

ACTION NO.: 0901-16005

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

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff

-and-

**ACTION ENERGY INC., NORTHERN GAS
MARKETING, INC. AND GRIFFON PETROLEUM INC.**

Defendants

**FIFTH REPORT OF THE RECEIVER OF
ACTION ENERGY INC.**

ERNST & YOUNG INC.

October 7, 2010

INTRODUCTION

1. Ernst & Young Inc. was appointed Receiver and Manager (the “Receiver”) of the property, assets and undertaking (the “Assets”) of Action Energy Inc. (“Action” or the “Company”) pursuant to an Order (the “Appointment Order”) of this Honourable Court dated October 28, 2009.
2. The Appointment Order authorized the Receiver, amongst other things, to carry on the business of the Company, to market and solicit offers to purchase the Assets of the Company, and to make such arrangements or agreements as deemed necessary by the Receiver.

PURPOSE OF REPORT

3. The purpose of this fifth report (the “Fifth Report”) of the Receiver is to advise this Honourable Court with respect to:
 - a) the activities of the Receiver since the fourth report of the Receiver dated April 23, 2010 (the “Fourth Report”);
 - b) the Receiver’s Final Statement of Receipts and Disbursements since its appointment to October 6, 2010;
 - c) the Receiver’s final estimated recovery analysis;
 - d) the Receiver’s recommended distribution of the estimated recovery;
 - e) the recommendation for the discharge of the Receiver; and
 - f) the Receiver’s recommendations.
4. Capitalized terms not defined in this Fifth Report are as defined in the First Report, Second Report, Third Report, and Fourth Report. All references to currency in the Fifth Report are in Canadian dollars.

BACKGROUND

5. Action was an oil and gas company engaged in the production, exploration, development and acquisition of natural gas and petroleum properties in the Provinces of Alberta and Saskatchewan. The head office of Action is located in Calgary, Alberta.
6. Action was a public company listed on the TSX Venture Exchange. Action is the successor, by amalgamation, of numerous predecessor corporations including High Plains Energy Inc., Powermax Energy Inc, and Rolling Thunder Exploration Ltd.
7. The Defendants, Northern Gas Marketing, Inc. (“Northern”) and Griffon Petroleum Inc. (“Griffon”) are each subsidiaries of Action. The Receiver understands these companies are inactive and have no material assets. Accordingly, Northern and Griffon were not included in October 28, 2009 Receivership Order.
8. Action’s major producing interests included lands and facilities located in Alberta near Lloydminster and Teepee Creek and in Saskatchewan near Shackleton and Lake Alma. Action also had minor interests which are primarily located in Alberta near Gordondale, West Calais, and Lindbergh and in Southern Saskatchewan near Greater Shackleton, Russelton and Bienfait.
9. At the receivership date, the Company operated approximately 172 producing wells which were producing approximately 900 barrels of oil equivalent (“BOE”) per day.
10. A large portion of Action’s properties have been sold by the Receiver to either Westfire as set out in the Westfire ASA (comprising approximately 770 BOE per day of production) and Cutpick as set out in the Cutpick ASA (comprising approximately 70 BOE per day of production) as authorized by this Honourable Court on November 5, 2009 and March 15, 2010 respectively . On April 28th, 2010 the Receiver sought and gained approval from this Honourable Court to execute an Asset Sale Agreement (the “Sandbox ASA”) with Sandbox Energy Corp. (“Sandbox”) which contemplated selling the assets that remained following the completion of the Cutpick ASA and Westfire ASA (the “Remaining Saskatchewan Assets “).

11. As discussed in the Receiver's Fourth Report, the Sandbox ASA included a closing condition that all government approvals had to be obtained by Sandbox. The Receiver continued to operate the Remaining Saskatchewan Assets which produce approximately 60 BOE per day.
12. At the date of the Receivership, the Company had 13 full-time employees and 20 contract operators. However due to the significant reduction in operations due to the sale of assets to Westfire and Cutpick, the Receiver currently employs three contract operators and a casual administration staff.

