

COURT FILE NUMBER 1601-03126

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) CALLIDUS CAPITAL CORPORATION

DEFENDANT(S) ALKEN BASIN DRILLING LTD.

DOCUMENT **SUPPLEMENTARY REPORT TO THE RECEIVER'S THIRD REPORT TO COURT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Gowling WLG (Canada) LLP
Suite 1600
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Attention: Tom Cumming

INTRODUCTION

1. MNP Ltd. was appointed Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings, and properties (the "**Property**") of Alken Basin Drilling Ltd. ("**Alken**") in accordance with an order of the Court of Queen's Bench of Alberta (the "**Court**") pronounced on April 1, 2016 (which order, as subsequently amended by the Amended and Restated Receivership Order issued by the Court, is referred to as the "**Receivership Order**").
2. Prior to its appointment as Receiver, MNP Ltd. had been engaged by Alken as an advisor (in such capacity, the "**Advisor**") to conduct an *en bloc* sales process of the Property (the "**Sales Process**"). In accordance with the Receivership Order, the

Receiver was authorized to continue with the Sales Process initiated prior to its appointment by the Court.

3. On May 9, 2017, Gowling WLG (Canada) LLP ("**Gowling WLG**"), the Receiver's counsel, filed an application in support of an order discharging the Receiver. The application was originally scheduled to be heard on May 19, 2017, but was adjourned to July 13, 2017. The Receiver filed the Third Report of the Receiver, dated May 9, 2017 (the "**Third Report**") in support of the Application.

PURPOSE OF REPORT

4. The purpose of this supplementary report to the Third Report of the Receiver (the "**Supplementary Report**") is to update the Court on developments occurring subsequent to the filing of the Third Report, particularly relating to the exchange of correspondence between legal counsel for Mr. Kevin Baumann ("**Baumann**"), Alken's former President, and the Receiver's counsel, as detailed below.

RESPONDING TO BAUMANN'S COMPLAINTS

5. The Third Report references correspondence exchanged between Baumann and the Receiver. It also references complaints filed by Baumann with the Office of the Superintendent of Bankruptcy and Alberta Ombudsman.
6. Baumann's email correspondence of May 8, 2017 (the "**May 8th Email**") was attached as an appendix to the Third Report, with the Receiver advising the Court it would provide its response to Mr. Baumann's May 8th Email in a Supplemental Report, to be filed with this Honourable Court. The May 8th Email was directed, in part, to the conduct of Callidus Capital Corporation ("**Callidus**") and Range Advisors (advisors to Alken). The balance of the email relates to:
 - a. the Receiver's decision to limit the disclosure of two memoranda of agreement (each, an "**MOA**", and collectively, the "**MOAs**") providing for the retention by Alken of a Middle Eastern consultant to assist Alken in being retained by Egyptian governmental authorities to drill wells in Egypt, to

those parties who had signed Confidentiality Agreements to “only the final bidding parties”; and

- b. the inclusion of two matters in which Alken is a plaintiff in the sale of assets to Altair Water and Drilling Services Ltd. (“**Altair**”).

7. After filing the Third Report, MacDonald Hanley, counsel to Baumann, directed a letter, dated May 11, 2017 (the “**MacDonald Hanley Correspondence**”), to Gowling WLG, and Lawson Lundell LLP, Callidus’ legal counsel, a copy of which is attached hereto as **Appendix “A”**. In this letter, MacDonald Hanley:

- a. requests certain documentation from the Receiver and Callidus, including further information relating to the MOAs;
- b. in relation to the Receiver, seeks additional information relating to the Receiver’s decision to permit Range Advisors to distribute the Information Summary to prospective purchasers; and
- c. reiterates Baumann’s questioning of the Receiver’s decision to not to disclose the MOAs to all prospective persons to whom marketing material was sent in the Sale Process, as opposed to only those that signed Confidentiality Agreements.

