

COURT FILE NO.

COURT

COURT OF KING'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

NORTHSHORE PETROLEUM  
LTD. AND JOHN ZANG

RESPONDENT

PISMO ENERGY LTD.

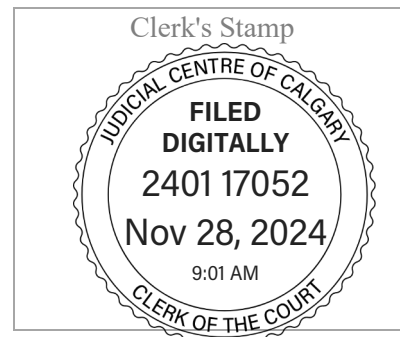
DOCUMENT

**BENCH BRIEF**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING  
THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Keely Cameron / Luc Rollingson / Sophie Fiddes  
Telephone No.: 403-298-3324 / 3311/7971  
Fax No.: 403-265-7219  
Client File No.: 87754.38



**Commercial List Chambers Application  
Scheduled for December 6, 2024  
before The Honourable Justice Harris**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. ISSUES .....3

III. LAW AND ARGUMENT .....3

    A. Court Approval of Receivership Sales.....3

    B. Pre-Pack Transactions.....6

    C. The Proposed Transaction Should be Approved .....8

IV. RELIEF SOUGHT .....10

V. TABLE OF AUTHORITIES .....11

## I. INTRODUCTION

1. North Shore Petroleum Ltd. (“**Parent Co.**”) as 100% shareholder of Pismo Energy Ltd. (“**Pismo**”) and John Zang, as a secured debenture holder of Pismo, seek the appointment of a receiver, to enable the disposition of Pismo’s interest in certain jointly owned oil and gas interests to North Fork Resources Ltd. (“**North Fork**”) and Poker Chip Exploration Ltd. (“**Poker Chip**” together with North Fork the “**WIP Partners**”). The relief sought is an effort to prevent all Pismo’s assets from ending up prematurely abandoned and/or with the Orphan Well Association (“**OWA**”), the Alberta non-profit that abandons and reclaims oil and gas sites when directed by the Alberta Energy Regulator (“**AER**”) where amongst other things the licensee is not financially viable.<sup>1</sup>

2. Pismo operates at a loss and its ability to restructure is limited given financial constraints and a proposed order from the Alberta Energy Regulator (“**AER**”) which would force them to shut-in their operations entirely. In a final effort to enable some of its assets to remain in production for the benefit of the province and other stakeholders, Pismo has sought to have its WIP Partners assume its interests. However, the AER is bound by ministerial order 096/2024 (“**Ministerial Order**”) which prevents it from permitting the transfer of Pismo’s licenses to its WIP Partners given the quantum of Pismo’s municipal tax arrears, in the absence of a receiver being appointed or the sites orphaned by the AER.

3. North Shore submits this brief in support of its application for an Order for, *inter alia*, the following relief:

- (a) Approving and authorizing the disposition of certain of Pismo’s assets to the WIP Partners (subject to the AER’s discretion regarding whether to approved the license transfers);
- (b) Appointing the KSV Restructuring Inc. as Receiver (“**KSV**” or the “**Receiver**”); and
- (c) Discharging the Receiver upon the fulfillment of the Receiver’s mandate – the transfer of the licenses or determination that the transfer cannot proceed.

---

<sup>1</sup> *Oil and Gas Conservation Act*, RSA 2000, c O-6, s. 70

4. North Shore submits that a “quick-flip” or “pre-pack” receivership (as described below), is the only way to prevent all the assets of Pismo from ending up with the OWA and causing hardship for Pismo’s WIP Partners.

## II. FACTS

5. The facts in support of Pismo’s Application are detailed in the Affidavit of John Zang, sworn November 27, 2024, (“**Zang Affidavit**”).<sup>2</sup>

6. The Proposed Transaction, known as “quick flip” or “pre-pack” transaction, involves the appointment of the Receiver for the immediate consummation of a proposed transaction (“**Proposed Transaction**”). Although quick flip transactions are subject to heightened scrutiny from the court, in these circumstances the order sought is demonstrably just and reasonable.

