

COURT FILE NUMBER 2201-02699
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT NATIONAL BANK OF CANADA
RESPONDENT BALANCED ENERGY HOLDINGS INC.,
BALANCED ENERGY OILFIELD SERVICES
INC., AND BALANCED ENERGY OILFIELD
SERVICES (USA) INC.
DOCUMENT **SECOND REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER AND
MANAGER OF BALANCED ENERGY
HOLDINGS INC., BALANCED ENERGY
OILFIELD SERVICES INC., AND
BALANCED ENERGY OILFIELD SERVICES
(USA) INC.**

May 30, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

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SECOND REPORT OF THE RECEIVER

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INTRODUCTION

1. On March 7, 2022 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**” or the “**Assets**”) of Balanced Energy Oilfield Services Inc. (“**BCAN**”), Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”), and Balanced Energy Holdings Inc. (“**BEH**”) (collectively the “**Balanced Group**” or the “**Company**”) pursuant to an Order of the Honourable Justice A.D. Grosse (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Company, to market and solicit offers to purchase the Assets of the Company, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The Receiver’s reports and other information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/balancedenergy/>.
4. Any capitalized terms not defined herein have the meanings given to them in the First Report of the Receiver, dated March 21, 2022 (the “**First Report**”).
5. On March 30, 2022, this Honourable Court granted various Orders which, among other things, authorized and approved the Sales Solicitation Process (“**SSP**”), the Stalking Horse Term Sheet, the AVO and RVO.

6. The purpose of this report (“**Second Report**”) is to inform the Court on the following:
 - (a) the activities of the Receiver’s since the date of the First Report, including the results of the SSP and the status of the Stalking Horse Term Sheet;
 - (b) the Receiver’s statement of receipts and disbursements from the Date of Appointment to May 27, 2022;
 - (c) details of the secured and potential priority claims in the Receivership Proceedings; and
 - (d) a summary of the estimated net proceeds available for distribution and remaining tasks to complete the administration of the Receivership Proceedings.

7. The Receiver is requesting the following relief from this Honourable Court at the Application it is bringing on June 10, 2022 (the “**Application**”):
 - (a) approval of the activities of the Receiver since the date of the First Report, including its receipts and disbursements; and
 - (b) authorization to make distributions and to holdback certain funds respecting potential priority creditor claims and to complete the administration of these Receivership Proceedings, as set out below.

TERMS OF REFERENCE

8. In preparing this Second Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
9. Except as described in this Second Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Receiver has not examined or reviewed the financial forecasts and projections referred to in this Second Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
10. Future oriented financial information reported or relied on in preparing this Second Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
11. The Receiver has prepared this Second Report in connection with the Application. This Second Report should not be relied on for other purposes.

12. Information and advice described in this Second Report has been provided to the Receiver by its counsel, Osler, Hoskin & Harcourt LLP (the “**Receiver’s Canadian Counsel**”) and has been provided to the Receiver to assist it in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other stakeholder.
13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

ACTIVITIES OF THE RECEIVER

14. Since the date of the First Report the Receiver, among other things:
 - (a) completed the SSP in accordance with the order granted on March 30, 2022 (the “**Sale Solicitation Process Order**”), the results of which are described in further detail below;
 - (b) closed the Stalking Horse Transaction and collected the proceeds therefrom;
 - (c) commenced proceedings in the United States under Chapter 15 of the United States Bankruptcy Code for an order to recognize these Receivership Proceedings. The Chapter 15 recognition was required to assist with dealing with various creditor claims that were being advanced in the United States, and with the Receiver’s efforts to take possession and control of certain equipment that had been impounded in the United States immediately following the commencement of these Receivership Proceedings;
 - (d) facilitated the filing of claims on behalf of employees who were determined to have claims under the *Wager Earner Protection Program Act (Canada)* (the “**WEPPA**”);

- (e) completed final customer billings for projects completed during the Receivership Proceedings and continued to work to collect accounts receivable owed to the Balanced Group;
- (f) responded to requests for information from creditors, employees and other stakeholders; and
- (g) corresponded with and reviewed various claims from creditors asserting secured and priority claims including the Canada Revenue Agency (“CRA”).

