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C41874

COURT FILE NUMBER 2201-02699
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NATIONAL BANK OF CANADA
DEFENDANTS BALANCED ENERGY OILFIELD SERVICES (USA) INC., BALANCED ENERGY HOLDINGS INC., MICHELLE THOMAS, NEIL SCHMEICHEL, DARREN MILLER, and CODY BELLAMY



\$50.00
COM
May 1 2023

DOCUMENT **APPLICATION**
(Approval of Accounts and Activities, Approval of Fees, and Discharge of Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Osler, Hoskin & Harcourt LLP**
Barristers and Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer
Phone: 403.260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1230496

NOTICE TO RESPONDENTS

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

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: May 1, 2023
Time: 2:00 p.m.
Where: Virtual Courtroom 60 (See Schedule "A" for Virtual Courtroom Link)
Before Whom: The Honourable Madam Justice B.E.C. Romaine

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

Orders Sought:

1. FTI Consulting Canada Inc. (the “**Receiver**”), in its capacity as receiver and manager of Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”), and Balanced Energy Holdings Inc. (“**BEH**”) (collectively the “**Balanced Group**” or the “**Company**”) is seeking an Order (the “**Discharge Order**”) substantially in the form attached hereto as **Schedule “B”**:
 - a. abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable today, and that further service of this Application other than to those listed on the Service List established in these proceedings is hereby dispensed with;
 - b. approving and ratifying the Receiver’s Statement of Receipts and Disbursements as at April 21, 2023, as set out in the Third Report of the Receiver, dated April 24, 2023 (the “**Third Report**”);
 - c. approving the actions, conduct and activities of the Receiver as described in the Third Report and all other reports filed by the Receiver in these proceedings;
 - d. approving the Receiver’s accounts and the accounts of the Receiver’s external legal counsel, inclusive of accrual for the fees and disbursements of the Receiver and those of its legal counsel in connection with the completion of these proceedings, including costs of this Application, all as set out in the Third Report;
 - e. directing and authorizing the Receiver to maintain a holdback of \$150,000 (the “**Holdback**”) to cover: (i) professional fees of the Receiver, the Receiver’s independent legal counsel, Osler, Hoskin & Harcourt LLP, and the Receiver’s U.S. bankruptcy counsel Munsch Hardt Kopf & Harr, P.C. and Receiver’s local North Dakota counsel Olson & Burns, P.C. to complete the administration of the Receivership; (ii) the Deemed Trust CRA Claim; (iii) the remaining costs to complete the administration of these Receivership proceedings including storage costs (collectively, the “**Holdback Expenses**”);

- f. amending paragraph 3 of the Receivership Order granted in these proceedings on March 7, 2022 by adding the following paragraph 3(t):
 - (t) if the Receiver deems it advisable to do so, to assign any of the Debtors into bankruptcy pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended;
- g. authorizing the Receiver to destroy the books and records of the Company that are not claimed by any of the current or former directors of the Company within 30 days of the Receiver providing written notice of this Order;
- h. upon the filing of the Receiver's Discharge Affidavit ("**Discharge Affidavit**") discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver's duties as court-appointed receiver of the Company, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
- i. granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

2. On March 7, 2022, the Receiver was appointed Receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate of the Company (which at the time included Balanced Energy Oilfield Services Inc. ("**BCAN**")), including all proceeds thereof (the "**Receivership Order**").
3. On March 30, 2022 this Honourable Court granted an Approval and Reverse Vesting Order which (amongst other things) approved various transactions and removed BCAN from the scope of the Receiver's mandate and removed BCAN as a defendant to the within Action.
4. The realization of the Property (as that term is defined in the Receivership Order) is complete. Apart from attending to minor administrative matters, including final payment of all Receivership costs and expenses, final distribution of remaining funds to NBC,

addressing a potential priority claim of the CRA, and other minor administrative matters, the Receiver has performed its mandate as Receiver under the Receivership Order.

5. It is appropriate that the Receiver be discharged as Receiver of the Company upon filing of the Discharge Affidavit.
6. Such further and other grounds as counsel may recommend and this Honourable Court may permit.