ACTIVITIES OF THE RECEIVER SINCE THE FOURTH REPORT

Operational Update

13. Since the Fourth Report, the operations of the Company have generally continued in the normal course and production levels have remained fairly consistent with historical trends for the Remaining Saskatchewan Assets. In addition to managing the general operations of Action, the Receiver has completed the following:
 - a) All the administrative tasks with respect to closing the Westfire ASA and the Cutpick ASA, including executing all required transfer documents with the Alberta Energy and Conservation Board ("ERCB") and the Saskatchewan Ministry of Energy and Resources ("SMER");
 - b) Negotiations with Sandbox, SMER, and National Bank of Canada ("National Bank") to resolve the issues surrounding the required licensee liability rating deposit (the "LLR Deposit") that is required by SMER with respect to the Remaining Saskatchewan Assets. SMER previously advised the Receiver that it would only approve the required transfer documents upon finalizing an acceptable LLR Deposit from Sandbox relating to the Remaining Saskatchewan Assets;
 - c) Efforts to collect on remaining receivables; and
 - d) Substantially all the remaining tasks relate to the completion of certain administrative tasks with respect to the Sandbox ASA.

Westfire ASA

14. As discussed in the Third Report and Fourth Report, several non-producing well sites which were located in areas near to the locations of the assets sold to Westfire were inadvertently excluded from the Westfire ASA. These properties were non-producing and did not have any material value.
15. The Receiver and Westfire entered into assignment agreement (the “Westfire Assignment Agreement”) to transfer these properties to Westfire for \$1. The Westfire Assignment Agreement has now been completed and the Receiver advises that the ERCB has transferred the title relating to these properties.
16. The Receiver and Westfire have concluded negotiations with SMER which resulted in SMER transferring the licenses and titles relating to the properties included in the Westfire ASA and Westfire Assignment Agreement to Westfire.
17. In summary, the Receiver advises that all material matters relating to the assets acquired by Westfire have been completed including the approval of all required transfer documents by the ERCB (for the Alberta Assets) and SMER (for the Saskatchewan Assets) and finalization and payment of the final purchase price adjustment.

Cutpick ASA

18. The Receiver and Cutpick have completed the final statement of adjustments relating to the Cutpick ASA and have concluded negotiations with ERCB resulting in the transfer the related licenses and titles to Cutpick. In summary, the Receiver advises that all material matters relating to the assets acquired by Cutpick have been completed.

Sandbox ASA

19. Since the approval of the Sandbox ASA by this Honourable Court on April 28, 2010, the Receiver has taken the following steps to complete the Sandbox ASA:
 - a) Collected the purchase price of \$1;
 - b) Calculated a preliminary statement of adjustments and met with Sandbox to deliver and discuss the statement of adjustments; and
 - c) Completed negotiations with Sandbox and the SMER to facilitate the transfer of titles and licenses to Sanbox relating to the assets included in the Sandbox ASA as discussed in further detail below.
20. As described in the Fourth Report, SMER had advised the Receiver of the following relating to the Remaining Saskatchewan Assets:
 - a) the LLR of the properties included in the Sandbox ASA required a LLR Deposit of approximately \$2.2 million; and
 - b) SMER's position was that it would require an acceptable LLR Deposit prior to it approving any related licensee transfers that may be required to complete the Sandbox ASA.
21. The completion of the Sandbox ASA was dependent upon Sandbox obtaining the required approval from SMER. Accordingly, the Receiver and Sandbox formally extended the Sandbox ASA on several occasions to allow further time to discuss with SMER an acceptable resolution of the LLR Deposit.
22. On September 23, 2010, after considerable discussion and negotiation, SMER issued a letter to the Receiver and Sandbox outlining the terms upon which SMER would approve the transfer of the licenses necessary to complete the Sandbox ASA (the "SMER Proposal"). On September 23, 2010, the Receiver and Sandbox agreed to the terms of the SMER Proposal.

