

COURT FILE NUMBER 1201-06934
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS **IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended**



I hereby certify this to be a true copy of
the original Order
dated this 13 day of Jan 2017
aw
for Clerk of the Court

**AND IN THE MATTER OF THE BUSINESS
CORPORATIONS ACT, R.S.A. 2000, c. B-9**

**AND IN THE MATTER OF 1252064 ALBERTA
LTD., 1330075 ALBERTA LTD. and HARVEST
CAPITAL MANAGEMENT INC.**

DOCUMENT ORDER (CLAIMS PROCESS)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT
McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Sean Collins / Walker W. MacLeod
Suite 4000, 421 - 7th Avenue S.W.
Calgary AB T2P 4K9
Phone: 403-260-3531/ 403-260-3710
Fax: 403-260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: January 12, 2017
NAME OF JUDGE WHO MADE THIS ORDER: Justice D.B. Nixon
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of the Receiver of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc. to establish a claims process in respect of the Debtor; **AND UPON** having read the Notice of Application, filed on January 4, 2017 (the "**Application**") and the Eighth Report of the Receiver in its capacity as court appointed receiver and manager of the Debtor (the "**Eighth Receiver's Report**"); **AND UPON** hearing counsel for the Receiver and counsel present for other parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application for this Claims Process Order is abridged and deemed good and sufficient and the Application is property returnable today.

DEFINED TERMS

2. For the purposes of this Claims Process Order, the following terms shall have the following meanings:

- (a) "**125**" means 1252064 Alberta Ltd.;
- (b) "**133**" means 1330075 Alberta Ltd.;
- (c) "**Affected Claim**" means all Claims other than Excluded Claims;
- (d) "**Affected Creditor**" means any Creditor having or asserting an Affected Claim;
- (e) "**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended;
- (f) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Calgary, Alberta;
- (g) "**Calmar Lands**" means the lands situated in the province of Alberta and legally described as Plan 0522859, Block 1, Lot 1 and Plan 0522859, Block 1, Lot 2, excepting thereout all mines and minerals;
- (h) "**Calmar Lands Order**" means the order issued by the Honourable Madam Justice J. Strekaf of this Court in the within proceedings on December 12, 2014;
- (i) "**Claim**" means any right or claim of any Person against one or more of the Debtors in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Debtors, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation any claim arising from or caused by the repudiation by a Debtor of any contract, lease or other agreement, whether written or oral, the commission of a tort (intentional or unintentional), any breach of duty (legal, statutory, equitable, fiduciary or otherwise), or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter,

action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Filing Date, together with any other claims of any kind that would constitute a claim provable in bankruptcy within the meaning of the BIA;

- (j) **"Claims Bar Date"** means 5:00 p.m. (Mountain Time) on February 23, 2017 or such other date as may be ordered by the Court;
- (k) **"Claims Package"** means the document package which shall include a copy of the Instruction Letter, a Proof of Claim and such other materials as the Receiver considers necessary or appropriate;
- (l) **"Claims Process"** means the procedures outlined herein in connection with the assertion of Claims against the Debtor;
- (m) **"Claims Process Order"** means the order granted by Justice D.B. Nixon of the Court on January 12, 2017, approving the Claims Process;
- (n) **"Court"** means the Court of Queen's Bench of Alberta;
- (o) **"Creditor"** means any Person having or asserting a Claim;
- (p) **"Debtor"** means each of 125, 133 and HCMI;
- (q) **"Excluded Claims"** means Claims:
 - (i) that are secured by charges granted pursuant to the Receivership Order;
 - (ii) that are secured by charges granted pursuant to the Calmar Lands Order;
and
 - (iii) that are secured by charges, mortgages, liens or encumbrances registered against title to the Calmar Lands;
- (r) **"Excluded Creditor"** means any Creditor having or asserting an Excluded Claim;
- (s) **"Filing Date"** means September 30, 2013;
- (t) **"HCMI"** means Harvest Capital Management Inc.;

