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JUDICIAL CENTRE	EDMONTON
PLAINTIFF	ATB FINANCIAL
DEFENDANT	D.L.M. OILFIELD ENTERPRISES LTD.
DOCUMENT	**RECEIVER'S FIFTH REPORT** **OCTOBER 18, 2021**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**<u>RECEIVER</u>** ERNST & YOUNG INC. EPCOR Tower 10423 – 101 Street, Suite 1400 PO Box 44 Edmonton, Alberta T5H 0E7 Attention: Matt McCulloch / Dan McCulloch Telephone: 780-638-6642 / 780-441-4695 Fax: 780-428-8977 Email: matt.mcculloch@ca.ey.com dan.mcculloch@ca.ey.com **<u>COUNSEL</u>** MLT AIKINS LLP Dana M. Nowak / Catrina Webster 2200, 10235 – 101 Street Edmonton, AB T5J 3G1 Telephone: 780-969-3506 / 403-693-4347 Fax: 780-969-3549 Email: dnowak@mltaikins.com cwebster@mltaikins.com

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SCHEDULES

INTRODUCTION AND PURPOSE OF THE REPORT

1. On February 8, 2019, pursuant to an application made by ATB Financial ("**ATB**"), Ernst & Young Inc. ("**EY**" or the "**Receiver**") was appointed as Receiver and Manager over the properties, assets and undertakings of D.L.M Oilfield Enterprises Ltd. ("**DLM**") by virtue of an order (the "**Receivership Order**") granted by the Court on that date.

2. Over the course of these receivership proceedings, there have been a number of applications to the Court by the Receiver. Of these, the Receiver specifically notes for the Court that an application was made by the Receiver to make a distribution to creditors, repay the Receiver's borrowings, approve the Receiver's discharge, and seek various other relief as set out in the Receiver's Third Report. This application was set to be heard on December 12, 2019, however, due to a priority dispute raised by Bond Mezzanine Capital III Limited Partnership (the "**ATB / Bond Priority Dispute**"), the application was ultimately adjourned (the "**Adjournment**").

3. The Receiver would like to highlight the following events which have occurred since the Adjournment, for the Court's ease of reference:

   (a) In April of 2020, Canadian Natural Resources Limited ("**CNRL**") asserted a trust claim pursuant to s. 22 of the *Alberta Builders' Lien Act*, RSA 2000, c B-7 regarding services that CNRL alleged were provided to DLM prior to the granting of the Receivership Order (the "**CNRL Trust Claim**").

   (b) On September 21, 2020, on application by the Receiver, the Court granted an order authorizing and directing the Receiver to make an interim distribution to the creditors of DLM totalling $4,727,778.53 (the "**Interim Distribution**"), being funds for which the Receiver's proposed distribution was uncontested (the "**Interim Distribution Order**"). The Receiver advises that the Interim Distribution has since been paid to DLM's creditors as per the terms of the Interim Distribution Order. The Interim Distribution did not include the following amounts:

      a. $1,324,967.70 which was held back by the Receiver pending the resolution or adjudication of the ATB / Bond Priority Dispute (the "**Bond Holdback**"); and,

b. $392,707.78 which was held back by the Receiver pending the resolution or adjudication of the CNRL Trust Claim provided by CNRL and its affiliates to DLM (the "**CNRL Holdback**").

(c) On September 25, 2020, the Court granted an order dismissing the CNRL Trust Claim and authorizing payment of the CNRL Holdback to ATB. The Receiver advises that the CNRL Holdback has since been paid to ATB. The Receiver also advises that the Court awarded costs in favour of the Receiver in respect of the CNRL Trust Claim, in the amount of $2,410.48, which: (i) the Receiver received from CNRL on September 17, 2021, and (ii) the Receiver proposes to distribute to ATB (discussed later in this report).

(d) On May 13, 2021, the Court granted an order dismissing the ATB / Bond Priority Dispute and authorizing payment of the Bond Holdback to ATB. The Receiver advises that the Bond Holdback has since been paid to ATB.