23. The SMER Proposal contemplated the Receiver posting \$400,000 of the LLR Deposit with SMER and Sandbox being responsible for the remaining amounts of the LLR on terms and conditions agreed upon between SMER and Sandbox. The SMER Proposal contemplated that Sandbox would be responsible for all future funding of any LLR Deposits; however, should the LLR Deposit for Sandbox be reduced, the first \$400,000 of the deposit amount would be returned to National Bank, as secured creditor over the assets.
24. The Receiver has funded its portion of the LLR Deposit to SMER and Sandbox has now completed its requirements as outlined under the SMER Proposal. On September 30, 2010 the Receiver received confirmation from SMER that the licenses for all of the Saskatchewan properties sold to Westfire and to Sandbox had been transferred. As such the Receiver has now completed the sale of all of Action's oil and gas properties.
25. The only remaining administrative task is completing the final statement of adjustments relating to the Sandbox ASA. The Receiver has provided Sandbox with a preliminary statement of Adjustments and expects a finalized version to be completed in the next 30 days.

Collection of Accounts Receivables

26. The Receiver has effectively completed efforts to collect pre-receivership accounts receivables. The Receiver has collected approximately \$312,535 in pre-receivership joint venture billing receivables. The Receiver has also collected \$77,296 relating to the Alberta Royalty Tax Credit. The Receiver believes that all collectable receivables have been collected, and as such, the Receiver considers the accounts receivable realization process to have been completed.

FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS

27. The table below summarizes the final statement of receipts and disbursements of the Receiver from October 28, 2009 to October 6, 2010:

Final Statement of Receipts less Disbursements	Oct 28/09 to Oct 6/2010	Notes
Receipts		
Sale of assets to Cutpick	256,890	a
Sale of assets to Westfire	30,127,069	b
Oil and gas sales	2,860,082	c
Receiver's certificate	800,000	d
Collection of receivables	312,535	e
ARTC Refund	77,296	f
Settlement of Husky Production Lien	307,093	g
GST	70,101	
Other receipts	81,922	h
Insurance Claim Proceeds	83,876	i
	<u>34,976,864</u>	
Disbursements		
Oil and gas operations	2,446,122	j
Avonlea commission	900,000	k
Receiver's fees	496,958	l
Payroll/consultants	445,958	m
Administrative expenses	293,461	n
Royalties	129,455	o
Receiver's Alberta legal counsel	187,054	p
Receiver's Saskatchewan legal counsel	11,231	p
Insurance	56,183	q
Fees to official receiver	70	
Westfire Purchase Price Adjustment	319,863	r
Cutpick Purchase Price Adjustment	12,229	s
30 day good claim	2,257	
GST	22,820	
LLR Deposit paid to SMER	400,015	t
Municipal taxes	120,931	u
	<u>5,844,605</u>	
Receipts less disbursements	<u>29,132,259</u>	

28. The following is a description of the major categories in the above table:

- a) Sale of assets to Cutpick – relates to the net proceeds received from the sale of the assets in accordance with the Cutpick ASA;
- b) Sale to Westfire – relates to the proceeds from the sale of assets in accordance with the Westfire ASA;
- c) Oil and gas sales – relate to the receipts of revenues of oil and gas during the receivership;
- d) Receiver's Certificate – a Receiver's Certificate of \$800,000, as allowed for under the Receivership Order, was issued by the National Bank to the Receiver to fund initial cash requirements to continue operations in the period immediately following the commencement of the receivership;
- e) Collection of receivables – primarily relate to operating revenue and the collections of pre-receivership joint venture accounts receivable;
- f) ARTC Refund – Relates to Alberta Royalty Tax Credit refund applied for by the Receiver;
- g) Settlement Husky Production Lien – Relates to the release of pre-receivership revenue that was held in trust pending settlement of a production lien filed by Husky;
- h) Other receipts – Relates to the sale of scrap production equipment and inventory, receipt of insurance proceeds for an insurance claim filed by the Receiver as well as other miscellaneous receipts;
- i) Insurance claim proceeds – relates to insurance proceeds that were received by the Receiver for a well blow-out that occurred on one of Actions wells.

