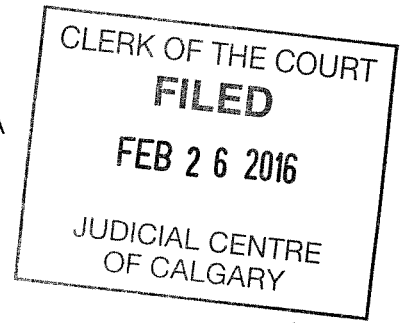


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COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT CP ENERGY MARKETING LP  
RESPONDENT KYOTO FUELS CORPORATION  
DOCUMENT FOURTH REPORT OF THE RECEIVER



FEBRUARY 24, 2015

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## INTRODUCTION

1. On April 30, 2014, the Court of Queen's Bench of Alberta ("Court") issued an order ("Initial Order") granting Kyoto Fuels Corporation ("Kyoto" or the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "CCAA Proceedings"). Ernst & Young Inc. ("EY") was appointed monitor ("Monitor") under the Initial Order.
2. The Initial Order was granted upon the application of T&E Ventures Inc. ("T&E"), a secured creditor of Kyoto.
3. Kyoto's CCAA Proceedings were terminated and on May 29, 2014, the Court issued a Receivership Order appointing EY as Receiver (the "Receiver") of the property, assets, and undertakings (the "Property") of Kyoto.
4. The Receivership Order authorized the Receiver, *inter alia*, to carry on the business of Kyoto, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to Court approval for transactions in excess of \$500,000 individually and \$1,000,000 in aggregate and to make such arrangements or agreements as deemed necessary by the Receiver. The Receivership Order also authorized the Receiver to borrow up to \$600,000 by way of Receiver's Certificates which amount was subsequently increased to \$850,000 by order of this Honourable Court granted October 24, 2014.
5. The Receiver previously reported to this Honourable Court on October 16, 2014 - the First Report, on January 21, 2015 - the Second Report, on April 24, 2015 - the Third Report, on May 1, 2015 - the First Supplemental Report and on May 8, 2015 - the Second Supplemental Report (collectively the "Receiver's Reports").
6. On January 27, 2015, this Honourable Court approved the sale of Kyoto's assets (the "Pelican Sale Transaction") to Pelican Transfer Inc. ("Pelican"). Prior to the scheduled sale closing date, Pelican advised the Receiver that it did not have sufficient financing in place to close the Pelican Sale Transaction. An extension agreement was negotiated; however, Pelican was unable meet the requirements of a second extension to the closing and accordingly the Pelican Sale Transaction was terminated.
7. The Receiver remarketed the Kyoto assets for sale and on May 12, 2015, this Honourable Court approved the sale of Kyoto's assets to 1886792 Alberta Ltd. (the "188 Sale Transaction") for an aggregate purchase price of \$3.0 million.

*Purpose of this Report*

8. The purpose of this fourth report of the Receiver (the "Fourth Report") is to:
  - (a) Summarize the activities of the Receiver since the Second Supplemental Report;
  - (b) Respectfully recommend that this Honourable Court:
    - i. Approve the Receiver's actions to date;
    - ii. Approve the fees and disbursements of the Monitor and those of its legal counsel incurred over the course of the CCAA Proceedings;
    - iii. Approve the fees and disbursements of the Receiver and those of its legal counsel incurred over the course of the receivership (including their respective anticipated further fees);
    - iv. Approve the final distributions to Agriculture Financial Services Corporation ("AFSC") and CP Energy Marketing LP ("CP") and a holdback to be held in reserve to address any final contingencies;
    - v. Approve the discharge of the Receiver after the disbursement of all funds held and concluding administrative matters; and
    - vi. Provide such further and other relief that the Court considers just and warranted in the circumstances.

**TERMS OF REFERENCE**

9. In developing this Third Report, the Receiver has relied upon unaudited financial information previously prepared by Kyoto's management, Kyoto's books and records and discussions with its former management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the information. Future orientated financial information relied upon in this report is based on assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.
10. Unless otherwise noted all currency references in this Fourth Report are in Canadian dollars.
11. Capitalized terms not defined in the Fourth Report are as defined in the Receivership Order and all previous reports filed in these proceedings.

