

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

**IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, C. C-36, AS AMENDED**

AND IN THE MATTER OF CARIBOU RESOURCES CORP.

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of Caribou Resources Corp. ("Caribou") before the Honourable Madam Justice K.M. Horner in Chambers at the Court House, at the City of Calgary, in the Province of Alberta, on Thursday, the 28th day of June, 2007, at the hour of 2:00 p.m. or so soon thereafter as counsel may be heard for the relief set out below. Capitalized terms in this Notice of Motion, unless otherwise defined herein, shall have the meaning ascribed to them in the *Companies' Creditors Arrangement Act (Canada)* R.S.C. 1985, c. C-36, ("CCAA") Plan of Arrangement ("CCAA Plan"), attached as Exhibit "A" to the Affidavit of Christina M. Fehr filed on June 22, 2007 (the "Fehr Affidavit"). Caribou applies for the following relief:

1. A declaration that the 2 classes of Affected Creditors, namely Subordinate Secured Creditors and Unsecured Creditors, are appropriate classes of Creditors who are to receive consideration and whose claims are to be compromised by the CCAA Plan;
2. A declaration that claimants having Flow-Through Claims ("Flow-Through Claimants") are properly excluded from the class of Unsecured Creditors;
3. A declaration that after the Plan Implementation Date neither Caribou nor JED Oil Inc. ("JED") shall have any liability whatsoever to the Flow-Through Claimants in respect of Flow-Through Claims, the Flow-Through Shares or their Subscription Agreements;
4. A declaration that JED shall not be required to increase the consideration being provided by JED to the Affected Creditors under the CCAA Plan or to the Caribou Shareholders under the ABCA Arrangement;
5. Advice and direction with respect to the Flow-Through Claims and a declaration that:

- (a) Flow-Through Claims are attributes of the Flow-Through Shares and Flow-Through Claimants do not have any Claim or other entitlement against Caribou independent of the Flow-Through Shares, and shall not be entitled to receive any distribution in respect of the Flow-Through Claims under the CCAA Plan or the ABCA Arrangement; or
 - (b) Flow-Through Claims have no value, and it is fair and reasonable that they do not share in the distribution provided by the ABCA Arrangement for Caribou Common Shareholders and are not included in the class of Caribou equity including Caribou Common Shareholders; or
 - (c) Flow-Through Claimants are entitled to share with Caribou Common Shareholders in the consideration provided to the Caribou equity holders under the ABCA Arrangement, and for any consequential directions and amendments so that Flow-Through Claims are compromised and released or extinguished pursuant to the terms of the CCAA Plan and ABCA Arrangement, Flow-Through Claims are valued in relation to the value of Caribou Common Shares and a procedure is established for determining how Flow-Through Claims and Caribou Common Shareholders will prove their claims and share in the JED Common Shares made available to equity under the ABCA Arrangement; and
6. Such further and other relief as counsel for Caribou may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE THAT Caribou will rely upon the following in support of this Application:

- (a) the CCAA Plan;
- (b) the ABCA Arrangement, a copy of which is attached and marked as Exhibit "B" to the Fehr Affidavit;
- (c) the Affidavit of Service, filed;
- (d) the Fehr Affidavit;

- (e) the Affidavit of Ross G. Robertson, filed on June 21, 2007 in Caribou's ABCA proceedings Action No. 0701-06434;
- (f) the Affidavit of Stephen J. A. Fagan, filed on May 30, 2007;
- (g) the Supplemental Affidavit of Christina Fehr, filed on May 29, 2007;
- (h) the Affidavits of Christina Fehr, filed on January 30, May 3, May 25 and June 13, 2007;
- (i) the Order granted in these proceedings on June 14, 2007, and materials filed in support thereof;
- (j) the Initial Order granted in these proceedings on January 30, 2007, and materials filed in support thereof;
- (k) the CCAA;
- (l) the ABCA;
- (m) the Alberta *Rules of Court*, including Rule 548;
- (n) the inherent jurisdiction of the Court; and
- (o) such further and other materials as counsel for Caribou may advise and this Honourable Court may permit.

