

COURT FILE NUMBER QBG-SA-00151-2022

**COURT OF QUEEN'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 August 31, 2022)**

McDougall Gauley LLP
500-616 Main Street
Saskatoon, Saskatchewan S7H 0J6

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I. INTRODUCTION

1. It has been approximately one year since Abbey¹ was granted the initial order under the CCAA.² Abbey's ability to continue its operations (much less restructure) was far from certain after the MER issued MRO 14/22 on January 24, 2022 which suspended certain Abbey natural gas pipelines and well licenses. This issue remained unresolved when MNP was appointed as the Receiver on February 28, 2022.

2. Since that time, the Receiver acted in earnest to address the MER's concerns that gave rise to MRO 14/22. These efforts included, but were not limited to:

- (a) engaging and working with SAML to ensure Abbey's day-to-day business operations were carried out in a prudent manner and in accordance with the applicable regulations and standards;
- (b) engaging SolutionsCorp to complete the Technical Assessment; and
- (c) acting on the information and recommendations contained in the Technical Assessment to remedy the underlying problems identified therein.

3. The Receiver and its professional advisors have worked in consultation with the MER throughout, and MRO 14/22 was rescinded on June 1, 2022.

¹ Capitalized terms not otherwise defined in this Brief of Law have the meaning ascribed to them in the draft order and the second report of the receiver dated August ____, 2022 (the "Second Report").

² The initial order was granted by the Honourable Mr. Justice G.A. Meschishnick on August 13, 2021.

4. The Receiver intends to liquidate Abbey's assets now that its natural gas infrastructure has been determined to be saleable.³ The proposed liquidation process will be conducted in two phases (the "**Liquidation Process**"). The Surplus Assets will be sold in the first phase of the Liquidation Process⁴ and the natural gas Assets will be sold in the second phase.⁵

5. The thrust of this application concerns phase one of the Liquidation Process and, in particular, the approval of an Auction process for Abbey's Surplus Assets to be conducted by Ritchie Bros.; however, the Receiver is also requesting Court approval of its execution of the Sayer Engagement Letter for the purposes of conceptualizing and conducting the sales process for phase two of the Liquidation Process.

6. As discussed in more detail below, the Receiver is authorized by the Receivership Order to both market and sell Abbey's Property and engage professional consultants to assist the Receiver with the exercise of these powers and duties. The process by which Ritchie Bros. was chosen was fair and transparent, and the Receiver has experience to draw upon in recommending Sayer as a leading firm with the expertise and reach to assist the Receiver with the marketing and sale of Abbey's natural gas assets. Ritchie Bros. and Sayer are well-known in their respective fields and the requisite legal tests for Court approval have, in the Receiver's respectful submission, been met.

II. FACTS

7. The relevant facts are set out in the Second Report and Confidential Supplement.

III. ISSUES

8. This Brief of Law addresses the following issues:

³ Second Report at para ____.

⁴ Second Report at para ____.

⁵ Second Report at para ____.

- (a) Should the Ritchie Bros. Contract be approved so that the Surplus Assets can be sold at Auction?
- (b) Should the Receiver's engagement of Sayer be approved for the purpose of preparing and facilitating a sales process with respect to the natural gas Assets?
- (c) Should the Second Confidential Supplement be sealed?

IV. DISCUSSION

A. The Retention of Ritchie Bros. and the Auction Should Be Approved

9. The Court's approval of a receiver's sales process for the debtor's assets is distinct from the approval of a sale of the debtor's assets. Nevertheless, the considerations for approving each are based on the well-known factors articulated in the Ontario Court of Appeal's decision in *Royal Bank of Canada Soundair Corp.*,⁶ 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.⁷

10. In *CCM Master Qualified Fund v blutip Power Technologies*,⁸ Justice Brown proposed that, for the purposes of considering the approval of a receiver's sales and marketing process, the *Soundair* test ought to be rephrased. In the result, on such applications, the Court considers:

- (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

⁶ 1991 CarswellOnt 205, [1991] OJ No 1137 (ON CA) [*Soundair*].

