

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF  
BRUTE FORCE OIL FIELD HAULING INC.**

**APPLICANT**

**NOTICE OF MOTION**

**TAKE NOTICE** that an application will be made on behalf of Brute Force Oil Field Hauling Inc., (the "**Applicant**") before the Honourable Mr. Justice S.J. LoVecchio at the Calgary Courts Centre in the City of Calgary in the Province of Alberta, on Friday, the 20<sup>th</sup> day of November, 2009, at the hour of two o'clock in the afternoon or so soon thereafter as counsel may be heard for the following relief:

1. An Order, substantially in the form as attached as Schedule "A" hereto:
  - (a) That the time for service of this Notice of Motion and the materials in support thereof (the "**Notice of Motion**") is abridged, the Notice of Motion is properly returnable on Friday, November 20, 2009 and further service of the Notice of Motion and any Order arising therefrom, other than to those listed on the Service List attached as Schedule "B" to the Notice of Motion, is hereby dispensed with;
  - (b) Approving an extension of the stay of proceedings provided for in paragraph 13 of the Initial Order granted on October 15, 2009 (the "**Initial Order**"), as extended by the Order granted on November 13, 2009 (the "**November 13 Order**"), until and including December 15, 2009; and
  - (c) Ordering, pursuant to section 48 of the *Builders' Lien Act*, R.S.A. 2000, c B – 7 (the "**BLA**"), that:
    - (i) Upon Newell Regional Services Corp. ("**Newell**") making payment into an interest bearing trust account (the "**Court Account**") of an

amount equal to ten percent of the value of the work actually done and materials actually furnished by the Applicant to a construction project (the “**Newell Project**”) pursuant to an agreement (the “**Newell Contract**”) between the Applicant and Newell, plus ten percent of this amount as security for costs (the “**Lien Fund**”), the Registrar of Land Titles shall forthwith remove the builders’ lien (the “**Lien**”), and any *Certificate of Lis Pendens* relating thereto, filed by an entity affiliated with the Corix Group of Companies (“**Corix**”) pursuant to the BLA from title to the lands upon which the Newell Project is being constructed (the “**Newell Project Lands**”);

- (ii) the Lien Fund shall be held in the Court Account pursuant to section 48(2) of the BLA or as may otherwise be ordered by this Honourable Court;
- (iii) Payment of the Lien Fund into the Court Account is without prejudice to the right of any person to challenge the validity of the Lien or the entitlement of Corix to the Lien Fund;

2. Invoking Rule 323.1(e) of the *Alberta Rules of Court*, A.R. 390/68 (the “**Rules**”), as may be required;
3. Such further and other relief as the Applicant may request and this Honourable Court may allow;

**AND FURTHER TAKE NOTICE THAT** the grounds of this application are as follows:

**The Stay Extension**

4. On October 15, 2009, this Honourable Court issued the Initial Order granting the Applicant protection from its creditors under the *Companies' Creditors Arrangement Act* (the “**CCAA**”);
5. The Initial Order, *inter alia*:

- (a) Appointed the Hardie & Kelly Inc. (the “**Monitor**”) as monitor of the Applicant;
  - (b) Stayed proceedings or enforcement processes against the Applicant until November 13, 2009 (the “**Stay Period**”); and
  - (c) Permitted the Applicant to proceed with an orderly restructuring of its business (the “**Restructuring**”);
6. The November 13 Order extended the Stay Period up to and including November 20, 2009;
7. The Applicant has acted and continues to act in good faith and with due diligence;
8. The extension of the Stay Period until December 15, 2009, will assist the Applicant in the Restructuring;

**The Lien**

9. Newell is the owner of the Newell Project Lands for the purposes of the BLA;
10. Newell wishes to post the Lien Fund in the Court Account to remove the Lien from title to the Newell Project Lands;
11. The removal of the Lien pursuant to section 48 of the BLA will:
- (a) Preserve any right or entitlement of Corix to the Lien Fund;
  - (b) Allow for the Newell Project to continue without interruption or delay; and
  - (c) Assist the Applicant with the Restructuring;

