

COURT OF APPEAL OF ALBERTA

Form AP-3  
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 1601-0023AC

TRIAL COURT FILE NUMBER: 1501-12220

REGISTRY OFFICE: CALGARY

PLAINTIFF: ALBERTA TREASURY BRANCHES

STATUS ON APPEAL: RESPONDENT

STATUS ON APPLICATION: RESPONDENT

DEFENDANT: CONSERVE OIL 1<sup>ST</sup> CORPORATION

STATUS ON APPEAL: APPELLANT

STATUS ON APPLICATION: APPLICANT

DEFENDANTS: COGI LIMITED PARTNERSHIP,  
CANADIAN OIL & GAS INTERNATIONAL  
INC., CONSERVE OIL GROUP INC.

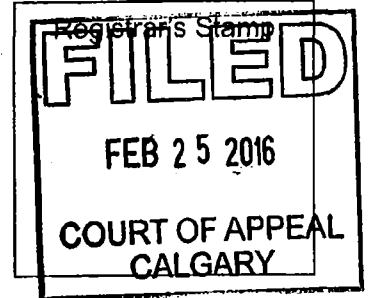
STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

STATUS ON APPLICATION: NOT PARTIES TO THE APPLICATION

DOCUMENT: **APPLICATION OF CONSERVE OIL 1<sup>ST</sup> CORPORATION  
RE: LEAVE TO APPEAL**

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**NOTICE TO RESPONDENT:**

ALBERTA TREASURY BRANCHES

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

**NOTICE TO 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:

Date: March 17, 2016  
Time: 9:30 a.m.  
Where: Court of Appeal of Alberta  
Before: Single Judge of the Court (Rule 14.37)

**Nature of Application and Relief Sought:**

1. Conserve Oil 1st Corporation ("**Amalco**" or the "**Applicant**") seeks an Order:
  - a. granting Amalco leave to appeal the order of Madam Justice Horner, pronounced January 6, 2016 (the "**Second Receivership Order**"), in Alberta Court of Queen's Bench of Alberta Action No. 1501-12220 (the "**Action**") pursuant to section 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3;
  - b. granting Amalco costs of the within Application; and
  - c. such further and other relief as this Honourable Court deems just and appropriate in these circumstances.

**Grounds for making this application:**

2. Amalco is the amalgamation successor of Conserve 1<sup>st</sup> Oil Corporation ("**COC1**"), Conserve Oil 2<sup>nd</sup> Corporation ("**COC2**"), Conserve Oil 6<sup>th</sup> Corporation ("**COC6**") and Conserve Oil 7<sup>th</sup> Corporation ("**COC7**", collectively with COC1 and COC6, the "**Old GPs**").
3. The Old GPs, who were the general partners of limited partnerships (collectively, the "**Old LPs**") that obtained credit facilities from Alberta Treasury Branches ("**ATB**") in the period December 2011 to September 2012, provided guarantees to ATB (the "**Old Guarantees**") securing the Old LPs' credit facilities in the aggregate of up to \$28.8 Million (the "**Old LPs Credit Facilities**").

4. In July 2013, by way of an arrangement agreement: (i) all of the assets and liabilities of the Old LPs, as well as the assets and liabilities of three other limited partnerships were acquired by a new limited partnership, COGI LP, the general partner of which was Canadian Oil & Gas International Inc. ("**COGI GP**"); and (ii) the Old LPs were dissolved.
5. In furtherance of the arrangement, effective August 30, 2013: (i) COGI LP entered into a new credit facility with ATB up to the principle amount of \$94.5 Million (the "**New Credit Facility**"); (ii) COGI LP and COGI GP provided security to ATB securing the whole of the New Credit Facility; (iii) COGI LP and COGI GP confirmation that the security provided by the Old LPs would continue to secure the obligations of COGI LP to ATB; and (iv) the credit facilities relating to the Old LPs were repaid in their entirety and cancelled.
6. On December 20, 2013, Amalco was created. Since its creation, Amalco has had no contractual relationship with ATB.
7. On October 26, 2015, ATB obtained a receivership Order (the "**First Receivership Order**") appointing a receiver over the assets of COGI LP, COGI GP, and Conserve Oil Group Inc. (collectively, the "**Separate Entities**").
8. On November 23, 2015, ATB applied for a second receivership Order (the "**Second Receivership Order**") over the assets of Amalco, an entity unrelated to the Separate Entities.
9. On January 6, 2016, ATB obtained the Second Receivership Order pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
10. The Second Receivership Order was granted on the basis that: (i) there was no evidence to infer an intention by ATB that the Old Guarantees would not remain enforceable; (ii) the wording of the Old Guarantees made it clear that ATB could enter into new credit arrangements with the existing customer or corporation carrying on the business of the existing customer; and (iii) the documents relating to the new indebtedness of COGI LP, and related documentation, implied consent by the Old GPs to have their Old Guarantees remain binding.
11. On appeal, it will be the Applicant's position that the Chambers Judge erred in her determinations. The Old Guarantees are ambiguous as to whether they were intended to secure the significantly changed obligations under the New Credit Facility for a new borrower. Furthermore, there was substantial evidence before the Chambers Judge from which it could be inferred an intention of ATB that there would be no reliance on the Old Guarantees and that the implied consent of the Old GPs has no reasonable basis in fact.
12. As there is no automatic right of appeal as it relates to the Second Receivership Order, the Applicant seeks leave to appeal.
13. The issues that the Applicant intends to raise on the appeal are:
  - a. significant to the bankruptcy practice at large;
  - b. significant to the action and, in particular, to ATB's entitlement to seek recovery for COGI LP's indebtedness from Amalco;

- c. *prima facie* meritorious; and
  - d. will not unduly hinder the bankruptcy action, as it will continue to proceed with respect to all other parties.
14. The error in the Second Receivership Order is such that it will cause prejudice to Amalco that is without remedy and Amalco has no other remedy available to it other than appealing the Second Receivership Order.
  15. Such further and other matters as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

16. The Affidavit of David Crombie, sworn February 16, 2016; the Affidavit of Alex Gramatski, sworn February 16, 2016.
17. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable Acts, regulations and rules:**

18. *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, at ss 183(2), 193.
19. *Alberta Rules of Court*, Alta Reg 124/2010, r 14.37.
20. Such further and other acts, regulations, and rules as counsel may advise and this Honourable Court may permit.