CHAPTER 15 PROCEEDINGS

15. As described in the Receiver’s First Report, NBC has valid first charge security over all of the Company’s assets in both Canada and the United States (apart from the collateral over which LBEL has security). Upon being appointed the Receiver intended to transport all equipment located in the United States into Canada so that the Receiver could take possession and control and prepare the equipment for sale.
16. However, shortly after the Date of Appointment, the Receiver learned that one or more creditors of BUSA coordinated the seizure of certain assets of BUSA located in the United States. Such assets included a crane and a hauling truck owned by BUSA (the “**Seized Equipment**”). The Receiver was advised by the Company’s local counsel in North Dakota that the seized equipment had been located in a private impound yard and were being held by one or more creditors, including a company by the name of Rossco Crane and Rigging, Inc. (“**Rossco**”).

17. On March 11, 2022, the Receiver was served with a Temporary Restraining Order (the “**TRO**”) for Preliminary Injunction issued by the State Court of North Dakota (the “**ND Court**”) enjoining BUSA, its agents representatives and attorneys from removing the Seized Equipment from the impound yard where it was located. The TRO was continued by further order of the ND Court on March 14 and April 12, 2022.
18. On April 4, 2022, the Receiver and Rossco reached an agreement to dissolve the TRO and on May 10, 2022, the ND Court ordered that the TRO be dissolved effective immediately.
19. On April 14, 2022, the Receiver (in its capacity as authorized foreign representative), through its US counsel, filed a Petition for Recognition as Foreign Main Proceeding Pursuant to Sections 1515 and 1517 of the United States *Bankruptcy Code* and Related Relief (the “**Chapter 15 Petitions**”) for each of the Balanced Group with the United States Bankruptcy Court for the District of North Dakota (“**US Court**”) seeking an order recognizing the Receivership Proceedings as a foreign main proceeding pursuant to Sections 1515 and 1517 of the United States *Bankruptcy Code*. On May 19, 2021, the US Court entered its Order granting recognition (“**Recognition Order**”) as a Foreign Main Proceeding and Related Relief wherein the Chapter 15 Petitions were granted.

20. The Recognition Order, among other things, gave effect to the stay of proceedings (and other rights and powers set out in the Receivership Order) in the United States, and authorized the Receiver to remove the Seized Equipment from the impound yard and transport it back to Canada for sale. As at the date of this Second Report, the Seized Equipment remains in the impound yard, as certain road bans due to weather are preventing the Receiver from transporting the equipment; however, the Receiver intendeds to transport it back to Canada after roads bans are lifted in the State of North Dakota, which the Receiver anticipates will occur in the near future.

SALES SOLICITATION PROCESS

21. The Sales Solicitation Process Order outlined the following steps and times lines for the SSP:
- (a) March 21, 2022 – formally launch sales process, e-mail blast, post teaser on the Receiver’s website, open virtual data room;
 - (b) March 21 to April 27, 2022 – sign non-disclosure agreements, provide interested parties access to data room, coordinate field visits to view assets;
 - (c) April 27, 2022 – final bid deadline (“**Final Bid Deadline**”) for binding proposals. A template asset purchase and sale agreement to be provided to all bidders in the data room;
 - (d) May 4, 2022 – auction to be held (if necessary); and
 - (e) May 13, 2022 – seek Court approval of any Successful Bids other than the Proposed Stalking Horse Transaction and close transaction thereafter.

22. In accordance with SSP, on March 21, 2022, the Receiver distributed an information memorandum (“**IM**”) describing the purchase opportunity and SSP to a list of counterparties. The outreach included financial and strategic buyers and auction houses.
23. Pursuant to the Sales Solicitation Process Order, the IM and SSP were posted on the Receiver’s website and notice of the SSP was published in the Insolvency Insider for 5 consecutive weeks beginning on March 28 and the Daily Oil Bulletin on three occasions.
24. During the SSP, counterparties that executed a non-disclosure agreement (“**NDA**”) were provided access to a virtual data room (“**VDR**”) that hosted detailed information with respect to the assets and financial information of the Balanced Group.
25. The marketing effort resulted in the following outreach:
 - (a) 276 views of the public advertisement and +150 direct email distributions;
 - (b) 8 parties signed NDA’s and were provided access to the VDR and offered the opportunity for site visits to inspect the assets; and
 - (c) Counterparties were instructed to submit non-binding letters of intent on April 27, 2022.
26. The Receiver followed up with all counterparties that executed an NDA on numerous occasions to determine if they required any additional information to complete their due diligence and to determine if they intended to submit a proposal in advance of the Final Bid Deadline.

