

COURT FILE NUMBER 2003-06728

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROMSPEN MORTGAGE LIMITED
PARTNERSHIP AND ROMSPEN
INVESTMENT CORPORATION

DEFENDANTS 3443 ZEN GARDEN LIMITED
PARTNERSHIP, LOT 11 GP LTD., LOT 11
LIMITED PARTNERSHIP, ECO-
INDUSTRIAL BUSINESS PARK INC.,
ABSOLUTE ENERGY RESOURCES INC.,
ABSOLUTE ENVIRONMENTAL WASTE
MANAGEMENT INC., AND DANIEL
ALEXANDER WHITE

DOCUMENT **FIRST REPORT OF MNP LTD.
RECEIVER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOENT
Counsel to Receiver

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Receiver

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SCHEDULES

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| Schedule A | Legal description of the Eco Lands and the Lot 11 Lands. |
| Schedule B | Copy of correspondence between the Receiver and Mr. Gamage |
| Schedule C | Copy of emails to Mr. White |
| Schedule D | Interim Statement of Receipts and Disbursements for the Period November 4, 2021 and January 28, 2022 |

INTRODUCTION AND BACKGROUND

1. On November 4, 2021 Lot 11 GP Ltd. ("**LGP**"), Lot 11 Limited Partnership ("**LLP**"), Eco-Industrial Business Park Inc. ("**Eco**"), Absolute Energy Resources Inc. ("**AERI**"), and Absolute Environmental Waste Management Inc. ("**AEWM**") (collectively hereinafter referred to as the "**Companies**") were placed into receivership (the "**Receivership**") by an Order (the "**Receivership Order**") of the Court of Queen's Bench of Alberta (the "**Court**") with MNP Ltd. named as Receiver (the "**Receiver**") over the assets of the Companies (the "**Property**")
2. The Receivership Order was granted pursuant to an application by Romspen Mortgage Limited Partnership and Romspen Investment Corporation (collectively referred to as "**Romspen**"), who hold first-ranking mortgages against the Property and general security agreements against the Companies (the "**Romspen Security**"). Counsel to the Companies consented to the granting of the Receivership Order.
3. The Companies were in the following businesses/assets:
 - a) AEWM is an operating company that operated one of the disposal wells licensed to Eco which is currently not in operations, AEWM does not own any assets;
 - b) Eco is the owner of real estate, legally described in **Schedule A** attached. (the "**Eco Lands**"). Eco is also the licensee of the two disposal wells located on the Eco Lands, has a disposal facility licence and owns all physical assets and equipment located on the Eco Lands. AEWM managed one of the disposal wells known as the 11-17 well (license number W0036962) (the "**11-17 Well**") and Celanese Canada ULC ("**Celanese**") managed the other disposal well known as the 10-17 well (license number W0028527) (the "**10-17 Well**") pursuant to purchase and sale agreement dated August 21, 2007 (the "**Celanese PSA**") (collectively the "**Wells**").
 - c) LGP is the owner certain lands legally described in **Schedule A** (the "**Lot 11 Lands**"). The Lot 11 Lands are adjacent to the Eco Lands (The Eco Lands and the Lot 11 Lands shall hereinafter be referred to collectively as the "**Lands**").
 - d) AERI was established with the intent of purchasing additional lands in or around Lamont, Alberta, however, the purchase of lands did not materialize and AERI does not hold any assets.
 - e) LLP is an Alberta limited partnership, the general partner for which is LGP.
4. In addition to assets described above, the Companies were party to certain ongoing litigation as of

the date of Receivership. Actions against the Companies were stayed by virtue of the provisions of the Receivership Order. The Receiver (through Osler) has conducted a review of various litigation in which any of the Companies are named as Plaintiffs in order to determine if there were urgent steps that required attention. The Receiver will decide in due course whether any of these actions should be pursued.

5. As the Receivership Order was granted on consent, various of its provisions were the subject of negotiations between the parties, with the result that the Receivership Order contained provisions which differed from the standard Alberta template form of Receivership Order. For example, the Receivership Order did not grant the Receiver the authority to market and sell the Property, but instead paragraph 4(k) of the Receivership Order granted the Receiver the authority, no early than three months after the granting of the Receivership Order, to apply for additional power to market and sell the property (on the terms set out in the Receivership Order).
6. This is the Receiver's First Report to Court (the "**Report**").
7. Information on the receivership proceedings can be accessed on the Receiver's website at <https://mnpdebt.ca/en/corporate/corporate-engagements/absolute-et-al>.
8. All amounts included herein are in Canadian dollars unless otherwise stated.

