

COURT FILE NUMBER 2001-06722
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT HSBC BANK CANADA, AS AGENT
RESPONDENTS Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD. and QMAX CANADA OPERATIONS INC.



DOCUMENT **APPLICATION**
(Advice and Directions re: MAXSITE)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT OSLER, HOSKIN & HARCOURT LLP
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2

Solicitors: Randal Van de Mosselaer
Phone: 403.260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1211096

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 Justice.

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

Date: January 15, 2021
Time: 2:00 p.m.
Where: Calgary Courts Centre, 601 – 5th Street SW, Calgary, AB, via
Webex Virtual Courtroom Link
Before Whom: The Honourable Justice R. A. Neufeld

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

Orders Sought:

1. KPMG Inc. (the “**Receiver**”), in its capacity as receiver and manager of Q’Max Solutions Inc. (“**QSI**”), Fluid Holdings Corp., Q’Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc. (collectively, the “**Debtors**”) seeks an Order (the “**Order**”) substantially in the form attached hereto as Schedule “A”, providing advice and directions from this Honourable Court with respect to the following:
 - a. abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable today, and that further service of this Application other than to those listed on the Service List established in these proceedings is hereby dispensed with;
 - b. making a request of the U.S. Bankruptcy Court to take such steps as it may consider advisable, including providing such further or other directions as may be appropriate, and making any ancillary findings as it may consider necessary, for the expeditious resolution of certain aspects of an action commenced by M-I LLC (“**M-I**”) against QSI (amongst others) filed on April 6, 2018, in the United States District Court for the Southern District of Texas bearing Case No. 4:18-cv-01099 (the “**M-I Action**”), and specifically:
 - (i) A determination of whether, assuming M-I were successful in the remaining claims under the M-I Action:
 - A. M-I could reasonably be entitled to any injunctive or other equitable relief with respect to MAXSITE or whether M-I’s relief would be limited to monetary damages; and
 - B. whether the Receiver may under any applicable United States law, including 11 U.S.C. § 363(f), sell its interests in the QSI’s international subsidiaries or operations, including a license or instance of MAXSITE, free and clear of any interests in MAXSITE that may be presumptively held by M-I, with any interest to attach to the proceeds of the sale attributable to MAXSITE and to be finally

determined in connection with distribution of such proceeds by the Receiver, as approved by this Alberta Court;

(ii) To the extent that the U.S. Bankruptcy Court should find that M-I may be entitled to any injunctive or equitable relief:

A. A determination of whether M-I has any ownership interest in MAXSITE; and

B. A determination of the actual ownership of MAXSITE as between QSI and M-I.

- c. If the U.S. Bankruptcy Court concludes that M-I has any interest in MAXSITE, that this Court further request that the U.S. Bankruptcy Court further determine, to the extent not already determined in connection with the foregoing, whether, as part of any transaction the Receiver may enter into, the Receiver may sell, transfer or license or provide an instance of MAXSITE free and clear of any interest that M-I may be found to have in MAXSITE, and whether any such M-I interest might attach to the proceeds of any such transaction;
- d. Whether (i) any of the issues set out in the Order should be referred back to the Alberta Court for determination, or (ii) whether the Alberta Court should deciding any of the matters set out in the Order to the extent it believes it is appropriate to do so.

2. The Receiver further seeks:

- a. The granting of a Restricted Court Access Order in respect of the First Confidential Supplemental Report substantially in the form attached hereto as Schedule "B"; and
- b. Such further and other relief as counsel may request and this Honourable Court may allow.

Grounds for making this application:

3. The Debtors are part of a large multinational group providing oilfield services, focused on onshore and offshore drilling fluids, solids control and waste management solutions in the upstream oil and gas drilling and producing industry.

