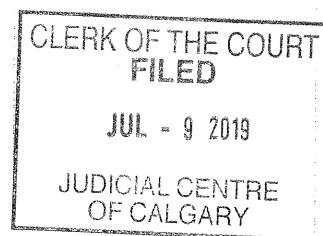


9/22/2018

Clerk's Stamp



COURT FILE NUMBER 1601-06131

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
CONNACHER OIL AND GAS LIMITED

DOCUMENT **APPLICATION**
(RETURN OF PROPERTY ORDER)

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT **CASSELS BROCK & BLACKWELL LLP**
Bankers Hall West, 888-3rd Street SW
Suite 3810
Calgary, Alberta T2P 5C5

Attn: Ryan Jacobs/Joseph Bellissimo/Natalie E. Levine
Tel: 403-351-2920
Fax: 403-648-1151
rjacobs@casselsbrock.com
jbellissimo@casselsbrock.com
nlevine@casselsbrock.com

NOTICE TO RESPONDENT(S):

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: July 16, 2019
Time: 10:30 a.m.
Where: Calgary Courts Centre, 601 - 5 Street S.W.
Calgary, AB T2P 5P7
Before Whom: The Honourable Madam Justice G.A. Campbell

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. Connacher Oil and Gas Limited ("**Connacher**") seeks an order substantially in the form attached hereto as Schedule "A" (the "**Return of Property Order**"), *inter alia*:
 - (a) declaring that service of the Application and supporting documents is good and sufficient, that the time for notice is abridged to the time provided, and dispensing with further service;
 - (b) declaring that the sum of \$728,183.99 or such lesser amount as remains in the following account in The Toronto-Dominion Bank ("**TD**"):Institution #: 004
Transit #: 02532
Account #: 5237438 (the "**Account**")
together with any interest that has accrued thereon since June 19, 2019 is the Property of Connacher, as such term is defined in the Initial Order dated May 17, 2016 (the "**Initial Order**"); and
 - (c) requiring that within 30 days of the date of the Return of Property Order, TD return the Property to Connacher by bank draft.

Grounds for making this Application:

2. On May 17, 2016, the Honourable Madam Justice Dario granted the Initial Order under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). Since the granting of the Initial Order, Connacher has continued to operate its business in the ordinary course.
3. Connacher regularly conducts business with a service provider known as Plains Midstream Canada ("**Plains**").
4. Connacher pays for Plains' services by sending electronic funds transfers ("**EFT**") from a Connacher bank account at ATB Financial ("**ATB**") to an account specified by Plains.
5. On June 11, 2019, a Connacher employee received an email (the "**First Scam Email**") appearing to originate from Plains' email system. The email provided Connacher with updated bank account details for future EFT payments to Plains, attaching instructions for a TD bank account with a branch address in Calgary.

6. On June 19, 2019, another email (the "**Second Scam Email**") appearing to originate from Plains' email system was sent to the same Connacher employee, following up to ensure that Connacher had received the new payment instructions. There is no indication in either of the First Scam Email or Second Scam Email that these emails originated from anywhere outside of Plains, or that a cyber-fraud was being perpetrated on Connacher.
7. Relying upon the new wire instructions, and without any knowledge of the cyber-fraud being perpetrated upon it, on June 19, 2019, Connacher paid by way of EFT \$728,183.99 (the "**Payment**") to the TD account specified in the First Scam Email.
8. On June 21, 2019, ATB advised Connacher that the fraud detection group at TD had flagged the Payment as potentially fraudulent. Despite Connacher's intention that funds be directed to Plains for services provided, the Payment had been made to the Account of TD's client, 5002483 Ontario Inc. ("**5002483**").
9. Plains advised Connacher that Plains had not received the Payment and did not send the First Scam Email or Second Scam Email.
10. On or about June 21, 2019, TD froze the funds in the 5002483 Account.
11. Connacher filed a report regarding the cyber-fraud with the Calgary Police Service.
12. 5002483 is an active Ontario-registered corporation with a registered office address in Toronto, Ontario. The business name "Buddy's Towing" is registered to 5002483. Connacher has no prior business with or awareness of 5002483 or Buddy's Towing.
13. Connacher is advised by TD that, due to the quantum of funds at issue, TD requires a Court order to disburse the funds back to ATB for the account of Connacher. TD does not oppose this Application.
14. On July 8, 2019, Connacher sent a letter to 5002483 at its registered office address advising that it would proceed with this Application for the return of its Property.
15. Connacher has suffered damage as a result of the cyber-fraud perpetrated upon it and requires that its Property be returned. The return of the Property is in the interests of justice, as the funds are Connacher's rightful Property.
16. Connacher's Application will be served upon 5002483 at its registered office address.

