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COURT FILE NUMBER B201 719774
 25-2719774

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY \$50.00
 COM
 March 29, 2023

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 DIVISION I PROPOSAL OF GS E&R CANADA INC., AND NOT IN ITS PERSONAL CAPACITY

DOCUMENT **APPLICATION (Approval of Activities & Fees; Discharge of Trustee)**

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 (SERVICE LIST)

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 29, 2023
Time:	11:00 a.m.
Where:	Virtual WebEx Hearing on the Edmonton Commercial List Virtual Courtroom 86: https://albertacourts.webex.com/meet/virtual.courtroom86
Before Whom:	The Honourable Justice J. S. Little

Remedy Claimed or Sought:

1. An Order substantially in the form attached hereto as **Appendix “1”**:
 - (a) if necessary, abridging time for service of this Notice of Application to the time actually given and deeming service good and sufficient;
 - (b) ratifying and approving the activities of MNP Ltd. (“**MNP**”), in its capacity as proposal trustee (in such capacity, the “**Trustee**”) of GS E&R Canada Inc. (“**E&R Canada**”), and ratifying and approving the Trustee’s Final Statement of Receipts and Disbursements;
 - (c) approving the Trustee’s fees and disbursements, and the fees and disbursements of the Trustee’s counsel, Lawson Lundell LLP, all without the necessity of a formal passing or assessment of accounts;
 - (d) declaring that the Trustee has satisfied its obligations under and pursuant to the terms of the Proposal and the Orders granted in the within proceedings to date; and
 - (e) providing for the Trustee’s discharge upon completion of the Remaining Activities and the filing of a discharge certificate certifying the same, releasing and discharging MNP from liability associated with its acts or omissions in such capacity with the exception of any liability arising out of gross negligence or willful misconduct on its part, and barring all claims against the Trustee except with leave of the court.

2. Such further and other relief as this Honourable Court may deem just and appropriate.

Grounds for Making this Application:***Procedural Background***

3. 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. The Trustee consented to act as trustee of E&R Canada under the NOI.

4. 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 assistance by Sayer Energy Advisors and MNP, in its capacity as Proposal Trustee.
5. Pursuant to the SISP, E&R Canada negotiated and executed a Purchase and Sale Agreement with Bench Creek Resources Ltd. (“**Bench Creek**”), dated as of July 30, 2021.
6. On August 16, 2021, the Honourable Mr. Justice G. S. Dunlop approved a Sale Approval and Vesting Order and Enhanced Trustee’s Powers order (the “**Enhanced Powers Order**”), which approved the sale to Bench Creek and provided, among other things, that upon the resignation of E&R Canada’s directors, the Trustee’s powers shall be enhanced to include the following:
 - (a) to deal with any surplus cash remaining in E&R Canada after implementation of E&R Canada’s proposal to its creditors; and
 - (b) to file tax returns on behalf of E&R Canada and deal with the Canada Revenue Agency (“**CRA**”) in respect of any issue relating to E&R Canada.
7. On August 17, 2021, E&R Canada filed a proposal to its creditors (the “**Proposal**”). At the meeting of creditors to vote on the Proposal on September 7, 2021, the required majority of creditors voted in favour of the Proposal, which was then approved by this Honourable Court by way of an Order dated September 17, 2021 (the “**Approval Order**”). No inspectors were appointed at the creditors’ meeting, and E&R Canada’s directors resigned on September 17, 2021.
8. In late September, 2021, the Trustee issued the 30-day notice requiring creditors to prove claims under s. 149 of the *BIA*. Seventeen of the thirty-four creditors listed on E&R Canada’s Claims Register delivered a proof of claim, one of which the Trustee disallowed.