8. On May 30, 2017, Gowling WLG responded to the MacDonald Hanley Correspondence, a copy of which is attached hereto as **Appendix “B”**. Gowling WLG responded by noting, *inter alia*:

- a. the Receivership Order limits the Receiver’s powers to marketing and selling Alken’s property and applying to the Court for an approval and vesting order. Paragraph 3 of the Receivership Order further stipulated that the Receiver was not appointed as manager and was not to take possession or control of Alken’s property, operate Alken’s business, or employ any of Alken’s employees. Given this limited mandate, the Receiver only obtained the information relating to Alken that was necessary in order to permit it to

perform its duties under the Receivership Order, and accordingly, does not have, and never has had, possession of much of the information requested;

- b. the Receiver is not able to release certain of the documents as they are confidential to Altair;
- c. with respect to the MOAs, the Receiver would be acting improperly if it disclosed confidential information to parties participating in a sales process who had not signed a confidentiality agreement;
- d. Alken's assets, including the MOAs, were appropriately and broadly marketed by the Receiver during the Sales Process and the purchase and sale transaction with Altair was approved by the Court in the Approval and Vesting Order;
- e. Range Advisors' distribution of the Information Summary to its data base formed part of the Sales Process approved by the Court, and was in addition to the Receiver's own fulsome marketing of Alken's property, as detailed in the Receiver's Pre-Filing, dated March 23, 2017 and First Report, dated April 26, 2017 (the "**First Report**"); and
- f. the Receiver's July 13, 2017 application to Court of a discharge order.

9. Other than serving and filing the affidavit and brief of Baumann referred to in paragraph 10 below on Gowling WLG at 7:10 pm on July 11, 2017, MacDonald Hanley did not respond to Gowling WLG's May 30th, 2017 correspondence.

Baumann's Affidavit

10. On the evening of Tuesday July 11, 2017, Baumann swore and, through his legal counsel, served an affidavit (the "**Baumann Affidavit**") in support of an Order requiring the Receiver to provide assistance in the provision of information to Baumann relating to Alken, in support of Baumann's defence to an action by Callidus on a guarantee provided by Baumann to Callidus, and to investigate "the

circumstances surrounding the failure to disclose the MOU, and it [sic] impact on the authenticity of the sale process”.¹

11. The Receiver has reviewed the Baumann Affidavit and makes the following comments as a means of clarifying certain facts as it pertains to the receivership:

a. At paragraph 21, Baumann states that he was contacted by “several individuals” interested in purchasing Alken’s assets in 2015. The Receiver notes that at no time did Baumann disclose these individuals to the Receiver, or make the Receiver aware that he knew of parties interested in purchasing Alken’s assets.

b. At paragraph 22, Baumann states that:

“Despite my demands to liquidate, Sinclair elected to continue to operate the corporation and did so until April 2016, when Callidus applied to appoint MNP as Receiver.”

As noted above, the Receiver’s mandate was limited to carrying on the Sales Process;

c. At paragraph 23, Baumann states:

“Having reviewed the Receiver’s first report on this matter, it is apparent that MNP relied on Sinclair’s assertions that he had marketed the assets of the company to his buyer’s list.”

The response of the Receiver’s counsel dated May 30, 2017 is discussed at paragraph 8 above, and clarifies that Sinclair’s efforts were supplementary to the Receiver’s;

d. At paragraph 24, Baumann states that:

“It subsequently became apparent that the purchaser of the assets is a company owned by Callidus and, at least initially,

¹ Paragraph 18 of the Brief of the Defendant Kevin Baumann. He defines the MOAs as the MOU.

operated by Sinclair and Kevin Schmidt, a former Aiken Basin employee.”

At paragraph 18 of the First Report, the Receiver advised the Court that the offer it accepted and was recommending was submitted by Callidus;

e. At paragraphs 28 and 29, Baumann states that:

“From a review of the Receiver's First Report, it is apparent that the Receiver was advised that a Memorandum of Understanding ("MOU") was disclosed to the Receiver apparently by Sinclair a mere week before the closing date and not during the advertising process for the assets.”

