



COURT FILE NUMBER 1701-01142  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

PLAINTIFFS CHINA MINSHENG BANKING CORP., LTD.,  
HONG KONG BRANCH AND CHINA  
MINSHENG BANKING CORP., LTD.,  
SHANGHAI BRANCH, AND SONICFIELD  
GLOBAL LIMITED, AS SECURED  
LENDERS, AND COMPUTERSHARE  
TRUST COMPANY OF CANADA, IN ITS  
CAPACITY AS COLLATERAL AGENT FOR  
AND ON BEHALF OF THE SECURED  
LENDERS

DEFENDANTS GRANDE CACHE COAL LP, GRANDE  
CACHE COAL CORPORATION, UP  
ENERGY (CANADA) LIMITED AND 0925165  
B.C. LTD.

**DOCUMENT APPLICATION**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT  
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**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: July 5, 2017  
Time: 3:00 p.m.  
Where: Calgary Courts Center  
Before Whom: Justice B.E.C. Romaine

Go to the end of this document to see what else you can do and when you must do it.

**Remedy Claimed or Sought:** Deloitte Restructuring Inc. (the “**Receiver**”) in its capacity as the court-appointed receiver and manager of Grande Cache Coal LP, Grande Cache Coal Corporation, Up Energy (Canada) Limited and 0925135 BC Ltd. (collectively, the “**Debtors**”), pursuant to a consent receivership order issued under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”) by the Honourable Madam Justice K.M. Horner on February 3, 2017 (the “**Receivership Order**”), applies for an Order, substantially in the form attached as Schedule “**A**” hereto:

1. Declaring that the time for service of this application (the “**Application**”) and the first report of the Receiver, dated June 27, 2017 (the “**First Report of the Receiver**”) on the service list is good and sufficient.
2. Approving the sales and investment solicitation process (the “**SISP**”) in substantially the form attached as an appendix to the First Report of the Receiver and authorizing and directing Receiver, for and on behalf of the Debtors, to take all steps and actions reasonably necessary to implement, conduct and carry-out the SISP.
3. Approving the key employee retention plan (the “**KERP**”) in substantially the form attached as a confidential appendix to the First Report of the Receiver (the “**Confidential Appendix**”), and granting a fixed and specific charge on the Property (as such term is defined in the Receivership Order) to secure payment and performance of the obligations owing under the KERP (the “**KERP Charge**”) in priority to all security interests, trusts, liens, charges or otherwise, statutory or otherwise, but subordinate to each of the Receiver’s Charge and the Receiver’s Borrowing Charge (as such terms are defined in the Receivership Order).
4. Amending the Receivership Order so as to increase the amount of the Receiver’s Borrowing Charge from \$10,000,000 to \$15,000,000.
5. Authorizing the Receiver, *nunc pro tunc*, to make a payment of pre-filing indebtedness owing by the Debtors to Aseniwuche Development Corporation (“**ADC**”) in the amount of \$87,681.32.
6. Sealing the Confidential Appendix until the date that is one hundred and eighty (180) days after the date that the Receiver is discharged as receiver and manager of the Property.
7. Ordering and declaring that service of any orders arising from the Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, shall constitute good and

sufficient service of such orders and that no persons other than those in attendance at the Application are entitled to be served with a copy of such orders.

8. Such further and other relief as counsel for the Receiver may advise and this Honourable Court may permit.

**Grounds for Making this Application:** The grounds for the Application are as follows:

9. The Receiver was appointed as the Receiver of the Property pursuant to the Receivership Order.

10. The Receiver has developed the SISP in consultation with the various stakeholders of the Debtors. The benefits of the SISP are:

- (a) it will allow for the implementation of a fair, open and efficient process to solicit the sale of the Property or an investment in the Debtors;
- (b) it will be supervised and supported by the Receiver; and
- (c) it will maximize value for all stakeholders.

11. The Receiver has identified a select number of persons that are important to the continued operation of the Debtors as a going-concern business. The Receiver is concerned that some of these persons may seek employment with other companies due to the current uncertainty involving the business of the Debtors. The KERP will incentivize these persons to remain employed with the Debtors until the conclusion of the SISP by way of a bonus payment secured through the KERP Charge. It is necessary and appropriate to temporarily seal the Confidential Supplement because it contains competitive compensation information pertaining to the proposed key employees and the disclosure of this information to competitors of the Debtors would be prejudicial to the interests of the Debtors and their stakeholders.

12. The Receiver currently projects that it will be required to borrow at least \$11,244,000 over the course of the receivership proceedings, exclusive of professional fees and disbursements, and is therefore seeking an increase in the Receiver's Borrowing Charge so that it will have the capacity to fund all obligations incurred over the course of the receivership proceedings.

13. ADC is a corporation owned and controlled by the Aseniwuche Winewak Nation of Canada and provides critical water management and related services to the Debtors. Following the issuance of the Receivership Order, the Receiver became concerned that ADC was going to cease to provide services due to pre-filing amounts owed to it by the Debtors. Cessation of services by ADC had the potential to cause an immediate and catastrophic loss of value to the Property and it was both impractical and potentially impossible for the Receiver to retain a replacement service provider in a timely fashion. Due to these concerns, the Receiver contemplates making an immediate payment of pre-filing amounts owed to ADC in order to secure continued performance by ADC and intends to seek retroactive authorization for such payment at the within application.

