File No. CI 12-01-76323

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO ARCTIC GLACIER INCOME FUND, ARCTIC GLACIER INC., ARCTIC GLACIER INTERNATIONAL INC. and the ADDITIONAL APPLICANTS LISTED ON SCHEDULE "A" HERETO

(collectively, the "APPLICANTS")

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

MOTION BRIEF OF THE MONITOR

(Motion for Claims Procedure Order and other Relief)

DATE OF HEARING: WEDNESDAY, SEPTEMBER 5, 2012, AT 10 A.M.
BEFORE THE HONOURABLE MADAM JUSTICE SPIVAK

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MOTION BRIEF OF THE MONITOR

INDEX

PART I LIST OF DOCUMENTS TO BE RELIED UPON

1. The Notice of Motion with the Proposed Orders attached as Appendices "1" and "2";

2. The Sixth Report of the Monitor; and

3. Such further and other materials as counsel may advise and this Court may permit.

PART II STATUTORY PROVISIONS AND AUTHORITIES TO BE RELIED UPON

Tab

1	*Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (hereinafter "CCAA") ss. 11, 11.02 and 20
2	*Re ScoZinc Ltd.* (2009), 53 C.B.R. (5th) 96
3	*2012 Annotated Bankruptcy and Insolvency Act*, Holden, Morawetz and Sarra, Note N§143
4	*Pine Valley Mining Corp. (Re)* (2008),41 C.B.R. (5th) 43
5	*Re Sino-Forest Corporation* Claims Procedure Order (May 14, 2012)
6	*Re InterTAN Canada Ltd.* Claims Procedure Order (February 10, 2009)
7	*Worldspan Marine Inc. (Re)*, 2011 BCSC 1758

PART III LIST OF POINTS TO BE ARGUED

1. This motion is for Orders:

   (a) establishing the claims procedure described in the draft claims procedure order at Appendix "1" to the Notice of Motion ("**Claims Procedure Order**");

   (b) extending the stay period ("**Stay Period**") defined in paragraph 30 of the Order of the Honourable Madam Justice Spivak made February 22, 2012 ("**Initial Order**") until November 30, 2012; and

   (c) other relief including:

      i. releasing the DIP Lenders' Charge, Financial Advisor Charge and KERP Charge;

      ii. authorizing the Chief Process Supervisor ("**CPS**") to execute the documentation required to change the names of the Applicant corporations;

      iii. approving payments under the Management Incentive Plan ("**MIP**"); and

      iv. approving the Sixth Report of the Monitor and the activities described therein.

2. The key points to be argued on this motion are as follows:

   (a) *Claims Procedure Order*: An order establishing a claims procedure is appropriate because it will permit the Monitor to quantify the Creditors' Claims;

(b) *Stay of Proceedings*: An order extending the stay of proceedings is appropriate to enable the Monitor to conduct the Claims Process for the benefit of the stakeholders; and

(c) *Other Relief:* An order is required to release redundant charges, make appropriate payments out of the MIP, facilitate corporate name changes and approve the Monitor's Sixth report.

The Proposed Claims Procedure Should Be Approved

3. Now that the Sale Transaction has been completed and the secured lenders and other priority claims have been addressed, there are net proceeds available of over $130 million. To be in a position to make a distribution to the Applicants' Creditors, it is necessary to establish a claims process. While CCAA s. 20 provides guidance as to the determination and admission of claims, the statute does not set out a formal claims administration process. The Courts therefore rely on the broad authority granted under the CCAA as well as inherent jurisdiction to establish a claims process with an appropriate claims bar provision. The Nova Scotia Supreme Court in *Re ScoZinc* acknowledged that Claims Procedure Orders are a "well accepted practice" and observed that the typical claims process should be "both flexible and expeditious". In particular:

> 18. ....as noted by McElcheran in *Commercial Insolvency in Canada* (LexisNexis Canada Inc., Markham, Ontario, 2005 at p. 279-80) the *CCAA* does not set out a process for identification or determination of claims; instead, the Court creates a claims process by court order....
>
> 22. ....the CCAA does not set out the procedure beyond the language in s. 12 (now CCAA s. 20). The language only accomplishes two things. The first is that the debtor company can agree on the amount of a secured or unsecured claim; and secondly, if there is a disagreement, then on application of either the company or the creditor, the amount shall be determined by the court on "summary application".

> 23. ...The practice has arisen for the court to create by order a claims process that is both flexible and expeditious. The Monitor identifies, by review of the debtor's records, all potential claimants and sends to them a claim package. To ensure that all creditors come forward and participate on a timely basis, there is a provision in the claims process order requiring creditors to file their claims by a fixed date. If they do not, subject to further relief provided by the claims process order, or by the court, the creditor's claim is barred....
>
> 30 The *CCAA* gives to the court the express and implied jurisdiction to do a variety of things. They need not all be enumerated. The court is required to appoint a monitor (s. 11.7). Once appointed, the monitor is required to monitor the company's business and financial affairs. The *Act* mandates that the monitor have access to and examine the company's property including all records. The monitor must file a report with the court on the state of the company's business and financial affairs and contain prescribed information. In addition, the monitor shall carry out such other functions in relation to the company as the court may direct (s. 11.7(3)(d)).
>
> 31 In these circumstances, it is not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the *BIA*. The Claims Procedure Order of February 18, 2009 accomplishes this.

(**Tab 2** – *Re ScoZinc Ltd.* (2009), 53 C.B.R. (5th) 96 (Hereinafter referred to as "*ScoZinc*") at paras. 18-31)

(**Tab 3** – *2012 Annotated Bankruptcy and Insolvency Act*, Holden, Morawetz and Sarra, Note N§143).

4. The proposed claims procedure is both flexible and expeditious. It complies with the jurisprudence surrounding the Monitor's role in a claims procedure under the CCAA. As noted in *Re Pine Valley Mining Corp. (Re)* (2008), 41 C.B.R. (5th) 43 at para. 13 (Tab 4):

> I conclude from the CCAA and the Claims Procedure Order that the function of the Monitor, that is relevant to this application, is to determine the validity and amount of a claim on the basis of the evidence submitted. The Monitor's process in doing so is in no way akin to an adversarial process. Although his findings and opinion should be respectfully considered, he is not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant. Counsel have not called my attention to any authority for either of the following propositions, either that the CCAA claim process alters substantive law that would otherwise apply to the determination of such a claim, or that a monitor appointed on the terms

> here is entitled to the deference accorded a quasi-judicial officer like a court appointed claims officer.....

To the extent there is a dispute as to the validity or amount of a claim that cannot be resolved, the proposed Claims Procedure Order contemplates that the Monitor will seek further direction from the Court.

> (**Tab 4** - *Pine Valley Mining Corp. (Re)* (2008),41 C.B.R. (5th) 43 at para. 13.)

5. Similar claims procedure orders were granted by the Honourable Mr. Justice Morawetz in *Re Sino-Forest Corporation* (May 14, 2012) and *Re InterTAN Canada Ltd.* (February 10, 2009).

> (**Tab 5** - *Re Sino-Forest Corporation* Claims Procedure Order (May 14, 2012).)

> (**Tab 6** - *Re InterTAN Canada Ltd.* Claims Procedure Order (February 10, 2009).)

6. The Monitor submits that the approval of the proposed Claims Procedure Order is a valid exercise of both the Court's inherent jurisdiction and the authority conferred on it pursuant to CCAA s.11. Granting the Claims Procedure Order will advance the restructuring objectives of Arctic Glacier and will enable the Court to authorize distributions to the Creditors.

The Stay of Proceedings Should Be Extended

7. The existing stay expires on September 14, 2012. To enable the Monitor to conduct the proposed Claims Process and to deal with other estate matters, it is necessary

to extend the stay. CCAA s. 11.02 gives the Court discretion to grant or extend a stay of proceedings. Section 11.02(2) applies when a stay of proceedings is requested other than on an initial application. It provides as follows:

> **11.02**(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
>
> > *(a)* staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)*(a)*;
> >
> > *(b)* restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> >
> > *(c)* prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.
>
> (**Tab 1** – CCAA, s. 11.02(2))

8. According to section 11.02(3) of the CCAA, the Court must be satisfied that:

(a) circumstances exist that make the order appropriate; and

(b) the applicant has acted and is acting in good faith and with due diligence.

(**Tab 1** – CCAA, s. 11.02(3))

9. In considering whether circumstances exist that make the order appropriate, the Court "must be satisfied that an extension of the Initial Order and stay will further the purposes of the CCAA". Arctic Glacier has completed the Sale Transaction which preserved the value of the business as a going concern for the benefit of all stakeholders.

In the Monitor's opinion, Arctic Glacier has acted and continues to act with due diligence and in good faith in these CCAA Proceedings. It is now necessary for the Monitor to quantify the Creditors' claims to enable the Court to authorize distribution of the sale proceeds for the benefit of the Creditors and to deal with other estate matters described in the Sixth Report.

(**Tab 7** – *Worldspan Marine Inc. (Re)*, 2011 BCSC 1758 at paras. 13-15)

OTHER RELIEF

10. As detailed in the Monitor's Sixth Report, there are a number of housekeeping matters to address, including:

(a) *Releasing Redundant Charges*: As the claims of the DIP Lender, Financial Advisor and employees entitled to the KERP have been paid, the Charges associated with these claims are redundant and should be released and discharged;

(b) *Paying Amounts Due Under the MIP*: A number of the Applicants' employees are beneficiaries of the MIP. The Asset Purchase Agreement provides that payment of the MIP amount calculated and accrued up to Closing is an obligation of the Vendors. The Board of Trustees recently engaged KPMG LLP to undertake a review of the MIP calculated and accrued to Closing and to provide a Report to the Board of Trustees and the Monitor in respect of its findings. Accordingly, and subject to receipt of the required report from KPMG LLP, the Monitor respectfully requests

that this Honourable Court approve the payment by the Monitor on behalf of the Applicants of the amounts in respect of the MIP; and

(c) *Authorizing CPS to Effect Name Change*: Pursuant to the Transition Service Agreement (the "**TSA**"), each of the incorporated Applicants that uses the words "Arctic Glacier" or a variation of those words in its legal name is obliged to change its legal name to a name that does not include those words. As senior management are no longer employed by the Applicants and in order to company with the TSA, the Monitor proposes that the CPS be authorized to execute the documentation to effect these changes.

CONCLUSION

11. It is respectfully submitted that this Honourable Court ought to grant the proposed orders as they are consistent with the underlying purposes of the CCAA and will benefit the stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of August, 2012.

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TAB 1

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(*a*) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(*b*) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(*a*) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(*a*);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(*a*) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(*b*) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Determination of amount of claims

20. (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(*a*) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(*b*) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

R.S., 1985, c. C-36, s. 20; 2005, c. 47, s. 131; 2007, c. 36, s. 70.

TAB 2

Case Name:

ScoZinc Ltd. (Re)

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 ScoZinc Ltd., Applicant

[2009] N.S.J. No. 187

2009 NSSC 136

277 N.S.R. (2d) 251

53 C.B.R. (5th) 96

2009 CarswellNS 229

Docket: Hfx No. 305549

Registry: Halifax

Nova Scotia Supreme Court
Halifax, Nova Scotia

D.R. Beveridge J.

Heard: April 3, 2009.
Oral judgment: April 3, 2009.
Released: April 28, 2009.

(49 paras.)

Bankruptcy and insolvency law -- Companies' Creditors Arrangement Act (CCAA) matters -- Compromises and arrangements -- Directions -- Monitors -- Powers, duties and functions -- Upon motion by monitor in proceedings under the Companies' Creditors Arrangement Act, the monitor was held to have the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the monitor to complete its assessment of claims -- To suggest the monitor did not have the authority to receive evidence and submissions and to consider them was to say it did

not have any real authority to carry out its court-appointed role to assess the claims that had been submitted.

Motion by monitor in proceedings under the Companies' Creditors Arrangement Act seeking directions from the court on whether it had the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the monitor to complete its assessment of claims. On Dec. 22, 2008, ScoZinc Ltd. had been granted protection by means of a stay of proceedings of all claims against it. The determination of creditors' claims was set by a claims procedure order of Feb. 18, 2009 setting dates for the submission of claims to the monitor, and for the monitor to assess the claims. The monitor was directed to review all proofs of claim filed on or before March 16, 2009 and accept, revise or disallow the claims. In three cases, revised proofs of claim were filed after this date.

HELD: Order granted. The monitor had the necessary authority. The Act gave no specific guidance to the court on how to determine the existence, nature, validity or extent of a claim against a debtor company. The determination that the claims must initially be identified and assessed by the monitor, and heard first by a claims officer, was a valid exercise of the court's inherent jurisdiction. It was not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the Bankruptcy and Insolvency Act. The Feb. 18, 2009 order accomplished this. It did not matter that revised claims were submitted after the claims bar date. In essence, the monitor simply acted to revise the proofs of claim already submitted to conform with the evidence elicited by the monitor, or submitted to it. The monitor had the necessary authority to revise the claims, either as to classification or amount. To suggest the monitor did not have the authority to receive evidence and submissions and to consider them was to say it did not have any real authority to carry out its court-appointed role to assess the claims that had been submitted.

