

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff

- and -

**ACTION ENERGY INC., NORTHERN GAS MARKETING INC. and GRIFFON
PETROLEUM INC.**

Defendants

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of Ernst & Young Inc. in its capacity as Receiver and Receiver and Manager (the "**Receiver**") before the Honourable Mr. Justice S.J. LoVecchio, in Chambers, at the Calgary Courts Centre, 601 - 5th Street S.W., in the City of Calgary, Province of Alberta on Friday, the 27th day of November, 2009 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard for:

1. Relief as outlined in the proposed Order attached as Schedule "A" including in particular, *inter alia*:
 - (a) declaring service of notice of this application and the supporting materials to be good and sufficient, and abridging the time therefore, if necessary;
 - (b) vesting those assets (the "**Assets**") described in the Asset Purchase and Sale Agreement dated October 30, 2009 between the Receiver and Westfire Energy Ltd. (the "**ASA**") in Westfire Energy Ltd. free and clear of all claims other than the Permitted Encumbrances (as defined in the ASA);

- (c) directing the appropriate government authorities including, without limitation, the Registrars of the North and South Land Titles Offices and the Minister of Energy, to discharge all registrations against the Assets other than the Permitted Encumbrances;
 - (d) directing that the net proceeds from the sale of the Assets shall stand in place and stead of the Assets and that all claims to the Assets, other than Permitted Encumbrances, shall to the extent that they are not paid from the net sale proceeds or otherwise, cease to be attached to or encumber or otherwise form a lien or a claim against the Assets and shall attach to the net sale proceeds with the same validity, priority and in the same amounts, and subject to the same defences, that existed when the Claims attached to the Assets;
 - (e) declaring that the sale of the Assets pursuant to the ASA shall not be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or any other applicable federal or provincial legislation, and the transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy; and
 - (f) declaring that the sale of the Assets and the granting of the Order requested herein shall not prejudice any person's *in personam* claim against Action Energy Inc. ("**Action**").
2. Such further and other relief as counsel may advise and this Honourable Court deems just.

AND FURTHER TAKE NOTICE that the grounds for this application are as follows:

1. On October 28, 2009, the Receiver was appointed receiver of the assets, undertakings and properties ("**Property**") of Action by order of Mr. Justice LoVecchio in these proceedings;

2. Pursuant to the Receivership Order, the Receiver is empowered and authorized to sell, convey or transfer the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court.

3. On October 15, 2009, Action entered into a Letter of Intent with Westfire Energy Ltd. that propose the acquisition of all of Action's oil and natural gas assets together with certain tangibles and miscellaneous interest.

4. Following its appointment, the Receiver negotiated and entered into the ASA, subject to Court approval.

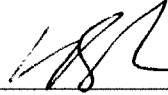
5. The terms of the ASA were approved by an Order of the Honourable Madam Justice B.E.C. Romaine on November 5, 2009, the terms of which permitted the Receiver to apply for an order vesting title in Westfire Energy Ltd. in the event that the Receiver believes the sale of the Assets pursuant to the ASA will close.

AND FURTHER TAKE NOTICE that the Receiver will rely on:

1. the Pleadings and other materials filed herein;
2. the Second Report of the Receiver dated November 23, 2009, to be filed;
3. *Land Titles Act*, R.S.A. 2000 c. L-4, as amended, and in particular sections 141, 152 and 191(1) thereof;
4. *Builders' Lien Act*, R.S.A. 2000, c. B-7, as amended, and in particular sections 36 and 47 thereof;
5. *Mines and Minerals Act*, R.S.A. 2000 c. M-17, as amended, and in particular section 99 thereof;
6. *Alberta Rules of Court*;
7. the inherent jurisdiction of the Court; and
8. such further and other material as Counsel may advise and this Honourable Court may allow.

DATED at the City of Calgary, in the Province of Alberta, this 24th day of November, 2009.

DAVIS LLP

Per: 

Larry B. Robinson Q.C.
Solicitors for the Receiver

TO: The Clerk of the Court

AND TO: Macleod Dixon LLP
Attention: Howard Gorman
Counsel for the Plaintiff

AND TO: McCarthy Tétrault LLP
Attention: Sean Collins
Counsel for Defendants

AND TO: Burnet, Duckworth & Palmer LLP
Attention: Doug Nishimura
Counsel for Westfire Energy Ltd.

AND TO: Shea Nerland Calnan LLP
Attention: Jim Shea
Counsel for Ripper Oil and Gas Ltd.

AND TO: Bennett Jones LLP
Attention: Grant Stapon, Q.C.
Counsel for Warren Doentz

AND TO: McLennan Ross LLP
Attention: Charles Russell, Q.C.
Counsel for Husky Energy

AND TO: Bearspaw Petroleum Ltd.

