Action No.:1001-14376

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

BETWEEN:

HSBC BANK CANADA

Plaintiff

- and -

PAINTEARTH ENERGY SERVICES INC., PAINTEARTH ENERGY SERVICES LTD. and PES SUBSURFACE CANADA INC.

Defendants

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of the Plaintiff, HSBC Bank Canada ("HSBC") before the Honourable Justice G.E.C. Hawco in Chambers, at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta, on Wednesday, the 27th day of October, 2010 at 10:00 o'clock in the forenoon or so soon thereafter as counsel may be heard for an Order:

(a) extending and expanding the Interim Receivership Order granted by this Honourable Court on September 27, 2010 (the "Interim Receivership Order") and appointing Ernst and Young Inc. ("E&Y") as the Receiver and Manager of the property, assets and undertaking of the Defendants, Paintearth Energy Services Inc. ("Paintearth Inc."), Paintearth Energy Services Ltd. (Paintearth Ltd.) and PES Subsurface Canada Inc. ("PES") (collectively referred to as the "Debtors"); and

(b) abridging time for service of notice of this application, if required; alternatively, under the circumstances, deeming service good and sufficient and providing directions with respect to the service of any order resulting from the within application.

AND FURTHER TAKE NOTICE that the grounds upon which this application is based include the following:

1. Having regard to the emergent concerns outlined in the Affidavit of Karla McCarthy of HSBC Bank Canada ("HSBC"), filed herein, HSBC made application for and obtained the Interim Receivership Order on September 27, 2010.

2. The Interim Receivership Order expires pursuant to its terms on October 27, 2010 and it is the opinion of E&Y as the Interim Receiver that it is in the best interests of the estates of the Debtors and their stakeholders, that the Interim Receivership Order be extended beyond the expiry date and that a further Order be granted conferring all of the normal powers and authorities upon E & Y as Receiver and Manager.

3. HSBC is the principal secured lender of the Debtors having granted certain demand loans to Paintearth Inc. in amounts exceeding $6,376,863 pursuant to a credit facility letter dated September 21, 2006, and amendments thereto (the "Loans") and secured by:

(a) General Security Agreement;

(b) General Assignment of Book Debt;

(c) Section 427 *Bank Act* Security;

(d) Assignment of Life Insurance Policy; and

(e) Agreement as to Loans and Advances and Security therefore.

(collectively the "Security");

4. Paintearth Ltd. guaranteed the Loans pursuant to a guarantee dated October 19, 2006, limited to the principal amount of $14,730,000 secured by a General Security Agreement dated October 19, 2006. PES guaranteed the Loans pursuant to unlimited and unconditional guarantees, dated April 30, 2010 secured by a General Security Agreement dated April 30, 2010.

5. The Debtors continue to be in default of obligations owed to HSBC and have failed to repay their outstanding indebtedness despite formal demands for repayment and the service of notices of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 ("BIA").

6. The Debtors continue to face a number of serious financial challenges, including declining financial positions, dissipation of assets, and the absence of authorized management to conduct their businesses, all of which threaten to erode the value of the assets in the estate of the Debtors and prejudice their stakeholders.

7. E&Y continues to deal with numerous issues respecting the Debtors, including but not limited to, complete management paralysis, sales processes for the property, assets and undertaking of the Debtors, significant inventory removed by suppliers of the Debtors, lessors under various lease agreements, employees of the Debtors, utility providers, insolvency proceedings under Chapter 15 of the United States Bankruptcy Code, and has advised this Honourable Court that the appointment sought in this application is necessary and in the best interests of the estates and their stakeholders.

8. E & Y is qualified and has consented to act as receiver and manager of the Debtors.

9. HSBC, as the principal secured lender and the party with the most at stake having regard to its secured loans and anticipated shortfalls, supports the within application.

AND FURTHER TAKE NOTICE that in support of this application will be read the pleadings in this action, the Affidavit of Neil Narfason of E&Y, the Affidavit of Karla McCarthy, all filed herein, the Interim Receivership Order and such further and other material as counsel may advise and this Honourable Court permit.

AND FURTHER TAKE NOTICE that the applicant intends to rely on the Alberta Rules of Court, in particular Rules 329 and 549, section 13(2) of the *Judicature Act*, being Chapter J-1 of the Revised Statutes of Alberta, 1980 as well as the provisions of the BIA.

DATED at the City of Calgary, in the Province of Alberta, this 22nd day of October, 2010.

BORDEN LADNER GERVAIS LLP

Per: ______________________
John L. Ircandia
Solicitors for HSBC BANK CANADA

To: CLERK OF THE COURT

And to: HSBC BANK CANADA **Attention: Karla McCarthy**

And to: Service List

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Mr. John L. Ircandia
Telephone: (403) 232-9406
File No.: 400500-000805

CLERK OF THE COURT
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CALGARY ALBERTA

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