Statutes, Regulations and Rules Cited:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11, s. 11.7, s. 12

Probate Act, R.S.N.S. 1900, c. 158,

Counsel:

John G. Stringer, Q.C., and Mr. Ben R. Durnford, for the applicant.

Robert MacKeigan, Q.C., for Grant Thornton.

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1 **D.R. BEVERIDGE J.** (orally):-- On December 22, 2008, ScoZinc Ltd. was granted protection by way of a stay of proceedings of all claims against it pursuant to s. 11 of the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36. The stay has been extended from time to time. Grant Thornton was appointed as the Monitor of the business and financial affairs of ScoZinc pursuant to s. 11.7 of the *CCAA*.

2 The determination of creditors' claims was set by a Claims Procedure Order. This order set dates for the submission of claims to the Monitor, and for the Monitor to assess the claims. The Monitor brought a motion seeking directions from the court on whether it has the necessary authority to allow a revision of a claim after the claim's bar date but before the date set for the Monitor to complete its assessment of claims.

3 The motion was heard on April 3, 2009. At the conclusion of the hearing of the motion I concluded that the Monitor did have the necessary authority. I granted the requested order with reasons to follow. These are my reasons.

BACKGROUND

4 The procedure for the identification and quantification of claims was established pursuant to my order of February 18, 2009. Any persons asserting a claim was to deliver to the Monitor a Proof of Claim by 5:00 p.m. on March 16, 2009, including a statement of account setting out the full details of the claim. Any claimant that did not deliver a Proof of Claim by the claims bar date, subject to the Monitor's agreement or as the court may otherwise order, would have its claim forever extinguished and barred from making any claim against ScoZinc.

5 The Monitor was directed to review all Proofs of Claim filed on or before March 16, 2009 and to accept, revise or disallow the claims. Any revision or disallowance was to be communicated by Notice of Revision or Disallowance, no later than March 27, 2009. If a creditor disagreed with the assessment of the Monitor, it could dispute the assessment before a Claims Officer and ultimately to a judge of the Supreme Court.

6 The three claims that have triggered the Monitor's motion for directions were submitted by Acadian Mining Corporation, Royal Roads Corp., and Komatsu International (Canada) Inc.

7 ScoZinc is 100% owned by Acadian Mining Corp. These two corporations share office space, managerial staff, and have common officers and directors. Acadian Mining is a substantial shareholder in Royal Roads and also have some common officers and directors.

8 Originally Royal Roads asserted a claim as a secured creditor on the basis of a first charge security held by it on ScoZinc's assets for a loan in the amount of approximately $2.3 million. Acadian Mining also claimed to be a secured creditor due to a second charge on ScoZinc's assets securing approximately $23.5 million of debt. Both Royal Roads and Acadian Mining have released their security. Each company submitted Proofs of Claim dated March 4, 2009 as unsecured creditors.

9 Royal Roads claim was for $579,964.62. The claim by Acadian Mining was for $23,761.270.20. John Rawding, Financial Officer for Acadian Mining and ScoZinc, prepared the Proofs of Claim for both Royal Roads and Acadian Mining. It appears from the affidavit and materials submitted, and the Monitor's fifth report dated March 31, 2009 that there were errors in each of the Proofs of Claim.

10 Mr. Rawding incorrectly attributed $1,720,035.38 as debt by Acadian Mining to Royal Roads when it should have been debt owed by ScoZinc to Royal Roads. In addition, during year end audit procedures for Royal Roads, Acadian Mining and ScoZinc, other erroneous entries were discovered. The total claim that should have been advanced by Royal Roads was $2,772,734.19.

11 The appropriate claim that should have been submitted by Acadian Mining was $22,041,234.82, a reduction of $1,720,035.38. Both Royal Roads and Acadian Mining submitted revised Proofs of Claim on March 25, 2009 with supporting documentation.

12 The third claim is by Komatsu. Its initial Proof of Claim was dated March 16, 2009 for both secured and unsecured claims of $4,245,663.78. The initial claim did not include a secured claim for the equipment that had been returned to Komatsu, nor include a claim for equipment that was still being used by ScoZinc. A revised Proof of Claim was filed by Komatsu on March 26, 2009.

13 The Monitor, sets out in its fifth report dated March 31, 2009, that after reviewing the relevant books and records, the errors in the Proofs of Claim by Royal Roads, Acadian Mining and Komatsu were due to inadvertence. For all of these claims it issued a Notice of Revision or Disallowance on March 27, 2009, allowing the claims as revised "if it is determined by the court that the Monitor has the power to do so".

14 The request for directions and the circumstances pose the following issue:

ISSUE

15 Does the Monitor have the authority to allow the revision of a claim by increasing it based on evidence submitted by a claimant within the time period set for the monitor to carry out its assessment of claims?

ANALYSIS

16 The jurisdiction of the Monitor stems from the jurisdiction of the court granted to it by the *CCAA*. Whenever an order is made under s. 11 of the *CCAA* the court is required to appoint a monitor. Section 11.7 of the *CCAA* provides:

> 11.7 (1) When an order is made in respect of a company by the court under section 11, the court shall at the same time appoint a person, in this section and in section 11.8 referred to as "the monitor", to monitor the business and financial affairs of the company while the order remains in effect.
>
> (2) Except as may be otherwise directed by the court, the auditor of the company may be appointed as the monitor.
>
> (3) The monitor shall
>
> (a) for the purposes of monitoring the company's business and financial affairs, have access to and examine the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company to the extent necessary to adequately assess the company's business and financial affairs;
>
> (b) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,
>
> (i) forthwith after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,
> (ii) at least seven days before any meeting of creditors under section 4 or 5, or
> (iii) at such other times as the court may order;

(c) advise the creditors of the filing of the report referred to in paragraph (b) in any notice of a meeting of creditors referred to in section 4 or 5; and

(d) carry out such other functions in relation to the company as the court may direct.

...

17 It appears that the purpose of the *CCAA* is to grant to an insolvent company protection from its creditors in order to permit it a reasonable opportunity to restructure its affairs in order to reach a compromise or arrangement between the company and its creditors. The court has the power to order a meeting of the creditors or class of creditors for them to consider a compromise or arrangement proposed by the debtor company (s. 4, 5). Where a majority of the creditors representing two thirds value of the creditors or class of creditors agree to a compromise or arrangement, the court may sanction it and thereafter such compromise or arrangement is binding on all creditors, or class of creditors (s. 6).

18 Section 12 of the *Act* defines a claim to mean "any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*." However, as noted by McElcheran in *Commercial Insolvency in Canada* (LexisNexis Canada Inc., Markham, Ontario, 2005 at p. 279-80) the *CCAA* does not set out a process for identification or determination of claims; instead, the Court creates a claims process by court order.

19 The only guidance provided by the *CCAA* is that in the event of a disagreement the amount of a claim shall be determined by the court on summary application by the company or by the creditor. Section 12(2) of the *Act* provides:

Determination of amount of claim

(2) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) the amount of an unsecured claim shall be the amount

(i) in the case of a company in the course of being wound up under the Winding-up and Restructuring Act, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the Bankruptcy and Insolvency Act, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim shall be the amount, proof of which might be made in respect thereof under the Bankruptcy and Insolvency Act if the claim were unsecured, but the amount if not admitted by the company shall, in the case of a company subject to pending proceedings under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, be established by proof in the same manner as an unsecured claim under the Winding-up and Restructuring Act or the Bankruptcy and Insolvency Act, as the case may be, and in the case of any other company the amount shall be determined by the court on summary application by the company or the creditor.

20 The only parties who appeared on this motion were the Monitor, ScoZinc and Komatsu. No specific submissions were requested nor made by the parties with respect to the nature of the court's jurisdiction to determine the mechanism and time lines to classify and quantify claims against the debtor company.

21 Under the *Bankruptcy and Insolvency Act* the Trustee is the designated gatekeeper who first determines whether a Proof of Claim submitted by a creditor is valid. The trustee may admit the claim or disallow it in whole or in part (s. 135(2) *BIA)*. A creditor who is dissatisfied with a decision by the trustee may appeal to a judge of the Bankruptcy Court.

22 In contrast, the *CCAA* does not set out the procedure beyond the language in s. 12. The language only accomplishes two things. The first is that the debtor company can agree on the amount of a secured or unsecured claim; and secondly, if there is a disagreement, then on application of either the company or the creditor, the amount shall be determined by the court on "summary application".

23 The practice has arisen for the court to create by order a claims process that is both flexible and expeditious. The Monitor identifies, by review of the debtor's records, all potential claimants and sends to them a claim package. To ensure that all creditors come forward and participate on a timely basis, there is a provision in the claims process order requiring creditors to file their claims by a fixed date. If they do not, subject to further relief provided by the claims process order, or by the court, the creditor's claim is barred.

24 If the Monitor disagrees with the claim, and the disagreement cannot be resolved, then a claimant can present its case to a claims officer who is usually given the power to adjudicate disputed claims, with the right of appeal to a judge of the court overseeing the *CCAA* proceedings.

25 The establishment of a claims process utilizing the monitor and or a claims officer by court order appears to be a well accepted practice (See for example *Federal Gypsum Co., (Re)* 2007 NSSC 384; *Olympia & York Developments Ltd. (Re)* (1993), 17 C.B.R. (3d) 1 (Ont. S.C.J.); *Air Canada, (Re)* (2004) 2 C.B.R. (5th) 23 (Ont. S.C.J.); *Triton Tubular Components v. Steelcase Inc.*, [2005] O.J. No. 3926 (Ont. S.C.J.); *Muscletech Research & Development Inc.,(Re)*, [2006] O.J. No. 4087 (Ont. S.C.J.); *Pine Valley Mining Corp., (Re)* 2008 BCSC 356; *Blue Range Resource Corp.*, Re 2000 ABCA 285; *Carlen Transport Inc. v. Juniper Lumber Co. (Monitor of)* (2001), 21 C.B.R. (4th) 222 (N.B.Q.B.).)

26 I could find no reported case that doubt the authority of the court to create a claims process. Kenneth Kraft in his article "The CCAA and the Claims Bar Process", (2000), 13 Commercial In-

solvency Reporter 6, endorsed the utilization of a claims process on the basis of reliance on the court's inherent jurisdiction, provided the process adhered to the specific mandates of the *CCAA*. In unrelated contexts, caution has been expressed with respect to reliance on the inherent jurisdiction of the superior court as the basis for dealing with the myriad issues that can arise under the *CCAA* (See: *Clear Creek Contracting v. Skeena Cellulous Inc.*,(2003), 43 C.B.R (4th) 187) (B.C.C.A.) and *Stelco Inc.(Re)*, [2005] O.J. No. 1171 (CA.)).

27 Sir J.H. Jacob, Q.C. in his seminal article "The Inherent Jurisdiction of the Court", (1970) Current Legal Problems 23, concluded that it has been clear law from the earliest times that superior courts of justice, as part of their inherent jurisdiction, have the power to control their own proceedings and process. He wrote:

> Under its inherent jurisdiction, the court has power to control and regulate its process and proceedings, and it exercises this power in a great variety of circumstances and by many different methods. Some of the instances of the exercise of this power have been of far-reaching importance, others have dealt with matters of detail or have been of transient value. Some have involved the exercise of administrative powers, others of judicial powers. Some have been turned into rules of law, others by long usage or custom may have acquired the force of law, and still others remain mere rules of practice. The exercise of this power has been pervasive throughout the whole legal machinery and has been extended to all stages of proceedings, pre-trial, trial and post-trial. Indeed, it is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process, for these limits are coincident with the needs of the court to fulfil its judicial functions in the administration of justice.
>
> p. 32-33

28 The *CCAA* gives no specific guidance to the court on how to determine the existence, nature, validity or extent of a claim against a debtor company. As noted earlier, the only reference is in s. 12 of the *Act* that if there is a dispute as to the amount of a claim, then the amount shall be determined by the court "on summary application". In *Re Freeman Estate*, [1922] N.S.J. No. 15, [1923] 1 D.L.R. 378 (en banc) the court considered the words "on summary application" as they appeared in the *Probate Act* R.S.N.S. 1900 c. 158. Harris C.J. wrote:

> [17] The words "summary application" do not mean without notice, but simply imply that the proceedings before the Court are not to be conducted in the ordinary way, but in a concise way.
>
> [18] The Oxford Dictionary p. 140 gives as one of the meanings of "summary" dispensing with needless details or formalities -- done with despatch.
>
> [19] In the case of the Western &c R. Co. v. Atlanta (1901), 113 Ga. 537, the meaning of the words "summary proceeding" is discussed at some length and the Court held at pp. 543-544:--

> "In a summary manner does not at all mean that they may be abated without notice or hearing, but simply that it may be done without a trial in the ordinary forms prescribed by law for a regular judicial procedure."
>
> [20] I cite this not because it is a binding authority, but because its reasoning commends itself to my judgment and I adopt it.

