

FORM 27
[RULES 6.3 AND 10.52(1)]

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COURT FILE NO. 2201-01016

COURT COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ROBUS SERVICES LLC

RESPONDENT ROBUS RESOURCES INC.

DOCUMENT **APPLICATION**
(Declaration Re: Post-Receivership Costs)

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING
THIS DOCUMENT **BENNETT JONES LLP**
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Chris Simard / Chelsea Tolppanen
Telephone No.: 403-298-4485/3083
Fax No.: 403-265-7219
Client File No.: 68320.6

**NOTICE TO RESPONDENT(S): ROBUS RESOURCES INC.,
ALVAREZ & MARSAL CANADA INC., AS
RECEIVER**

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

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

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

Date: December 14, 2022
Time: 2:00 p.m.
Where: Calgary Courts Centre (via Webex Videoconference)
Before Whom: The Honourable Assistant Chief Justice K.G. Nielsen

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. Enerplus Corporation ("**Enerplus**") applies for an Order (substantially in the form attached hereto as **Schedule "A"** hereto):
 - (a) ordering and declaring that:
 - (i) Alvarez & Marsal Canada Inc., in its capacity as Receiver (the "**Receiver**") of Robus Resources Inc. ("**Robus**") is obligated to pay to Enerplus all the amounts owing to Enerplus with respect to all goods and services provided by Enerplus under the November 17, 2017 Joint Operating Agreement (the "**Operating Agreement**") attached as Exhibit "1" to the Affidavit of Derek Lynn sworn on December 7, 2022 (the "**Lynn Affidavit**") from and after the date of the Receivership Order (the "**Receivership Order**") granted herein on April 12, 2022 (collectively, the "**Post-Filing Costs**");
 - (ii) the Post-Filing Costs are post-filing obligations of the Receiver, that must be paid in full before the repayment of any creditors of Robus or any creditors of the Receiver (including, without limitation, the repayment of any amounts secured by the Receiver's Borrowings Charge (as defined in the Receivership Order), and whether such repayments are by way of cash, credit bid, or some other form of consideration);
 - (iii) the Receiver's obligation to pay the Post-Filing Costs to Enerplus are secured by and shall have the benefit of the Receiver's Charge (as defined in the Receivership Order), and the Receiver's Charge is hereby increased by the amount of the Post-Filing Costs outstanding, from time to time;
 - (iv) [**OR, IN THE ALTERNATIVE TO PARAGRAPH (iii)**] Enerplus is hereby granted a constructive trust as against the Property (as defined in the Receivership Order), in the amount of the Post-Filing Costs outstanding, from time to time; and

- (v) all of the Receiver's audit rights with respect to the Post-Filing Costs, as provided for in the Operating Agreement and at law, are expressly preserved; and
- (b) granting such further and other relief as to this Honourable Court seems just.

Grounds for making this application:

2. Enerplus and Robus are parties to the Operating Agreement, pursuant to which Enerplus, as operator, provides ongoing goods and services to Robus with respect to approximately 140 oil and gas wells, along with certain associated facilities and pipelines (collectively, the "**Joarcam Assets**") that are beneficially owned 99% by Robus and 1% by Enerplus.
3. The Joarcam Assets are Robus's only valuable assets. Therefore, any recovery by Robus's creditors in this Receivership will depend on the Receiver being able to sell or otherwise monetize the Joarcam Assets.
4. If Enerplus ceased providing goods and services as operator of the Joarcam Assets, the Receiver's ability to maximize the value of the Joarcam Assets for the benefit of Robus's creditors would be severely impacted. Enerplus, as operator of the Joarcam Assets, is a critical vendor.
5. If Enerplus does not receive assurances that it will be paid for the Post-Filing Costs, it may have to shut-in the Joarcam Assets, to limit any further unrecoverable losses.
6. Enerplus has been providing goods and services to the Receiver under the Operating Agreement from and after the date on which the Receivership Order was granted, April 12, 2022 (the "**Filing Date**").
7. The Receiver, through its words and actions, has elected to adopt and affirm the Operating Agreement, and has received the benefit of Enerplus's performance of its obligations under the Operating Agreement after the Filing Date. As a result, the Post-Filing Costs are current obligations of the Receiver, which must be paid before any creditors of Robus can be repaid.

