

COURT FILE NUMBER     **2201-01086**

COURT     COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE     CALGARY

PLAINTIFF     **CANADIAN WESTERN BANK**

DEFENDANTS     **BIG BEAR ENERGY RENTALS LTD., 1509571  
ALBERTA LTD., 5556300 MANITOBA LTD.,  
BARRICADE ENVIRONMENTAL LTD., DIRECT  
ENVIRONMENTAL TECHNOLOGIES INC., JASON  
ROBERT LLOYD, KENNETH JOHN GEORGE  
CARSTAIRS, ROBERT CHRISTOPHER LLOYD and  
DANIEL ROBERTS**

DOCUMENT     **APPLICATION BY THE RECEIVER, re:  
FINAL DISTRIBUTION & DISCHARGE**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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File No. 022910.000008

**NOTICE TO THE ATTACHED SERVICE LIST AT SCHEDULE “A”**

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

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

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

Date	October 31, 2022
Time	2:00 p.m.
Where	Calgary Courts Centre (via Webex Video Conference)
Before Whom	The Honourable Madam Justice K.M. Horner

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

**REMEDY CLAIMED OR SOUGHT:**

1. Capitalized terms used herein have the same meaning as in the Third Report unless otherwise defined.
2. Alvarez & Marsal Canada Inc., in its capacity as Receiver of Big Bear Energy Rentals Ltd., 1509571 Alberta Ltd., 5556300 Manitoba Ltd., Barricade Environmental Ltd., and Direct Environmental Technologies Inc. (collectively, the “**Debtors**”) seeks an Order, substantially in the form attached as Schedule “B” hereto, for the following relief:
  - (a) Deeming service of this Application together with all supporting materials to be good and sufficient, and abridging the time for service of said documents, if necessary;
  - (b) Approving and ratifying the actions, conduct and activities of the Interim Receiver and the Receiver, as applicable, as outlined in the First Report of the Interim Receiver dated February 1, 2022 (the “**Interim Report**”), the First Report of the Receiver, dated April 25, 2022 (the “**First Report**”), the Second Report of the Receiver dated June 27, 2022 (the “**Second Report**”) and the Third Report of the Receiver to be filed (the “**Third Report**”);
  - (c) Approving and ratifying the professional fees and disbursements of the Receiver and its legal counsel, Borden Ladner Gervais LLP, as set out in the Third Report, without the necessity of a formal passing of accounts;
  - (d) Approving the interim statement of receipts and disbursements as set out in the Third Report;
  - (e) Approving the Receiver’s Forecast Receipts and Disbursements;
  - (f) Amending the terms of the Approval and Vesting Order granted in these proceedings on July 8, 2022, to authorize the distribution of the net funds available in the Debtors’ estate, and any additional funds collected by the Receiver either before or after its discharge, to Canadian Western Bank (“**CWB**”) and Business Development Bank of Canada (“**BDC**”), subject to:
    - (i) payment of amounts secured by liens held by Meridian OneCap and Fountain Tire in respect of certain of the Debtors’ serial numbered goods; and
    - (ii) maintaining sufficient funds in the estate to resolve any remaining claims and to address the Receiver’s final administration of the estate;
  - (g) Authorizing the Receiver to settle the Disputed Spartan A/R on terms agreed to by CWB and BDC, or failing such agreement, subject to further approval of the Court;
  - (h) Approving the Settlement Agreement for the settlement of accounts receivable owing from Pine Cliff to Big Bear;
  - (i) Granting the Restricted Court Access Order sealing the Confidential Appendices;

- (j) Authorizing the Receiver to assign any one or more of the Debtors into bankruptcy; and
  - (k) Discharging the Receiver upon the Receiver filing a discharge certificate, and releasing the Receiver from any and all liability arising in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of the Receiver; and
3. Such further and other relief as counsel may advise and this Honourable Court permit.