14. Such further and other grounds as counsel for the Debtors may advise and this Honourable Court may permit.

**Material or Evidence to be Relied On:** The Receiver will rely on the following evidence:

15. The First Report of the Receiver, to be filed.

16. The Confidential Appendix.

17. Such further and other evidence as counsel for the Applicants may advise.

**Applicable Rules:**

18. Rules 6.3(1) of the *Alberta Rules of Court*.

19. Such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

20. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

21. Such further and other acts and regulations as counsel for the Applicants may advise and this Honourable Court may permit.

**Any Irregularity Complained of or Objection Relied On:**

22. There are no irregularities complained of, or objections relied on.

**How the Application is Proposed to be Heard or Considered:**

23. The Receiver proposes that the Application be heard in person with one, some, or all of the parties present.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicants.

**SCHEDULE "A"**

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Calgary, AB T2P 4K9  
Phone: 403-260-3531  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca

**DATE ON WHICH ORDER WAS PRONOUNCED: July 5, 2017**

**LOCATION OF HEARING OR TRIAL: Calgary, Alberta**

**NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Justice B.E.C. Romaine**

Clerk's Stamp

**UPON THE APPLICATION** of Deloitte Restructuring Inc. (the "**Receiver**") in its capacity as the court-appointed receiver and manager of Grande Cache Coal LP, Grande Cache Coal Corporation, Up Energy (Canada) Limited and 0925135 BC Ltd. (collectively, the "**Debtors**"), pursuant to a consent receivership order issued under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**") by the Honourable Madam Justice K.M. Horner on February 3, 2017 (the "**Receivership Order**"); **AND UPON** reading the First Report of the Receiver, dated June 27, 2017 (the "**First Report of the Receiver**"); **AND UPON** reading confidential appendix • to

the First Report of the Receiver, dated June 27, 2017 (the “**Confidential Appendix**”); **AND UPON** reading the Affidavit of Service of Katie Doran, sworn on ●, 2017 (the “**Affidavit of Service**”); **AND UPON** hearing counsel for the Receiver and counsel for any other persons present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of the corresponding Application and the First Report of the Receiver is abridged to the date parties were served, the Application is properly returnable today, service of the Application and the First Report of the Receiver on the service list maintained in these proceedings, in the manner described in the Affidavit of Service, is validated, good, and sufficient.
2. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Receivership Order.
3. The sales and investment solicitation process, substantially in the form attached as appendix ● to the First Report of the Receiver (the “**SISP**”), be and is hereby approved. The Receiver is authorized and directed, for and on behalf of the Debtors, to take all steps and actions reasonably necessary to implement, conduct and carry-out the SISP and to perform the SISP in accordance with the terms thereof.
4. The key employee retention plan, in substantially the form attached as the Confidential Appendix (the “**KERP**”), be and is hereby approved.
5. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge to secure payment and performance of the obligations owing under the KERP, up to the maximum amount of \$150,000 or such further and other amount as may be ordered by this Honourable Court (the “**KERP Charge**”). The KERP Charge shall rank subordinate to each of the Receiver’s Charge and the Receiver’s Borrowing Charge and in priority to all security interests, trusts, liens, charges or otherwise, statutory or otherwise, against or pertaining to the Property.
6. Paragraph 20 of the Receivership Order be and is hereby amended by deleting the number “\$10,000,000” in the third line thereof and replacing it with the number “\$15,000,000”.

7. The Receiver be and is hereby authorized, *nunc pro tunc*, to make a payment of pre-filing indebtedness owing by the Debtors to Aseniwuche Development Corporation (“ADC”) in the amount of \$87,681.32.

8. Division 4 of Part 6 of the *Rules of Court* (Alberta) does not apply to the Application. The Confidential Appendix shall be sealed on the Court file and shall not be made publically accessible until the date that is one hundred and eighty (180) days after the discharge of the Receiver as receiver and manager of the Property. The Clerk of the Court be and is hereby directed to seal the Confidential Appendix on the court file in an envelope containing the following:

THIS ENVELOPE CONTAINS THE CONFIDENTIAL APPENDIX TO THE FIRST REPORT OF THE RECEIVER, DATED JUNE 27, 2017. THE CONFIDENTIAL APPENDIX HAS BEEN SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE B.E.C. ROMAINE, DATED JULY 5, 2017, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD UNTIL THE DAY THAT IS ONE HUNDRED AND EIGHTY (180) DAYS AFTER THE DAY THAT THE RECEIVER IS DISCHARGED AS RECEIVER AND MANAGER OF THE PROPERTY.

9. Any interested Person has leave, on notice to the Receiver and all other interested Persons, to apply to vary or amend this paragraph 8 so as to shorten, extend or otherwise alter the sealing provisions provided for herein.

10. Service of this Order by email, facsimile, registered mail, courier or personal delivery to the persons listed on the Service List shall constitute good and sufficient service of this Order, and no persons other than those listed on the Service List are entitled to be served with a copy of this Order.

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J.C.Q.B.A.