

COURT FILE NUMBER 2001-08434
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
MATTER IN THE MATTER OF SECTION 192 OF THE CANADA
BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS
AMENDED



AND IN THE MATTER OF A PROPOSED ARRANGEMENT
OF 12178711 CANADA INC., CALFRAC WELL SERVICES
LTD., CALFRAC (CANADA) INC., CALFRAC WELL
SERVICES CORP. and CALFRAC HOLDINGS LP, by its
General Partner CALFRAC (CANADA) INC.

APPLICANT WILKS BROTHERS, LLC
RESPONDENTS 12178711 CANADA INC., CALFRAC WELL SERVICES LTD.,
CALFRAC (CANADA) INC., CALFRAC WELL SERVICES
CORP. and CALFRAC HOLDINGS LP, by its General Partner
CALFRAC (CANADA) INC.

DOCUMENT **APPLICATION BY WILKS BROTHERS, LLC FOR LIMITED
PRODUCTION OF TRANSACTION DOCUMENTS
REFERENCED IN SECOND MATHISON AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS DOCUMENT
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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 Court.

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

Date: September 30, 2020

Time: 10:00 AM

Where: Calgary Courts Centre
601 - 5 Street S.W., Calgary, Alberta (Via Webex)

Before Whom: The Honourable Mr. Justice D.B. Nixon

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

Remedy claimed or sought:

1. The Applicant, Wilks Brothers, LLC ("**Wilks**"), seeks an Order in the form appended as **Schedule "A"** hereto for the limited production from the Respondents (collectively, "**Calfrac**") of certain non-privileged records relevant to Calfrac's proposed recapitalization transaction (the "**Relevant Transaction Documents**").
2. Order(s) deeming service and notice good and sufficient on all interested parties and abridging the time for service to that actually given; or if necessary dispensing with service;
3. Costs on such basis as this Honourable Court may determine; and
4. Such further or other relief as this Honourable Court may deem just.

Grounds for making this Application:

(a) Background for Application

5. Calfrac has applied to this Court for approval of a proposed Plan of Arrangement (which it has termed the "**Recapitalization Transaction**") under section 192 of the *Canada Business Corporations Act* ("**CBCA**").
6. The key issue before the Court at the final hearing is the fairness of the Recapitalization Transaction. The principle of fairness concerns not only the Plan of Arrangement itself, but also the litigation process by which this legal standard of fairness is tested.
7. Calfrac had originally scheduled a final hearing on the Recapitalization Transaction for September 30, 2020. As a result, Wilks and Calfrac negotiated and agreed upon a litigation schedule that included deadlines for expert evidence, examinations and briefing.
8. In the context of the litigation schedule and to assist Wilks' experts with their analysis of the Recapitalization Transaction, on September 10, 2020 Wilks sought customary limited production from Calfrac of relevant transaction documents and materials. Wilks' initial, reasonable requests for relevant documents, were denied by Calfrac without explanation.
9. On September 18, 2020, Wilks delivered in good faith a follow up request to Calfrac for such production. Production requests in a contested restructuring proceeding are generally worked

out among the parties, rendering costly applications to the Court by the affected stakeholder, unnecessary.

10. Under the guise of purporting to consider the follow-up request from Wilks, counsel for Calfrac requested some additional time to respond. That did not seem unusual and Wilks afforded Calfrac the professional courtesy. However, it is now clear that the additional time was not requested to actually consider the request in good faith, but rather to prepare an application seeking to prevent the Company's largest stakeholder (Wilks is Calfrac's second largest shareholder) from obtaining **any** access to Calfrac's Relevant Transaction Documents. That application was delivered to Wilks without any notice on September 22, 2020 (the "**No Production Application**").
11. Calfrac's No Production Application seeks to prevent Wilks from obtaining the Relevant Transaction Documents, thereby foreclosing Wilks' fundamental rights to procedural fairness, and to prejudice the process of a fair hearing of the Final Application.
12. In light of the No Production Application suddenly brought by Calfrac, Calfrac's failure to engage with Wilks in any good faith discussions on a limited scope production, and the final hearing on the Recapitalization Transaction to be held within weeks. Wilks has been forced to bring this Application for access to the Relevant Transaction Documents to protect its rights and ensure a fair process.

