribution

17. The Approval Order authorizes and directs the Trustee to make all required payments and distributions under the terms of the Proposal; however, the Proposal contemplates that Unsecured Creditors are entitled to a distribution under the Proposal only once the determination of Proven Claims is complete. As of the date of this Application, the Trustee may not have received all known Claims against E&R Canada.
18. Specifically, CRA has advised the Trustee that although there was no amount showing as owing E&R Canada for GST as of the Filing Date, CRA must first perform a GST audit before it can determine if it has a pre-filing Claim for GST. CRA has not provided the Trustee with an indication of when the audit will be undertaken. Waiting for CRA to perform the GST audit, and then waiting to receive and determine the Claim of CRA, if any, for GST could potentially delay distribution under the Proposal for weeks or months.
19. For these reasons, the Trustee believes it is reasonable in the circumstances, and in the best interests of E&R Canada's Unsecured Creditors, to pay dividends to all Unsecured Creditors with Proven Claims in accordance with the Proposal and as detailed in the Statement of Receipts and Disbursements and Dividend Sheet appended to the Seventh Report (the "**Interim Distribution**").
20. The Trustee seeks this Honourable Court's approval to make the Interim Distribution both because the Proposal does not contemplate an interim distribution before all known Claims have been determined, and because no Inspectors were appointed in respect of the Proposal. Therefore, the Trustee believes it is appropriate and prudent to seek court approval of the Interim Distribution.

21. This Honourable Court has inherent jurisdiction under the BIA, and generally, as a superior court to authorize and sanction all acts required to be done by the Trustee for the due administration of the Proposal. The proposed Interim Distribution is necessary for the due administration of the Proposal, as it serves the ends of the Proposal by ensuring Unsecured Creditors with Proven Claims are paid in a timely manner, and provides protection to the Trustee in the absence of Inspectors.

Approval of Trustee's Activities

22. Since the date of the Trustee's Fifth Report to this Honourable Court, the Trustee has, among other things, as outlined in the Sixth and Seventh Reports:
- (a) corresponded with Bench Creek Resources Ltd. ("**Bench Creek**"), the purchaser of substantially all of E&R Canada's assets pursuant to a Purchase and Sale Agreement dated July 30, 2021 with E&R Canada (the "**APA**") to secure payment to E&R Canada of revenue for the August 2021 production month (the "**August Revenue**") in accordance with the APA;
 - (b) prepared and filed application materials to compel Bench Creek to pay the unpaid portion of the August Revenue to E&R Canada, and, with the assistance of its counsel, took steps to resolve the application;
 - (c) dealt with various other post-closing matters under the APA;
 - (d) sent the Section 149 Notice in accordance with the Proposal, corresponded with various creditors who filed proofs of claims to obtain further information, seek clarification, or request amended claims, and, in consultation with legal counsel, reviewed and determined all proofs of claim received;
 - (e) worked with post-filing creditors of E&R Canada, including BC Finance and CRA, in order to determine, verify, and pay post-filing amounts due;
 - (f) responded to stakeholder inquiries regarding the status of the Proposal;
 - (g) realized on any remaining assets of E&R Canada; and

- (h) reported to and engaged in discussions with GS E&R Corp. (the “**Shareholder**”), the sole shareholder of E&R Canada, in relation to the Proposal, the Trustee’s activities under the Enhanced Powers Order, and the winding-up of E&R Canada.
23. The Trustee has acted diligently since the Proposal was approved by this Honourable Court and E&R Canada’s directors resigned, and has undertaken the activities described in its Sixth Report and Seventh Report to this Honourable Court, which actions are lawful, proper and consistent with the *BIA* and the Trustee’s powers and duties under the Enhanced Powers Order.
24. This Court’s inherent jurisdiction as a superior court extends to granting the relief sought, as that jurisdiction may be used to accomplish what practicality requires. In this case, the Trustee has acted in accordance with the Enhanced Powers Order, which provides that the Trustee shall incur no liability as a result of its acting in accordance therewith. The Order sought in this Application gives effect to the Enhanced Powers Order by approving actions that fall under its scope.
25. Further, there are practical and policy reasons to seek such approval. This Application brings the Trustee’s activities under the Proposal and the Enhanced Powers Order before this Court and allows this Court to satisfy itself that the activities of its officer were conducted prudently and diligently. Further, the Order sought will provide certainty and finality to these proceedings and an added level of protection to the Trustee.