29 In my opinion, whatever process may be appropriate and necessary to adjudicate disputed claims that ultimately end up before a judge of the superior court, the determination by the court that claims must initially be identified and assessed by the Monitor, and heard first by a Claims Officer, is a valid exercise of the court's inherent jurisdiction.

30 The *CCAA* gives to the court the express and implied jurisdiction to do a variety of things. They need not all be enumerated. The court is required to appoint a monitor (s. 11.7). Once appointed, the monitor is required to monitor the company's business and financial affairs. The *Act* mandates that the monitor have access to and examine the company's property including all records. The monitor must file a report with the court on the state of the company's business and financial affairs and contain prescribed information. In addition, the monitor shall carry out such other functions in relation to the company as the court may direct (s. 11.7(3)(d)).

31 In these circumstances, it is not only logical, but eminently practical that the monitor, as an officer of the court, be directed by court order to fulfil the analogous role to that of the trustee under the *BIA*. The Claims Procedure Order of February 18, 2009 accomplishes this.

POWER OF THE MONITOR

32 The Monitor was required by the Order to publish a notice to claimants in the newspaper regarding the claims procedure. It was also required to send a claims package to known potential claimants identified by the Monitor through its review of the books and records of ScoZinc. The claims bar date was set as March 16, 2009, or such later date as may be ordered by the court.

33 The duties of the Monitor, once a claim was received by it, were set out in paragraphs 9 and 10 of the Claims Procedure Order. They provide as follows:

> 9. Upon receipt of a Proof of Claim:
>
> a. The Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and the execution of a Proof of Claim. A Claim which is accepted by the Monitor shall constitute a Proven Claim;
>
> b. the Monitor and ScoZinc may attempt to consensually resolve the classification and amount of any Claim with the claimant prior to accepting, revising or disallowing such Claim; and
>
> ...

> 10. The Monitor shall review all Proofs of Claim filed on or before the Claims Bar Date. The Monitor shall accept, revise or disallow such Proofs of Claim as contemplated herein. The Monitor shall send a Notice of Revision or Disallowance and the form of Notice of Dispute to the Claimant as soon as the Claim has been revised or disallowed but in any event no later than 11:59 p.m. (Halifax time) on March 27, 2009 or such later date as the Court may order. Where the Monitor does not send a Notice of Revision or Disallowance by the aforementioned date to a Claimant who has submitted a Proof of Claim, the Monitor shall be deemed to have accepted such Claim.

34 Any person who wished to dispute a Notice of Revision or Disallowance was required to file a notice to the monitor and to the Claims Officer no later than April 6, 2009. The Claims Officer was designated to be Richard Cregan, Q.C., serving in his personal capacity and not as Registrar in Bankruptcy. Subject to the direction of the court, the Claims Officer was given the power to determine how evidence would be brought before him and any other procedural matters that may arise with respect to the claim. A claimant or the Monitor may appeal the Claims Officer's decision to the court.

35 The Monitor suggests that the power given to it under paragraph 9(a) and 10 is sufficient to permit it to accept the revised Proofs of Claim filed after the claim's bar date of March 16, 2009, but before its assessment date of March 27, 2009.

36 Reliance is also placed on the decision of the Alberta Court of Appeal in *Blue Range Resource Corp.* 2000 ABCA 285. As noted by the Monitor, the decision in *Blue Range* did not directly deal with the issue on which the Monitor here seeks directions. In *Blue Range*, the claims procedure established by the court set the claims bar date of June 15, 1999. Claims of creditors not proven in accordance with the procedures set out were deemed to be forever barred. Some creditors filed their Notice of Claim after the claims bar date. The monitor disallowed their claims. There were a second group of creditors who filed their Notice of Claim prior to the applicable claims bar date, but then sought to amend their claims after the claims bar date had passed. The monitor also disallowed these claims as late. What is not clear from the reported decisions is whether this second group of creditors requested amendments of their claims during the time period granted to the Monitor to carry out its assessment.

37 The chambers judge allowed the late and amended claims to be filed, [1999] A.J. No. 1308. Enron Capital Corp. and the creditor's committee sought leave to appeal that decision. Leave to appeal was granted on January 14, 2000 with respect to the following question:

> What criteria in the circumstances of these cases should the Court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?
>
> *Re Blue Range Resources Corp.*, 2000 ABCA 16

38 Wittmann J.A. delivered the judgment of the court. He noted that all counsel conceded that the court had the authority to allow the late filing of claims and that the appeal was really a matter of what criteria the court should use in exercising that power. Accordingly, a Claims Procedure Or-

der that contains a claims bar date should not purport to forever bar a claim without a saving provision. Wittmann J.A. set out the test for determining when a late claim may be included to be as follows:

> [26] Therefore, the appropriate criteria to apply to the late claimants is as follows:
>
> 1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
> 2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
> 3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
> 4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?
>
> [27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. I will deal with the conduct of each of the respondents in turn below and then turn to a discussion of potential prejudice suffered by the appellants.
>
> 2000 ABCA 285

39 The appellants claimed that they would be prejudiced if the late claims were allowed because if they had known the late claims would be allowed they would have voted differently. This assertion was rejected by the chambers judge. With respect to what is meant by prejudiced, Wittmann J.A. wrote:

> 40 In a CCAA context, as in a BIA context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the CCAA involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share can not be characterized as prejudice: Re Cohen (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in 312630 British Columbia Ltd., [1995] B.C.J. No. 1600. It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

40 In considering how the Monitor should carry out its duties and responsibilities under the Claims Procedure Order it is important to note that the Monitor is an officer of the court and is

obliged to ensure that the interests of the stakeholders are considered including all creditors, the company and its shareholders (See *Laidlaw Inc. Re* (2002), 34 C.B.R. (4th) 72 (Ont. S.C.J.).

41 In a different context Turnball J.A. in *Siscoe & Savoie v. Royal Bank* (1994), 29 C.B.R. (3d) 1 commented that the monitor is an agent of the court and as a result is responsible and accountable to the court, owing a fiduciary duty to all of the parties (para. 28).

42 In my opinion, para. 9(a) is not of assistance in determining the authority of the Monitor to revise upward a claim filed after the claim's bar date but before the assessment date. Paragraph 9(a) authorizes the Monitor to use reasonable discretion as to the adequacy of compliance as to **the manner** to which Proofs of Claim are completed and executed. If it satisfied that the claim has been adequately proven it may waive strict compliance with the requirements of the order as to **completion** and the **execution** of a Proof of Claim.

43 Paragraph 10 of the Claims Procedure Order mandates the Monitor shall review all Proofs of Claim filed on or before the claims bar date. It shall "accept, revise or disallow such Proofs of Claim as contemplated herein". While normally a monitor's revision would be to reduce a Proof of Claim, there is in fact nothing in the Claims Procedure Order that so restricts the Monitor's authority. It is obviously contemplated by para. 10 that the monitor is to carry out some assessment of the claims that are submitted.

44 In my view, the Proofs of Claim that are filed act both as a form of pleading and an opportunity for the claimant to provide supporting documents to evidence its claim. In the case before me, the creditors discovered that the claims they had submitted were inaccurate and further evidence was tendered to the Monitor to demonstrate. The Monitor, after reviewing the evidence, accepted the validity of the claims.

45 Courts in a general way are engaged in dispensing justice. They do so by setting up and applying procedural rules to ensure that litigants are afforded a fair hearing. The resolution of disputes through the litigation process, including the ultimate hearing, is fundamentally a truth-seeking process to determine the facts and to apply the law to those facts. Can it be any different where the process is not in the court but under its supervision pursuant to a claims process under the *CCAA.?*

46 To suggest that the monitor does not have the authority to receive evidence and submissions and to consider them is to say that it does not have any real authority to carry out its court appointed role to assess the claims that have been submitted. The notion that the monitor cannot look at documentary evidence on its own initiative or at the instance of a claimant, and even consider submissions, is to deny it any real power to consider and make a preliminary determination of the merits of a claim.

47 The Claims Procedure Order contains a number of provisions that anticipate the exchange of information between the Monitor, the company and a creditor. Paragraph 9(b) authorizes the Monitor and ScoZinc to attempt to consensually resolve the classification and the amount of any claim with a claimant prior to accepting, revising or disallowing such claim. Paragraph 17 of the Claims Procedure Order directs that the Monitor shall at all times be authorized to enter into negotiations with claimants and settle any claim on such terms as the Monitor may consider appropriate.

48 In my opinion, it does not matter that revised claims were submitted after the claims bar date. In essence, the Monitor simply acted to revise the Proofs of Claim already submitted to con-

form with the evidence elicited by the Monitor, or submitted to it. The Monitor had the necessary authority to revise the claims, either as to classification or amount.

49 If a claimant seeks to revise or amend its claim after the assessment date set out in the Claims Procedure Order, different considerations may come into play. The appropriate procedure will depend on the provisions of the Claims Procedure Order. In addition, the court, as the ultimate arbiter of disputed claims under s. 12 of the *CCAA*, should always be viewed as having the jurisdiction to permit appropriate revision of claims.

D.R. BEVERIDGE J.

TAB 3

N§143 — Claims of Creditors

Previously, s. 19 specified that ss. 65 and 66 of the *Winding-up and Restructuring Act* did not apply to a compromise or arrangement under the *CCAA*. When the amendments were proclaimed in force, the current s. 19 was repealed and the new provision set out in s. 41 (2007, c. 36, in force September 18, 2009). See N§204 "Sections 65 and 66 of *Winding-up and Restructuring Act* Do Not Apply".

Section 19 contains provisions in respect of compromise of claims that align with provisions under the *BIA*. Claims that may be dealt with by a compromise or arrangement in respect of a debtor company are claims that relate to debts or liabilities, present or future, to which the company is subject or may become subject on commencement of *CCAA* proceedings or proposal proceedings under the *BIA*: s. 19(1) (in force September 18, 2009). If the company filed a notice of intention under s. 50.4 of the *BIA* or commenced proceedings under the *CCAA* with the consent of inspectors referred to in s. 116 of the *BIA*, claims dealt with are from the date of the initial bankruptcy event within the meaning of s. 2: s. 19(1) (2007, c. 36, in force September 18, 2009). The plan may deal with claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the same dates: s. 19(2) (2007, c. 36, in force September 18, 2009). There is an exception for specified claims.

For the purposes of the *CCAA*, "claim" means indebtedness, liability or obligation that would be provable under the *BIA*. The amount represented by a claim of any secured or unsecured creditor is determined as the following. Where a company is being wound up under *WURA* or liquidated under the *BIA*, proof is in accordance with those statutes: s. 20(1) and see N§145 "Determination of Amount of Claims".

The debtor can admit the amount. If not, the court can determine the value of the claim on summary application by either the company or a creditor. Nothing in the *WURA* or *BIA* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted. The 2009 amendments renumbered and clarified the language of the provisions, as well as adding specified claims that are not compromised by a plan, in order to align the *CCAA* with the *BIA*. However, the cases below referring to former section 12 are still relevant in most instances. A debtor company may admit the amount of a claim for voting purposes and reserve its right to contest liability on the claim for other purposes: s. 20(2). Section 20(2) specifies that nothing prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted. The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be: s. 21 (2007, c. 36, in force September 18, 2009).

The Alberta Court of Queen's Bench denied the debtors' motion authorizing interim distribution of funds to a major secured creditor. Romaine J. held that while orders allowing interim distributions to creditors are not without precedent, an application for an interim distribution to one creditor must be carefully scrutinized and found to be justifiable for good and sustainable reasons, recognizing that it may create a preference. Here, it appeared that the debtors' right of subrogation and indemnity may not be enforceable against other borrowers or guarantors unless all indebtedness to the lenders was paid in full and it appeared that the right to contribution from other members of the enterprise group may be limited under U.S. law. Romaine J. held that an interim distribution would give rise to the possibility that unsecured creditors may be prejudiced and that such potential for prejudice outweighed the benefits of an early payment on the guarantee to the lenders. It is not necessarily the case that

a distribution of funds from the Canadian estate must await the resolution of the Chapter 11 proceedings, as *CCAA* proceedings may advance at a different pace if the court is satisfied by the evidence before it that it is appropriate to do so. The application was adjourned *sine die* with leave to the applicants and the lenders to reapply with more current information if it became apparent that the potential prejudice identified by the unsecured creditors was unlikely to materialize or could be avoided by other measures or that the balance of prejudice and benefit had shifted: *Re SemCanada Crude Co.* (2009), 2009 CarswellAlta 167, 52 C.B.R. (5th) 131 (Alta. Q.B.); leave to appeal refused (2009), 2009 CarswellAlta 972, 55 C.B.R. (5th) 48 (Alta. C.A. [In Chambers]).