9. On January 18, 2022, this Honourable Court granted an Order (the “**Interim Distribution Order**”) authorizing the Trustee to pay out of the Proposal Proceeds (as defined in the Proposal) dividends to all unsecured creditors having a proven claim the total amount of their claim, net of any levy payable to the Office of the Superintendent of Bankruptcy (the “**OSB**”), plus 5% interest per annum, as the Proposal Proceeds exceeded the total amount of the unsecured creditors’ proven claims, in accordance with section 6.5 of the Proposal and s. 122(2) of the *BIA*.
10. The Approval Order authorizes and directs the Trustee to make all required payments and distributions under the terms of the Proposal. The Trustee sought and obtained an order authorizing it to make an interim distribution, notwithstanding that CRA had not yet completed a GST audit of E&R Canada.
11. The Trustee has on multiple occasions requested that CRA complete an audit of E&R Canada’s GST account. CRA has verbally advised the Trustee that, as there was no GST amount owing by E&R Canada as of the filing date of the NOI, no audit would be undertaken.
12. All creditors of E&R Canada who filed proofs of claim in the Proposal were fully repaid in accordance with the Distribution Order on or around January 26, 2022 pursuant to Section 6.5 of the Proposal and Section 122(2) of the *BIA*.
13. On August 8, 2022, the Trustee issued its Certificate of Full Performance of Proposal, certifying that the Proposal had been fully performed, as the payments contemplated by the Proposal to proven creditors who filed a proof of claim in accordance with the Approval Order were fully satisfied and all aspects of the Proposal were fully performed.
14. E&R Canada was dissolved effective January 2, 2023 and is not carrying on business or incurring any liabilities other than professional fees, such that no party will be prejudiced by the granting of the orders being sought by the Trustee and E&R Parent.

Approval of Trustee's Activities Since January 12, 2022

15. Since the Trustee issued its Seventh Report on January 12, 2022, the Trustee has undertaken various activities, as outlined in its Seventh and Eighth Reports to this Honourable Court, including but not limited to the following:
- (a) distributed to all unsecured creditors with proven claims, and deemed trust claims, a final dividend in accordance with the distribution process as set out in the Seventh Report and approved by the Order (Interim Distribution and Approval of Activities Order) pronounced January 18, 2022 (the “**Distribution Order**”);
 - (b) obtained or arranged for all documents and information necessary to complete, and completed, E&R Canada’s 2021 fiscal year end taxes;
 - (c) continued to work with CRA, pay GST arising from E&R Canada’s post-filing activities, and to facilitate a GST audit, including by requesting a clearance certificate and filing a formal complaint with CRA;
 - (d) worked with Bench Creek and third parties in accordance with the Enhanced Powers Order to ensure all assets to be conveyed to Bench Creek were properly conveyed;
 - (e) paid post-filing obligations pursuant to paragraph 15(e) of the Enhanced Powers Order and in accordance with Section 2.7 of the Proposal;
 - (f) discussed with E&R Canada’s sole shareholder, GS E&R Corp. (“**E&R Parent**”) and its counsel the appropriate mechanism for distributing the surplus cash remaining in E&R Canada, subject to withholding amounts for contingent tax liabilities pending completion of GST and income tax audits by CRA;
 - (g) discussed with E&R Parent and its counsel the appropriate mechanism for dissolution of E&R Canada and preparation of its final financial statements and tax returns; and
 - (h) continued to provide reporting to E&R Parent, at E&R Parent’s request.

16. The Trustee has acted diligently in undertaking the activities outlined in the preceding paragraph, which actions are lawful, proper, and consistent with the *BIA* and the Trustee's powers and duties under the Enhanced Powers Order, the Proposal, and the Approval Order, as well as being commercially reasonable.
17. 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 Trustee has also acted in accordance with the Proposal, the Approval Order, and the *BIA*.
18. The Order sought in this Application gives effect to the Enhanced Powers Order by approving actions that fall under its scope, and under the Trustee's powers and duties under the *BIA*, along with other Orders granted by this Court in the within proceedings.
19. Further, there are practical and policy reasons to seek approval of the Trustee's activities. This Application brings the Trustee's activities 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.

Classification of Remaining Assets

20. The Trustee understands that the common share amount recorded in E&R Canada's December 31, 2022 balance sheet represents the paid-up capital of E&R Parent, as sole shareholder of E&R Canada. All of E&R Parent's investment in common shares of E&R Canada was made before the NOI was filed and has not been repaid.
21. Subject to any claims the CRA may have, the Trustee is of the opinion that the balance of the funds remaining in E&R Canada should be returned to E&R Parent as a return of the paid-up capital of E&R Canada.

Approval of Trustee's Fees and Disbursements and Final SRD

22. The Trustee's fees and disbursements, including the fees of its counsel, Lawson Lundell LLP, are reasonable.
23. Upon completion of all steps required under the Proposal and upon the Trustee issuing a Certificate of Full Performance of Proposal, the Trustee is required pursuant to s. 66(1.2) of the *BIA* to submit its final Statement of Receipts and Disbursements to the OSB.

