

FORM 27
[RULES 6.3 AND 10.52(1)]

CLERK'S STAMP

COURT FILE NUMBER	2001-13391
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ORPHAN WELL ASSOCIATION
DEFENDANT	BOW RIVER ENERGY LTD.
DOCUMENT	<u>APPLICATION (SSP & SALES AGENT)</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BENNETT JONES LLP Barristers and Solicitors 4500, 855-2 nd Street S.W. Calgary, Alberta T2P 4K7

Attention: Keely Cameron
Telephone No.: 403-298-3324
Fax No.: 403-265-7219
Client File No.: 68775.5

NOTICE TO RESPONDENTS:

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:	Wednesday, December 2, 2020
Time:	2:00 p.m.
Where:	Edmonton Court Centre (Virtually via Webex)
Before Whom:	Justice B.R. Burrows of the Court of Queen's Bench of Alberta

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

This Application is being made by BDO Canada Limited (the "**Receiver**" or "**BDO**"), the court appointed receiver and manager of Bow River Energy Ltd. ("**Bow River**").

Any capitalized terms used but not defined in this Application shall bear their meanings as defined in the First Report of the Receiver, dated November 23, 2020 ("**First Report**").

Remedy claimed or sought:

1. An Order substantially in the form attached as Schedule "A":
 - (a) Deeming service of this application good and sufficient;
 - (b) Approving the sales and solicitation process ("**SSP**") in respect of Bow River's Alberta Assets;
 - (c) Appointing Sayer Energy Advisors as sale agent to carry out the SSP in cooperation with the Receiver ("**Sayer**");
 - (d) Granting a sealing order with respect to the Confidential Appendix "A" to the First Report;
2. Such further and other relief as counsel may request and this Honourable Court may deem just in all of the circumstances.

Grounds for making this application:

Background Relevant to the SSP

3. Bow River is a Calgary, Alberta-based oil and gas company with assets in Alberta and Saskatchewan.
4. On June 1, 2020, this Court granted an Initial Order pursuant to the *Company's Creditors Arrangement Act* which among other things appointed BDO as the monitor of Bow River ("**CCAA Proceedings**").
5. On July 24, 2020, this Honourable Court granted an order that amongst other things appointed Sayer as sales agent, approved a stalking horse asset purchase and sale agreement with respect to certain Alberta Assets of Bow River ("**Stalking Horse APA**"), and approved a sale and investment solicitation process ("**SISP**").

6. Bow River in cooperation with Sayer and the Monitor carried out the sales process in accordance with the SISP, which included marketing the Alberta and Saskatchewan assets from July 24, 2020 until August 24, 2020.
7. As a result of Sayer's efforts, 52 parties executed confidentiality agreements and gained access to the data room and fourteen parties submitted offers by the August 24, 2020 deadline, one party submitted a late offer on the evening of August 24, 2020 which was accepted into the process.
8. In total the SISP resulted in offers on 98% and 95% of Bow River's producing properties in Alberta and Saskatchewan respectively. No offers were received that constituted a Superior Bid to the Stalking Horse APA.
9. After consultation with both the Alberta and Saskatchewan Regulators it became apparent that both Regulators had concerns with the proposed transactions and on September 21, 2020 the Alberta Energy Regulator advised that it would object for various reasons to an application by Bow River seeking approval of the Stalking Horse APA.
10. Ultimately, Management of Bow River resigned and on October 28, 2020 the Court of Queen's Bench of Saskatchewan granted an application by the Saskatchewan Ministry for an order appointing BDO as receiver and manager of Bow River's Saskatchewan assets. On October 29, 2020, the Court of Queen's Bench of Alberta granted an order appointing BDO as receiver and manager of Bow River's Alberta Assets.

SSP

11. A summary of the SSP is set out in the First Report. The SSP was prepared with input from Sayer and in consultation with the Alberta Energy Regulator and Orphan Well Association.
12. The Receiver seeks the Court's approval of the SSP to enable it to effectively market Bow River's Alberta Assets in a fair and reasonable process.
13. Any proposed transactions pursuant to the SSP will be subject to court approval.

