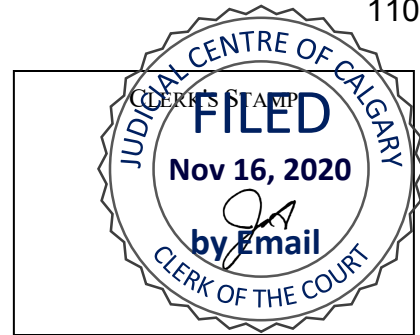




1103037

FORM 27  
[RULES 6.3 AND 10.52(1)]



ESTATE NUMBERS

B201 679073

25-2679073

25-2679074

\$50  
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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

Nov. 17, 2020

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, C. B-3, AS  
AMENDED

AND IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
GREENFIRE HANGINGSTONE OPERATING  
CORPORATION

AND IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
GREENFIRE OIL & GAS LTD.

DOCUMENT

**APPLICATION**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BENNETT JONES LLP**

Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Kelsey Meyer / Dylan Gibbs  
Telephone No.: 403-298-3323 / 403-298-3449  
Fax No.: 403-265-7219  
Client File No.: 87366.2

**NOTICE TO RESPONDENTS: THE SERVICE LIST**

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

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

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

Date:	Tuesday, November 17, 2020
Time:	10:00 a.m.
Where:	Edmonton Law Courts
Before Whom:	The Honourable Mr. Justice Little on the Commercial List

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. An Order substantially in the form attached hereto as **Schedule "1"**:

- (a) abridging the time for service of this application and the materials filed in support thereof, deeming service of this application and the supporting materials to be good and sufficient, and dispensing with further service;
- (b) directing that, in accordance with section 65.11(3) of the *Bankruptcy and Insolvency Act*, RSC 1985 c C-4, as amended (the "**BIA**"), the Marketing Agreement between Warner Petroleum Corporation ("**Warner**"), Greenfire Hangingstone Operating Corporation ("**GHOC**"), and Greenfire Oil & Gas Ltd. ("**GOGL**" and together with GHOC, "**Greenfire**") dated April 15, 2019 (the "**Marketing Agreement**") has not been and is not to be disclaimed or resiliated, that disclaimer or resiliation of the Marketing Agreement is prohibited, and that the notice given by Greenfire to disclaim the Marketing Agreement dated November 6, 2020 is invalid;
- (c) declaring that the Marketing Agreement constitutes an eligible financial contract within the meaning of section 65.11(10)(a) of the *BIA*;
- (d) declaring that the Marketing Agreement constitutes an interest in land that persists irrespective of any disclaimer of the Marketing Agreement;
- (e) declaring that any purchaser or assignee of Greenfire's interest, or any portion thereof, in the Lands (including the Product within, upon or under those Lands, together with the right to explore for and recover Product), Leases and reserves related thereto, is bound by the provisions of the Marketing Agreement, unless otherwise agreed to by Warner; and

- (f) declaring that Greenfire is bound by all of its contractual obligations under the Marketing Agreement that persist beyond termination, including the obligation not to solicit Warner's customers, buyers, or suppliers.
2. Such further and other relief as this Honourable Court may deem appropriate.

**Grounds for making this application:**

3. Warner and Greenfire entered into the Marketing Agreement as part of a larger transaction whereby Warner and its nominee invested significant funds in Greenfire. The Marketing Agreement must be considered in the context of that larger transaction, which also involved, *inter alia*, Warner's nominee, Liberator Crude Trading, LLC ("**Liberator**") purchasing common shares in GOGL for a purchase price of CDN \$5,000,000, and Warner making significant investments in infrastructure and other resources required to carry out the Marketing Agreement.
4. The Marketing Agreement was used by Greenfire as an inducement for Warner to make a significant equity investment in Greenfire (which equity investment was made by Liberator).
5. All capitalized terms in this section not otherwise defined herein shall bear the meanings given them in the Marketing Agreement. Pursuant to the Marketing Agreement:
- (a) Greenfire agreed to dedicate all Product (being crude oil, synthetic crude oil, condensate or bitumen blend) produced by Greenfire within the Area of Dedication to Warner to market in accordance with the terms of the Marketing Agreement;
- (b) Greenfire agreed not to sell, assign or otherwise convey its interest, or any portion thereof, in the Lands (the definition of which includes the Product within, upon or under those Lands, together with the right to explore for and recover Product), Leases and reserves related thereto, unless the purchaser or assignee of such interest agrees to be bound by the provisions of the Marketing Agreement;
- (c) Greenfire agreed to hedge in a prudent manner for a minimum of 24 months using West Texas Intermediate as a benchmark, in amounts sufficient to assure coverage of all

operating costs, including Warner's net revenue share, subject to Greenfire's senior debt covenants and Greenfire board approval of a prudent hedging strategy;

