

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

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
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

MOTION RECORD OF THE APPLICANT

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TAB 1

Court File No. 09-8363-00CL

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Applicant

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on a date to be established by the Commercial List Office, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, if necessary, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on the date established by the Commercial List office and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
2. an Order approving the bidding procedures as described in the affidavit of Karen Narwold sworn September 17, 2009 (the "**Narwold Affidavit**") (the

"**Bidding Procedures**") subject to approval of the Bidding Procedures by the United States Bankruptcy Court for the District of Delaware (the "**US Court**") in the proceedings commenced by the US affiliates of the Applicant (the "**US Debtors**") under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**");

3. Approving the asset purchase agreement dated as of September 15, 2009 between the Applicant and the US Debtors, as sellers, and Chriscott USA Inc. and 4513614 Canada Inc. (collectively, "**Metco**"), as purchasers (the "**APA**") as attached as an exhibit to the Narwold Affidavit for the purposes of conducting the "stalking horse" bidding process in accordance with the Bidding Procedures including, without limitation, the Break-Up Fee and the Expenses Reimbursement (as both terms are defined in the APA); and

4. such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Applicant and the US Debtors (collectively, the "**Debtors**"), with the assistance of Houlihan Lokey Howard & Zukin Capital, Inc. ("**Houlihan**"), conducted a comprehensive sales process for their respective assets over a 3½ month period contacting over 220 potential strategic and financial buyers/investors of which 72 executed confidentiality agreements, received an information memorandum and gained access to an electronic data room to conduct their due diligence resulting in more than thirteen (13) potential buyers and investors receiving management presentations or conducting facility tours which

ultimately resulted in the receipt of twelve (12) offers to pursue a transaction involving substantially all of the Debtors' assets;

- (b) after due consideration, the Applicant, the US Debtors and Houlihan considered the APA to represent the best offer resulting from such a sale process;
- (c) although Applicant's Secured Lenders (as defined in the Narwold Affidavit) are owed significantly more debt than the purchase price set out in the APA, the Secured Lenders have consented to and supported the Applicant's entering into the APA;
- (d) Given the financial condition of the Debtors, Metco was not prepared to purchase any of the assets of the Debtors outside of formal insolvency proceedings and the APA is structured to be a "stalking horse" in a court supervised sales process by both this Court and the US Court;
- (e) these proceedings are premised on maintaining the Debtors' business as a going concern in order to be able to permit the Applicant to effect a sale of all or substantially all of its assets so as to maximize the realizable value of its assets and continue as an operating enterprise;
- (f) given the extensive sales process that has already been conducted for the assets of the Debtors, the "final round" court supervised sales process can be relatively short;
- (g) the DIP Credit Agreement (as defined in the Narwold Affidavit) also requires the Applicant to comply with certain Sale Milestones (as

defined in the DIP Credit Agreement) and the Applicant cannot continue carrying on business if the DIP Credit Agreement is terminated;

- (h) the Bidding Procedures provide for an orderly, efficient auction process for the cross-border sale of the assets of the Debtors in a coordinated fashion with this Court and the US Court acting in parallel;
- (i) the Bidding Procedures will ensure that the Debtors receive the maximum value for their respective assets and Metco has agreed that the APA is subject to higher or better offers;
- (j) execution of the auction pursuant to the Bidding Procedures will be monitored by Deloitte & Touche Inc. in its capacity as the court appointed monitor in these proceedings (the "**Monitor**");
- (k) paragraphs 45 and 49 of the Initial Order made in these proceedings on September 15, 2009;
- (l) Rules 3.02 and 37.02(1) of the *Rules of Civil Procedure*; and
- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) the Karen Narwold sworn September 17, 2009;
- (ii) a report of the Monitor, to be filed separately; and

(iii) such further and other materials as counsel may advise and this Honourable Court may permit.

Date: September 17, 2009

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TO: ATTACHED SERVICE LIST

Court File No. 09-8363-00CL

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Applicant

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BARZEL INDUSTRIES CANADA INC.

Court File No. 09-8363-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
Proceeding Commenced at Toronto

NOTICE OF MOTION

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TAB 2

Court File No. 09-8363-00CL

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Applicant

AFFIDAVIT OF KAREN NARWOLD

I, Karen Narwold, of the City of Wilmington, in the State of Delaware,
U.S.A. MAKE OATH AND SAY:

1. I am the Vice President of Barzel Industries Canada Inc. (the "**Applicant**") and have held this position since April 15, 2008. As such I have personal knowledge of the matters to which I depose in respect of the Applicant and the US Debtors (defined below) (collectively, the "**Debtors**"). To the extent that I do not have personal knowledge, I verily believe the information to which I depose.

