

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.,
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 **ORDER FOR FINAL
DISTRIBUTION, APPROVAL OF
RECEIVER'S ACTIVITIES AND
FEES, AND DISCHARGE OF
RECEIVER**

I hereby certify this to be a true copy of
the original Order

Dated this 03 day of Nov 2022

Hermosa Czek
for Clerk of the Court

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Robyn Gurofsky / Anthony Mersich
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
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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 Jennifer Gorrie sworn on October 28, 2022; **AND UPON** hearing counsel for the Receiver, counsel for the Debtor, counsel for Jason Robert Lloyd and Robert Christopher Lloyd (together, the “**Lloyds**”), 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, including the fees and costs set out in the Interim Statement of Receipts and Disbursements and the Forecast Fees and Costs, 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, including the fees and costs set out in the Interim Statement of Receipts and Disbursements and the Forecast Fees and Costs, 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. The foregoing shall not be deemed to constitute a determination of issues which are the subject of the allegations by CWB against the Defendants and their defences and any counterclaims or third party proceedings in the within Action, including without limitation, any allegations of conspiracy, deceit, fraudulent

misrepresentation or fraud in the within Action; Provided however that any person (including the Plaintiff and the Defendants in the within Action and the Receiver) shall be entitled to access and to use in the within Action, any Reports filed by the Receiver in the within Action, and all documents and financial records of the Receiver in relation to the Reports (other than any solicitor and client privileged documents), and all documents and financial records of any of the corporate Defendants in the within Action (other than any solicitor and client privileged documents) in the possession or control of the Receiver.

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. In addition:
 - a. In the event a settlement has been negotiated by the Receiver and approved by CWB and BDC, the Receiver shall provide the details of the settlement to counsel to the Lloyds, prior to concluding any settlement.
 - b. Within 7 days of receiving the settlement terms, counsel to the Lloyds shall advise whether they object to the terms of the settlement negotiated.
 - c. In the event there is an objection noted as aforesaid, then the Lloyds shall:
 - i. within 10 days after providing such notification, file an application on the Commercial List (to be heard on a mutually agreed upon date) setting out the objection to the settlement; and

- ii. prior to filing their application, post with the Receiver or its legal counsel, in trust, the sum of \$15,000 to act as security for any costs that may be awarded in the event the application is unsuccessful.
- d. In the event the Lloyds do not object to the settlement, or in the event the requirements set out in paragraph C above are not met, the Receiver shall proceed to conclude the settlement agreement.
- 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. Any member of the Receiver's office will make themselves available in person or via telephone, email or video conference, until close of business on November 14, 2022, to meet with and receive information from the Lloyds regarding the Spartan A/R and any matter relevant to the settlement thereof.
- 11. The Receiver is authorized to assign any one or more of the Debtors into bankruptcy.

Amending Order

- 12. 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.

Restricted Court Access Order

13. 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 15 hereof.
14. 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.

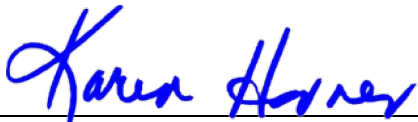
15. Leave is hereby granted to any person or party affected by paragraphs 11 and 12 of this Order to apply to this Honourable Court for a further order modifying or varying the terms of those paragraphs of this Order, with such application to be brought on no less than 7 days’ notice to the Receiver,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

Discharge

16. 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.

17. 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.
18. 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 91 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.
19. Upon the Receiver filing the aforesaid Affidavit, the Receiver shall provide the allocation of receivership costs referenced in paragraph 20 of the Third Report to counsel for the Lloyds.
20. 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.
21. Service of this Order on any party not attending this application is hereby dispensed with.



Justice of the Court of Queen's Bench of Alberta

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: 

Christa Nicholson KC
Counsel to Robert Christopher Lloyd
and Jason Robert Lloyd

GROIA AND COMPANY LLP

Per: _____

Kevin Richard
Counsel to Kenneth John George Carstairs

MILLER THOMSON LLP

Per: _____


Rick Reeson KC
Counsel to Canadian Western Bank

ORDER OF MADAM JUSTICE HORNER DATED OCTOBER 31, 2022 IN COURT FILE
NUMBER 2201-01086 APPROVED AS TO ORDER GRANTED BY:

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____
Christa Nicholson KC
Counsel to Robert Christopher Lloyd
and Jason Robert Lloyd

GROIA AND COMPANY PROFESSIONAL CORPORATION

Per:  _____
Kevin Richard
Counsel to Kenneth John George Carstairs

MILLER THOMSON LLP

Per: _____
Rick Reeson KC
Counsel to Canadian Western Bank

ORDER OF MADAM JUSTICE HORNER DATED OCTOBER 31, 2022 IN COURT FILE
NUMBER 2201-01086 APPROVED AS TO ORDER GRANTED BY:


JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: _____
Christa Nicholson KC
Counsel to Robert Christopher Lloyd
and Jason Robert Lloyd

GROIA AND COMPANY LLP

Per: _____
Kevin Richard
Counsel to Kenneth John George Carstairs

MILLER THOMSON LLP

Per:  _____
for Rick Reeson KC
Counsel to Canadian Western Bank

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 CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Robyn Gurofsky / Anthony Mersich
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 9744 / 9154
Facsimile: (403) 266-1395
Email: RGurofsky@blg.com /
AMersich@blg.com
File No. 022910.000008

AFFIDAVIT OF OREST KONOWALCHUK

Sworn (or Affirmed) on _____, 20

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

1. 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 where stated to be based on information and belief, and where so stated, I verily believe the same to be true.

2. The Receiver was appointed pursuant to an Order of the Honourable Justice K.M Horner of the Court of Queen’s Bench of Alberta, Judicial District of Calgary (the “**Court**”) dated February 4, 2022.
3. Pursuant to an Order of the Honourable Justice K.M. Horner of the Court dated October 31, 2022, upon the Receiver filing with the Clerk of the Court an affidavit confirming that the administration of the estates of the Debtors is concluded, the Receiver would be confirmed discharged in its capacity as Receiver.
4. The Receiver confirms that it has completed the final administration of the Debtors’ estates, and in particular, the administration of the tasks set out at paragraphs 89 and 90 of the Third Report of the Receiver dated October 19, 2022, filed in these proceedings.
5. I swear/affirm this affidavit in support of the discharge of the Receiver.

SWORN (OR AFFIRMED) BEFORE ME at)
 [City], Alberta, this [Date] day of [Month],)
 20[Year].)

 (Commissioner for Oaths in and for Alberta)

 (Signature)

 PRINT NAME AND EXPIRY/LAWYER
 /STUDENT-AT-LAW

 (Print Name)