The creditor has the burden of proving its claims: *Re Pine Valley Mining Corp.* (2008), 2008 CarswellBC 579, 41 C.B.R. (5th) 43; additional reasons at (2008), 2008 CarswellBC 712, 41 C.B.R. (5th) 49 (B.C. S.C.).

Two parties that were judgment creditors moved for directions as to whether the terms of the "release," which was part of a *CCAA* plan sanction order of the Ontario Superior Court, was part of the approval of a plan. The Ontario Superior Court held that the Ontario Court did not have the jurisdiction to deal with the real issue as between the parties, namely whether the bailiff was authorized or negligent in turning property proceeds in a Québec proceeding into asset-backed commercial paper, as that was a matter for the Québec court. It was, however, appropriate that the Ontario Court address the narrow issue of whether the parties were covered by the release terms in the ABCP plan sanction order. The parties who had bargained for ABCP releases were those who could be sued by noteholders. Neither judgment creditor had had any dealings with the company that purchased the ABCP and Campbell J. held that it would be inequitable to preclude them from pursuing a claim against the bailiff for failure to pay over amounts owing on a court-ordered process: *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 5255, 46 C.B.R. (5th) 195 (Ont. S.C.J. [Commercial List]). In another judgment, Campbell J. considered the monitor's report, which calculated the vote both on the basis previously approved and on the basis of dollar value and was satisfied that a reclassification would not alter the strong majority voting in favour of the plan: *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269 (Ont. S.C.J. [Commercial List]); affirmed (2008), 2008 CarswellOnt 4811, 45 C.B.R. (5th) 163 (Ont. C.A.); leave to appeal to S.C.C. refused (2008), 2008 CarswellOnt 5432, 2008 CarswellOnt 5433 (S.C.C.).

The onus is on any claimant to prove its claim. Where a contingent claimant seeks to prove its claim, it must show that the claim is not speculative or remote; however, it need not establish that success is probable: *Re Air Canada (CUPE contingent claim appeal)* (2004), 2004 CarswellOnt 3320, 2 C.B.R. (5th) 23 (Ont. S.C.J. [Commercial]).

The amendments specify that the court has the authority to fix a deadline for creditors to file claims, often referred to as a claims bar date for the purposes of voting and for distribution under a compromise or arrangement: s. 12 (2007, c. 36, in force September 18, 2009).

A claim determined to be valid under Part III of the *Canada Labour Code* becomes a judgment debt and will be determined at an amount of 100% of the claim. The judgment creditor in turn becomes an unsecured debt holder and may determine whether or not, in a *CCAA* procedure, it wishes to support or reject the plan. If the plan is rejected, then Part III creditors will be free to pursue whatever remedies they may have to collect their judgment debt: *Re Air Canada (Canada Labour Code Claims)* (2004), 2004 CarswellOnt 2946, 2 C.B.R. (5th) 18 (Ont. S.C.J. [Commercial]).

The court can determine the valuation of claims summarily, but in an appropriate case, the court can direct the trial of an issue in which production and discovery would be available: *Algoma Steel Corp. v. Royal Bank* (1992), 11 C.B.R. (3d) 11, 8 O.R. (3d) 449 (C.A.). In

Algoma Steel Corp. v. Royal Bank (1992), 11 C.B.R. (3d) 11, Farley J. (Ont. Gen. Div.) held that the holder of a guarantee given by the debtor company could prove a claim for the full amount of the debt owing by the principal debtor. The holder of the guarantee need not, however, file a claim but can proceed against the principal debtor without being affected by a plan made under the *CCAA*.

In *Confederation Financial Services (Canada) Ltd. v. Confederation Treasury Services Ltd.* (2003), 40 C.B.R. (4th) 10, 2003 CarswellOnt 1104 (Ont. S.C.J.), under the *CCAA* plan of arrangement, the debtor entered into a trust indenture pursuant to which what were called residue certificates were issued to creditors in satisfaction of their claims. The holders of the certificates were paid in full together with accrued interest. Certain certificate holders had not proved their claims. After payment of the claims of creditors, there remained a substantial surplus. The Public Guardian and Trustee of Ontario contended that all residue certificates not claimed by the holders were escheated and forfeited to the Crown as *bona vacantia*. The court held that the unclaimed moneys were not *bona vacantia*, since property that is undistributed under a trust is not *bona vacantia*. The debtor company did not wish to receive the surplus funds. The court amended the trust indenture to distribute the surplus funds between the holders of residue certificates and the professional advisors who had worked on the plan. The professional advisors, the court said, had achieved a highly successful result beyond all reasonable expectations and were entitled to a premium.

The Tax Court of Canada has exclusive jurisdiction to determine a disputed tax liability assessment, even where the debtor is operating under *CCAA* protection: *Re CCI Industries Ltd.* (2005), 2005 CarswellAlta 1261, 15 C.B.R. (5th) 180 (Alta. Q.B.).

In *Re Cage Logistics Inc.* (2002), 50 C.B.R. (4th) 169, 2002 CarswellAlta 1896 (Alta. Q.B.); leave to appeal refused (2003), 2003 CarswellAlta 123, 40 C.B.R. (4th) 165 (Alta. C.A.), a credit agreement provided for the payment of "breakage costs" in the event of the pre-payment of a loan. The court found that the debtors were not obliged to pay those costs where the creditors were paid the principal owed, plus interest and other applicable charges under the credit arrangement as part of a plan of arrangement. The obligation to pay the breakage fee did not arise, pursuant to the contract, unless the pre-payment was with the tacit consent of the debtor.

Products liability actions had been stayed in both the *CCAA* and U.S. Chapter 15 proceedings, and there was a claims process set up that involved a first assessment of claims by the monitor; a process for resolving disputed claims; and a claims bar date. The court held that the *CCAA* process and notice adequately protected the interests of the potential claimants and they chose not to utilize the process. The court declined to exercise its discretion to allow the representative claims or lift the stay to permit certification motions to proceed in the U.S. The court held that changing and increasing the landscape of claimants after the claims bar date and after the settlement of thirty claims could cause prejudice to the eventual success of the *CCAA* process. The process gave adequate opportunity for anyone with a claim to file a proof of claim; the forms were accessible and in plain language; the products liability claimants all managed to make individual claims, even where they were involved in class actions; and hence the court concluded that to allow representative or class claims at this date would be prejudicial to the entire claims process and would impair the integrity of the *CCAA* process: *Re Muscletech Research & Development Inc.* (2006), 2006 CarswellOnt 4929, 25 C.B.R. (5th) 218; additional reasons at (2006), 2006 CarswellOnt 5484, 25 C.B.R. (5th) 229 (Ont. S.C.J. [Commercial List]).

A monetary penalty under the *Aeronautics Act* issued against Air Canada prior to its *CCAA* proceedings was a claim in the *CCAA* proceedings and was thus a compromised debt after

the plan had received court sanction: *Re Air Canada* (2006), 2006 CarswellOnt 8175, 28 C.B.R. (5th) 317 (Ont. S.C.J. [Commercial List]).

Where debtors in a *CCAA* proceeding had obtained an order permitting them to market debentures they owned with provisions requiring them to identify and process claims purporting to differentiate rights, privileges and entitlements associated with the debentures ("bond differentiation claims"), the court dismissed an application by U.S. debtors to vary the order. The court held that the amendments proposed by U.S. debtors were not refinement or clarification, but would result in real change in effect and scope of the order by exempting from its application any defences the U.S. debtors may have to any proof of claim in U.S. court proceedings. The court held that it had jurisdiction to make determinations relating to bond differentiation claims and there was no evidence before it that a jurisdictional issue had arisen and the court held that it must necessarily make determinations regarding the status and enforceability of the principal claims outstanding in the *CCAA* proceeding: *Re Calpine Canada Energy Ltd.* (2006), 2006 CarswellAlta 1313, 26 C.B.R. (5th) 77 (Alta Q.B). See Howard Gorman, "Calpine: Cross-Border Review and Approval of Inter-Debtor Claims", in J. Sarra, ed. *Annual Review of Insolvency Law, 2007* (Carswell, 2008).

A franchisor that was a subsidiary of a group of companies that filed under the *CCAA* had a general security agreement (GSA) over the assets of its franchises. The franchisor's parent corporation in the same proceeding had a subordination agreement with the bank, but the franchisor itself had never made an agreement. During the *CCAA* proceeding, the debtor parent sold the franchise agreements and the GSA to a purchaser pursuant to approval and a vesting procedure free and clear of any security interests. The court granted a motion by the purchaser for a declaration that the GSA had priority over the bank's GSA on the basis that the order was clear, the bank was party to the proceedings two years' prior and had failed to claim priority at the time, and the matters resolved by the order were *res judicata*. The court held that the *CCAA* objective of providing a mechanism for the efficient restructuring of insolvent companies would be seriously undermined if parties that fail to assert their rights at the time are permitted to subsequently return to court to undo past transactions: *Extreme Retail (Canada) Inc. v. Bank of Montréal* (2007), 2007 CarswellOnt 5520, 37 C.B.R. (5th) 90 (Ont. S.C.J. [Commercial List]).

In a *CCAA* proceeding, the Québec Superior Court held that the debtor companies could satisfy the claims of a strategic buyer of distressed debt by paying the distressed debt buyer the sums that the distressed debt buyer had paid to acquire the distressed debt. The court has jurisdiction to take into account the circumstances under which distressed debt is acquired in insolvency proceedings, especially in situations where the purchaser of such distressed debt is pursuing a hidden agenda, is acting in bad faith, or "tramples on the rights and expectations of others". The debtors had sought a "white knight" to buy out the bank's interest at a steep discount in order to allow the debtor to fund a plan of arrangement. A falling out among the principals resulted in the white knight purchasing claims in order to control the class of creditors and defeat the debtor's restructuring efforts. In finding that the distressed debt buyer was a "rogue white knight", the court held that "threatening to hijack the project and frustrate a plan intended to bring a measure of relief to many creditors, including the purchasers of units, does not square with the good faith conduct required of contracting parties by article 1375 C.C.Q." Based on the particular facts, the court decided to treat the claims of the white knight as if they were "litigious rights" because that was what the parties intended at the time that the bank debt was acquired at a discount. In Québec, the person from whom litigious rights are claimed is fully discharged by paying to the buyer of such rights the sale price, the costs related to the sale, and interest on the price computed from the day on which the buyer paid it. Consequently, the court ordered that the debtor could satisfy

and discharge all claims owing to the white knight by paying it, in the context of its plan of arrangement, the amount that the white knight had itself paid to acquire the subject debt claims. On such payment, the white knight would be deemed to have accepted the debtor's plan of arrangement: *Minco-Division Construction Inc. v. 9170-6929 Québec Inc.* (2007), 2007 CarswellQue 420, 29 C.B.R. (5th) 165 (Que. S.C. [Commercial Div.]); leave to appeal to C.A. refused (29 January 2007), Montréal 500-09-017423-070 and 500-09-017419-078 (Que. C.A.). For a discussion of this judgment, see article by Mark Meland, "Rogue White Knights and Strategic Buyers of Distressed Debt in Canadian Insolvency Proceedings" and Janis Sarra, "Distressed Debt Purchasers in Canadian Restructuring Proceedings — The Québec Court's Recent Consideration of Rogue White Knights", INSOL Newsletter, July 2007.

The Ontario Court of Appeal held that a pre-*CCAA* claim for arrears of rent under a lease may be asserted in full against the reorganized *CCAA* company following its emergence from *CCAA* proceedings where the lease in question was not repudiated as part of the *CCAA* proceedings; the claimant never received notice of the *CCAA* proceedings or of a claims procedure order; and the provisions of the order sanctioning the debtor company's plan of reorganization and the plan itself make it clear that: (1) a real property lease that has not been repudiated or terminated and in respect of which there has been no written agreement to allow a claim is an "unaffected obligation" under the plan; (2) the debtor company is deemed to have ratified each unexpired lease to which it is a party, unless such lease was previously repudiated or terminated or previously expired or terminated pursuant to its own terms; and (3) any agreement to which the debtor company is a party as at the effective date of the plan shall be and remain in full force and effect unamended: *Ivorylane Corp. v. Country Style Realty Ltd.* (2005), 2005 CarswellOnt 2516, 11 C.B.R. (5th) 230 (Ont. C.A.).

