

**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.

**NOTICE OF MOTION
(The Guarantee Company of North America)**

TAKE NOTICE that an application will be made by the Guarantee Company of North America ("GCNA") before the Honourable Justice Eidsvik, in Chambers at the Calgary Court Centre, 601 - 5th Street S.W., in the City of Calgary, in the Province of Alberta, on Friday, the 13 day of November, 2009, at the hour of 9:00 o'clock in the forenoon, or so soon thereafter as counsel may be heard, for an Order in the terms of the draft Order attached hereto marked Schedule "X":

AND FURTHER TAKE NOTICE that the grounds upon which this application is brought are as follows:

1. GCNA established a surety bonding facility for Brute Force to issue Performance Bonds and Labour and Material Payment Bonds (the "Bonds");
2. The Bonds were issued on the basis that Brute Force and the Owners will comply with their obligations under the BLA;
3. The Initial Order was granted without notice to GCNA;
4. The Initial Order requires amendment to eliminate the severe prejudice which it is causing to GCNA and the Owners, and to ensure that the funds generated by the Bonded Projects are applied to complete the Bonded Projects instead of being used for other purposes by Brute Force;

5. It is inappropriate for the Charges to attach to the funds in the Project Accounts and for the Charges to have priority over the interests of the Owners and GCNA.

AND FURTHER TAKE NOTICE that in support of this application GCNA will rely upon the Affidavit of Stephen Muxlow sworn November 10, 2009, the pleadings and affidavits filed of record, any Report by the Monitor, and such additional material as counsel may advise and the Court may allow.

DATED at the City of Calgary, in the Province of Alberta, this 11 day of November, 2009.

BORDEN LADNER GERVAIS LLP

Per: _____

Josef G.A. Krüger
Solicitors for The Guarantee Company
of North America

TO: The Clerk of the Court
AND TO: Service List

SCHEDULE "X"

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 ARRANGMENT OF
BRUTE FORCE OIL FIELD HAULING INC.

BEFORE THE HONOURABLE)
MADAME JUSTICE _____)
IN CHAMBERS, LAW COURTS)
CALGARY, ALBERTA)

On the _____ day of November, 2009, at
the City of Calgary, in the Province of
Alberta

CONSENT ORDER

UPON THE APPLICATION of the Guarantee Company of North America ("GCNA") AND UPON having read the Affidavit of Steven Muxlow sworn November 10, 2009, filed; AND UPON noting the consent of counsel on behalf of GCNA, Brute Force Oil Field Hauling Inc ("Brute Force"), Toronto-Dominion Bank and for the Monitor;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Initial Order in this action granted by Justice S.J. Lovecchio on October 15, 2009 is hereby amended by the addition of the following paragraphs:

51. Nothing in this Order will operate to allow the Applicant or the Monitor to administer the affairs of the Applicant other than in full compliance with the provisions of the *Builders' Lien Act*, R.S.A. c.B-7 (the "BLA").

52. Nothing in this Order shall in any way affect or interfere with: (i) the rights of GCNA, or any "Obligees" identified in the bonds issued by GCNA (hereinafter referred to as "Owners") and listed in Schedule "A" hereto (the "Bonds"), to perform their obligations and pursue their rights and remedies in respect of the Bonds and the projects related thereto (the "GCNA Bonded Projects"); or

(ii) the rights of Owners to perform their obligations and pursue their rights and remedies in respect of their contracts with the Applicants, and no person shall take any steps to interfere with the Owners' payment or retention of funds on the GCNA Bonded Projects without further order of the Court on notice to GCNA.

53. In the event that a certificate of substantial performance ("CSP") has been issued in respect of any of the GCNA Bonded Projects and a payment is owing by the Owner on the GCNA Bonded Project to the Applicant, the Owner is entitled, upon the written approval of the Applicant, GCNA and the Monitor, to pay to the Applicant any amount that the Applicant owes to the persons who provided work or furnished materials in respect of such GCNA Bonded Project (the "Unpaid Vendor"), such funds to be held in trust by the Applicant for the benefit of the Unpaid Vendors and immediately paid to the Unpaid Vendors in the approved amounts. In the absence of the above-noted approval by each of the Applicant, GCNA and the Monitor, all such funds shall be held by Owner pending further order of the Court.