(e) On July 19, 2021, again on application by the Receiver, the Court granted an order authorizing and directing the Receiver to destroy DLM's books and records as the Receiver no longer required such records to complete the administration of these receivership proceedings (the "**Records**"). The Receiver advises that the Records have since been destroyed.

4. The purpose of this report (the **"Receiver's Fifth Report"**) is to advise the Court and the stakeholders of DLM of the following:

(a) to bring forward the matters discussed in the Receiver's Third Report, that were part of the Adjournment, and not yet approved by the Court;

(b) the Receiver's actions in these receivership proceedings since the date of the Receiver's First Report (such actions were previously discussed in the Receiver's Third Report; however, the actions were not approved by the Court at that time as they were part of the Adjournment);

(c) the Receiver's fees and those of its legal counsel, including unbilled work-in-progress ("**WIP**") up to and including October 1, 2021, along with the Receiver's and its counsel's estimates of anticipated future fees to finalize this matter;

(d) the receipts realized, and the disbursements incurred by the Receiver since the onset of these proceedings, up to and including October 1, 2021 (the "**Receiver's Statement of Receipts and Disbursements**" or the "**SRD**");

(e) a proposed distribution to ATB (the "**Receiver's Proposed Distribution**"); and,

to obtain an order of the Court that:

(f) approves the Receiver's actions to date, to the extent that any such actions have not been previously approved by the Court;

(g) approves the fees and disbursements of the Receiver and those of its legal counsel, including unbilled WIP up to and including October 1, 2021 and anticipated future fees to finalize this matter;

(h) approves the Receiver's Statement of Receipts and Disbursements, up to and including October 1, 2021;

(i) approves the Receiver's Proposed Distribution as set out herein;

(j) approves the discharge of the Receiver after all funds held by the Receiver have been distributed, and all administrative matters have been concluded, without the requirement for an additional application to the Court; upon the filing of a certificate and Final Statements of Receipts and Disbursements for DLM; and,

(k) provides such further relief that the Court considers just and warranted in the circumstances.

DISCLAIMER

5. In preparing the Receiver's Fifth Report, the Receiver has relied upon DLM's unaudited financial information, DLM's books and records, certain financial information prepared by DLM, and discussions with DLM's management ("**Management**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied upon in its preparation.

6. This report should be read in conjunction with any other materials filed before the date of the upcoming application to Court which has currently been set for October 28, 2021. All reports and Orders, save for items directed to be sealed for confidentiality purposes, are available on the Receiver's website established for these proceedings that is located at www.ey.com/ca/dlm.

7. Unless otherwise stated, all references to monetary amounts contained herein are expressed in Canadian currency. Capitalized terms used herein, not otherwise defined, are as defined in the previous reports of the Receiver or other materials filed in connection with these proceedings.

RECEIVER'S ACTIONS SINCE THE DATE OF THE FIRST REPORT

8. As briefly noted earlier in this report, the actions of the Receiver since the Receiver's First Report were previously discussed in the Receiver's Third Report; however, the actions were not approved by the Court at that time as they were part of the Adjournment. As such, the Receiver would like to bring forward these actions for approval by the Court.

Conservatory Measures

9. Since the date of the Receiver's First Report, the Receiver's conservatory activities have included, but were not limited to, the following:

   (a) continued rent, regular security checks, and utility services at both of DLM's Bonnyville and Elk Point, Alberta locations (the "**DLM Locations**") until September 15, 2019 at which time Maynards Industries Canada Ltd. ("**Maynards**") assumed the responsibility for the rent, security and utility services at the DLM Locations. With respect to insurance coverage, the Receiver maintained insurance coverage until after the Second Auction Order (pronounced on October 29, 2019) was granted and the Receiver had confirmed that Maynards obtained its own insurance coverage; and,

   (b) continued review of DLM's redirected mail, in an attempt to intercept accounts receivable payments, review creditor correspondence, and ensure that all creditors were captured and provided with notice of these proceedings where appropriate.

