

COURT FILE NUMBER **1701-03460**

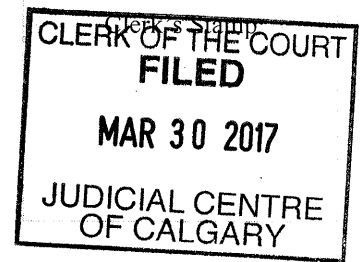
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Calgary

APPLICANT **ALBERTA ENERGY REGULATOR**

RESPONDENT **LEXIN RESOURCES LTD.**

DOCUMENT **APPLICATION BY RECEIVER:
ADVICE & DIRECTIONS FOR
HEALTH & SAFETY RECORDS**



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO RESPONDENTS: See Service List, Schedule "A" to this Application

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date April 4, 2017
Time 10:00 a.m.
Where Calgary Courts Centre, 601-5th Street SW, Calgary AB
Before Whom The Honourable Justice A.D. Macleod

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

Remedy claimed or sought:

1. Grant Thornton Limited, in its capacity as the court-appointed receiver ("**Receiver**") of Lexin Resources Ltd. ("**Lexin**"), seeks the advice and directions of this Court regarding the Receiver's immediate access to Lexin Records and information to address urgent health and safety concerns, including an Order for the following relief:
 - (a) Declaring service of this Application good and sufficient, and abridging the time for notice of this Application to the time actually given, if necessary;
 - (b) Approving the Document Review Protocol established between the Receiver and the Orphan Well Association ("**OWA**"), attached to the First Report of the Receiver, dated March 30, 2017 (the "**First Report**") as Appendix "4" (the "**OWA Protocol**");
 - (c) Approving the Document Review Protocol established between the Receiver and the Alberta Energy Regulator ("**AER**"), attached to the First Report as Appendix "5" (the "**AER Protocol**"); and
 - (d) Authorizing and directing the Receiver to immediately review any and all Lexin Records in accordance with each of the OWA Protocol and the AER Protocol, notwithstanding any claims of privilege which have been asserted on behalf of Lexin.

Grounds for making this application:

Background

2. On March 20, 2017, this Court granted the Alberta Energy Regulator's ("**AER**") application to petition Lexin into receivership (the "**Receivership Order**"). All capitalized terms but not otherwise defined herein shall have the meaning given to them in the Receivership Order.
3. The Receivership Order appointed the Receiver over all of Lexin's Property, but provided that, while the Receiver may take possession and exercise control over the Property, the Receiver is not required to take possession or exercise physical control over any of Lexin oil or gas wells, pipelines, facilities or sites regulated by the AER (the "**Sites and Abandoned Sites**").
4. Since its appointment the Receiver has been attempting to gain access to Lexin's Records. These attempts have included, but are not limited to:
 - (a) Writing to Lexin's former landlords requesting access to two former leased premises occupied by Lexin to retrieve Records and Property;
 - (b) Writing to Lexin's counsel, Groia & Company ("**Groia**") to, amongst other things:

- (i) Request delivery of all Lexin Records to the Receiver that are in the possession of Lexin, Mr. Michael Smith, Lexin's director, Groia, or any other party they are aware of;
 - (ii) Request delivery of all litigation files pertaining to Lexin; and
 - (iii) Advise of the Receiver's intention to attend at the Mazeppa Gas Processing Plant ("**Mazeppa**"), the Gladys Field Office ("**Gladys**"), and the Brant Field Office ("**Brant**") to retrieve Lexin's Records;
- (c) Writing to Sanghra Moller LLP, requesting delivery of Lexin's minute books and corporate records; and
- (d) Writing to the AER requesting delivery of the Lexin servers which the AER has in its possession.
5. In response to the Receiver's request to access Lexin's Records, Groia has advised the Receiver that Lexin asserts privilege over its Records. Groia has proposed that a document review protocol be put in place with respect to the Receiver's obtaining Lexin's Records, whereby all Records are to be delivered to Groia, Groia will review the Records and determine which Records are subject to privilege, and then deliver the non-privileged Records to the Receiver.
6. On March 28, 2017, through its counsel, the Receiver advised Groia that pursuant to paragraph 3(c) of the Receivership Order, the Receiver would be taking possession of and relocating the Records in order to preserve and protect the Records. The Receiver acknowledged Groia's advice that Lexin has not waived privilege over the Records.

Records Are Necessary for Health & Safety Reasons

7. Lexin's Records contain information regarding its oil and gas sites, some of which are sour gas facilities and which have existing and potential health and safety issues which require immediate attention by the parties with the care and custody of Lexin's sites, being the Orphan Well Association (the "**OWA**") and other working interest participants ("**WIPs**").
8. The OWA and the WIPs urgently require access to Lexin's Records to review and ensure Lexin has appropriate emergency response plans ("**ERPs**") in place and to obtain information regarding Lexin's emergency response zone ("**ERZ**"), which should contain contact particulars for all persons located in the ERZ who would need to be notified in the event of an emergency with one of Lexin's oil and gas sites, which include sour gas wells within the City limits of Calgary.

9. The information required by the OWA and WIPs includes, but is not limited to information regarding Lexin's: well, facility and pipeline files, ERPs, and ERZs (collectively the "**Emergency Records**"). The Emergency Records do not constitute privileged information.
10. Further, the Receiver understands that some of the Emergency Records are contained on Lexin servers which are in the possession of the AER, as a result of a seizure performed by the AER. The AER has advised the Receiver that it is unable to relinquish the servers to the Receiver due to the privilege assertions made by Groia on behalf of Lexin.
11. The Receiver has developed the OWA Protocol in conjunction with the OWA in order to immediately provide the OWA with the Emergency Records to ensure safe care and custody of Lexin's oil and gas facilities, which include sour gas wells within the City limits of Calgary.
12. The Receiver has developed the AER Protocol in consultation with the AER in order to obtain access to the records seized by the AER in light of the privilege claims made by Groia on behalf of Lexin.
13. The approval of each of the OWA Protocol and the AER Protocol is necessary to urgently address the health and safety concerns regarding Lexin's oil and gas sites, which include sour gas wells within the City limits of Calgary.
14. Such further and other relief as counsel may advise and this Honourable Court permit.

Material or evidence to be relied on:

15. The First Report of the Receiver, dated March 30, 2017.
16. The pleadings previously filed in these proceedings.
17. Such further and other evidence as counsel may advise and this Honourable Court permit.

Applicable rules:

18. *Alberta Rules of Court*, AR124/2010, and in particular, Rules 1.3, 3.75, 6.3, 6.4, 11.27, 11.29 and 13.5.
19. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6 and 11.
20. Such further and other rules as counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

21. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular Part XI thereof.
22. *Judicature Act*, RSA 2000, c J-2, and in particular ss 5(3)(e) and (i), 8.

Any irregularity complained of or objection relied on:

23. None.

How the application is proposed to be heard or considered:

24. In person before the Honourable Justice A.D. Macleod, with some or all of the parties present.

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.

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DOCUMENT **SERVICE LIST**

Clerk's Stamp

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