7. As more fully set out in the Zang Affidavit, Pismo has conducted a Sales and Solicitation Investment Process (“**SISP**”) with Energy Advisors Group Ltd. (“**EAG**” or “**Sales Advisor**”). The SISP has resulted in no successful bids.<sup>3</sup>

8. On September 19, 2024, the AER issued an Order requiring Pismo to pay \$982,870.00 (“**September 19 Order**”).<sup>4</sup> Subsequent to the September 19 Order, Pismo attempted to transfer its interest to its WIP Partners.<sup>5</sup> Pismo applied to the AER to transfer licenses to Poker Chip and North Fork.<sup>6</sup> The AER would not approve the transfer of licenses to the WIP Partners unless Pismo dealt with the municipal taxes that were owing.<sup>7</sup>

9. Since the September 19 Order, Pismo has worked in good faith with the AER providing, as required, weekly updates about what steps it was taking to address the AER’s concerns.<sup>8</sup> Despite this, and in addition to knowing that Pismo was attempting to sell some of its assets to the WIP Partners, the AER notified Pismo of an order which forces Pismo to shut-in and abandon all of its wells, facilities and pipelines (“**Shut-in Order**”).<sup>9</sup> The Shut-in Order

---

<sup>2</sup> Unless otherwise indicated, capitalized terms used herein shall have the meaning ascribed to them in the Affidavit of John Zang, sworn November 27, 2024.

<sup>3</sup> Zang Affidavit at para 36.

<sup>4</sup> Zang Affidavit at para 29.

<sup>5</sup> Zang Affidavit at para 32.

<sup>6</sup> Zang Affidavit at para 33.

<sup>7</sup> Zang Affidavit at para 33.

<sup>8</sup> Zang Affidavit at para 31.

<sup>9</sup> Zang Affidavit at para 34.

will result in the complete abandonment of the wells operated by the WIP Partners and will deprive the Province of Alberta of Royalties and landowners of surface lease payments.<sup>10</sup>

10. The only way to avoid the total abandonment of all of Pismo's assets is through a quick-flip receivership. The quick-flip receivership would vest certain Pismo's assets, those jointly owned with the WIP Partners allowing them to continue operations.

### III. ISSUES

11. The following are at issue:

- (a) Should the Receiver be appointed on the terms sought in the Order?
- (b) Should the Court approve the quick-flip or pre-pack transaction?
- (c) Should the Receiver be discharged once the assets are vested to the WIP Partners?

### IV. LAW AND ARGUMENT

#### A. Court Appointment of a Receiver

12. Under section 243(1) of the *Bankruptcy and Insolvency Act*, (“*BIA*”), on the application of a “secured creditor” who has complied with the statutory notice period, the court may appoint a receiver over the property of an “insolvent person”.<sup>11</sup> The Court may authorize the appointment of a receiver where it considers that it is “just or convenient” to do so.<sup>12</sup>

13. Alberta's Provincial legislation contemplates a similar test for the appointment of receiver under the *Alberta Business Corporation Act* (“*ABCA*”).<sup>13</sup> On application by an “interested person” the Court may appoint a receiver over the corporation's assets.<sup>14</sup>

14. Similarly, under the *Judicature Act* allows the Court to grant an order appointing a receiver “in all cases in which it appears to the court to be just or convenient” and provides

---

<sup>10</sup> Zang Affidavit at para 35.

<sup>11</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243(1).

<sup>12</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243(1).

<sup>13</sup> *Alberta Business Corporations Act*, RSA 2000, c B-9, s. 99(a).

<sup>14</sup> *Alberta Business Corporations Act*, RSA 2000, c B-9, s. 99(a).

that the “order may be made either unconditionally or on any terms and conditions the Court thinks just.”<sup>15</sup>

15. In *Paragon Capital Corp v Merchants & Traders Assurance Co*,<sup>16</sup> Justice Romaine of this Court held that, in analyzing whether a receiver is “just or convenient”, the Court may consider various factors enumerated in Bennett on Receiverships. The applicability of those factors depends on the factual matrix. The factors include:

- (a) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection/safeguarding of the assets while litigation takes place;
- (b) the nature of the property;
- (c) the balance of convenience to the parties;
- (d) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently; and
- (e) the likelihood of maximizing returns to the parties.<sup>17</sup>

#### The Appointment of a Receiver is Just and Convenient

16. North Shore and John Zang has satisfied the requirements for the appointment of a Receiver, including certain Bennett factors (as applied in *Paragon*). Specifically:

- (a) John Zang is a secured creditor of Pismo;<sup>18</sup>
- (b) Pismo is insolvent;<sup>19</sup>
- (c) The appointment of a Receiver is the only way to preserve some of Pismo’s assets;<sup>20</sup>

---

<sup>15</sup> *Judicature Act*, RSA 2000, c J-2, s. 13(2).

