

COURT FILE NUMBER 1801-17912
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON
DOCUMENT APPLICATION
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker W. MacLeod / Pantelis Kyriakakis
Tel: 403-260-3710 / 3536
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca



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 master/judge.

To do so, you must be in Court when the application is heard, as shown below:

Date: April 17, 2019
Time: 3:00 p.m.
Where: Calgary Courts Centre
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: Ernst & Young Inc. (the "Receiver"), in its capacity as the court-appointed receiver and manager of the assets, properties, and undertaking (collectively, the "Property") of Hughson Trucking Inc. (the "Debtor") pursuant to the Consent Receivership Order (the "Receivership Order") granted on December 19, 2018 (the "Filing Date"), and an order granted on March 5, 2019 authorizing the Receiver to sell substantially all of the Debtor's assets (the "Sale Order") in the within proceedings (the "Receivership Proceedings") applies for an Order, substantially in the form attached as Schedules "A" hereto:

1. If necessary, declaring that the time for service of this application (the “**Application**”) and the second report of the Receiver, dated April 14, 2018 (the “**Second Receiver’s Report**”) is abridged, that the Application is properly returnable on April [●], 2019, that service of the Application on the service list is good and sufficient, and that no persons other than those on the service list are entitled to service of the Application, or any orders arising therefrom.
2. Authorizing and directing the Receiver to withhold the amount of \$380,068 (the “**Holdback Amount**”) to pay for or perform reclamation or remediation work (the “**Reclamation Work**”) that the Debtor may owe on real property legally described as NW-26-02-17W4M (the “**Lands**”) for environmental conditions or damage that existed on or before the Filing Date.
3. Authorizing and directing the Receiver to make distributions from the Property (as such term is defined in the Receivership Order) to who were owed debts, liabilities or obligations by the Debtor as of the Filing Date (the “**Creditors**”).
4. Ordering and declaring that service of any orders arising from the Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, to the persons present at the Application shall constitute good and sufficient service of such orders and that no persons, other than those present at the Application, are entitled to be served with a copy of such orders.
5. Such further and other relief as counsel for the Receiver may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Grounds for Making this Application: The grounds for the Application are as follows:

6. The Receiver was appointed as receiver and manager of the Property pursuant to and in accordance with the Receivership Order.
7. The Receiver was authorized pursuant to the Sale Order to sell substantially all of the Debtor’s assets. Following the closing of transactions contemplated by the Sale Order, the Receiver intends to or will become obligated to make distributions of the Property to Creditors.
8. The obligation of the Debtor to pay for or perform the Reclamation Work is disputed. The Receiver seeks authorization to withhold the Holdback Amount to pay for the Reclamation Work if the Debtor is determined to have liability for same. The relief sought by the Receiver will provide security for any obligation of the Debtor to perform the Reclamation Work and allow for the timely distribution of the remaining Property to Creditors.

9. Such further and other grounds as counsel for the Receiver may advise.

Affidavit or other Evidence and Materials to be used in Support of this Application:

10. The Second Receiver's Report.

11. Such further and other evidence or materials as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable Rules:

12. Rule 6.3(1), 6.9(1), 6.28, and 11.27 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.

13. Such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

14. The *Bankruptcy and Insolvency Act* (Canada).

15. Such further and other acts and regulations as counsel for the Receiver may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

16. There are no irregularities complained of or objections relied on.

How the Application is Proposed to be Heard or Considered:

17. The Receiver proposes that this application be heard in person with one, some, or all of the parties present.

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 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.

SCHEDULE "A" TO THE APPLICATION

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DEFENDANTS	HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON
DOCUMENT	ORDER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCARTHY TÉTRAULT LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3710 / 3536 Fax: 403-260-3501 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

Clerk's Stamp

DATE ON WHICH ORDER WAS PRONOUNCED: ●

LOCATION OF HEARING OR TRIAL: ●, Alberta

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Justice ●

UPON the application (the "**Application**") of Ernst & Young Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver and manager of Hughson Trucking Inc. (the "**Debtor**") pursuant to the Consent Receivership Order issued by this Honourable Court (the "**Receivership Order**") on December 19, 2018 (the "**Filing Date**"); **AND UPON** noting the Order (Distribution and Sealing) issued by this Honourable Court on March 5, 2019 that, *inter alia*, authorized the Receiver to make distributions to ATB Financial ("**ATB**") in the within proceedings (the "**Distribution Order**"); **AND UPON** reading the Second Report of the Receiver, dated April 14, 2019 (the "**Second Receiver's Report**"); **AND UPON** noting the Affidavit of Service of Katie Doran, sworn April ●, 2019 (the "**Service Affidavit**"); **AND UPON** hearing from counsel for the Receiver and from counsel for other Persons in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

Defined Terms

1. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Receivership Order.

Service

2. The time for service of the Application and the Second Receiver's Report be and is hereby abridged, service of the of the Application and the Second Receiver's Report in the manner described in the Service Affidavit is validated and the Application is properly returnable today.

Holdback Amount

3. The Receiver is authorized and directed to withhold the amount of \$380,068 (the "**Holdback Amount**") from distributions of the Property to Persons who were owed debts, liabilities or obligations by the Debtor as of the Filing Date (collectively, the "**Creditors**"), on a without prejudice basis, as security for the obligation, if any, of the Debtor to Alberta Environment and Parks (the "**AEP**"), if any, to pay for or perform reclamation or remediation work on real property described as NW 62-02-17 W4M (the "**Lands**") for environmental conditions or damage that existed on or before the Filing Date (the "**Reclamation Work**").

4. The Holdback Amount, on a without prejudice basis, shall stand as security only for the obligation, if any, of the Debtor to AEP, if any, to pay for or perform the Reclamation Work and shall not:

- (a) be determinative of the liability of the Debtor to the AEP, if any, to pay for or perform the Reclamation Work; or
- (b) be used or applied towards satisfying the obligation of any other Person to pay for or perform Reclamation Work including, without limitation, the obligation of any other Person who has or previously had an interest in, performed work on, supplied materials to or otherwise made use of the Lands.

5. The Holdback Amount may be disbursed pursuant to and in accordance with either:

- (a) the consent of AEP and the Receiver; or

- (b) a further order of this Honourable Court on application by either the AEP or the Receiver and each of the AEP and the Receiver be and are hereby granted leave to bring an application for the Release of the Holdback Amount pursuant to and in accordance with the terms of this Order.

Creditor Distributions

6. Subject to maintaining the Holdback Amount pursuant to and in accordance with the terms of this Order, the Receiver be and is hereby authorized to make distributions of the Property to Creditors including, without limitation, distributions of the Property to ATB pursuant to and in accordance with paragraph 1 of the Distribution Order.

Miscellaneous

7. Service of this Order on the persons in attendance at the Application by email, facsimile, registered mail, courier, or personal delivery, shall constitute good and sufficient service of this Order, and no persons, other than those in attendance at the Application, are entitled to be served with a copy of this Order.

J.C.C.Q.B.A.