## BACKGROUND

12. Kyoto's plan was to become a commercial producer of biodiesel fuel, a fuel made from feedstock such as plant oils or animal fats. Kyoto's biodiesel plant was located near Lethbridge, Alberta and was the second largest biodiesel plant in Canada, with production capacity of 79 million litres per year (the "Plant").
13. The Plant never operated at commercial production capacity. The Plant operated briefly in the fall of 2013 to test the production process and produced a small amount of biodiesel. The Plant never operated subsequent to the test production process.
14. Additional investment would have been required for the Plant to be able to produce biodiesel commercially including funding additional test production, specification testing of such production, and completion of the Plant's testing lab.
15. At the date of the Receivership Order, Kyoto's primary secured creditors were as follows:
  - a) T&E in first position against Kyoto in respect of the interim financing of \$400,000 it provided to fund the CCAA Proceedings. The priority of the T&E financing was confirmed in the Receivership Order;
  - b) CP and AFSC ranking in second position, *pari passu*, for approximately \$11.2 million (together, the "Senior Secured Lenders"); and
  - c) T&E secured in third position against Kyoto in respect of financing it provided prior to the CCAA Proceedings totalling approximately \$3.9 million.
16. AFSC subsequently held a second priority position (in priority to the CP and AFSC security noted above) pursuant to the issuance of Receiver's Certificates totalling \$850,000 (plus accrued interest).
17. Upon closing the 188 Sale Transaction:
  - (a) T&E was paid the balance of funds plus accrued interest owed to it from its advances to fund the CCAA Proceedings (a previous installment had been made by the Receiver as a result of forfeited funds in connection with the failed Pelican Sale Transaction);
  - (b) AFSC was paid \$850,000 plus accrued interest in respect of the Receiver Certificates issued by AFSC; and

- (c) AFSC and CP were each paid \$450,000 pursuant to their security. AFSC and CP, subsequent to the distribution, reached an agreement in respect of their loans whereby CP is to be paid 55% of all net proceeds and AFSC is to be paid 45%. The agreement applies retroactively to the above payment and accordingly an adjustment will be made to subsequent distributions in accordance with the agreement reached between AFSC and CP.
- 18. AFSC and CP will not recover fully on their outstanding loans and consequently there are no funds available to be distributed to T&E in respect of its third priority secured position.
- 19. Background and other information regarding these receivership proceedings have been posted on the Receiver's website at: [www.ey.com/ca/kyotofuels](http://www.ey.com/ca/kyotofuels).

#### RECEIVER'S ACTIONS

- 20. The Receiver has previously set out all its activities in the Receiver's Reports. The following is an update on the Receiver's activities from the date of the Second Supplemental Report:
  - a) Closed the 188 sale transaction;
  - b) Distributed funds to T&E pursuant to its first secured position;
  - c) Distributed funds to AFSC in connection with the Receiver Certificates;
  - d) Distributed additional funds to AFSC and CP pursuant to their secured positions;
  - e) Regularly dealing with the Canada Revenue Agency ("CRA") in respect of pre-receivership GST matters;
  - f) Addressing a GST challenge with CRA in respect of the sale by the Receiver of off specification bio material;
  - g) Assisted AFSC and CP with an application to place Kyoto into bankruptcy on October 28, 2015;
  - h) Pursuant to a Court Order, distributed \$57,500 to Thermo Fisher Financial Services Inc. ("TF") pursuant to its secured claim on a specific Kyoto asset, in full and final satisfaction of TF's claim;
  - i) Drafting, reviewing and finalizing the Receiver's Fourth Report; and
  - j) Various additional matters required in connection with the ongoing administration of the receivership.

## PROFESSIONAL FEES

### *Monitor's Fees and Disbursements*

21. The Monitor was discharged on May 29, 2014 subject only to the passing of its accounts and those of its legal counsel, Dentons Canada LLP ("Dentons").
22. The Monitor billed and has been paid \$93,429.88 (excluding GST) in respect of all activities and its administration of the CCAA Proceedings. The accounts of the Monitor are calculated based on the hours spent at rates established by each professional based on their qualifications and experience. There are no outstanding amounts owed to the Monitor.

### *Monitor's Legal Fees and Disbursements*

23. The Monitor's legal counsel, Dentons has billed and was paid \$92,390.40 (excluding GST) in respect its activities and services provided to the Monitor. The accounts of Dentons are calculated based on hours spent at rates established by each professional based on their qualifications and experience. There are no outstanding amounts owed to the Monitor's legal counsel.
24. Copies of the Monitor's and its legal counsel's invoices are not attached to this Fourth Report but will be made available at the pending Court application.

### *Receiver's Fees and Disbursements*

25. The Receiver has billed and been paid approximately \$411,678 (excluding GST). The accounts of the Receiver are calculated based on hours spent at rates established by each professional based on their qualifications and experience.
26. The Receiver has work in progress of approximately \$1,500 (excluding GST) and estimates that it will incur additional fees and expenses of approximately \$8,000 in connection with this Fourth Report, Court application, finalizing all administrative matters and obtaining its discharge.