Background

2. The Applicant was granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") by order of this Honourable Court made in these proceedings on September 15, 2009 (the "**Initial Order**"). A copy of the Initial Order is attached hereto as Exhibit "**A**".

3. The Applicant is a wholly-owned indirect subsidiary of Barzel Industries Inc., a corporation organized under the laws of the State of Delaware. Barzel Industries

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Inc. and its U.S. subsidiaries, being Barzel Holdings Inc., Barzel Finco Inc., Barzel Industries U.S. Inc., American Steel and Aluminum Corporation, Nova Tube and Steel, Inc., Novamerican Tube Holdings, Inc. and Nova Tube Indiana, LLC, (collectively, the "**US Debtors**") filed voluntary petitions for relief under title 11 of the United States Code, 11 U.S.C. §101-1532 (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**US Court**") early in the morning on September 15, 2009 (the "**Chapter 11 Proceedings**"). The US Debtors intend to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. It is not expected that any trustee or examiner will be appointed in the US Debtors' cases.

4. The Chapter 11 Proceedings were granted recognition by this Honourable Court as a "foreign proceeding" pursuant to Section 18.6 of the CCAA by a companion order made on September 15, 2009 (the "**Recognition Order**"). A copy of the Recognition Order is attached hereto as Exhibit "**B**".

5. The Applicant's relationship to its affiliated companies is illustrated on the corporate group organizational chart attached as Exhibit "**C**" hereto.

6. The Applicant itself owns, directly or indirectly, all of the shares or other equity interests in 632422 N.B. Limited (a New Brunswick corporation), Hencorp LLC (a Delaware corporation) and Chriscorp ULC (a Nova Scotia unlimited liability company). None of these companies have any assets or employees and none of them currently carry on any business.

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7. The Applicant is also a party to a joint venture arrangement with ArcelorMittal Tubular Products Montreal Inc. pursuant to which the Applicant owns a 60% equity interest in Delta Tubes Inc. (a Québec corporation) and 60% of the limited partnership units of Delta Tube and Company Limited, a Québec limited partnership. Delta Tubes Inc. is the general partner of Delta Tube and Company Limited. The owner of the 40% equity interest in Delta Tubes Inc. and remaining 40% of the limited partnership units of Delta Tube and Company Limited is ArcelorMittal Tubular Products Montreal Inc. The material terms of this joint venture arrangement are outlined in greater detail below.

8. The Applicant sought protection under the CCAA in order to provide it with the necessary forum, time and a stable operational environment so as to effect and implement a going concern sale of its business.

9. An overview of the Applicant's business and operations is set out in my affidavit dated September 15, 2009 in support of the Applicant's CCAA application (the "**Application Affidavit**"). A copy of the Application Affidavit (without exhibits) is attached hereto as Exhibit "D".

Purpose of Affidavit

10. The purpose of this Affidavit is to support the Applicant's motion for an order of this Honourable Court approving bidding procedures for the sale of the Applicant's assets and the Applicant's entering into a "stalking horse" agreement of purchase and sale.

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Sale Process

11. The three and a half month sale process leading up to the Applicant and the US Debtors entering into an asset purchase agreement with Chriscott USA Inc. and 4513614 Canada Inc. as purchasers (collectively, "**Metco**") dated September 15, 2009 (the "**APA**") is outlined in paragraphs 73 to 78 in the Application Affidavit. The principals of Metco are the same principals who were the previous owners of the Debtors' business. A copy of the APA (without schedules) is attached hereto as Exhibit "**E**".

12. The APA does not include the purchase of the Applicant's interest in the Delta Tube joint venture. However, the Applicant is prepared to sell its interest in the Delta Tube joint venture to Metco upon appropriate sale documentation being agreed to subject to approval by this Honourable Court. Metco has agreed to a purchase price of no less than CND\$3 million for the Applicant's interest in the Delta Tube joint venture should such transaction be so effected and approved. Such a sale will be the subject of a future motion before this Honourable Court.

13. The APA is predicated on there being a court supervised sale of the Applicant's and US Debtors' assets with Metco being the "stalking horse" in such a contemplated auction.