17. Connacher's Application is supported by the Court-appointed monitor, Ernst & Young Inc., certain of the first lien lenders holding in excess of 75% of the principal amount of debt outstanding under the First Lien Credit Agreement dated as of May 23, 2014, as amended (the "**First Lien Credit Agreement**"), and Wilmington Trust, National Association, the First Lien Agent under the First Lien Credit Agreement.

Material or evidence to be relied on:

18. The Affidavit of Merle Johnson sworn July 9, 2019, filed.
19. The Initial Order.
20. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

21. *Alberta Rules of Court*, AR 124/2010.
22. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

23. *The Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended.
24. *The Bank Act*, S.C. 1991, c. 46 as amended.
25. *Judicature Act*, R.S.A. 2000, c. J-2.
26. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

27. None.

How the Application is proposed to be heard or considered:

28. In person.

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 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 "A" TO APPLICATION

COURT FILE NO. 1601-06131

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT **IN THE MATTER OF THE *COMPANIES'*
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DOCUMENT **RETURN OF PROPERTY ORDER**

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Cassels Brock & Blackwell LLP
Suite 3810 Bankers Hall West
888-3rd Street SW
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Attn: Ryan Jacobs/Joseph Bellissimo/Natalie E. Levine

Tel: 403-351-2920

Fax: 403-648-1151

rjacobs@casselsbrock.com

jbellissimo@casselsbrock.com

nlevine@casselsbrock.com

DATE ON WHICH ORDER WAS PRONOUNCED: July 16, 2019

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice
G.A. Campbell

UPON the application of Connacher Oil and Gas Limited (the "**Applicant**"); **AND UPON** having read the Affidavit of Merle Johnson sworn July 9, 2019; and the pleadings and proceedings herein; **AND UPON** hearing counsel for the Applicant, Ernst & Young Inc., the court-appointed monitor of the Applicant, the First Lien Agent, The Toronto-Dominion Bank ("**TD**") and from any

other affected parties present before the Court and no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of ● sworn July ●, 2019, filed;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE AND NOTICE

1. Service of this Application and supporting documents is hereby deemed to be good and sufficient, the time for notice is hereby abridged to the time provided, and no other person is required to have been served with notice of this Application.

DECLARATION

2. The sum of \$728,183.99 or such lesser amount as remains in the TD account identified as Account No. 5237438, Transit No. 02532, Institution No. 004, Swift code: TDOMCATTOR (the "**Account**"), together with interest that has accrued thereon from June 19, 2019 is the Property (as defined in the Initial Order dated May 17, 2016) of the Applicant.

RETURN OF PROPERTY

3. Within 30 days of the date of this Order, TD shall return the Property to the Applicant by bank draft payable to Connacher Oil and Gas Limited at 1040, 640-5th Avenue SW, Calgary, AB, T2P 3G4.

MISCELLANEOUS

4. This Order shall have full force and effect in all provinces and territories of Canada and against all persons against whom it may be enforceable.
5. This Order shall be posted on the Website at www.ey.com/ca/connacheroilandgas and only be required to be served upon the parties on the service list and those parties who appeared at the hearing of the application for this Order.

Justice of the Court of Queen's Bench of Alberta