COURT FILE NUMBER	1801-17912
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	**ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)**
RESPONDENTS	HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, AND JUSTIN LEE HUGHSON
DOCUMENT	**THIRD REPORT OF THE RECEIVER** **March 4, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** ERNST & YOUNG INC. Calgary City Centre 2200, 215 - 2nd Street SW Calgary, Alberta T2P 1M4 Attention: Peter Chisholm Telephone: (403) 206-5061 Fax: (403) 206-5075 Email: peter.chisholm@ca.ey.com **COUNSEL** McCarthy Tétrault LLP Suite 4000, 421 7th Avenue SW Calgary, Alberta T2P 4K9 Attn: Walker MacLeod Pantelis Kyriakakis Telephone: (403) 260-3710 (403) 260-3536 Email: wmacleod@mccarthy.ca pkyriakakis@mccarthy.ca

Clerk's Stamp
CLERK OF THE COURT
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APPENDICES

INTRODUCTION

1. Ernst & Young Inc. ("**EYI**") was appointed Receiver (the "**Receiver**") of the property, assets and undertakings (the "**Property**") of Hughson Trucking Inc. ("**HTI**" or the "**Corporation**") pursuant to an Order of this Honourable Court (the "**Receivership Order**") dated December 19, 2018 (the "**Receivership Date**").

2. The Receivership Order authorized the Receiver, among other things, to carry on the business of HTI, to sell, convey, transfer, lease, or assign the Property out of the normal course of business, subject to approval by this Honourable Court for any transactions exceeding $200,000, or the aggregate of multiple transactions exceeding $1,000,000, and to make such arrangements or agreements as deemed necessary by the Receiver.

3. The purpose of this third report of the Receiver (the "**Third Report**") is to provide this Honourable Court with the Receiver's comments with respect to:

   a) the proposed asset purchase agreement between the Receiver and 1010307 Alberta Ltd. ("**1010 AB**") dated February 19, 2020 (the "**Milk River APA**") for the sale of certain HTI owned property in Milk River, Alberta (the "**Milk River Transaction**"); and

   b) the Receiver's recommendation in respect of the same.

TERMS OF REFERENCE

4. All references to dollars are in Canadian currency unless otherwise noted.

5. Capitalized terms not defined in this Third Report are as defined in the Receivership Order, Bankruptcy Order and the prior reports of the Receiver filed in these proceedings.

PROPOSED MILK RIVER TRANSACTION

6. HTI owns the lands and premises municipally described as 116 & 124 8th Avenue NW, Milk River, Alberta and legally described as Plan 7410759, Block 17, Lot 17 and Plan 7410759, Block 37, Lot 18, respectively, (collectively, the "**Milk River Property**").

7. Subsequent to its appointment, the Receiver solicited proposals from eight reputable real estate agents for the purposes of marketing and selling the Milk River Property. On April 4, 2019, the Receiver retained Avison Young Lethbridge (2016) Inc. ("**Avison Young**")

as its realtor to list and solicit offers for the Milk River Property. Based upon guidance from Avison Young derived from comparable sales in the local market, the Receiver listed the Milk River Property for sale at $330,000.

8. Since early April 2019, Avison Young has undertaken a broad marketing of the Milk River Property to many prospective purchasers. During this period, Avison Young, among other things, distributed non-confidential marketing materials (e.g., brochures) to every business and household in Milk River, Alberta, emailed frequent updates to those parties that expressed interest in the Milk River Property, and maintained a listing on its website.

9. Over the 11-month period that the Milk River Property was marketed, the Receiver received offers for the Milk River Property from three different parties. The details of the offers have been summarized in Confidential Appendix '**A**' to this Third Report.

10. The Receiver selected the offer from 1010 AB on the basis that 1010 AB offered the highest and best purchase price. The remaining offers were not pursued as they were significantly less than the fair market value of the Milk River Property.

11. Key terms of the Milk River APA include the following:

   a) the Milk River Transaction is subject to the approval of this Honourable Court;

   b) 1010 AB is required to pay the Receiver a deposit of 10% of the purchase price; and

   c) closing of the Milk River Transaction shall be 10:00 a.m. (Mountain Time) 15 business days following the removal of the Receiver's conditions precedent (the "**Closing Date**").

12. The executed Milk River APA in the same form, but with certain commercial terms redacted is attached as Appendix '**A**' to this Third Report. An unredacted version of the Milk River APA is attached as Confidential Appendix '**B**' to this Third Report.

