

MLT Insolvency Group 2015 Year in Review

MLT's Insolvency & Restructuring Group provides:

- Specialists committed to insolvency & restructuring law
- Unparalleled experience as debtor company counsel (over 25 assignments)
- Unique understanding of how consensual outcomes preserve value
- Deep expertise in agricultural restructuring

The MLT Insolvency Group worked on a variety of insolvency and restructuring assignments for clients across Western Canada in 2015. Our insolvency lawyers also participated in a number of speaking engagements, presented papers and achieved other milestones in 2015.

Set out below are some of the notable public record aspects of these mandates by the MLT Insolvency Group undertaken on behalf of secured creditors, debtor companies and court-appointed officers this past year, as well as a summary of notable speaking engagements, presentation of papers and other milestones achieved by our insolvency lawyers in 2015.

2015 ALBERTA Assignments

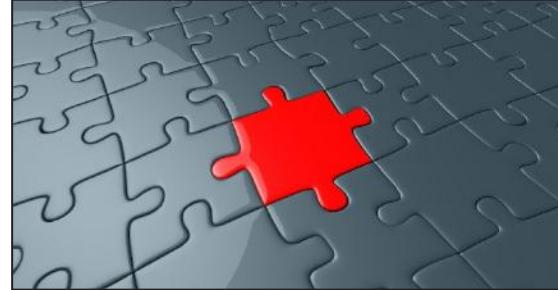
Verity Energy Ltd. (CCAA)

Dean Hutchison of the MLT Insolvency Group acted as counsel for an Alberta municipality in proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA"), concerning Verity Energy Ltd., an oil and gas exploration company, with respect to issues concerning unpaid linear property taxes.

Trucking Company (Out of Court Restructuring)

Dean Hutchison acted as counsel to the senior secured lender of an oil and gas trucking company that operates in central Alberta. Dean negotiated inter-creditor agreements and revised security agreements concerning a restructuring of the secured debt of the debtor trucking company which ultimately lead to the secured lender being repaid in full.

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1-2-3 Development Inc. (BIA Interim Receivership)

Dana Nowak and **Jeff Lee** of the MLT Insolvency Group acted as counsel to the Interim Receiver of 1-2-3 Development Inc., a company involved in aggregate hauling and manufacture of concrete foundations in Fort McMurray, Alberta, which initially owed approximately \$2 million dollars to its creditors. The Interim Receiver was appointed pursuant to section 47 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").

MLT continues to assist the Interim Receiver in discharging its duties under the Interim Receivership Order.

Lutheran Church - Canada, Alberta - British Columbia District (CCAA)

Dean Hutchison acted as counsel for a trustee of certain tax sheltered investment vehicles administered by one of the debtor entities in Calgary-based CCAA proceedings commenced by the Lutheran Church – Canada, Alberta – British Columbia District.



Oil and Gas Service Company (Out of Court Restructuring)

Dean Hutchison acted as counsel to the senior secured lender of an oil and gas service company that operates in northern Alberta. Dean negotiated a forbearance agreement on behalf of the secured lender with the debtor company, improving the secured lender's security position, which ultimately lead to the secured lender being repaid in full through a voluntary liquidation of certain assets over which the secured lender obtained a security interest.

1693737 Alberta Inc. (Receivership)

Dean Hutchison acted as counsel to an Alberta municipality with respect to the receivership of a commercial condominium development. The subject development was partially completed at the time of the court appointment of the receiver. The municipality was successful in having all of the outstanding property taxes paid, as well as having the Development Agreement concerning the subject development remain in place, as part of a court approved sale of the subject condominium development.

SASKATCHEWAN Assignments

Advance Engineered Products Ltd. (CCAA)

Jeff Lee acted as counsel to Advance Engineered Products Ltd. ("AEPL"), a manufacturer of truck tanks, trailers and vacuum truck equipment with manufacturing plants and service facilities in Saskatchewan, Alberta, Quebec and British Columbia that owed approximately \$120 million to its creditors.

AEPL applied for and obtained an Initial Order under the CCAA from the Court of Queen's Bench For Saskatchewan on April 10, 2015. Thereafter, AEPL closed a court-supervised sale of its business as a going concern in October of 2015.