⁷ *Ibid.* at para 16.

⁸ 2012 ONSC 1750, 90 CBR (5th) 74 [*CCM*].

- (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.⁹

(collectively, the “*CCM Factors*”)

11. 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.*¹⁰

12. The Receiver submits that a consideration of the *CCM Factors* favour approving the Ritchie Bros. Contract and Auction for the following reasons:

- (a) the auctions process is easily understood and open to the public at large;
- (b) in the Receiver’s experience, auctions are an efficient and effective way to liquidate movables (such the Surplus Assets);¹¹
- (c) the longstanding listing of the surplus field assets failed to generate significant offers, and there is no basis to presume that a further listing of the Surplus Assets as a whole will yield a better result; and
- (d) the Receiver ran a robust, fair, and transparent RFP process to solicit competitive responses from reputable auctioneers.¹²

13. For these reasons, the Ritchie Bros. Contract represents the best opportunity for the Receiver to maximize the net proceeds from the sale of the Surplus Assets.¹³ In the absence of evidence suggesting the Receiver has acted improvidently, the Receiver’s recommendation is ordinarily afforded deference.¹⁴

⁹ *Ibid.* at para 6.

¹⁰ 2021 ONSC 5338 at paras 7 to 8.

¹¹ Second Report at para ____.

¹² Second Report at para ____.

¹³ Confidential Supplement at para ____.

¹⁴ *Soundair*, *supra* note 6 at para 21.

B. The Engagement of Sayer Should Be Approved

14. The Receiver has gone to great lengths to address the MER's pre-receivership concerns and ensure that Abbey's natural gas assets can be sold to a prudent operator (or operators).¹⁵ That work is now largely complete; however, the sale process for Abbey's natural gas assets is a work in progress, such that the Receiver is only seeking to approve its retention of Sayer on the terms set out in the Sayer Engagement Letter at this time.

15. The Receivership Order permits the Receiver to engage consultants to assist with carrying out its powers and duties.¹⁶ The Canadian energy industry is heavily regulated and complex. The Receiver is of the view that, in order to maximize the recovery from a sale of Abbey's natural gas assets, the Receiver should engage an industry consultant, and Sayer is the chosen candidate.

16. In *Colossus Minerals Inc. (Re)*,¹⁷ the debtor company successfully applied to the Court for the approval of an engagement letter that it entered into with a financial advisor, Dundee Securities Limited ("**Dundee**").¹⁸ The terms and circumstances under which Dundee was engaged in *Colossus* are analogous to those set out in the Sayer Engagement Letter, namely:

- (a) the purpose of both engagements was to facilitate a sales process of the debtor companies' assets;¹⁹
- (b) the subject assets in both cases were unique and industry specific (i.e gas well licenses and securities); and
- (c) both engagements contemplated a success fee.²⁰

17. Most importantly, the Receiver has engaged Sayer in other proceeding to facilitate the sale of oil and natural gas assets, and respectfully submits that the terms of the Sayer Engagement

¹⁵ Second Report at paras _____.

¹⁶ See Sections 3(d) and (k) of the Receivership Order.

¹⁷ 2014 ONSC 514.

¹⁸ *Ibid*, at para 28.

¹⁹ *Ibid*.

²⁰ *Ibid*, at para 29.

Letter are commercially reasonable and competitive based on its past experience.²¹ Approval is therefore being recommended on this basis.

