

## **Issuance of a notice of abandonment under clause 1201 of CAPL is an attempt to exercise a “right to remedy” within the meaning of the typical stay provisions of a Receivership Order**

**By Nigel Bankes**

### **Decision commented on:**

*Baytex Energy Ltd. v Sterling Eagle Petroleum Corporation*, [2012 ABQB 539](#)

### **The Facts**

Baytex and Sterling held 50% working interests in certain properties by way of various agreements of 1995 and 1996. The properties were also subject to the terms of the CAPL Operating Procedure. There were a number of producing wells on the joint lands and four non-producing wells. Sterling was placed in receivership in June 2011 and the terms of the Receivership Order were brought to the attention of Baytex in August 2011. Revenues from the producing wells continued to be paid to the Receiver. The Order, conventionally, provided that:

All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver of leave of this Court, provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provision relating to health, safety or environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

In January 2012 Baytex delivered to MNP (as Receiver for Sterling) four notices of abandonment for the four non-producing wells on the joint lands. Clause 1201 of CAPL provided that:

1201 PROCEDURE FOR ABANDONMENT - If a party proposes to abandon a well on the joint lands ... it shall give notice of the proposed abandonment to the other parties. Within thirty (30) days of receipt of the notice, each of the other parties shall elect, by notice to the other parties, whether it wishes to take over the well. Failure by a party to respond to such notice shall be deemed to be an election by that party to take over, or participate in the takeover, of the well.

Baytex followed this up with a letter in February advising that failure to respond was a deemed election to take over the wells. The Receiver relied on the stay provision in the Order and

ultimately indicated that it would consent to the lifting of the stay so as to allow Baytex to issue the notices of abandonment

Baytex brought this application for an order to lift the stay and for a further order compelling the Receiver to accept a transfer of the four wells.

### **The Decision**

Justice Streck lifted the stay to allow the application to be brought but denied the application for an order compelling the Receiver to accept a transfer of the wells.

Issuance of a notice of abandonment which has the effect of triggering a deemed election to take over the well absent a response within thirty days constitutes the exercise of a “right and remedy” within the meaning of the stay provision of the Order (at paras 17 – 19). Since the notices were issued without the consent of the Receiver and without leave of the Court they were of no effect (at para 9). This was not a case in which the Court should lift the stay and grant leave *nunc pro tunc* since the effect of such an Order would be shift the entire costs of abandonment to Sterling (at para 20). Baytex is at liberty to re-issue the notices of abandonment since the Receiver had consented to same (at para 20). While there was some suggestion (at para 18) that abandonment might be cheaper than fulfilling the requirements of the Energy Resources Conservation Board in relation to suspended wells, the Court emphasised that Baytex was relying on its contractual rights to have Sterling assume the entire responsibility for the wells rather than any provision in the *Oil and Gas Conservation Act*, RSA 2000, c O-6 (*OGCA*). Indeed, section 30 of the *OGCA* contemplates that well suspension costs, abandonment costs and reclamation costs are to be paid by the working interest participants in accordance with their proportionate share in the well.