Restructuring and Insolvency Deals in the Oil Patch

Recent Trends and Developments

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Roadmap

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Introduction – Market, Trends and Context

- Backdrop – volatile pricing, attempts to reduce emissions, reduced access to capital (aside from COVID relief), industry at developed stage of lifecycle
- COVID – global supply chain issues, labour disruptions, price shocks
  - Pressures exerted on both consumers and producers
- Widespread financial distress
  - Growing inflation, the Great Resignation, interest rate hikes, pandemic hangover, war in Ukraine
- Existence of value/opportunities in O&G restructuring deals
Introduction – Market, Trends and Context

- Insolvencies peaked (86) in 2016
  - *Redwater QB*
  - 13-year low on O&G prices
- Low of 27 in 2018
  - SCC decision in *Redwater* pending
- Nine insolvencies in the first quarter of 2022
- Since *Redwater*
  - More than 10,000 AER-licensed wells, facilities, pipelines renounced
  - Deemed liabilities $335 million
  - Orphan well inventory up more than 300%
  - More than $245 million in property tax arrears
- Plenty of uncertainty, also sets the table for creative approaches to address evolving circumstances
Insolvency 101

- Overview
- CCAA vs Receivership
- Purposes/usual outcomes/key distinctions in O&G context
- Monitor/Receiver roles
- Effect of SAVOs
- Executory contract disclaimers
- CCAA Plans
- RVOs
Insolvency Sales Processes/SISPs/Bid Processes

- Typical timeline/order of operations
- Insolvency M&A vs. traditional M&A
- En bloc vs. discrete packages
- SISP/Stalking horse bids
- Contracts/agreements to complete sales process
- Key steps/getting to closing
Regulatory Impacts

- Background and the decision in *Redwater*
- Challenges Post-*Redwater*
  - Differing approaches to insolvencies
  - Increased regulatory involvement
    - Material Change Reporting within 30 days of initiating proceedings
    - Issuance of AER Orders
    - AER approach to transfers
Navigating AER Transfer Matters

- **Directive 067 Eligibility**
  - Minimum 30 day process
  - Limited vs. General Eligibility
  - Ongoing reporting:
    - Material change
    - Financials annually within 180 days of year end
  - Submissions feed into holistic assessment of licensees' capabilities

- **Transfers (Directive 088 & Manual 23)**
  - AER may require rec cert and rec exempt licenses to be transferred
  - Holistic Assessment of both parties:
    - Financial health, purchase price, source of financing, reserves, liability, compliance, site specific risks, performance (including history of closure), capability, intended use of site
  - Expanded powers re amalgamations
Re-emergence of Creditor/Debtor Initiated Insolvencies

- Initial Focus on en bloc deals
- Looking forward:
  - Increased focus on the *Abitibi* Test
  - Utilizing tools such as RVOs
  - Role/Obligations of Working Interest Participants
  - AER’s statutory lien
Municipalities

- Municipalities
  - *Virginia Hills*, 2019 ABCA 61
  - *Reid-Built Homes*, 2019 ABCA 109
  - *Bow River*

- Legislative Amendments
  - Bill 77 and changes to the *MGA*

- Given all the blows in attempts to recover, expect municipalities will begin to act earlier, attempt to extend reach
RVOs

- History
- Differences between RVOs and SAVOs
- Benefits to RVO use
- Recent use
  - Elcano Exploration; Balanced Oilfield Energy Services; Glenogle Energy
- Issues and Court Scrutiny
  - Re Harte Gold Corp, 2022 ONSC 653
Selected Deal Points/Transaction Issues

- Taking over contracts/Payment of cure costs
- Operatorship
- Royalty interests and ROFRs
- WIP issues/managing hidden transaction costs (mineral lease arrears for joint interests with insolvent seller; WIPs seeking security upfront; zombie WIP interests)
- Deposits/Break fees
- Reps/Warranties
Practical Solutions, Questions

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