- (u) **"Instruction Letter"** means the letter regarding completion of a Proof of Claim, which letter shall be substantially in the form attached hereto as Appendix **"A"**;
- (v) **"Known Creditors"** means Affected Creditors which the books and records of the Debtor disclose have an Affected Claim against the Debtor as of the Filing Date;
- (w) **"Newspaper Notice"** means the notice of the Claims Process to be published in the newspapers in accordance with the Claims Process in substantially the form attached to the Claims Process Order as Appendix **"C"**;
- (x) **"Notice of Revision and Disallowance"** means the notice revising or disallowing an Affected Claim in accordance with the Claims Process in substantially the form attached to the Claims Process Order as Appendix **"D"**;
- (y) **"Person"** shall be broadly interpreted and includes an individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, corporation, unincorporated association or organization, syndicate, committee, the government or a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, however designated or constituted, and the trustees, executors, administrators, or other legal representatives of any individual;
- (z) **"Proof of Claim"** means the form setting forth an Affected Claim, which proof of claim shall be substantially in the form attached to the Claims Process Order as Appendix **"B"**;
- (aa) **"Receiver"** has the meaning ascribed to it in the Receivership Order;
- (bb) **"Receivership Order"** means the receivership order issued by the Court on September 30, 2013 in the within proceedings;
- (cc) **"Website"** means the website established by the Receiver and located at <http://documentcentre.eycan.com/Pages/Main.aspx?SID=228>.

NOTICE OF CLAIMS PROCESS

3. The Receiver shall cause a Proof of Claim to be sent to each Known Creditor by regular prepaid mail, courier, facsimile or email on or prior to January 20, 2017.
4. The Receiver shall cause the Newspaper Notice to be published in the Calgary Herald and any other newspaper the Receiver consider advisable, on or prior to January 20, 2017.
5. The Receiver shall cause the Claims Package to be posted on the Website on or prior to January 20, 2017.
6. The Receiver shall cause a copy of the Claims Package to be sent to any Person requesting such material as soon as practicable.

AFFECTED CLAIMS AGAINST TWO OR MORE DEBTORS

7. Any Person wishing to assert an Affected Claim against two or more of the Debtors must file a separate Proof of Claim with respect to each such Debtor and identify the particular Debtor against which an Affected Claim is asserted. If a Creditor lists more than one Debtor on any one Proof of Claim the Claim will be deemed to have been asserted only against the first-listed Debtor.

BARRING OF AFFECTED CLAIMS

8. Any Person who fails, refuses or neglects to deliver a completed Proof of Claim to the Receiver in respect of an Affected Claim on or before the Claims Bar Date shall, subject only to the further order of this Court:

- (a) be forever barred, estopped and enjoined from asserting or enforcing such Affected Claim against any of the Debtors and the Debtors shall not have any liability whatsoever in respect of such Affected Claim and such Affected Claim shall be extinguished without any further act or notification by the Debtors;
- (b) not be entitled to participate as an Affected Creditor in these proceedings or receive any further notice regarding this Claims Process or these proceedings;
and

- (c) not be entitled to receive any distribution, dividend or payment from the Debtors in respect of such Affected Claim.

RESOLUTION OF AFFECTED CLAIMS

9. The Receiver shall review any Proof of Claim that is submitted to it on or before the Claims Bar Date and, subject to the terms of this Claims Process Order, may accept, revise or disallow the Affected Claim as set forth in the Proof of Claim.

10. The Receiver may attempt to consensually resolve the classification or quantum of any Affected Claim prior to the Receiver accepting, revising or disallowing the Affected Claim as set forth in the Proof of Claim.

11. In the event that the Receiver elects to revise or disallow an Affected Claim as set forth in a Proof of Claim the Receiver shall send a Notice of Revision or Disallowance setting out the revision or disallowance of such Affected Claim as set forth in the Proof of Claim.

12. Any Person who wishes to dispute the Notice of Revision or Disallowance received from the Receiver shall, within fifteen days of receipt of the Notice of Revision or Disallowance from the Receiver, file an Application before the Court for the determination of its Affected Claim.

13. Any Person who receives a Notice of Revision or Disallowance from the Receiver and who fails to comply with Paragraph **Error! Reference source not found.** of this Claims Process shall be deemed to have conclusively accepted the classification and quantum of its Affected Claim as set forth in the Notice of Revision or Disallowance and shall, subject only to the further order of the Court:

- (a) be forever barred, enjoined and estopped from challenging the classification and quantum of its Affected Claim as set forth in the Notice of Revision or Disallowance delivered to it by the Receiver; and
- (b) be only entitled to receive distribution, dividend or payment from the Debtors in respect of such Affected Claim as classified and quantified in the Notice of Revision or Disallowance delivered to it by the Receiver.

