

COURT FILE NUMBER 1601-13686

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

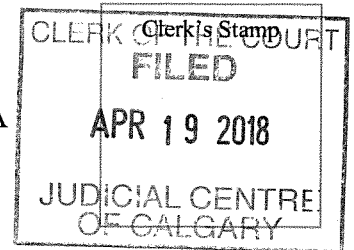
PLAINTIFF FACTORS WESTERN INC.

DEFENDANT CANADIAN NATURAL RESOURCES LIMITED

DOCUMENT **APPLICATION TO AMEND STATEMENT OF CLAIM
TO ADD DCR INC. AS PLAINTIFF**

APPLICANTS HARDIE & KELLY INC., in its capacity as Court-appointed
Receiver and Bankruptcy Trustee of DCR Inc.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Suite 2500, 450 - 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Randal Van de Mosselaer
Telephone: (403) 260-7060
Facsimile: (403) 260-7024
Email: rvandemosselaer@osler.com
File Number: 1181049



NOTICE TO RESPONDENT:

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master.

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

Date: April 24, 2018
Time: 10:00 a.m., or as soon after as counsel may be heard
Where: Calgary Courts Center, 601 – 5th Avenue SW, Calgary AB
Before Whom: Master in Chambers

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

Remedy claimed or sought:

An Order:

1. Substantially in the form attached as **Schedule “A”** hereto granting Hardie & Kelly Inc., in its capacity as Court-appointed Receiver and Bankruptcy Trustee (the “**Receiver**”) of DCR Inc. (“DCR”) leave to amend the Statement of Claim filed in the within Action to add the Receiver as a plaintiff pursuant to Rules 3.62 and 3.74 of the Alberta *Rules of Court*, Alta. Reg. 124/2010 (the “**Rules**”);
2. Granting the Receiver costs of this Application against Canadian Natural Resources Limited (“**CNRL**”) under Column 5 of Schedule C to the Rules; and
3. Such further and other relief as counsel may advise and this Honourable Court deems just.

Grounds for making this application:

4. Factors Western Inc. (“**Factors Western**”) is the assignee of all accounts receivable owing to DCR by CNRL pursuant to a General Assignment Letter dated March 26, 2010, between Factors Western and DCR (the “**Assignment Letter**”).
5. Factors Western filed a Statement of Claim against CNRL in the within Action for unpaid amounts owing by CNRL to DCR pursuant to the terms of a Master Agreement between CNRL and DCR, dated February 25, 2010 (the “**Master Agreement**”).
6. CNRL defended Factors Western’s claim, in part, on the basis that DCR was not permitted to assign the Master Agreement nor transfer or assign any payment due to DCR under the Master Agreement without the prior written consent of CNRL. The Statement of Defence alleges that DCR did not obtain CNRL’s consent to the assignment of the accounts receivable to Factors Western and that, as a result, the purported assignment is not valid or binding on CNRL.
7. On March 22, 2018, CNRL filed an application for an order dismissing Factors Western’s claim against it on the same basis as that alleged in the Statement of Defence – namely, that the assignment of the accounts receivable to Factors Western was not binding on CNRL since DCR was not permitted to assign the Master Agreement nor transfer or assign any payment due under the Master Agreement without the prior written consent of CNRL.
8. Whether or not the Assignment Letter is valid or binding on CNRL impacts only to whom the receivable is owed, not the existence or validity of the receivable.
9. The amounts claimed by Factors Western in the Statement of Claim are owing either to Factors Western or, if the Assignment Letter is invalid as against CNRL, to the Receiver.

10. The Receiver has requested CNRL's consent to an amendment to the Statement of Claim to add the Receiver as a plaintiff in the Action. CNRL has refused to consent to such an amendment.
11. The Receiver is a proper party to the Action.
12. The Receiver consents to being added as a plaintiff in the Action.

Material or evidence to be relied on:

13. The pleadings in the Action; and
14. The Second Report of the Receiver, filed April 19, 2018.

Applicable rules:

15. Rules 1.2, 3.62, 3.66, 3.74; and
16. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

17. *Judicature Act*, RSA 2000, c J-2; and
18. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

19. Nil.

How the application is proposed to be heard or considered:

20. Before a Master in Chambers.

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.

Schedule "A"

COURT FILE NUMBER 1601-13686

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF FACTORS WESTERN INC.

DEFENDANT CANADIAN NATURAL RESOURCES LIMITED

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
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Calgary, AB T2P 5H1
Solicitor: Randal Van de Mosselaer
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Email: rvandemosselaer@osler.com
File Number: 1181049

DATE ON WHICH ORDER WAS PRONOUNCED: April 24, 2018

NAME OF MASTER WHO MADE THIS ORDER: Master

LOCATION OF HEARING: Calgary Courts Center
601 – 5th Avenue SW
Calgary, Alberta

UPON THE APPLICATION OF Hardie & Kelly Inc., in its capacity as Court-appointed Receiver and Bankruptcy Trustee (the "Receiver") of DCR Inc. ("DCR"); **AND UPON** reviewing the Second Report of the Receiver, filed April 19, 2018; **AND UPON** noting the consent of the Receiver to being added as a Plaintiff in the Action; **AND UPON** hearing from counsel for the Receiver, Factors Western Inc. and Canadian Natural Resources Limited ("CNRL"); **IT IS HEREBY ORDERED THAT:**