<sup>16</sup> *Paragon Capital Corp v Merchants & Traders Assurance Co*, 2002 ABQB 430.

<sup>17</sup> *Ibid* at para 27, citing Frank Bennett, *Bennett on Receiverships*, 2nd ed (Toronto: Thompson Canada, 1995) at 130.

<sup>18</sup> Zang Affidavit at para 4.

<sup>19</sup> Zang Affidavit at para 10.

<sup>20</sup> Zang Affidavit at para 38.

- (d) Pismo consents to appointment of a Receiver;<sup>21</sup> and
- (e) The balance of convenience favours the appointment of the proposed Receiver to carry out the quick-flip sale.

## **B. Court Approval of Transactions**

17. In considering whether to approve a proposed transaction by a receiver, Courts apply the four factors set out in *Royal Bank v Soundair Corp*, as follows:

- (a) Whether the receiver has made sufficient effort to get the best price and has not acted improvidently
- (b) The interests of all parties
- (c) The efficacy and integrity of the process by which offers are obtained; and
- (d) Whether there has been unfairness in the working out of the process.<sup>22</sup>

18. Although several of the *Soundair*, principles related specifically to the sales process adopted by a receiver, Alberta Courts have found that *Soundair* does not require that a receiver undertake a formal court-supervised sales process in every case. Rather, the approve of a sale by a receiver is a “matter of discretion” and Courts consider the relevant facts and circumstances in a particular case.<sup>23</sup>

19. For example, in *Salima Investments Ltd. v Bank of Montreal*, the Alberta Court of Appeal explained that:

It certainly does not follow, for example, that the court on an application for approval of a sale is bound to conduct a judicial auction or even to accept a higher last-minute bid, There are, however, binding policy considerations, In Can, Permanent Trust Co, v. King Art Dev, Ltd., 32 Alta, L.R. (2d) 1, [1984] 4 W.W.R. 587, 12 D.L.R. (4th) 161, 54 A.R. 172, we said that receivers (and masters on foreclosure) should look for new and imaginative ways to get the highest possible price in these cases. Sale by tender is not necessarily the best method for a

---

<sup>21</sup> Zang Affidavit at para 38.

<sup>22</sup> *Royal Bank v Soundair Corp*, [1991 CanLII 2727](#) at para 16 (ONCA).

<sup>23</sup> *Jaycap Financial Ltd v Snowdon Block Inc*, 2019 ABCA 47 at para 20.

commercial property which involves also the sale of an ongoing business. The receiver here accepted the challenge offered by this court, and combined a call for tenders with subsequent negotiations.<sup>24</sup> (Underlining added)

20. Similarly, in *Re Calpine Canada Energy Ltd.*, Justice Romaine considered whether to approve competing transactions in *Companies' Creditors Arrangement Act* (the "CCAA")<sup>25</sup> proceedings, and stated "*Soundair* did not suggest that a formal auction process was necessary or advisable in every case."<sup>26</sup> In the particular circumstance of *Calpine*, Justice Romaine further remarked that the uniqueness of an asset may bear on the appropriate sales process.<sup>27</sup>

### 1. Pre-Pack of Quick-Flip Transactions

21. Alberta Courts have held that a sales process conducted prior to the commencement of insolvency proceedings, referred to as a "pre-pack" sale, may satisfy the *Soundair* analysis in the appropriate circumstances. For example, in *Re Sanjel Corp*, the Court approved an asset sale in CCAA proceedings, even though the marketing process had occurred before the insolvency proceedings and outside of the Court's oversight. In reaching the conclusion that the sale was reasonable in the circumstances, the Court considered a number of factors including the following which are relevant to the present case:

- (a) The sales process, which not conducting in the Court proceedings, appeared reasonable in the circumstance, which circumstances included the deteriorating economic climate and financing conditions of the debtor, militating against running a further process;
- (b) The monitor reviewed the process and considered it appropriate;
- (c) Creditors were consulted and involved in the sale process; and
- (d) The evidence demonstrated that the consideration was reasonable and fair.<sup>28</sup>

22. Other Canadian Courts have also approved asset sales by a receiver, without a court-supervised sale process or formal marketing process at all. Specifically, in *Re Tool-Plas*

---

<sup>24</sup> *Salima Investments Ltd v Bank of Montreal*, [1985 ABCA 191](#) at para 11.