Material or Evidence to be Relied On:

26. The pleadings and proceedings had and taken in this Action, including but not limited to:
- (a) The Enhanced Powers Order;
 - (b) The Approval Order;
 - (c) The Sixth and Seventh Reports of the Trustee; and
 - (d) Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

27. Rules 1.2, and 1.3, Part 6, Division 1, and Part 6, Division 4 of the *Alberta Rules of Court*, Alta Reg 124/2010.

Applicable Acts and Regulations

28. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
29. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

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.

SCHEDULE "A"
Proposed Form of Order

COURT FILE NUMBER 25-2719774
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO
 MAKE A PROPOSAL OF GS E&R CANADA INC.

APPLICANT MNP LTD., IN ITS CAPACITY AS TRUSTEE UNDER THE
 NOTICE OF INTENTION TO MAKE A PROPOSAL OF GS
 E&R CANADA INC., AND NOT IN ITS PERSONAL
 CAPACITY

DOCUMENT **ORDER (Interim Distribution and Approval of Activities)**

ADDRESS FOR SERVICE AND CONTACT LAWSON LUNDELL LLP
 BARRISTERS AND SOLICITORS
 INFORMATION OF PARTY FILING THIS DOCUMENT Suite 1100, 225 – 6 Avenue SW
 Calgary, AB T2P 1N2
Attention: Alexis Teasdale
 Telephone: (403) 218-7564
 Fax: (403) 269-9494
 Email: ateasdale@lawsonlundell.com
 File No.: 38143-154610

DATE ON WHICH ORDER WAS PRONOUNCED: January 18, 2022
NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K.M. Horner
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of MNP Ltd. in its capacity as Trustee under the Division I Proposal of GS E&R Canada Inc. (“**E&R Canada**”) and not in its personal capacity (in such capacity, the “**Trustee**”); **AND UPON** having read the Sale Approval and Vesting Order and Enhanced Monitor’s Powers order pronounced August 16, 2021; **AND UPON** having read the Approval Order pronounced September 17, 2021 in the within proceedings; **AND UPON** having read the Notice of Application of the Trustee, the Sixth Report to the Court of the Trustee to the Court dated November 22, 2021 (the “**Sixth Report**”), the Seventh Report to the Court of the Trustee dated January 12, 2022 (the “**Seventh Report**”), and the Affidavit of Service of Vanessa Gacusana, affirmed on January [●], 2022; **AND UPON** reading such other material and

pleadings in the within proceedings as are deemed necessary; **AND UPON** hearing from counsel for the Trustee and counsel present for any other interested party;

IT IS HEREBY ORDERED THAT:

Service and Definitions

1. The time for service of the Notice of Application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no person other than those persons served is entitled to service of the Notice of Application.
2. All capitalized terms not otherwise defined in this Order have the meaning given to them in the Division I Proposal made by E&R Canada to its creditors and dated August 17, 2021 (the “**Proposal**”).

Interim Distribution

3. The Trustee is hereby authorized and directed to pay, out of the Proposal Proceeds, dividends to all Unsecured Creditors with Proven Claims, as detailed in the Dividend Sheet at Schedule “A” to this Order, in accordance with Section 6.5 of the Proposal.
4. After payment of the dividends outlined in Schedule “A” to this Order, no Unsecured Creditor listed in Schedule “A” to this Order shall have any further claim against, or interest in, the Proposal Proceeds.