27. No Superior Proposals were received by the Final Bid Deadline and accordingly the Receiver filed the Receiver's Certificate on May 19, 2022, certifying that no Superior Offers had been received, in accordance with the Sale Solicitation Process Order.
28. The Receiver then proceeded to close the Stalking Horse Transaction in accordance with the Sales Solicitation Process Order. On May 18, 2022, the Receiver collected sales proceeds of \$12,274,335 which represents the sales proceeds the assets included in the Stalking Horse Transaction except for the Seized Equipment. The Receiver intends to close on the sale of the Seized Equipment and collect the remainder of the sales proceeds (\$831,000) from the Stalking Horse Transaction once the Seized Equipment is released from the impound lot and transported back to Canada.

DETAILS OF SECURED AND POTENTIAL PRIORITY CLAIMS

29. The Receiver is aware of the following secured claims, charges and liens that are owed by the Company, either pursuant to statute, or which have been registered against the Property.

Secured Claims

30. As described in the affidavit of Dana Ades-Landy sworn February 28, 2022, the Balanced Group is indebted to the National Bank of Canada ("NBC") pursuant to two facilities:

- (a) An offer of financing and credit facility dated June 8, 2020 (“**NBC Facility**”). As at January 26, 2022, the amount owed by the Balanced Group under the NBC Facility was \$23,695,717, excluding legal and professional fees, costs, charges disbursements and expenses incurred by NBC prior to January 26, 2022; and
 - (b) An offer of financing dated June 25, 2021, respecting a Highly Affected Sectors Availability Program Term Loan (“**NBC HASCAP Facility**”). As at January 26, 2022, the amount owing under the NBC HASCAP Facility was \$1,003,397, excluding legal and professional fees, costs, charges disbursements and expenses incurred by NBC prior to January 26, 2022.
31. Collectively, as at May 27, 2022, the amount owing under the NBC Facility and the NBC HASCAP Facility was approximately \$25.2 million (the “**NBC Secured Debt**”), with interest accruing thereafter plus legal and professional fees, costs, charges disbursements and expenses incurred by NBC.
32. The NBC Secured Debt is secured by the following:
- (a) A general security agreement executed on February 20, 2018, by BCAN in favour of NBC;
 - (b) A security agreement executed on September 26, 2018, by BUSA in favour of NBC; and
 - (c) A general security agreement executed on February 20, 2018, by BEH in favour of NBC.
- (collectively, the “**NBC Security**”).

33. In addition to NBC, LBEL Inc. (“**LBEL**”) holds a secured charge over certain equipment held by BUSA in the amount of approximately \$915,000 (as at May 16, 2022) (the “**LBEL Secured Debt**”) pursuant to a Specific Security Agreement dated March 20, 2018 (the “**LBEL Security Agreement**”).

Canada Revenue Agency

34. On April 20, 2022, the CRA sent a letter to the Receiver outlining a proposal to assess the BCAN GST account in the amount of \$242,625.77, arising from GST/HST that was not paid to suppliers based on the creditor listing attached to the Receiver’s notice and statement of receiver (the “**GST Assessment**”).
35. The Receiver continues to review the validity of the GST Assessment as well as consider the treatment of such claim in accordance with the RVO. The Receiver intends to hold back funds equal to the full amount the GST Assessment until it completes its review and reports further to this Court in respect of the GST Assessment.

Wage Earner Protection Program

36. On the Date of Appointment, several former employees were terminated and were not paid termination and/or severance pay. Additionally, employees that were terminated (or resigned) during the Receivership Proceedings on behalf of the Debtors were not paid vacation pay that accrued prior to the Date of Appointment or termination and/or severance pay.

