

COURT FILE NUMBER

1501-00681

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

Calgary

Form 27
[Rules 6.3 and 10.52(1)]

CLERK OF THE COURT

FILED
Clerk's Stamp

FEB - 6 2015

CALGARY, ALBERTA

**IN THE MATTER OF THE BANKRUPTCY
AND INSOLVENCY OF CALMENA
ENERGY SERVICES INC., CALMENA
ENERGY HOLDINGS LTD., CALMENA
ENERGY SERVICES OPERATING
LIMITED PARTNERSHIP, 1414995
ALBERTA LTD., CALMENA ENERGY
SERVICES USA CORP., CALMENA
DRILLING SERVICES LLC, CALMENA
ENERGY SERVICES US LP, BW
SERVICES LUXEMBOURG S.A.R.L.,
BWES SERVICES DE MEXICO, S. DE R.L.
DE C.V., PAN AMERICAN DRILLING S.
DE R.L. DE C.V., CALMENA ENERGY
SERVICES DE MEXICO, S. DE R.L. DE
C.V., CALMENA LUXEMBOURG
HOLDINGS S.A.R.L.**

PLAINTIFF

HSBC BANK CANADA

DEFENDANTS

**CALMENA ENERGY SERVICES INC.,
CALMENA ENERGY HOLDINGS LTD.,
CALMENA ENERGY SERVICES
OPERATING LIMITED PARTNERSHIP,
1414995 ALBERTA LTD., CALMENA
ENERGY SERVICES USA CORP.,
CALMENA DRILLING SERVICES LLC,
CALMENA ENERGY SERVICES US LP,
BW SERVICES LUXEMBOURG S.A.R.L.,
BWES SERVICES DE MEXICO, S. DE R.L.
DE C.V., PAN AMERICAN DRILLING S.
DE R.L. DE C.V., CALMENA ENERGY
SERVICES DE MEXICO, S. DE R.L. DE
C.V., CALMENA LUXEMBOURG
HOLDINGS S.A.R.L.**

DOCUMENT

**APPLICATION BY ERNST &
YOUNG INC., IN ITS CAPACITY
AS THE RECEIVER OF THE
DEFENDANTS**

ADDRESS FOR SERVICE AND	Patrick T. McCarthy, Q.C. / Jessica L. Duhn
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NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	February 9, 2015
Time	10:00 a.m., or so soon thereafter as counsel may be heard
Where	Calgary Courts Centre, 601 - 5 Street S.W., Calgary
Before Whom	The Honourable Justice LoVecchio in Commercial Appearance Court

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Ernst & Young Inc., in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of Calmena Energy Services Inc., Calmena Energy Holdings Ltd., Calmena Energy Services Operating Limited Partnership, 1414995 Alberta Ltd., Calmena Energy Services USA Corp., Calmena Drilling Services LLC, Calmena Energy Services US LP, BW Services Luxembourg S.A.R.L., BWES Services de Mexico, S. de R.L. de C.V., Pan American Drilling, S. de R.L. de C.V., Calmena Energy Services de Mexico, S. de R.L. de C.V., and Calmena Luxembourg Holdings S.A.R.L. (together the “**Calmena Group**”), pursuant to an Order of this Honourable Court dated January 20, 2015 (the “**Receivership Order**”), seeks the following relief:
 - (a) An Order,
 - (i) abridging the time for service of the notice of this Application, and deeming the service to be good and sufficient;

- (ii) Amending the Receivership Order by removing the following entities from the definition of the “Debtors” within the Receivership Order, *nunc pro tunc*:
 - (1) Calmena Energy Services de Mexico S. de R.L. de C.V.,
 - (2) BWES Services de Mexico, S. de R.L. de C.V.,
 - (3) Pan American Drilling S. de R.L. de C.V.,
 - (4) BW Services Luxembourg S.A.R.L., and
 - (5) Calmena Luxembourg Holdings S.A.R.L.
 (collectively the “**Foreign Subsidiaries**”);
- (iii) Declaring that, notwithstanding anything contained in the Receivership Order, EY has not:
 - (1) Taken possession of or exercised control over any of the Foreign Subsidiaries’ current or future assets, undertakings, and properties, wherever situated, including all proceeds thereof (the “**Foreign Property**”);
 - (2) Managed, operated or carried on the business of the Foreign Subsidiaries; and
 - (3) Therefore has not incurred, and will not incur, any duty or obligation with respect to the Foreign Subsidiaries pursuant to Part XI of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
- (b) An Amended and Restated Receivership Order, removing the Foreign Subsidiaries from the definition of the “Debtors” within the Receivership Order; and
- (c) Such further and other relief as counsel may advise and this Honourable Court deem just.

