

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended**

**AND IN THE MATTER OF
DARIAN RESOURCES LTD.;**

**AND IN THE MATTER OF
BOWVIEW PETROLEUM INC.**

APPLICANTS

**NOTICE OF MOTION
(Re: Advice and Directions)**

TAKE NOTICE that an application will be made on behalf of Alberta Treasury Branches ("ATB") before the Honourable Madam Justice B.E.C. Romaine in Chambers at the Calgary Courts Centre, 601-5th Street S.W., at the City of Calgary, in the Province of Alberta, on Friday, the 19th day of February, 2010 at 9 o'clock in the forenoon or as soon thereafter as counsel may be heard for the following relief:

1. An Order:
 - (a) providing that the time for service of this application is abridged, that this application is properly returnable on February 19, 2010, and that service of the Notice of Motion to those listed on the Service List attached hereto is sufficient;
 - (b) for advice and directions as to:
 - (i) whether the stay of proceedings provided for in the Initial Order (as defined herein) did or did not operate to stay SJ Capital Corp., S.P.L.H. Investments Ltd., Julmar Holdings Ltd. and Shawana Estates Ltd. (collectively, the "Shaw Lenders") from making the Assignment Demand (as defined in the Hamblin Affidavit, as hereinafter defined) and requiring the Assignment (as defined in the Hamblin Affidavit) and:

- (A) if the stay did so operate, a declaration that the Assignment Demand is ineffective and the Assignment need not be effected; or
- (B) if the stay did not so operate: (i) a declaration that the Assignment Demand is effective; and (ii) an order granting the Shaw Lenders and ATB leave to apply to this Honourable Court for advice and directions in connection with the form and substance of the assignment agreement between those parties, if there is any dispute; and
- (c) approving the Account Agreement between Darian and ATB relating to the MCC Funds (as those terms are defined in the Hamblin Affidavit) and substantially in the form attached as **Exhibit "I"** to the Hamblin Affidavit;
- (d) adjourning the application brought by the Shaw Lenders returnable on February 19, 2010 for, the appointment of a receiver over Darian (the "Shaw Receivership Application") to a date subsequent to the determination of the within application (the "Adjournment Request"); and
- (e) granting such further and other relief, including in relation to the ISDA, as ATB may seek and this Honourable Court may deem just.

AND FURTHER TAKE NOTICE THAT the grounds of this application are as follows:

- (a) ATB and Darian entered into a commitment letter dated as of September 29, 2008 (the "Commitment Letter"), the terms and provisions of which were acknowledged and accepted by Bowview, the guarantor of the obligations of ATB to Darian;
- (b) as security for the indebtedness and all obligations of Darian to ATB under the Commitment Letter, Darian and Bowview each granted ATB a security interest in all of their present and after-acquired real and personal property;
- (c) on September 29, 2008, the Shaw Lenders, Darian, KYAL Energy Inc. and ATB entered into an interlender agreement (the "Interlender Agreement").

- (d) on September 30, 2008, ATB provided an irrevocable letter of guarantee to EnCana Corporation (“EnCana”) in the amount of \$10,000,000 (the “EnCana LC”). Darian agreed to indemnify ATB on demand for any sums ATB may be required to pay under the EnCana LC;
- (e) on February 12, 2010, ATB issued a demand letter and Notice of Intention to Enforce Security under section 244(1) of the *Bankruptcy and Insolvency Act* to Darian and Bowview;
- (f) on February 12, 2010, Darian and Bowview applied in these proceedings for, and were granted, protection from their creditors under the CCAA pursuant to an Initial Order granted February 12, 2010;
- (g) on February 16, 2010, the Shaw Lenders’ counsel sent to ATB’s counsel, the Assignment Demand, *inter alia*, requiring that ATB effect the Assignment;
- (h) Darian and Bowview have indicated their opposition to the Assignment, including their position that no such Assignment could take place unless the stay of proceedings was lifted because of paragraphs 13 and 14 of the Initial Order;
- (i) ATB finds itself in the middle of a dispute between Darian and Bowview and the Shaw Lenders and seeks the Court’s assistance as to whether or not the Assignment Demand was stayed by the Initial Order and therefore is ineffective and whether the Assignment is also stayed by the Initial Order and need not be effected. ATB is of the view that an application for advice and directions is an appropriate manner in which to proceed;
- (j) given the disputes between Darian and Bowview, on one hand and the Shaw Lenders, on the other, and the Assignment issue, ATB seeks to have the Account Agreement approved by this Honourable Court;
- (k) on February 17, 2010, the Shaw Lenders brought the Shaw Receivership Application;
- (l) with respect to the Adjournment Request respecting the Shaw Receivership Application, it is appropriate because if the Assignment Demand and the

Assignment is stayed, ATB will need time to consider its position with respect to the Shaw Receivership Application and determine, *inter alia*, whether to file evidence and/or cross-examine on the evidence filed to date and/or bring its own application for the appointment of a receiver, having regard to, *inter alia*, the terms of the Interlender Agreement. Further, if the Assignment Demand and the Assignment are not stayed, and provided ATB is fully paid out and it assigns to the Shaw Lenders its Security, ATB will have no interest in whether a receiver is thereafter appointed, but would not want a receiver to be appointed prior to the completion of such pay out and assignment.


AND FURTHER TAKE NOTICE THAT ATB will rely upon the following:

- (i) the Affidavit of James W. Hamblin sworn February 18, 2010 (the “**Hamblin Affidavit**”);
- (ii) the pleadings in the within proceedings;
- (iii) the CCAA;
- (iv) the Alberta *Rules of Court*;
- (v) the inherent jurisdiction of this Honourable Court; and
- (vi) such further and other materials as counsel for the Applicant may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 18th day of February, 2010.

OSLER, HOSKIN & HARCOURT LLP

Per:



Christa Nicholson / Carole J. Hunter
Solicitors for ATB

TO: The Clerk of the Court
AND TO: Service List (Attached)

ACTION NO. 1001-02216

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