- (d) The parties agreed Warner shall use reasonable commercial efforts to obtain competitive pricing for Greenfire Product, and further agreed to a pricing mechanism that all Product buy and sell pricing will be based on New York Mercantile Exchange (NYMEX) postings for West Texas Intermediate crude oil posting, strike date, strip, etc., as mutually agreed by the Parties in writing prior to a transaction;
- (e) Greenfire acknowledged that the markets for Greenfire Product are highly volatile and depend on a variety of global and local market, economic, political, geopolitical, weather, legal, labour, competition and other factors;
- (f) The Parties agreed that title, custody and possession to all Product delivered to Warner passes from Greenfire to Warner when the Product passes from Greenfire's delivery truck last connection flange into the designated Transloading Facility's first hard receiving manifold flange;
- (g) Greenfire and Warner agreed to an allocation of pre-determined Margins between them, and further, that Warner would receive a minimum of USD \$3.00 per barrel of oil sold under the terms of the Marketing Agreement;
- (h) Greenfire agreed that at least sixty days before the beginning of each contract year, Greenfire is to provide Warner with an estimate of volume of Product it will tender for Marketing Services for each month in such contract year (the "**Annual Production Volume**") which in any event shall be no less than 1,000,000 barrels of Product per calendar year (the "**Minimum Annual Volume**");
- (i) The Parties agreed that if, during any calendar year, Greenfire tendered to Warner a volume of product that was less than the Annual Production Volume, for any reason other than Force Majeure, then Greenfire shall compensate Warner for contract breakage costs and other Losses sustained as a result of the shortage, in accordance with the terms of the Marketing Agreement;

- (j) The Parties were expressly granted rights to net out amounts due and owing under the Marketing Agreement;
  - (k) Greenfire agreed that, throughout the Marketing Agreement's term and for a period of two years after its termination or expiry, it would not solicit or entice Warner's customers, buyers, or suppliers, or allow any of its Affiliates to do the same;
  - (l) The Marketing Agreement has an initial term of five years, which is extended automatically for successive one-year intervals absent written notice;
  - (m) Upon an Event of Default that is an Insolvency Event, the non-Defaulting Party may elect to terminate the Marketing Agreement upon provision of written notice to the Defaulting Party;
6. The Marketing Agreement constitutes an eligible financial contract within the meaning of section 65.11(10)(a) of the *BIA*, in that:
- (a) the Product constitutes a fungible commodity that trades in a volatile market with a sufficient trading volume to ensure a competitive trading price;
  - (b) Warner and Greenfire's obligations under the Marketing Agreement are derived from, referenced to, or based on, sales of the Product as well as freight rates;
  - (c) the Marketing Agreement constitutes a physically-settled forward commodity contract; and
  - (d) the Marketing Agreement is a financial agreement that serves important financial purposes, separate and apart from physical delivery of the Product, including management and hedging of financial risks.
7. The Marketing Agreement constitutes an interest in land that cannot be disclaimed and that runs with the Lands in the Area of Dedication. In particular:
- (a) Greenfire's working interest in the Area of Dedication is an interest in land from which a further interest in land can be carved;

- (b) Greenfire granted Warner an overriding interest in Greenfire's production, to solicit investment in Greenfire by Warner, by way of its nominee, Liberator;
  - (c) Greenfire agreed not to convey any portion of its interest in the Area of Dedication without first ensuring that the subsequent purchaser or assignee would be bound by the Marketing Agreement; and
  - (d) Greenfire represented to its primary secured lender, Summit Partners, that Greenfire was not entitled to convey its interest in the Area of Dedication without assigning the Marketing Agreement to the purchaser.
- 8. Warner has performed all of its obligations under the Marketing Agreement.
  - 9. Greenfire owes Warner over CDN \$2,167,913.66 due to its breaches of the Marketing Agreement.
  - 10. The Proposal Trustee approved the disclaimer of the Marketing Agreement without regard to or consideration of the available options and whether any other marketer is capable of delivering Greenfire's product to market on terms comparable to or better than the terms of the Marketing Agreement.
  - 11. The disclaimer or resiliation of the Marketing Agreement would cause significant financial hardship to Warner and Liberator.

#### **General**

- 12. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, including but not limited to section 65.11 thereof.
- 13. The equitable jurisdiction of this Honourable Court.
- 14. Such further and other grounds as counsel may advise and this Honourable Court permits.

#### **Material or evidence to be relied on:**

- 15. The Affidavit No. 1 of Harry Warner, sworn November 4, 2020.

16. The Affidavit No. 2 of Harry Warner, sworn November 12, 2020.
17. The Transcript of the Questioning of Robert Logan on his Affidavit No. 1 sworn October 9, 2020, his Affidavit No. 2 sworn November 2, 2020 and his Affidavit No. 3 sworn November 9, 2020, held November 12, 2020, including the confidential portion of that transcript, and all Exhibits thereto;
18. The responses to undertakings given by Robert Logan at his Questioning held November 12, 2020;
19. The Brief and Authorities of Warner and Liberator dated November 13, 2020;
20. Such further and other materials as counsel may advise and this Honourable Court may permit; and
21. The pleadings previously filed in these proceedings.