(b) Current Status of Calfrac's Recapitalization Transaction

13. As is customary in the context of a proposed CBCA restructuring, independent shareholder advisory firms, Glass Lewis & Co. ("**Glass Lewis**") and Institutional Shareholder Services ("**ISS**") conduct detailed analyses and provide recommendations to shareholders on the fairness of a proposed transaction. Notably, both Glass Lewis and ISS have come out strong against the approval of Calfrac's Recapitalization Transaction.
14. Glass Lewis' report provided:

"In light of the formal launch of the Wilks Offer ... and the Company's announcement ... that the Calfrac special committee and board will review the Wilks Offer, file a circular and make a recommendation to shareholders with respect to the Wilks Offer in due course, at this time, in order to preserve the ability of shareholders to potentially tender into and accept the Wilks Offer, **we believe unaffiliated Calfrac shareholders should vote against the Recapitalization Transaction currently proposed by the board and management.** As noted above, the Wilks Offer is not available if the Recapitalization Transaction proceeds". *(emphasis added)*

...

Given the current financial position and prospective performance of Calfrac going forward, we are inclined to suggest that an immediate, all-cash payment at a price representing a premium to Calfrac's unaffected and current share prices -- **and a value that is roughly six times greater than the estimated initial value under the Recapitalization Transaction** -- may reasonably represent a superior alternative for

Calfrac's common shareholders, especially when considering the risk and uncertainty inherent in the Company's business plan and the Recapitalization Transaction". *(emphasis added)*

15. ISS express similar strong support against the Recapitalization Transaction, as follows:

"Given that Wilks' debt reduction plan offers superior value to shareholders and its premium takeover bid mitigates the risk associated with renewed debtholder negotiations, shareholders are advised...to vote AGAINST management's proposed Recapitalization Transaction".
16. On September 14, 2020 (only 3 days from the shareholder vote), in the face of shareholder support against their transaction and following the strong recommendations by both ISS and Glass Lewis that the Recapitalization Transaction was **not** in the best interests of Calfrac or its shareholders, Calfrac abruptly adjourned the shareholder meeting by approximately two weeks, to September 29, 2020.
17. Presumably Calfrac determined the adjournment was needed to either modify their transaction, which leading market analysts and shareholder advisory services overwhelmingly agreed was a bad deal for Calfrac and its stakeholders, or to try to improve their deficient disclosure related to the various actionable and superior alternatives to the Recapitalization Transaction. One such actionable superior alternative that ISS and Glass Lewis noted was the premium to market Take Over Bid launched by Wilks on September 10, 2020 and which guarantees shareholders almost a 600% premium to their recovery under the Recapitalization Transaction.
18. On September 18, 2020, Calfrac's counsel advised Wilks that a final hearing will be scheduled either the week of October 19 or October 26, 2020. Despite this, Calfrac has otherwise remained silent as to the Recapitalization Transaction, and Calfrac has not yet delivered an Affidavit in support of the relief sought for the approval of the Recapitalization Transaction (the "**Final Application**"). Stakeholders have no insight into what is planned beyond the company's required Directors' Circular (due tomorrow, September 24, 2020) to provide recommendations with respect to Wilks' Take-Over Bid. Calfrac has still not produced its application materials for the purpose of seeking the final order on the Recapitalization Transaction, and they have failed to announce a proxy deadline as required by law.
19. Calfrac now appears to be proceeding with a two-pronged strategy: a) attempting to prevent Wilks from being able to fairly prepare to challenge the Recapitalization Transaction they seek a final order on in just a few weeks, by obstructing Wilks' basic, fundamental right to information disclosure, and at the same time b) refusing to file their evidence for the Recapitalization Transaction until the very last minute on a schedule they will manufacture. Calfrac, in the driver's seat of this restructuring, is tilting the playing field to an unacceptable and unfair degree.
20. As the Recapitalization Transaction remains pending and Calfrac has advised Wilks they will see a final order in a mere few weeks, Wilks must continue to proceed with its preparation for

the Final Hearing, including obtaining access to the Relevant Transaction Documents or face serious prejudice.