- j) Oil and gas operations – relate to operating costs associated with the production of oil and gas;
- k) Avonlea commission – commission payable to Avonlea relating to the sale of assets to Westfire as approved by this Honourable Court on November 30, 2009;
- l) Receiver's fees – fees incurred paid by the Receiver to June 25, 2010. An additional approximately \$45,000 has been incurred but not yet invoiced or paid relating to Receiver's fees subsequent to June 25, 2010;;
- m) Payroll costs – comprise payroll expenses related to head office personnel, certain field staff and contract staff;
- n) Administrative expenses and other costs – costs incurred and paid relating to general and administrative expenses including office costs, utilities, software licenses, administrative staff, professional fees incurred prior to the Receivership in relation to National Bank's forbearance agreement and other miscellaneous expenses;
- o) Royalties – Relates to crown, GORR, and freehold royalties paid to royalty owners on Action's producing wells;
- p) Legal fees – relates to fees paid to the Receiver's counsel;
- q) Insurance – relates to insurance policy taken out by the Receiver to secure Action's assets;
- r) Westfire Purchase Price Adjustment – Relates to the purchase price adjustment for revenues received less expenses paid by the Receiver between the effective date and the closing date of the sale for the properties sold to Westfire, offset by \$150,000 paid by Westfire to the Receiver to facilitate the transfer of the Saskatchewan well/facility licenses from Action to Westfire;

- s) Cutpick Purchase Price Adjustment - – Relates to the purchase price adjustment for revenues received less expenses paid by the Receiver between the effective date and the closing date of the sale for the properties sold to Cutpick;
- t) Deposit paid to SMER –the deposit paid to SMER relates to the LLR liability agreement, discussed in more detail below;
- u) Municipal taxes – relates property taxes and business taxes paid relating to Action’s operations;

29. The net receipts less disbursements totaled approximately \$29.2 million. The Receiver has applied approximately \$29.0 million of the net recoveries against the outstanding operating line owing to National Bank in order to reduce ongoing interest charges, with a written agreement in place that the Receiver may revolve the operating line to fund any needed expenditures or priority creditors.

ESTIMATED RECOVERY ANALYSIS

30. The table below summarizes the estimated recovery analysis:

Estimated recovery analysis	Amounts
Receipts less disbursement (see above)	29,132,259
Final statement of adjustments (Sandbox ASA)	93,000
Estimated operating costs	(15,000)
Receiver's counsel's cost to complete	(10,000)
Receiver's outstanding fees plus cost to complete	(50,000)
Estimated funds for secured creditors	<u>29,150,259</u>

31. The table above illustrates the estimated net recoveries to be approximately \$29.15 million. The Receiver understands that the National Bank’s outstanding secured loans total in excess of \$31.5 million. Accordingly, the Receiver advises that the amounts owed to the secured creditor is in excess of the estimated recoveries and, therefore, no recovery is expected for unsecured creditors or secured creditors who have security ranking subsequent to that of the National Bank.