14. Metco and its advisors have expended and likely will continue to expend considerable time, energy and resources pursuing the purchase of the assets of the Debtors and have engaged in extended negotiations. The APA is a culmination of

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these efforts. In recognition of this expenditure of time, energy and resources, the Debtors have agreed that if Metco is not the Successful Bidder (as defined in the Bidding Procedures (defined below)), the Debtors will pay Metco the Sellers Termination Fee (as defined in the APA) and the Expense Reimbursement (as defined in the APA). The Sellers Termination Fee is equal to 3% of the Base Purchase Price (as defined in the APA) which is US\$65 million. The Expense Reimbursement is to be equal to the amount of reasonable out-of-pocket costs and expenses including all reasonable and documented fees of Metco's advisers, to a maximum of US\$750,000.

15. As also set out in the Application Affidavit, the secured debt owed by the Applicant to its primary secured lenders, being the Holders and Secured Lenders (as those terms are defined in the Application Affidavit) (collectively, the "**Secured Lenders**") materially exceeds the purchase price set out in the APA.

16. The Secured Lenders have consented to the Debtors' entering into the APA on certain terms and conditions set out in an acknowledgement dated September 14, 2009 (the "**Acknowledgement**"). A copy of the Acknowledgement is attached hereto as Exhibit "F".

17. The APA currently represents the highest and best offer for the Debtors' assets as validated by a comprehensive and diligent marketing process for such assets.

18. The Secured Lenders are also the DIP Lenders (as defined in the Application Affidavit).

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19. The Applicant must be able to draw under the DIP Facility (as defined in the Application Affidavit) if it is to continue operating as a going concern while it works toward affecting a sale of its business to Metco or a higher or better offer.

20. The ability to obtain advances under the DIP Facility is subject to, among other things, compliance with certain milestones for a sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code for the assets of the US Debtors and the CCAA for the assets of the Applicant (the "**363 Sale**") including (i) a motion to approve the sale (including bid and auction procedures) being filed by no later than two (2) business days after the Filing Date (as defined in the DIP Credit Agreement), (ii) an order approving the bid procedure motion having been entered no later than eighteen (18) days after the Filing Date, (iii) bids for the 363 sale being due by no later than thirty-five (35) days after the Filing Date, (iv) if applicable, an auction occurring by no later than forty (40) days following the Filing Date, (v) the hearing to confirm the 363 Sale having been concluded and the order confirming the 363 Sale having been entered no later than forty-five (45) days after the Filing Date, and (vi) the 363 Sale having been consummated by no later than sixty (60) days following the Filing Date.

Bidding Procedures

21. In order to effect a sale pursuant to section 363 of the Bankruptcy Code, some form of auction process must be undertaken. The terms and conditions of such an auction process have been set out in certain bidding procedures as agreed to

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between the Debtors and Metco (the "**Bidding Procedures**"). A copy of the Bidding Procedures is attached hereto as Exhibit "**G**".

22. Given the extensive sale process that has already been conducted for the assets of the Debtors and the terms of the DIP Credit Agreement, the auction process contemplated by the Bidding Procedures should be relatively short with bids due by no later than October 20, 2009, being the thirty fifth day after the Filing Date.

23. The Bidding Procedures provide for an orderly, efficient auction process for the cross-border sale of the assets of the Debtors in a coordinated fashion with this Honourable Court and the US Court.

24. Execution of the auction pursuant to the Bidding Procedures will be monitored by Deloitte & Touche Inc., in its capacity as the court appointed monitor in the Applicant's CCAA proceedings, and the Bidding Procedures themselves contemplate and incorporate this oversight role.

25. The Applicant believes that the Bidding Procedures will ensure that the Debtors receive the maximum value for their respective assets and Metco has agreed that the APA is subject to higher or better offers.

Conclusion

26. Under the circumstances, I believe that the proposed process for the sale of the assets of the Debtors pursuant to the Bidding Procedures with the APA as the "stalking horse" is the best way to preserve and maximize the going concern value of the Applicant which, in turn, is the best way to preserve the employment of the greatest

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number of the Applicant's employees as possible and maintain customer, supplier and other stakeholder networks.

SWORN/ATTESTED BEFORE ME)
at the City of Wilmington, in the)
State of Delaware, USA, this)
17th day of September, 2009)

Karen D. Narwold
Karen Narwold

Fredda J. Marshall

**FREDDA J. MARSHALL
NOTARY PUBLIC STATE OF DELAWARE
MY COMMISSION EXPIRES 7/21/2011**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
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INDUSTRIES CANADA INC.**

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**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIS**

Proceeding commenced at Toronto

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