Other Activities of the Receiver

10. In addition to the conservatory activities, since the date of the Receiver's First Report, the Receiver's activities also included the following:

(a) coordinated the continued/additional cleaning (purging) of DLM's remaining assets as set-out in the terms of the auction agreement with Maynards (the "**Amended Auction Agreement**");

(b) finalized its review and collection efforts in relation to DLM's outstanding accounts receivable (discussed later in this report);

(c) continued to field and address various stakeholder enquiries, including those from landlords, unsecured creditors and ATB;

(d) resolved outstanding insurance claims (discussed later in this report);

(e) dismissed all of the DLM staff who were engaged by the Receiver to assist with various tasks;

(f) worked with its counsel and Maynards to deal with net minimum guarantee ("**NMG**") issues and the Amended Auction Agreement (discussed later in this report);

(g) prepared and submitted all applicable employee information returns to the Canada Revenue Agency (the "**CRA**");

(h) prepared and filed all Goods and Services Tax ("**GST**") returns with the CRA;

(i) finalized all dealings in relation to claims filed by employees under the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("**WEPPA**") and filed WEPPA details with Service Canada;

(j) addressed or otherwise attended to the other specific matters outlined in this report; and,

(k) prepared this report including the SRD and the Receiver's Proposed Distribution attached hereto.

ASSET MATTERS

11. Matters related to the assets of DLM were previously discussed in the Receiver's Third Report; however, the matters were not approved by the Court at that time as they were part of the Adjournment. As such, the Receiver would like to bring forward the following asset matters for approval by the Court.

Accounts Receivable ("A/R")

12. The following is a summary of the results of the collection efforts of the Receiver up to the date of this report:

Total Net A/R Collectable (net of GST)	A/R Amounts Collected (net of GST)	A/R Amounts Set-Off, Disputed or Uncollectable (net of GST)	Lien Claims (net of GST)
$1,029,990.52	$805,744.07	$59,157.96	$165,088.49

13. The $59,157.96 of "A/R Amounts Set-Off, Disputed or Uncollectable" above relates to the following:

(a) The Receiver has reduced the receivables of certain DLM customers (the "**Set-Off Customers**"), totaling $48,582.92, to nil where valid set-off rights were demonstrated to the Receiver. The set-off rights of the Set-Off Customers were either equal to, or exceeded, the related receivables owed to DLM by these customers, and as such, no further receivables remain outstanding from the Set-Off Customers.

(b) Receivables of $5,212.91 relate to two DLM customers that are disputing their original invoices and are refusing to pay. Receivables of $3,737.13 relate to three DLM customers that, despite all reasonable efforts, the Receiver has been unable to contact. A receivable of $1,625.00 relates to a DLM customer who is experiencing cash flow problems. The Receiver has decided not to pursue the collection of the three amounts noted above due to the relatively immaterial amounts involved, the low probability of collection and anticipated associated costs. In the unlikely event that any further amounts are recovered from these specific receivables, the Receiver proposes to distribute such funds collected to ATB.

14. The $165,088.49 of "Lien Claims" above relates to a receivable due from one DLM customer who has liens registered against its property by three subcontractors. The Receiver's counsel has determined that the liens against the DLM customer in question are valid. The aggregate quantum of the lien claims total $378,028.22 and exceed the receivable due from the DLM customer. As a result, the Receiver will not be pursuing any further collection activities in relation to this receivable.

15. There are no further receivables for the Receiver to pursue.

Insurance Claims Initiated by the Receiver

16. On February 25, 2019, the Receiver was informed of a ceiling fire, that occurred at the Elk Point (Wash Bay) site, and for which the Receiver filed a Proof of Loss claim with the insurer.

17. The Receiver advises that the repairs to the ceiling were completed and passed inspection by the local building authorities. In addition, the contractor who completed the repairs has received payment directly from the insurer in the amount of $52,904.00, which is net of the $1,000.00 deductible and GST totaling $2,695.20. The Receiver has subsequently paid the deductible and GST to the contractor as required.