Biotechnology Company (BIA Interim Receivership)

Jeff Lee and **Paul Olfert** acted as counsel to the senior secured creditor to a Saskatoon-based health research and technology company. Suffering from cash flow problems, the company was unable to meet its obligations to its creditors and applied for creditor protection under the CCAA for itself and a related entity in November of 2015. On behalf of its secured creditor client, MLT brought an application for the appointment of a receiver of the company under the BIA. An interim receiver under the BIA was appointed by the Court on December 3, 2015.

3L Cattle Company Ltd. (BIA Receivership)

Jeff Lee acted as counsel to a secured creditor in an application to appoint a receiver of a Saskatchewan ranch company under section 243 of the BIA. The ranch company argued that the receivership application was a nullity, owing to the secured creditor not complying with Part II of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1 (the "SFSA"), an elaborate provincial legislative regime which governs actions with respect to Saskatchewan farmland.

The Court of Queen's Bench dismissed the BIA receivership application on grounds that (among other things) the secured creditor had failed to comply with Part II of the SFSA. On April 1, 2014, the Saskatchewan Court of Appeal allowed an appeal by the secured creditor and held that Part II of the SFSA was rendered inoperative because of the doctrine of federal paramountcy. The Court of Appeal held that Part II of the SFSA frustrated the

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purpose of section 243 of the BIA. As a result, the Court of Appeal concluded that Part II of the SFSA is inoperative in circumstances where an application is made to appoint a receiver pursuant to s. 243(1) of the BIA. The Court of Appeal declined to interfere with the decision of the lower court not to appoint a receiver in any event on grounds that it was not "just and convenient" to do so.

The Attorney General For Saskatchewan obtained leave to appeal this decision to the Supreme Court of Canada on the constitutional issue. The appeal was heard by the Supreme Court of Canada on May 21, 2015. **Jeff Lee** and **Kristen MacDonald** of MLT acted as court-appointed *amicus curiae*. In a decision released on November 13, 2015, the Supreme Court of Canada allowed the appeal and held that, in regard to section 243 BIA applications to appoint receivers of Saskatchewan farmland, Part II of the SFSA was not rendered inoperative and secured creditors are required to comply with the provincial farm protection regime.

Saskatchewan Construction Company (BIA Division I Proposal)

Jeff Lee acted as counsel to a Saskatchewan construction company engaged in the business of providing excavating, directional drilling, trucking, rail and other earth moving services. The company filed a Notice of Intention to make a Proposal

under Division I of Part III of the BIA on April 30, 2015, and ultimately filed its Proposal to Creditors on October 16, 2015. The Proposal was approved by the required majority of creditors and the Bankruptcy Court in November of 2015.



Naber Specialty Grains Ltd. and Melfort Grain Terminal Ltd. (Receivership)

Jeff Lee acted as counsel to a secured creditor of a seed cleaning and grain terminal operation located near Melfort, Saskatchewan, in a successful application to the Court of Queen's Bench for Saskatchewan for an Order appointing a Receiver of all of the property, assets and undertaking of the debtor companies. The receivership proceedings, including the marketing by the receiver of the assets of the debtor companies, are ongoing.

Publications, Speaking Engagements and Other News

Jeff Lee developed and presented a live Webinar entitled "*Bankruptcy and Insolvency: Practical Advice on Managing Issues Arising From Business Failure*" for the Law Society of Saskatchewan on May 12, 2015.

Dana Nowak lectured to the University of Alberta Faculty of Law Bankruptcy Course on March 10, 2015 regarding the issue of director liability in insolvency proceedings and on October 15, 2015 regarding the issue of bankruptcy discharge applications.

Dean Hutchison delivered an in-house seminar to a group of Alberta trustees in bankruptcy regarding notable recent decisions of significance in both consumer and commercial bankruptcy matters on October 30, 2015.

Dana Nowak presented a Technical Update at the May 12, 2015 Insolvency and Restructuring Forum presented by the Canadian Association of Insolvency and Restructuring Professionals in Edmonton.



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