**Applicable rules:**

22. *Alberta Rules of Court*, AR 124/2010, and in particular Rules 1.3, 3.75, 6.3, 6.4, 11.27, 11.29 and 13.5.
23. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6 and 11.
24. Such further and other rules as counsel may advise and this Honourable Court permits.

**Applicable Acts and regulations:**

25. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular Part XI thereof.
26. Such further and other acts and regulations as Counsel may advise and this Honourable Court permit.

**Any irregularity complained of or objection relied on:**

27. None.

**How the application is proposed to be heard or considered:**

28. By telephone conference call or videoconference before the Honourable Mr. Justice J.S. Little (as directed by the Honourable Mr. Justice Mah at a hearing before His Lordship in these Actions on November 13, 2020).

**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 "1"**

CLERK'S STAMP

ESTATE NUMBERS

25-2679073  
25-2679074

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

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IN THE MATTER OF THE *BANKRUPTCY AND  
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**BENNETT JONES LLP**

Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Kelsey Meyer / Dylan Gibbs  
Telephone No.: 403-298-3323 / 403-298-3449  
Fax No.: 403-265-7219  
Client File No.: 87366.2

**DATE ON WHICH ORDER WAS PRONOUNCED:**

TUESDAY, NOVEMBER 17, 2020

**LOCATION WHERE ORDER WAS PRONOUNCED:**

EDMONTON LAW COURTS

**NAME OF JUSTICE WHO MADE THIS ORDER:**

THE HONOURABLE MR. JUSTICE  
LITTLE

**UPON THE APPLICATION** by Warner Petroleum Corporation ("**Warner**") and Liberator Crude Trading, LLC ("**Liberator**"); **AND UPON HAVING READ** the Application of Warner and Liberator dated November 16, 2020, the Affidavit of Harry Warner sworn November 4, 2020, the Affidavit No. 2 of Harry Warner sworn November 12, 2020, the Bench Brief of Warner dated November 12, 2020, the Transcript of the Questioning of Robert Logan held on November 12, 2020 and the Exhibits thereto, the Responses to Undertakings given by Robert Logan, the Affidavit No. 1 of Robert Logan sworn October 9, 2020, the Affidavit No. 2 of Robert Logan sworn November 2, 2020, and the Affidavit No. 3 of Robert Logan sworn November 9, 2020; **AND UPON HEARING** the submissions of counsel for Warner, counsel for Greenfire, counsel for the Proposal Trustee, Alvarez & Marsal, and of other interested parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE AND NOTICE OF APPLICATION**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, 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.

**NO DISCLAIMER OF MARKETING AGREEMENT**

2. In accordance with section 65.11(3) of the *Bankruptcy and Insolvency Act*, RSC 1985 c C-4, as amended (the "**BIA**"), the Marketing Agreement between Warner, Greenfire Hangingstone Operating Corporation ("**GHOC**"), and Greenfire Oil & Gas Ltd. ("**GOGL**" and together with GHOC, "**Greenfire**") dated April 15, 2019 (the "**Marketing Agreement**") has not been and is not to be disclaimed or resiliated, and disclaimer or resiliation of the Marketing Agreement is prohibited.
3. The notice given by Greenfire to disclaim the Marketing Agreement dated November 6, 2020 is invalid.
4. The Marketing Agreement constitutes an eligible financial contract within the meaning of section 65.11(10)(a) of the BIA and cannot be disclaimed.

### **INTEREST IN LAND**

5. The Marketing Agreement constitutes an interest in land that runs with the Lands in the Area of Dedication (as those capitalized terms are defined in the Marketing Agreement).
6. Any purchaser or assignee of Greenfire's interest, or any portion thereof, in the Lands (including the Product within, upon or under those Lands, together with the right to explore for and recover Product), Leases and reserves related thereto (as those capitalized terms are defined in the Marketing Agreement) is bound by the provisions of the Marketing Agreement unless otherwise agreed to by Warner.

### **SURVIVING OBLIGATIONS**

7. In the event that the Marketing Agreement is terminated, Greenfire or any purchaser or assignee of Greenfire's interest, or any portion thereof, in the Lands, Leases and reserves related thereto (as those capitalized terms are defined in the Marketing Agreement) shall remain bound by all those contractual obligations under the Marketing Agreement that persist beyond termination, including the obligation not to solicit or entice Warner's customers, buyers, or suppliers.

### **SERVICE OF ORDER**

8. 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, courier, or regular mail. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
9. Service of this Order on any party not attending this application is hereby dispensed with.

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Justice of the Court of Queen's Bench of Alberta