NOTICE TO READER

9. In preparing the Report and making comments herein, the Receiver has relied upon certain unaudited, draft or internal financial information, including the Companies' books and records, and information from other third-party sources (collectively, the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada (the "**Standards**"). Additionally, none of the Receiver's procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the Information in accordance with the Standards, additional matters may come to the Receiver's attention. Accordingly, the Receiver does not express an opinion, nor does it provide any other form of assurance on the financial or other information presented herein. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of the Report.
10. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as

a result of the use of the Report. Any use which any party makes of the Report or any reliance or decision to be made based on the Report is the sole responsibility of such party.

PURPOSE OF THE REPORT

11. The purpose of the Report is to provide this Honourable Court with the Receiver's comments and information in respect of the activities of the Receiver since its appointment on November 4, 2021 and information in respect of an application by the Receiver seeking the following relief:
- a. Approving the reported actions of the Receiver in administering the receivership proceedings;
 - b. Providing the Receiver with the power and authority to market and sell the Property subject to approval by the Court, on the terms set out in the Receivership Order;
 - c. Increasing the Receiver's borrowing limit from \$200,000 to \$700,000;
 - d. Granting a sealing order (the "**Sealing Order**") in relation to the confidential supplement to the Report (the "**Confidential Supplement**"); and
 - e. Compelling Mr. Daniel Alexander White ("**Mr. White**"), the principal of the Companies; to immediately deliver all books and records of the Companies in his possession or control to the Receiver.

Activities of the Receiver

- 12 Since the granting of the Receivership Order, the Receiver has undertaken the following activities:
- a. Secured (where possible) outbuildings and sea-cans on the Lands;
 - b. Contacted the existing security company for the Lands and made arrangements to continue services;
 - c. Contacted management of the Companies in an effort to obtain the books and records of the Companies and information with respect to the Lands;
 - d. Contacted banking institutions to request the bank accounts be frozen and control provided to the Receiver;
 - e. Contacted tenants and made arrangements to either continue or discontinue rental agreements in respect of the Eco Lands;
 - f. Contacted the insurer and arranged to continue the existing policy, reviewed the existing policy for adequacy, and arranged for payment in respect of same to ensure there was no interruption of coverage;
 - g. Made arrangements to place additional insurance coverage for commercial general liability insurance;

- h. Met with representatives of VRL Projects Ltd., (the agent for Celanese on the Lands) to gather information with respect to the ongoing activities of Celanese on the Eco lands regarding the 10-17 Well;
- i. Met with Celanese and its legal counsel regarding the 10-17 Well;
- j. Met with the Alberta Energy Regulator (the "AER");
- k. Retained the services of Sproule Asset Management Limited ("Sproule");
- l. Worked with Sproule to perform work on the Lands to address urgent environmental and safety concerns;
- m. Corresponded with Romspen and its legal counsel;
- n. Corresponded with and met with Receiver's legal counsel, Osler, Hoskin & Harcourt LLP ("Osler");
- o. Reviewed correspondence relating to various lawsuits initiated by and against the Companies, and
- p. Issued the Notice and Statement of Receiver as required under Sections 244 (1) and (2) of the Bankruptcy and Insolvency Act.

SUMMARY OF OPERATIONAL ISSUES

- 6. AEWM was responsible for operating the 11-17 Well that has been non-operational since approximately June 2021.
- 7. At or around the end of June 2021 the 11-17 Well was shut in due to operational issues. AEWM had contracted a service company to attempt to resolve the operational issues, but this attempt failed. As a result, on the date of the Receivership the Companies had no ongoing operations and therefore no revenues were being realized by the Companies since that date.
- 8. Due to the specialized and environmentally sensitive nature of the Wells and associated operations, the Receiver engaged Sproule to, among other things, assist the Receiver with the administration of the Receivership in terms of ensuring that the Wells and the Lands were physically secured, that the 11-17 Well and related equipment was properly winterized, to identify and address any AER regulatory deficiencies and to formulate the steps necessary to assess the viability of restarting operations.
- 9. Immediate actions taken by Sproule upon their engagement by the Receiver were primarily to address concerns with the security of the site and winterizing 11-17 Well and other equipment on the Lands to mitigate risk of an environmental spill or incident arising from freezing temperatures.

