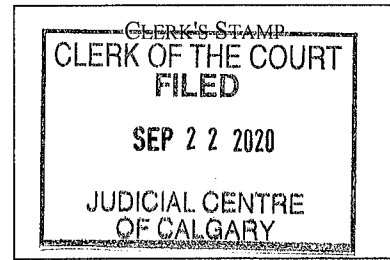


FORM 27
[RULES 6.3 AND 10.52(1)]



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.

APPLICANTS 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.

RESPONDENT WILKS BROTHERS, LLC

DOCUMENT **APPLICATION BY THE APPLICANTS 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. RE: DOCUMENT PRODUCTION REQUEST**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7
Attention: Chris Simard/Kevin Zych/Justin Lambert
Telephone: 403.298.4485/416.777.5738/

403.298.3046
Facsimile: 403.298.3100
Client File No.: 44609-111

NOTICE TO RESPONDENT(S): Wilks Brothers, LLC

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

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

Date: September 30, 2020
Time: 10:00 a.m.
Where: Calgary Courts Centre, 601 – 5th Street S.W., Calgary
(Virtual Courtroom Via Webex)
Before: The Honourable 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 Applicants, 12178711 Canada Inc. ("**Calfrac Arrangeco**"), Calfrac Well Services Ltd. ("**Calfrac**"), Calfrac (Canada) Inc. ("**CCI**"), Calfrac Well Services Corp. ("**CWSC**") and Calfrac Holdings LP, by its general partner CCI (each an "**Applicant**" and collectively, the "**Applicants**" or the "**Calfrac Entities**"), seek an Order:
 - (a) declaring that Wilks Brothers, LLC ("**Wilks Brothers**") has no right to the production of records by the Applicants in this action, including but not limited to the records demanded in Wilks Brothers' draft Notice of Appointment (the "**Appointment**") dated September 18, 2020 (the "**Requested Records**");
 - (b) granting the Applicants their costs of this Application; and
 - (c) granting such further or other relief as this Honourable Court may direct.

Grounds for making this application:

The Current Status of this Action

2. All capitalized terms not otherwise defined herein are intended to bear their meanings as defined in the Mathison Affidavits (as defined below).
3. On July 13, 2020, the Applicants commenced this action (the "**CBCA Proceedings**") by way of Originating Application, seeking the approval of a plan of arrangement pursuant to section 192 of the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended (the "**CBCA**").
4. In the CBCA Proceedings, this Honourable Court has:
 - (a) on July 13, 2020, granted a Preliminary Interim Order which provided, among other things, a stay of proceedings in favour of the Applicants, on the terms set out in the Preliminary Interim Order (the "**Stay Provision**"), to enable the Calfrac Entities to continue to advance the Recapitalization Transaction with its Affected Securityholders;

- (b) on July 27, 2020, dismissed the Wilks Brothers' application to amend or vary the Preliminary Interim Order to exempt the Second Lien Noteholders from the Stay Provision (the "**Comeback Application**"); and
 - (c) on August 7, 2020, granted an Interim Order, authorizing the holding of the Meetings at which Affected Stakeholders will consider and vote on the Arrangement and the Recapitalization Transaction.
5. The Calfrac Entities anticipate making an application to this Honourable Court for a final order, among other things approving the Arrangement and the Recapitalization Transaction (the "**Final Order Application**"). The Final Order Application has not yet been scheduled for hearing, and the Applicants have not yet filed or served their materials for the Final Order Application, including affidavits in support thereof (the "**Final Order Evidence**").

Background to the Application

6. As outlined below in greater detail, Wilks Brothers is requesting production from the Applicants of the Requested Records, in advance of the Final Order Application and in advance of any cross-examinations on the Final Order Evidence.
7. Wilks Brothers' request for records production ought to be denied.
8. In addition to the fact that the production request is improper and impermissible, Wilks Brothers is a competitor of Calfrac, an activist investor in Calfrac and is currently advancing a hostile takeover bid for the Common Shares of Calfrac. In the circumstances, production of the requested records to Wilks Brothers would cause serious harm to Calfrac and its stakeholders. Further, the Requested Records are not required for this Honourable Court to assess whether the Arrangement is fair and reasonable, nor to determine the other issues that will be before the Court at the Final Order Application.