THE GROUNDS FOR THIS APPLICATION include:

- (a) the division of the Affected Creditors into Subordinated Secured Creditors and Unsecured Creditors is an appropriate classification because the entirety of the former is secured and the entirety of the latter is unsecured;
- (b) both of the classes (Subordinated Secured Creditors and Unsecured Creditors) of Affected Creditors are provided for in the CCAA Plan;
- (c) Flow-Through Claims are not debts, but rather are in the nature of equity and as such do not rank with Unsecured Creditors;

- (d) the Caribou Common Shareholders are provided for in the ABCA Arrangement, which does not provide any additional JED Common Shares for holders of Flow-Through Claims;
- (e) on June 8, 2006 Caribou closed a private placement of 1,630,434 Caribou Common Shares and 2,040,181 Caribou Common Shares on a flow-through basis;
- (f) pursuant to subscription agreements (each a "Subscription Agreement") separately entered into on or before June 8, 2006 by Caribou with 8 subscribers ("Purchasers"), the Purchasers subscribed for Flow-Through Shares for an aggregate subscription price of \$6,250,002.05;
- (g) each Subscription Agreement provides that the Purchaser shall be entitled to receive flow-through tax benefits from Caribou in accordance with Schedule "D" of the Subscription Agreement and in Schedule "D" Caribou covenanted, *inter alia*:
 - (i) to, on or after the signing of a Subscription Agreement by the Purchaser and on or before December 31, 2007, incur Qualified Expenditures (as defined in the Subscription Agreement) in an amount not less than the amount of the Funds (as defined in the Subscription Agreement);
 - (ii) to renounce to the Purchaser on or before March 31, 2007, effective on or before December 31, 2006 and in accordance with subsection 66(12.6) of the *Income Tax Act* (Canada) ("ITA"), Qualified Expenditures in the amount equal to the Funds subscribed for by the Purchaser;
 - (iii) to indemnify the Purchaser if there is any reduction pursuant to subsection 66(12.73) of the ITA of an amount renounced to the Purchaser and pay to the Purchaser an amount equal to the amount of any tax payable under the ITA (and any corresponding provincial legislation); and
 - (iv) that if it failed to incur and renounce to the Purchaser Qualified Expenditures in the amount of the Funds subscribed for by the Purchaser,

Caribou would indemnify the Purchaser as to, and pay to the Purchaser, an amount equal to the amount of any tax payable under the ITA (and any corresponding provincial legislation) by the Purchaser as a consequence of such failure.

- (h) to date Caribou has incurred Qualified Expenditures in the aggregate amount of \$543,182, which is less than the aggregate \$6,250,002.05 it agreed to incur and renounce;
- (i) JED has advised that if the CCAA Plan and ABCA Arrangement are approved by the requisite majorities of the creditors and shareholders of Caribou and the Court and are implemented, Caribou will not incur or renounce any further Qualified Expenditures in 2007;
- (j) pursuant to the covenants referred to above in sub-paragraphs (g) (i) to (iv) above the Purchasers have Flow-Through Claims against Caribou for any additional tax (at their respective applicable marginal tax rates) payable by them as a result of Caribou's failure to incur Qualified Expenditures in the aggregate amount of \$6,250,002.05;
- (k) pursuant to the decision of the Alberta Court of Appeal in *National Bank of Canada v. Merit Energy Ltd.*, 2001 ABQB 583 affirmed on appeal *National Bank of Canada v. Merit Energy Ltd.*, 2002 ABCA 5, the Flow-Through Claims are not debt claims and should not be placed in the same class as Unsecured Creditors;
- (l) Caribou has substantial net operating losses, the preservation of which also represents a preservation of value of Caribou Common Shares and it is therefore reasonable that Caribou Common Shareholders receive consideration under the CCAA Plan and ABCA Arrangement even though Caribou is insolvent. Caribou is not aware of any positive value associated with the Flow-Through Claims, given Caribou's insolvency.
- (m) in the event that the Court determines that Flow-Through Claims are entitled to share with Caribou Common Shareholders in the distribution of 3.85 million JED Common Shares under the CCAA Plan and ABCA Arrangement, Caribou will


need advice and directions for valuing the Flow-Through Claims in relation to Caribou Common Shares, determining the procedure by which Flow-Through Claims shall be proven and shall share with Caribou Common Shareholders and establishing how the cost of completing such a process will be funded; and

- (n) such other grounds as counsel for Caribou may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 22nd day of June, 2007.

BLAKE, CASSELS & GRAYDON LLP

Per: _____

 a behalf of

A. Robert Anderson, Q.C.

TO: Clerk of the Court

AND TO: Service List - see attached Schedule "A"

SCHEDULE "A"

Action No. 0701-01113

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SERVICE LIST

Last updated on May 28, 2007

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CLERK OF THE COURT

JUN 22 2007

CALGARY, ALBERTA

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