4. QSI is a British Columbia incorporated company extra-provincially registered company in Alberta and is the direct or indirect parent of all or substantially all of the remainder of the broader multinational group, including Q'Max America Inc. ("**QAI**") and Anchor Drilling Fluids USA, LLC ("**Anchor**").
5. QSI is a borrower pursuant to a credit agreement dated May 23, 2014 (the "**Credit Agreement**") as between HSBC Bank Canada as agent and certain other lenders (collectively, the "**Lenders**") to provide funding to QSI and others.
6. As of May 5, 2020, the amounts outstanding from to the Lenders under the Credit Agreement, inclusive of interest, was (a) US\$145,381,623.21 plus CDN\$1,228,668.47; (b) outstanding letters of credit in the amounts of US\$3,916,296.42 and CDN\$1,161,408.79; (c) other outstanding credit card balances, plus accrued and accruing costs, disbursements and interest.
7. On May 12, 2020, the Lenders issued a demand for payment and notice of intention to enforce security (the "**Demand Notice**") pursuant to Section 244 of the *Bankruptcy and Insolvency Act* ("**BIA**").
8. Shortly after the Demand Notice, the Lenders brought an application to have the Receiver appointed as receiver and manager of the Debtors and on May 28, 2020, the Court of Queen's Bench of Alberta issued an order appointing KPMG Inc. as the Receiver over all of the property and undertakings of the Debtors.
9. At the time of the Receiver's appointment, QSI was named as a Defendant in the M-I Action, which had been commenced in April, 2018.
10. Following its appointment, the Receiver applied for and on October 29, 2020 obtained a Recognition Order (the "**Recognition Order**") from the U.S. Bankruptcy Court pursuant to Chapter 15 of the U.S. Bankruptcy Code, over the objections of M-I, the Plaintiff in the M-I Action.
11. In granting the Recognition Order, the U.S. Bankruptcy Court reserved to itself the determination of certain issues raised in the M-I Action, including:

- a. the determination of the actual ownership of a certain suite of engineering software known as MAXSITE;
- b. whether M-I has any ownership interest in MAXSITE; and
- c. whether M-I is entitled to any injunctive or other equitable relief with respect to MAXSITE,

with the retention of this jurisdiction not affecting the U.S. Bankruptcy Court's ability to enter all necessary and appropriate orders in connection with the Receivership, including with respect to the disposition or sale of QSI's property or the licensing of MAXSITE to the extent of QSI's ownership interest therein, and granting stay relief for the U.S. Bankruptcy Court to determine whether M-I has any interest in MAXSITE;

12. The timely and swift determination of these and various related issues is critical to the Receiver's ongoing liquidation of the estates of QSI and various other Debtors, and there is urgency associated with this determination in order for the Receiver to be able to complete potential sales of various international affiliates on a going-concern basis;
13. Public disclosure of the confidential information contained in the First Supplemental Confidential Report would likely be detrimental to and would be likely to cause irreparable harm to the ownership and business interests of the Debtors as it contains confidential information concerning ongoing negotiations between the Receiver and prospective purchasers of various QSI assets and international operations. The salutary effects of sealing the First Supplemental Confidential Report on the Court file outweigh the potential prejudicial effects of doing so.

Affidavit or other Evidence and Materials to be used in Support of this Application:

14. The First Report of the Receiver, dated December 18, 2020;
15. The First Supplemental Confidential Report of the Receiver;
16. Evidence and materials previously filed in this Action; and

17. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

18. The *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

19. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.
20. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

21. None.

How the Application is Proposed to be Heard or Considered:

22. By Webex before the The Honourable Justice R. A. Neufeld on January 15, 2021 at 2:00 p.m.

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 2001-06722
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT HSBC BANK CANADA, AS AGENT
RESPONDENTS Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD. and QMAX CANADA OPERATIONS INC.



DOCUMENT **ORDER**
(Advice and Directions re: MAXSITE)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer
Phone: 403.260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1211096

DATE ON WHICH ORDER WAS PRONOUNCED: **January 15, 2021**

LOCATION WHERE ORDER WAS PRONOUNCED: **Calgary, Alberta**

NAME OF JUSTICE WHO MADE THIS ORDER: **The Honourable Justice R. A. Neufeld**

UPON the application (the "**Application**") of KPMG Inc. in its capacity as court-appointed receiver (the "**Receiver**") of Q'Max Solutions Inc. ("**QSI**"), Fluid Holdings Corp., Q'Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc. (collectively, the "**Debtors**"), having been appointed Receiver pursuant to a Consent Receivership Order (the "**Receivership Order**") pronounced by Madam Justice Grosse of the Alberta Court of Queen's Bench (the "**Alberta Court**") on May 28, 2020 (the "**Receivership**"); **AND UPON** noting that the Receiver filed an Emergency Verified Petition (the "**Petition**") for (i) Recognition of Foreign Main Proceeding, (ii) Recognition of Foreign Representative, and (iii) Related Relief Under