Baumann also states that:

“The MOU was not publicly disclosed but was only disclosed to certain parties to whom the advertisements were made, that is those who signed confidentiality agreements.”

As noted in paragraph 8 above, the Receiver would be acting improperly if it disclosed Alken's confidential information to prospective purchasers participating in a sales process who had not signed a confidentiality agreement. The second MOA was fully executed on April 10, 2016, whereupon the Receiver advised all 24 such prospective purchasers (who had signed a confidentiality agreement) of the existence of the second MOA. As noted in the First Report, of the 24 such parties, only six requested the details of the MOA. Further, as noted in the Receiver's Certificate filed with the Court on July 5, 2016, the purchase and sale transaction approved by the Approval and Vesting Order was completed on June 8, 2016, which is eight weeks after the Receiver was provided with the second MOA on March 12, 2016.

12. The Receiver notes that, by way of background, on or around March 24, 2016, Callidus made MNP, in its capacity as Advisor, aware of a potential agreement with a Kuwaiti consulting company to cooperate in securing contracts in Egypt to drill wells. On March 28, 2016, Scott Sinclair provided to MNP in its capacity as Advisor a MOA executed by Alken on March 23, 2016 and Petro Staff International

on March 8, 2016, regarding a potential contract with “Egyptian Authorities” to drill wells in Egypt. A second MOA was signed by Alken on March 23, 2016 and by PTSME Company on April 10, 2016, and delivered by Scott Sinclair to the Receiver and Callidus on April 12, 2016. In addition, Scott Sinclair provided the Receiver with a spreadsheet that set out the potential net income that could be earned by Alken in the event that Alken was able to enter into contracts to drill with Egyptian authorities (the first MOA, second MOA and the spreadsheet being collectively referred to as the “**Consulting Documents**”). Copies of the Consulting Documents are attached as **Confidential Appendix “A”**.

13. Altair acquired all of Alken’s right, title and interest in the Consulting Documents pursuant to the Approval and Vesting Order, and through its counsel has advised the Receiver that the Consulting Documents are confidential and potentially sensitive commercial information and therefore requested that the Receiver seek an order sealing the Confidential Appendix “A” and its attached Consulting Documents and accompanying financial analysis.

14. In paragraph 5(h) of the Brief of Baumann, it is stated that no bids were received, other than presumably the bid by Callidus that was ultimately accepted by the Receiver and approved the Court. In fact, as indicated at paragraph 9 of the Confidential Addendum to the First Report, four bids were submitted, of which the bid by Callidus provided the greatest consideration.

15. In paragraph 5(j) of the Brief of Baumann, it is stated that the precise value of the MOA is unknown but may be as high as \$1 billion. The Receiver is unaware of any basis for such a valuation, given it essentially provides for the retention of a consultant to assist Alken in acquiring contracts to drill. There is no certainty that any such drilling contracts would in fact ever be entered into.

LEGAL FEES AND DISBURSEMENTS

16. Paragraphs 23 and 26 of the Third Report state that subject to there being no complexities or complications, the Receiver and Gowling WLG each estimate

additional fees and expenses of \$10,000 plus GST to complete its remaining duties. Given the additional time spent by the Receiver and Gowling WLG addressing the matters detailed herein, the Receiver and Gowling WLG estimate further fees of \$10,000 plus GST, and further disbursements \$1,000, plus GST, respectively (in excess of the \$10,000 each estimated as part of the Third Report).

All of which is respectfully submitted this 13th day of July 2017.

MNP Ltd., solely in its capacity as Court-Appointed Receiver of **Aiken Basin Drilling Ltd.**, and not in its personal or corporate capacity

Per: 

Sheldon Title
Senior Vice President

Appendix "A"
MacDonald Hanley Correspondence

See the attached.

