

Facts currently before the Supreme Court of Canada:

- Redwater Energy Corporation is a bankrupt company that held licences in oil and gas properties.
- The cost of remediation for disclaimed wells can exceed their value.
- Disclaimed wells become the responsibility of the AER and the Orphan Well Association (OWA).
- Redwater's receiver and trustee in bankruptcy (ATB Financial) sought to disclaim the bankrupt's interest in those wells and to sell the valuable assets.
- The Alberta Energy Regulator (AER) has specific 'end-of-life' rules on how a spent well must be rendered environmentally safe prior to completion certificates being issued or selling assets.
- The AER opposed the trustee's disclaimer of spent wells on the basis that the trustee had to comply with the end-of-life obligations prior to any distribution to the creditors. The AER issued abandonment and remediation orders in respect of the wells that had been disclaimed or renounced.
- The trustee (ATB Financial) chose not comply with the orders on the basis of their duty to increase estate value for creditors.
- Alberta Court of Queen's Bench released its decision in favour of ATB Financial on May 17, 2016

Issues:

- 1) Whether the interests of creditors in an insolvency of an oil and gas company trump provincial safety and environmental obligations that were known and agreed to at the time of licensing; and
- 2) The resulting ability or inability of a province to exercise its exclusive jurisdiction to regulate natural resources during insolvency proceedings.

Law: Section 14.06 of the *Bankruptcy and Insolvency Act*¹ was enacted by Parliament (Federal, which supersedes, has 'paramountcy' over provincial law) to:

- (a) Limit the personal liability of receivers and trustees for environmental claims or conditions;
- (b) Permit receivers and trustees to renounce or disclaim properties affected by environmental conditions or damage; and
- (c) Provide a priority scheme for the costs associated with regulatory and financial orders from provincial regulatory authorities.²

Section 1(1)(a) of the *Oil and Gas Conservation Act*³(Alberta law) refers to abandonment as a permanent dismantlement of a well or facility as per associated regulations to ensure that the well or facility is left permanently safe and secure.

Remedies being sought:

- The AER and the OWA applied to for a declaration that Provincial regulatory obligations of reclamation of oil and gas assets are public duties.
- The trustee seeks to have the appeal dismissed and the lower court decisions as upheld, which confirmed the trustee decisions pursuant to the *BIA*.

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*].

² Factum of Canadian Association of Insolvency and Restructuring Professionals, Intervenor, SCC File No 37627 at paragraph 1.

³ *Oil and Gas Conservation Act*, RSA 2000 Chapter O-6 [*OGCA*].