

Form 6-5
(Rule 6-5)

COURT FILE NUMBER Q.B. No. 733 of 2021
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY
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.

NOTICE OF APPLICATION

(Re: Application for Second Extension Order, Declaration and Vesting Order, and Sale Approval
and Vesting Orders)

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where 1800 Central Avenue
 Prince Albert, SK S6V 4W7

Date Thursday, October 7, 2021

Time 1:30. P.M.

Proceeding Virtually by WebEx Hearing

NOTE: Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. Dial-in or WebEx login particulars may be obtained upon request by contacting counsel for the Applicant, DLA Piper (Canada) LLP, at the address for service listed below.

Go to the end of this document to see what you can do and when you must do it.

**APPLICATION FOR SECOND EXTENSION ORDER AND OTHER RELIF PURSUANT TO THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

Remedy claimed or sought:

1. The Applicant, Abbey Resources Corp., seeks Orders pursuant to sections 11, 11.02, and 36

of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, (the "**CCAA**"), Rule 13-7(2) of *The Queen's Bench Rules* and the inherent jurisdiction of this Honourable Court, substantially in the form of the draft Second Extension Order, draft Vesting Order, and draft Sale Approval and Vesting Orders, all filed herewith:

- a. re-affirming the relief granted in the August 13, 2021, Initial Order of the Honourable Mr. Justice G.A. Meschishnick (the "**Initial Order**") granted in these proceedings;
- b. validating the time for service of this Notice of Application and materials filed therewith;
- c. providing that the stay of proceedings imposed in the Initial Order shall be further extended up to and including 11:59 p.m. on the 5th of January, 2022;
- d. approving the transaction for the purchase and sale of a Jenbacher J312 natural gas engine bearing serial no. 4504351 (the "**Jenbacher Engine**") to Steel Reef Infrastructure Corporation ("**Steel Reef**") for a purchase price of \$65,000 and vesting in the name of Steel Reef all right title and interest in the Jenbacher Engine free and clear of all liens, charges, and encumbrances;
- e. approving the transaction for the purchase and sale of a 24" x 10' filter vessel with pump bearing serial no. SO5-081-001 MWP: 720 PSI (the "**Filter Skid**") to XTO Energy Inc. ("**XTO**") for a purchase price of \$17,000 and vesting in the name of XTO all right title and interest in the Filter Skid, free and clear of all liens, charges, and encumbrances;
- f. declaring, pursuant to section 11 of the CCAA, that the transaction entered into between the Applicant and Optimum Petroleum Services Inc. ("**Optimum PSI**") pursuant to instruments dated November 1, 2020, is void *ab initio*, is of no force or effect, and that title to any property transferred or purportedly transferred pursuant to such transaction is vested in the name of Applicant; and
- g. providing such further and other relief that Court may deem appropriate or necessary.

Grounds for making this application:

Second Extension

2. Section 11.02(3) of the CCAA empowers this Honourable Court with the authority to extend the stay of proceedings imposed in the Initial Order provided that it is satisfied that appropriate circumstances exist to extend the stay and that the Applicant has continued to act in good faith and with due diligence.
3. The Applicant, working in consultation with the Monitor, has continued to act in good faith and due diligence and has taken material steps towards the completion of the work necessary to

implement its restructuring plan in these proceedings.

4. It is, therefore, submitted that this Honourable court should afford the Applicant the reasonable opportunity to restructure in these proceedings and exercise its discretion to extend the stay of proceedings - inclusive of the stay of proceedings against the Applicant's director pursuant to CCAA section 11.03(1) and the regulatory stay imposed pursuant to CCAA section 11.1(3) - for a period of 90 days, ending on January 5, 2021.

