

COURT FILE NUMBER 2001-06722
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF HSBC BANK CANADA, AS AGENT
DEFENDANTS Q'MAX SOLUTIONS INC., FLUID HOLDING CORP., Q'MAX SOLUTIONS HOLDINGS INC., 1356760 ALBERTA LTD., QMAX CANADA OPERATIONS INC., CENTRAL PROCUREMENT INC., Q'MAX AMERICA INC., ANCHOR DRILLING FLUIDS USA, LLC, QMAX MEXICO, S.A. de C.V., ENVIRONMENTAL SOLUTIONS FOR PETROLEUM SERVICES – FREE ZONE – S.A.E AND QMAX ECUADOR S.A.
DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

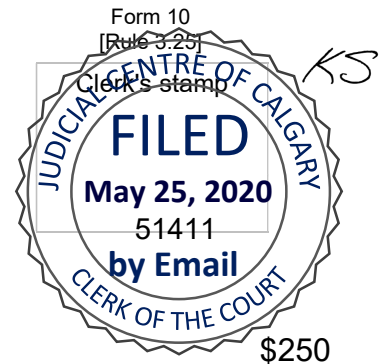
Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

I. The Parties

1. The Plaintiff, HSBC Bank Canada (**HSBC**) is a financial institution with offices in Alberta, including branch offices in Calgary. HSBC brings this claim in its capacity as



administrative agent (**Agent**) for and on behalf of a syndicate of lenders, currently comprised of HSBC, Bank of Montreal, Business Development Bank of Canada, Export Development Canada and HSBC Bank USA (collectively, the **Lenders**).

2. The Defendants, Fluid Holding Corp. (**Fluid Holding**), Q'Max Solutions Inc. (**QSI**) and Q'Max Canada Operations Inc. (**QCO**) are British Columbia corporations that carry on business in Alberta and potentially elsewhere.

3. The Defendants, 1356760 Alberta Ltd. (**135 Alberta**) and Q'Max Solutions Holdings Inc. (**QSH**), are Alberta corporations with registered offices in Calgary that carry on business in Alberta and potentially elsewhere.

4. The Defendants, Central Procurement Inc. (**Central Procurement**), QMax Mexico, S.A. de C.V. (**Q'Max Mexico**), Environmental Solutions for Petroleum Services – Free Zone – S.A.E. (**Environmental Solutions**) and QMax Ecuador S.A. (**Q'Max Ecuador**), are all foreign corporations that are involved in the global operations of the Q'Max enterprise.

5. The Defendants, Q'Max America Inc. (**QAI**) and Anchor Drilling Fluids USA, LLC (**Anchor**), are United States corporations. QAI and Anchor filed under Chapter 7 of Title 11, United States Code on May 24, 2020. The Agent does not anticipate taking steps against QAI and Anchor until a determination is made about the scope and extent of any resulting stay of proceedings and the resolution of any application that may be necessary to lift such stay (if necessary).

6. Control and management of the Q'Max enterprise in Canada and globally is centralized principally through QSI.

Real and Substantial Connection

7. A real and substantial connection exists between Alberta and all of the Defendants in this Action, *inter alia*, because:

- (a) numerous of the Defendants are Alberta corporations, or are corporations from elsewhere with operations in Alberta;
- (b) the global operations of the Q'Max enterprise are controlled and managed principally through QSI, which carries on business in Alberta;

- (c) the Credit Facilities (as defined below) are maintained by the Agent in Alberta; and
- (d) the Credit Agreement (as defined below) and related loan documents were made, performed and breached in Alberta.

8. The facts described in paragraph 7 (above) are grounds for service of this Statement of Claim outside of Alberta.

Indebtedness

9. QSI, QAI and QCO are borrowers (**Borrowers**) under a syndicated secured credit agreement being administered by the Agent, originally dated May 23, 2014 but amended and restated on July 31, 2018 and amended thereafter (as amended, the **Credit Agreement**). The remaining Defendants are all guarantors of the Borrowers' indebtedness under the Credit Agreement (**Guarantors**). All of the Borrowers and Guarantors, whether Defendants or not, are **Loan Parties**.

10. Under the Credit Agreement, the Lenders agreed to provide the Borrowers with the following Credit Facilities:

- (a) Canadian operating facility in the maximum amount of the lesser of (i) the Canadian Operating Facility Commitment (U.S. \$109,681,471), and (ii) the sum of the Borrowing Base less the then outstanding Advances under the Term Facility and the U.S. Operating Facility;
- (b) Term facility in the maximum amount of \$13,656,250; and
- (c) U.S. operating facility in the maximum amount of the lesser of (i) the U.S. Operating Facility Commitment (U.S. \$15,000,000), and (ii) the sum of the Borrowing Base less the then outstanding Advances under the Term Facility and the Canadian Operating Facility,