Chapter 15 of the United States Bankruptcy Code (the “**U.S. Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**U.S. Bankruptcy Court**”), under Case No. 20-34791 (the “**Chapter 15 Proceedings**”); **AND UPON** noting that M-I LLC (“**M-I**”) had previously filed a Complaint on April 6, 2018, in the United States District Court for the Southern District of Texas (the “**Texas Civil Court**”) bearing Case No. 4:18-cv-01099 (the “**M-I Action**”), against QSI and others, and making various allegations and seeking various relief, including injunctive relief and an award of monetary damages, in connection with certain software known as “MAXSITE”; **AND UPON** noting that certain portions of the M-I Action were summarily determined by the Texas Civil Court in a Memorandum Opinion and Order granted on August 6, 2020; **AND UPON** noting that Judge Isgur of the U.S. Bankruptcy Court heard the Receiver’s Petition in the Chapter 15 Proceedings and issued an Order on October 29, 2020 (the “**Recognition Order**”), whereby, among other things, Judge Isgur: (i) recognized the Receivership as a foreign main proceeding pursuant to section 1517 of the U.S. Bankruptcy Code with respect to QSI, (ii) granted the Receiver all of the relief afforded under section 1520 of the U.S. Bankruptcy Code, (iii) granted various stays of proceedings pursuant to section 1521 of the U.S. Bankruptcy Code, and (iv) retained exclusive jurisdiction to determine the actual ownership of MAXSITE, including whether M-I has any ownership interest in MAXSITE, or is entitled to any injunctive or other equitable relief with respect to MAXSITE, the retention of such jurisdiction not to affect this Court’s ability to enter all necessary and appropriate orders in connection with the Receivership, including with respect to the disposition or sale of QSI’s property or the licensing of MAXSITE to the extent of QSI’s ownership interest therein, and granting stay relief for the U.S. Bankruptcy Court to determine whether M-I has any interest in MAXSITE; **AND UPON** noting that the resolution of certain aspects of the M-I Action, including the question of what if any remedies M-I may be entitled to in the M-I Action, are important for the future conduct of the Receivership; **AND UPON** noting the public interest of international comity; **AND UPON** reading the Application, and such other pleadings or proceedings filed herein; **AND UPON** noting the consent of counsel for the Receiver and counsel for M-I;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of this Application, together with all supporting materials, is hereby abridged, if necessary, and declared to be good and sufficient and no other person is required to have been

served with such documents, and this hearing is properly returnable before this Honourable Alberta Court today and further service thereof is hereby dispensed with.

MAXSITE Software

2. This Alberta Court does hereby request that Judge Isgur of the U.S. Bankruptcy Court take such steps as he may consider advisable, including providing such further or other directions as may be appropriate, and make any ancillary findings as he may consider necessary, for the expeditious resolution of certain aspects of the M-I Action, specifically:
 - (a) A determination of whether, assuming M-I were successful in the remaining claims under the M-I Action:
 - (i) M-I could reasonably be entitled to any injunctive or other equitable relief with respect to MAXSITE or whether M-I's relief would be limited to monetary damages; and
 - (ii) the Receiver may under any applicable United States law, including 11 U.S.C. § 363(f), sell its interests in the QSI's international subsidiaries or operations, including a license or instance of MAXSITE, free and clear of any interests in MAXSITE that may be presumptively held by M-I, with any interest to attach to the proceeds of the sale attributable to MAXSITE and to be finally determined in connection with distribution of such proceeds by the Receiver, as approved by this Alberta Court;
 - (b) To the extent that the U.S. Bankruptcy Court should find that M-I may be entitled to any injunctive or equitable relief:
 - (i) A determination of whether M-I has any ownership interest in MAXSITE; and
 - (ii) A determination of the actual ownership of MAXSITE as between QSI and M-I.
3. Regardless how the issues in paragraph 2 are determined, as it appears unlikely that the Receiver will be able to conclude a transaction ("**Transaction**") for any of QSI's international subsidiaries or operations without the ability to sell, transfer, license or provide an instance of MAXSITE to a purchaser, if Judge Isgur concludes pursuant to paragraph 2 hereof that M-I has any interest in MAXSITE, this Alberta Court does hereby request that Judge Isgur further determine, to the extent not already determined in connection with 2(a)(i) above, whether, as part of any Transaction, the Receiver may sell, transfer or license or provide an instance of MAXSITE free and clear of any

interest that M-I may be found to have in MAXSITE, and whether any such M-I interest might attach to the proceeds of such Transaction.