The Wilks Brothers' History of Competition with and Hostility Toward Calfrac

9. Wilks Brothers owns 100% of Profrac Services, LLC ("**Profrac**"), a direct competitor of Calfrac in the fracturing services markets in the Marcellus basin (out of Smithfield, PA)

and in the Permian basin (Calfrac out of Artesia, NM and Profrac out of Odessa, TX). In Smithfield, PA, Profrac's operating base is across the street from CWSC's operating base.

10. By late 2017, Wilks Brothers had acquired approximately 19.78% of the issued and outstanding Common Shares of Calfrac. By no later than September 13, 2017, Wilks Brothers had self-identified as an activist investor with respect to Calfrac.
11. In early 2018, in the context of Wilks Brothers declaring itself an activist investor with respect to Calfrac, Calfrac and Wilks Brothers entered into a Non-Disclosure Agreement (the "NDA"), to allow Calfrac to provide confidential information to Wilks Brothers, and for the parties to be able to frankly exchange their views.
12. After entering into the NDA, Calfrac provided Wilks Brothers with confidential business information.
13. At Calfrac's 2018 annual meeting of shareholders, Wilks Brothers withheld certain of its votes. Wilks Brothers then issued a press release in which it purported to explain its decision to withhold its votes. In that press release, Wilks Brothers disclosed confidential information in breach of the NDA.
14. Calfrac sued Wilks Brothers for its breach of the NDA and, on May 6, 2019, in *Calfrac Well Services Ltd v Wilks Brothers, LLC*, 2019 ABQB 340, Calfrac was granted summary judgment. This Honourable Court found that Wilks Brothers breached the NDA by issuing the press release. Wilks Brothers did not appeal that decision.
15. Since June 2020, Wilks Brothers and/or its joint actors have acquired:
 - (a) approximately 56.1% of the Second Lien Notes, at a total aggregate acquisition cost of \$47,167,661.00, or approximately \$0.70 per \$1.00 of par value; and
 - (b) approximately 6.8% of the Senior Unsecured Notes, at an aggregate acquisition cost of US\$3,068,627.50, or approximately \$0.1043 per \$1.00 of par value.

16. On June 22, 2020 and June 30, 2020, Wilks Brothers submitted unsolicited letters of intent to acquire Calfrac's US business and related assets. These unsolicited offers were rejected by Calfrac.
17. After the public announcement of the Arrangement and the Recapitalization Transaction on July 14, 2020, Wilks Brothers publicly announced on August 4, 2020 an "alternative" for Calfrac (the "**Wilks Brothers' Proposal**"). On or about August 17, 2020, Calfrac announced via press release that the Special Committee of the Calfrac Board had completed its review of the Wilks Brothers' Proposal, and had concluded, among other things, that the Wilks Brothers' Proposal:
 - (a) was not a "Superior Proposal" as defined in the support agreements entered into between Calfrac and holders of approximately 78% of the Senior Unsecured Notes; and
 - (b) could not reasonably be expected to result in a transaction more favourable to Calfrac and its stakeholders (including the Senior Unsecured Noteholders) as it lacked the required level of support from Senior Unsecured Noteholders.
18. Wilks Brothers issued a press release after the close of markets on September 1, 2020, publicly announcing its plans to initiate a hostile takeover of Calfrac by offering \$0.18 per share for the Common Shares (the "**Wilks Brothers' Hostile Takeover Bid**").
19. Wilks Brothers has engaged in a persistent press release campaign in criticism of the Recapitalization Transaction and the Arrangement and in the promotion of both the Wilks Brothers' Proposal and the Wilks Brothers' Hostile Takeover Bid. Wilks Brothers has also partially or fully opposed every step taken in this action and in the ancillary proceedings commenced under Chapter 15 of the U.S. Bankruptcy Code, seeking on multiple occasions to derail such proceedings and force Calfrac into insolvency proceedings, which would benefit Wilks Brothers' interests as the recent acquiror of a majority of the Second Lien Notes.