In the context of a *CCAA* plan, the British Columbia Court of Appeal held that an employment contract was an executory contract and therefore a "claim" that was compromised in the plan of arrangement. Levine J.A. held that the first step in determining whether a claim for damages for breach of an employment contract represented a contingent liability was to consider the meaning of that term. The Supreme Court of Canada in *McLarty v. R.* (2008), 2008 CarswellNat 1380, 2008 CarswellNat 1381, [2008] 2 S.C.R. 79 referred to the "well-accepted test for a contingent liability" as described by Lord Guest in *Winter v. Inland Revenue Commissioners* (1961), [1963] A.C. 235, [1961] 3 All E.R. 855 (U.K. H.L.), as an event that may or may not occur, and the contingent liability is a liability that depends for its existence on an event that may or may not happen. Levine J.A. concluded that, although there is the potential of a claim for damages, there can be no liability, contingent or otherwise, where there is no present cause of action. Until there is a breach of contract, there is no legal basis for any claim or any corresponding liability. Levine J.A. concluded that the liability to pay damages if an employment contract was breached for failing to give reasonable notice of termination was not a contingent liability within the ordinary meaning of that term. Until the termination of employment without adequate notice, there was no injury. Justice Levine also held that the applicant's employment contract was, at the filing date, an executory contract that fell within the definition of "claim" in the plan: *Re West Bay SonShip Yachts Ltd.* (2009), 2009 CarswellBC 139, 49 C.B.R. (5th) 159 (B.C. C.A.).

Where parties entered into an agreement for a shareholder to pay USD 20 million to purchase USD 10 million of the debtor company's income tax refund, the agreement required the debtor to hold the tax refund in trust for the shareholder. The debtor did not deliver the transfer document, in breach of the agreement, and then filed under the *CCAA*. The shareholder successfully argued that the funds were held in trust; and on appeal, the appellate court held that the circumstances of the case made it appropriate to apply the equi-

table maxim that "equity looks on that as done which ought to be done". It would be inequitable for the debtor to take advantage of its own breach of agreement by contending that its failure to deliver the transfer excused it from its contractual obligation. It was not inequitable to require secured creditors to live with the agreement they helped make and that they influenced the debtor company to breach: *Re Grant Forest Products Inc.* (2010), 2010 Carswell-Ont 3001, 101 O.R. (3d) 383, 67 C.B.R. (5th) 23 (Ont. C.A.).

(1) — Claims Barring Procedure

In *CCAA* proceedings, a claims bar order can be made by the judge in charge of the proceedings. The purpose of the order is, amongst other things, to enable creditors to meaningfully assess and vote on a plan of arrangement and to ensure a timely and orderly completion of the *CCAA* proceedings.

Under a claims bar order, creditors are required to file their claims by a fixed date. The debtor company is directed to send notice of the order to all creditors. The court may also order publication in a newspaper.

It is usual to appoint a claims officer who will be given power to adjudicate disputed claims with the right of appeal to the judge administering the *CCAA* proceedings. In some orders, a creditor is given the right to by-pass the claims officer and to apply directly to the judge for a ruling on its claim.

In *Re Blue Range Resource Corp.* (2000), 15 C.B.R. (4th) 192, 2000 CarswellAlta 30 (C.A. [In Chambers]) a claims bar order was made by the court. Two creditors did not file their claims in the time period fixed by the order. The creditors applied for and were granted an extension of time for filing their claims. A large creditor applied for leave to appeal. A judge of the Alberta Court of Appeal granted leave to appeal on the issue whether the lower court judge had erred in exercising the discretion to extend the time for creditors to file their claims. The Court of Appeal dismissed the appeal: see *Re Blue Range Resource Corp.* (2000), 2000 CarswellAlta 1145 (C.A.); additional reasons at (2001), 2001 CarswellAlta 1059 (C.A.); leave to appeal refused (2001), 2001 CarswellAlta 1209, 2001 CarswellAlta 1210 (S.C.C.). The Court of Appeal held that in determining whether or not to grant permission for late filing of claims, the court should apply the following tests:

> 1. Was the delay in filing caused by inadvertence and if so, was the creditor acting in good faith? Inadvertence includes carelessness, negligence and accident but the conduct must be unintentional.
>
> 2. What is the effect of extending the time for filing in terms of the existence and impact of any relevant prejudice caused by the late filing? The test for prejudice is: did the creditors who filed on time lose as a result of the late filing a realistic opportunity to do anything that they might otherwise have done? The fact that the amount available for distribution to creditors has been reduced does not constitute prejudice.
>
> 3. If the late filing has caused relevant prejudice, can it be alleviated by attaching appropriate conditions to the order permitting the late filing?
>
> 4. If relevant prejudice has been caused, which cannot be alleviated, are there any other consideration which could nonetheless warrant an order for late filing?

Leave to file a late dispute notice may be granted where it will not cause hardship to any interested party or prejudice the debtor's reorganization; which is not to say that an extension will usually be granted. Corrective action must be taken forthwith to address delays upon the error being realised, and lying in the weeds is not an option: *Re Air Canada [Late Dispute Notice]* (2004), 49 C.B.R. (4th) 175, 2004 CarswellOnt 1843 (Ont. S.C.J. [Commercial]).

The Alberta Court of Appeal held that to further the goal of enabling a company to deal with creditors in order to carry on business, the *CCAA* proceedings seek to resolve matters and obtain finality without undue delay, and a claims bar date is one means of bringing disputed claims to an end and allowing a company to move forward: *Hurricane Hydrocarbons Ltd. v. Komarnicki* (2007), 2007 CarswellAlta 1521, 37 C.B.R. (5th) 1 (Alta. C.A.).

In considering whether claims could be considered when they were submitted after a claims bar date, the Newfoundland and Labrador Supreme Court extended the time for filing of certain claims on the basis that the trustee had not set out any real prejudice that would arise if the claims were allowed; the proposal itself contemplated that there would be additional claimants; there was evidence of an overall intent to determine and assess the claims of unknown victims of abuse; there was no inordinate delay by each of the applicants that could prejudice the process; and the trustee had not pointed to anything greater than the inadvertence claimed by the claimants that would minimize the existence of good faith on their behalf: *Re Roman Catholic Episcopal Corp. of St. George's* (2007), 2007 CarswellNfld 198, 32 C.B.R. (5th) 302 (N.L. T.D.).

The court has the jurisdiction to admit late-filed, or otherwise irregular, claims in a previously approved *CCAA* plan. Pursuant to a *CCAA* plan, a trust was established for the purpose of holding, administering and distributing an "HIV Fund" in satisfaction of claims of persons ("HIV Claimants") who were infected with the HIV virus from receiving blood supplied by the debtor. As a result of problems and litigation, no distributions had been made from the HIV Trust in the eight years since the plan had been approved. Late applications were received from persons who were either infected persons, or persons with derivative claims as members of the families of infected persons, where they did not receive notice. The court's considerations in the exercise of its jurisdiction in this case were: the structure of the *CCAA* plan with its provision of a separate fund for HIV Claimants; the fact that no distributions had been made; the absence of prejudice that would be suffered by the debtor and other claimants; the uncertainty created by the limitations issues; the circumstances of the claimants that distinguish them from commercial creditors; the fact that adequate notice to them was essential if the plan was to be effective; the application forms provided to the HIV Claimants were not clear; and the methods of disseminating notice of the deadline may have been affected, and unduly limited, by a misapprehension as to the number of potential claimants: *Re Canadian Red Cross Society/Société Canadienne de la Croix-Rouge* (2008), 2008 CarswellOnt 6105, 48 C.B.R. (5th) 41 (Ont. S.C.J.). See Vern W. DaRe, "Risks Inherent in the Settlement of Tort Claims: Recent Direction from the Red Cross Case", in J. Sarra, ed., *Annual Review of Insolvency Law, 2008* (Toronto: Carswell, 2009).

The monitor brought a motion seeking directions as to whether it has the necessary authority to allow a revision of a claim after the claims bar date but before the date set for the monitor to complete its assessment of claims. The monitor was of the view that errors in the proofs of claim were due to inadvertence and for all of the claims it issued a notice of revision, allowing the claims as revised if the court determined that it had the power to do so. The court held that the monitor as an officer of the court, is obliged to ensure that the interests of the stakeholders are considered, including all creditors, the company and its shareholders; and the monitor had the necessary authority to revise the claims, either as to classification or amount: *Re ScoZinc Ltd.* (2009), 2009 CarswellNS 229, 53 C.B.R. (5th) 96 (N.S. S.C.).

The British Columbia Court of Appeal upheld two decisions in proceedings under the *CCAA* involving pre-sale purchasers of residential condominiums, who argued that they had certain remedial rights under the *Real Estate Marketing and Development Act (REMDA)* that were sufficient to give them status as creditors in the *CCAA* proceeding. The Court held that there was nothing in the *REMDA* that suggested that the legislature intended that the "identity of

the developer" changes if corporate ownership and control change. Levine J.A. held that the appellants had no rights of rescission or to return of their deposits because their pre-sale agreements were unenforceable under the *REMDA*; thus, there was no basis for them to claim that they were creditors in the *CCAA* proceeding. The appellate court affirmed the supervising judge's approval of an extension of the completion date of the pre-sale agreements because of construction delays, observing that the customary way of determining delay claims is after the project has been completed. In this case, there was not that luxury, and the court proceeded to decide them and ordered the extension: *Re Jameson House Properties Ltd* (2009), 2009 CarswellBC 1904, 57 C.B.R. (5th) 21 (B.C. C.A.).

An issue arose during *CCAA* proceedings as to whether a document constituted a promissory note within the meaning of the *Bills of Exchange Act*. The Alberta Court of Appeal held that it was not a promissory note as it was not unconditional in nature; and the provision that was titled "promissory note" was included as part of a contract, the terms of which conditioned payment of obligation. The provision could not be construed independently from other provisions of the purchase contract. Hence the chambers judge was correct in her determination that the document did not contain an unconditional promise to pay: *Re Fairmont Resort Properties Ltd.* (2009), 2009 CarswellAlta 1589, 60 C.B.R. (5th) 55 (Alta. C.A.).

The Ontario Superior Court of Justice declined to establish a claims bar date in respect of claims made under special purpose provincial legislation. The court reviewed the basis for establishing such a process and concluded, in this case, that there would be no prejudice to the claimant if the motion was dismissed on a without prejudice basis to the claimant to request similar relief at a time in the future. The Attorneys General for Canada, the MRQ and six provincial Crowns had filed notices of claim in respect of this claims bar order, the aggregate Crown smuggling claims against the debtor company totalled many billions of dollars. British Columbia had enacted the *Tobacco Damages and Health Care Cost Recovery Act (TDHCCRA)* and delivered a notice of claim to the debtor company and the monitor, seeking the present value of the past and future costs of government health care benefits on an aggregate basis provided for its population resulting from tobacco related disease as a result of smoking cigarettes. The proposed order would fix a claims bar date. Justice Cumming held that those provinces that have enacted and proclaimed in force TDHCCRA-type legislation have a cause of action and consequently, have claims "provable in bankruptcy". Justice Cumming held that it was inappropriate to attempt to determine "provable claims" at this early stage. He did acknowledge the provinces' submission that all provisions of the TDHCCRA-type legislation operated retroactively, including the section of each statute that creates a cause of action. Justice Cumming concluded that the claims arising out of allegations of smuggling of contraband tobacco products were distinguishable from the situation with the putative health care cost recovery (HCCR) claims. Each cause of action existed at the time the claims bar order was sought. The existing claims bar order relating to the Crown smuggling claims did not impair or challenge the jurisdiction of any legislature to enact legislation in the future. Rather, the claims bar order simply required that any such existing smuggling claims of governments be filed by a fixed date, so as to give notice to preserve their existing claims for purposes of the *CCAA* proceedings. Justice Cumming concluded that there was no prejudice to B.C., or to any other province that may choose to advance an HCCR claim. The existing HCCR claims were proceeding having been unaffected (with the stay lifted) by these *CCAA* proceedings. There are no limitation of action issues in respect of the HCCR claims. Justice Cumming went on to note that the existing and anticipated HCCR claims would involve multiple defendants, both domestic and foreign, and would necessarily have to proceed in the civil courts. It might well unnecessarily complicate and delay the HCCR proceedings, as well as the *CCAA* proceeding, to make a Crown HCCR claims bar order at this time relating to HCCR claims against the company. It was premature to set a bar

date and establish a procedure for the determination of HCCR claims. The existing B.C. claim was proceeding before the Supreme Court of British Columbia and was being case managed. It was obvious that it would be both efficient and expeditious to have a single trial in respect of all HCCR claims rather than one in each province: *Re JTI-MacDonald Corp.* (2009), 2009 CarswellOnt 6614, 61 C.B.R. (5th) 117 (Ont. S.C.J. [Commercial List]).