1. The Receiver has leave to amend the Statement of Claim filed in the within Action by filing an Amended Statement of Claim in the form attached hereto as Schedule "A".
2. Following service of the Amended Statement of Claim by the Receiver in accordance with Rule 3.62(2) of the Alberta *Rules of Court*, Alta Reg 124/2010 (the "Rules"), CNRL shall have 20 days to file and serve an Amended Statement of Defence.
3. CNRL shall pay the Receiver costs of this Application under Column 5 of Schedule C to the Rules in the amount of \$1,500.

Master of the Court of Queen's Bench of Alberta

SCHEDULE "A"

FORM 10
[RULE 3.25]

Clerk's stamp:

COURT FILE NUMBER: 1601-13686

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

PLAINTIFF: **FACTORS WESTERN INC.**
HARDIE & KELLY INC., in its capacity as Court-appointed Receiver and Bankruptcy Trustee of DCR Inc.

DEFENDANT: **CANADIAN NATURAL RESOURCES LIMITED**

DOCUMENT: **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: **For Factors Western Inc:**
Doug Nishimura
Field LLP
Barristers and Solicitors
400, 604 – 1st Street S.W.
Calgary, AB T2P 1M7
Ph: (403) 260-8543 Fax: (403) 264-7084
File No. 62370-1

For Hardie & Kelly Inc., in its capacity as Court-appointed Receiver and Bankruptcy Trustee of DCR Inc.:
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Suite 2500, 450 - 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Randal Van de Mosselaer
Telephone: (403) 260-7060
Facsimile: (403) 260-7024
Email: rvandemosselaer@osler.com
File Number: 1181049

NOTICE TO DEFENDANT(S)

You have been sued. You are a Defendant.

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

Statement of facts relied on:

Parties

1. The Plaintiff, Factors Western Inc. ("**Factors Western**") is a corporation incorporated pursuant to the laws of Alberta, which has a head office in Calgary, Alberta and which carries on business in Alberta and elsewhere.
2. The Plaintiff, Hardie & Kelly Inc. (the "Receiver") was appointed receiver and manager of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof, of DCR Inc. ("DCR") (among others) pursuant to the Order of the Honourable Mr. Justice D.B. Nixon, granted November 4, 2016. On May 4, 2017, DCR (among others) was assigned into bankruptcy and the Receiver was appointed bankruptcy trustee.
3. The Defendant, Canadian Natural Resources Limited ("**CNRL**") is a corporation incorporated pursuant to the laws of Alberta, which has a head office in Calgary, Alberta and which carries on business in Alberta and elsewhere.

Background

4. DCR and CNRL are party to a Master Goods and Services Agreement, dated February 25, 2010 (the "**Master Agreement**") pursuant to which DCR agreed to provide CNRL with bitumen production fueling, fuel tank relocation and re-installation, and plant 21 MDP discharge pipeline relocation for the Horizon Oil Sands project.
5. Pursuant to a General Assignment Letter dated March 26, 2010, between Factors Western and DCR ^ (the "**Assignment Letter**"), DCR assigned all accounts receivable owing from CNRL to DCR pursuant to the Master Agreement ^^.
6. CNRL has approved DCR invoices under the Master Agreement totaling \$65,129,045.03, but to date, CNRL has only paid the sum of \$59,859,014.34 pursuant to those above invoices.

7. A further amount of \$1,260,444.96 was invoiced by DCR, but has not been approved or paid by CNRL.
8. Factors Western and the Receiver are in possession of a new invoice for previously un-invoiced expenses for reimbursable camps and/or flights in the amount of \$219,049.09, which expenses are reimbursable to DCR by CNRL under the Master Agreement.
9. Pursuant to the foregoing, as of October 14, 2016, CNRL owed DCR the total sum of \$6,749,497.74 plus applicable interest and costs [^] . [^] These amounts are due and owing to Factors Western pursuant to the Assignment Letter.
10. In the Alternative, if the Assignment Letter was ineffective to assign to Factors Western all accounts receivable owing by CNRL to DCR pursuant to the Master Agreement, such amounts are due and owing to the Receiver.
11. A demand was issued by Factors Western to CNRL on July 27, 2016. CNRL has neglected or refused to respond to the demand.

Trial

12. The Plaintiffs states that the trial of this action will take less than 25 days and propose[^] that such trial take place in Calgary, Alberta.

Remedies sought:

13. [^] The Plaintiffs hereby seek[^]:
 - a. Judgment against CNRL in the amount of \$6,749,497.74 plus interest at the rate of 15% per annum from the date of advance;
 - b. Costs on a solicitor and his own client basis, or alternatively, on a party and party basis; and

- c. Such further and other relief as counsel may seek and this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S):

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the Office of the Clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiff's (s') address for service.

WARNING:

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve or are late in doing either of these things, a court may give a judgment to the Plaintiff(s) against you.