

BANKRUPTCY NO. 25-1436014

Form 27
[Rule 6.3]

COURT QUEEN'S BENCH OF ALBERTA,
IN BANKRUPTCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE
BANKRUPTCY OF PIIKANI
ENERGY CORPORATION;

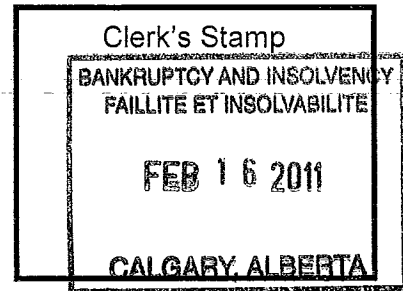
AND IN THE MATTER OF THE
BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, c. B-3, AS
AMENDED.

PLAINTIFF(S) ALGER & ASSOCIATES INC., IN
ITS CAPACITY AS TRUSTEE OF
PIIKANI ENERGY CORPORATION

DEFENDANT(S) 607385 ALBERTA LTD.,
STEPHANIE HO LEM and DALE
MCMULLEN

DOCUMENT **APPLICATION BY ALGER &
ASSOCIATES INC., IN ITS
CAPACITY AS TRUSTEE OF
PIIKANI ENERGY CORPORATION**

ADDRESS FOR
SERVICE AND
CONTACT **CARON & PARTNERS LLP**
INFORMATION OF
PARTY FILING THIS
DOCUMENT Barristers & Solicitors
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File No.: 43387-001



NOTICE TO RESPONDENT(S):

607385 ALBERTA LTD., STEPHANIE HO LEM and DALE MCMULLEN

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

You have the right to state your side of this matter before the Court.

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

Date: February 22, 2010
Time: ✓ 10:00 ✓ 4:10
9:00 a.m.
Where: Calgary Courts Centre
North Tower, 501-6th Street SW, Calgary, Alberta
Before Whom: The Honourable Mr. Justice R.A. Graesser

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

Remedy claimed or sought:

1. An Order pursuant to Sections 2, 4, 95, 96, 98, 243(1)(c), 248, 249 and/or 250 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") to set aside the specific preferences and/or transfers at undervalue made by Piikani Energy Corporation ("PEC") to Stephanie Ho Lem ("Ho Lem") and Dale McMullen ("McMullen"), and to recover such money or proceeds, which are deemed under the BIA to be property of the Trustee, Alger & Associates Inc. ("Alger" or the "Trustee").

Grounds for making this application:

2. PEC was insolvent at the time that such preferences and/or transfers at undervalue were made by PEC;

3. PEC has made payments that *prima facie* constitute preferences or transfers at undervalue to members of its Board of Directors, namely, Ho Lem and McMullen;

4. On December 18, 2009, PEC made a payment, described as a "base annual retainer" payment, of \$150,000.00 to Ho Lem, through her numbered company, 607385 Alberta Ltd. ("607385") pursuant to an Agreement for Services dated January 1, 2009, between Ho Lem and PEC (the "Ho Lem Agreement"). On July 6, 2010, in its capacity as Receiver of PEC, Alger demanded repayment of \$73,150.00 of such payment (the "Ho Lem Payment") pursuant to each of the BIA and the *Fraudulent Preferences Act*, R.S.A. 200, c. F-24, as amended (the "FPA");

5. On December 18, 2009, PEC made a further payment, described as a "severance payment", of \$240,000.00 to McMullen (the "McMullen Payment"), pursuant to an Employment Agreement dated February 1, 2009 (the "McMullen Agreement"), between PEC and McMullen (each of the Ho Lem Payment and McMullen Payment shall be collectively referred to as the

"Transactions"). On July 6, 2010, in its capacity as Receiver of PEC, Alger demanded repayment of the \$240,000.00 McMullen Payment pursuant to each of the *BIA* and the *FPA*;

6. The respective Transactions took place within less than twelve (12) months of November 29, 2010, the date of the "initial bankruptcy event", as defined in Section 2 of the *BIA*, which in this case is the date on which Alger assigned PEC into bankruptcy pursuant to the *BIA*;

7. This Honourable Court specifically authorized Alger to assign PEC into bankruptcy by its Order dated November 24, 2010;

8. The Transactions occurred at a time when PEC was an "insolvent person" as defined by the *BIA*. In particular, at the time of the Transactions, PEC was a person who was not bankrupt and who resided, carried on business and/or had property in Canada, and whose liabilities to creditors provable as claims under the *BIA* are more than one thousand dollars; and who is unable to meet its obligations as they generally become due; and who has ceased paying its current obligations in the ordinary course of business as they generally become due; and the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

9. The Trustee held the First Meeting of Creditors of PEC on December 14, 2010. Only one Proof of Claim was received by the Trustee prior to such meeting from Pikani Investment Corporation ("PIC"), Inspectors were not appointed and the meeting was adjourned *sine die*;

10. The Trustee has conducted an investigation and has established that PEC was an "insolvent person", within the meaning of the *BIA*, at the time of the Transactions;

11. The Trustee has confirmed that each of Ho Lem and McMullen, as creditors of PEC, received a preference at the time of the Transactions, the effect of which was that Ho Lem and McMullen each received a respective preference not accorded to other creditors of PEC, which respective payments were made, incurred, taken or suffered with a view to give each of Ho Lem and McMullen a preference;

12. The Investigator's Preliminary Report on the Financial Affairs of PIC dated November 30, 2009 (the "Preliminary Report"), particularly, the results of the investigation into Receipts

and Disbursements made by PEC during the period of July 15, 2005 to October 31, 2009; the Summary of Professional and Management Fees as at October 31, 2009; and the Estimated Financial Position of PEC as at October 31, 2009, revealed that PEC, as at October 31, 2009, had an estimated shortfall totaling the sum of \$2,988,608.00; and

13. The First Report of the Conservator of PEC (the "Conservator") dated January 7, 2010, concluded that it was apparent that there had been a number of large payments made by PEC at a time when PEC was insolvent, and as such, these payments *prima facie* constituted fraudulent preferences to parties not "dealing with each other at arm's length" within the meaning prescribed under Section 4 of the *BIA*.

Material or evidence to be relied on:

14. The pleadings and proceedings had and taken in this action;

15. The PEC Receivership Order dated May 20, 2010;

16. Each of the Reports of the Investigator and Conservator, including, *inter alia*, the Investigator's Preliminary Report dated November 30, 2009, the Conservator's First Report dated January 7, 2010, the Conservator's Second Report dated May 14, 2010, the Receiver's First Report dated September 15, 2010; and, the Receiver-Manager's Second Report and the Investigator's Third Report, each dated December 22, 2010;

17. The Order of the Honourable Mr. Justice R.A. Graesser dated November 24, 2010;

18. The PEC Assignment into Bankruptcy dated November 29, 2010;

19. The Affidavit of Bruce Alger, Trustee of PEC, dated February 15, 2011; and

20. Such further and other material as counsel may advise and that this Honourable Court may permit under the circumstances.

Applicable Rules:

21. Rule 6.3 and 6.9(1)(a) of the *Alberta Rules of Court*.

Applicable Acts and regulations:

22. Sections 2, 4, 95, 96, 98, 243(1)(c), 248, 249 and/or 250 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

Any irregularity complained of or objection relied on:

23. Nil

How the application is proposed to be heard or considered:

24. 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 Applicant.