11. The terms of the Credit Agreement include, *inter alia*:

- (a) interest on the Credit Facilities (i) in respect of Canadian Dollar Prime Rate Loans, U.S. Dollar Base Rate Loans and LIBOR Loans is payable monthly at the Canadian Prime Rate, the U.S. Base Rate, or the U.S. Dollar LIBOR Rate,

respectively, plus the Applicable Margin; (ii) in respect of Bankers' Acceptances and BA Equivalent Loans is payable at a stamping fee (calculated by referenced to the Applicable Margin); and (iii) upon certain other terms more fully described in the Second ARCA, including at Sections 2.6, 3.6 and 4.6;

- (b) a Default Rate of interest, which applies when an Event of Default exists, whereby the interest rate and fees comprising the Applicable Margin each increase by 2.0% per annum;
- (c) financial covenants, including requiring the Borrowers to maintain a prescribed Net Leverage Ratio and Fixed Charge Coverage Ratio;
- (d) reporting obligations pursuant to which the Borrowers must provide regular reporting to the Agent, including annual, quarterly and monthly financial statements;
- (e) upon the occurrence of an Event of Default, and the expiration of any applicable cure period, all amounts advanced under the Credit Agreement would become immediately due and payable, or the Agent could declare all such amounts to be immediately due and payable;
- (f) an Insolvency Event, the non-performance of obligations relating to Funded Debt, Material Adverse Change and the discontinuance of a material portion of the Loan Parties' business are all defined as Events of Default; and
- (g) a Maturity Date of May 22, 2021.

12. In accordance with the terms of the Credit Agreement, the Agent and Lenders made various advances to the Borrowers from time to time.

13. The Borrowers agreed to repay the principal, interest and all applicable bank and agency fees to the Lenders at such times, on such terms and with such interest and costs as set out under the Credit Agreement.

14. As at May 5, 2020, the amounts outstanding and owing to the Agent (on behalf of the Lenders) under and in connection with the Credit Agreement, inclusive of interest, was

approximately USD \$145,381,623.21 plus CDN \$1,228,668.47 as well as outstanding letters of credit in the amounts of USD \$3,916,296.42 and CDN \$1,161,408.79 and outstanding credit card balances, plus accrued and accruing costs and disbursements, and interest continuing to accrue per diem (**Indebtedness**).

15. In addition, the Agent and the Lenders have incurred and are continuing to incur further costs, charges and expenses, including legal and other fees, to recover the Indebtedness.

Guarantees

16. In connection with the Credit Agreement, the Loan Parties granted guarantees (**Guarantees**) to the Agent as follows:

- (a) Unlimited guarantees were granted by QSI, QCO, QSH, QAI, 135 Alberta, Anchor, Central Procurement, Q'Max Mexico, Environmental Solutions and Q'Max Ecuador; and
- (b) A limited recourse guarantee was granted by Fluid Holding whereby recourse was limited to the collateral granted by Fluid Holding under a particular Securities Pledge Agreement.

Security

17. The Loan Parties granted various forms of security (**Security**) to the Agent and Lenders, or certain of them, in respect of their indebtedness, liabilities and obligations under the Credit Facility and Guarantees. Without limitation, the Security includes:

- (a) Security Agreement dated May 23, 2014 granted by QSI;
- (b) Security Agreement dated May 23, 2014 granted by Fluid Acquisition Corp. (now QSI);
- (c) Securities Pledge Agreement dated May 23, 2014 granted by QSI in respect of the shares of QSH, 135 Alberta and QCO held by QSI, as amended on September 1, 2016;
- (d) Security Agreement dated May 23, 2014 granted by QSH;

- (e) Security Agreement dated May 23, 2014 granted by 135 Alberta;
- (f) Securities Pledge Agreement dated May 23, 2014 granted by Fluid Holding in respect of the shares of QSI (as Fluid Acquisition Corp.) held by Fluid Holding;
- (g) Security Agreement dated September 1, 2016 granted by QCO;
- (h) Security Agreement dated as of May 23, 2014 granted by QAI;
- (i) Security Agreement dated November 21, 2017 granted by Anchor, as amended on July 31, 2018;
- (j) Account Security Deed dated 2014 (day and month not specified) granted by Central Procurement;
- (k) Debenture dated 2014 (day and month not specified) granted by Central Procurement;
- (l) Shares Charge dated 2014 (day and month not specified) granted by QSI in respect of the shares in Central Procurement held by QSI;
- (m) Management and Guarantee Commercial Trust Agreement dated July 31, 2014 granted by Central Procurement;
- (n) Promissory Note No. 01B dated August 22, 2018 granted by Central Procurement;
- (o) Promissory Note No. 02B dated August 22, 2018 granted by Central Procurement;
- (p) Promissory Note No. 03B dated August 22, 2018 granted by Central Procurement;
- (q) Promissory Note No. 04B dated August 22, 2018 granted by Central Procurement;
- (r) Promissory Note No. 05B dated August 22, 2018 granted by Central Procurement;