**AND FURTHER TAKE NOTICE THAT** the Applicant will refer to the following:

12. The Initial Order;
13. The November 13 Order;
14. The Applicant’s Notice of Motion, dated November 10, 2009;

15. The Affidavit of Barry Watson, sworn November 10, 2009;
16. The Applicant's Notice of Motion, dated November 17, 2009;
17. The Affidavit of Barry Watson, sworn November 17, 2009;
18. The Affidavit of Barry Watson, sworn November 20, 2009;
19. The First Report of the Monitor, dated November 12, 2009, and any subsequent report filed by the Monitor;
20. The CCAA, the BLA and the Rules;
21. The inherent jurisdiction of this Honourable Court; and
22. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 19<sup>th</sup> day of November, 2009.

**OSLER, HOSKIN & HARCOURT LLP**

Per: 

Christa Nicholson  
Walker M. MacLeod

TO: Clerk of the Court

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

**SCHEDULE "A"**

**Action No.: 0901-15051**

**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 BRUTE FORCE OIL FIELD HAULING INC.**

BEFORE THE HONOURABLE ) AT THE LAW COURTS, IN THE CITY  
MADAM JUSTICE S.J. LOVECCHIO ) OF CALGARY, IN THE PROVINCE OF  
IN CHAMBERS ) ALBERTA, ON FRIDAY, THE 20<sup>th</sup>  
) DAY OF NOVEMBER, 2009

**ORDER**

**UPON** the application of the Applicant; **AND UPON** noting the Order granted by this Honourable Court in the within proceedings on October 15, 2009 (the "**Initial Order**"); **AND UPON** noting the Order granted by this Honourable Court in the within proceedings on November 13, 2009 (the "**November 13 Order**"); **AND UPON** having read (i) the Notice of Motion of the Applicant, dated November 12, 2009; (ii) the Notice of Motion of the Applicant, dated November 17, 2009; (iii) the Notice of Motion of the Applicant, dated November 19, 2009; (iv) the Affidavit of Barry Watson, sworn November 10, 2009, (v) the Affidavit of Barry Watson, sworn November 17, 2009; (vi) the Affidavit of Barry Watson, sworn November 19, 2009; and (vii) the First Report of the Monitor, dated November 12, 2009; **AND UPON** hearing counsel for the Applicant, the Monitor, the TD Bank, the GCNA and counsel present for other parties; **AND UPON** being satisfied that the Applicants have acted and continue to act in good faith and with due diligence and that the circumstances exist that make this Order appropriate; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the November 13 Order;
2. The time for service of the Notice of Motion dated November 19, 2009 and the materials in support thereof (the "**Notice of Motion**") is abridged, the Notice of

Motion is properly returnable today and further service of the Notice of Motion and this Order, other than to those listed on the Service List attached as Schedule “B” to the Notice of Motion, is hereby dispensed with;

3. The Stay Period as set forth at paragraph 13 of the Initial Order, and as extended by the November 13 Order, is hereby extended up to and including December 15, 2009;

4. It is hereby ordered, pursuant to section 48 of the *Builders’ Lien Act*, R.S.A. 2000, c B – 7 (the “**BLA**”), that:

(a) Upon Newell Regional Services Corp. (“**Newell**”) making payment into an interest bearing trust account (the “**Court Account**”) of an amount equal to ten percent of the value of the work actually done and materials actually furnished by the Applicant to a construction project (the “**Newell Project**”) pursuant to an agreement (the “**Newell Contract**”) between the Applicant and Newell, plus ten percent of this amount as security for costs (the “**Lien Fund**”), the Registrar of Land Titles shall forthwith remove the builders’ lien (the “**Lien**”), and any *Certificate of Lis Pendens* relating thereto, filed by an entity affiliated with the Corix Group of Companies (“**Corix**”) pursuant to the BLA from title to the lands upon which the Newell Project is being constructed (the “**Newell Project Lands**”);

(b) The Lien Fund shall be held in the Court Account pursuant to section 48(2) of the BLA or as may otherwise be ordered by this Honourable Court; and

(c) Payment of the Lien Fund into the Court Account is without prejudice to the right of any person to challenge the validity of the Lien or the entitlement of Corix to the Lien Fund;

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J.C.Q.B.A.