Affidavit or other Evidence and Materials to be used in Support of this Application:

7. The Third Report of the Receiver, dated April 24, 2023;
8. Evidence and Reports of the Receiver previously filed in this Action; and
9. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

10. The *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

11. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.
12. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

13. None.

How the Application is Proposed to be Heard or Considered:

14. By Webex before the Honourable Madam Justice B.E.C. Romaine on May 1, 2023 at 2:00 p.m.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule “A”

Webex Confirmation 2201 02699 - NATIONAL BANK OF CANADA v. BALANCED ENERGY OILFIELD SERVICES INC. - May 01, 2023 02:00 PM - ROMAINE, J - Confirmed

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,



Court of King's
Bench of Alberta

Brent Dufault
Commercial Duty Coordinator

E: commercialcoordinator.qbcalgary@albertacourts.ca

Court of King's Bench of Alberta
Calgary Court Centre
601 5 Street SW
Calgary, Alberta T2P 5P7

Schedule “B”

COURT FILE NUMBER 2201-02699

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA

DEFENDANTS BALANCED ENERGY OILFIELD SERVICES (USA) INC., BALANCED ENERGY HOLDINGS INC., MICHELLE THOMAS, NEIL SCHMEICHEL, DARREN MILLER, and CODY BELLAMY

DOCUMENT **ORDER**
(Approval of Accounts and Activities, Approval of Fees, and Discharge of Receiver)

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Barristers and Solicitors
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Solicitors: Randal Van de Mosselaer
Phone: 403. 260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1230496

Clerk's Stamp

DATE ON WHICH ORDER WAS PRONOUNCED: May 1, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice
B.E.C. Romaine

UPON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as receiver and manager (the “**Receiver**”) of Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”) and Balanced Energy Holdings Inc. (“**BEH**”) (collectively the “**Balanced Group**” or the “**Debtor**”); **AND UPON** reviewing the Third Report of the Receiver, dated April 24, 2023 (the “**Third Report**”) and other Reports previously filed by the Receiver in this Action; **AND UPON** hearing

from counsel for the Receiver and counsel for any other interested party appearing at the hearing of the Application; **AND UPON** reviewing the Affidavit of Service of _____, sworn April ____, 2023;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given;

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Third Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel Osler, Hoskin & Harcourt LLP ("**Osler**"), for its fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The accounts of the Receiver's U.S. bankruptcy counsel Munsch Hardt Kopf & Harr, P.C. and Receiver's local North Dakota counsel Olson & Burns, P.C. for their fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of their accounts.
5. The Receiver's activities as set out in the Receiver's Third Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as set out in the Receiver's Third Report, are hereby ratified and approved.
6. The Receiver is directed and authorized to maintain a holdback of \$150,000 (the "**Holdback**") to cover: (i) professional fees of the Receiver, the Receiver's independent legal counsel, Osler, and the Receiver's U.S. bankruptcy counsel Munsch Hardt Kopf & Harr, P.C. and Receiver's local North Dakota counsel Olson & Burns, P.C. to complete the administration of the Receivership; (ii) the Deemed Trust CRA Claim as further described in the Third Report (until such time as BEH is assigned into bankruptcy or the CRA

consents to the release of this portion of the Holdback, at which time this portion of the Holdback may be released); (iii) the remaining costs to complete the administration of these Receivership proceedings including storage costs (collectively, the “**Holdback Expenses**”).

7. The Receiver is authorized and directed to distribute all remaining funds apart from the Holdback, to National Bank of Canada (“**National Bank**”).
8. In the event any residual funds remain in the Holdback following payment of the Holdback Expenses, the Receiver is authorized and directed to distribute any such residual funds to National Bank.
9. Paragraph 3 of the Receivership Order granted in these proceedings on March 7, 2022 is hereby amended by adding the following paragraph 3(t):
 - (t) if the Receiver deems it advisable to do so, to assign any of the Debtors into bankruptcy pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended;

DISCHARGE OF THE RECEIVER

10. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
11. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
12. The Receiver is hereby authorized and permitted to deliver to the current or former directors of the Debtor at his/her own expense copies of any corporate records in the

possession and control of the Receiver relating to the Debtor. In the event corporate records remain in the possession and control of the Receiver 30 days following the Receiver providing notice of this Order by posting a copy of same on its website, the Receiver is hereby authorized and directed to destroy or dispose of such records in whatever manner the Receiver deems appropriate.

13. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed Trustee employed by the Receiver confirming that all outstanding matters required in administration of this Receivership have been completed, then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

MISCELLANEOUS

14. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
15. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
16. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.