10. On January 21, 2022, Sproule issued a report to the Receiver (the "**Sproule Report**") that, in part, summarized observations made by Sproule, described actions taken by Sproule and made recommendations with respect to additional steps to take in respect of the Wells and the Lands.

11. Sproule's observations (in summary) were as follows:
 - a. This was a neglected site with squatters in dilapidated buildings;
 - b. The site has been vandalized;
 - c. Power on site was limited to Celanese activities (with no power to the 11-17 Well or other facilities or equipment);
 - d. Non-compliance with certain AER regulations;
 - e. Active remediation monitoring and mitigation was being conducted by Celanese as required by the Celanese PSA;
 - f. Areas with varying degrees of remediation and reclamation;
 - g. There was a lack of required signage and no functioning emergency response telephone number;
 - h. Facilities and equipment were in disrepair and in need of maintenance including winterization; and
 - i. Disposal tanks on site contained unknown fluids.

12. Sproule has, with the approval of the Receiver, taken the following actions in order to address pressing environmental, safety, and regulatory concerns:
 - a. All tanks, flowlines, and vessels on the 11-17 Well site were thawed, drained, and contents were appropriately disposed of;
 - b. Wellhead valves for wells 10-17 Well and 11-17 Well were greased and "function-checked";
 - c. All valves on the 11-17 Well and associated tanks were chained and locked, with bullplugs inserted in any open piping;
 - d. Security on the site was increased by changing locks on the buildings and gates, where applicable;
 - e. An Emergency Action Plan was implemented complete with a 24-hour call centre telephone number and signage with the Emergency Response Number; and
 - f. Surface Casing Vent Flow tests were conducted and passed for the 10-17 Well and the 11-17 Well.

13. As noted above, as of the date of Receivership, there was (and remains) no power to the 11-17 Well. Given the time of year, this was an immediate concern considering the risk of freezing. However the steps taken by Sproule as outlined above have mitigated that risk negating the need for power to the site at this time.

14. We understand that prior to the 11-17 Well ceasing operations, the disposal facility was used by many customers in the Edmonton area. Given its Class 1 license status that allows for the disposal of a wide range of hazardous chemicals, and due to the limited other options available in the area for customers who require the use of a well of this class, the Receiver is currently investigating whether the 11-17 Well can be repaired and operations can then be safely restarted (in accordance with applicable AER regulations). If operations on the 11-17 Well can be restated, this would increase the value of the Lands, and, in the event of a future sales process, provide certainty to prospective buyers as to the functionality of the 11-17 Well.
15. As mentioned previously, prior to the Receivership the Companies had undertaken certain steps to try to diagnose and fix the issues with the 11-17 Well in order to restart operations. In the summer of 2021 the Companies engaged third party professionals who attempted to diagnose and repair the issues of injectivity through various tests and operations, such as fracking. The Receiver understands that the measures taken by these contractors in the summer of 2021 were not successful in getting the 11-17 Well to a point where it could be again used for chemical disposal. The third parties that had been engaged have been cooperative in providing the Receiver with information outlining the various steps which were taken by them and results of their work, despite the fact that they were not paid by the Companies for their services.
16. The Sproule Report also outlines an action plan to further assess the issues surrounding the injectivity into the 11-17 Well which includes potential further testing (e.g., packer isolation tests, injectivity tests, etc.), determining costs to diagnose and repair issues to satisfy compliance in accordance with the regulations, and evaluating the 11-17 Well for stimulation (if operations are to be restarted). The Sproule Report provides estimated costs to perform the various tests and related activities (which is dependent on the results of testing).
17. In addition to Sproule restricting distribution of the Sproule Report and the Sproule report containing information that is confidential in nature that could negatively affect a sales process if the Sproule Report was made public the Sproule Report has not been attached to the Report. The Sproule Report is therefore attached as Schedule A to the Confidential Addendum to the Receiver's First Report (the "**Confidential Supplement**"). We would recommend that the Confidential Report be sealed until 30 days following the sale of all of the Property has closed or upon a further order of the Court.
18. It is the intention of the Receiver to undertake tests, as required to maintain the licenses as outlined in the Sproule Report in the spring once the weather has improved to a point where it is possible to do so.