The Alberta Court of Queen's Bench denied the motion of a creditor to have a late amended proof of claim accepted in a *CCAA* proceeding. The issue was whether the creditor, having initially filed a claim that it characterized as fully secured, was entitled to file a late amended claim alleging that a large portion of its claim was unsecured. The criteria to accept late claims include: (a) was the delay caused by inadvertence and if so, did the claimant act in good faith; (b) what is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay; (c) if relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing; (d) if relevant prejudice is found that cannot be alleviated, are there any other considerations that may nonetheless warrant an order permitting late filing? In this case, the creditor filed a late revised claim after months of relative lack of diligence with respect to the value of its security, at a time when it had become apparent that the distribution to unsecured creditors under a proposed plan would be substantial. The court concluded that, on the facts, it would not be fair or equitable to accept the late amended claim: *Re BA Energy Inc.* (2010), 2010 CarswellAlta 1598, 70 C.B.R. (5th) 24 (Alta. Q.B.).

The Québec Superior Court declined to grant a *CCAA* claims bar order in respect of a bankrupt debtor who was no longer under *CCAA* protection. The court held that there was no jurisdiction under the *CCAA* to make such an order as the *BIA* now applied. Justice Gascon held that the most appropriate approach to determine a court's authority during a *CCAA* proceeding is a hierarchical one, where courts must first rely on an interpretation of the provisions of the *CCAA* text before turning to inherent or equitable jurisdiction. Applying these guidelines, Gascon J. was of the view that there were simply no provisions in the *CCAA* that would support the court's authority to issue a claims procedure order solely aimed at potential claims that may be raised against the beneficiaries of *CCAA* charges affecting the property of an entity no longer under *CCAA* protection. The claims covered by s. 12 of the *CCAA* concerned the creditors of the debtor company under *CCAA* protection, nothing more. Justice Gascon held that the mere fact that these *CCAA* charges existed, were valid, and may entail potential claims as secured creditors, was not sufficient to justify the court exercising any alleged statutory jurisdiction, discretionary power or inherent jurisdiction to grant the claims procedure and the bar orders: *Re AbitibiBowater inc.* (2011), 2011 CarswellQue 1645, 2011 QCCS 766 (Que. S.C.).

See N. MacParland, "How Close is Too Close? The Treatment of Related Party Claims in Canadian Restructurings", *Annual Review of Insolvency Law, 2004* (Carswell, 2005) 355–398.

(2) — Proof of Claim

In the context of a *CCAA* proceeding, the Alberta Court of Queen's Bench held that a secured creditor's interest secured under the British Columbia *PPSA* that had lapsed ranked behind that of another secured creditor that registered its security after the lapse and before the security was reregistered. To determine priorities, the court must determine which party holds the earliest perfected interest. The only way that the secured creditor could have priority was if it had perfected its possession before the second creditor filed under the *PPSA*. Here the creditor gave up actual physical possession to another company to secure credit advances and thus was not in possession at the relevant time: *Re Fairmont Resort Properties*

Ltd. (2009), 2009 CarswellAlta 1210, 56 C.B.R. (5th) 235 (Alta. Q.B.); leave to appeal refused (2009), 2009 CarswellAlta 1725, 59 C.B.R. (5th) 233 (Alta. C.A.).

(3) — Negotiation and Mediation of Claims

An experienced mediator under a *CCAA* proceeding should be given the highest degree of flexibility in his or her approach to and handling of a mediation between all stakeholders of an insolvent corporation; and if the monitor feels it appropriate, it may recommend a third party's proposal for the stakeholders' consideration, in addition to the monitor's proposal. If any stakeholder does not voluntarily participate in the mediation, then the monitor, at the mediator's request, may move for an order that such participation be directed and ordered by the court: *Re Stelco Inc.* (2005), 2005 CarswellOnt 2010, 11 C.B.R. (5th) 163 (Ont. S.C.J. [Commercial List]).

N§144 — Claims that Cannot be Comprised under a Plan

Unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for acceptance of the compromise or arrangement, a compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any fine, penalty, restitution order or similar order imposed by a court in respect of an offence; any award of damages by a court in civil proceedings in respect of bodily harm intentionally inflicted, sexual assault, or wrongful death; any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Québec, as a trustee or an administrator of the property of others; any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim: s. 19(2) (2007, c. 36, in force September 18, 2009).

20. (1) Determination of amount of claims — For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the

amount is to be determined by the court on summary application by the company or the creditor.

(2) Admission of claims — Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

(3) [Repealed 2007, c. 36, s. 70.]

2005, c. 47, s. 131; 2007, c. 36, s. 70

N§145 — Determination of Amount of Claims

The amount represented by a claim of any secured or unsecured creditor is to be determined as follows. The amount of an unsecured claim is the amount in the case of a company in the course of being wound up or liquidated under the *WURA* or the *BIA* is proof in accordance with those statutes. The secured claim is the amount, proof of which might be made under the *BIA* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *WURA* or the *BIA*, to be established by proof in the same manner as an unsecured claim under those statutes, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor (2007, c. 36, in force September 18, 2009). The secured creditor is not prevented from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim.

N§146 — Debtor Right to Reserve Right to Contest Claim

The debtor company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes: s. 21(2) (2007, c. 36, in force September 18, 2009).

21. Law of set-off or compensation to apply — The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.

1997, c. 12, s. 126; 2005, c. 47, s. 131

N§147 — Set-Off

The cases and commentary on set-off were moved to this section when the 2009 amendments coming into force. The set-off provision became s. 21 of the *CCAA* and s. 18.1 was repealed. Section 21 specifies that the law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant (2007, c. 36, in force September 18, 2009).

The Supreme Court of Canada set out the principles applicable to equitable set-off: 1) the party relying on a set-off must show some equitable ground for being protected against its adversary's demands; 2) the equitable ground must go to the very root of the plaintiff's claim; 3) a cross-claim must be so clearly connected with the demand of the plaintiff that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into

TAB 4

Case Name:

Pine Valley Mining Corp. (Re)

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.B.C. 2002, c. 57, as amended
IN THE MATTER OF Pine Valley Mining Corporation, Falls Mountain Coal Inc., Pine Valley Coal Inc., and Globaltex Gold Mining Corporation, Petitioners

[2008] B.C.J. No. 510

2008 BCSC 356

41 C.B.R. (5th) 43

2008 CarswellBC 579

165 A.C.W.S. (3d) 842

Docket: S066791

Registry: Vancouver

British Columbia Supreme Court
Vancouver, British Columbia

N.J. Garson J.

Oral judgment: March 14, 2008.

(20 paras.)

[Editor's note: Supplementary reasons for judgment were released April 14, 2008. See [2008] B.C.J. No. 637.]

Insolvency law -- Legislation -- Companies' Creditors Arrangement Act -- Directions issued in this proceeding under the Companies' Creditors Arrangement Act to the effect that the creditor Pine Valley Mining Corporation bore the burden of proving its claim for a debt of $37,692,218, and that the matter would proceed to a summary trial -- The monitor's report confirming a debt was not en-

titled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant -- A summary trial was mandated by s. 12 of the Act -- Companies' Creditors Arrangement Act, s. 12.

Insolvency law -- Claims -- Priorities -- Directions issued in this proceeding under the Companies' Creditors Arrangement Act to the effect that the creditor Pine Valley Mining Corporation bore the burden of proving its claim for a debt of $37,692,218, and that the matter would proceed to a summary trial -- The monitor's report confirming a debt was not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant -- A summary trial was mandated by s. 12 of the Act -- Companies' Creditors Arrangement Act, s. 12.

Insolvency law -- Receivers, managers and monitors -- Duties and powers -- Directions issued in this proceeding under the Companies' Creditors Arrangement Act to the effect that the creditor Pine Valley Mining Corporation bore the burden of proving its claim for a debt of $37,692,218, and that the matter would proceed to a summary trial -- The monitor's report confirming a debt was not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant -- A summary trial was mandated by s. 12 of the Act -- Companies' Creditors Arrangement Act, s. 12.

The petitioners in this proceeding under the Companies' Creditors Arrangement Act sought directions respecting the process for determining the amount of the Pine Valley Mining Corporation's claim against Fall Mountain Coal (FMC) -- In the present application, the court was asked to determine (a) who bore the onus of proof of the amount and character of PVM's claim, and (b) whether the trial ought to be a summary trial or a conventional one with viva voce witnesses, or some combination of both -- PVM claimed that FMC, its wholly-owned subsidiary, owed it $37,692,218 -- The other major creditors disputed the amount on the grounds that advances to FMC were properly characterized as capital investment, not debt, with the result that PVM would rank behind the other unsecured creditors in the distribution of FMC assets -- The court-appointed monitor had reviewed the accounts and determined $27,070,166 was properly owed to PVM by FMC -- HELD: PVM bore the onus of proving its claim in the summary trial to follow -- The Monitor's process was in no way akin to an adversarial process -- He was not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant -- It followed that PVM had the burden of proving its claim -- Either party was at liberty to use the monitor's report or part of it at the trial as an expert report, provided the necessary notice was given to the other party -- Section 12 of the Act required a summary trial -- The court was not persuaded that the claim could not be tried summarily on the date reserved -- Either party had leave to apply to convert this summary trial to a conventional trial, but the parties were expected to make their best efforts to manage this generally as a summary trial.

Statutes, Regulations and Rules Cited:

Business Corporations Act, R.S.B.C. 2002, c. 57,

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 12(2)

Counsel:

Counsel for Pine Valley Mining Corporation: J.R. Sandrelli, O. Jones.

Counsel for Tercon Mining PV Ltd.: B.G. McLean, C. Armstrong.

Counsel for the Monitor: W. Kaplan, Q.C.

Counsel for Petro-Canada: D.A. Garner.

Counsel for CN Rail: R.D. Watson.

Reasons for Judgment

1 **N.J. GARSON J.** (orally):-- This is an application for directions respecting the process for the determination of the amount of Pine Valley Mining Corporation's ("PVM") claim against Falls Mountain Coal Inc. ("FMC") within a proceeding under the ***Companies' Creditors Arrangement Act***, R.S.C. 1985, c. C-36, as amended, (the "CCAA Proceeding"), in which both PVM and FMC are related parties and petitioners.

2 FMC is a wholly-owned subsidiary of PVM. PVM claims that FMC owes PVM $37,692,218. The other major creditors of FMC dispute that amount largely on the basis that the advances made to FMC are properly characterized as capital investment in FMC, not debt, and therefore PVM should rank behind the other unsecured creditors in the distribution of FMC assets. The Monitor appointed by this Court in the CCAA Proceeding has reviewed the accounts of PVM and FMC and determined that $27,070,166 is properly owed to PVM by FMC as debt.

3 On this application the Court is asked to determine two issues:

1. Who bears the onus of proof of the amount and character of PVM's claim?
2. Should the trial be a summary trial or a conventional trial with *viva voce* witnesses, or some combination of those two procedures?

4 The relevant factual background to the matter may be stated as follows:

* FMC is the wholly-owned subsidiary of PVM.
* FMC operated the Willow Creek Coal Mine.
* On October 20, 2006, PVM and FMC petitioned this Court for a general stay of proceedings under the ***CCAA***. The order they sought was granted, and extended from time to time since the initial order.
* The Petition did not disclose an inter-company debt as between the two petitioners. All financial reporting was done on a consolidated basis. When the Monitor requested unconsolidated financial statements for each of the petitioners the inter-company debt was revealed. In recounting this history I make no adverse finding of fact on this point. That is a matter for the trial judge.
* On January 19, 2007, PVM filed a claim with the Monitor stating that FMC was indebted to PVM in the amount of $41,658,441.
* On March 16, 2007, the Monitor issued its Fourth Report to the Court. That report contained a detailed review of the transactions underlying the PVM claim.

As already noted, as a result of his investigations the Monitor "[proposed] to allow a revised PVM Claim against FMC in the amount of $27,070,166".

* Some of the creditors objected to the claim, including the revised claim, and agreed that the counsel for the largest creditor, Tercon, would have standing to defend the PVM claim and to raise all defences available to FMC and to creditors of FMC. The other main creditors have maintained - if I may describe it thus - an active watching brief.

5 A ten-day trial has been reserved for May of this year. The parties have reached an impasse on the two issues mentioned above. Mr. Sandrelli, counsel for PVM, says that "deference is owed to the Monitor's ... conclusions ... in [his] Fourth Report, such that the onus to challenge the Monitor's findings lies on the party appealing the Monitor's findings; and if deference is owed to the Monitor's findings, what standard of review applies to those findings".

6 I understood Mr. Sandrelli to use the term "appeal" in a loose sense. He acknowledged that this is not an appeal because Tercon did not participate in the original decision making process of the Monitor. He said in submissions that the process is more akin to a review on a correctness standard of review. He concluded his submissions by contending that Tercon should bear the onus of displacing the finding of the Monitor that PVM is owed $27 Million by FMC, and that PVM bears the onus of displacing the Monitor's finding that PVM is not entitled to the additional approximate $11 million it claims.

7 Mr. McLean, counsel for Tercon, contends that "the burden of proof lies upon the party who substantially asserts the affirmative of the issue": *Phipson on Evidence*, 14th ed. He says that PVM seeks to prove that it is a creditor of FMC and it must carry the burden of proof of that whole claim.