32. The following is a description of the major categories relating the estimated recovery analysis:
- a) Receipts less disbursements relates to the net recoveries per the schedule of receipts and disbursements set out in the table above;
 - b) Final statement of adjustments – Relates to the purchase price adjustment for revenues received less expenses paid by the Receiver between the effective date of April 1, 2010 and the date that the property licenses were officially transferred to Sandbox, September 23, 2010, for the properties sold to Sandbox.
 - c) Estimated operating costs – relates to the Receiver’s estimate of additional operating and administrative invoices such as utilities, consulting fees, and other miscellaneous invoices that are expected to be received;
 - d) Receiver’s counsel fees - relates to the Receiver’s counsel’s estimated costs to complete the Receivership; and
 - e) The Receiver’s cost to complete – primarily relates to fees incurred but not yet paid of approximately \$50,000 which have been incurred since June 24, 2010 to date.
33. As discussed above, pursuant to the SMER Proposal, the Receiver funded \$400,000 of the LLR Deposit relating to the properties included in the Sandbox ASA. The agreement reached between the Receiver, National Bank, Sandbox and SMER sets out that any future reduction in the LLR Deposit amount would be first refunded by SMER to National Bank (as first secured creditor) up to a maximum of the amount initially funded by the Receiver (i.e. \$400,000). The recovery of this amount is dependent upon many factors including future production and reserve values relating to those assets included in the Sandbox ASA. According, given the uncertainty with respect to the timing and probability, the recovery of the \$400,000 has not been included in the above analysis. Such recovery, if and when received, would be paid directly to National Bank as the first secured creditor, which would still expect a shortfall on its security even if the funds were received.

ANALYSIS OF PRIORITY CLAIMS

Validity and enforceability of the National Bank's Security

34. The Bank's security has been reviewed by the Receiver's counsel who have opined that the security creates a valid security interest in favour of the National Bank in any property in which Action, Northern and Griffin have rights and was sufficient to create a valid security interest in favour of the National Bank against any such personal property in which the Action, Northern and Griffin had rights as at October 28, 2010.

Confirmed Priority Claims

35. The table below summarizes the alleged and confirmed priority claims that the Receiver is aware of:

Summary of Priority Claims	Claim Amount	Confirmed Amount
Boomer Transport Ltd.	113,662	2,395
Brady Oilfield Services L.P.	56,826	4,198
E-Can Oilfield Services L.P.	10,852	-
Total	181,340	6,593

36. Boomer Transport Ltd. ("Boomer") registered a combined builders lien claim (the "Boomer Lien Claim") against three leases in the amount of \$113,662. The Receiver's Counsel reviewed the Boomer Lien Claim and determined that Boomer had a claim in priority to the National Bank only with respect to lease #0490060271 ("Lease 271") as the National Bank had previously registered its security against the other two mineral leases.
37. The Receiver reviewed the documentation supporting the Boomer Lien Claim and determined that a significant portion of the claim related to invoices which were subsequently paid by Action and that amount outstanding with respect to work done on Lease 271 totaled approximately \$2,395 which the Receiver's counsel confirmed was in priority to National Bank. The Receiver's counsel has advised counsel to Boomer that only \$2,395 of its lien claim would rank in priority to National Bank.

38. Brady Oilfield Services L.P. (“Brady”) registered four builders lien claims (the “Brady Lien Claims”) against four leases totaling approximately \$56,826. The Receiver’s Counsel reviewed the Brady Lien Claims and determined that Brady had a claim in priority to the National Bank with respect to lease #PN 59617 (“Lease 617”) and #EL 00832 (“Lease 832”) as the National Bank had previously registered its security against the other two mineral leases.
39. The Receiver reviewed the documentation supporting the Brady Lien Claims against Lease 617 in the amount of \$2,277 and Lease 832 in the amount of \$1,915, and believes that the supporting information was appropriate and that these amounts were still outstanding. The Receiver’s counsel has advised counsel to Brady that \$4,198 of its lien claim would rank in priority to National Bank’s security.
40. On May 7, 2010 E-Can Oilfield Services L.P. (“E-Can”) filed a claim against crown mineral leases 4-050053 in the amount of \$10,851.97. The Receiver’s counsel had reviewed the claim and determined that the National Bank had previously registered its security against crown mineral leases 4-050053 and therefore National banks security took priority over the claim filed by E-Can.
41. On or around November 10, 2010 Great West Life asserted a claim for unpaid rent by verbally advising the Receiver that they would not allow office furniture to be removed from Action’s office. At the time of receiving the verbal claim from Great West Life, the Receiver had a sale pending for Action’s office furniture. On November 16, 2010 the Receiver and Great West Life agreed to allow the sale of the furniture to be completed with the \$12,500 proceeds to be held in trust pending resolution of the claim. The \$12,500 is currently held in trust by the Receiver’s counsel. The Receiver’s counsel has reviewed the claim and determined that the tenancy relationship had been terminated in accordance with the Receivership Order and therefore any claims for unpaid rent would be an unsecured claim. The Receiver’s counsel has advised Great West Life of its position and the Receiver expects to conclude collection of the proceeds in the near term.