## **GROUND FOR MAKING THIS APPLICATION:**

### **Background**

- 4. The Receiver was appointed pursuant to an Enhanced Interim Receivership Order and Receivership Order, granted by the Court of Queen's Bench of Alberta (the "**Court**") on February 4, 2022, (the "**Receivership Order**").
- 5. Pursuant to an approval and vesting order granted on July 8, 2022 (the "**Vesting Order**"), the Court approved an auction agreement between the Receiver and Maynards Industries II Canada Ltd. (the "**Auctioneer**"), dated June 27, 2022 (the "**Auction Agreement**"). The Vesting Order authorized the Auctioneer to sell or otherwise transfer the Debtors' assets (the "**Assets**") to potential purchasers, pursuant to the terms of the Auction Agreement (the "**Auction**").
- 6. The Auction took place on September 15, 2022, and the Auctioneer has collected the proceeds of the sale of the Assets sold in the Auction (the "**Auction Proceeds**") and has delivered the Auction Proceeds to the Receiver.
- 7. In addition to overseeing the Auction, since the filing of the Second Report, the Receiver has, among other things,
  - (a) continued communication with the Canada Revenue Agency with respect to finalizing its audits of the source deduction and GST accounts of the Debtors;
  - (b) continued corresponding with CWB, BDC and its counsel concerning various receivership matters;
  - (c) provided the Lloyds' Counsel, Mr. Carstairs' counsel and counsel for CWB "read only" access to Jobutrax and access to a data room containing copies of the Debtor's accounting records on July 7, 2022;
  - (d) negotiated with Spartan with respect to the validation, settlement and collection of outstanding accounts receivable totalling approximately \$984,000, which negotiations remain ongoing;

- (e) worked with customs brokers to provide updates to the United States and Canadian Border Patrol on the return of the TIB Assets to the Big Bear Facility in order to avoid fines;
- (f) issued lease repudiation notices to landlords; and
- (g) undertaken the day-to-day management of the Company.

### **Distribution, Approval of Fees & Disbursements, and Discharge**

8. Aside from resolving certain disputed claims in respect of accounts receivable owing to the Debtors by Spartan Delta Corp. (the “**Remaining Spartan A/R**”), the Receiver has completed its duties in the within proceedings and is seeking its discharge from the Court. To the extent additional funds are recovered by the Receiver from the Remaining Spartan A/R, the Receiver proposes to distribute those funds as a post-discharge administrative matter.
9. The Receiver’s independent legal counsel completed its security opinions and has determined that, subject to the usual qualifications, each of CWB and BDC hold valid and enforceable security, effective against a trustee in bankruptcy.
10. BDC holds valid and enforceable security in first position primarily against the Debtors’ equipment. CWB holds valid and enforceable security in first position primarily against the Debtors’ accounts receivable and inventory. CWB’s security extends to any surplus equipment sale proceeds after BDC is paid from those proceeds in full. CWB’s and BDC’s security is subordinate only to security held by Meridian OneCap and Fountain registered against certain of the Debtors’ serial numbered assets, with such registration securing amounts of approximately \$10,000, and certain deemed trust claims of the CRA.
11. On this basis, the Receiver is in a position to make distributions to Meridian OneCap, Fountain Tire, CWB and BDC from the cash in the estate, the cash anticipated to be collected from outstanding and uncollected accounts receivables, and the proceeds of the Auction, subject to maintaining sufficient holdbacks necessary to address any estate administration matters.
12. It is anticipated that recoveries from the estate will not surpass what is outstanding to CWB and BDC. As a result, the unsecured creditors are not expected to receive any recoveries.
13. The Receiver has completed an interim statement of receipts and disbursements reflecting net funds available to the Debtors’ creditors in the approximate amount of \$9,191,000. The Receiver proposes to file a final statement of receipts and disbursements with the Clerk of the Court once the Spartan Claims have been settled or resolved.

14. The Receiver has incurred professional fees through its office and that of its legal counsel, which the Receiver believes to be fair and reasonable and commensurate with the nature of the work completed.

#### **Assignment into Bankruptcy**

15. The Receivership Order authorizes the Receiver to assign any one or more of the Debtors into bankruptcy, with prior approval of the Court. The Receiver is of the view that it is in the best interests of the Debtors' creditors to assign the Debtors into bankruptcy, and therefore seeks the Court's approval of same.