<sup>25</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#).

<sup>26</sup> *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, [2007 ABQB 49](#) at para 29.

<sup>27</sup> *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, [2007 ABQB 49](#) at para 49.

<sup>28</sup> *Re Sanjel Corp*, [2016 ABQB 257](#) at para 112.



*Systems Inc.*,<sup>29</sup> Justice Morawetz approved a "quick flip" sale in a receivership. In that case, RSM Richter was engaged prior to the receivership to assess the financial viability of the debtor. Once a transaction was agreed upon, and an application was made to appoint RSM Richter as receiver and to approve the sale. While RSM Richter considered "alternative courses of action"<sup>30</sup> prior to filing the sale approval application, there was no formal marketing process.

23. Justice Morawetz nevertheless approved the sale and concluded, "in the circumstances of this case I am satisfied that the process set out in *Soundair* have been followed."<sup>31</sup> He held:

A 'quick flip' transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a 'quick flip' transaction, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the 'quick flip' transaction would realistically be any different if an extended sales process were followed.<sup>32</sup> (Underlining added)

24. In *Montrose Mortgage Corporation v Kingsway Arms Ottawa*,<sup>33</sup> the Ontario Superior Court stated the following before citing the above quote from *Tool-Plas*:

Quick flip" or "pre-pack" transactions are becoming more common in the Ontario distress marketplace. In certain circumstances, a "quick flip" involving the appointment of a receiver and then immediately seeking court approval of a "pre-packaged" sale transaction may well represent the best, or only, commercial alternative to a liquidation. In such situations the court still will assess the need for a receiver and the reasonableness of the proposed sale against the standard criteria set out in decisions such as *Bank of Nova Scotia v. Freure Village on Clair Creek* and *Royal Bank v. Soundair Corp.*, respectively. However, courts will scrutinize with especial care the adequacy and the fairness of the sales and marketing process in "quick flip" transactions:

Part of the duty of a receiver is to place before the court sufficient evidence to enable the court to understand the implications for all parties of any proposed sale and, in the case of a sale to a related party, the overall fairness of the proposed related-party transaction. As stated by Morawetz J. in the *Tool-Plas* case:

---

<sup>29</sup> *Tool-Plas Systems Inc (Re)*, [2008 CanLII 54791](#) (ON SC).

<sup>30</sup> *Tool-Plas Systems Inc (Re)*, [2008 CanLII 54791](#) (ON SC) at para 18.

<sup>31</sup> *Tool-Plas Systems Inc (Re)*, [2008 CanLII 54791](#) (ON SC) at para 20.

<sup>32</sup> *Tool-Plas Systems Inc (Re)*, [2008 CanLII 54791](#) (ON SC) at para 15.

<sup>33</sup> *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, [2013 ONSC 6905](#) at para 10.

...

The need for such a robust and transparent record is heightened even more where the proposed purchase involves a credit bid by one of the debtor's secured creditors, the practical effect of which usually is to foreclose on all subordinate creditors.

25. Simply stated, the *Soundair* principles apply when the Court is considering if it should approve an asset sale by a receiver, but the decision is discretionary.<sup>34</sup> The application of the *Soundair* principles depends on the circumstances of the receivership,<sup>35</sup> The appropriate process in a given case may depend on previous attempts to sell the assets,<sup>36</sup> the uniqueness of the assets,<sup>37</sup> the deteriorating financial position of the debtor,<sup>38</sup> whether there are any realistic alternatives,<sup>39</sup> and whether stakeholders (including secured creditors and employees) are served by the proposed sale, among other examples.<sup>40</sup>

## **2. The Proposed Transactions Should be Approved**

26. Pismo submits that the Proposed Transactions are commercially reasonable and satisfied the *Soundair* principles for the following reasons:

- (a) The Court is entitled to rely on the process undertaken prior to the appointment of a receiver.<sup>41</sup>
- (b) The SISP, undertaken prior to the within receivership proceedings, was conducted by Energy Advisors Group Ltd. (“EAG”), an arm’s length Sales Advisor with significant experience in the sale of oil and gas assets.<sup>42</sup>
- (c) The Receiver had the opportunity to review the steps taken in the SISP and the results thereof.<sup>43</sup>
- (d) The SISP appears to have been conducted in a fair and reasonable manner.<sup>44</sup>

---

<sup>34</sup> *Salima Investments Ltd v Bank of Montreal*, 1985 ABCA 191.

<sup>35</sup> *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC) at para 15.

<sup>36</sup> *Re Sanjel Corp*, 2016 ABQB 257 at paras 75-77.

<sup>37</sup> *Calpine Canada Energy Limited (Companies’ Creditors Arrangement Act)*, 2007 ABQB 49 at para 49.

<sup>38</sup> *Re Sanjel Corp*, 2016 ABQB 257.

<sup>39</sup> *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC) at para 15.

<sup>40</sup> *Re Sanjel Corp*, 2016 ABQB 257; *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC) at para 16.

<sup>41</sup> See e.g. *Re Sanjel Corp*, 2016 ABQB 257 at para 70; *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC) at paras 15-20.

<sup>42</sup> Zang Affidavit at para 35.

<sup>43</sup> Zang Affidavit at para 35.

<sup>44</sup> Zang Affidavit at para 36.

- (e) The SISP received no offers, chiefly due to the fact that Pismo's assets are minority interests in sites that other working interest partners operate.<sup>45</sup> However, some of those operators have expressed a willingness to assume those jointly owned sites.
- (f) Pismo is of the view that the Proposed Transactions represent the highest and best offers and that a further sales process would not generate a better result.<sup>46</sup> Nor is one practical given the lack of finances of Pismo and the impending Alberta Energy Regulator order.
- (g) The Proposed Transactions were only entered into after it became clear that no better results could be achieved through the SISP.<sup>47</sup>
- (h) There is no evidence that there has been unfairness in the process nor any evidence that Pismo has acted improvidently in the circumstances.

27. In all of the circumstances, Pismo respectfully requests that the Court exercise its discretion to approve the Proposed Transaction.

**C. Discharge of the Receiver**

28. Courts have held a receiver may seek to be discharged once it has completed the "[...] substance of its mandate."<sup>48</sup> The authority to discharge a receiver is not explicitly set out in the *Bankruptcy and Insolvency Act*.

29. Given the limited scope of the receivership appointment and limited funds to conduct the process, the Applicants submit that the receiver should be discharged upon the completion of the substance of its mandate – to seek to complete the transactions to the WIP Partners or determination that the AER transfer of licenses is not feasible.

---

<sup>45</sup> Zang Affidavit at para 36.

<sup>46</sup> Zang Affidavit at para 36.

<sup>47</sup> Zang Affidavit at para 36.

<sup>48</sup> *Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc*, [2009] OJ No 4265, (2009) 181 ACWS (3d) 471 (ONSCJ) at paras. 8 and 9.

**V. RELIEF SOUGHT**

30. For the foregoing reasons, Northshore and John Zang respectfully submit that the Court exercise its discretion and approve the Proposed Transactions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 6<sup>th</sup> day of December, 2024.

Estimated Time for  
Argument: 30

BENNETT JONES LLP

Per:



for: Keely Cameron/Luc Rollingson/Sophie  
Fiddes  
Counsel for the Applicant  
Erikson National Energy Inc.

## VI. TABLE OF AUTHORITIES

### TAB

1. *Royal Bank v Soundair Corp*, [1991 CanLII 2727](#) (ONCA).
2. *Salima Investments Ltd v Bank of Montreal*, [1985 ABCA 191](#).
3. *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#).
4. *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, [2007 ABQB 49](#).
5. *Re Sanjel Corp*, [2016 ABQB 257](#).
6. *Tool-Plas Systems Inc (Re)*, [2008 CanLII 54791](#) (ONSC).
7. *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, [2013 ONSC 6905](#).