

COURT FILE NUMBER    **Q.B. No. 733 of 2021**  
COURT OF QUEEN’S BENCH FOR SASKATCHEWAN  
JUDICIAL CENTRE        **SASKATOON**  
APPLICANT                **ABBEY RESOURCES CORP.**

**IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF ABBEY RESOURCES CORP.**

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**BRIEF OF ARGUMENT OF  
THE GOVERNMENT OF SASKATCHEWAN  
(REPRESENTED BY THE MINISTER OF ENERGY AND RESOURCES)  
APPLICATION SCHEDULED FOR THURSDAY, OCTOBER 7, 2021**

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**ROBERTSON STROMBERG LLP**  
Barristers & Solicitors  
Suite 600, 105 – 21<sup>st</sup> Street East  
Saskatoon, SK S7K 0B3

**A. INTRODUCTION**

1. The Government of Saskatchewan, as represent by the Minister of Energy and Resources (the “**Crown**”) has prepared this Argument in Brief to address several issues arising with respect to matters to be addressed at the hearing in this on Thursday, October 7, 2021.
2. Since the grant of the initial order, the Crown has:
  - (a) Engaged with the Company in its capacity as regulator, in order to address possible environmental concerns (as noted in Exhibit “H” to the Sixth Affidavit of James Gettis; and
  - (b) Has sought and obtained information from the Monitor and from the Company with respect to some of the ongoing efforts of the Company to restructure its debt and other obligations.
3. The Crown received advance notice of the proposal by the company to make the two equipment sales referenced in its material;
4. The Crown was also informed in advance of the intended approach of the Company with respect to the Abbey-Optimum Transaction;

**B. SPECIFIC SALE OF EQUIPMENT**

5. As earlier communicated to counsel for the Company, the Crown is in agreement with the proposed sale of specific equipment, and the proposal to have the Monitor hold the funds pending further order of the Court.

**C. REVERSAL OF THE ABBEY – OPTIMUM TRANSACTION**

6. The Crown is in agreement with the methodology and order proposed to reverse the Abbey – Optimum Transaction.

**D. ISSUES ARISING FROM CASH FLOW STATEMENT AND AFFIDAVIT**

7. With the grant of the Initial Order, it is apparent that the grant of the Initial Order means that the Company will be given some time to more fully develop its plan of arrangement, and to address the concerns which gave rise to the Crown's decision to oppose the grant of the Initial Order.
8. Some of those concerns appear to ongoing, as reflected in the material which has been filed for the purposes of the October 7 hearing:
  - (a) The Sixth Affidavit of Jim Gettis confirms that the ongoing obligation to make post filing payments to all surface rights owners has been honoured in the case of those who have agreed to new lease arrangements, but further states that no 45 days later, no payments have been made to those owners who have not provided amended agreements, and appears to take the position that no payment will be made until an extension order is granted;
  - (b) An examination of the cash flow statements provided discloses no apparent budgeting for the need to remediate or replace infrastructure, such as the collection pipeline system. The affidavit material suggests that no such budget is in place as the remediation will not take place until 2022 (following compliance with the risk assessment required by the Crown), however, the cash flow contains no budget whatsoever for dealing with and remediating spills arising from the Company's operations in the ordinary course.
9. Each of the foregoing is a concern to the Crown, but perhaps does not a concern sufficient to warrant the denial of an extension order.
10. There is, however, a matter which arises from the Sixth Affidavit of James Gettis, which causes mores substantial concern for the Crown, both in its capacity as a creditor of the Company, but also in its capacity as the government of this province, with an interest in the public good.
11. The concern arises from the apparent plan of the Company, moving forward to:

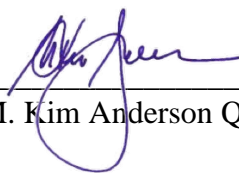
- (a) Pay landowners who have signed amended surface leases with the Company in the ordinary course; and
  - (b) Treat those landowners who have not signed amended leases with the Company in a substantially different manner, by paying, not the annual rental payment when it falls due, but rather a prorated portion thereof.
12. It is trite to say that the Initial Order stays only those obligations which predate the grant of the order, with ongoing, post-filing obligations on the part of the Company being unimpaired. Landowners are entitled to surface lease payments to be made on the date due, and the actions of the Company are wholly inconsistent with that obligation.
13. This gives rise to several problems.
14. The first is that this creates a potential problem with respect to the “unsigned” landowners. Failure to pay as required on the anniversary date of the leases will give rise to recourse to the landowner’s legal remedies which include the ability to terminate the surface leases involved. This has implications both with respect to the restructuring, to the extent to which the revenue of the Company may be adversely affected. It may also have implications such monitoring and ensuring the safety of a well which to which the Company no longer has access.
15. The second is that, in the unfortunate eventuality that the restructuring does not succeed, and landowners are not paid their post-filing entitlement in full, they will have left their land exposed to further traffic to and from the well or other facility located on their land (and the potential for environmental damage) without being fully compensated, as they will enjoy no priority in a post CCAA insolvency.
16. Third, and a difficulty that will not be lost on the landowners, is that the approach to now be adopted by the Company simply replicates or perpetuates the approach taken by the Company for the two to three years leading up to the Initial Order, which was essentially to reward its “friends” (landowners signing new agreements) and punish its “enemies” (the “unsigned” landowners) by immediately paying the

former, and postponing its obligations to the other, and, as proposed by Mr. Gettis, tying those future payments to extension orders granted to the Company.

17. The fact that, to date, the landowners have not as a whole taken steps to terminate leases does not mean that they will not change their approach. The Company's affidavit material already references the fact that certain landowners are defying the terms of the Initial Order. To the extent that they are, they are subject to sanction by this Honourable Court. However as long as unsigned landowners do not receive payment as required by their leases, events will overtake each of those situations at some point, whereby those landowners will have passed their anniversary date, and then have some legal justification for taking steps to limit or prevent access.
18. In view of the foregoing, the Crown submits while the Company would normally be given some additional time to meet the concerns raised by the Creditors, and to prepare a plan of arrangement, the stay of proceedings should not be further extended given the admitted inability of the Company to meet its legal obligations to the surface rights owners.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of October 2021.

**ROBERTSON STROMBERG LLP**



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M. Kim Anderson Q.C.

**CONTACT INFO AND ADDRESS FOR SERVICE**

**ROBERTSON STROMBERG LLP**

Barristers & Solicitors

Suite 600, 105 – 21<sup>st</sup> Street East

Saskatoon, SK S7K 0B3

Lawyer in Charge of file: M. Kim Anderson, Q.C.

Direct Line: (306) 933-1344

Facsimile: (306) 652-2445

E-Mail: [mk.anderson@rslaw.com](mailto:mk.anderson@rslaw.com)