NOTICE OF TRANSFEREES

14. If an Affected Creditor or any subsequent holder of an Affected Claim who has been acknowledged by the Receiver as the holder of the Affected Claim transfers or assigns that Affected Claim to another Person, the Receiver shall not be required to give notice to or to otherwise deal with the transferee or assignee of the Affected Claim as the holder of such Affected Claim unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been delivered to the Receiver. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such Affected Claim and shall be bound by notices given and steps taken in respect of such Affected Claim in accordance with the provisions of the Claims Process.

15. If an Affected Creditor or any subsequent holder of an Affected Claim who has been acknowledged by the Receiver as the holder of the Affected Claim transfers or assigns the whole of such Affected Claim to more than one Person or part of such Affected Claim to another Person or Persons, such transfers or assignments shall not create separate Affected Claims and such Affected Claims shall continue to constitute and be dealt with as a single Affected Claim notwithstanding such transfers or assignments. The Receiver shall not, in each such case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Affected Claim only as a whole and then only to and with the Person last holding such Affected Claim provided such Person may, by notice in writing delivered to the Receiver, direct that subsequent dealings in respect of such Affected Claim, but only as a whole, shall be dealt with by a specified Person and, in such event, such Person shall be bound by any notices given or steps taken in respect of such Affected Claim in accordance with the provisions of the Claims Process.

NOTICE AND COMMUNICATION

16. Except as otherwise provided herein, the Receiver may deliver any notice or other communication to be given under this Claims Process Order to Affected Creditors or other interested Persons by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or email to such Affected Creditors or Persons at the address last shown on the books and records of the Debtor, and that any such notice by courier, personal delivery, facsimile or email shall be deemed to be received on the next Business Day following the date of forwarding thereof, or, if sent by ordinary mail on the third Business Day after mailing within Alberta, the

fifth Business Day after mailing within Canada, and the tenth Business Day after mailing internationally.

17. Any notice or other communication to be given under this Claims Process Order by an Affected Creditor to the Receiver shall be in writing in substantially the form, if any, provided for in this Claims Process Order and will be sufficiently given only if delivered by registered mail, courier, e-mail (in PDF format), personal delivery or facsimile transmission addressed to:

Ernst & Young Inc., in its capacity as court
appointed receiver and manager of 1252065
Alberta Ltd., 1330075 Alberta Ltd. and Harvest
Capital Management Inc.

Attention: Jessica Caden
2200, 215 – 2nd Street SW
Calgary, Alberta T2P 1M4

E-mail: Jessica.Caden@ca.ey.com
Fax: 403-206-5394

18. In the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

CURRENCY OF CLAIMS

19. Any Affected Claim set out in a Proof of Claim shall be denominated in Canadian dollars, failing which such Affected Claim shall be converted to and shall constitute obligations in Canadian dollars and such calculation will be effected using the noon spot rate of the Bank of Canada as of the date of the Claims Process Order.

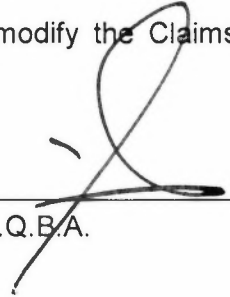
GENERAL

20. The Receiver is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Proofs of Claim are completed and executed and may, if satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of the Claims Process and this Order as to the completion and execution of Proofs of Claim.

21. References in this Claims Process Order to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

22. Nothing in this Claims Process shall operate to bar, extinguish or affect Excluded Claims or the priority afforded to any Excluded Claims or Excluded Creditors.

23. Notwithstanding the terms of this Claims Process Order, the Receiver or any interested Person may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or modify the Claims Process or this Claims Process Order.



J.C.Q.B.A.

APPENDIX "A"

INSTRUCTION LETTER FOR THE CLAIMS PROCESS OF 1252064 ALBERTA LTD, 1330075 ALBERTA LTD. AND HARVEST CAPITAL MANAGEMENT INC. (COLLECTIVELY, THE "DEBTOR")

TO: [NAME AND ADDRESS OF CREDITOR]

On September 30, 2013, Ernst & Young Inc. (the "**Receiver**") was appointed as receiver and manager of the assets, properties and undertakings of the Debtor pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

On January 12, 2017, the Court granted a further order prescribing a claims process to quantify, classify and resolve claims against the Debtor established (the "**Claims Process Order**"). A copy of the Claims Process Order may be viewed at <http://documentcentre.eycan.com/Pages/Main.aspx?SID=228>. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to it in the Claims Process Order.

