

COURT FILE NUMBER KBG-SA-00151-2022

**COURT OF KING'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE SASKATOON

**IN THE MATTER OF THE RECEIVERSHIP OF
ABBEY RESOURCES CORP.**

**BRIEF OF LAW ON BEHALF OF THE RECEIVER, MNP LTD.
(Filed in support of an application scheduled to be heard by the Honourable Mr. Justice
G.A. Meschishnick on October 11, 2022)**

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I. INTRODUCTION

1. Since the last application, the Receiver's¹ work has focused on advancing the Liquidation Process. More specifically:

- (a) the auction of Abbey's Surplus Assets approved by the Court on August 31, 2022 has been scheduled for October 18, 2022; and
- (b) the Receiver has developed a SSP for the sale of the Abbey's Natural Gas Assets, which is the focus of the present application.

2. As discussed in more detail below, the SSP:

- (a) was developed in consultation with not only the Receiver's industry consultant, Sayer, but also key stakeholders, such as CTK, the MER and the Minister of Indigenous Services, represented by Indian Oil and Gas Canada (the "IOGC");
- (b) clearly identifies the:
 - (i) procedural, regulatory, and statutory requirements with which participants must comply to successfully conclude a transaction;
 - (ii) deadlines for receiving bids; and
 - (iii) procedure for approving the successful bid(s);
- (c) allows the Receiver and any other interested person to seek clarification, advice, or directions as needed regarding the interpretation or application of the SSP and their responsibilities pursuant to the same; and
- (d) contemplates a flexible, competitive bidding process.

¹ Capitalized terms not otherwise defined in this Brief of Law have the meaning ascribed to them in the draft order and the third report of the receiver dated October 6, 2022 (the "Third Report").

3. The resulting SSP therefore, in the Receiver's respectful submission, satisfies the legal test set out in *CCM Master Qualified Fund v blutip Power Technologies*.²

II. FACTS

4. The relevant facts are set out in the Third Report.

III. ISSUES

5. This Brief of Law addresses whether the sales process described in the SSP should be approved.

IV. DISCUSSION

A. The CCM Factors

6. In determining whether a transaction entered into by a receiver should be approved, the courts consider the well-known factors established by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp*,³ which are:

- (a) whether the receiver made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and integrity of the process by which the offers were obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of the parties.⁴

(collectively, the "*Soundair Factors*")

² 2012 ONSC 1750, 90 CBR (5th) 74 [*CCM*].

³ 1991 CarswellOnt 205, [1991] OJ No 1137 (ON CA) [*Soundair*].

⁴ *Ibid.* at para 16.

7. In *CCM*, Justice Brown suggested that the *Soundair* Factors should be rephrased as follows when considering the approval of a receiver’s proposed marketing and sales process:

- (a) the fairness, transparency, and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁵

(collectively, the “*CCM Factors*”)

8. Chief Justice Morawetz of the Ontario Superior Court recently affirmed the application of the *CCM Factors* “[w]hen reviewing a sales and marketing process proposed by a receiver” in *Ontario Securities Commission v Bridging Finance Inc.*⁶

B. Application

9. A consideration of the *CCM Factors* favours approving the SSP for the following reasons:

- (a) **Stakeholder Consideration/Consultation**: The SSP was carefully drafted to ensure that the interests of all stakeholders were considered. Counsel to the MER, IOGC, and CTK were instrumental in ensuring that the SSP complies with the various statutory requirements contained in the *OGCA*, *PA*, and *IOGR*.⁷ Similarly, the SSP affords each lease holder the opportunity to actively engage with Potential Bidders as to the terms of any proposed assignment of Abbey’s existing surface leases or, alternatively, a new surface lease.⁸

⁵ *CCM* at para 6.

⁶ 2021 ONSC 5338 at paras 7 to 8 [*Bridging Finance*].

⁷ Third Report at para 12.

⁸ See (for example): the Conditions Precedent contained in sections 6(b)(i)-(iii) of the SSP.

(b) **Transparency and Fairness:** The SSP is transparent and fair for, among others, the following reasons:

- (i) it calls for a robust marketing process, with the Receiver and the Marketing Agent directly marketing to Prospective Bidders likely interested and capable of closing such a transaction⁹ and publishing advertisements in industry-specific reports and bulletins;¹⁰
- (ii) following the marketing and solicitation process, each Potential Bidder is given access to the Data Room in order to make an informed commercial decision as to whether they wish to pursue a Transaction. To ensure the integrity of the process, each Potential Bidder must sign a Confidentiality and Non-Disclosure Agreement prior to accessing the Data Room;¹¹
- (iii) the Receiver retains the discretion to, for example, waive strict compliance with bid deadlines,¹² in order to facilitate unique circumstances that arise in the course of the process;
- (iv) the SSP clearly articulates the bid and approval processes, and identifies the MER and IOGC's statutory requirements; and
- (v) the Receiver or any other interested Person may apply to the Court during the SSP if there is a disagreement or clarification is required with respect to the interpretation and application of the SSP.¹³

(c) **Best Interests of the Stakeholders:** The approval of the SSP is in the best interests of Abbey's stakeholders because it presents an opportunity to reduce the end of life obligations associated with the Natural Gas Assets, while also giving the surface

⁹ See: SSP at para 12.