MacDONALD HANLEY

2050, 736 - 6th Avenue S.W. Calgary, Alberta T2P 3T7

James G. Hanley
(403) 668-5432 (Phone)
(403) 233-2033 (Fax)
jhanley@macdonaldhanley.com

Legal Assistant
Jamie Macphee
(403) 668-5428 (Phone)
jmacphee@macdonaldhanley.com

May 11, 2017

VIA EMAIL

Our File: 53384.003JGH

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia V6C 3L

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, AB T2P 4K9

Attention: Tom Cumming/Frank Lamie

Attention: William L. Roberts

Dear Sirs:

Re: *Callidus Capital Corporation v. Alken Basin Drilling Ltd.*

You may be aware that we act for Kevin Baumann with respect to the foreclosure matter being pursued by Callidus, and as a result have an interest in the receivership matter. I am advised that you are applying on May 19 for a discharge of the Receiver. Please include me on the Service List on behalf of Kevin Baumann. You may remove me for counsel for Bakuskas and Hoover.

I am also advised that on May 4 that Justice Nixon granted a Sealing Order. Please provide me with copies of that Order and describe the nature of the documents that the Receiver sought sealed.

Given what I understand to be the current state of this matter I am surprised that sealing orders would still be sought. I am going to bring an Application to release the documents that were sealed in the Receivership and grant me access to those documents.

We request the following documentation from the Receiver and Callidus, to the extent they are in the possession of these respective documents.

Financial Documentation

- 1) Detailed trial balance from 01 March 2014 to 31 March 2016;
- 2) Monthly income statements and balance sheets;
- 3) A copy of all revenue invoices submitted by Alken for 01 March 2014 to 31 March 2016;

- 4) All borrowing requests made in terms of Facility A;
- 5) Detailed statements of Callidus loans from date of inception to 31 March 2016;
- 6) Bank statements for the TD Blocked account from date of opening to 31 March 2016;
- 7) Any other bank statements including the disbursement account owned by Alken from 01 March 2014 to 31 March 2016;
- 8) List of all payments made to Sinclair and Range advisers from 01 December 2014 to 31 March 2016; and
- 9) Cash flows forecasts presented to Callidus.

Emails

- 1) All emails for the following individuals at Alken:
 - a. Kevin Baumann allaboutwater@alkenbasindrilling.com;
 - b. Mike Baumann mike@alkenbasindrilling.com;
 - c. Kevin Schmidt kevins@alkenbasindrilling.com;
 - d. Scott Sinclair;
 - e. Janice Jensen janice@alkenbasindrilling.com;
 - f. Aram Babasyan aram@alkenbasindrilling.com; and
 - g. Bob Gill bobgill@alkenbasindrilling.com.
- 2) All emails for Scott Sinclair from and relating to at Range Advisors pertaining to the Callidus/Alken Basin relationship, and any action taken by, for and on behalf of Range by, for and on behalf of Alken in relation to the sale process;
- 3) All emails not protected by privilege for the following individuals:
 - a. Newton Glassman;
 - b. Craig Boyer;
 - c. D. Resse;
 - d. Jim Hall; and
 - e. Nhan Tri Vu.

Telephone line

Correspondence transferring the Alken 30 yr old toll free number to Altai

Memorandum of Understanding (MOU, referenced in the Receiver's First Report)

- 1) A description of the work completed by Alken prior to the MOU being signed, expenses, including travelling expenses including internal costs (salary, consulting, other related matters) incurred by Alken to obtain the MOU;
- 2) Projected value of this business;
- 3) When the MOU was signed;
- 4) Why the receiver was only notified of the MOU during the sales process; and
- 5) Details of the MOU that were advised to the receiver.

To Mr. Roberts, I anticipate amending the Defence to the foreclosure to include an unequivocal claim of mortgagee in possession.

You are aware of my intention to revise the February 2nd Affidavit. Over the course of collecting information from Mr. Baumann, and his forensic accountant, we have determined that the information requested in this letter is necessary to allow us to further plead and prepare the responding evidence. Certainly some of the matters sworn to in Mr. Baumann's Affidavit are potentially inappropriate but at the same time there is other information of which he is aware that we want to put before the Court in full defence of your guarantee claim.