8 Mr. Sandrelli argues that in the special context of a ***CCAA*** proceeding the Monitor, who is appointed by the court, should be accorded deference and that the review of his decision is akin to a review of a ***CCAA*** claims officer's decision in a ***CCAA*** proceeding. He relies for this proposition on dicta in ***Olympia & York Developments Ltd. (Re)*** (1993), 17 C.B.R. (3d) 1; ***Air Canada (Re.)*** (2004), 2 C.B.R. (5th) 23; ***Canadian Airlines (Re)***, 2001 ABQB 146; ***Matte v. Roux***, 2007 BCSC 902; ***Triton Tubular Components Corp v. Steelcase Inc.***, [2005] O.J. No. 3926 (S.C.J.); and ***Muscletech Research & Development Inc.*** (2006), 25 C.B.R. (5th) 231.

9 In ***Olympia & York***, the decision under review was that made by a claims officer. The claims officer is akin to a judicial officer. The proceeding before him is an adversarial one and naturally he should be granted some deference. That decision is distinguishable on the grounds that the court appointed Monitor in this proceeding, while undoubtedly an impartial agent of the court, reviews the claim but is in no way engaged to conduct a hearing or any type of adversarial or quasi-judicial type proceeding. Similarly, ***Air Canada*** involved an appeal from a decision of a claims officer appointed in the ***CCAA*** proceeding in which the claims officer had dismissed a contingent claim. The appeal was dismissed. The ***Air Canada*** case is distinguishable for the same reasons as the ***Olympia & York*** case. In ***Canadian Airlines***, the decision under review was also that of a claims officer appointed to determine disputed claims within a ***CCAA*** proceeding. Paperny J., as she then was, held that the review was a trial *de novo*, but that was because the law in Alberta differed from Ontario. The ***Matte*** case involved the standard of review of a master's decision and for the same reasons, I find it unhelpful and distinguishable. ***Triton*** also involved the review of a claims officer's decision. The court determined that the standard of review was correctness but, for the same reasons as above, the case is distinguishable. The ***Muscletech*** case is similarly distinguishable.

10 In none of the cases cited above was the decision under review one of a monitor, not engaged in an adversarial process.

11 Paragraph 17 of the Claims Procedure Order pronounced December 8, 2006, provides:

> Where a Creditor delivers a Dispute Notice in accordance with the terms of this Order, such dispute shall be resolved as directed by this Court or as the Creditor in question, the Petitioners and Monitor may agree.

12 Section 12(2) of the ***CCAA*** provides in part as follows:

> For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:
>
> (a) the amount of the unsecured claim shall be the amount
>
> (iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount shall be determined by the court on summary application by the company or by the creditor;

13 I conclude from the ***CCAA*** and the Claims Procedure Order that the function of the Monitor, that is relevant to this application, is to determine the validity and amount of a claim on the basis of the evidence submitted. The Monitor's process in doing so is in no way akin to an adversarial process. Although his findings and opinion should be respectfully considered, he is not entitled to deference in the sense that would alter the burden of proof ordinarily imposed on the claimant. Counsel have not called my attention to any authority for either of the following propositions, either that the CCAA claim process alters substantive law that would otherwise apply to the determination of such a claim, or that a monitor appointed on the terms here is entitled to the deference accorded a quasi-judicial officer like a court appointed claims officer. It follows that PVM has the burden of proving its claim. PVM shall file a statement of claim. Tercon, with standing to defend on behalf of FMC, shall file a statement of defence.

14 I turn next to the procedural questions.

15 The Monitor has spent a good deal of time investigating the PVM claim. His report documents the numerous transactions that are at issue, and provides a very useful framework for the court. There is much in the report that may be of use to the parties at the hearing of this matter. In exercising my jurisdiction to give directions for a summary determination of this matter I order that either party is at liberty to use the Monitor's report or part of the report at the trial of this matter, as an expert report, provided the necessary notice is given to the other. The Monitor may be required to be cross-examined on the report.

16 The second issue I have been asked to determine is the question of the format of this trial. Section 12 of the ***CCAA*** requires a summary trial. I recognize that in some cases, courts have held that that does not preclude a conventional trial. (See ***Algoma Steel Corporation v. Royal Bank of Canada*** (1992), 8 O.R. (3d) 449 (C.A.). I do not understand Mr. McLean to object in principle to an order that this matter be determined in a summary way but, rather, I think he reserves his right to object to the suitability of such a procedure depending on how the evidence unfolds. It is my view

that s. 12 of the *CCAA* informs any decision the court must make as to the format of a trial and that trial must surely be as the section dictates, a summary trial, unless to do otherwise would be unjust, or there is some other compelling reason against a summary trial. I am not persuaded that this claim cannot be tried summarily on the date reserved in May of this year. The parties have one week to work out an agreement as to a time line for the necessary steps to prepare for that trial, including the exchange of pleadings, disclosure of documents as requested by Tercon, agreed facts, delivery of affidavits, expert reports (including notice of reliance on all or part of the Monitor's reports), delivery and responses to notices to admit, examination for discovery if consented to, and delivery of written arguments. I acknowledge that many of these steps are underway.

17 Mr. Sandrelli says he will now have to marshall all the evidence to prove his claim from ground zero as opposed to simply relying in the first instance on the Monitor's report. As I have said, he may rely on all or part of the Monitor's report. I am not persuaded yet that he cannot marshall his evidence in the time remaining before the May trial date. I will hear submissions on the trial schedule if, by March 21, 2008, the parties have been unable to reach agreement on it. The parties may contact the registry to arrange such a hearing prior to ordinary court hours. Either party has leave to apply to cross-examine the deponent of an affidavit out of court or in court. Either party has leave to apply to convert this summary trial to a conventional trial but I expect the parties to make their best efforts to manage this generally as a summary trial.

18 The parties have each proposed somewhat differing forms of order, concerning various procedural matters relevant to the conduct and hearing of the inter-company claim. Also Mr. Watson, for CN, objects to the following clause proposed by PVC:

> No other creditor, claimant or counsel therefore shall be entitled to participate by having representation in the proceedings concerning the determination of the Issues and in relation to the claim of PVM against FMC without leave of the Court, which application for leave,if any, shall be made on 4 days' notice to PVM and Tercon by no later than March 31, 2008.

19 Mr. Watson, counsel for CN, one of the creditors, contends that his client should be exempted from the limitation imposed on all other creditors contemplated by this last mentioned clause in the draft order. I agree with Mr. Sandrelli that it is necessary for the orderly conduct of the resolution of the claim that PVM and Tercon have some certainty as to what counsel are involved. On the other hand, CN and Petro-Canada have maintained what I earlier described as an active watching brief on the progress of the inter-company claim resolution. They should have the ability to continue to do so. Their submissions have generally been helpful and consequently I see no prejudice in permitting them to continue in that role, at least until shortly before the hearing. I will leave it to counsel to work out a date by which those two creditors will be barred from seeking leave to participate. I have in mind something like two weeks before the hearing but if counsel cannot agree they may make further submissions on this point.

20 I will leave it to the parties to work out the balance of the terms of the order. They have leave to speak to the matter if those terms cannot be agreed upon.

N.J. GARSON J.

TAB 5

Court File No. CV-12-9667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE MORAWETZ	)))	MONDAY, THE 14th DAY OF MAY, 2012

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 AND ARRANGEMENT OF SINO-FOREST CORPORATION

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order establishing a claims procedure for the identification and determination of certain claims was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion, the affidavit of W. Judson Martin sworn on May 2, 2012, the Second Report of FTI Consulting Canada Inc. (the "Monitor") dated April 30, 2012 (the "Monitor's Second Report") and the Supplemental Report to the Monitor's Second Report dated May 12, 2012 (the "Supplemental Report"), and on hearing the submissions of counsel for the Applicant, the Applicant's directors, the Monitor, the *ad hoc* committee of Noteholders (the "Ad Hoc Noteholders"), and those other parties present, no one appearing for the other parties served with the Applicant's Motion Record, although duly served as appears from the affidavit of service, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Monitor's Second Report and the Supplemental Report is hereby abridged and

validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. The following terms shall have the following meanings ascribed thereto:

(a) "2013 and 2016 Trustee" means The Bank of New York Mellon, in its capacity as trustee for the 2013 Notes and the 2016 Notes;

(b) "2014 and 2017 Trustee" means Law Debenture Trust Company of New York, in its capacity as trustee for the 2014 Notes and the 2017 Notes;

(c) "2013 Note Indenture" means the indenture dated as of July 23, 2008, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;

(d) "2014 Note Indenture" means the indenture dated as of July 27, 2009 entered into by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;

(e) "2016 Note Indenture" means the indenture dated as of December 17, 2009, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and The Bank of New York Mellon, as trustee, as amended, modified or supplemented;

(f) "2017 Note Indenture" means the indenture dated as of October 21, 2010, by and between the Applicant, the entities listed as subsidiary guarantors thereto, and Law Debenture Trust Company of New York, as trustee, as amended, modified or supplemented;

(g) "2013 Notes" means the US$345,000,000 of 5.00% Convertible Senior Notes Due 2013 issued pursuant to the 2013 Note Indenture;

(h) "2014 Notes" means the US$399,517,000 of 10.25% Guaranteed Senior Notes Due 2014 issued pursuant to the 2014 Note Indenture;

(i) "2016 Notes" means the US$460,000,000 of 4.25% Convertible Senior Notes Due 2016 issued pursuant to the 2016 Note Indenture;

(j) "2017 Notes" means the US$600,000,000 of 6.25% Guaranteed Senior Notes Due 2017 issued pursuant to the 2017 Note Indenture;

(k) "Administration Charge" has the meaning given to that term in paragraph 37 of the Initial Order;

(l) "BIA" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended;

(m) "Business Day" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

(n) "CCAA" means the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;

(o) "CCAA Proceedings" means the proceedings commenced by the Applicant in the Court under Court File No. CV-12-9667-00CL;

(p) "CCAA Service List" means the service list in the CCAA Proceedings posted on the Monitor's Website, as amended from time to time;

(q) "Claim" means:

(i) any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement

(oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors and Officers) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, or an Equity Claim (each a "Prefiling Claim", and collectively, the "Prefiling Claims");

(ii) a Restructuring Claim; and

(iii) a Secured Claim;

provided, however, that "Claim" shall not include an Excluded Claim, a D&O Claim or a D&O Indemnity Claim;

(r) "Claimant" means any Person having a Claim, a D&O Claim or a D&O Indemnity Claim and includes the transferee or assignee of a Claim, a D&O Claim or a D&O Indemnity Claim transferred and recognized as a Claimant in accordance with paragraphs 46 and 47 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

(s) "Claimants' Guide to Completing the D&O Proof of Claim" means the guide to completing the D&O Proof of Claim form, in substantially the form attached as Schedule "E-2" hereto;

(t) "Claimants' Guide to Completing the Proof of Claim" means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule "E" hereto;

(u) "Claims Bar Date" means June 20, 2012;

(v) "Class" means the National Class and the Quebec Class;

(w) "Court" means the Ontario Superior Court of Justice (Commercial List);

(x) "Creditors' Meeting" means any meeting of creditors called for the purpose of considering and voting in respect of the Plan, if one is filed, to be scheduled pursuant to further order of the Court;

(y) "D&O Claim" means, other than an Excluded Claim, (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Filing Date, or (B) relates to a time period prior to the Filing Date;

(z) "D&O Indemnity Claim" means any existing or future right of any Director or Officer against the Applicant which arose or arises as a result of any Person filing a D&O Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant;

(aa) "D&O Indemnity Claims Bar Date" has the meaning set forth in paragraph 19 of this Order;

(bb) "D&O Indemnity Proof of Claim" means the indemnity proof of claim in substantially the form attached as Schedule "F" hereto to be completed and filed by a Director or Officer setting forth its purported D&O Indemnity Claim;

(cc) "D&O Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D-2" hereto to be completed and filed by a Person setting forth its purported D&O Claim and which shall include all supporting documentation in respect of such purported D&O Claim;

(dd) "Directors" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of the Applicant;

(ee) "Directors' Charge" has the meaning given to that term in paragraph 26 of the Initial Order;

(ff) "Dispute Notice" means a written notice to the Monitor, in substantially the form attached as Schedule "B" hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance;

(gg) "Employee Amounts" means all outstanding wages, salaries and employee benefits (including, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), vacation pay, commissions, bonuses and other incentive payments, termination and severance payments, and employee expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(hh) "Equity Claim" has the meaning set forth in Section 2(1) of the CCAA;

(ii) "Excluded Claim" means:

(i) any Claims entitled to the benefit of the Administration Charge or the Directors' Charge, or any further charge as may be ordered by the Court;

(ii) any Claims of the Subsidiaries against the Applicant;