- (s) Contrato De Prenda Sobre Acciones dated July 31, 2014 granted by QSH and 135 Alberta in respect of the shares in Q'Max Mexico held by QSH and 135 Alberta;
- (t) Contrato De Prenda Sin Transmision De Posesion dated July 31, 2014 granted by Q'Max Mexico;
- (u) Convenio Modificatorio Del Contrato De Prenda Sin Transmision De Posesion dated July 31, 2014 granted by Q'Max Mexico;
- (v) Convenio Modificatoria Del Contrato De Prenda Sobre Acciones dated July 31, 2014 granted by QSH and 135 Alberta;
- (w) Encargo Fiduciario Que Otorga: QMax Ecuador S.A. A Favor De Fiducia S.A. Administradora De Fondos Y Fideicomisos Mercantiles Cuantia Indeterminada dated May 17, 2014 granted by Q'Max Ecuador;
- (x) Share Pledge granted by QSI., 135 Alberta and QSH in respect of the shares of Environmental Solutions held by QSI, 135 Alberta and QSH;
- (y) Assignment Agreement between Environmental Solutions, as assignor, and the Agent, as assignee, assigning to the Agent all current and future insurance policies of Environmental Solutions; and
- (z) Share Pledge Agreement granted by Environmental Solutions in respect of the shares of SARL Environmental Solutions Algeria held by Environmental Solutions.

18. Each Securities or Share Pledge Agreement requests the debtor under such Securities Pledge Agreement to deliver to the Agent any and all pledged certificated securities and other materials as may be required to provide the Agent with control over such pledged certificated securities.

19. The terms of the Security include, *inter alia*:

- (a) in the event of default of payment, the Agent may appoint a receiver over all assets secured by the Security; and

- (b) the Loan Parties must pay to the Agent all fees, charges and costs, including receiver's fees and legal costs on a solicitor and own client basis, incurred by the Agent or Lenders in taking any steps to enforce the Security.

Default and Demand

20. The Loan Parties have committed Events of Default under the Credit Agreement, *inter alia*, because:

- (a) there have been Insolvency Events (as defined by the Credit Agreement) involving the Borrowers and other Loan Parties, including the persisting insolvency of Loan Parties and the bankruptcy filings by QAI and Anchor in the United States;
- (b) certain Borrowers and Loan Parties failed to perform obligations in respect of Funded Debt (as defined in the Credit Agreement) owing to another secured creditor, Encina Business Credit, LLC (**Encina**), such that Encina took enforcement action against certain Loan Parties; and
- (c) one or more Material Adverse Changes resulted from Encina's enforcement action, the bankruptcy filings by QAI and Anchor in the United States, and such other events as may be proved; and
- (d) the Loan Parties are discontinuing material aspects of the business in the United States and perhaps elsewhere.

21. These Events of Default also resulted in the termination of certain previously waived payment obligations, financial covenants and liquidity thresholds under the Credit Agreement, as amended, thus resulting in additional Events of Default.

22. On or about May 12, 2020, the Agent, through its legal counsel, delivered a demand to the Loan Parties for repayment of the full Indebtedness (**Demand**). Such demand included Notices of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (**BIA**).

23. The Loan Parties have not made full payout, nor any payment, to the Agent or the Lenders to satisfy the Indebtedness in accordance with the Demand or otherwise.

24. In addition, by the conduct of the Loan Parties, the Lenders have incurred further costs, charges and expenses, including legal and other fees, that continue to accrue.

Trial

25. The Agent proposes that the trial of this Action be held at the Courts Centre in the City of Calgary, in the Province of Alberta.

26. The trial of this Action is expected to take less than 25 days.

Remedy sought:

27. The Agent seeks judgment and other relief from the Defendants, jointly and severally, as follows:

- (a) a declaration that the Defendants are in default of payment of the Indebtedness under the Credit Agreement, Guarantees and Security;
- (b) a declaration as to the amount owing to the Lenders under the Credit Agreement, Guarantees and Security, inclusive of interest, fees and costs;
- (c) a declaration that the Security is enforceable and constitutes valid and enforceable security;
- (d) an order requiring the Defendants to deliver any and all pledged certificated securities and other materials necessary to provide the Agent with control over same;
- (e) judgment against the Defendants in the following amounts, or such other amounts as may be proved, together with interest at the contractually agreed rates, plus fees, costs and expenses:
 - (i) the Canadian dollar equivalent of USD \$145,381,623.21; and
 - (ii) \$1,228,668.47
- (f) in addition to sub-paragraph (e), judgment (in Canadian dollar equivalent, as necessary) against the Borrowers and Loan Parties for outstanding credit card

balances, together with interest at the contractually agreed rates, plus fees, costs and expenses;

- (g) in the alternative to interest at contractually agreed rates, interest under the *Judgment Interest Act*, RSA 2000, c. J-1;
- (h) an order appointing a receiver or receiver and manager over the assets, undertakings and property of the Defendants, or certain of them, or such assets, undertakings and property of the Defendants as the Agent may direct and deem appropriate from time to time;
- (i) costs payable on a full indemnity, solicitor and own client basis, in accordance with the terms of the Credit Agreement, Guarantees and Security; or
- (j) in the alternative, costs payable in accordance with Schedule "C" under the *Alberta Rules of Court*, Alta Reg. 124/2010; and
- (k) such further and other relief as this Honourable Court deems appropriate.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.