I intend to file an affidavit on behalf of Mr. Baumann in respect of the Receiver's Application for Discharge. I am going to seek an adjournment of this discharge application and ask that the Receiver provide further and better information with respect to the MOU. The discussion in the Receiver's report does not address a number of issues, including:

- 1) When did Alken become aware of the MOU and when was it disclosed to the Receiver;
- 2) Why did the Receiver not disclose this matter to all prospective purchasers, as opposed to only those that signed CAs. Given Mr. Sinclair's subsequent press releases and Mr. Glassman's conference call information, it appears that the value of this MOU may have resulted in substantial increase in value to the Alken assets. Certainly, Callidus thinks so. If Callidus and Alken were aware of the value of the MOU and the increase of the potential value for the utilization of the Alken assets at the time the sale process was being advanced, it is unclear why the Receiver would not be more aggressive in advertising the nature of this potential increase in value to all of the potential bidders;
- 3) Why did Scott Sinclair, an agent of Callidus, take responsibility for the "distribution of the information summary". Certainly, this is the function of the Receiver, and it is apparent that the Receiver relied upon Mr. Sinclair to fulfill some of what would ordinarily be the duties of the Receiver.

Having said all of that, I think it incumbent upon the Receiver to provide a report to the Court relating to the MOU and the sales process in a more fulsome form.

In any event, I will await your response with respect to the information requested.

Yours very truly,

MacDONALD HANLEY



JAMES G. HANLEY

JGH*jgm

Appendix "B"
May 30, 2017 Gowling WLG response to the
MacDonald Hanley Correspondence

See the attached.



May 30, 2017

Delivered by Email

MacDonald Hanley
2050, 736-6th Avenue SW
Calgary, AB T2P 3T7

Thomas Cumming
Direct +1 403 298 1938
Direct Fax +1 403 695 3538
tom.cumming@gowlingwlg.com
File no. A152711

Attention: James G. Hanley

Dear Sirs:

Re: MNP Ltd., as Receiver of Alken Basin Drilling Ltd.

We acknowledge receipt of your letter dated May 11, 2017 addressed to us and to Lawson Lundell LLP. We act for MNP Ltd. ("MNP") in its capacity as receiver of the assets, undertakings and properties of Alken Basin Drilling Ltd. ("Alken", and MNP, in such capacity, the "Receiver"). We note that Lawson Lundell LLP represents Callidus Capital Corporation ("Callidus") in the receivership proceedings in respect of Alken (the "Receivership Proceedings") and therefore will not address matters that relate to Callidus rather than the Receiver. I am copying Mr. Roberts of Lawson Lundell LLP in this response as you addressed your letter to him also.

I confirm that you have been included on the Service List for the Receivership Proceedings as counsel for Mr. Baumann.

The materials sealed pursuant to the Order of the Honourable Justice D.B. Nixon of the Court of Queen's Bench of Alberta (the "Court") pronounced on May 4, 2016 consist of the Confidential Addendum to the Receiver's First Report to the Court dated April 26, 2016. The Addendum reviewed the bids submitted in the sale process. You express surprise that they were sealed but we can assure you that such materials are invariably subject to a sealing order in insolvency proceedings until the subject sale transactions are completed. The transaction was in fact completed, and the Receiver filed a certificate confirming the same with the Court. Therefore the addendum should be publicly available. In any event, we attach a copy of the addendum.

The Receiver was appointed pursuant to an Order of the Honourable Justice D.B. Nixon on April 1, 2016 (the "Receivership Order"). The Receiver's powers were expressly limited under paragraph 3 of the Receivership Order to marketing and selling Alken's property and applying to the Court for an approval and vesting order. Paragraph 3 of the Receivership Order further stipulated that the Receiver was not appointed as manager and was not to take possession or control of Alken's property, operate Alken's business, or employ any of Alken's employees. Rather, that paragraph expressly stated that Alken remained in possession and control of its property until the property was sold.