RECEIVER'S SALE POWERS AND ASSET REALIZATION STRATEGY

19. Paragraph 4 (k) of the Receivership Order provides (in part) that the Receiver may, no earlier than three months from the date of the granting of the Receivership Order, apply to the Court for the additional power to:
- i. Market any or all the Property (as defined in the Receivership Order) including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and,
 - ii. Sell, convey, transfer, lease or assign the Property or any parts or parts thereof out of the ordinary course of business (with transactions limits as defined in the Receivership Order).
20. In addition, the Receiver has had meetings with the AER who has provided the Receiver with correspondence outlining compliance issues identified in respect of the Well licenses held by Eco. The AER has provided the Receiver with a draft form of regulatory order, the issuance of which appears imminent, which would require the Receiver to take certain steps in respect of the Well licenses, including, if possible, undertaking a sale of the Property in order to convey/transfer the licenses to a third party in order to avoid further regulatory measures being imposed on the Receiver. The AER has advised the Receiver that such further regulatory measures could include a requirement that the Wells and Lands be abandoned and reclaimed.
21. The AER has advised that upon issuance of the compliance order (which the Receiver anticipates receiving in the near future) that they would impose a 90-day time limit for compliance with the order.
22. The Receiver continues to work with the AER to ensure regulatory compliance and to come to a mutually beneficial agreement that provides for the preservation and maximization of value for the benefit of the Receivership while also ensuring protection of the public interest satisfactory to the AER.
23. There also is approximately \$2.2 million owed to the City of Edmonton in relation to outstanding property taxes for the Eco Lands and the Lot 11 Lands. The Receiver has notified the City of Edmonton of the Receivership.
24. Based on the foregoing, the Receiver believes the authority to conduct a sales process in respect of the assets of the Companies is in the best interest of the Receivership and all other stakeholders and

is therefore respectfully seeking approval of the Court for same in accordance with paragraph 4(k) of the Receivership Order.

ACCESS TO BOOKS AND RECORDS

25. Prior to being appointed Receiver, MNP Ltd. monitored the financial affairs of the Companies as interim monitor ("**Interim Monitor**") engaged by Romspen pursuant to the April 2, 2020 Order of this Court granted in the within action. In the later stages of the course of that engagement, the Interim Monitor primarily dealt with Mr. David Gamage ("**Mr. Gamage**"), an agent of Symmetry Asset Management Inc. ("**Symmetry**") (a company related to the Companies, and also controlled by Mr. White) who was the primary contact for the provision of information to the Interim Monitor on behalf of the Companies. Mr. Gamage advised that Symmetry provided all management services to AEWM. Mr. Gamage remained the primary point of contact for the Companies up to the date of the Receivership Order.
26. Upon being appointed, the Receiver contacted Mr. Gamage to confirm the whereabouts of the book and records of the Companies that the Receiver required to administer the Receivership estate.
27. While Mr. Gamage provided the Receiver with some preliminary information, such as site contacts and login information for the relevant AER reporting software, Mr. Gamage advised the Receiver on November 22, 2021, that he was no longer employed by Symmetry as his position was terminated due to the Receivership. Mr. Gamage advised the Receiver to contact Mr. White to discuss matters related to the Receivership including retrieval of the book and records of the Companies. A copy of the correspondence between Mr. Gamage and the Receiver is attached hereto as **Schedule B**.
28. The Receiver emailed Mr. White, to the email address provided by Romspen's legal counsel with a copy to Mr. White's legal counsel, on November 26, 2021, and again on December 8, 2021 in respect of the Receivership to advise of Receiver's need to retrieve the books and records of the Companies and Mr. White's obligations to cooperate with the Receiver as provided under paragraphs 5, 6, and 7 of the Receivership Order. Copies of the emails to Mr. White are attached as **Schedule C**.
29. To date, the Receiver has not since the date of the Receivership Order had any communications from Mr. White, and he has failed to respond to the Receiver's email requests to provide the Companies' books and records.
30. The Receiver requires the books and records of the Companies to administer the Receivership properly and efficiently. One particular and time sensitive issue surrounds the ability of the Receiver to acquire pollution insurance on the Lands, which becomes even more critical if a decision is made

to restart operations in the coming months. The Receiver is unable to provide the information required by the insurance companies to allow them to consider placing pollution coverage.