#### **Sealing Order**

16. The Confidential Appendices contain privileged and commercially sensitive information of the Receiver as well as commercially sensitive information of the Receiver.
17. The Sealing Order sought is the least restrictive and prejudicial alternative to prevent dissemination of the privileged commercially sensitive information.
18. It is fair, just and in the public interest in the circumstances to restrict public access to the Confidential Appendices.
19. The equitable jurisdiction of this Honourable Court is applicable to and provides the basis for the relief sought by the Applicants.
20. Such further and other basis as Counsel may advise and this Honourable Court may permit

#### **MATERIALS OR EVIDENCE TO BE RELIED ON:**

21. The First Report of the Interim Receiver, filed February 4, 2022;
22. The First Report of the Receiver, filed April 25, 2022;
23. The Second Report of the Receiver, filed July 27, 2022;
24. The Third Report of the Receiver, to be filed; and
25. Such further and other material as counsel may advise and this Honourable Court permit.

**APPLICABLE RULES:**

26. *Alberta Rules of Court*, AR 124/2010.
27. Such further and other rules as Counsel may advise and this Honourable Court permits.

**APPLICABLE ACTS AND REGULATIONS:**

28. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
29. Such further and other Acts and regulations as Counsel may advise and this Honourable Court permit.

**ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:**

30. None.

**HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:**

31. Via Webex Video Conference, before the Honourable Justice K.M. Horner, with some or all of the parties present.

**WARNING**

Subject to the Court's procedures having regard for the COVID-19 pandemic, 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"**

**SERVICE LIST**

COURT FILE NUMBER      **2201-01086**

COURT                      COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE        CALGARY

PLAINTIFF                CANADIAN WESTERN BANK

DEFENDANTS            BIG BEAR ENERGY RENTALS LTD., 1509571 ALBERTA LTD., 5556300 MANITOBA LTD., BARRICADE ENVIRONMENTAL LTD., DIRECT ENVIRONMENTAL TECHNOLOGIES INC. (the "**Debtors**"), JASON ROBERT LLOYD, KENNETH JOHN GEORGE CARSTAIRS, ROBERT CHRISTOPHER LLOYD, and DANIEL ROBERTS

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**SCHEDULE “B”**

**FORM OF ORDER SOUGHT**



COURT FILE NUMBER      **2201-01086**

COURT                      **COURT OF KING'S BENCH OF ALBERTA**

JUDICIAL CENTRE        **Calgary**

PLAINTIFF                **CANADIAN WESTERN BANK**

DEFENDANT(S)          **BIG BEAR ENERGY RENTALS LTD.,  
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JOHN GEORGE CARSTAIRS, ROBERT  
CHRISTOPHER LLOYD and DANIEL  
ROBERTS**

DOCUMENT                **ORDER FOR FINAL  
DISTRIBUTION, APPROVAL OF  
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Clerk's Stamp

ADDRESS FOR SERVICE AND  
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File No. 022910.000008

**DATE ON WHICH ORDER WAS PRONOUNCED: October 31, 2022**

**LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, Calgary, Alberta**

**NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.M. Horner**

**UPON THE APPLICATION** by Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of Big Bear Energy Rentals Ltd., 1509571 Alberta Ltd., 5556300 Manitoba Ltd., Barricade Environmental Ltd., and Direct Environmental Technologies Inc. (collectively, the “**Debtors**”) for an Order, *inter alia*, for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities, sealing certain confidential appendices, and discharge of the Receiver; **AND UPON** having read the First Report of the Interim Receiver, filed February

4, 2022 (the “**Interim Report**”), First Report of the Receiver, filed April 25, 2022 (the “**First Report**”), the Second Report of the Receiver, filed July 27, 2022 (the “**Second Report**”), the Receiver's Third Report dated October 19, 2022 (the “**Third Report**”), the confidential appendices 1 and 2 attached to the Third Report (the “**Confidential Appendices**”) and the Affidavit of Service of \_\_\_\_\_ dated \_\_\_\_\_; **AND UPON** hearing counsel for the Receiver, counsel for the Debtor, counsel for Jason Robert Lloyd and Robert Christopher Lloyd, counsel for Kenneth John George Carstairs, counsel for Canadian Western Bank, counsel for Business Development Bank, and any other counsel in attendance; **AND UPON** being satisfied that it is appropriate to do so,

**IT IS ORDERED THAT:**

**Service of Application**

1. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Third Report.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient.