RECEIVER'S COMMENTS ON THE MILK RIVER TRANSACTION

13. The Receiver supports the Milk River APA based upon the following factors:

   a) the Receiver acted in good faith and with due diligence in soliciting offers to purchase the Milk River Property;

b) Avison Young undertook a broad marketing of the Milk River Property to many prospective purchasers over an 11-month period and the market was reasonably canvassed, suggesting sufficient efforts were made to obtain the best purchase price for the Milk River Property;

c) the marketing process held by Avison Young was fair and conducted with integrity;

d) the Milk River Transaction has the full support of ATB Financial ("**ATB**"), the primary secured creditor, which holds security against all present and after-acquired personal real property of HTI, including the Milk River Property. The Receiver has obtained an opinion from its legal counsel that, subject to the standard assumptions and qualifications, ATB has valid and enforceable security against the Milk River Property;

e) the Milk River APA was negotiated between the Receiver and 1010 AB at arm's length and in good faith and is commercially reasonable;

f) 1010 AB has provided a 10% deposit to the Receiver in accordance with the Milk River APA; and

g) the Receiver concluded that that the offer submitted by 1010 AB was the highest and best offer for the Milk River Property.

14. 1010 AB is a related party to HTI as they share joint-ownership and directors prior to HTI's directors, Justin Hughson and Darren Hughson, resigning prior to the Receivership Date. Additionally, 1010 AB is a secured creditor of HTI and holds a mortgage registered against the Milk River Property. 1010 AB's security interests are subordinate to ATB's.

15. This relationship did not influence the Receiver's selection of 1010 AB as the successful bidder. Furthermore, the Receiver notes that: (i) good faith efforts were made to sell or otherwise dispose of the Milk River Property to persons not related to HTI; (ii) the consideration to be received under the Milk River APA is superior to the consideration that would be received under any of the other third party offers received to date; and, (iii) the Milk River APA was negotiated at arm's length between the Receiver and 1010 AB. Finally, ATB, who has a first registered secured claim against the sales proceeds which will not be sufficient to fully satisfy the indebtedness outstanding from HTI to ATB, supports the sale and the Milk River APA.

SEALING ORDER

16. It is the view of the Receiver that the details of the solicited offers for the Milk River Property and the commercial terms in the Milk River APA, including the purchase price, constitute commercially sensitive information which could negatively impact the monetization of the Milk River Property if made public in the event the Receiver is forced to re-market the Milk River Property and cause serious and irreparable harm to the estate of HTI and it stakeholders.

17. The Receiver is of the view that this information should remain confidential until the Milk River Transaction has been completed to preserve the integrity of the marketing process in the event the Milk River Transaction does not proceed. Therefore, the Receiver is seeking an Order of this Honourable Court (the "**Sealing Order**") sealing the terms of the offers for the Milk River Property solicited by the Receiver and the Milk River APA.

RECEIVER'S RECOMMENDATIONS

18. The Receiver respectfully recommends that this Honourable Court approve:

    a) the Milk River APA; and

    b) Sealing Order.

Dated at Calgary, this 4th day of March, 2020.

ERNST & YOUNG INC.
in its capacity as the Receiver of HTI

Peter Chisholm, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX ‘A’

ASSET PURCHASE AGREEMENT

DATED this 19th day of February 2020, among:

ERNST & YOUNG INC., in its capacity as receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of **Hughson Trucking Inc.** ("**HTI**")

- and -

1010307 Alberta Ltd a corporation incorporated under the laws of the Province of Alberta (the "**Purchaser**")

WHEREAS:

A. The Court of Queen's Bench of Alberta (the "**Receivership Proceedings**") granted a receivership order (the "**Receivership Order**") appointing the Receiver as the receiver and manager of the current and future assets, undertakings and properties of HTI (the "**Property**").

B. The Receivership Order empowers and authorizes the Receiver to market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

C. The Purchaser wishes to purchase the Assets (as defined below) subject to, and in accordance with, the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed between the parties as follows:

ARTICLE 1 – DEFINITIONS

1.1 **Definitions.** In this Agreement, the following terms shall have the following meanings:

(a) "**Agreement**" means this Asset Purchase Agreement;

(b) "**Assets**" means all of the property and assets set out in Schedule "A";

(c) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Alberta;

(d) "**Canadian Dollars**" or "Cdn. $" or "$" shall mean lawful money of Canada;

(e) "**Claim**" shall mean any secured, lien, possessory lien, unsecured, administrative, trust or other type of claim, against HTI and/or any and all of the Assets, of every nature and kind and howsoever arising, including, without limitation, debts, dues, rights, actions, causes of action, third party claims, rights by way of indemnity, surety or set-off and securities, whether legal, beneficial, equitable, absolute or contingent, liquidated or unliquidated, vested or not vested, due or accruing due, present or future, known or unknown, but not including the Permitted Encumbrances;