¹⁰ See: SSP at para 13(a).

¹¹ See: para 16 of the SSP.

¹² See (for example): paras 20, 23, 24 and 36 of the SSP.

¹³ See: para 9 of the SSP.

leaseholders and rural municipalities an opportunity to secure a future income stream from a new, prudent operator.¹⁴

(d) **Commercial Efficacy**: In the Receiver's view, the SSP optimizes the likelihood of an efficient sale because:

(i) the Marketing Agent has a proven track record with Receiver in similar engagements;¹⁵

(ii) the SSP contemplates two bid phases.¹⁶ These two phases afford the Receiver and Marketing Agent an opportunity to ensure that the process is running effectively and focus their resources on serious, competitive bids; and

(iii) due to the unique nature of the Natural Gas Assets, the Receiver has the ability to enter into multiple Transactions with various Potential Bidders. For example, the SSP allows the Receiver to sell Natural Gas Assets located on CTK's lands to one Potential Bidder while concurrently entering into a Transaction with a different Potential Bidder(s) with respect to Natural Gas Assets located elsewhere in the Province.¹⁷

10. In *Bridging Finance*, Chief Justice Morawetz approved a receiver-proposed sales process for reasons similar to the foregoing:

[9] At paragraph [8] of the factum, counsel for the Receiver details the reasons why the proposed SISP satisfies the test set out in *CCM*. Specific reference is made to the marketing process, the two-phase process, the proposed timing of the SISP, the flexibility of the SISP, the discretion of the Receiver, the fact that borrowers are protected and that the Receiver, in its business judgement, is of the view that the proposed SISP represents the best option in the circumstances to maximize the value of the Business and Property of Bridging.

[10] In my view, the test as outlined in *CCM* has been satisfied.

¹⁴ See: page 2 of Appendix B to the Third Report.

¹⁵ Second report of the receiver dated August 26, 2022 at para 26.

¹⁶ See (for example): paras 21 and 25 of the SSP.

¹⁷ See: paras 26 and 27 of the SSP.

11. The Receiver therefore submits that a consideration of the *CCM* Factors weighs in favour of approving the SSP.

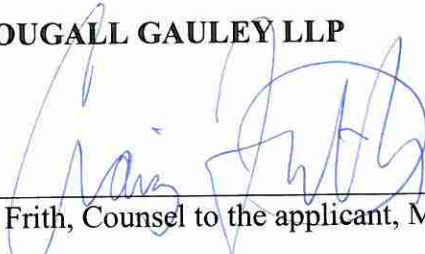
V. CONCLUSION

12. For the reasons stated in this Brief of Law, the Receiver respectfully requests that the requested relief be granted in the form of the Draft Order filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of October, 2022.

McDOUGALL GAULEY LLP

Per:



Craig Frith, Counsel to the applicant, MNP Ltd.

VI. AUTHORITIES

TABLE OF AUTHORITIES (in accordance with Rule 13-38.1 of <i>The Queen's Bench Rules</i>)		
LEGISLATION/JURISPRUDENCE	SECTIONS/PARAGRAPHS RELIED ON	LEGAL PRINCIPLES
<i>Royal Bank of Canada v Soundair Corp.</i> , 1991 CarswellOnt 205, [1991] OJ No 1137 (ON CA)	Paragraph 16	Establishing the legal test to determine if a Receiver acted properly in entering into a transaction.
<i>CCM Master Qualified Fund v blutip Power Technologies</i> , 2012 ONSC 1750, 90 CBR (5 th) 74	Paragraph 6	Establishes the test to approve a Receiver recommended sales process, applying the principles of <i>Soundair</i> .
<i>Ontario Securities Commission v Bridging</i> 2021 ONSC 5338	Paragraphs 7 to 8 Paragraphs 9 to 10	Confirming the application of the <i>CCM</i> Factors and the <i>Soundair</i> principles to sales process approvals. An analogous situation where the court applied the <i>CCM</i> Factors and granted a sales process for similar reasons to those being advanced by the Receiver.

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