**Approval of Professional Fees and Activities**

3. The Receiver's accounts for fees and disbursements, as set out in the Third Report are hereby approved without the necessity of a formal passing of its accounts.
4. The accounts of the Receiver's legal counsel Borden Ladner Gervais LLP, for its fees and disbursements, as set out in the Third Report are hereby approved without the necessity of a formal passing of its accounts.
5. The Receiver's actions, conduct and activities as set out in the Interim Report, the First Report, the Second Report and the Third Report, are hereby ratified and approved.
6. The Interim Statement of Receipts and Disbursements provided at paragraph 69 of the Third Report and the Forecast Receipts and Disbursements provided at paragraph 74 of the Third Report are each hereby ratified and approved.
7. The Settlement Agreement between the Receiver and Pine Cliff Energy Ltd. provided at Confidential Appendix 2 of the Third Report is hereby approved.

### Final Administrative Matters

8. The Receiver is authorized to settle or otherwise resolve the Remaining Spartan A/R upon obtaining the consent of Canadian Western Bank (“CWB”) and Business Development Bank of Canada (“BDC”) regarding the terms of such settlement or resolution. If the Receiver is not able to settle or otherwise resolve the Remaining Spartan A/R on terms it considers reasonable, or is unable to obtain the consent of CWB and BDC in respect of such terms, the Receiver may apply to this Court for advice and direction regarding same.
9. The Receiver shall, as soon as practicable after settling or otherwise resolving the Remaining Spartan A/R, file a final Statement of Receipts and Disbursements with the Clerk of the Court and serve same on the Service List.
10. The Receiver is authorized to assign any one or more of the Debtors into bankruptcy.

### Amending Order

11. Paragraph 11 of the Approval and Vesting Order granted in these proceedings on July 8, 2022 is hereby amended by deleting the following

*11. The Receiver shall be entitled to make a distribution and any subsequent distributions to Canadian Western Bank and Business Development Bank of Canada (together, the “**Lenders**”) from the net proceeds of sale of the Auctioned Assets held by the Receiver up to the amount of the indebtedness owed to the respective Lenders, subject to maintaining sufficient funds in the estate to address any Claims against any Auctioned Assets sold, any claims disputing title or ownership of the Auctioned Assets, and estate costs, provided that the Lenders agree on an allocation of receivership costs amongst them, to be provided by the Receiver. In the event the Lenders are unable to agree on such allocation to be presented, the Receiver shall return to Court for approval of such cost allocation prior to making any distributions to the Lenders.*

and replacing it with the following

*11. The Receiver is authorized to make a distribution and any subsequent distributions to CWB and BDC (collectively, the “**Lenders**”) from the net proceeds of the Debtors’ estates held by the Receiver, up to the amount of the indebtedness owed to each of the Lenders, subject to:*

*(a) paying priority claims to Meridian OneCap and Fountain Tire in respect of registrations against serial numbered goods identified by the Receiver; and*

*(b) maintaining sufficient funds in the estate to resolve any remaining claims and address its final administration of the estate,*

*provided that the Lenders agree on an allocation of receivership costs amongst them, to be provided by the Receiver. In the event the Lenders are unable to agree on such allocation to be presented, the Receiver shall return to Court for approval of such cost allocation prior to making any distributions to the Lenders.*

### **Sealing Order**

12. The Confidential Appendices shall be sealed on the Court file and kept confidential unless and until an application is made to modify or vary this Order, pursuant to paragraph 14 hereof.