31. In addition, the Receiver understands that AEWB had employees in 2021 up to the date that operations ceased. The Receiver does not know if the employees have been paid or whether Records of Employment and T4's have been issued for the 2021 taxation year.
32. Prior to the Receiver's appointment, the Receiver (in its capacity as Interim Monitor) was advised by Mr. Gamage that Symmetry maintained control of the Companies in its capacity as "asset manager" and is believed to also be in possession of the relevant books and records. Mr. White, as the controlling mind behind the Companies and of Symmetry, has a duty under the Receivership Order to cooperate with the Receiver insofar as confirming the whereabouts of the books and records and providing access to same or providing the contact information of any third party who is in possession of the books and records.
33. Based on the above, the Receiver is hereby requesting an order of the Court to compel Mr. White to provide the Receiver by February 15, 2022 with the location of the books and records of the Companies as well as contact information for those who have possession and control of the books and records of the Companies, should they not be in Mr. White's direct possession.

FUNDING OF THE RECEIVERSHIP

34. In accordance with the Receivership Order, the Receiver was authorized to borrow funds up to \$200,000 to administer the Receivership. To date, the Receiver has borrowed the full amount authorized by the Receivership Order.
35. As evidenced in the Sproule Report (more particularly set out in the Confidential Addendum), costs to further explore the repair and potential rectification of the injectivity issues with the 11-17 well are significant not including the potential of restarting operations should it be determined that restarting operations would maximize the value of the Property.
36. The Receiver is seeking to increase the borrowing power afforded under the Receivership Order from \$200,000 to \$700,000 so that adequate funding will be available if the decision is made, and all conditions are met, to restart operations in the coming months. Given the lack of revenue and otherwise limited cash resources in the Companies, the increase in borrowing power is also necessary to ensure the proper administration of the Receivership.
37. Romspen is in support of the Receiver's intention to increase the borrowing limit.

SECURED AND PRIORITY CREDITORS

38. Osler has reviewed the Romspen security and rendered an opinion that, subject to customary assumptions and qualifications, the Romspen Security constitutes a valid and enforceable first charge in respect of Property.
39. As of the date of Receivership, Romspen was owed approximately \$81,693,000. This amount does not take into account additional costs for interest and professional fees that will have accrued since that time.

City of Edmonton

40. As previously noted, property taxes owed to the City of Edmonton on each of the Eco Lands and Lot 11 Lands are significantly in arrears. Based on November 24, 2021 property tax searches provided by the City of Edmonton, the total outstanding property taxes is approximately \$2.2 million.

Other Priority Creditors

41. As of the date of the First Report, Canada Revenue Agency has not filed claims to the Receivership, nor have they yet requested access to the Companies' books and records so that a trust audit on the payroll and Goods and Services Tax accounts of the Companies could be performed. In the circumstances, the Receiver would not be able to comply with such a request given the lack of books and records it has been able to retrieve to date.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

42. Attached as **Schedule D** is a copy of the Receiver's Interim Statement of Receipts and Disbursements to January 28, 2022

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CONCLUSION

43. Based upon the foregoing the Receiver respectfully seeks the Court's approval for the following:

- a. Approval of the reported actions of the Receiver in administering the receivership proceedings;
- b. Extension of the Receiver's powers to allow it to market and sell the Property subject to Court approval;
- c. Sealing of the Confidential Supplement until 30 days following the closing of the sale of all of the Property or upon a further order of the Court;
- i) Increase the Receiver's borrowing powers under the Receiver's Certificate from \$200,000 to \$700,00; and
- a. Compel Mr. White to provide the Companies' books and records within 14 days from the issuance of this Order.

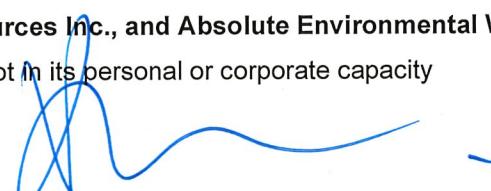
All of which is respectfully submitted this 31st day of January 2022.

MNP Ltd.

In its sole capacity as Receiver of

Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc.

And not in its personal or corporate capacity



Victor P. Kroeger CPA, CA, LIT, CIRP, CFE
Senior Vice President