As a result of its limited mandate, the Receiver only obtained such information relating to Alken so as to permit it to perform its duties under the Receivership Order. The Receiver does not have, and never has had, possession of much of the information you requested. Further, much of the information you

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CAL_LAW 27367452

have requested is confidential information formerly belonging to Alken but which has been conveyed to Altair Water and Drilling Services Ltd. ("**Altair**") pursuant to the agreement of purchase and sale between the Receiver and Callidus and the approval and vesting order pronounced by the Honourable Justice D.B. Nixon on May 4, 2016 (the "**Approval and Vesting Order**"). However, referring specifically to your headings, we confirm the following:

1. **Financial Documentation** – The Receiver is not in possession of the information listed in items 1 to 9 under this heading. However, for your reference, we attach the Notice and Statement of Receiver issued April 8, 2016. We believe your client was previously provided with a copy of this document.
2. **Emails** – Given the limited scope of the Receiver's mandate, and Receiver never took possession of or copied the computer drives of Alken, and therefore was never in possession of any of the emails listed as items 1 to 3 under this heading.
3. **Telephone line** – The Receiver has no information with respect to the transfer of the telephone line. It would appear that this was handled directly by Alken and/or Altair.
4. **Memorandum of Understanding**
 - (a) The information you have requested in items 1 and 2 is confidential to Altair, and could only be released to you with the consent of Altair.
 - (b) With respect to items 3 and 4 under this heading, we note that an initial memorandum (the "**IM**") was signed by Alken on March 23, 2016 and by its counter-party on March 18, 2016. A memorandum of agreement (the "**MOA**") was signed by Alken on March 23, 2016 and by the counterparty on April 10, 2016, which is subsequent to the Receiver's appointment. We assume that the reason why the Receiver only learned about the IM and the MOA after its appointment is that the MOA was not signed by the counterparty until after the appointment. We note that because the Receiver was not managing the business of Alken, its prior consent was not required with respect to the MOA.
 - (c) With respect to item 5, the Receiver was provided with copies of the IM and MOA. As these documents are confidential to Altair, the Receiver is not in a position to release them to you.
5. **Questions on the Third Page of Your Letter**
 - (a) With respect to question (1), this was answered in paragraph 4(b) above.
 - (b) With respect to question (2), a Receiver would be acting improperly if it disclosed confidential information to parties participating in a sale process who have not signed a confidentiality agreement. It is entirely appropriate that the Receiver only discloses the IM and MOA to potential bidders who have signed confidentiality agreements. The Receiver has no information with respect to the perceived value of Alken's property other than the bids that were actually submitted. Further, the business and property of Alken was appropriately and broadly marketed by the Receiver and the sale to Altair was approved by the Court in the Approval and Vesting Order. Your client, Mr. Bauman, was



given an opportunity by Justice Nixon to make submissions at the application for the Approval and Vesting Order. Notwithstanding Mr. Bauman's submissions, the Approval and Vesting Order was issued by the Court.

- (c) Range Corporate Advisors was permitted by the Receiver to distribute marketing materials to its data base. However, the Receiver also conducted its own fulsome marketing, including by way of distribution to its lists of participants in the industry, through advertising and publication in relevant conventional and electronic media. As indicated in the First Report of the Receiver, an information summary was sent to all MNP partners for distribution to their contacts and clients, and to auction companies and networks of distressed asset purchasers. The highest bidder was Callidus, which assigned its bid to Altair.

As previously indicated to you by email, the Receiver will be applying for a discharge order on Thursday July 13, 2017 at 2 pm. The application will be before the Honourable Madam Justice Horner.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in cursive script that reads "Thomas Cumming".

Thomas Cumming

TSC

Enclosures:

1. Confidential Addendum to the Receiver's First Report to the Court dated April 26, 2016
2. Notice and Statement of Receiver issued April 8, 2016