

**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 THE *BUSINESS  
CORPORATIONS ACT*, R.S.A. 2000, C. B-9, AS AMENDED**

**AND IN THE MATTER OF OILEXCO INCORPORATED  
and OILEXCO TECHNICAL SERVICES INC.**

**NOTICE OF MOTION**

**(Re: Employee Retention Plan)**

**TAKE NOTICE** that an application will be made on behalf of Oilexco Incorporated ("Oilexco") and Oilexco Technical Services Inc. ("OTSI") (collectively, the "Applicants") before the Honourable Madam Justice K.M. Horner, in Chambers, at the Calgary Courts Centre, 601 – 5th Street SW, in the City of Calgary, in the Province of Alberta, on Wednesday, the 11th day of February, 2009 at 1:00 o'clock in the afternoon or so soon thereafter as counsel may be heard for the following relief:

1. An Order, *inter alia*:

- (a) providing that the time for service of this application is abridged, that this application is properly returnable on February 11, 2009, and that service of the Notice of Motion to those listed on the Service List attached to the within Notice of Motion is sufficient;
- (b) authorizing Oilexco and OTSI to implement an employee retention plan (the "ERP") as set out in Exhibit "A" to the Affidavit of Arthur Millholland sworn February 10, 2009 (the "Millholland Affidavit #2");
- (c) approving the ERP;

- (d) authorizing Oilexco to advance funds in an amount equal to the ERP obligations of OTSI and granting OTSI a charge (the "Intercompany Charge") over the assets of Oilexco in respect of the Intercompany Charge, which charge shall be subordinate to the Administration Charge and the Directors' Charge (as defined in the Initial Order) and shall rank *pari passu* with the ERP Charge, as hereinafter defined, but shall rank ahead of claims of Secured Creditors and Unsecured Creditors;
- (e) granting a charge (the "ERP Charge") over the assets of Oilexco for claims by its employees under the ERP, which charge shall be subordinate to the Administration Charge and the Directors' Charge (as defined in the Initial Order) and shall rank *pari passu* with the Intercompany Charge, but shall rank ahead of claims of secured creditors and unsecured creditors;
- (f) in the alternative, adjourning the relief sought in paragraphs (d) and (e) herein and granting an interim order providing that the Intercompany Charge and the ERP Charge shall be secured by and to the extent of the Success Fee (as that term is defined in the Millholland Affidavit #2) and, in default of payment of the Success Fee, that the Intercompany Charge and ERP Charge shall be secured over the assets of Oilexco in an amount equal to the Success Fee which charge shall be subordinate to the Administration Charge and the Directors' Charge, with such relief to be confirmed on further application to this Honourable Court on notice to all affected parties (the "ERP Comeback Hearing");
- (g) in the further alternative, granting leave to the Applicants to seek the relief requested herein in paragraphs (d) and (e) at the ERP Comeback Hearing;
- (h) sealing on the court file until further order the following confidential information (the "Confidential Information"):
  - (i) Schedule "A" to Exhibit "A" to the Millholland Affidavit #2

2. Such further and other relief as the Applicants may seek and this Honourable Court may deem just.

**AND FURTHER TAKE NOTICE THAT** the grounds upon which this application is brought include the following:

**Background**

- (a) on February 5, 2009, Oilexco and OTSI applied in these proceedings for, and were granted, protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") pursuant to the Initial Order;
- (b) paragraph 5(a) of the Initial Order entitles the Applicants to pay, to the extent permitted by law, all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses, payable on or after the date of the Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

**The Employee Retention Plan**

- (c) Oilexco and OTSI require the continued service and assistance of their employees in order to fulfil their obligations under the Services Agreement (as that term is defined in the Initial Order) and to complete the restructuring process, all in the best interests of their stakeholders;
- (d) in support of the initial application for the Initial Order by Oilexco and OTSI, in Arthur Milholland, in his Affidavit sworn February 4, 2009, informed the court that he considered an employee retention plan necessary to retain employees and preserve the value of Oilexco and OTSI's business;
- (e) the ERP is supported by management and the directors of Oilexco;
- (f) the Applicants believe that the ERP provides the incentives necessary to attempt to retain their employees, in each case for the period of time and the purpose required while at the same time recognizing Oilexco's financial circumstances;
- (g) the terms and conditions of the ERP are reasonable and implementation of same is critical to attempt to ensure that the employees are retained to maintain the businesses and complete the restructuring.