Vesting Order Reversing Abbey - Optimum Transaction

5. On November 1, 2020, the Applicant concluded a transaction (the "**Abbey - Optimum Transaction**") involving the transfer or purported transfer of certain assets to Optimum PSI, an entity not dealing at arm's length with the Applicant. Though the Abbey - Optimum Transaction was not concluded with the intent to defeat creditors, it may have nevertheless constituted a reviewable transaction, voidable under section 96(1)(b)(i) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").
6. Section 36.1 of the CCAA imputes the reviewable transaction provisions set out in sections 95 to 101 of the BIA into the CCAA, *mutatis mutandis*. The reviewable transaction provisions, incorporated into the CCAA, do not expressly allow an applicant debtor to apply for an Order voiding a potentially reviewable transaction between itself and a third party.
7. Both Optimum PSI and the Applicant consent to the reversal of the Abbey - Optimum Transaction. It is respectfully submitted that such consent, coupled with the fact that the Abbey - Optimum Transaction may be reviewable under the BIA, should serve as sufficient grounds for this Honourable Court to exercise its broad, discretionary authority under section 11 of the CCAA to declare that the Abbey - Optimum Transaction is void *ab initio*, that it is of no force or effect, and that property purported to have been transferred under the Abbey - Optimum Transaction shall vest in the name of Abbey, subject to the encumbrances that would have attached or remained attached to such property had the Abbey - Optimum Transaction not occurred.

Sale Approval and Vesting Orders for Surplus Equipment Sales

8. Prior to the Applicant's entry into CCAA proceedings, Optimum PSI had entered into agreements to sell the Jenbacher Engine and the Filter Skid to Steel Reef and XTO, respectively.

9. The Applicant seeks to close the pending transactions with Steel Reef and XTO upon the vesting of the property purportedly transferred to Optimum PSI under the Abbey - Optimum Transaction in the name of the Applicant.
10. Section 36(1) of the CCAA enables this Honourable Court to approve a transaction proposed by an applicant for a transaction involving the disposal of property out of the ordinary course of business and to grant an Order vesting property sold by an applicant in CCAA proceedings free and clear in the name of a purchaser.
11. The Applicant respectfully submits that the two proposed arm's-length transactions are reasonable under the circumstances. Additionally, the Sale Approval and Vesting Orders impress upon the net sale proceeds of the Jenbacher Engine and the Filter Skid any and all charges or encumbrances previously impressed on such property. Accordingly, the proposed transaction will have no adverse effect on any creditor or other party with any potential interest in the Jenbacher Engine or the Filter Skid.
12. The preconditions for the granting of an order under CCAA section 36(1) imposed by CCAA sections 36(2) and (7) are made as, respectively, the parties with an interest in the subject property will be served with notice of this Application and the proposed transactions will not jeopardize the Applicant's ability to make any payments owing to its employees.
13. The Applicant does not currently seek an Order providing for the distribution of the sale proceeds, but instead seeks that net sale proceeds to be paid into the trust account of counsel for the Monitor.
14. Therefore, it is respectfully submitted this Honourable Court may grant the Sale Approval and Vesting Orders sought by the Applicant.

Material or evidence to be relied on:

15. The Applicant relies on the following materials in support of its Application:
 - a. Notice of Application;
 - b. Affidavits of James Gettis, dated July 13, 2021, July 15, 2021, July 28, 2021, August 3, 2021, and August 10, 2021, and October 1, 2021;
 - c. Affidavit of Aaron Tait dated September 30, 2021;
 - d. The Second Report of the Monitor, MNP Ltd.;
 - e. (draft) CCAA Second Extension Order;

- f. (draft) Declaration and Vesting Order;
- g. (draft) Sale Approval and Vesting Orders;
- h. Brief of Law (to be filed);
- i. Service List; and
- j. Such further and other material as counsel may advise and the Court may allow.

Applicable rules:

16. N/A

Applicable Acts and regulations:

17. *Companies Creditors' Arrangement Act*, RSC 1985, c C-36, at s 11, 11.02(2), 11.03(1), and 11.1(3), 36(1), (2), (3), (6) and (7).

DATED at Edmonton, Alberta, this 1st day of October, 2021.

DLA PIPER (CANADA) LLP

Per:



Jerritt R. Pawlyk and Kevin N. Hoy,
Counsel to Abbey Resources Corp.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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