37. In accordance with the WEPPA, the Receiver made the former employees aware of the existence of such program and advised that the Receiver would review the Company's books and records and identify employees who were owed eligible wages under the Wage Earner Protection Program (the "**WEPP**").
38. After reviewing the Company's books and records, and with the assistance of the Company, the Receiver determined that approximately \$6,500 was owed to former employees for unpaid vacation and \$60,000 for termination and severance pay, which are considered eligible wages under the WEPP (the "**WEPP Claims**").
39. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Company's current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
40. The Receiver has yet to receive the details of Service Canada's subrogated claim. However, it estimates that the claim submitted by Service Canada ranking in priority to the Secured Creditor will be approximately \$6,500 ("**Expected Priority WEPP Claim**") which relates to the unpaid vacation pay portion of the WEPP Claims. The Receiver recommends holding back funds sufficient to satisfy the full amount of the Expected Priority WEPP Claim.
41. The Receiver notes that the Expected Priority WEPP Claim only relates to former BCAN employees as BEH had no employees at the Date of Appointment.

Repairman's Liens

42. The Receiver has been made aware of potential repairman's liens, claimed by creditors of BUSA and registered or asserted in North Dakota.

43. The Receiver intends to investigate such claims further, and request formal documentation and US legal advice in respect of such claims. Once received the Receiver and the Receiver's Canadian Counsel and US Counsel will review the claim to determine the amount and the priority of such claims (vis-à-vis the NBC Security). The Receiver recommends holding back sufficient funds until the potential claim is resolved.

Security Review

44. The Receiver's Canadian Counsel has reviewed the NBC Facility, the NBC HASCAP Facility and the NBC Security and determined that, subject to the standard qualifications and assumptions, NBC has a valid and enforceable security over the Assets securing the NBC Debt.
45. The Receiver also engaged Munsch Hardt Kopf & Harr, P.C. ("**US Counsel**") to review and opine on the security granted by BUSA to NBC. US Counsel determined that, subject to customary assumptions and qualifications, NBC's security against BUSA was properly perfected.
46. The Receiver's Canadian Counsel has also reviewed the LBEL Security Agreement and determined that, subject to the standard qualifications and assumptions, LBEL has valid and enforceable security in the assets listed in the LBEL Security Agreement.

SUMMARY OF RECEIPTS AND DISBURSEMENTS

47. Receipts and Disbursements from the Date of Appointment to May 27, 2022, are summarized as follows:

Statement of Receipts and Disbursements for the period of March 7, 2021 to May 27, 2022	
CAD \$	Cumulative
Receipts	
Sale of Assets	\$ 12,274,335
Accounts receivable collections	5,321,200
Receiver's Certificate	1,000,000
GST Collected	221,963
Transfer from pre-receivership account	43,733
Other receipts	3,575
Total - Receipts	18,864,805
Disbursements	
Payroll and benefits	1,672,370
Receiver's Certificate	1,000,000
Operating expense	553,181
Legal fees and disbursements	314,142
Insurance	245,568
Receiver's fees and costs	203,377
Rent and utilities	104,925
GST Paid	51,278
Bank fees and other	40,234
Total - Disbursements	4,185,075
Net Cash on Hand	\$ 14,679,730

- (a) Sale of assets includes collection of the proceeds from the Stalking Horse Transaction (balance of purchase price to be collected upon the return of the Seized Equipment);
- (b) Accounts receivable includes collections by the Receiver in connection with the Company's coil tubing services;

- (c) Transfer from the Company's pre-receivership accounts to the Receiver's trust account;
 - (d) Payroll and benefits include amounts disbursed by the Receiver relating to payroll and employee deductions and payments to consultants of BCAN and BUSA;
 - (e) Operating costs include amounts paid to vendors and suppliers to facilitate the ongoing operations of the BCAN business;
 - (f) Legal fees and disbursements paid to date for US Counsel (approximately \$112,000) and the Receiver's Canadian Counsel (\$202,000) in respect of legal advice in connection with the Receivership Proceedings;
 - (g) Insurance relates to insurance costs including operator's extra insurance, general liability and employee benefits;
 - (h) Receiver's fees and costs paid to date in connection with the administration of the Receivership Proceedings;
 - (i) Rent and Utilities includes amounts disbursed for occupation rent and office utilities; and
 - (j) Bank Charges include wire payment fees, and other miscellaneous bank fees.
48. As at May 27, 2022, the Receiver holds approximately \$14.7 million of cash on hand.