8. The Receiver has paid some, but not all, of the Post-Filing Costs. The Receiver owes Enerplus Post-Filing-Costs in the approximate amount of \$1.895 million, as at November 30, 2022.
9. Enerplus's entitlement to receive payment of the Post-Filing Costs are secured by the Receiver's Charge (as defined in the Receivership Order), given that the Post-Filing Costs are a disbursement of the Receiver.
10. Alternatively, Enerplus is entitled to the benefit of a constructive trust as against the Property (as defined in the Receivership Order), in the amount of the Post-Filing Costs outstanding, from time to time. The Receiver and the receivership estate have been enriched by Enerplus's provision of goods and services under the Operating Agreement since the date of the Receivership Order, Enerplus has been correspondingly deprived by not being paid the Post-Filing Costs, and there is no juristic reason for the deprivation.
11. In consideration for its ongoing provision of goods and services under the Operating Agreement, Enerplus is entitled to the reasonable protection provided by the Order being sought.

Material or evidence to be relied on:

12. The Lynn Affidavit;
13. all pleadings had and taken herein;
14. such further and other material as counsel may advise and this Honourable Court may deem admissible.

Applicable Rules:

15. Rule 6.3

Applicable Acts and Regulations:

16. *Alberta Rules of Court*, Alta Reg 124/2010;
17. *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3;

18. *Judicature Act*, RSA 2000, c. J-2; and
19. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

20. None.

How the application is proposed to be heard or considered:

21. In Commercial Duty Chambers, before Justice R. A. Neufeld of the Court of King's Bench of Alberta via Webex.

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"

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JUDICIAL CENTRE CALGARY

APPLICANT ROBUS SERVICES LLC
RESPONDENT ROBUS RESOURCES INC.

DOCUMENT **ORDER (Declaration re: Post-Receivership Costs)**

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Attention: Chris Simard / Chelsea Tolppanen
Telephone No.: 403-298-4485/3083
Fax No.: 403-265-7219
Client File No.: 68320.6

DATE ON WHICH ORDER WAS PRONOUNCED: December 14, 2022

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF APPLICATIONS JUDGE/JUDGE WHO MADE THIS ORDER: The Honourable Assistant Chief Justice K.G. Nielsen

UPON THE APPLICATION OF THE APPLICANT Enerplus Corporation ("**Enerplus**"), AND UPON reading the Affidavit of Derek Lynn sworn on December 7, 2022 (the "**Lynn Affidavit**"); AND UPON hearing counsel for the Applicant and counsel for the Respondent;

IT IS ORDERED AND DECLARED THAT:

Service

1. The time for service of the notice of application for this Order is hereby abridged and deemed good and sufficient.

Post-Filing Costs

2. Alvarez & Marsal Canada Inc., in its capacity as Receiver (the "**Receiver**") of Robus Resources Inc. ("**Robus**") is obligated to pay to Enerplus all the amounts owing to Enerplus with respect to all goods and services provided by Enerplus under the November 17, 2017 Joint Operating Agreement attached as Exhibit "1" to the Lynn Affidavit (the "**Operating Agreement**"), from and after the date of the Receivership Order (the "**Receivership Order**") granted herein on April 12, 2022 (collectively, the "**Post-Filing Costs**").
3. The Post-Filing Costs are post-filing obligations of the Receiver, that must be paid in full before the repayment of any creditors of Robus or any creditors of the Receiver (including, without limitation, the repayment of any amounts secured by the Receiver's Borrowings Charge (as defined in the Receivership Order), and whether such repayments are by way of cash, credit bid, or some other form of consideration).
4. The Receiver's obligation to pay the Post-Filing Costs to Enerplus are secured by and shall have the benefit of the Receiver's Charge (as defined in the Receivership Order), and the Receiver's Charge is hereby increased by the amount of the Post-Filing Costs outstanding, from time to time.
5. [**OR, IN THE ALTERNATIVE TO PARAGRAPH 4**] Enerplus is hereby granted a constructive trust as against the Property (as defined in the Receivership Order), in the amount of the Post-Filing Costs outstanding, from time to time.
6. All of the Receiver's audit rights with respect to the Post-Filing Costs, as provided for in the Operating Agreement and at law, are expressly preserved.

J.C.K.B.A. or Clerk of the Court