The Wilks Brothers' Wide-Ranging and Unreasonable Demands for the Production of Records

20. On September 10, 2020, Wilks Brothers wrote to Calfrac, via counsel, to demand production of the Requested Records one business day later.
21. On September 16, 2020, Calfrac wrote to Wilks Brothers, via counsel, denying Wilks Brothers' entitlement to demand production of the Requested Records.
22. On September 18, 2020, Wilks Brothers wrote to Calfrac, via counsel, to renew its request for production of the Requested Records, by way of the Appointment.
23. The Requested Records comprise a 3-page list of records, sorted into 27 separate items, many of which are requests for very broad categories of records, and most of which could reasonably be expected to result in substantial production if the requests were granted.
24. A copy of the Appointment with attached records requests is appended as **Schedule "A"** to this Application for ease of reference.

Wilks Brothers' Records Requests are Improper

25. The records production demanded by Wilks Brothers is improper because, among other things:
 - (a) the request is improper under the *Rules of Court*;
 - (b) even if Wilks Brothers was entitled to ask for records production by way of a Notice of Appointment for Questioning such as the Appointment, then, among other things:
 - (i) the Requested Records are not relevant and material to the issues to be determined by this Honourable Court in the Final Order Application;
 - (ii) the production of the Requested Records is unreasonable or unnecessary;
 - (iii) certain of the Requested Records are privileged;
 - (iv) the production of many of the Requested Records would result in inordinate cost and delay, particularly when that cost and delay is weighed

against the meager benefit (if any) that might be realized from production of the records,

- (v) disclosure of the Requested Records to Wilks Brothers, a known competitor of the Calfrac Entities and a party with an avowed intent to acquire the Applicants' U.S. business, by hostile means if necessary, would cause serious harm to the Applicants and their other stakeholders; and
- (vi) the public policy rationale underlying plans of arrangement and proceedings like these CBCA Proceedings militates against allowing disgruntled competitors to engage in "fishing expeditions" in an effort to delay or derail approval of a plan of arrangement.

Material or evidence to be relied on:

- 26. The following Affidavits of Ronald P. Mathison:
 - (a) the Mathison Affidavit No. 1, sworn on July 13, 2020;
 - (b) the Mathison Affidavit No. 2, sworn on July 30, 2020;
 - (c) the Supplemental Affidavit to the Mathison Affidavit No. 2, sworn on August 5, 2020; and
 - (d) the Mathison Affidavit No. 3, to be sworn(collectively, the "**Mathison Affidavits**").
- 27. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

- 28. Part 6, Division 1 of the *Alberta Rules of Court*.

29. Such further and other authority as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

30. Section 192 of the CBCA.

Any irregularity complained of or objection relied on:

31. N/A.

How the application is proposed to be heard or considered:

32. In person before The Honourable Justice D.B. Nixon.

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 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

Clerk's Stamp

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.

APPLICANTS 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.

RESPONDENT WILKS BROTHERS, LLC

DOCUMENT **NOTICE OF APPOINTMENT FOR QUESTIONING**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
CASSELS BROCK & BLACKWELL LLP
Suite 1250 Millennium Tower
440 – 2nd Avenue SW
Calgary, AB T2P 5E9

Attention: Timothy Pinos / Lara Jackson
Tel: 416.869.7584
Fax: 416.350.6903
Email: tpinos@cassels.com
ljackson@cassels.com

NOTICE TO: TBD

This notice requires you to attend for questioning.

You must attend at the date, time and place and for the period specified below:

DATE: September 15, 2020
TIME: 10:00 o'clock in the forenoon
PLACE: Via Webex or equivalent
PERIOD OF ATTENDANCE: TBD

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You must notify the questioning party prior to the date of the appointment regarding any arrangements that are necessary to accommodate your reasonable needs. The questioning party must, to the extent reasonably possible, make arrangements to accommodate those reasonable needs that you identify.

You must also bring any records described below.

You are not required to bring any records.

OR

You must also bring the following records:

(a) See Schedule "A" attached.

An allowance that is required to be paid to you for attending as a witness accompanies this notice.