18. On April 3, 2019, the Receiver was informed that a break-in occurred at the Wabasca Shop and that a trailer, generator, skid steer forks, and 12 assorted tires (collectively the "**Stolen Assets**") were stolen, and for which the Receiver filed a police report with the RCMP and a Proof of Loss claim with the insurer.

19. The Receiver advises that the Stolen Assets have not been recovered, however, the Receiver has received payment from the insurer for this claim in the amount of $15,310.00 (the "**Insurance Payment**"), which is net of the $1,000.00 deductible. The amount of the Insurance Payment was based on replacement costs provided to the insurer by the Receiver's agent. It is the Receiver's position that the Insurance Payment is reasonable and appropriate in the circumstances.

Maynards Sale and Subsequent Amended Auction Agreement

20. The Maynards Sale took place on September 5, 2019, at the DLM Locations, and the overall results were lower than anticipated with many of the DLM assets remaining unsold.

21. Following a series of negotiations between the Receiver and Maynards, counsel for Maynards presented the settlement proposal to the Receiver, which resulted in an Amended Auction Agreement that was approved by the Court in the Second Auction Order.

22. As set-out in the Amended Auction Agreement, Maynards provided the Receiver with the balance of the NMG, in the amount of $3,178,058.00, and the Receiver has released the remaining unsold DLM assets to Maynards in accordance with the terms of the Second Auction Order.

CREDITOR MATTERS

23. Matters related to the creditors of DLM were previously discussed in the Receiver's Third Report; however, the matters were not approved by the Court at that time as they were part of the Adjournment. As such, the Receiver would like to bring forward the following creditor matters for approval by the Court.

Source Deductions and GST

24. All post-Receivership employee T4 slips, T4 Summaries and Records of Employment with respect to the former DLM employees engaged by the Receiver, have been completed and filed as required. In addition, all GST returns and all other returns required to be filed by statute have been completed and remitted.

25. The Receiver will proceed to close the "0002" payroll and GST accounts, which were opened to remit post-receivership source deductions and GST, with the CRA upon completion of all administrative matters. The Receiver proposes to pay any refunds received (if any) to ATB (discussed later in this report).

26. There were no outstanding amounts due to the CRA for Source Deductions or GST prior to these receivership proceedings.

Workers' Compensation Board ("WCB")

27. To affect the proper remittance of post-Receivership WCB premiums, the Receiver opened a new Receivership account with WCB Alberta.

28. The Receiver made all required WCB premium payments over the period of the receivership to maintain adequate coverage. The Receiver no longer has any DLM employees engaged to assist the Receiver, and as such, the Receivership account with WCB Alberta for the period of the receivership has been closed.

RECEIVER'S AND RECEIVER'S COUNSEL'S FEES AND DISBURSEMENTS

29. As at the date of this report, in relation to its fees and costs (excluding legal fees), the Receiver has invoiced $350,121.02 plus GST of $17,506.06, for a total of $367,627.08. The Receiver's unbilled WIP up to and including October 1, 2021 is $12,220.30 plus GST of $611.02, for a total of $12,831.32. A summary of the Receiver's invoiced fees and expenses are attached as **Schedule "A"**.

30. The Receiver estimates its fees to the end of its administration to be $15,000.00 plus GST of $750.00, for a total of $15,750.00.

31. As noted in the Receiver's Third Report, the Receiver has not charged any fees in relation to the BMO Asset release matter.

32. As at the date of this report, in relation to its fees and disbursements, the Receiver's counsel has invoiced the estate $226,178.99 plus GST of $11,237.60, for a total of $237,416.59. The Receiver's counsel estimates its fees, disbursements, and other charges to the end of the administration, including unbilled WIP, to be $10,000.00 plus GST of $500.00, for a total of $10,500.00. A copy of the Receiver's Counsel's invoices are attached as **Schedule "B"**.

33. It is the opinion of the Receiver that the fees and expenses of the Receiver and its counsel are fair and reasonable in these circumstances, and as such, should be approved by the Court.

