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CALGARY, ALBERTA

COURT FILE NUMBER 1801-10960  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

PLAINTIFFS PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity

DEFENDANTS PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. and SUSAN RIDDELL ROSE

DOCUMENT **JOINT REPLY OF THE DEFENDANTS**

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File No. 59140-43

## I. INTRODUCTION

1 The Perpetual Defendants and Rose make these submissions in reply to the Further Submissions of the Respondent, PriceWaterhouseCoopers Inc., LIT (the **Trustee's Submissions**).

## II. MUNICIPALITIES

2 While having nothing to do with *Redwater*, the Trustee repeats the erroneous submission that three municipalities had provable claims against PEOC at the time of the Transaction.<sup>1</sup> This was addressed in the Rose Brief<sup>2</sup>, the Joint Answers of the Defendants dated December 17, 2018<sup>3</sup>, and during oral submissions.<sup>4</sup>

3 It bears emphasis that the Trustee adduced no evidence from the municipalities. The Trustee did not even bother to interview the municipalities before suing.<sup>5</sup>

## III. AER

4 For the first time, the Trustee relies on the “any other person” clause of the oppression remedy.<sup>6</sup> To date, the Trustee’s position has been pleaded and premised solely on the allegation that the AER was a *creditor* of PEOC at the time of the Transaction.<sup>7</sup>

5 The new position of the Trustee is remarkable because, as a trustee in bankruptcy, the Trustee has no authority to sue in relation to any non-creditor interests of the AER.<sup>8</sup> Only the AER could advance such a claim. Notably, the AER has not sued.

6 Moreover, the Trustee adduced no evidence from the AER. Like the municipalities, the Trustee did not even bother to interview the AER.<sup>9</sup>

## IV. REDWATER

7 Remarkably, the Trustee now seeks to distance itself from its unqualified prior admission that the ARO associated with PEOC’s assets was not a PEOC liability:

The Court: ... We have a liability here?

Mr. De Waal: It wasn’t a current liability, no, My Lord.

The Court: I asked the question, do we have a liability here?

Mr. De Waal: No, My Lord.

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<sup>1</sup> Trustee’s Submissions, para. 3.1.

<sup>2</sup> paras. 131-135.

<sup>3</sup> Answer to Q. 14.

<sup>4</sup> Transcript of hearing of Nov. 8/18, 54 II 21 – 56 II 6.

<sup>5</sup> Rose Brief, para. 98.

<sup>6</sup> Trustee’s Submissions, para. 6.

<sup>7</sup> Rose Brief, paras. 115-122; Trustee’s Response to Requests from, and Questions for, the Parties, answer to Q. 19, 21, 44 (The Trustee relied solely on the argument that the AER was a “potential” *creditor* under the ABCA). See also transcripts of hearing of Nov. 9/18, 20 II 19-22 II 34.

<sup>8</sup> Rose Brief, paras. 93-142.

<sup>9</sup> Rose Brief, para. 98.

The Court: We don't.  
Mr. De Waal: No.  
The Court: Thank you.<sup>10</sup>

8 As previously submitted, the analysis in *Daishowa-Marubeni*, as confirmed in *Redwater*, demonstrates that the ARO was not a PEOC liability to the AER at the time of the Transaction.<sup>11</sup>

9 The Trustee is correct that *Redwater* did not deal with an oppression claim. However, *Redwater* makes it clear that the AER does not become a creditor of the licensee. As such, *Redwater* underscores the point that an oppression claim based on the AER's interests as a "potential" creditor is unsustainable.<sup>12</sup>

## V. **WEIR-JONES**

10 Importantly, the Trustee agrees with the Defendants' submissions regarding the impact of *Weir-Jones* on applications for summary judgment.

11 The Trustee's submissions address the effect of *Weir-Jones* on the Defendants' stay application. If that application is ever required to be argued, the Defendants' submission is that the Plaintiff's application should be stayed for all the reasons set out in paragraphs 95-133 of the Perpetual Defendants' Brief. The force of those arguments was not affected by the decision on the standard of proof or anything else in *Weir-Jones*.

## VI. **CONCLUSION**

12 The decision in *Redwater* puts to rest many of the core arguments advanced by the Trustee.

13 The decision in *Weir-Jones* underscores the appropriateness of a summary dismissal of the Trustee's claims.

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<sup>10</sup> Joint Submissions of the Defendants filed June 4, 2019, para. 14. Transcripts from hearing of Nov. 8/18 79 II 5 – 80 II 38.

<sup>11</sup> Rose Brief, paras. 82-89.

<sup>12</sup> And, as noted in paragraph 5, an oppression claim based on the "any other person" clause is not maintainable by a trustee in bankruptcy.

June 14, 2019


RESPECTFULLY SUBMITTED.

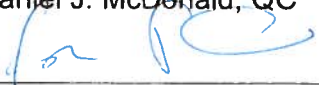
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