### *Receiver's Legal Fees and Disbursements*

27. The Receiver's legal counsel, Dentons has billed and been paid approximately \$208,834 (excluding GST). The accounts of Dentons are calculated based on hours spent at rates established by each professional based on their qualifications and experience.

28. Dentons has work in progress of approximately \$2,000 (excluding GST) and estimates it will incur additional fees and expenses of approximately \$5,000 in connection with finalizing all receivership matters.

#### FINAL DISTRIBUTION AND HOLDBACK

29. Attached as Appendix "A" is a Statement of Receipts and Disbursements outlining the administration of the Receivership for the period May 29, 2014 to February 10, 2016.
30. As previously reported in the Third report, the Receiver's legal counsel has opined that the security held by the Senior Secured Lenders, subject to the assumptions and qualifications contained therein, which ranks *pari passu*, is valid and enforceable and ranks in priority to all other debts of Kyoto other than amounts outstanding under the Administration Charge, the CCAA Charges, and the Receiver's Borrowing Charge. AFSC and CP reached an agreement as to the outstanding balance of their respective loans for the purposes of allocating distributions between them.
31. From the funds it still holds, the Receiver proposes, after payment of the Receiver's fees and expenses and the fees and expenses of its legal counsel, to distribute and provide for a holdback as follows:
  - a) \$378,000 to AFSC;
  - b) \$562,000 to CP; and
  - c) \$72,489 to be held as a holdback to address any financial contingencies including the disagreement with CRA in connection with GST and the bankruptcy administration (the "Holdback"). Funds not required to address the Holdback amount will be distributed to AFSC and CP in accordance with the percentage agreement established between AFSC and CP upon concluding all administrative matters.

#### CONCLUSION AND RECOMMENDATION

32. The Receiver has concluded the majority of its administration of the receivership. Upon disbursing the remaining funds, addressing the GST issue with CRA, completing the final GST returns, providing a final report to the Official Receiver and closing the Receiver's trust account, the Receiver is not aware of its services being required for any further purpose herein, and is therefore of the view that it should be discharged from its mandate.
33. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief detailed in Section 8 b) of this Final Report and such further and other relief as this Honourable Court deems appropriate in the circumstances.

\* \* \*



All of which is respectfully submitted this 24 day of February, 2016.

**ERNST & YOUNG INC.**

**in its capacity as Receiver and Manager of Kyoto Fuels Corporation  
and not in its personal or corporate capacity**



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Robert J. Taylor, FCA•CIRP, CFE  
Senior Vice-President

Interim Statement of Receipts and Disbursements  
 IN THE MATTER OF THE RECEIVERSHIP OF  
 KYOTO FUELS CORPORATION  
 Ernst & Young Inc.

C\$, unaudited

|  |                  |                            |
|--|------------------|----------------------------|
| Proceeds from asset sales                                      | \$ 3,200,000     |                            |
| Advances by AFSC pursuant to Receiver's Certificates           | 850,000          |                            |
| Deposit forfeited by Pelican Transfers Ltd.                    | 500,000          |                            |
| Sales (biodiesel and chemicals)                                | 153,581          |                            |
| Other receipts   | 114,709          |                            |
| Cash on hand at the date of Receivership                       | 13,579           |                            |
| GST collected and refunded                                     | 12,878           |                            |
| <b>Total receipts</b>  | <u>4,844,747</u> | <b>4,844,747</b>           |
| Interim distribution   | \$ 957,500       |                            |
| Repayment of Receiver's Certificates                           | 886,888          |                            |
| Receivers' fees and costs                                      | 411,678          |                            |
| Operating costs  | 353,883          |                            |
| Decommissioning costs - IIS                                    | 236,939          |                            |
| Repayment of dip lender  | 220,720          |                            |
| Partial repayment of T&E CCAA financing                        | 200,000          |                            |
| Receivers' counsels' fees and costs                            | 208,834          |                            |
| Commissions  | 168,000          |                            |
| Disposal costs   | 73,655           |                            |
| Consulting costs   | 63,736           |                            |
| GST paid on operating costs                                    | 29,580           |                            |
| GST paid on Receiver's and Receiver's counsel's fees and costs | 30,845           |                            |
| <b>Total disbursements</b>                                     | <u>3,842,258</u> | <b>3,842,258</b>           |
| Cash on hand, end of period                                    |                  | <u><u>\$ 1,002,489</u></u> |