Grounds for making this application:

- 2. The Receiver was appointed as receiver and manager of the Calmena Group pursuant to the Receivership Order.
- 3. Calmena Energy Services Inc. (“**Calmena Canada**”) is either directly or indirectly the parent company of all of the corporate entities comprising the Calmena Group. The Calmena Group conducts operations in Canada, the United States, Mexico and elsewhere through a number of corporate entities incorporated in various jurisdictions including Canada, the United States, Mexico and Luxembourg.

4. The Receiver is presently in the process of seeking recognition of the within proceedings and of its appointment as receiver and manager of Calmena Energy Services USA Corp., Calmena Drilling Services LLC, and Calmena Drilling Services US LP, in the United States pursuant to Chapter 15 of the US *Bankruptcy Code*.
5. The Receiver has also investigated the possibility of pursuing foreign recognition proceedings in relation to its other foreign subsidiaries, specifically:
 - (a) In Mexico: Calmena Energy Services de Mexico S. de R.L. de C.V., BWES Services de Mexico, S. de R.L. de C.V. and Pan American Drilling, S. de R.L. de C.V. (collectively the “**Mexican Subsidiaries**”); and
 - (b) In Luxembourg: BW Services Luxembourg S.A.R.L. and Calmena Luxembourg Holdings S.A.R.L. (together the “**Luxembourg Subsidiaries**”).
6. The Receiver has been advised by its local counsel in both Mexico and Luxembourg that in both jurisdictions formal insolvency proceedings with respect to both the Mexican and Luxembourg Subsidiaries will be difficult and involve considerable delay and expense.
7. Despite having been unable to take direct control of the assets and operations of the Mexican or Luxembourg Subsidiaries, the Receiver has had the co-operation of the directors of these companies.
8. The Receiver expects to be able to effect an orderly disposition of the business, assets and operations of both the Mexican and Luxembourg Subsidiaries by virtue of its control of the parent company, Calmena Canada, and as a result of the co-operation extended by the directors of the Mexican and Luxembourg Subsidiaries.
9. As a result, there has been a material change in the circumstances existing as at the time the Receivership Order was granted, in that the Receiver has concluded that there is currently little to be gained by seeking formal recognition of the within proceedings in Mexico or Luxembourg.
10. Formal recognition proceedings with respect to the Mexican or Luxembourg Subsidiaries are likely to result in greater and unnecessary costs to the Estate.
11. Business efficacy requires that the Foreign Subsidiaries be removed from the receivership proceedings at the present time.

12. The Calmena Group's creditors would not be prejudiced by an Order removing the Foreign Subsidiaries from the receivership.
13. It is fair and reasonable in the circumstances for this Court to exercise its discretion and review, rescind or vary the Receivership Order to remove the Foreign Subsidiaries from the receivership.

Material or evidence to be relied on:

14. The Affidavit of Neil Narfason, sworn on February 4, 2015.

Applicable rules:

15. *Alberta Rules of Court*, AR 124/2010, and in particular Rules 1.3, 6.3, 6.4, 11.27, 11.29, and 13.5.
16. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6, and 11.
17. Such further and other rules as counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

18. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and in particular s 187(5) and Part XI thereof.
19. Such further and other Acts and regulations as counsel may advise and this Honourable Court permit.

Any irregularity complained of or objection relied on:

20. None.

How the application is proposed to be heard or considered:

21. In person before the Honourable Justice LoVecchio in Commercial Appearance Court, on affidavit evidence, with some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the

beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.