Sales Agent

14. In order to effectively conduct the SSP, the Receiver believes that it is appropriate to engage Sayer as its sales agent.
15. Sayer is well known in the local industry and specializes in coordinating disposition programs in the oil and gas industry and has significant experience working on insolvency engagements. Sayer has worked on engagements with BDO and in conjunction with Veracity in the past in an efficient and effective manner.
16. Having just recently carried out the SISP as part of the CCAA Proceedings, Sayer is well positioned to carry out the SSP as it has had recent contact with potential interested parties, knowledge of the Alberta Assets, and already has a data room established which will result in efficiencies and enable the marketing process to commence immediately following court approval.
17. Both the Receiver and the OWA are satisfied that the terms of the Engagement Letter are commercially reasonable in the circumstances and consistent with the terms associated with similar mandates for which BDO has been involved. A copy of the Engagement Letter is provided as a Confidential Appendix "A" to the First Report, as it contains commercially sensitive information regarding the sales and marketing strategy employed by Sayer and Sayer requires that the Receiver keep it confidential. Disclosure of this information could adversely affect Sayer.
18. In the circumstances, approval of Sayer as the sales agent and authorizing the Receiver to enter into the Engagement Letter is appropriate.

Material or evidence to be relied on:

19. The pleadings and proceedings taken in this Action;
20. The First Report of the Receiver dated November 23, 2020; and
21. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

22. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

Applicable Acts and Regulations:

23. *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended; and

24. Such further and other Acts or Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

25. N/A

How the application is proposed to be heard or considered:

26. Via Videoconference before the Honourable Justice Burrows.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

CLERK'S STAMP

SCHEDULE "A"

COURT FILE NUMBER 2001-13391

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ORPHAN WELL ASSOCIATION

RESPONDENT BOW RIVER ENERGY LTD.

DOCUMENT **ORDER (Re: SSP and SALES AGENT)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855-2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Keely Cameron
Telephone No.: 403-298-3324
Fax No.: 403-265-7219
Client File No.: 68775.5

DATE ON WHICH ORDER WAS PRONOUNCED: December 2, 2020

LOCATION OF HEARING OR TRIAL: Edmonton Courts Centre

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: The Honourable Justice B.R. Burrows

UPON THE APPLICATION OF BDO Canada Limited, the Court appointed receiver and manager of Bow River Energy Ltd. ("**Receiver**"); AND UPON reading the Receiver's First Report dated

November 23, 2020 ("**First Report**"); AND UPON hearing counsel for the Receiver and counsel for any other interested party;

IT IS ORDERED AND DECLARED THAT:

1. The time for service of the notice of application for this order (the "**Order**") together with all supporting materials is hereby deemed good and sufficient and this application is properly returnable today.

SSP

2. The sale and solicitation process ("**SSP**") attached hereto as **Schedule "A"** in relation to Bow River's Alberta Assets is approved. The Receiver and the Sales Agent (as defined below) are authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations under the SSP.

Sales Agent

3. Sayer Energy Advisors is appointed as Sales Agent to carry out the SSP in cooperation with the Receiver. The Engagement Letter as set out in the Confidential Appendix "A" to the Receiver's First Report is approved and the Receiver is authorized and directed to execute the Engagement Letter. The Receiver is hereby authorized and directed to do all things reasonably necessary to give effect to the Engagement Letter and carry out its obligations thereunder, including payments of amounts due to be paid pursuant to the terms of the Engagement Letter.

Sealing Order

4. The Confidential Appendix "A" to the First Report shall be sealed on the Court file and shall not form part of the public record.
5. The Clerk of this Honourable Court shall file the Confidential Appendix "A" in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 2001-13391. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE BURROWS ON DECEMBER 2, 2020.

6. The Receiver is empowered and authorized, but not directed to provide the Confidential Appendix or any portion thereof to any interested party that the Receiver considers reasonable in the circumstances subject to confidentiality arrangements satisfactory to the Receiver.

Miscellaneous

7. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Daylight Time on the date of this Order.

J.C.Q.B.A.

Schedule "A"

SALES SOLICITATION PROCESS Bow River Energy Ltd.