ENTERED this \_\_\_\_ day of November, 2009

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Clerk of the Court

Action No. 0901-15051

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BRUTE FORCE OIL FIELD HAULING  
INC.**

Applicant

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**ORDER**

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**OSLER, HOSKIN & HARCOURT LLP**  
Barristers and Solicitors  
2500, 450 – 1<sup>st</sup> Street S.W.  
Calgary, AB T2P 5H1

**Attention: Christa Nicholson/Walker W.  
MacLeod**  
Telephone: (403) 260-7043  
Facsimile: (403) 260-7024  
File Number: 1119223

**Schedule "B"**

**Service List  
Brute Force Oil Field Hauling Inc.**

**Last Updated on November 17, 2009**

<i>Party</i>	<i>Telephone</i>	<i>Fax</i>	<i>Representing</i>
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<b>HARDIE &amp; KELLY INC.</b> 206 5800 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2H 02H  Marc Kelly mkelly@insolvency.net	403.252.1766	403.640.9051	Monitor
<b>BLAKE CASSELS &amp; GRAYDON LLP</b> 3500 Bankers Hall East 855 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 4J8  Kelly Bourassa kelly.bourassa@blakes.com	403.260.9697	403.260.9700	Monitor

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<b>STIKEMAN ELLIOTT</b> 1155 René-Lévesque Blvd West 40 <sup>th</sup> Floor Montréal , QC H3B 3V2  Guy P. Martel gmartel@stikeman.com  4300 Bankers Hall West 888 - 3rd Street S.W. Calgary, AB T2P 5C5  Harold K. Andersen handersen@stikeman.com	514.397.3000	514.397.3222	Pembina Pipelines Corporation
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<b>BRAUL MCEVOY &amp; GEE</b> 10123 99 St NW Edmonton, AB T5J 3H1  Walter Braul wbraul@braullaw.ab.ca	780.423.2481	780.423.2474	Phoenix Insurance

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<b>STRINGAM DENECKY LLP</b> 104 - 140 Maple Avenue S.E. Medicine Hat, AB T1A 8C1  John D. Evans jdevans@stringam.ca	403.488.8200	403.488.4815	Newell Regional Services Corporation
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<b>DEPARTMENT OF JUSTICE CANADA</b> 510, 606 4th St. S.W. Calgary, AB T2P 1T1  Jill Medhurst-Tivadar jill.medhurst-tivadar@justice.gc.ca	403.299.3985	403. 299.3966	

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<b>AFW CONSTRUCTION LIMITED</b>  Walter Briand wbriand@explorenet.com			
<b>J.E. NASH ENTERPRISES LTD.</b> PO Box 129 Slave Lake, AB T0G 2A0  Jennifer jennifer@nashcompany.ca	780.849.3977	780.849.3244	
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<i>Party</i>	<i>Telephone</i>	<i>Fax</i>	<i>Representing</i>
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<b>CANADA REVENUE AGENCY</b> 220 4 <sup>th</sup> Avenue S.E. Calgary, Alberta T2G 0L1	1.800.959.552 5	403.264.5893	
<b>BUSINESS DEVELOPMENT BANK OF CANADA</b> Box 6, 505 Burard Street Vancouver, BC V7X 1V3	604.666.7467	604.666.1573	
<b>AGRICULTURAL FINANCIAL SERVICES CORPORATION</b> PO Box 5000, Station M 4910 – 52 Street Camrose, Alberta T4V 4E8	780.679.1350	780.679.1394	
<b>ALTERINVEST II FUND LP</b> 110, 444 7 Avenue SW Calgary, Alberta T2P 0X8	403.292.5600	403.292.6616	
<b>TERRA NOVA VENTURES LTD</b> 45-5304 Range Road 274 Spruce Grove, Alberta T7X 3T1	780.720.6663		

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