STATEMENT OF RECEIPTS AND DISBURSEMENTS AND PROPOSED DISTRIBUTION

Receiver's Statement of Receipts and Disbursements

34. Attached as **Schedule "C"** to this report is a copy of the Receiver's Statement of Receipts and Disbursements up to and including October 1, 2021. The Receiver has provided explanatory notes for certain items outlined in **Schedule "C"**, where it felt further explanation or details were merited.

35. It is the Receiver's position that the receipts and disbursements as noted in **Schedule "C"** are reasonable and appropriate in these circumstances.

Receiver's Proposed Distribution

36. On March 10, 2020, in an affidavit sworn by Ian Mark Philip of ATB, DLM's indebtedness to ATB was confirmed to be $15,862,439.93 plus all accruing interest, fees, costs, and expenses, pursuant to and in accordance with the terms of the relevant agreements between ATB and DLM.

37. Based on the Receiver's interim distribution and the Receiver's Proposed Distribution (discussed below), the Receiver anticipates that ATB will suffer a shortfall exceeding $10,000,000, plus all accruing interest, fees, costs, and expenses, pursuant to and in accordance with the terms of the relevant agreements between ATB and DLM. For the Court's ease of reference, ATB has first ranking general security over the assets of DLM.

38. As discussed earlier in this report, and after considering the anticipated shortfall discussed above, the Receiver proposes to pay any future refunds received (if any) or any other future recoveries to ATB to reduce the anticipated shortfall until this shortfall is paid in full (the Receiver believes payment in full of ATB's claim in these circumstances is unlikely).

39. Attached as **Schedule "D"** to this report is the Receiver's Proposed Distribution. For the Court's ease of reference, the Receiver proposes to distribute the net receipts as follows:

- Payment of the net receipts to ATB of $385,329.19, less a holdback of $39,081.32, for a net dividend of $346,247.87.

40. The Receiver proposes to retain a holdback of $39,081.32 from the Receiver's Proposed Distribution to cover the Receiver's unbilled WIP, which includes the Receiver's time and costs in preparing this report and the associated schedules, and for future costs of the Receiver and its counsel in relation to completing the administration of these proceedings. Any funds not required from the holdback (if any), as well as any unanticipated funds received by the Receiver prior to its discharge, will be distributed to ATB to reduce the anticipated shortfall discussed earlier.

DISCHARGE OF THE RECEIVER

41. In an effort to minimize costs, the Receiver requests that the Court grant its discharge, without the requirement for an additional application to the Court, subject to the Receiver confirming to the Court, in an affidavit, that it has completed the following (as required):

    (a) file a final GST return with the CRA and, if applicable, forward any resulting refunds to ATB;

    (b) payment of the Receiver's Proposed Distribution to ATB (if approved);

    (c) payment of any surplus amounts accrued for professional fees or collected from any outstanding receivables to ATB; and,

    (d) upon completion of the above, close DLM's trust account.

CONCLUSION

42. The Receiver respectfully submits that its actions to date as outlined in this report are reasonable and appropriate in the circumstances.

43. As there are no other matters to report to the Court currently, the Receiver recommends that this Honourable Court grant an Order that:

    (a) approves the Receiver's actions to date, to the extent that any such actions have not been previously approved by the Court;

    (b) approves the fees and disbursements of the Receiver and those of its legal counsel, including unbilled WIP up to and including October 1, 2021 and anticipated future fees to finalize this matter;

    (c) approves the Receiver's Statement of Receipts and Disbursements up to and including October 1, 2021;

    (d) approves the Receiver's Proposed Distribution as set out herein;

(e) approves the discharge of the Receiver after all funds held by the Receiver have been distributed, and all administrative matters have been concluded, without the requirement for an additional application to the Court; upon the filing of a certificate and Final Statements of Receipts and Disbursements for DLM; and,

(f) provides such further relief that the Court considers just and warranted in the circumstances.

Respectfully submitted this 18th day of October 2021.

Ernst & Young Inc.
In its capacity as Receiver of
D.L.M. Oilfield Enterprises Ltd.
and not in its Personal Capacity

Per:

Matt McCulloch, CA, CPA, CIRP, LIT,
Senior Vice President