13. The Clerk of the Court shall file the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS, BEING THE CONFIDENTIAL APPENDICES 1 AND 2 TO THE THIRD REPORT OF THE RECEIVER DATED OCTOBER 19, 2022 (THE “**CONFIDENTIAL APPENDICES**”) PURSUANT TO THE RESTRICTED ACCESS AND SEALING ORDER ISSUED BY JUSTICE K.M. HORNER ON OCTOBER 31, 2022. THE CLERK OF THE COURT SHALL NOT RELEASE THE CONFIDENTIAL APPENDICES TO THE PUBLIC UNLESS THE SEALING ORDER HAS BEEN MODIFIED BY FURTHER ORDER OF THE COURT.

14. Leave is hereby granted to any person or party affected by paragraphs 11 and 12 of this Order to apply to this Honourable Court for a further order modifying or varying the terms of those paragraphs of this Order, with such application to be brought on no less than 7 days’ notice to the Receiver, Maynards Industries II Canada Ltd. and any other affected party.

### **Discharge**

15. 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.

16. 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.
17. Upon the Receiver filing an Affidavit of the Receiver, substantially in the form attached hereto as Appendix "A", confirming that the items listed in paragraphs [89 & 90] of the Third Report have been completed, then the Receiver shall be discharged as Receiver of the Debtors, 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.
18. 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.
19. Service of this Order on any party not attending this application is hereby dispensed with.

**Appendix “A”**

**Form 49**  
[Rule 13.19]

COURT FILE NUMBER 2201-01086  
COURT COURT OF KING’S BENCH OF ALBERTA  
JUDICIAL CENTRE Calgary  
PLANTIFF(S) CANADIAN WESTERN BANK  
DEFENDANT(S) BIG BEAR ENERGY RENTALS LTD.,  
1509571 ALBERTA LTD., 5556300  
MANITOBA LTD., BARRICADE  
ENVIRONMENTAL LTD., DIRECT  
ENVIRONMENTAL TECHNOLOGIES INC.,  
JASON ROBERT LLOYD, KENNETH JOHN  
GEORGE CARSTAIRS, ROBERT  
CHRISTOPHER LLOYD, and DANIEL  
ROBERTS

Clerk’s Stamp

DOCUMENT **AFFIDAVIT OF THE RECEIVER**

ADDRESS FOR SERVICE AND Robyn Gurofsky / Anthony Mersich  
CONTACT INFORMATION OF Borden Ladner Gervais LLP  
1900, 520 3<sup>rd</sup> Ave. S.W.  
PARTY FILING THIS Calgary, AB T2P 0R3  
Telephone: (403) 9744 / 9154  
DOCUMENT Facsimile: (403) 266-1395  
Email: [RGurofsky@blg.com](mailto:RGurofsky@blg.com) /  
[AMersich@blg.com](mailto:AMersich@blg.com)  
File No. 022910.000008

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**AFFIDAVIT OF OREST KONOWALCHUK**

**Sworn (or Affirmed) on \_\_\_\_\_, 20**

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I, Orest Konowalchuk, of Calgary, Alberta, SWEAR/AFFIRM AND SAY THAT:

32. I am a Senior Vice President of Alvarez & Marsal Canada Inc., which is the Court appointed receiver (“**Receiver**”) of the undertaking, property and assets of Big Bear Energy Rentals Ltd., 1509571 Alberta Ltd., 5556300 Manitoba Ltd., Barricade Environmental Ltd., and Direct Environmental Technologies Inc. (collectively, the “**Debtors**”). Due to my direct involvement in these receivership proceedings, I have personal knowledge of the matters deposed to herein, except

- SWORN (OR AFFIRMED) BEFORE ME at )  
[City], Alberta, this [Date] day of [Month], )  
20[Year]. )  
) )  
) )  
\_\_\_\_\_) (Signature)  
(Commissioner for Oaths in and for Alberta) )  
) )  
) )  
\_\_\_\_\_) )  
PRINT NAME AND EXPIRY/LAWYER )  
/STUDENT-AT-LAW ) (Print Name)