Discharge of Trustee

24. Subject to distribution of all funds remaining in E&R Canada, completion by CRA of a GST audit and a corporate income tax audit, and payment of any pre-filing claims arising from such audits, E&R Canada will be fully wound-up.
25. E&R Parent is bringing an application concurrently with the within Application, authorizing and directing the Trustee to distribute to E&R Parent the surplus funds remaining in E&R Canada, to be held in trust by counsel for E&R Parent pursuant to an escrow agreement, pending completion by CRA of all outstanding audits and satisfaction of any liabilities to CRA arising from the same.
26. Following distribution of all surplus funds to counsel for E&R Parent and upon the Trustee completing E&R Canada's final financial statements and tax returns (the "**Remaining Activities**"), all matters relating to the Proposal and the Trustee's administration of E&R Canada's estate pursuant to the Enhanced Powers Order, the Proposal, the Approval Order, and the *BIA*, will be complete, such that the Trustee should be discharged upon completion of these steps.
27. This Court's inherent jurisdiction as a superior court extends to granting the relief sought in respect of the Trustee's discharge.
28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence to be Relied On:

29. The pleadings and proceedings had and taken in this Action, including but not limited to:
- (a) Eighth Report of the Proposal Trustee dated March 20, 2023;
 - (b) Affidavit of Richard Anderson, sworn March 20, 2023;
 - (c) Affidavit of Alexis Teasdale, affirmed March 23, 2023;
 - (d) Notice of Application of GS E&R Corp., returnable March 29, 2023; and
 - (e) Affidavit of Alex (Hyunsoo) Yoon, sworn March 23, 2023.
30. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

31. 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

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

How the Application is Proposed to be Heard or Considered

34. In person (virtually) before the Honourable Justice J. S. Little in chambers, via WebEx.

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.

APPENDIX "1"
Proposed Form of Order

COURT FILE NUMBER 25-2719774
COURT COURT OF KING'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 (Approval of Activities & Fees; Discharge of
Trustee)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
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

DATE ON WHICH ORDER WAS PRONOUNCED: March 29, 2023

NAME OF JUDGE WHO MADE THIS ORDER: Justice J. S. Little

LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd. (“**MNP**”) 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 (the “**Enhanced Powers Order**”); **AND UPON** having read the Approval Order pronounced September 17, 2021 approving E&R Canada’s proposal to its creditors (the “**Proposal**”), and authorizing and directing the Trustee to take all steps necessary to implement and complete the Proposal; **AND UPON** having read the Notice of Application of the Trustee, the Eighth Report to the Court of

the Trustee dated March 20, 2023 (the “**Eighth Report**”), the Affidavit of Richard Anderson sworn March 20, 2023, the Affidavit of Alexis Teasdale affirmed March 23, 2023, and the Affidavit of Service of Alex Henze, affirmed on March [●], 2023; **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 service is 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.

Approval of Activities

2. The Eighth Report is 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.

Approval of Final Statement of Receipts and Disbursements

3. The Trustee’s final statement of receipts and disbursements for the period of September 17, 2021 to February 28, 2023 is hereby ratified and approved.

Approval of Fees and Disbursements

4. The Trustee’s accounts for fees and disbursements, as set out in the Eighth Report are hereby approved without the necessity of a formal passing of accounts. The Trustee may pay those accounts from the retainer funds provided to the Trustee by GS E&R Corp. and held in trust by the Trustee (the “**Retainer**”), and any final professional fees and costs of the Trustee to complete the steps authorized or directed under the Enhanced Powers Order and any further Orders of this Court made in the within proceedings.
5. The accounts of the Trustee’s legal counsel, Lawson Lundell LLP, for its fees and disbursements, as set out in the Eighth Report, are hereby approved without the necessity

of a formal assessment of its accounts. The Trustee may pay the accounts of its legal counsel from the Retainer, and any final professional fees and costs of the Trustee's legal counsel to complete the steps authorized or directed under the Enhanced Powers Order and any further Orders of this Court made in the within proceedings.