PROPOSED INTERIM DISTRIBUTION

49. The Stalking Horse Transaction contemplates the repayment of the LBEL Secured Debt in full. LBEL provided a payout statement effective May 16, 2022, which totals approximately \$915,000. The Receiver proposes to make a distribution to LBEL (the “**LBEL Distribution**”) in an amount equal to the LBEL Secured Debt (in such quantum as may be agreed between LBEL and the Receiver, and which is presently estimated at approximately \$915,000, or as may be determined by further Order of this Court) in full and final satisfaction of the LBEL Secured Debt and all obligations under the LBEL Security Agreement.
50. The Receiver has an opinion from the Receiver’s Canadian Counsel opining that the LBEL Security Agreement and NBC Security are, subject to the usual assumptions, validly authorized, executed, issued and registered. Given the realization of the Property is substantially complete, the Receiver does not anticipate the recoveries will be sufficient to repay the NBC Secured Debt in full. Accordingly, in the Receiver’s view NBC is the fulcrum creditor in the Receivership Proceedings.
51. As detailed above, the Receiver has approximately \$14.7 million of cash on hand. The table below presents a summary of the Receiver’s proposed uses of the cash on hand including proposed distributions to LBEL and NBC and a holdback to be retained by the Receiver on account of the following:
- (a) the remaining costs to complete the administration of these Receivership proceedings including the completion of certain post-closing matters associated with the TSA and payment of any remaining operating expenses;

- (b) a holdback for professional fees to complete the administration of the Receivership Proceedings; and
- (c) to account for any claims which may have priority over the NBC Security including the GST Assessment and the Expected Priority WEPP Claims,
- (collectively, the “**Holdback**”).

Estimated Holdback	
CAD \$	
Holdback	
GST Assessment	242,626
Operating expenses	223,483
Receiver's Counsel's Fees	119,563
Receiver's Fees	90,000
G&A expenses	59,500
WEPP Priority	6,500
Contingency	122,418
Total - Holdback	864,090

Interim Distribution	
CAD \$	
Cash on Hand	14,679,730
Distribution to LBEL	(915,641)
Estimated Interim Distribution to NBC	(12,900,000)
Holdback	864,090

52. As at May 27, 2022, the total amount owing under the NBC Secured Loans is approximately \$25.2 million. The Receiver is seeking an Order from this Honourable Court to make the LBEL Distribution to LBEL in full satisfaction of LBEL’s secured claim and one or more interim distributions to NBC (the “**NBC Interim Distribution**”) (up to the amount of the NBC Secured Debt) and at such times as may be determined appropriate by the Receiver, out of the available cash on hand, to the NBC, on account of and in partial satisfaction of the NBC Secured Debt without further Order of this Honourable Court. The proposed NBC Interim Distribution is significantly below the amount of the NBC Secured Debt of approximately \$25.2 million.
53. The Receiver anticipates that a further distribution to NBC will be made in the future, upon the completion of the following:
- (a) the completion of the sale of the Seized Equipment;
 - (b) collection of the remaining accounts receivable;
 - (c) resolution of the various priority claims discussed above; and
 - (d) remaining administrative matters of the Receivership Proceedings.
54. It is anticipated that any further distribution to NBC will result in a significant shortfall (in excess of \$10 million) to the amount owing under the NBC Secured Debt.

RECEIVER'S RECOMMENDATIONS

55. The Receiver respectfully requests that this Honourable Court grant the following relief:
- (a) approving the Receiver's activities to date, including its receipts and disbursements; and
 - (b) authorizing the Receiver to make the proposed LBEL Distribution and NBC Interim Distribution and retain the Holdback.
56. All of which is respectfully submitted this 30th day of May 2022.

FTI Consulting Canada Inc. in its capacity as
Receiver of the assets, property and undertaking
of the Balanced Group.



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