(c) The Relevant Transaction Documents are Limited in Scope and Production at this Time Ensures Fairness

21. Calfrac's Executive Chairman, Ronald P. Mathison ("**Mathison**"), previously provided an Affidavit sworn July 30, 2020, testifying as to the fairness of the Recapitalization Transaction to all stakeholders, at para. 33:

"In particular, the Recapitalization Transaction represents the best alternative available to address the Calfrac Group's capital structure and liquidity needs. Peters & Co. Limited ("Peters & Co."), an independent financial advisor to the Calfrac Board, has provided two opinions to the Calfrac Board (the "CBCA Opinion" and the "Fairness Opinion", together, the "Opinions"). The CBCA Opinion provides that Senior Unsecured Noteholders and Shareholders would be in a better financial position, respectively, under the Recapitalization Transaction than if the Company were liquidated. The Fairness Opinion is required pursuant to the CBCA policy on arrangements, and provides that the terms of the Recapitalization Transaction are fair, from a financial point of view, to Calfrac. Based on a range of factors, including the Fairness Opinion and advice of outside legal counsel, the Calfrac Board is unanimously recommending that all Senior Unsecured Noteholders and Existing Shareholders support the Recapitalization Transaction, which will significantly reduce the Calfrac Group's debt and provide liquidity for ongoing operations. The above Fairness Opinion determinations and calculations in respect of the value of the Common Shares are based on numerous assumptions, facts and circumstances as at the date of the Fairness Opinion, which are subject to change." (*emphasis added.*)

22. Wilks is a substantial stakeholder of Calfrac and agrees with the leading independent advisory firms and analysts that the Recapitalization Transaction is not fair to Calfrac or to its stakeholders.
23. As Calfrac intends to proceed with the Recapitalization Transaction, Wilks is entitled to vigorously test and challenge all of the evidence of Mathison and Calfrac through questioning and expert evidence in respect of the Recapitalization Transaction. Wilks' right to vigorously test all evidence adduced in support of the Final Application are fundamental rights of procedural fairness, and absolute requirements for a fair hearing of the Final Application.
24. The Relevant Transaction Documents that Wilks' seeks for its advisors are business and other records in the possession and control of Calfrac. The Relevant Transaction Documents are a focused list of non-privileged documents directly relevant to the Recapitalization Transaction and that Wilks' own experts have identified as necessary for them to fairly assess the Recapitalization Transaction in connection with the Final Application.

(i) *Relevant Documents Provided to Peters & Co.*

25. The majority of the Relevant Transaction Documents requested by Wilks for its advisors are a set of documents provided to Calfrac's Financial Advisor, Peters & Co ("**Peters**") which Peters relied upon in preparing a fairness opinion provided to Calfrac (the "**Fairness Opinion**"), and which is relied upon by Calfrac and its Board in justifying the fairness of the Recapitalization Transaction. The Fairness Opinion is included in the Management Information Circular (the "**Circular**") distributed to Shareholders in respect of the Plan of Arrangement. Without the production of the material reviewed by Peters in its Fairness Opinion, there will be a marked information asymmetry between Calfrac and Wilks. Fairness requires that Wilks be provided with the reasonable opportunity to review the same material that was produced by Calfrac to Peters in order to offer an informed critique of the conclusion of fairness stated in the Fairness Opinion.
26. The materials provided to Peters and requested by Wilks are listed at items 1(a)(i) through (iv) of **Schedule "A"**.
27. There is no issue as to privilege in respect of these Relevant Transaction Documents (or any of the others). The only item that relates to discussions with counsel is item 1(a)(v) of **Schedule "A"** (discussions with legal counsel regarding the Recapitalization), and any privilege was waived as result of its production to Peters.
28. There is also no legitimate concern about the volume of documentation in this request. Peters was retained by Calfrac on July 7, 2020. Peters provided its final Fairness Opinion and solvency opinion only six days later on July 13, 2020. Wilks simply wishes for its advisors to review what Peters reviewed over the brief course of its retainer.
29. The limited remainder of Relevant Transaction Documents requested by Wilks are specific documents which are or must be in existence and which go directly to the financial fairness of the Recapitalization Transaction, the solvency of Calfrac on emergence from the Recapitalization Transaction if it is approved by both shareholders and the Court, and the decision-making process of the Board in approving and advocating for the Recapitalization Transaction.