4. Nothing in this Order shall preclude (i) the ability of the U.S. Bankruptcy Court to refer any or all of the issues set out herein back to the Alberta Court for determination in accordance with the provisions of the Recognition Order and in particular paragraph 9 thereof, or (ii) the ability of the Alberta Court from deciding any of the matters set out herein to the extent it believes it is appropriate to do so.
5. To the extent necessary, the stay of proceedings pursuant to Sections 7, 8 and/or 9 of the Receivership Order, are hereby lifted for the sole purpose of permitting the U.S. Bankruptcy Court to take steps or provide directions in respect of the matters set out in paragraph 2 hereof.

Miscellaneous

6. To harmonize and coordinate the administration of this Receivership proceedings and the Chapter 15 Proceedings, the Alberta Court and the U.S. Bankruptcy Court each may coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible, and the Alberta Court and the U.S. Bankruptcy Court may communicate with one another, with or without counsel being present, with respect to any procedural or substantive matter relating to the Receivership or the Chapter 15 Proceedings. The Alberta Court and the U.S. Bankruptcy Court may, but are not obliged to, coordinate activities in the Receivership proceedings and the Chapter 15 Proceedings such that the subject matter of any particular action, suit, request, application or contested matter or other proceeding is determined in a single Court.
7. This Alberta Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in or outside Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.
8. Service of this Order shall be deemed good and sufficient by posting a copy of this Order to the Receiver's Website at: <https://home.kpmg/ca/qmax> .
9. No other persons are entitled to be served with a copy of this Order.

Justice of the Court of Queen's Bench of Alberta

Schedule "B"

COURT FILE NUMBER	2001-06722	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	HSBC BANK CANADA, AS AGENT	
RESPONDENTS	Q'MAX SOLUTIONS INC., FLUID HOLDINGS CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD. and QMAX CANADA OPERATIONS INC.	
DOCUMENT	RESTRICTED COURT ACCESS ORDER	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	OSLER, HOSKIN & HARCOURT LLP Suite 2700, Brookfield Place 225 – 6th Avenue S.W. Calgary, Alberta, Canada T2P 1N2	
	Solicitors: Randal Van de Mosselaer Phone: 403.260.7060 Fax: 403.260.7024 Email: RVandemosselaer@osler.com Matter: 1211096	

DATE ON WHICH ORDER WAS PRONOUNCED: January 15, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice R. A. Neufeld

UPON THE APPLICATION by KPMG Inc. in its capacity as court-appointed receiver (the "**Receiver**") of Q'Max Solutions Inc. ("**QSI**"), Fluid Holdings Corp., Q'Max Solutions Holdings Inc., 1356760 Alberta Ltd. and QMax Canada Operations Inc. (collectively, the "**Debtors**"), for an order providing advice and directions;

AND UPON HAVING READ the Receivership Order dated May 28, 2020 (the "**Receivership Order**"), the First Report of the Receiver, dated December 18, 2020 (the "**First Report**"), the First Supplemental Confidential Report dated December ●, 2020 (the "**First Supplemental Confidential Report**"), all other prior materials filed in the within proceedings;

AND UPON HEARING the submissions of counsel for the Receiver, counsel to HSBC Bank Canada as Agent for a lending Lenders (the “**Lenders**”), and counsel to M-I LLC, and no one appearing for any other person on the service list, filed; **AND UPON** capitalized terms used but not defined in this Order having the same meaning as in the Sale Agreement;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given, and specifically, the service, notice and formal requirements of Part 6, Division 4 of the Alberta *Rules of Court*, Alta Reg. 124/2010 shall not apply to this Order and are hereby dispensed with.
2. The First Supplemental Confidential Report shall, subject to further Order of this Court, be marked "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR ORDER OF THE COURT" and shall be maintained in accordance with the terms of this Order and shall be treated as confidential, sealed and not form part of the public record.
3. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.
4. This Order will remain in effect subject to further Order of the Court granted following an Application brought on notice to the Receiver and the Lenders.
5. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
6. Service of this Order on any party not attending this Application is hereby dispensed with.

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