54. Subject to paragraph 53, the Applicant is directed to deposit any and all payments it receives from Owners on the GCNA Bonded Projects into separate bank accounts, which accounts are to be established by the Applicant for each individual GCNA Bonded Project (the "Project Accounts"). The funds held in the Project Accounts shall not be disbursed for any purpose inconsistent with the provisions of the BLA and shall only be disbursed in accordance with the following terms:

- (i) The Applicant will establish an accounting system to permit it to keep separate records for all amounts deposited to or disbursed from the Project Accounts on a project by project basis;
- (ii) The Applicant will provide to the owner of each of the GCNA Bonded Projects the applicable Bonded Account information and a direction that all cheques issued with respect to the relevant Bonded Project shall be marked as follows: "For deposit only to *[Insert Bank Account No.]* related to *[Insert name of Project]*";
- (iii) The Applicant will on a project by project and month by month basis contemporaneously with submitting an application for payment to the Owners, submit a list to the Monitor of the subcontractors and suppliers entitled to be paid

from the progress payment. The Monitor shall review the list of payments, using its best efforts to determine, in consultation with GCNA and the Applicant, the subcontractors and suppliers to be paid;

- (iv) Upon completion of the review by the Monitor of the list of payments to be made for each Bonded Project each month, and the Monitor being satisfied based on its best effort review that the proposed list of payments relates only to subcontractors and suppliers for the particular Bonded Project, the Applicant shall make payments from the particular Project Account to the particular Bonded Project subcontractors and suppliers;
- (v) Prior to the release of any surplus balance of the funds to the Applicant at the end of any particular Bonded Project, after all of the obligations have been fully satisfied with respect to that Bonded Project, the Applicant, shall deliver a sworn statutory declaration to the Monitor confirming that all of the subcontractors and suppliers relating to that particular project have been paid in full; and
- (vi) In the event of a default by the Applicant in performing the work on any of the projects that is not cured by the Applicant pursuant to the agreements applicable to such Bonded Project , or if the Applicant that it will not proceed with any of the Bonded Projects, the Applicant shall immediately freeze the balance of any funds in the bank account related to the particular Bonded Project. Any such balance of funds in the Project Account related to the particular Bonded Project shall be maintained in the Project Account subject to further Order of the Court on notice to all parties.

55. All funds received in the Project Accounts are excluded from the operation of the Charges granted in the Initial Order, and the Charges shall not rank in priority to the funds in the Project Accounts until such funds are released to Brute Force at the completion of the relevant Bonded Project..

J.C.C.Q.B.A.

CONSENTED TO
this ____ day of November, 2009

BORDEN LADNER GERVAIS LLP

Josef G.A. Kruger
Solicitors for Guarantee Company of North America

OSLER, HOSKIN & HARCOURT LLP

ENTERED this _____ day of November, 2009.

Krista Nicholson
Solicitors for Brute Force Oil Field Hauling Inc.

Clerk of the of Queen's Bench of Alberta

BLAKE, CASSELS & GRAYDON LLP

Kelly Bourassa
Solicitors for the Monitor

MACLEOD DIXON LLP

Howard A. Gorman
Solicitors for the Toronto-Dominion Bank

SCHEDULE "A"

List of Bonds for Brute Force Oilfield Hauling

Bond No.	Obligee	Contract
ES1094460	E Construction Ltd.	Subcontract No. 8082-01 ALBE
ES1094455	Newell Regional Services Corporation	
ES1094452	1376510 Alberta Ltd.	Site Servicing - Lakeview Village
ES1094440	Yellowhead County	Muskeg Diesel Road - Junction
ES1083409	Saddle Hills County	Local Road Grading and Other Work
Es1094461	Lafarge Canada Inc., C., Mat Group Northern Alberta	Century Road Widening 2009
ES1094446	Yellowhead County	2009 - 551 2009 Summer Gravel
ES1094445	Yellowhead County	Wolf Lake - Elk
ES1083408	Lac La Biche County Lakeview	County of Lac La Biche
ES1083405	Town of Slave Lake	2008 Water Distribution Rehab
ES1083401	Town of Marshall o/c Bar Engineering	Bar Project No. 06-129 Sewage

No. 0901-15051

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NOTICE OF MOTION

BORDEN LADNER GERVAIS LLP
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400 Third Avenue S.W.
Calgary, Alberta T2P 4H2

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