C. The Sealing Order Is Necessary

18. The legal test that the Court must apply in determining whether to grant a sealing order was revised by the Supreme Court of Canada in *Sherman Estate v Donovan*,²² where it has held that, in order to rebut the general open-Court presumption, an applicant must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought by an applicant is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.²³

19. Chief Justice Morawetz of the Ontario Superior Court applied the *Sherman Estate* test in *Ontario Securities Commission v Bridging Finance Inc.*²⁴ and held that a sealing order was warranted where an application was made to seal commercially sensitive information regarding a receiver's proposed sales process.²⁵

20. In this case, the Receiver is requesting a sealing order with respect to the following information:

- (a) the Technical Assessment produced by SolutionsCorp;
- (b) commercially sensitive information including the Receiver's analysis of the responses to its RFP; and

²¹ Second Report at para _____.

²² 2021 SCC 25, 458 DLR (4th) 361 [*Sherman Estate*].

²³ *Ibid*, at para 38.

²⁴ 2021 ONSC 4347 [*Bridging*].

²⁵ *Ibid*, at paras 25 to 26.

- (c) commercially sensitive terms contained in both the Ritchie Bros. Contract and the Sayer Engagement Letter.

(collectively, the “**Confidential Information**”).

21. The Receiver submits that it has satisfied the test laid out in *Sherman Estate* and that is appropriate to grant the sealing order for the following reasons:

- (a) the Receiver does not have SolutionCorp’s authorization to publicly disclose the Technical Assessment at this time;
- (b) the Courts have accepted that there is a public interest in preserving the integrity of the Confidential Information as it relates to a proposed sales process;²⁶
- (c) it is necessary to seal the Confidential Supplement because there is no alternative method by which the Confidential Information can be introduced into evidence before the Court without exposing the Confidential Information to the deleterious effects associated with public exposure;
- (d) the Receiver has taken steps to minimize the intrusion on the open-Court principle by appending redacted copies of the Ritchie Bros. Contract and the Sayer Engagement Letter to Second Report (which is publicly available); and
- (e) any interested party may apply to Court to unseal the Confidential Supplement in the event it feels prejudiced by the sealing order.

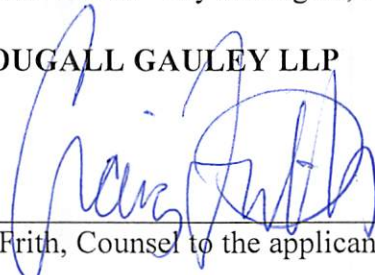
V. **CONCLUSION**

22. 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 26th day of August, 2022.

McDOUGALL GAULEY LLP

Per:



Craig Frith, Counsel to the applicant, MNP Ltd.

²⁶ See, for example, *Bridging*.

VI. AUTHORITIES

<p style="text-align: center;">TABLE OF AUTHORITIES (in accordance with Rule 13-38.1 of <i>The Queen's Bench Rules</i>)</p>		
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 Paragraph 21	Establishing the legal test to determine if a Receiver acted properly in entering into a transaction. Stating legal principle that court-appointed receivers should be afforded deference with respect to proposed sales.
<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	Confirming the application of the <i>CCM</i> Factors and the <i>Soundair</i> principles to sales process approvals.
<i>Colossus Minerals Inc. (Re)</i> , 2014 ONSC 514	Paragraphs 28 to 29	An example of a situation where the Court approved the engagement of consultant to facilitate a sales process in an insolvency proceeding.
<i>Sherman Estate v Donovan</i> , 2021 SCC 25, 458 DLR (4 th) 361	Paragraph 38	The revised legal test for sealing orders in Canada.
<i>Ontario Securities Commission v Bridging Finance Inc.</i> , 2021 ONSC 4347	Paragraphs 24 to 27	The application of the <i>Sherman Estate</i> test in an insolvency proceeding.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	McDougall Gauley LLP
Lawyers in charge of file:	Ian Sutherland / Craig Frith
Address of firm:	500-616 Main Street, Saskatoon, SK S7H 0J6
Telephone numbers:	306-665-5417 / (306)665-5432
Facsimile number:	306-652-1323
E-mail addresses:	<u>isutherland@mcdougallgauley.com</u> / <u>cfrith@mcdougallgauley.com</u>