INTRODUCTION

1. On October 29, 2020, the Court of Queen's Bench of Alberta (the "**Court**") granted an order appointing BDO Canada Limited ("**BDO**") as the receiver and manager of Bow River Energy Ltd.'s ("**Bow River**") Alberta assets (the "**Alberta Assets**").
2. Pursuant to the Order of the Court dated December 2, 2020 (the "**SSP Order**"), the Court approved the sale solicitation process set out herein (the "**SSP**").
3. Pursuant to the SSP Order, Sayer Energy Advisors was appointed to act as sales agent in accordance with the SSP Order and the SSP (the "**Sales Agent**").
4. The Sales Agent will develop a list of Known Potential Bidders (as defined below), communicate and meet with interested parties, prepare and distribute marketing materials, and manage the Data Room (as defined below).

SSP OVERVIEW

5. The purpose of the SSP is to solicit interest in a sale or liquidation of all, or substantially all, of the Alberta Assets.
6. The SSP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a "**Person**") may gain access to or continue to have access to due diligence materials concerning the Alberta Assets, and how bids involving the Alberta Assets will be submitted to and dealt with by the Receiver and the Sales Agent, and how Court approval will be obtained in respect of any Transaction (as defined below).
7. As described below, the various deadlines herein may be extended by and at the discretion of the Receiver. The Receiver will consider extending the various deadlines herein, in the event that the Receiver determines that such an extension will generally benefit Bow River's creditors and other stakeholders. The Receiver shall generally oversee the SSP and in particular shall oversee the Sales Agent in connection therewith. In the event that there is a disagreement as to the interpretation or application of the SSP, the Court will have jurisdiction to hear and resolve such dispute.

"AS IS, WHERE IS" BASIS

8. Any transaction involving all or any portion of the Alberta Assets (each a "**Transaction**") will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Sales Agent, the Receiver, or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).

The key dates pursuant to the SSP are as follows (capitalized terms in the chart below have the meaning ascribed in the SSP):

<u>Event</u>	<u>Date</u>
Sales Agent to create list of Known Potential Bidders and distribute Teaser Letter and Confidentiality Agreements to Known Potential Bidders	As soon as practical and no later than December 7, 2020
Sales Agent to prepare and have available for Potential Bidders the CIM and VDR	As soon as practical and no later than December 7, 2020
LOI Deadline (for delivery of offers by Qualified Bidders in accordance with the requirements of paragraphs 17 and 19 of the SSP)	By January 28, 2021
Final Agreement Deadline	February 19, 2021
Application to the Court for Approval Order(s)	As soon as reasonably practicable after the Final Agreement Deadline
Closing of the Transaction	Within ten (10) days of the Approval Order(s) becoming Final Order(s)

THE SSP PROCESS

A. Initial Solicitation of Interest

9. The Sales Agent may contact any Persons to solicit expressions of interest in a Transaction either before or after the granting of the SSP Order.
10. As soon as reasonably practicable after the granting of the SSP Order and in any event by no later than December 7, 2020, in consultation with the Receiver, the Sales Agent will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have interest in the Alberta Assets pursuant to an asset purchase transaction (an "**Asset Bid**"). Concurrently, the Sales Agent will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders and any other interested persons of the SSP and inviting them to express interest in making an Asset Bid. The Teaser Letter shall be posted on the Receiver's Website and that of the Sales Agent.
11. By no later than December 7, 2020, the Sales Agent shall distribute to the Known Potential Bidders and any other interested Persons the Teaser Letter, as well as a form of confidentiality agreement (the "**Confidentiality Agreement**") that shall inure to the benefit of the Person or Persons who make the Winning Bid(s) (as defined herein) pursuant to this SSP. Copies of the Teaser Letter and Confidentiality Agreement shall be provided to any appropriate Persons who becomes known to the Sales Agent after the initial distribution of such documents.
12. Any Person (a) who executes a Confidentiality Agreement in form and substance satisfactory to the Sales Agent and the Receiver, and (b) provides written confirmation of the identity of the potential bidder, including its direct and indirect principals and financial disclosure or credit quality support sufficient to allow the Sales Agent, in consultation with the Receiver, to make a reasonable determination as to its capabilities to conclude a transaction, shall be deemed to be a potential bidder (each, a "**Potential Bidder**").

B. Due Diligence

13. The Sales Agent shall provide each Potential Bidder with information, including access to an electronic data room established by the Sales Agent by no later than December 7, 2020 (the "**Data Room**"), that the Sales Agent in its reasonable business judgment determines to be necessary for the Potential Bidder to evaluate a transaction involving an Asset Bid. The Data Room will include, among other things, a form of purchase agreement for use by Qualified Bidders in the case of an Asset Bid.
14. The Sales Agent will prepare a confidential information memorandum ("**CIM**") by no later than December 4, 2020, describing the opportunity to make a SSP Bid and shall deliver the CIM to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SSP.
15. The Receiver and the Sales Agent shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Sales Agent will be obliged to furnish any information relating to the Alberta Assets other than to a Potential Bidder.
16. The Sales Agent, the Receiver and their respective advisors make no representation or warranty as to the information made available pursuant to the SSP, including any information contained in the Data Room.

C. LOI Process

17. Any Potential Bidder who wishes to submit an Asset Bid must deliver a written, non-binding letter of intent (each, a "**LOI**") to the Receiver and the Sales Agent at the address specified in and in accordance with Schedule "A" hereto so as to be received by the Receiver and Sales Agent not later than **12:00 p.m. (Mountain time) on January 28, 2021**, or such other date or time as the Receiver may determine (the "**LOI Deadline**").
18. Following the LOI Deadline, all LOIs shall be reviewed by the Receiver and the Sales Agent.
19. An LOI shall be a qualified LOI (each, a "**Qualified LOI**") provided that:
 - (a) it is submitted on or before the LOI Deadline by a Potential Bidder;
 - (b) it is submitted in a format that identifies any and all changes made from the PSA form supplied by the Receiver;
 - (c) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
 - (d) it identifies:
 - (i) the purchase price in Canadian Dollars (including any liabilities to be assumed by the Potential Bidder and any credit bid);
 - (ii) whether the Asset Bid is *en bloc*, the Alberta Assets included, any of the Alberta Assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;

- (iii) confirmation that the Potential Bidder has sufficient funds to complete the Transaction;
- (iv) the proposed treatment of any leases and other material contracts;
- (v) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (vi) it contains a statement that the Potential Bidder is a licensee in good standing with the AER, or has eligibility to obtain or hold AER licenses, permits or approvals with respect to the Assets or has submitted an application to the AER for license eligibility, and will have a Liability Management Rating of 1.0 or greater should the offer be accepted and the AER approves the transfer;
- (vii) the offer must be accompanied by a 20% deposit payable to "BDO Canada Limited - in trust" (the "**Deposit**") by way of bank draft or certified cheque;
- (viii) must not be subject to any conditions other than approval by the Court of Queen's Bench of Alberta (the "**Court**") and the PSA must acknowledge that it is subject to Court approval;
- (ix) contemplates a schedule for closing the Transaction set out therein which is on or before February 19, 2021 (the "**Closing Date**"); and
- (x) contains such other information as reasonably requested by the Selling Agent or Receiver from time to time.

20. Any Potential Bidder who submits a Qualified LOI on or before the LOI Deadline shall be designated a "**Qualified Bidder**".

21. The Receiver, may waive the strict compliance of one or more of the requirements specified above and deem any LOI to be a Qualified LOI, notwithstanding any noncompliance with the terms and conditions of this SSP.

22. In the event that no Person submits an LOI, or that no LOI qualifies as or is deemed to qualify as a Qualified LOI, or that no Qualified LOI is deemed commercially reasonable to the Receiver, the Receiver may terminate the SSP. If no Qualified LOIs are received by the LOI Deadline, the Receiver may consider other forms of bids for the Alberta Assets. At any time during the SSP, the Receiver may determine that any LOI is a Winning Bid and seek Approval Orders in respect of such Winning Bid(s) from the Court.

23. The Sales Agent may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the Data Room, arrange for inspections and site visits at Bow River's premises, as determined by the Sales Agent.

D. Selection of Winning Bid

24. The Receiver shall review all Qualified LOIs in consultation with the Sales Agent. The Receiver may, but shall have no obligation to enter into a definitive agreement or agreements (each a "**Final Agreement**") with the Person or Persons who submitted the highest, best or otherwise most

favourable Qualified LOIs.

25. The Receiver may give preference to the Qualified LOI or combination of Qualified LOIs that results in the largest amount of environmental liabilities being addressed in terms of liabilities assumed and/or cash provided.
26. In the event that the Receiver enters into one or more Final Agreements by February 19, 2021 ("**Final Agreement Deadline**"), any Qualified LOI so selected shall be a "**Winning Bid**". Any Qualified Bidder that makes a Winning Bid shall be a "**Successful Bidder**".
27. This SSP shall terminate in the event that: (a) no Qualified Bidder submits or is deemed to have submitted a Qualified LOI; (b) the Receiver determines that none of the Qualified LOIs should be accepted; or (c) a Final Agreement has not been entered into before the Final Agreement Deadline.
28. The highest Qualified LOI may not necessarily be accepted by the Receiver. The Receiver reserves the right not to accept any Qualified LOI or to otherwise terminate the SSP. The Receiver further reserves the right to deal with one or more Qualified Bidders to the exclusion of other Persons, to accept a Qualified LOI for some or all of the Alberta Assets or to accept multiple Qualified LOIs and enter into multiple Final Agreements.

APPROVAL ORDERS

29. In the event that Receiver enters into a Final Agreement(s), on or before February 19, 2021, the Receiver shall apply as soon as reasonably practicable thereafter, for order(s) (the "**Approval Order**") from the Court, in form and substance satisfactory to the Receiver, approving the transaction contemplated by the Winning Bid(s) and any necessary related relief required to consummate the Transaction contemplated by the Winning Bid(s), subject to the terms of the Final Agreement(s).
30. An Approval Order shall become a "**Final Order**" upon satisfaction of the following conditions: (a) it is in full force and effect; (b) it has not been reversed, modified or vacated and is not subject to any stay; and (c) all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving the Approval Order wholly operable.

CLOSING

31. Closing of the transactions contemplated in any Final Agreement shall occur within ten (10) days of the date upon which the Approval Orders have become Final Orders, or as may be extended with the approval of the Receiver.

DEPOSITS

32. All Deposits paid pursuant to this SSP shall be held in trust by the Receiver. The Receiver shall hold Deposits paid by each of the Successful Bidder in accordance with the terms outlined in this SSP. In the event that a Deposit is paid pursuant to this SSP and the Receiver elects not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Receiver shall return the Deposit and any interest accrued thereon to that Person.
33. In the event that a Successful Bidder defaults in the payment or performance of any obligations owed to the Receiver or the Sales Agent pursuant to any Final Agreement, the Deposit paid by the Successful Bidder as applicable, shall be forfeited to such party as liquidated damages and not as a

penalty.

CONFLICTS OF INTEREST

34. Until such time as any secured creditor of Bow River has: (i) irrevocably declared his or her intention not to submit a bid; (ii) his or her LOI has been irrevocably disqualified under the SSP; or (iii) his or her LOI has been irrevocably determined not to be the Winning Bid), such secured creditor:
- (a) shall only receive information regarding the SSP in keeping with his or her capacity as a Potential Bidder in these proceedings; and
 - (b) shall receive no information whatsoever regarding other bids in the SSP.
35. If any secured creditor determines that he or she will submit a bid in the SSP, such secured creditor shall advise the Receiver of such intent as soon as reasonably practicable, and no later than seven (7) days before the LOI Deadline.

COVID-19

36. This SSP shall be interpreted so as to comply and be consistent with any applicable laws, regulations or public health directives related to the COVID-19 pandemic, and may be amended at any time with the approval of the Receiver to the extent necessary or advisable to comply with same.

SCHEDULE "A"

Addresses for Deliveries

Any notice or other delivery made to the Receiver pursuant to this SSP shall be made to:

BDO Canada Limited
110, 5800 – 2nd Street SW
Calgary, AB T2H 0H2
Attention: Marc Kelly
Tel: 403-536-8510
Email: makelly@bdo.ca

with copy to:

Bennett Jones LLP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, AB, T2P 4K7
Attention: Keely Cameron
Tel: 403-298-3324
Email: cameronk@bennettjones.com

Any notice or delivery made to the Sales Agent pursuant to this SSP shall be made to:

Sayer Energy Advisors
1620, 540 5 Ave S.W.
Calgary, AB T2P 0M2
Attention: Tom Pavic
Tel: (403) 266-6133
Email: TPavic@sayeradvisors.com

Deliveries pursuant to this SSP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SSP shall be deemed to be received when delivered to the relevant address, as identified above.