Canada Revenue Agency

42. The Receiver has obtained a comfort letter from the Canada Revenue Agency (“CRA”) stating that there are no pre-receivership amounts outstanding for Action’s source deduction account. As such there is no deemed trust claim outstanding for source deductions. The Receiver is in the process of reconciling Action’s GST position however believes that Action will be in a minimal refund position upon filing all required GST returns. Accordingly, the Receiver is not aware of any of prior ranking claims relating to GST. Any net funds collected upon filing the final GST returns will be remitted to the National Bank.

PROPOSED DISTRIBUTION OF PROCEEDS FROM REALIZATION

43. The Receiver proposes the distribution of the proceeds from realization as follows:

Proposed Distribution	Amount	Note
Estimated Recoveries	29,150,259	a
Priority Claims	<u>(6,593)</u>	b
Estimated Distribution to National Bank	<u>29,143,666</u>	c

- a) Total estimated recoveries of \$29,150,259 as noted above;
- b) Distribution relating to priority claims of \$6,593 that have been determined to rank in priority to National Banks’ security as described above; and
- c) The total estimated distribution to National Bank is expected to be approximately \$29.14 million. Prior to the receivership, National Bank Financial assisted in preparing Action for a sale process including compiling prospective purchaser listing, assembling sales materials and populating data rooms. This information was used by the Receiver in completing the various sale efforts previously reported to this Honourable Court. Accordingly, after discussions with National Bank, it is proposed that \$100,000 be paid to National Bank Financial and the remaining \$29.0 million to National Bank. The Receiver advises that National Bank does not oppose the payment to National Bank Financial if such payment is approved by this

Honourable Court. The Receiver further advises that the allocation of the distribution between National Bank Financial and National Bank is not prejudicial to any subordinate ranking creditors as National Bank is expected to experience an estimated shortfall on their secured debt in excess of \$2.5 million.

APPROVAL OF PROFESSIONAL FEES

44. The Receiver's total fees are \$546,665 (plus applicable taxes). The Receiver's counsel fees are \$198,284.93 (plus applicable taxes), including both Saskatchewan and Alberta counsel. The Receiver has examined the bills of costs referred to above, the services referred to therein have been duly authorized and duly rendered and the charges therein are reasonable in the Receiver's opinion.
45. The Receiver's counsel estimates fees to completion of this engagement will not exceed \$11,000.
46. The Receiver respectfully requests that this Honourable Court approve the Receiver and the Receiver's counsel fees and disbursements along with the estimate of fees to completion.

DISCHARGE OF THE RECEIVER

47. The Receiver's administration of the estates is essentially complete, the Receiver may have some miscellaneous administrative items to attend to post-discharge, but these items are immaterial and in the Receiver's opinion should not prevent this Honourable Court from granting an unconditional discharge.
48. The Receiver respectfully requests that this Honourable Court approve an Order discharging absolutely, forever and unconditionally discharging the Receiver from any and all obligations as Receiver of Action.

RECOMMENDATIONS

49. The Receiver recommends that this Honourable Court approve the following:

- a) the Receiver's Final Statement of Receipts and Disbursements;
- b) the Receiver's proposed distribution of the net proceeds from realization;
- c) the Receiver's and its counsels fees and disbursements; and
- d) the discharge of the Receiver.

All of which is respectfully submitted this 7th day of October, 2010.

**ERNST & YOUNG INC.,
in its capacity as Receiver
of Action Energy Inc.**



Deryck Helkaa, CA•CIRP
Senior Vice-President