(f) "**Closing**" means the closing of the transactions set forth in this Agreement at the Closing Time;

(g) "**Closing Time**" shall mean 10:00 a.m. (Calgary time) fifteen (15) Business Days after the satisfaction or waiver of the conditions set out in paragraph 2.5 of this Agreement, or such later date as the parties may agree to in writing;

(h) "**Court**" means the Court of Queen's Bench of Alberta in the Judicial District of Calgary presiding over the Receivership Proceedings;

(i) "**Deposit**" has the meaning attributed thereto in paragraph 2.4 of this Agreement;

(j) "**GST**" has the meaning attributed thereto in paragraph 2.3 of this Agreement;

(k) "**ITA**" means the *Income Tax Act* (Canada), as amended;

(l) "**Order**" means an order granted by the Court;

(m) "**Permitted Encumbrances**" means the permitted encumbrances set out in Schedule "B" to this Agreement;

(n) "**Purchase Price**" means the sum of [redacted]________;

(o) "**Transaction**" means the transaction of purchase and sale of the Assets and other arrangements, if any, contemplated by this Agreement; and

(p) "**Vesting Order**" means an Order, in form and substance acceptable to the Purchaser and the Receiver acting reasonably, approving the sale of, and vesting title to, the Assets, upon Closing, to the Purchaser free and clear of all Claims.

1.2 **Headings.** The headings appearing in this Agreement are inserted for convenience of reference only and will not affect the interpretation of this Agreement.

1.3 **Plurality and Gender.** Words used herein importing the singular number only shall include the plural and vice versa and words importing gender shall include all genders and words importing individuals shall include corporations, partnerships, trusts, syndicates, joint ventures, governments and governmental agents and authorities and vice versa.

1.4 **Schedules.** The following Schedules are incorporated into and form part of this Agreement:

Schedule "A" Assets

Schedule "B" Permitted Encumbrances

ARTICLE 2 – PURCHASE AND SALE

2.1 **Sale of the Assets.** Upon the satisfaction of the terms and conditions stated herein, on Closing, the Purchaser hereby purchases from the Receiver, and the Receiver hereby sells, assigns, conveys and delivers to the Purchaser, the Assets, on an as is where is basis, at and for the Purchase Price.

2.2 **Payment of Purchase Price.** Upon the satisfaction of the terms and conditions stated herein, the Purchaser shall pay to the Receiver, on or before the Closing Time, the Purchase Price plus applicable GST. Unless otherwise agreed, all amounts payable shall be paid to the Receiver by cheque certified by, or draft of, a Canadian chartered bank to be released upon Closing.

2.3 **GST.** The Purchase Price shall not include the amount of Goods and Services Tax eligible on the within transaction pursuant to the provisions of the *Excise Tax Act* (Canada) (the "**GST**"), which GST shall be tendered by the Purchaser to the Receiver in addition to the Purchase Price. At or before the Closing Time, the Purchaser shall deliver, or cause to be delivered, to the Receiver i) the registration number of the Purchaser for purposes of the GST together with the covenant and indemnity of the Purchaser to make appropriate filings with respect to this transaction as it relates to GST as required by the ITA, or ii) payment or evidence of payment of applicable federal or provincial taxes including GST, or, alternatively, iii) appropriate exemption certificates in form and substance satisfactory to the Receiver.

2.4 **Deposit.** Upon execution of this Agreement, the Purchaser shall provide the Receiver with a deposit in the amount of $[redacted]. (the "**Deposit**"). The Deposit shall be made by a cheque certified by, or draft of, a Canadian chartered bank. The Deposit shall be deemed to be a cash deposit to be applied to the Purchase Price. The Deposit shall be returned to the Purchaser if this Agreement is terminated pursuant to paragraph 2.6.

2.5 **Conditions Precedent.** This Agreement is conditional on the satisfaction or waiver of the following conditions, which are inserted for the benefit of all of the parties to this agreement and may be waived, in whole or in part, in writing by all of the parties hereto:

(a) the Court shall have granted the Vesting Order, which shall, among other things, approve the Purchaser's acquisition of the Assets free and clear of all Claims, interests and encumbrances, howsoever arising, except for the Permitted Encumbrances;

(b) the Vesting Order shall not be subject to any stay or other impediment in connection with the execution and closing of the Transaction;

(c) at the Closing Time, subject only to the Permitted Encumbrances, the Assets shall be absolutely unencumbered and free of any and all Claims pursuant to the Vesting Order;

(d) [redacted]

2.6 **Termination.** If the conditions contained in section 2.5 are not satisfied or waived on or before March 18, 2020 or such later date as may be agreed to in writing by all of the parties, this Agreement shall terminate and cease to have any further force or effect.

