

No. S1910538
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE RECEIVERSHIP OF
QUINSAM COAL CORPORATION
PURSUANT TO SECTION 243 (1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED
AND
SECTION 39 OF THE
LAW AND EQUITY ACT, R.S.B.C. 1996 c. 253 AS AMENDED**

Supplemental Report to Receiver's First Report to Court

November 26, 2021

**IN THE MATTER OF THE RECEIVERSHIP OF
QUINSAM COAL CORPORATION**
Supplemental Report to Receiver’s First Report to Court

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APPENDICES

- A. Settlement Agreement dated Nov 26, 2021

I. PURPOSE OF REPORT

1. The purpose of this supplemental report is to provide the Court with:
 - i. An update on the priority dispute between the Province and Enceco; and
 - ii. Request approval of the terms of the Settlement Agreement dated November 26, 2021.
2. This is a supplemental report to the Receiver's First Report to Court dated November 17, 2021 (the "**Receiver's First Report**"). This report should be read in conjunction with the Receiver's First Report.

II. BACKGROUND

3. On September 20, 2019, The Bowra Group Inc. was appointed the Receiver and Manager (in such capacity, the "**Receiver**") of Quinsam Coal Corporation (the "**Company**" or "**Quinsam**") on application by the Province of British Columbia, as represented by the Ministry of Energy, Mines and Natural Resources (the "**Province**") pursuant to an Order of the Supreme Court of British Columbia (the "**Receivership Order**").
4. A term of the Receivership Order negotiated between the Province and ENCECo Inc. ("**Enceco**"), the 50% owner of the Company, required the Receiver to complete the obligations under a sales agreement for Company's coal inventory with Javelin Global Commodities (UK) Ltd. (the "**Javelin Sales Agreement**").
5. The Receiver completed the Javelin Sales Agreement and holds \$802,676 (the "**Coal Proceeds Balance**").
6. Enceco holds a general security agreement over all the present and after acquired property of Quinsam and claims priority pursuant to its general security agreement. The Province claims priority over the property of Quinsam pursuant to regulation under the *Mines Act*. The Province and Enceco have been involved in a priority dispute over the net proceeds from the Javelin Sales Agreement and certain other personal property of the Company (the "**Priority Dispute**").

7. The personal property subject to the Priority Dispute consists of some specialized equipment for underground work and is required by the Receiver in performing ongoing care and maintenance. Replacing the equipment would require time and considerable cost due to its specialized nature.
8. In addition to the Coal Proceeds Balance, the Receiver also holds \$22,756 from insurance settlement proceeds for certain of Quinsam's personal property (the "**Insurance Proceeds**"). The Receiver holds the Insurance Proceeds in trust pending the outcome of the priority dispute.
9. The dispute between the Province and Enceco was heard in the Supreme Court of British Columbia in November 2019 and a decision issued in April 2020 by Mr. Justice Giaschi (the "**Decision**"). The Decision *inter alia* determined that the coal inventory was not an asset of the estate and accordingly the Province's claim of security under the *Mines Act* did not need to be addressed by the Court.
10. The Province appealed the Decision however no appeal date was set while discussions on a potential sale were ongoing.
11. The Receiver closed the sales process on November 17, 2021 and the Province and Enceco resumed discussions to attempt to resolve their priority dispute.
12. The Province and Enceco have agreed to settle the Priority Dispute and have come to terms in a settlement agreement dated November 26, 2021 (the "**Settlement Agreement**").

III. SUMMARY OF THE SETTLEMENT AGREEMENT

13. The Settlement Agreement is attached as **Appendix A**.
14. The key terms of the Settlement Agreement are as follows:
 - i. The Receiver will pay Enceco \$824,000 from funds held in trust within five days of Court approval of the Settlement Agreement;

- ii. Enceco will have the option to either (i) take title to a specific piece of mining equipment and designated parts inventory within forty five days of Court approval of the Settlement Agreement, or (ii) receive an additional payment of \$96,000 within sixty days of Court approval of the Settlement Agreement;
- iii. Enceco will discharge all of its loans and security against Quinsam within three business days of either taking title to the mining equipment or receipt of the additional payment; and
- iv. The Province will abandon its appeal of the Decision within five business days of Enceco discharging its loans and security.

IV. CONCLUSION AND RECOMMENDATION

Conclusion

15. The personal property, that is subject to the Priority Dispute, is required by the Receiver to perform care and maintenance on the Mine. The Receiver has determined it would be difficult to replace the equipment in a timely manner and that will give rise safety and cost concerns for the estate.
16. The Settlement Agreement would allow the Receiver to continue to utilize the equipment necessary to perform care and maintenance.
17. The Receiver has reviewed the Settlement Agreement and is of the view that the terms of the agreement are fair and reasonable in the circumstances. The Receiver also notes that proposed settlement represents intensive efforts and negotiations and significant back and forth on the parties' respective interests as facilitated by the Receiver.

Recommendation

- 18. The Receiver respectfully requests that the Court approve the Settlement Agreement dated November 26, 2021.
- 19. All of which is respectfully submitted this 26th day of November, 2021.

The Bowra Group Inc.

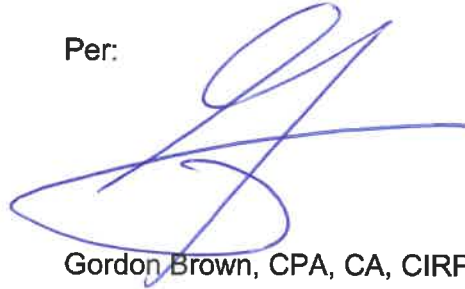
In its capacity as Receiver and Manager of Quinsam Coal Corporation

Per:



Mario Mainella, CPA, CA, CIRP

Per:



Gordon Brown, CPA, CA, CIRP