The Alberta Energy Regulator Retains its Statutory Powers in the Bankruptcy of an Oil and Gas Licensee

January 31, 2019

Today, the Supreme Court of Canada released its decision in *Orphan Well Association v. Grant Thornton Ltd.*, known as *Redwater*. A majority of the Supreme Court held that the Alberta Energy Regulator's (AER) use of its statutory powers does not create a conflict with the federal *Bankruptcy and Insolvency Act* (BIA) as to trigger the constitutional doctrine of federal paramountcy.

The majority held that Section 14.06(4) of the BIA is concerned with the personal liability of Trustees-in-Bankruptcy (Trustee) and does not empower a Trustee to walk away from the environmental liabilities of the estate it is administering. Furthermore, the AER is not asserting any claims provable in the bankruptcy, and the priority scheme in the BIA is not upended. The AER's refusal to approve licence transfers unless and until a licensee's Liability Management Rating obligations have been satisfied does not give the AER a monetary claim against the licensee.

The majority concluded that Alberta's oil and gas regulatory regime can coexist with and apply alongside the BIA.

A full analysis of the Supreme Court of Canada's decision will follow.

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