

Clerk's Stamp

COURT FILE NUMBER 25-3009380 / B301 009380

COURT COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C B-3 AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF ATHABASCA MINERALS INC., AMI SILICA INC.,
AMI AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534
ALBERTA LTD.

APPLICANT JMAC ENERGY SERVICES INC.

RESPONDENT ATHABASCA MINERALS INC., AMI SILICA INC., AMI
AGGREGATES INC., AMI ROCKCHAIN INC., TERRASHIFT
ENGINEERING LTD., 2132561 ALBERTA LTD., and 2140534
ALBERTA LTD.

DOCUMENT **BRIEF OF JMAC ENERGY SERVICES INC.**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Field LLP
400 – 444 – 7 Avenue SW
Calgary AB T2P 0X8
Lawyer: Douglas Nishimura
Phone Number: (403) 260-8500
Fax Number: (403) 264-7084
Email Address: dnishimura@fieldlaw.com
File No. 77794-5

TABLE OF CONTENTS

INTRODUCTION..... 3
FACTS 5
ISSUES 9
ARGUMENT 9
CONCLUSION..... 16
RELIEF REQUESTED 16

INTRODUCTION

1. This is a cross-application to the application of Athabasca Minerals, Inc. ("**Athabasca**"), AMI Silica Inc. ("**AMI Silica**"), AMI Aggregates Inc. ("**Aggregates**"), AMI Rockchain Inc. ("**Rockchain**"), Terrashift Engineering Ltd. ("**Terrashift**"), 2132561 Alberta Ltd. ("**213**"), and 2140534 Alberta Ltd. ("**214**" and collectively with Athabasca, AMI Silica, Terrashift, Rockchain, and 2013 the "**Companies**") whereby the Companies are seeking an order approving a transaction for the sale of substantially all of the Companies' Business and Property via a share transaction (the "**Transaction**") to Badger Mining Corporation ("**Badger**") pursuant to a subscription agreement between the Companies and Badger dated February 9, 2024, and granting a proposed reverse vesting order ("**RVO**").
2. JMAC Energy Services Inc. ("**JMAC**") and Athabasca are the founding members of AMI Silica, a limited liability company they formed under the laws of North Dakota to jointly acquire and operate a silica sand supply business. JMAC and Athabasca are the sole members of AMI Silica, each owning a fifty percent share.
3. Under AMI Silica's Operating Agreement, JMAC and Athabasca agreed to restrict the transfer of the parties' respective interests in AMI Silica and the joining of new members in AMI Silica by providing for a right of first refusal ("**ROFR**") to a non-selling member in the event either JMAC or Athabasca sought to sell their interest in AMI Silica. A primary purpose of these ROFR rights are and were to protect each member from being forced into business with an outsider if the other member decided to sell its membership interest.
4. Athabasca has experienced significant financial difficulties, and its only asset of significant value is its interests in AMI Silica. As a result of these financial difficulties, on November 13, 2023, Athabasca filed a notice of intention to make a proposal to its creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**Proposal Proceedings**").
5. As part of the Proposal Proceedings, Athabasca, over JMAC's frequent objection, established an auction process to sell itself to a third party, in violation of JMAC's ROFR. This auction took place on February 9, 2024, and Badger – one of AMI Silica's biggest competitors – was the winning bidder for Athabasca. Pursuant to the Sales and Investment Solicitation Process ("**SISP**") and the

Order granted December 12, 2023 approving the SISP, JMAC's position with respect to its ROFR was expressly preserved. At no time has JMAC waived its ROFR rights.

6. In this process, Athabasca solicited and obtained an offer from Badger which it was prepared to accept at a value of \$13.1 million. This triggered JMAC's ROFR rights. However, JMAC was not provided an opportunity to accept transaction of that amount. Rather, JMAC was required to participate in the auction process.
7. As a result of the foregoing, JMAC initiated proceedings in the United States Federal Court (the "**US Proceedings**") for a declaration and other relief with respect to JMAC's ROFR rights. These proceedings are ongoing.
8. The approval of the sale and reverse vesting order will obstruct the US Proceedings and render them nugatory. It will further remove JMAC's ROFR rights which were expressly preserved by this Court.
9. JMAC brings this application seeking a stay of sale and reverse vesting order to prevent irreparable harm to its business from the transaction's closure and to allow the United States District Court of North Dakota make a determination on JMAC's asserted ROFR.
10. The Applicant, JMAC, respectfully seeks an Order for the following relief:
 - (a) Abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
 - (b) Setting aside or alternatively, stay the sale to Badger;
 - (c) Recognizing and giving effect to JMAC's ROFR in the event the United States Federal Court determines that Athabasca Minerals Inc. improperly failed to honour that right;
 - (d) Lifting the Stay of proceedings against Athabasca imposed by S. 69(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 and allowing JMAC to proceed with the action filed by JMAC in the United States District Court, District of North Dakota identified by Civil Action No. 1:24-cv-037; and
 - (e) Such further and other relief as counsel may seek and this Honourable Court deem just.

11. JMAC is prepared to agree to interim relief which would see Athabasca's creditors paid and shareholders receive a distribution up to the amounts in the offer by Badger which triggered the ROFR rights.

FACTS

12. JMAC and Athabasca formed the North Dakota Limited Liability Company AMI Silica on or about June 2, 2021. AMI Silica is in the business of mining and supplying sand for industrial purposes. JMAC and Athabasca each own 50% of the membership interest of AMI Silica.
13. On or about July 19, 2021, JMAC and Athabasca executed an operating agreement (the "Operating Agreement") to govern the business and management of AMI Silica.¹ AMI Silica is organized under the laws of the State of North Dakota, and the Operating Agreement specifies that it shall be governed by North Dakota law.
14. The Operating Agreement requires that each party offer the other a ROFR if either decides to sell, transfer, or otherwise dispose of any or all of its interest in AMI Silica to a third party, and forbade any other means of transfer of a party's interest. It provides:

11.01 General. Except as otherwise specifically provided herein neither a Member nor an Economic Interest Owner shall have the right to:

- (a) **sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell"),**
- (b) gift, bequeath, or otherwise transfer for no consideration (whether or not by operation of law except in the case of bankruptcy) all or any part of its Membership Interest or Economic Interest.

11.02 Right of First Refusal.

- (a) In the event a Selling Member desires to sell all or any portion of its Membership Interest or Economic Interest in the Company to a third party purchaser, the Selling Member shall first obtain from such third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor. The Selling Member shall give written notification to the remaining Members, . . . of its intention to so transfer such

¹ Operating Agreement

interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase such interest.

- (b) **The remaining Members, and each of them shall, on a basis pro rata to their Capital Interests . . . have the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase** by giving written notification to the Selling Member within twenty (20) days after receiving written notice from the Selling Member. (emphasis added).

15. The Operating Agreement at s. 11.03 also provides that the transferee of membership units will not become a participating member in AMI Silica absent unanimous consent from all of the remaining members after the transfer unless the transferee was already a member in AMI:

....if all of the remaining Members do not **approve by unanimous written consent the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift**, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member.... (emphasis added).

16. Consistent with this intent, JMAC has consistently provided whatever financial support to AMI Silica and Athabasca as was necessary to prevent third-party involvement in the financing or management of AMI Silica. Further facts regarding the ROFR are set out in JMAC's filed documents in the US Proceedings.
17. In February of 2022, Athabasca was not able to meet its financial commitments to AMI Silica and in consideration for JMAC entering into a bonding arrangement on Athabasca's behalf, JMAC and Athabasca entered into an amendment to the operating agreement dated February 16, 2022 (the "**Operating Agreement Amendment**"),² whereby Athabasca made certain concessions, which among others terms to JMAC's benefit contained a right of first refusal if either debt or equity capital was required by AMI Silica, then JMAC would have the right of first

² Operating Agreement Amendment

refusal to provide such capital, which further reflects the intention of both Athabasca and JMAC to have no third-party involvement in AMI Silica.

18. In the Fall of 2022, Athabasca began experiencing significant financial difficulties that continued into 2023. In early 2023, Athabasca explored the possibility of going to market for sale, with such sale including the sale of Athabasca's interests in AMI Silica. At this time, JMAC warned Athabasca that it expected that any bona fide offer extended to Athabasca which contemplated a transfer of Athabasca's interest in AMI Silica would be presented to JMAC pursuant to the ROFR.
19. Beginning in 2023, Athabasca began to sell off its Canadian assets, and eventually disposed of nearly all of its Canadian assets, while retaining all Canadian liabilities.
20. On November 13, 2023, Athabasca filed a Notice of Intention to make a proposal to its creditors pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
21. Athabasca's only asset of significant value is its interests in AMI Silica. Its remaining assets consist either of cash or cash equivalents, its office and software lease, and interests in two numbered companies which hold the following assets: (i) the Montney prospecting rights from the government, which have not as yet turned up any commercial deposits, and (ii) their permitted Prosvita mine in northern Alberta, which have not been determined to be commercially feasible. Thus, any purchase of Athabasca is, in effect, simply a purchase of Athabasca's interests in AMI.
22. On December 5, 2023, JMAC and Athabasca agreed on the terms of a Letter of Intent ("**LOI**"), whereby JMAC would become the Stalking Horse bidder for Athabasca's assets, which would be prima facie accepted subject to being superseded by a superior bid. The LOI preserved JMAC's right to assert the ROFR, stating: "materials provided to potential purchasers with the SISP shall recognize and include the [ROFR] currently held by JMAC pursuant to the AMI Silica LLC Operating Agreement."
23. Notwithstanding JMAC's repeated explanation that the ROFR applied to any transaction which involved a change of control of AMI Silica, Athabasca established a Sales and Investment Solicitation Process ("**SISP**") whereby it would solicit competing offers to JMAC's Stalking Horse

- bid. The SISP was submitted for Court approval on December 12, 2023, which was granted the same day. The SISP, and Court order accepting the SISP, expressly preserved JMAC's right to assert that the ROFR in the Operating Agreement applied.
24. Badger subsequently made an offer to purchase for a sale price of \$13.1 million. Badger provided a Subscription Agreement setting forth the terms of the proposed sale and offered a sale price of \$13.1 million.
 25. Badger's offer of \$13.1 million constituted a bona fide offer within the meaning of the Operating Agreement and triggered Athabasca's obligation to submit the offer in writing to JMAC for JMAC to match pursuant to Section 11.02 of the Operating Agreement.
 26. Athabasca was willing to sell its interest in AMI Silica for \$13.1 million and would have done so had it not implemented its plan to hold the SISP Auction in violation of JMAC's ROFR.
 27. JMAC would have exercised its ROFR had it been given the opportunity as required by the AMI Silica Operating Agreement. However, JMAC was required to participate in an auction process for the purchase of Athabasca's interest in AMI Silica.
 28. On February 9, 2024, Athabasca conducted an auction, subject to JMAC's reservation of its right to assert the ROFR. Bidding opened with Badger's January bid of \$13.1 million and proceeded in increments of \$100,000.
 29. Badger made the winning bid, in the amount of \$29.2 million.
 30. JMAC subsequently confirmed in writing that it intended to assert its ROFR pursuant to the Operating Agreement.
 31. Athabasca has refused to honor JMAC's ROFR and Athabasca and Badger have brought an application seeking the approval of the sale in this Court in violation of US contract law and JMAC's US property rights.
 32. On February 27, 2024, JMAC commenced the US Proceedings in the United States District Court, District of North Dakota to assert its ROFR to purchase Athabasca's membership interest in AMI Silica. These proceedings are ongoing, and JMAC is seeking an expedited resolution.

33. If the sale to Badger and RVO are approved by this Court in advance of outcome of US Proceedings, Athabasca's transfer of its AMI Silica membership interest to Badger would be difficult or impossible to unwind, and JMAC's right to prevent this transfer would be irreversibly lost.

ISSUES

Issue I – This Court's approval of the Transaction and the proposed RVO in advance of a determination of JMAC's ROFR rights in the US Proceedings poses a real and substantial risk of having contradictory decisions in different jurisdictions and indirectly making an irreversible determination of JMAC's ROFR rights.

ARGUMENT

34. Under Rule 1.4(2)(h), this Court is afforded significant discretion whereby it may elect to adjourn or stay all or any part of an action, application or proceeding.³
35. The Supreme Court of Canada articulated the general rule that applies to adjournments in *R. v. Barrette*,⁴ where at pg 125 it stated:

It is true that a decision on an application for adjournment is in the judge's discretion. It is, however, a judicial discretion so that his decision may be reviewed on appeal if it is based on reasons which are not well founded in law. This right of review is especially wide when the consequence of the exercise of discretion is that someone is deprived of his rights, whether in criminal or in civil proceedings...

36. Following *Barrette*, Courts have held that deciding whether to grant adjournments requires the balancing of interests between the parties and the administration of justice in the orderly processing of civil trials.⁵

³ *Alberta Rules of Court*, Alta Reg 124/2010, R 1.4(2)(h).

⁴ *R. v. Barrette*, 1976 CanLII 180 at pg 125 (SCC).

⁵ *Lameman v. Alberta*, 2011 ABQB 40 at para 25 [*Lameman*].

37. Yamauchi J. canvassed a number of decisions dealing with adjournments in *Lameman*⁶ and identified a list of factors courts may look into in considering whether to exercise their discretion to grant an adjournment:

1. courts should make a just determination of the real matters in dispute and they should decide cases on their merits;
2. the prejudice caused by granting or denying the adjournment;
3. the applicant's explanation for not being ready to proceed;
4. the length of the adjournment the applicant is seeking and the consequent disruption of the court's schedule;
5. the importance of effectively enforcing previous court orders;
6. the proper marshalling of evidence and prosecution of complex and multi-faceted actions;
7. whether there is a realistic expectation that the adjournment will accomplish its stated purpose;
8. the history of the proceedings, including other adjournments and delays, and at whose instance those adjournments and delays occurred;
9. where a party is seeking the adjournment to amend pleadings, how long counsel has known of the issue to which the amendment is aimed and whether counsel has had previous opportunities to amend;
10. whether the application is merely an attempt to delay the proceedings; and
11. the party who seeks the adjournment should not bear the consequences of its counsel's failures

38. The above list is not exhaustive but provides the court with some reference from which to conduct its analysis.⁷

⁶ *Ibid* at para 33

39. JMAC submits that the same factors and a similar analysis is required by this court when considering a stay of these proceedings until the determination of JMAC's ROFR rights is made in the US Proceedings.

JMAC's ROFR Rights

40. Section 11.01 of the Operating Agreement provides that "except as otherwise specifically provided herein, neither a Member nor an Economic Interest Owner shall have the right to: (a) "sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell")" their Membership or Economic Interest in AMI Silica." Critically, the only way the Operating Agreements provides for either JMAC or Athabasca to "sell" their interests in AMI Silica is by providing the other the ROFR.
41. The plain language of the Operating Agreement is extremely broad – JMAC and Athabasca agreed that any time they chose to "sell" their interests in any manner, they would provide the other party a ROFR.
42. In our circumstances, despite the Operating Agreement's requirement that Athabasca give JMAC the ROFR anytime it seeks to "sell" its interest in AMI Silica in any manner, Athabasca has refused to recognize JMAC's ROFR rights.
43. Specifically, Athabasca received a written offer from Badger to purchase Athabasca for \$13.1 million which it was willing to accept. Badger's proposed purchase includes Athabasca's interests in AMI Silica, which constitutes effectively all of Athabasca's value. As such, Badger's \$13.1 million written offer was a bona fide offer to purchase Athabasca's interests in AMI Silica, thereby triggering JMAC's ROFR rights to purchase Athabasca's interests in AMI Silica for that same price.
44. The documents filed by JMAC in the US Proceedings (upon which JMAC relies in these proceedings as if set out in full herein) present a compelling case that the ROFR was triggered.
45. Athabasca's refusal to recognize JMAC's ROFR rights is a breach of the plain language of the Operating Agreement's transfer and ROFR provisions. Accordingly, JMAC commenced the US Proceedings to determine JMAC's rights under the ROFR.

⁷ *Attila Dogan Construction v AMEC Americas Limited*, 2015 ABQB 120 at paras 29 and 30

JMAC could be irreparably harmed should this Court approve the Transaction and RVO prior to a determination of JMAC's ROFR rights in the US Proceedings

46. Courts in Alberta have held that the purpose of ROFR provisions is to prevent a party from being forced into an undesired partnership and to protect the parties' respective interests when a party disposes of the property or interest that is subject to the ROFR.⁸

47. Further, in *Consolidated-Bathurst v. Mutual Boiler*,⁹ the Supreme Court of Canada provided guidance when interpreting a right of first refusal:

... [T]he normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract. Consequently, literal meaning should not be applied where to do so would bring about an unrealistic result or a result which would not be contemplated in the commercial atmosphere in which the [contract was made]. Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be taken as the interpretation which would promote the intention of the parties. Similarly, an interpretation which defeats the intentions of the parties and their objective in entering into the commercial transaction in the first place should be discarded in favour of an interpretation of the policy which promotes a sensible commercial result...

48. JMAC's filings in the US Proceedings, which are relied upon as if set out in full herein, confirm that US law adopts a similarly broad approach and has enforced ROFR's in situations similar to the present case.

49. At all material times, JMAC has maintained that its ROFR set forth in the Operating Agreement has effect in both an asset and a share sale with respect to Athabasca including in the proposal proceedings currently underway under the BIA.

⁸ *Canadian Natural Resources Limited v. Encana Oil & Gas Partnership*, 2007 ABQB 460 at para 37; *Blaze Energy Ltd v Imperial Oil Resources*, 2014 ABQB 326 at para 74 ("**Blaze**"), citing *Calcrude Oils Ltd v Langevin Resources*, 2003 ABQB 1051.

⁹ *Consolidated-Bathurst v. Mutual Boiler*, 1979 CanLII 10 (SCC), [1980] 1 SCR 888 at pp 901 and 902; see also *Blaze* at para 72

50. If this Court approves the Transaction and RVO in advance of a determination of JMAC's ROFR rights in the US Proceedings, it runs the risk of causing irreparable harm to JMAC by indirectly making a determination on its negotiated ROFR rights under the Operating Agreement.
51. JMAC's counsel has taken steps to ensure the SISP and the Order granted December 12, 2023, both reflected JMAC's position with respect to the applicability of its ROFR rights under the Operating Agreement. As such, JMAC submits that the applicability of its ROFR rights must be determined in advance of any approval of the Transaction and RVO.
52. JMAC's reasons for commencing the US Proceedings are not only to preserve its rights under the Operating Agreement, but also due to a number of concerns with Badger obtaining Athabasca's membership interest of AMI Silica, including, but not limited to:
- (a) Badger is a major competitor of AMI Silica, and its potential acquisition of Athabasca's membership interest in AMI Silica raises serious concerns. Specifically, if Badger were able to obtain Athabasca's membership interest of AMI Silica, it would gain access to cost and pricing information of one of its direct competitors, as well as access to its relationships with transportation providers and customers. This would potentially give a significant and unfair competitive advantage over AMI Silica through access to proprietary AMI Silica information.
 - (b) If permitted to participate in the management of AMI Silica, Badger would also have the ability to restrict or inhibit AMI Silica's ability to properly function, by using its fifty percent control to affect or inhibit investment and other business decisions of AMI Silica in a manner calculated to benefit Badger to the detriment of JMAC.
 - (c) Badger would have a clear financial motivation to use this information to increase its market share to the detriment of AMI Silica. Specifically, Badger would benefit by obtaining 100% of the benefit of shifting volume from AMI Silica to Badger, while losing volume in an entity in which it owns only 50%.
 - (d) There is no practical remedy when information becomes known, or relationships are damaged.

53. The above noted concerns is the primary reason JMAC bargained for the ROFR in the AMI Silica Operating Agreement and certain other provisions to control who other members may be.
54. Any interpretation that Badger's proposed purchase does not trigger JMAC's ROFR rights is directly contrary to the parties' intention in including the ROFR provisions in the Operating Agreement.
55. The ROFR provisions of the Operating Agreement are extremely broad. The Operating Agreement: (1) broadly defines the term "sell" to include any attempt by Athabasca or JMAC to "sell, assign, pledge, hypothecate, transfer, exchange, or otherwise transfer" their interests in AMI Silica; (2) provides that neither Athabasca nor JMAC may "sell" their interests except as set forth in the Operating Agreement; (3) provides that any time Athabasca or JMAC wish to sell their interests, they must afford the other a ROFR.
56. Athabasca and JMAC expressed a clear intent in the Operating Agreement that any time they wished to sell or transfer in any manner their interest in AMI Silica, they must afford the other party a ROFR. This is consistent with both the parties' stated intent in including the ROFR provisions in the Operating Agreement and the generally recognized intent behind ROFR provisions in businesses like AMI Silica, i.e. to prevent the intrusion of an uninvited outsider into a two-member 50/50 LLC.
57. Should this Court approve the Transaction and RVO in advance of a determination of JMAC's ROFR rights in the US Proceedings, there is a real and substantial risk that JMAC could be deprived of its ROFR rights under the Operating Agreement without a proper determination by the US courts of the applicability of same.

Athabasca and other stakeholders will not be harmed by a stay of proceedings until a determination of JMAC's ROFR rights has occurred in the US Proceedings

58. JMAC, through commencement of the US Proceedings, is merely seeking to enforce its contractual rights under the Operating Agreement. As such, Athabasca can suffer no harm by being forced to comply with its legal obligations if such a determination is made. Further, JMAC has undertaken to pay any damages associated with such delay if its claim is not successful.

59. In the event that the outcome of the US Proceedings determines that JMAC's ROFR under the Operating Agreement has not been triggered, JMAC has every incentive to ensure the health of Athabasca's only significant asset – AMI Silica – and no harm would result from the delay in closing the Transaction.
60. As stated above, JMAC is prepared to agree to interim relief which would see Athabasca's creditors paid and shareholders receive a distribution up to the amounts in the offer by Badger which triggered the ROFR rights, therefore, Athabasca and its creditors would suffer no damages as a result of the requested relief.

Lifting the stay and allowing JMAC to proceed with its US Proceedings

61. Section 69(1)(a) of the BIA imposes a stay on proceedings on the filing of a notice of intention. Section 69.4 allows a creditor to apply to the court to lift the stay if the court is satisfied that (1) the creditor or person is likely to be materially prejudiced by the continued operation of the stay; or (2) that it is equitable on other grounds to lift the stay.
62. At all material times, JMAC has maintained that its ROFR set forth in the Operating Agreement has effect in both an asset and a share sale with respect to Athabasca including in the proposal proceedings currently underway under the BIA. Further, JMAC's counsel ensured that the SISP and the Order granted December 12, 2023, both reflected JMAC's position with respect to the applicability of its ROFR rights under the Operating Agreement.
63. Approving the Transaction and RVO in advance of a determination of JMAC's ROFR rights in the US Proceedings carries a real and substantial risk that JMAC would be deprived of its rights under the Operating Agreement.
64. JMAC submits that lifting the stay to allow for a determination of its ROFR rights in the US Proceedings is necessary and required in the circumstances to prevent it from being materially prejudiced by the possibility of losing its negotiated ROFR rights. Further, JMAC's submits that lifting the stay would be consistent with the intention of preserving JMAC's ROFR rights in both the SISP and the December 12, 2023, Order.

CONCLUSION

65. In summary:

- (a) There is a substantial risk that this Court, by approving the Transaction and RVO in advance of the completion of the US Proceedings, irreparably harms JMAC by indirectly making a determination regarding its negotiated ROFR rights under the Operating Agreement;
- (b) The application of the Companies to approve the sale to Badger and the RVO should be stayed until a determination of JMAC's ROFR has been made in the US Proceedings; and
- (c) Athabasca and other interested stakeholders will not be harmed should this Honourable Court grant the stay.

RELIEF REQUESTED

66. An Order:

- (a) Abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
- (b) Setting aside or alternatively, staying the sale to Badger;
- (c) Recognizing and giving effect to JMAC's ROFR in the event the United States Federal Court determines that Athabasca Minerals Inc. improperly failed to honour that right;
- (d) Lifting the Stay of proceedings against Athabasca imposed by S. 69(1) of *the Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 and allowing JMAC to proceed with the action filed by JMAC in the United States District Court, District of North Dakota identified by Civil Action No. 1:24-cv-037; and
- (e) Such further and other relief as counsel may seek and this Honourable Court deem just.

67. Solicitor-client costs or alternatively, party-party costs on an enhanced basis;

68. Such further and other relief as this Honourable Court may deem just.

Submitted this 29th day of February, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

FIELD LLP

A handwritten signature in black ink, appearing to be 'D. R. O.', written in a cursive style.

Per: _____

TABLE OF AUTHORITIES

1. Alberta Rules of Court, [Reg 124/2010](#)
2. R. v. Barrette, [1976 CanLII 180 \(SCC\)](#)
3. Lameman v. Alberta, [2011 ABQB 40](#)
4. Attila Dogan Construction v AMEC Americas Limited, [2015 ABQB 120](#)
5. Canadian Natural Resources Limited v. Encana Oil & Gas Partnership, [2007 ABQB 460](#)
6. Blaze Energy Ltd v Imperial Oil Resources, [2014 ABQB 326](#)
7. Consolidated-Bathurst v. Mutual Boiler, [1979 CanLII 10 \(SCC\)](#), [\[1980\] 1 SCR 888](#)