- (h) there is urgency to this application as, without the ERP, the Applicants will have difficulty retaining the continuing services of their respective employees during this critical time, to the detriment of the Applicants' stakeholders.

### **ERP Charges**

- (i) a court-ordered charge over the property of the Applicants in respect of ERP is appropriate to provide reasonable assurances to the employees that the ERP will be honoured;

### **Confidentiality**

- (j) there is a need to ensure that the Confidential Information is not made public, otherwise the Confidential Information would circulate throughout the oil and gas industry very quickly to the detriment of the Applicant and its employees and, in any event, the salutary effects of sealing the Confidential Information outweigh the deleterious effects; and

### **Other**

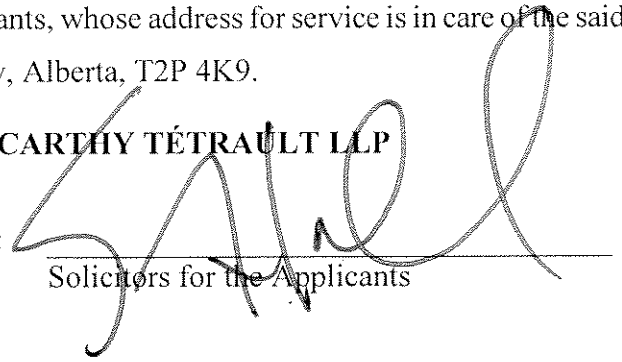
- (k) such further and other grounds as counsel may advise and this Honourable Court may permit.

**AND FURTHER TAKE NOTICE THAT** the Applicant will rely upon the following:

- (i) the Millholland Affidavit #2 sworn February 10, 2009;
- (ii) the Monitor's First Report;
- (iii) the pleadings in the within proceedings;
- (iv) the CCAA;
- (v) the Alberta *Rules of Court*, including Rules 548 and 312;
- (vi) the inherent jurisdiction of the Court; and
- (vii) such further and other materials as counsel for the applicants may advise and this Honourable Court may permit.

**DATED** at Calgary, Alberta, this 10 day of February, 2009 **AND DELIVERED BY**  
McCarthy Tétrault LLP, Solicitors for the Applicants, whose address for service is in care of the said  
solicitors at 3300, 421-7th Avenue S.W., Calgary, Alberta, T2P 4K9.

**McCARTHY TÉTRAULT LLP**

Per: 

Solicitors for the Applicants

TO: Clerk of the Court

AND TO: Service List

**IN THE MATTER OF OILEXCO INCORPORATED  
and OILEXCO TECHNICAL SERVICES INC.**

**SERVICE LIST**

Last updated on February 10, 2009

| <i>Counsel</i>                                                                                                                                                                            | <i>Telephone</i> | <i>Fax</i>   | <i>Counsel For</i>             |
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| Fraser Milner Casgrain LLP<br>3000, 237-4th Avenue S.W.<br>Calgary AB T2P 4X7<br>Attention: David Mann<br>E-Mail: <a href="mailto:david.mann@fmc-law.com">david.mann@fmc-law.com</a>      | 403-268-7097     | 403-268-3100 | Monitor                        |
| Ernst & Young Inc. (Monitor)<br>1000, 440-2nd Avenue S.W.<br>Calgary, AB T2P 5E9<br>Attention: Greg Pollard<br>E-Mail: <a href="mailto:greg.pollard@ca.ey.com">greg.pollard@ca.ey.com</a> | 403-206-5479     | 403-818-0710 | -                              |
| Osler, Hoskin & Harcourt LLP<br>2500, 450-1st Street S.W.<br>Calgary, AB T2P 5H1<br>Attention: Colin Feasby<br>E-Mail: <a href="mailto:cfeasby@osler.com">cfeasby@osler.com</a>           | 403-260-7067     | 403-260-7024 | Royal Bank of<br>Scotland, plc |

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No. 0901-01613

A.D. 2009

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