(ii) Relevant Documents Provided to Calfrac's Board

30. Wilks seeks access for its advisors to certain limited materials presented to the Calfrac Board by their financial advisors in the course of their review of the Recapitalization Transaction. This material is referred to at page 18 of Calfrac's Circular and includes but is not limited to the items listed at items (a) through (h) on that page.
31. This material relates directly to the governance process surrounding the Recapitalization Transaction and the examination of the fairness of the transaction for the purposes of the section 192 approval test under the *CBCA*.
32. The limited requested material is referred to at item 1(b) of **Schedule "A"**.

(iii) Relevant Financial and Transaction Documents

33. Wilks seeks access for its advisors to certain non-privileged financial information in order to examine the financial underpinnings of the proposed Recapitalization Transaction.
34. There are two aspects to this request. First, section 192 of the *CBCA* includes a solvency on emergence requirement for the Court's approval of the plan, which Calfrac must establish. The additional financial information sought is directly relevant to assessing the extent to which Calfrac will be solvent on emergence following the Recapitalization Transaction, if approved by shareholders and this Court.
35. Second, in determining the fairness and reasonableness of the Recapitalization Transaction, Wilks seeks to examine the Superior Alternative Transaction proposed by Wilks with the Recapitalization Transaction to determine which proposal would be more financially beneficial to Calfrac and its stakeholders. Wilks requires the financial information to assist in this determination.
36. This material is referred to at items 1(c) through (j) of **Schedule "A"**.

CONCLUSION

37. Calfrac has unfairly refused to provide the Relevant Transaction Documents and has now declared on record by virtue of the No Production Application that any such request by Wilks at the questioning of Ronald P. Mathison will be refused and result in a refusals motion.
38. Given the timetable under which Calfrac is pursuing its Recapitalization Transaction, and the fact that Calfrac has already declared on record its intention to refuse such undertaking requests, it is neither practical or efficient to require Wilks to seek undertakings at the questioning of Ronald P. Mathison and proceed thereafter by a refusals motion.
39. Wilks simply seeks the production of Relevant Transaction Documents in the most efficient and timely manner. This will permit questioning of Calfrac's affiant(s) on the Relevant Transaction Documents at first instance rather than in a, costly, bifurcated fashion.
40. The suggestion by Calfrac that the Relevant Transaction Documents sought are a fishing expedition is simply not credible and is an attempt to deny Wilks of its due process rights and procedural fairness.
41. Moreover, the suggestion that production of the limited Relevant Transaction Documents should be denied because it could provide information to the largest stakeholder of Calfrac who Calfrac simply alleges is a competitor of Calfrac, is preposterous. In any event, Wilks simply seeks that the limited information it has requested be provided to its counsel, who will maintain the information in confidence and share it only with its experts who may use the information in connection with Wilks' position on the Recapitalization Transaction. There can be no possible prejudice to Calfrac in those circumstances and the suggestion otherwise is not defensible.

Material or evidence to be relied on:

42. The pleadings and proceedings herein;

- 43. The Affidavit of Sherry Nadeau, sworn September 23, 2020, filed;
- 44. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

- 45. Rules 1.2-1.5, 1.7, 6.2, 6.16 including 6.16(3),(4), 6.38, 10.31 and 13.5 of the *Alberta Rules of Court.*, Alta. Reg. 124/10 as amended.