The allowance is calculated as follows:

Allowance payable for each day or part of a day necessarily spent by you as a witness:	\$50.00
Meals	
Lunch (\$11.60)	\$11.60
Accommodation	\$N/A
Transportation/Parking	\$30.00
TOTAL	\$91.60

WARNING

The Court may order a person to attend for questioning, at a date, time and place specified by the Court, if the person

- (a) is required to be questioned under the *Alberta Rules of Court*,
- (b) was served with a notice of appointment for questioning under the *Alberta Rules of Court*,
- (c) was provided with an allowance, determined in accordance with Schedule B [Court Fees and Witness and Other Allowances] of the *Alberta Rules of Court*, if so required by the *Alberta Rules of Court*, and
- (d) did not attend the appointment.

The Court may order the person to be questioned to bring records to the questioning that the person could be required to produce at trial.

Schedule "A"

I. Records Provided by the Company to Peters & Co Limited ("Peters") and which are listed in the July 13, 2020 Fairness Opinion of Peters¹

1. Unaudited projected financial statements for 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.
2. A detailed listing of the Company's capital assets.
3. Notes, materials, documentation and descriptions of discussions between Peters and senior management and directors of the Company relating to the Company's current business, plans, financial
4. Notes, materials, documentation and descriptions of 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.
5. Notes, materials, documentation and descriptions of discussions between Peters and senior management and directors of the Company and the Company's legal and financial advisors relating to the alternatives available to the Company and the consequences of completing or not completing the Recapitalization.
6. Notes, materials, documentation and descriptions of discussions between Peters and the Company's legal counsel regarding various matters relating to the Recapitalization Transaction.
7. Copy of Representations contained in certificates addressed to Peters from certain senior officers and directors of the Company as to the completeness and accuracy of the information upon which the CBCA Opinion is based.

II. Additional Records Requested

8. Notes, material, documents and descriptions 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).
9. Extracts of Board and Independent Committee minutes from April 1, 2020 to date referring to the Recapitalization Transaction, any and all alternative transactions considered, and/or Wilks Brothers LLC.
10. Any other internal presentations and materials prepared for Calfrac's Management and/or Board of Directors related to the Recapitalization Transaction.
11. Current borrowing base calculation, including drawn amounts and projects for those amounts.

¹ See Peters Opinion, July 13, 2020 - Scope of Review, pages 2 to 4.

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12. Budgets/projections prepared during the current fiscal year for each of Calfrac's operating segments, by country.
13. Covenant calculations under the banking arrangement, both current and projected.
14. 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, by geographic segment and country.
15. Most current cash flow forecasts prepared by Calfrac.
16. Calfrac's interim consolidated financial statements as at August 31, 2020 (if not available, provide as at July 30, 2020).
17. Calfrac's most current corporate income tax return(s) and assessments.
18. Detailed calculations and assumptions underlying Calfrac's write-offs of the company's deferred tax assets during 2020.
19. Assumptions underlying the forecast information provided in the July 13, 2020 press release.
20. The Agreement for the Revolving Term Loan Facility
21. Any appraisals and/or valuations of Calfrac, Calfrac's subsidiaries or assets.
22. Calfrac's impairment calculations for the 2020 Second Quarter Interim Report.
23. The following information respecting the M&A alternatives referred to at page 15 of the Circular:
 - a. Whether the M&A alternatives included a sale of the Company or a sale of substantially all of the assets of the Company;
 - b. The numbers of parties approached or contacted, the number of non-disclosure agreements signed, the number of term sheets received and the number of parties in due diligence; and
 - c. Copies of all non-disclosure agreements entered into by Calfrac in this regard.
24. Notes, material, documents and descriptions relating to the alternative considered of a draw on the bank line of credit, and any steps taken to negotiate the amendment of covenants to permit such a draw.
25. A description of the process undertaken to canvass the markets in respect of a 1.5 lien convertible debt offering, including the number of parties approached or contacted, the number of non-disclosure agreements signed, the number of term sheets received and the number of parties in due diligence.
26. Copies of the non-disclosure agreements signed in connection with the 1.5 lien convertible debt offering.

27. A breakdown of the unsecured noteholders who are (a) supporting the Recapitalization Transaction (through support agreements), (b) participating in the committed component of the 1.5 lien convertible debt offering, and (c) a related party to Matco or G2S2

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