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Recapitalization of Calfrac Well Services Ltd and its affiliates “Contested Plan of Arrangement under CBCA

Peter Griffin, Lawrence Thacker and Derek Knoke acted as counsel to G2S2 Capital Inc., a bondholder and lender to Calfrac Well Services Ltd. (“Calfrac”) in a restructuring and recapitalization implemented pursuant to a plan of arrangement (the “Plan of Arrangement”) under the *Canada Business Corporations Act* (“CBCA”).

Calfrac provides specialized oilfield services to exploration and production companies drilling and extracting oil from wells drilled throughout Western Canada, the United States, Argentina and Russia.

Calfrac and its affiliates had approximately \$900 million in funded debt obligations before its recapitalization, including roughly \$590 million due under its senior unsecured debentures. It had defaulted on a payment owing under those senior unsecured debentures. The recapitalization would reduce Calfrac’s total debt by \$562 million. Without the restructuring and insolvency, a CCAA insolvency restructuring was virtually certain.

Calfrac’s largest competitor was Wilks Brothers, LLC (“WB”). In the preceding year, WB had made an unsolicited bid for all of Calfrac’s U.S. assets, which generates the majority of Calfrac’s revenue. When that bid failed, WB began acquiring common shares as well as significant amounts of the senior unsecured debentures, and another class of subordinated second lien secured debentures.

WB opposed every step of the process required to implement the transaction. WB launched a proxy solicitation proposing an alternate recapitalization plan, and eventually commenced a competing hostile takeover bid to acquire all of Calfrac’s common shares.

WB contested every step in the court litigation (and related U.S. proceedings), lost at every stage, and appealed each WB loss. The WB appeals all failed, including an application for a stay pending an appeal to the Supreme Court of Canada.

The various stages of the proceedings are described below.

On July 13, 2020, Calfrac and certain related entities obtained a Preliminary Interim Order from the Court of Queen's Bench of Alberta (the "Court"), which granted a stay of proceedings to prevent creditors from exercising rights and remedies against Calfrac, and ensured a level playing field for all stakeholders.

On July 23, 2020, WB applied to the Court to vary the Preliminary Interim Order. On July 27, 2020, the Court dismissed WB's application.

On August 7, 2020, Calfrac obtained an Interim Order under the *CBCA* authorizing (a) a meeting (the "Senior Unsecured Noteholders' Meeting") of Senior Unsecured Noteholders; and (b) a special meeting (the "Shareholders' Meeting") of Shareholders, to consider and vote upon the Plan of Arrangement.

WB subsequently applied to the Court of Appeal of Alberta seeking leave to file an appeal of the July 27 dismissal of WB's application.

On September 1, 2020, WB's leave to appeal application was heard and dismissed.

On October 16, 2020, the Shareholders' Meeting and Senior Unsecured Noteholders' Meetings were held, votes were taken, and the Plan of Arrangement was approved. Excluding Common Shares voted by WB, the Shareholders voted 96% in favour of the transaction. The Unsecured Noteholders voted 99.8% in favour.

On November 2, 2020, Calfrac obtained a Final Order from the Court approving the Plan of Arrangement. At the end of the hearing, WB immediately advised the Court of its intention to file an appeal on an expedited basis.

On November 25, 2020, the Court of Appeal of Alberta heard WB's appeal.

On November 26, 2020, the Court of Appeal of Alberta dismissed WB's appeal.

WB has filed an application for leave to appeal to the Supreme Court of Canada, which is pending.

The Court Orders in Calfrac were significant for insolvency and restructuring practitioners. They confirmed the jurisdiction and remedies available to a judge in a *CBCA* plan of arrangement.

- One, the Court confirmed the jurisdiction of a supervising judge in a *CBCA* plan of arrangement proceeding to grant a stay of proceedings to prevent a creditor unaffected

under the proposed arrangement from enforcing its acceleration and enforcement rights.

- Two, the Alberta Court of Appeal affirmed that the *CBCA* provides a supervising judge in a *CBCA* plan of arrangement with the jurisdiction to grant an order deeming all persons, including unaffected creditors who were not given a vote, to waive defaults arising from the implementation of a restructuring arrangement.

In this case the waivers in the Final Order included all defaults resulting from (a) the commencement of their *CBCA* proceedings, or (b) the related proceedings for U.S. recognition of the *CBCA* proceedings pursuant to Chapter 15 of the *United States Bankruptcy Code*, or (c) the steps or transactions related to the *CBCA* proceedings, the Plan of Arrangement or any related transaction, or Chapter 15 proceedings, or (d) third party change of control provisions that may be triggered by the Plan of Arrangement.