Pursuant to the Claims Process Order, the Receiver is to send this Instruction Letter to Known Creditors and other certain other Persons.

The Claims Process Order provides that any Person who wishes to advance an Affected Claim against the Debtor, must complete and forward to the Receiver, a completed Proof of Claim on or before 5:00 pm (MST) on February 23, 2017. Any Person who fails to comply with these requirements shall be forever barred, enjoined and estopped from asserting such Affected Claim against the Debtor and such Affected Claim shall be forever extinguished. Affected Claims not proven in accordance with the procedures set out above shall, unless otherwise ordered by the Court, be deemed to be forever barred and may not thereafter be advanced against the Debtor.

Dated the ____ day of _____, 2017 in Calgary, Alberta.

**ERNST & YOUNG INC., in its capacity as
court appointed receiver and manager of
1252064 Alberta Ltd., 1330075 Alberta Ltd.
and Harvest Capital Management Inc.**

Per: _____
Name:
Title:

APPENDIX "B"

PROOF OF CLAIM FOR THE CLAIMS PROCESS OF 1252064 ALBERTA LTD, 1330075 ALBERTA LTD. AND HARVEST CAPITAL MANAGEMENT INC. (COLLECTIVELY, THE "DEBTOR")

For Claims Arising On or Before September 30, 2013

Regarding the claim of _____ (referred to in this form as "the creditor") against:
(name of creditor)

- ☐ 1252064 Alberta Ltd.
- ☐ 1330075 Alberta Ltd.
- ☐ Harvest Capital Management Inc.

All notices or correspondence regarding this claim to be forwarded to the creditor at the following address:

Telephone: _____ Fax: _____

I, _____ residing in the _____
(name of person signing claim) (city, town, etc.)

of _____ in the Province of _____
(name of city, town, etc.)

Do hereby certify that:

1. ☐ I am the creditor
- OR ☐ I am _____ of the creditor.
(if an officer or employee of the company, state position or title)

2. I have knowledge of all the circumstances connected with the claim referred to in this form.

3.A The debtor identified above was, as at September 30, 2013, and still is indebted to the creditor in the sum of \$_____ as shown by the statement of account attached hereto and marked "Schedule A". Claims should **not** include the value of good and/or services supplied or claims arising after September 30, 2013. If a creditor's claim is to be reduced by deducting any counter claims to which the debtor is entitled and/or amounts associated with the return of equipment and/or assets by the debtor, please specify.

The statement of account must specify the vouchers or other evidence in support of the claim including the date and location of the delivery of all services and materials. Any claim for interest must be supported by contractual documentation evidencing

the entitlement to interest.

B The indebtedness referred to in paragraph 4.A is in the following currency:

- ☐ Canadian Dollars
- ☐ United States Dollars

4.A ☐ **Unsecured claim.** \$ _____. In respect to the said debt, the creditor does not and has not since September 30, 2013, held any assets of the Debtor as security.

- ☐ **Secured claim.** \$ _____. In respect of the said debt, the creditor holds assets of the Debtor valued at \$ _____ as security:

Provide full particulars of security, including the date on which the security was given and the value at which the creditor assesses the security together with the basis of valuation, and attach a copy of the security documents as Schedule "B".

Dated at _____, this _____ day of _____, 2017

Witness

Must be signed and witnessed

Instructions for Completing Proof of Claim Forms

In completing the attached form, your attention is directed to the notes on the form and to the following requirements:

Proof of Claim:

1. Please indicate which of the three debtors which you are asserting a claim against. If you are asserting a claim against multiple debtors please complete a separate Proof of Claim for all claims being asserted.
2. The form must be completed by an individual and not by a corporation. If you are acting for a corporation or other person, you must state the capacity in which you are acting, such as, "Credit Manager", "Treasurer", "Authorized Agent", etc., and the full legal name of the party you represent.
3. The person signing the form must have knowledge of the circumstances connected with the claim.
4. A. A Statement of Account containing details of secured and unsecured claims, and if applicable, of the amount due in respect of property claims, and must be attached and marked Schedule "A". Claims should not include the value of goods and/or services arising after September 30, 2013. It is necessary that all creditors indicate the date and location of the delivery of all goods and/or services. Any amounts claimed as interest should be clearly noted as being for interest.