ARTICLE 3 – "AS IS, WHERE IS"

3.1 **As Is, Where Is.** The Purchaser hereby acknowledges and agrees that the Assets are being purchased on an "as is, where is" basis, and that it has conducted to its satisfaction its own independent investigation, analysis and evaluation of the Assets as it deems necessary or appropriate and that in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby it has and will rely solely on such independent investigation. Without limiting the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to any legislation in any jurisdiction do not apply hereto and have been waived by the Purchaser. The Purchaser acknowledges that there is no representation, warranty, term, condition, understanding or agreement, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, given in this Agreement or in any document furnished in connection with this Agreement, as to title, outstanding liens, encumbrances, description, merchantability, value, suitability or marketability of the Assets or in respect of any other matter or thing whatsoever, except as otherwise expressly stated herein. The Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the transactions contemplated hereunder.

ARTICLE 4 – MISCELLANEOUS

4.1 **Further Assurances.** The parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

4.2 **Notice.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to the parties or sent by courier or facsimile to the following address (or such other address for a party as shall be specified by like notice):

(a) to Purchaser, as follows:

1010307 Alberta Ltd.
PO Box 532 Milk River, AB T0K 1M0
Phone: 403 315 0840
Email: hughsonjustin@gmail.com
Attention: Justin Hughson

(b) to the Receiver, as follows:

Ernst & Young Inc. Calgary City Centre
2200 – 215 2nd Street SW Calgary AB T2P 1M4
Phone: +1 403 206 5061 | Fax: +1 403 206 5075

Attention: Peter Chisholm/ José Aldana

Any such notice or other communication shall be effective upon delivery.

4.3 **Legal Advice.** The parties have consulted with and been advised by their own solicitors before entering into this Agreement, have read same and know the contents thereof.

4.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.

4.5 **Severability.** In case any provision in this Agreement shall be prohibited, invalid, illegal or unenforceable in any jurisdiction, such provision shall be ineffective only to the extent of such prohibition, invalidity, illegality or unenforceability in such jurisdiction without affecting or impairing the validity, legality or enforceability of the remaining provisions hereof, and any such prohibition, invalidity, illegality or unenforceability shall not affect or impair such provision in any other jurisdiction.

4.6 **Amendment.** No amendment of this Agreement will be binding unless made in writing by all the parties.

4.7 **Time of the Essence.** Time shall be of the essence of this Agreement.

4.8 **Costs.** Each party shall be responsible for its own costs in preparation of this Agreement and completion of the Transaction.

4.9 **Waiver.** Failure by either party hereto to insist in any one or more instances upon the strict performance of any one of the covenants and obligations contained herein shall not be construed as a waiver or relinquishment of such covenant or obligation. No waiver by any party hereto (whether in whole or in part) of any such covenant or obligation shall be deemed to have been made unless expressed in writing and signed by the waiving party.

4.10 **Applicable Law and Court Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties hereby attorn to the jurisdiction of the Court in relation to any matter relating to this Agreement.

4.11 **Successors and Assigns.** This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

4.12 **Counterparts.** This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by fax or any other form of electronic transmission.

[**REMAINDER OF PAGE INTENTIONALLY BLANK - SIGNATURE PAGE TO FOLLOW**]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

1010307 Alberta Ltd.

Per: ______________________

ERNST & YOUNG INC., in its capacity as receiver and manager of the current and future assets, undertakings and properties of **Hughson Trucking Inc.**

Per: ______________________

Schedule "A"

Assets

The Assets are comprised of:

a) the lands municipally described as:

116 8th Avenue NW, Milk River Alberta Legally described as: Plan: 7410759 Block: 37 Lot: 17 Title # 961 043 858

124 8th Avenue NW, Milk River Alberta Legally described as: Plan: 7410759 Block: 37 Lot: 18 Title # 961 043 875

(the "**Lands**");

b) any and all real property and buildings located on the Lands, including, without limitation, attachments and fixtures thereto;

c) any and all personal property that are in the possession of the Receiver and unattached goods including, without limitation, all equipment, inventory, furniture, chattels, books, records, electronic data, licenses, all intellectual property, including by not limited to the intellectual property related to the business conducted from the Lands, entitlements, and any and all other documents, equipment, inventory, furniture and chattels on the Lands.

Schedule "B"

Permitted Encumbrances

Title # 961 043 858

None

Title # 961 043 875

None