Approval of Activities

5. The Sixth Report and the Seventh Report are hereby ratified and approved, and the activities of the Trustee set out therein are hereby ratified and approved, provided that only the Trustee in its personal capacity and with respect to its own personal liability shall be entitled to rely on or utilize in any way the approval set out in this Order.

General

6. This Order must be served only upon those interested parties attending or represented at the application for this Order and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of such documents.

7. Service of this Order on any party not attending the application for this Order is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"
Dividend Sheet

District of Alberta
 Division No. 02 - Calgary
 Court No. 25-2719774
 Estate No. 25-2719774

Schedule 1

DIVIDEND SHEET

In the matter of the Proposal of
 GS E&R Canada Inc.
 of the city of Calgary, in the Province of Alberta

Date declared: January 21, 2022

	Claim \$	Dividend \$	Total Levy \$	Payment \$	Interim Payment \$	Dividend \$	Current Levy \$	Payment \$
Deemed Trust Claim								
CRA - Tax - Prairies	25,165.44	25,165.44	0.00	25,165.44	25,165.44	0.00	0.00	0.00
Total:	25,165.44	25,165.44	0.00	25,165.44	25,165.44	0.00	0.00	0.00
Unsecured								
Adam Arsenaault	9,800.00	10,225.56	511.28	9,714.28	0.00	10,225.56	511.28	9,714.28
AGAT Laboratories	2,977.70	3,107.00	155.35	2,951.65	0.00	3,107.00	155.35	2,951.65
Baron Oilfield Supply Ltd.	20.54	21.43	1.07	20.36	0.00	21.43	1.07	20.36
BC Ministry of Finance	45,491.96	47,467.40	2,373.37	45,094.03	0.00	47,467.40	2,373.37	45,094.03
Christine Capot-Blanc	9,800.00	10,225.56	511.28	9,714.28	0.00	10,225.56	511.28	9,714.28
Corpro Canada Inc.	10,419.15	10,871.59	543.58	10,328.01	0.00	10,871.59	543.58	10,328.01
CRA - Tax - Prairies	100.00	104.34	5.22	99.12	0.00	104.34	5.22	99.12
Energetic Services Inc	4,735.50	4,941.13	247.06	4,694.07	0.00	4,941.13	247.06	4,694.07
Gasfield Energy Services	2,770.13	2,890.42	144.52	2,745.90	0.00	2,890.42	144.52	2,745.90
Hyewon Lee	5,550.00	5,791.00	289.55	5,501.45	0.00	5,791.00	289.55	5,501.45
Ken Walker	9,800.00	10,225.56	511.28	9,714.28	0.00	10,225.56	511.28	9,714.28
Kevin Davis	8,400.00	8,764.76	438.24	8,326.52	0.00	8,764.76	438.24	8,326.52
Lindsey Wood	2,480.00	2,587.69	129.38	2,458.31	0.00	2,587.69	129.38	2,458.31
Save on Foods Fort Nelson	2,547.25	2,657.86	132.89	2,524.97	0.00	2,657.86	132.89	2,524.97
Secure Energy Services Inc.	588.00	613.53	30.68	582.85	0.00	613.53	30.68	582.85
Sheldon Sandau	76,500.06	79,822.00	3,991.09	75,830.91	0.00	79,822.00	3,991.09	75,830.91
Vision Integrity Engineering Ltd	15,201.38	15,861.48	793.07	15,068.41	0.00	15,861.48	793.07	15,068.41
Wide Sky Disposal (1989) Ltd.	270.00	281.72	14.09	267.63	0.00	281.72	14.09	267.63
Worksafe BC	1,905.66	1,988.41	99.42	1,888.99	0.00	1,988.41	99.42	1,888.99
Total:	209,357.33	218,448.44	10,922.42	207,526.02	0.00	218,448.44	10,922.42	207,526.02