Discharge of Trustee

6. On the evidence before this Court, the Trustee has satisfied its obligations under and pursuant to the terms of the Proposal and the Orders granted in the within proceedings up to and including the date hereof, including but not limited to the Enhanced Powers Order.
7. After payment by the Trustee of all surplus cash of E&R Canada to Stikeman Elliott LLP in its capacity as counsel to GS E&R Corp., and upon the Trustee filing the Trustee's Discharge Certificate in the form attached hereto as **Schedule "A"** certifying that it has completed the Remaining Activities (as defined in the Eighth Report), MNP shall be discharged as proposal trustee of E&R Canada, provided, however, that notwithstanding its discharge herein:
 - (a) The Trustee shall remain as proposal trustee for the performance of such incidental duties as may be required to complete the administration of the within proceedings; and
 - (b) The Trustee shall continue to have the benefit of the provisions of all Orders made in the within proceedings, including all approvals, protections and stays in favour of the Trustee in its capacity as proposal trustee of E&R Canada.
8. Upon filing the Trustee's Discharge Certificate, MNP shall be discharged as Trustee of E&R Canada, and shall be forever released and discharged from any and all liability, including without limitation any matters that were raised, or which could have been raised, in the within proceedings, that the Trustee now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Trustee while acting in its capacity as proposal trustee in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Trustee. Subject to the foregoing, any claims against the Trustee in connection with

the performance of its duties as proposal trustee, whether before or after the date of this Order, are hereby stayed, extinguished and forever barred.

9. No action or other proceedings shall be commenced against the Trustee in any way arising from or related to its capacity or conduct as proposal trustee of E&R Canada, whether before or after the date of this Order, except with prior leave of this Court on notice to the Trustee, and upon such terms as this Court may direct.
10. This Court hereby requests the aid and recognition of any court or any judicial, regulatory, or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory, or administrative body of any other nation or state, to act in aid of and be complimentary to this Court in carrying out the terms of this Order.

General

11. 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.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"
Trustee's Discharge Certificate

Clerk's Stamp

COURT FILE NUMBER 25-2719774
COURT COURT OF KING'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 **DISCHARGE CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT LAWSON LUNDELL LLP
Barristers and Solicitors
INFORMATION OF PARTY Suite 1100, 225 – 6 Avenue SW
FILING THIS DOCUMENT Calgary, AB T2P 1N2

Attention: Alexis Teasdale
Telephone: (403) 218-7564
Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 38143-154610

RECITALS

1. On March 11, 2021, GS E&R Canada Inc. ("**E&R Canada**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Part III, Division I of the Bankruptcy and Insolvency Act (the "**BIA**") and MNP Ltd. ("**MNP**") consented to act as trustee under the NOI (in such capacity, the "**Trustee**").
2. Pursuant to an Order of the Court pronounced August 16, 2021 (the "**Enhanced Powers Order**"), the Trustee's powers were enhanced to include the power to, among other things, deal with any surplus cash remaining in E&R Canada after implementation of its proposal to its creditors.

3. On August 17, 2021, E&R Canada filed a proposal to its creditors (the “**Proposal**”), which was approved by the required majority of creditors at the meeting of creditors held to consider the Proposal on September 7, 2021. The Proposal was approved by the Court pursuant to the Approval Order pronounced by the Honourable Justice C. M. Jones on September 17, 2021.

4. Pursuant to an Order of the Court pronounced on March 29, 2023, MNP was discharged as Trustee, effective upon MNP filing with the Court a certificate confirming that all matters to be attended to in connection with the completion of the administration of E&R Canada’s proposal proceedings, or in connection with the Enhanced Powers Order and any other Orders of this Honourable Court in these proceedings, have been completed to the satisfaction of the Trustee (the “**Remaining Activities**”), as set out in the Trustee’s Eighth Report to the Court dated March 20, 2023, (the “**Eighth Report**”), provided, however, that, notwithstanding its discharge: (a) MNP will remain Trustee for such incidental duties as may be required for the performance of the Remaining Activities, and (b) MNP, in its capacity as Trustee, will continue to have the benefit of the provisions of all Orders made in this proceeding including all approvals, protections and stays of proceedings in favour of MNP, in its capacity as the Trustee.

THE TRUSTEE CERTIFIES the following:

1. The Trustee has paid all amounts required to be paid pursuant to the Proposal and which it was authorized to pay by the Enhanced Powers Order; and

2. The Trustee is satisfied that all Remaining Activities have been completed to the satisfaction of the Trustee.

THIS CERTIFICATE was delivered by the Trustee on _____, 2023

MNP. Ltd., solely in its capacity as the Trustee under the Proposal of GS E&R Canada Inc., and not in its corporate or personal capacity or in any other capacity.

Per: _____