SCHEDULE "A"

Action No. 0901-16005

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
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BETWEEN:

NATIONAL BANK OF CANADA

PLAINTIFF

- and -

**ACTION ENERGY INC., NORTHERN GAS MARKETING INC. and GRIFFON
PETROLEUM INC.**

DEFENDANTS

Before the Honourable
Mr. Justice S.J. LoVecchio
In Chambers

) At the Courts Centre, in the City of Calgary, in
) the Province of Alberta, on Friday, the 27th day
) of November, 2009.
)

ORDER

UPON the application of Ernst & Young Inc. in its capacity as Receiver and Receiver and Manager (the "Receiver") of Action Energy Inc. ("Action"); **AND UPON** reading the Second Report of the Receiver dated November 23, 2009, filed, and the Asset Purchase and Sale Agreement dated October 30, 2009 between the Receiver and Westfire Energy Ltd. (the "ASA"); **AND UPON** hearing counsel for the Receiver and counsel for other interested parties; **AND UPON** it appearing that the ASA is in the best interests of Action and its creditors; **AND UPON** noting the Order of the Honourable Madam Justice B.E.C. Romaine approving the ASA granted November 5, 2009;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. Service of notice of this application and the supporting materials is deemed to be good and sufficient, and the time for service is abridged to the time actually given;

Defined Terms

2. All capitalised terms not defined herein shall have the meanings defined in the Second Report of the Receiver and the ASA (as applicable);

Vesting Provisions

3. Upon Closing, all of Action's right, title, interest, estate and equity of redemption in and to the Assets shall, without further instrument of transfer or assignment, vest in the Purchaser in accordance with and as contemplated by the ASA absolutely and forever, free and clear of and from any and all claims by, through, or under Action, and free and clear of and from any and all estate, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes (including any unpaid property taxes in respect of the Assets), judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, easements, covenants, caveats, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of Action whether or not they have attached or have been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as "the Claims"), excepting only the Permitted Encumbrances, and whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants"), including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and

entities served (either directly or through their solicitors) with this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceedings;

4. The Purchaser shall, by virtue of the completion of the transaction, have no liability of any kind whatsoever to any Claimants in respect of any Claims any of the Claimants may have against Action;
5. Other than a certified copy of this Order and a letter from Davis LLP, counsel to the Receiver, authorising the use of this Order (the "Authorisation Letter"), no further authorisation or approval or other action by any governmental authority or regulatory body exercising jurisdiction over the Assets shall be required for the Closing and post-Closing implementation of the transaction contemplated in the ASA;

Discharge of Registrations

6. The Receiver is authorised and directed to deliver to the Purchaser at Closing a general conveyance and specific conveyances signed by the Receiver in the manner provided for in Paragraph 8 of this Order, and upon filing of a certified copy of this Order and the Authorisation Letter, together with any applicable registration fees, the appropriate government authorities are hereby directed to register such transfers, discharges, discharge statements or conveyances, as may be required to convey clear title to the Assets to the Purchaser except for Permitted Encumbrances. Without limiting the foregoing:
 - (a) the Registrars of the North and South Alberta Land Registration Districts (the "Registrars") shall, notwithstanding subsection 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4 (Alberta), as amended, cancel and discharge the claims registered against the interests of Action in respect of freehold properties located in the Province of Alberta and, without limiting the generality of the foregoing, the Registrars shall cancel and discharge the claims identified in Schedule 1 to this Order. For greater and further certainty, the Registrars shall not cancel and

discharge the registration of any claims registered against the estates or interests other than the estate or interest of Action; and

- (b) the Ministry of Energy for Alberta acting pursuant to section 99 of the *Mines and Minerals Act*, R.S.A. 2000, c. M-17 (Alberta), as amended and sections 36 and 47 of the *Builders' Lien Act*, R.S.A. 2000, c. B-7 (Alberta), as amended, is hereby directed to cancel and discharge the claims registered against the estate or interest of Action in and to the Assets located in the Province of Alberta including, and without limiting the generality of the foregoing, the Minister of Energy shall cancel and discharge the claims identified in Schedule 2 to this Order. For further certainty, the Minister of Energy shall not cancel and discharge the registration of such builders' liens, security interests or builders' lien statements registered against estates or interests other than the estate or interest of Action;

Proceeds to Stand in Place

7. The net proceeds of the sale of the Assets shall stand in the place and stead of the Assets and all Claims not identified as Permitted Encumbrances shall, to the extent that they are not paid from the net sale proceeds or otherwise, cease to be attached to or encumber or otherwise form a lien or a claim against the Assets and shall attach to the net sale proceeds with the same validity, priority and in the same amounts, and subject to the same defences, that existed when the Claims attached to the Assets.

Miscellaneous

8. Any transfers, assignments, or other conveyances in respect of the Assets to be registered at any Land Titles Office, Alberta Energy or any other government agency, shall be deemed to be validly executed if signed in the following manner:

Ernst & Young Inc., in its capacity as Receiver and Receiver and Manager of Action Energy Inc., and not in its personal capacity.

Per: _____

9. The transaction contemplated in the ASA shall not be void or voidable and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or any other applicable federal or provincial legislation, and the transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy;
10. Nothing in this Order shall prejudice any person's *in personam* claim against Action;
11. This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, and in particular the Province of Saskatchewan, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or any of its provinces or territories and any federal or state court or administrative body in the United States of America or any other foreign courts or any administrative body or other tribunal to act in aid of and to be complimentary to this Court in carrying out the terms of this Order;
12. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

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

ENTERED this ____ day of _____, 2009.

Clerk of the Court of Queen's Bench

Schedule 1

Schedule 2

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DEFENDANTS

ORDER

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Calgary, Alberta
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File No. 38689-00001

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JUDICIAL DISTRICT OF CALGARY

BETWEEN:

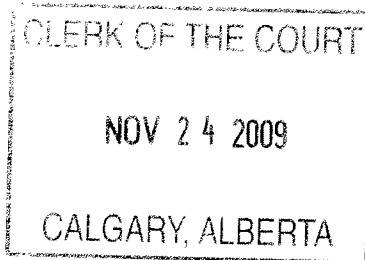
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Plaintiff

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Defendants



NOTICE OF MOTION

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