Applicable Acts and regulations:

- 46. *Canada Business Corporations Act* RSC 1985, c. C-44; *Alberta Rules of Court*, Alta. Reg. 124/2010.

Any irregularity complained of or objection relied on:

- 47. None.

How the Application is proposed to be heard or considered:

- 48. By electronic hearing and videoconference.

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 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

2001-08434

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTER

IN THE MATTER OF SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 12178711 CANADA INC., CALFRAC WELL SERVICES LTD., CALFRAC (CANADA) INC., CALFRAC WELL SERVICES CORP. and CALFRAC HOLDINGS LP, by its General Partner CALFRAC (CANADA) INC.

APPLICANT

WILKS BROTHERS, LLC

RESPONDENTS

12178711 CANADA INC., CALFRAC WELL SERVICES LTD., CALFRAC (CANADA) INC., CALFRAC WELL SERVICES CORP. and CALFRAC HOLDINGS LP, by its General Partner CALFRAC (CANADA) INC.

DOCUMENT

ORDER

ADDRESS FOR SERVICE
AND CONTACT
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FILING THIS DOCUMENT

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DATE ON WHICH ORDER WAS PRONOUNCED:

LOCATION AT WHICH ORDER WAS MADE:

NAME OF JUDGE WHO MADE THIS ORDER:

UPON THE APPLICATION of the Applicant; **AND UPON HEARING** counsel for the Applicant and the Respondents;

IT IS HEREBY ORDERED THAT:

1. The Respondents shall produce to counsel for the Applicant, within five (5) days from the date of this Order, full and complete copies of the following records:
 - (a) Each of the following documents as provided to Peters & Co. Limited (“**Peters**”) and which are listed in the July 13, 2020 Fairness Opinion of Peters:
 - (i) Unaudited projected financial statements for Calfrac Well Services Ltd. (the “**Company**”) on a consolidated basis prepared by management of the Company for the years ending December 31, 2020 through 2021, under various potential financing and recapitalization alternatives, and including projections respecting the liquidity of the Company, and ability of the Company to satisfy material financial covenants.
 - (ii) A detailed listing of the Company’s capital assets.
 - (iii) Documents provided to, or recording discussions between, Peters and senior management and directors of the Company relating to the Company’s current business, plans, financial condition and prospects, including the results of recent operating activities;
 - (iv) Documents provided, to or recording discussions between, Peters and management and directors of the Company and the Company’s legal and financial advisors relating to efforts by the Company to improve its strategic and financial position.
 - (b) Documents presented to the Board of Calfrac by the Financial Advisors in their “detailed review” of the restructuring plan as referred to at page 18 of the Circular, including but not limited to listed items (a) through (h).
 - (c) Current borrowing base calculation, including drawn amounts and projects for those amounts.
 - (d) Budgets and projections prepared during the current fiscal year for each of Calfrac’s operating segments, by country.
 - (e) Documents which contain detailed calculations and assumptions (including underlying assumptions such as fracturing revenue per job, number of fracturing jobs, active pumping horsepower, idle pumping horsepower etc.) underlying each category of financial projections, budgets and cash flow forecasts.
 - (f) Most current cash flow forecasts prepared by Calfrac.
 - (g) Calfrac’s interim consolidated financial statements as at August 31, 2020 (if not available, provide as at July 30, 2020).

- (h) Documents which contain the assumptions underlying the forecast information provided in the July 14, 2020 press release, specifically, in Table 2:
 - (i) Revenue for 2020 and 2021;
 - (ii) Capital Expenditures for 2020 and 2021;
 - (iii) Adjusted EBITDA (\$ and % of Revenue) for 2020 and 2021; and,
 - (iv) Unlevered Free Cash Flow for 2020 and 2021.
- (i) The Agreement for the Revolving Term Loan Facility.
- (j) Copies of the non-disclosure agreements signed in connection with the 1.5 lien convertible debt offering.

2. The Applicant is awarded its costs _____.

J.C.C.Q.B.A.