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Restructuring and Insolvency Deals in the Oil Patch

Recent Trends and Developments

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Roadmap

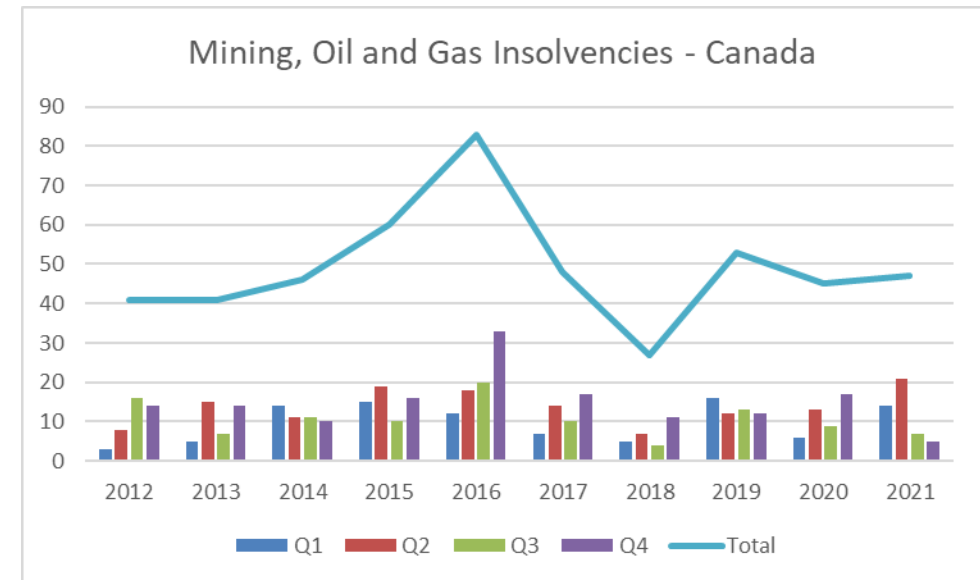
- I. Introduction – Market, Trends and Context
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- III. Insolvency Sales Processes/SISPs/Bid Processes
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- V. Recent Developments
 - I. Challenges Post-*Redwater*
 - II. Municipalities
 - III. RVOs
- VI. Selected Deal Points/Transaction Issues

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



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Practical Solutions, Questions

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