B. Tick the appropriate currency.
5. The nature of the claim must be indicated by ticking the type of claim which applies. e.g.
—

Ticking (A) indicates the claim is unsecured;

Ticking (B) indicates the claim is secured, such as a mortgage, lease or other security interest, and the value of which the creditor assesses the security must be inserted, together with the basis of valuation. Details of each item of security held should be attached as Schedule "B" and submitted with a copy of the chattel mortgage, conditional sales contract, security agreement, etc.;

A creditor may have separate claims in different categories, in which case a separate claim form must be submitted for each claim.

6. The person signing the form must insert the place and date in the space provided, and the signature must be witnessed.

Send a copy of the completed Proof of Claim, by 5:00 pm (MST) on February 23, 2017, to the Receiver at the below addresses:

Ernst & Young Inc., in its capacity as court
appointed receiver and manager of 1252065
Alberta Ltd., 1330075 Alberta Ltd. and Harvest
Capital Management Inc.

Attention: Jessica Caden
2200, 215 – 2nd Street SW
Calgary, Alberta T2P 1M4

E-mail: Jessica.Caden@ca.ey.com
Fax: 403-206-5394

APPENDIX "C"

NEWSPAPER NOTICE FOR THE CLAIMS PROCESS OF 1252064 ALBERTA LTD, 1330075 ALBERTA LTD. AND HARVEST CAPITAL MANAGEMENT INC. (COLLECTIVELY, THE "DEBTOR")

On September 30, 2013, Ernst & Young Inc. (the "**Receiver**") was appointed as receiver and manager of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc. (the "**Debtor**").

On January 12, 2017, the Court granted a further order prescribing a process by which the identity and status of creditors of the Debtor and the amounts of their claims will be established (the "**Claims Process Order**"). A copy of the Claims Process Order may be viewed at <http://documentcentre.eycan.com/Pages/Main.aspx?SID=228>. Capitalized terms below are as defined in the Claims Process Order.

Any Person who wishes to advance an Affected Claim against the Debtor must complete and forward to the Receiver a completed Proof of Claim on or before 5:00 pm (MST) on February 23, 2017. Any Person who fails to comply with these requirements shall be forever barred, enjoined and estopped from asserting such Affected Claim against the Debtor and such Affected Claim shall be forever extinguished.

All claims must be made in the prescribed "Proof of Claim" form together with the required supporting documentation and be received by the Receiver on or before the Claims Bar Date, being 5:00 pm (MST) on February 23, 2017. If you have any questions regarding the claims process or the attached materials, please contact Jessica Caden at 403-206-5394 or Jessica.Caden@ca.ey.com.

APPENDIX "D"

**NOTICE OF REVISION AND DISALLOWANCE FOR THE CLAIMS PROCESS OF 1252064
ALBERTA LTD, 1330075 ALBERTA LTD. AND HARVEST CAPITAL MANAGEMENT INC.
(COLLECTIVELY, THE "DEBTOR")**

TO: [NAME AND ADDRESS OF CREDITOR]

NAME OF CREDITOR:

CLAIM NO.

**THE RECEIVER HAS [REVISED/DISALLOWED] THE PROOF OF CLAIM YOU SUBMITTED
AS FOLLOWS:**

Classification:

Quantum:

**IF YOU WISH TO DISPUTE THE REVISION AND DISALLOWANCE YOU MUST TAKE THE
STEPS OUTLINED BELOW.**

The Claims Process Order provides that if a Creditor disagrees with the Notice of Revision or Disallowance of its claim set out herein, the Creditor must file a Notice of Application before the Court of Queen's Bench of Alberta within fifteen days of the date of this Notice of Revision or Disallowance to have its Affected Claim determined.

Any Person who fails to comply with such requirements shall be deemed to have accepted the classification and quantum of its Affected Claim as set forth in this Notice of Revision or Disallowance and shall be forever barred, enjoined and estopped from challenging the classification and quantum of its Affected Claim as set forth in this Notice of Revision or Disallowance delivered to it by the Receiver, except as otherwise may be ordered by the Court.

Dated the ____ day of _____, 2017 in Calgary, Alberta.

**ERNST & YOUNG INC., in its capacity as
court appointed receiver and manager of
1252064 Alberta Ltd., 1330075 Alberta Ltd.
and Harvest Capital Management Inc.**

Per: _____

Name:

Title: