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DOCUMENT	<u>BENCH BRIEF</u>

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**BENCH BRIEF OF KSV RESTRUCTURING INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE PROPERTIES, ASSETS AND UNDERTAKINGS
OF CCR TECHNOLOGIES LTD.**

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I. INTRODUCTION AND BACKGROUND

1. Pursuant to an order of the Court of King's Bench of Alberta (the "**Court**") dated June 7, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. (the "**Receiver**") was appointed Receiver of the assets, undertakings and properties (apart from the Excluded Property, as defined in the Receivership Order) (collectively, the "**Property**") of CCR Technologies Ltd. ("**CCR**"). The Receivership Order expressly authorizes the Receiver to market and sell the Property.
2. The Receiver has entered into an asset purchase agreement (the "**Unit 1 APA**") with Carbon Capture and Reclaiming Services Ltd. (the "**Purchaser**") and filed the present Application for a Sale Approval and Vesting Order ("**SAVO**") and related relief, set to be heard on December 12, 2024.
3. The Property to be sold by way of the Unit 1 APA, among other things, includes various tangible and intangible property (including tractors, trailers, miscellaneous inventory, intellectual property and CCR's current interest in a leasehold facility located near Brooks, Alberta (the "**Brooks Lease**").
4. CCR was engaged in the business of chemical reclamation, utilizing proprietary technology for solvent reconditioning and reclamation in order to remove impurities from chemicals. CCR carried out a portion of its work from the premises comprising the Brooks Lease. In order to operate its business from the Brooks Lease, CCR obtained and continues to hold an "Approval", granted by Alberta Environment and Parks ("**AE&P**") in compliance with environmental requirements under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ("**EPEA**") (the "**Approval**").
5. For the Purchaser to make best use of the Property acquired under the Unit 1 APA, the Approval must be transferred from CCR to the Purchaser, so that the Purchaser can continue operations. The typical process to transfer an Approval is set out under the *EPEA*, which states that a person must seek approval from the Director (the Director being a person designated by the Minister) in order to have an Approval transferred.
6. The requirements for transfer of an Approval do not expressly apply to a Court-appointed receiver. The Receiver submits the proposed transaction, including transfer of the Approval to the Purchaser, is within the jurisdiction of this Honourable Court. The proposed transaction meets all of the *Soundair* principles (further described, below), is in the best interests of the estate stakeholders, and creates no prejudice to any person or entity, including the AE&P.

II. RELIEF SOUGHT

7. The Receiver respectfully seeks approval of the SAVO, including a direction that the Approval be transferred to the Purchaser concurrently with the Purchaser's acquisition of the Property described in the Unit 1 APA.
8. The Receiver seeks ancillary relief, including a temporary Sealing Order in respect of portions of the Unit 1 APA, containing commercially sensitive information.

III. LAW AND ARGUMENT

a. The proposed transaction meets all of the *Soundair* factors

9. Any sale process must be assessed with retrospective view to the *Soundair* factors¹:
 - (a) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently;
 - (b) whether the interests of all parties have been considered;
 - (c) the efficacy and integrity of the process by which offers have been obtained; and
 - (d) whether there has been unfairness in the working out of the process.
10. Ultimately, the Court must look at the proposed transaction as a whole and determine whether it is appropriate, fair and reasonable in the circumstances and thus ought to be approved.
11. In this case, two Sale Approval and Vesting Orders (the Unit 4 APA and the Unit 7 APA) have previously been granted, as a result of the Receiver's marketing efforts for the Property.
12. The Receiver's sale process was extensive, including the following activities²:
 - (a) identifying Canadian and US operators and other strategic parties and issuing a teaser document, setting out the acquisition opportunities;
 - (b) coordinating a virtual data room and non-disclosure agreements, for interested parties to conduct due diligence;
 - (c) setting and working toward a series of offer deadlines for different asset packages;
 - (d) facilitating access to information and site visits for inspections of tangible property;
 - (e) receipt and review of offers, identifying and working with successful bidders (including the Unit 4 Purchaser and Unit 7 Purchaser, as defined in the First Report), and other stakeholders; and
 - (f) extending the sale process for remaining assets, after completing initial sales, and working with prospective purchasers on an ongoing basis.
13. The Unit 4 APA and Unit 7 APA disposed of specific tangible assets, comprised particularly of mobile units used in chemical reclamation processes and associated equipment. The Unit 1 APA, if approved, will now dispose of virtually all remaining tangible assets of CCR, including the Brooks Lease.

¹ *Royal Bank v Soundair Corp.*, (1991), 4 OR (3d) 1 (CA), at para 16 [**Soundair**] – **TAB 1**

² All as described in the Receiver's First Report, dated October 7, 2024 [**First Report**], and Receiver's Second Report, dated December 3, 2024 [**Second Report**].

14. The only “Excluded Assets”, under the Unit 1 APA, are certain patents owned by CCR. These are subject of ongoing sale negotiations and are expected to be sold by the Receiver in due course.
15. Importantly, the sale of substantially all remaining assets of CCR, including the Brooks Lease, wraps up this small estate in an effective manner, for a price the Receiver confirms is provident, and supported by the substantial additional value noted in the Purchaser’s assumption of all environmental liabilities.
16. In the Receiver’s submission, there is no better alternative than the sale proposed under the Unit 1 APA, inclusive of the assignment to the Purchaser of the Approval.

b. The regulatory structure relating to the Approval and assignment by the Receiver

17. The *EPEA* and its underlying regulations outline the process for transfer of an Approval. Section 75(1) of the *EPEA* states that, “No person shall transfer, sell, lease, assign or otherwise dispose of an approval or registration except in accordance with the regulations” (emphasis added).
18. Section 11(1) of the *Approvals and Registrations Procedure Regulation*, Alta Reg 113/1993 (“**ARPR**”) provides three basic requirements³:
 - 11(1) No transfer, sale, lease, assignment or other disposition of an approval or registration is valid without the prior written consent of the Director.
 - (2) Except where the Director prescribes otherwise under section 75(2) of the Act, the transferor must comply with the terms and conditions of the approval or registration until the approval or registration is transferred.
 - (3) Where, pursuant to a regulation under the Act, security or insurance is required in respect of an activity, the Director may not approve a transfer, sale, lease, assignment or other disposition of the approval or registration in respect of the activity until he is satisfied that the security or insurance has been provided by the transferee.
19. Applied to CCR, a transfer of the Approval requires consent of the Director; CCR must comply with the terms and conditions of the Approval until the Approval is transferred; and the existing security (which is held by AE&P in form of a letter of credit issued by CIBC), must be in place.
20. The Receiver confirms CCR is in compliance with the terms and conditions of the Approval, and confirms the existing security, that is a CIBC letter of credit, is in place. The only uncertain requirement, in respect of transferring the Approval, is the pre-requisite of consent.
21. It is submitted that the Receiver, by virtue of its role, office and function, is not obligated to seek consent prior to transfer. The consent requirement would apply to a business owner, but not . This follows several considerations.
22. First, the operative *EPEA* provision is that no *person* shall transfer an approval, except in accordance with the regulations⁴.

³ *ARPR*, at section 11(1) – **TAB 2**

⁴ *EPEA*, at section 75(1) – **TAB 3**

23. "Person" is not defined under the *EPEA*. A person is defined under the *Canada Business Corporations Act*, RSC 1985 c C-44 as an individual, partnership, association, body corporate, or personal representative. This definition does not contemplate the Court of King's Bench, nor a receiver as the Court's officer.
24. This assertion is supported by the fact "person responsible" is defined under the *EPEA*. Person responsible includes an owner or previous owner of a substance or thing, every person who has charge, management or control of a substance or thing, and further includes "any successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subclause (i) or (ii)" – so the *EPEA* clearly includes a receiver, receiver-manager and trustee, as a "person responsible", but does not include a receiver, receiver-manager or trustee for any other purpose under the *EPEA*, including as a "person".
25. A person responsible, under the *EPEA*, has certain prescribed obligations, particularly concerning release of substances and environmental protection orders. There is no reference or connection to a "person responsible", in respect of a transfer of an Approval. Whereas, the legislation expressly includes receivers and trustees for certain limited purposes, it conspicuously excludes receivers and trustees from the scope of operating approvals.
26. This contrast was observed by the Supreme Court of Canada, in the *Redwater* decision. The regulatory structure in Alberta, as it relates to licensing of oil and gas wells, includes the *EPEA*, the *Oil and Gas Conservation Act*, RSA 2000, c O-6 ("**OGCA**") and the *Pipeline Act*, RSA 2000, c P-15. Under the *OGCA* and *Pipeline Act*, a "licensee" is defined to include a receiver, receiver-manager, trustee or liquidator of property of any licensee. The express reference to a receiver, as a licensee, has implications on the applicability of the regulatory regime in insolvency proceedings. This was described by the Supreme Court in *Redwater*, as follows⁵:

The *OGCA*, the *Pipeline Act* and the *EPEA* all contemplate that a licensee's regulatory obligations will continue to be fulfilled when it is subject to insolvency proceedings. The *EPEA* achieves this by including the trustee of a licensee in the definition of "operator" for the purposes of the duty to reclaim (s. 134(b)(vi)). The *EPEA* also specifically provides that an order to perform reclamation work (known as an "environmental protection order") may be issued to a trustee (ss. 140 and 142(1)(a)(ii)). The *EPEA* imposes responsibility for carrying out the terms of an environmental protection order on the person to whom the order is directed (ss. 240 and 245). However, absent gross negligence or wilful misconduct, a trustee's liability in relation to such an order is expressly limited to the value of the assets in the bankrupt estate (s. 240(3)). The *OGCA* and the *Pipeline Act* take a more generic approach to applying the various obligations of licensees to trustees in the insolvency context: they simply include trustees in the definition of "licensee" (*OGCA*, s. 1(1)(cc); *Pipeline Act*, s. 1(1)(n)). As a result, every power which these Acts give the Regulator against a licensee can theoretically also be exercised against a trustee. [Emphasis added.]
27. In the result, the regulatory regime for oil and gas wells, as governed by the Alberta Energy Regulator, expressly applies to receivers of Licensees, as receivers are deemed to be Licensees. By contrast, the regulatory regime for "approvals" under the *EPEA*, does not have the same definition. The inclusion of receivers under the *EPEA* provisions is expressly more limited.

⁵ *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5 [**Redwater**], at para 21 – **TAB 4**

28. This is not to say the Receiver seeks broadly to avoid any regulatory requirements under the EPEA. To the contrary, the Receiver proposes to act within the regulatory structure, but submits simply that the Receiver is not restricted in its ability to transfer an Approval. In the Receiver's submission, the transfer can and ought to be effected, in this case, at the Receiver's request.

c. The Receiver's proposed transfer of the Approval is supported at law

29. The recent receivership of *Urbancorp Cumberland 1 GP Inc. (Re) ("Urbancorp")*⁶, provides review and confirmation of the basis upon which a Court-appointed receiver can effect the transfer of a debtor's interests, notwithstanding absence of consent of an affected counterparty.
30. In *Urbancorp*, a commercial landlord was opposed to the assignment of a debtor's lease by a receiver. The landlord argued the Court-appointed receiver has no statutory authority to effect an assignment, absent consent. As noted by the Court, "s. 84.1 of the *Bankruptcy and Insolvency Act* ("BIA") and s. 11.3 of the *Companies' Creditors Arrangement Act* ("CCAA") ... provide the court, in bankruptcy and CCAA proceedings, with statutory jurisdiction to make an order assigning a debtor company's rights and obligations under an agreement, on notice to every party to the agreement and to the court officer."⁷
31. The receiver's application was granted. The Court held there is jurisdiction for a receiver to assign an agreement, particularly where the same is required for the efficacy of a sale transaction within the context of the receivership. *Urbancorp* also considered the unfavourable alternative, should the lease in that case not be assigned, this being a presumed bankruptcy, relying on section 84.1(1) of the BIA to seek the assignment, unwanted delay and unnecessary added costs.⁸
32. The Court in *Urbancorp* adopted a purposive approach to the issue, and noted the importance of harmonizing, to the extent possible, the Canadian insolvency regimes. The aim of the receiver is to prevent loss of value and to maximize realizations for the estate. The Court noted that section 243(1) of the BIA, under which national receivers are appointed, provides: "243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so: ..."⁹
33. The Court additionally noted that, "If the Transaction flounders as a result of the inability to assign the Berm Lease, the result would clearly be harmful to creditors."¹⁰
34. In the case at bar, the Receiver has broad powers under the Receivership Order, including to enter settlements, compromises, agreements and assignments. The Receiver's powers, in every case, are intended to enable the Receiver to accomplish an effective, efficient realization, with greatest benefit to affected stakeholders.
35. By completing the sale expressed under the Unit 1 APA, the Receiver will not only bring proceeds into the estate, it will resolve what is otherwise an operating facility with known environmental

⁶ *Urbancorp Cumberland 1 GP Inc (Re)*, 2020 ONSC 7920 – **TAB 5**

⁷ *Urbancorp*, at para 20.

⁸ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 84.1(1) – **TAB 6**

⁹ *Urbancorp*, at para 30.

¹⁰ *Urbancorp*, at para 27.

exposures – this is demonstrated in the fact AE&P conducts periodic reviews and requires cash or letter of credit security, to ensure environmental risks are adequately mitigated.

36. If the Receiver is unable to close the Unit 1 APA transaction, the estate not only loses the return of sale proceeds, but remains saddled with the assets (which otherwise have a carrying cost and may not be capable of alternative sale), and remains burdened by the environmental liability, which would persist as a priority interest, ahead of creditors.
37. By contrast, if the transaction is approved, there is no prejudice to any person or entity. The assets are monetized, the environmental liability is assumed by a solvent new purchaser as counterparty, the AE&P continues with the *status quo* arrangement – so is not worse off, and in fact can only have an improved position, by having a new operator in place. Moreover, there are no existing monetary defaults (that is, the Receiver does not seek to transfer an agreement that is “in arrears”), and the Receiver is not seeking to extinguish or limit any rights.
38. The Receiver is accordingly strongly supportive of the proposed transaction, inclusive of the assignment, as it results in significantly more value to the estate than just proceeds, and no detriment to any party.

IV. CONCLUSION

39. The Receiver respectfully seeks the granting of the proposed SAVO, inclusive of the assignment.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF DECEMBER, 2024, BY

DENTONS CANADA LLP, counsel for the Receiver

Per: 

Derek Pontin

TABLE OF AUTHORITIES

<u>TAB</u>	<u>AUTHORITY</u>
1.	<i>Royal Bank v Soundair Corp</i> , (1991), 4 OR (3d) 1 (CA)
2.	<i>Approvals and Registrations Procedure Regulation</i> , Alta Reg 113/93
3.	<i>Environmental Protection and Enhancement Act</i> , RSA 2000, c E-12, s 75
4.	<i>Orphan Well Association v. Grant Thornton Ltd.</i> , 2019 SCC 5
5.	<i>Urbancorp Cumberland 1 GP Inc. (Re)</i> , 2020 ONSC 7920
6.	<i>Bankruptcy and Insolvency Act</i> , RSC 1985, s 84.1