

COURT FILE NUMBER **QB No 984 of 2014**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE OF **SASKATOON**

APPLICANT **BUSINESS DEVELOPMENT BANK OF CANADA**

RESPONDENTS **ASSINIBOIA RUBBER RECYCLING INC.**

TWICE AMENDED NOTICE OF APPLICATION

NOTICE TO RESPONDENTS

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where: Court of Queen's Bench, 520 Spadina Crescent East, Saskatoon,
Saskatchewan

Date: August 11~~April 25~~, 2016

Time: 3:00~~4:00~~ p.m.

Go to the end of this document to see what you can do and when you must do it.

REMEDY CLAIMED OR SOUGHT:

The Applicant, Ernst & Young Inc., in its capacity as receiver over the assets and undertaking of Assiniboia Rubber Recycling Inc. (the "Company") seeks an Order that:

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

1A.1. Paragraph 2(a)(ii) of the Adjournment, Cost Allocation and Distribution order made by this Court on June 9, 2016 shall be amended to read as follows:

(ii) Subsequent to the allocation of costs of the Receivership against TD Bank in the amount of \$10,000 described in paragraph 2(a)(i) hereof, the Receiver shall, deduct and remit GST thereafter pay over the net remaining amount of the Receivable (i.e. - \$53,000) to the order of TD Bank.

1A. Pursuant to the provisions of s. 15 of the Order granted by the Honourable Madam Justice Rothery on July 11, 2014 (the "Receivership Order"), an order in relation to an order made by the fire chief for the Town of Assiniboia (the "Environmental Order"):

(a) Declaring that the Receiver has not taken possession of the property which is the subject of the Environmental Order and that the Receiver is accordingly not bound to comply therewith; or

(b) In the alternative, declaring that the Receiver has effectively abandoned and released any interest in the subject of the Environmental Order and that the Receiver is not bound to comply therewith.

2. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Final Report (including those necessary to finalize the receivership) are approved without the necessity of a formal passing of its accounts.

3. The accounts of the Receiver's legal counsel Robertson Stromberg LLP, for its fees and disbursements (including those necessary to finalize the receivership), as set out in the Receiver's Report are approved without the necessity of a formal assessment of its accounts.

4. The Receiver's activities as set out in the Receiver's Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Report, are ratified and approved.

5. Intentionally left blank. ~~The Receiver is authorized and directed to:~~

~~(a) Conclude the proceedings brought by the Receiver against 623452 Saskatchewan Ltd. and Kelly Minisofer and realize the judgment in relation thereto; and~~

~~(b) In the event that the Receiver shall be in possession of any net sum after the payment of all expenses, fees and disbursements, such net sum shall be paid over to Business Development Bank of Canada.~~

6. 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 that 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 in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court, and that subject to the foregoing any claims against the Receiver in connection with the performance of its duties be stayed, extinguished and forever barred.
7. 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.
8. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a certificate of a licensed Trustee employed by the Receiver confirming that all matters required by the order granted have been completed that the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge (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.
9. The Order must be served only upon those interested parties attending or represented at the within application and that service may be effected by Facsimile, electronic mail, personal delivery or courier with service is deemed to be effected the next business day following the transmission or delivery of such documents.

9A. ~~In the alternative to paragraphs 1A through 9 above, adjourning the Receiver's application for the relief set forth therein to a date to be determined by the Court, and for a further order providing that:~~

~~That the Receiver shall issue an invitation to the Saskatchewan Ministry of the Environment for its representative(s) to attend a settlement conference to be convened by a member of the insolvency and restructuring panel of the Court of Queen's Bench;~~

~~That in the event that the Ministry should accept that invitation, that Assiniboia Rubber Recycling Inc., Ted Hillestead, Marc Topola, Business Development Bank of Canada, Saskatchewan Scrap Tire Corporation and the Receiver shall attend; and that~~

~~Such conference shall be set at the earliest date that the Local Registrar can schedule, in consultation with whose ordered to and invited to attend.~~

10. Service of this Order on any party not attending the application is hereby dispensed with.

GROUND FOR MAKING THIS APPLICATION:

1. The Receiver has realized on all assets with respect to which the Receiver has taken possession, save for certain assets claimed by the Receiver from 623452 Saskatchewan Ltd. and Kelly Minisofer, which are the subject of an outstanding application to be heard prior to this application.
2. The Receiver has not taken possession of the main plant of the Debtor, by virtue of environmental issues, which have arisen thereto, or in the alternative, has properly and appropriately abandoned and released any interest in that property;
3. ~~The Receiver has endeavored to find a basis by which issues at the main plant of the debtor might be resolved, and that the security held by BDC might be released, but no such resolution has been achieved;~~

3A. The fire chief of the Town of Assiniboia has made an order respecting property belonging to the Company;

~~3B. Business Development Bank of Canada has commenced action against Assiniboia Rubber Recycling Inc., Ted Hillestead, Marc Topola, Business Development Bank of Canada, Saskatchewan Scrap Tire Corporation in Queen's Bench Action 511 of 2016, at the Judicial Centre of Saskatoon, where the subject matter of the action is intimately connected with this receivership.~~

4. There is no practical basis for the appointment of the Receiver continue;

5. Such further and other grounds as may be set forth in the Receiver's Final Report.

MATERIAL OR EVIDENCE TO BE RELIED ON:

1. The Applicant intends to rely upon:

(a) This Amended Notice of Application, with proof of service

(b) The Sedcond Report of the Receiver;

~~(a)(c)~~ The Third Report of the Receiver; and

(d) Draft Order Amending the Adjournment, Cost Allocation and Distribution Order; and

~~(b)(e)~~ Amended Draft Order for Discharge.

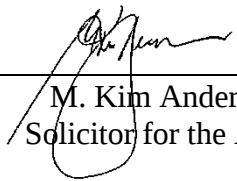
APPLICABLE ORDERS:

1. Paragraph 2 of the Receivership Order provides that, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, section 65(1) of *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01, and section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2, the Applicant was appointed Receiver of all the assets, undertakings and properties of AAR acquired for, or used in relation to the business carried on by AAR (the "Property").

DATED at Saskatoon, Saskatchewan, this ~~15th~~9th day of ~~April~~August, 2016.

ROBERTSON STROMBERG LLP

Per: _____


M. Kim Anderson, Q.C.
Solicitor for the Applicant

NOTICE

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 rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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