(iii) any Claims of employees of the Applicant as at the Filing Date in respect of Employee Amounts;

(iv) any Post-Filing Claims;

(v) any Claims of the Ontario Securities Commission; and

(vi) any D&O Claims in respect of (i) though (v) above;

(jj) "Filing Date" means March 30, 2012;

(kk) "Government Authority" means a federal, provincial, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over the Applicant;

(ll) "Initial Order" means the Initial order of the Honourable Mr. Justice Morawetz made March 30, 2012 in the CCAA Proceedings, as amended, restated or varied from time to time;

(mm) "Known Claimants" means:

(i) any Persons which, based upon the books and records of the Applicant, was owed monies by the Applicant as of the Filing Date and which monies remain unpaid in whole or in part;

(ii) any Person who has commenced a legal proceeding in respect of a Claim or D&O Claim or given the Applicant written notice of an intention to commence a legal proceeding or a demand for payment in respect of a Claim or D&O Claim, provided that where a lawyer of record has been listed in connection with any such proceedings, the "Known Claimant" for the purposes of any notice required herein or to be given hereunder shall be, in addition to that Person, its lawyer of record; and

(iii) any Person who is a party to a lease, contract, or other agreement or obligation of the Applicant which was restructured, terminated, repudiated or disclaimed by the Applicant between the Filing Date and the date of this Order;

(nn) "Monitor's Website" has the meaning set forth in paragraph 12(a) of this Order;

(oo) "National Class" has the meaning given to it in the Fresh As Amended Statement of Claim in the Ontario Class Action;

(pp) "Note Indenture Trustees" means, collectively, the 2013 and 2016 Trustee and the 2014 and 2017 Trustee;

(qq) "Notes" means, collectively, the 2013 Notes, the 2014 Notes, the 2016 Notes, and the 2017 Notes;

(rr) "Noteholder" means a registered or beneficial holder on or after the Filing Date of a Note in that capacity, and, for greater certainty, does not include former registered or beneficial holders of Notes;

(ss) "Notice of Revision or Disallowance" means a notice, in substantially the form attached as Schedule "A" hereto, advising a Person that the Monitor has revised or disallowed all or part of such Person's purported Claim, D&O Claim or D&O Indemnity Claim set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim;

(tt) "Notice to Claimants" means the notice to Claimants for publication in substantially the form attached as Schedule "C" hereto;

(uu) "Officers" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant;

(vv) "Ontario Class Action: means the action commenced against the Applicant and others in the Ontario Superior Court of Justice, bearing (Toronto) Court File No. CV-11-431153-00CP;

(ww) "Ontario Plaintiffs" means the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and the other named Plaintiffs in the Ontario Class Action;

(xx) "Person" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

(yy) "Plan" means any proposed plan of compromise or arrangement filed in respect of the Applicant pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with its terms;

(zz) "Post-Filing Claims" means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business, but specifically excluding any Restructuring Claim;

(aaa) "Proof of Claim" means the proof of claim in substantially the form attached as Schedule "D" hereto to be completed and filed by a Person setting forth its purported Claim and which shall include all supporting documentation in respect of such purported Claim;

(bbb) "Proof of Claim Document Package" means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the D&O Proof of Claim form, the Claimants' Guide to Completing the Proof of Claim form, the Claimants' Guide to Completing the D&O Proof of Claim form, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable;

(ccc) "Proven Claim" means the amount and Status of a Claim, D&O Claim or D&O Indemnity Claim of a Claimant as determined in accordance with this Order;

(ddd) "Quebec Class" has the meaning given to it in the statement of claim in the Quebec Class Action;

(eee) "Quebec Class Action" means the action commenced against the Applicant and others in the Quebec Superior Court, bearing Court File No. 200-06-000132-111 ;

(fff) "Quebec Plaintiffs" means Guining Liu and the other named plaintiffs in the Quebec Class Action;

(ggg) "Restructuring Claim" means any right or claim of any Person that may be asserted or made in whole or in part against the Applicant, whether or not asserted

or made, in connection with any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation on or after the Filing Date and whether such restructuring, termination, repudiation or disclaimer took place or takes place before or after the date of this Order;

(hhh) "Restructuring Claims Bar Date" means, in respect of a Restructuring Claim, the later of (i) the Claims Bar Date, and (ii) 30 days after a Person is deemed to receive a Proof of Claim Document Package pursuant to paragraph 12(e) hereof.

(iii) "Secured Claim" means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicant (including statutory and possessor liens that create security interests) up to the value of such collateral, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date;

(jjj) "Status" means, with respect to a Claim, D&O Claim or D&O Indemnity Claim, or a purported Claim, D&O Claim or D&O Indemnity Claim, whether such claim is secured or unsecured; and

(kkk) "Subsidiaries" means all direct and indirect subsidiaries of the Applicant other than Greenheart Group Limited (Bermuda) and its direct and indirect subsidiaries, and "Subsidiary" means any one of the Subsidiaries.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation".

5. THIS COURT ORDERS that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. THIS COURT ORDERS that the Monitor, in consultation with the Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where it is satisfied that a Claim, a D&O Claim or a D&O Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of such forms and to request any further documentation from a Person that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Claim, a D&O Claim or a D&O Indemnity Claim.

7. THIS COURT ORDERS that if any purported Claim, D&O Claim or D&O Indemnity Claim arose in a currency other than Canadian dollars, then the Person making the purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim in such currency, rather than in Canadian dollars or any other currency. The Monitor shall subsequently calculate the amount of such purported Claim, D&O Claim or D&O Indemnity Claim in Canadian Dollars, using the Reuters closing rate on the Filing Date (as found at http://www.reuters.com/finance/currencies), without prejudice to a different exchange rate being proposed in any Plan.

8. THIS COURT ORDERS that a Person making a purported Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim without including any interest and penalties that would otherwise accrue after the Filing Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice of Revision or Disallowance, Dispute Notice, Notice to Claimants, the Proof of Claim, the D&O Proof of Claim, the Claimants' Guide to Completing the Proof of Claim, the Claimants' Guide to Completing the D&O Proof of Claim, and D&O Indemnity Proof of Claim substantially in the forms attached as Schedules "A", "B", "C", "D", "D-2", "E", "E-2" and "F" respectively to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the

Applicant, may from time to time make minor non-substantive changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or advisable.

MONITOR'S ROLE

10. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS

12. THIS COURT ORDERS that:

(a) the Monitor shall no later than five (5) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on its website at http://cfcanada.fticonsulting.com/sfc ("Monitor's Website");

(b) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to the Note Indenture Trustees (or to counsel for the Note Indenture Trustees as appears on the CCAA Service List if applicable) a copy of the Proof of Claim Document Package;

(c) the Monitor shall no later than five (5) Business Days following the making of this Order, send on behalf of the Applicant to each of the Known Claimants a copy of the Proof of Claim Document Package, provided however that the

Monitor is not required to send Proof of Claim Document Packages to Noteholders;

(d) the Monitor shall no later than five (5) Business Days following the making of this Order, cause the Notice to Claimants to be published in (i) The Globe and Mail newspaper (National Edition) on one such day, and (ii) the Wall Street Journal (Global Edition) on one such day;

(e) with respect to Restructuring Claims arising from the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation, the Monitor shall send to the counterparty(ies) to such lease, contract, or other agreement or obligation a Proof of Claim Document Package no later than five (5) Business Days following the time the Monitor becomes aware of the restructuring, termination, repudiation or disclaimer of any such lease, contract, or other agreement or obligation;

(f) the Monitor shall, provided such request is received by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor a copy of the Proof of Claim Document Package to any Person requesting such material; and

(g) the Monitor shall send to any Director of Officer named in a D&O Proof of Claim received by the Claims Bar Date a copy of such D&O Proof of Claim as soon as practicable along with an D&O Indemnity Proof of Claim form, with a copy to counsel for such Directors or Officers.

13. THIS COURT ORDERS that the Applicant shall (i) inform the Monitor of all Known Claimants by providing the Monitor with a list of all Known Claimants and their last known addresses according to the books and records of the Applicant and (ii) provide the Monitor with a list of all Directors and Officers and their last known addresses according to the books and records of the Applicant.

14. THIS COURT ORDERS that, except as otherwise set out in this Order or other orders of the Court, neither the Monitor nor the Applicant is under any obligation to send notice to any

Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and without limitation, neither the Monitor nor the Applicant shall have any obligation to send notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons (including Known Claimants) shall be bound by any notices published pursuant to paragraphs 12(a) and 12(d) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

15. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Applicant or the Monitor of any liability of the Applicant or any Director of Officer to any Person.

CLAIMS BAR DATES

Claims and D&O Claims

16. THIS COURT ORDERS that (i) Proofs of Claim (but not in respect of any Restructuring Claims) and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date, and (ii) Proofs of Claim in respect of Restructuring Claims shall be filed with the Monitor on or before the Restructuring Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim was commenced prior to the Filing Date.

17. THIS COURT ORDERS that any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and all such Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant; (c) shall not be entitled to vote such Claim at the Creditors' Meeting in respect of the

Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such Claim.

18. THIS COURT ORDERS that any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Directors or Officers, and all such D&O Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Directors or Officers; (c) shall not be entitled to vote such D&O Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Claim; and (d) shall not be entitled to any further notice in, and shall not be entitled to participate as a Claimant or creditor in, the CCAA Proceedings in respect of such D&O Claim.

D&O Indemnity Claims

19. THIS COURT ORDERS that any Director of Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor so that it is received by no later than fifteen (15) Business Days after the date of receipt of the D&O Proof of Claim by such Director or Officer pursuant to paragraph 12(g) hereof (with respect to each D&O Indemnity Claim, the "D&O Indemnity Claims Bar Date").

20. THIS COURT ORDERS that any Director of Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the D&O Indemnity Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant; and (c) shall not be entitled to vote such D&O Indemnity Claim at the Creditors' Meeting or to receive any distribution in respect of such D&O Indemnity Claim.

Excluded Claims

21. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

PROOFS OF CLAIM

22. THIS COURT ORDERS that (i) each Person shall include any and all Claims it asserts against the Applicant in a single Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported Claim after the Filing Date, that Person shall file a separate Proof of Claim for each such assigned or transferred purported Claim, and (ii) each Person that has or intends to assert a right or claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a purported Claim made against the Applicant shall so indicate on such Claimant's Proof of Claim.

23. THIS COURT ORDERS that each Person shall include any and all D&O Claims it asserts against one or more Directors or Officers in a single D&O Proof of Claim, provided however that where a Person has taken assignment or transfer of a purported D&O Claim after the Filing Date, that Person shall file a separate D&O Proof of Claim for each such assigned or transferred purported D&O Claim.

24. THIS COURT ORDERS that the 2013 and 2016 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2013 Notes and the 2016 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2013 Note Indenture and the 2016 Note Indenture.

25. THIS COURT ORDERS that the 2014 and 2017 Trustee is authorized and directed to file one Proof of Claim on or before the Claims Bar Date in respect of each of the 2014 Notes and the 2017 Notes, indicating the amount owing on an aggregate basis as at the Filing Date under each of the 2014 Note Indenture and the 2017 Note Indenture.

26. Notwithstanding any other provisions of this Order, Noteholders are not required to file individual Proofs of Claim in respect of Claims relating solely to the debt evidenced by their

Notes. The Monitor may disregard any Proofs of Claim filed by any individual Noteholder claiming the debt evidenced by the Notes, and such Proofs of Claim shall be ineffective for all purposes. The process for determining each individual Noteholder's Claim for voting and distribution purposes with respect to the Plan and the process for voting on the Plan by Noteholders will be established by further order of the Court.

27. THIS COURT ORDERS that the Ontario Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Ontario Class Action, notwithstanding that leave to make a secondary market liability claim has not be granted and that the National Class has not yet been certified, and that members of the National Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Ontario Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Ontario Class Action.

28. THIS COURT ORDERS that the Quebec Plaintiffs are, collectively, authorized to file, on or before the Claims Bar Date, one Proof of Claim and, if applicable, one D&O Proof of Claim, in respect of the substance of the matters set out in the Quebec Class Action, notwithstanding that leave to make a secondary market liability claim has not be granted and that the Quebec Class has not yet been certified, and that members of the Quebec Class may rely on the one Proof of Claim and/or one D&O Proof of Claim filed by the counsel for the Quebec Plaintiffs and are not required to file individual Proofs of Claim or D&O Proofs of Claim in respect of the Claims forming the subject matter of the Quebec Class Action.

REVIEW OF PROOFS OF CLAIM

29. THIS COURT ORDERS that any Claimant filing a Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall clearly mark as "Confidential" any documents or portions thereof that that Person believes should be treated as confidential.

30. THIS COURT ORDERS that with respect to documents or portions thereof that are marked "Confidential", the following shall apply:

(a) any information that is otherwise publicly available shall not be treated as "Confidential" regardless of whether it is marked as such;

(b) subject to the following, such information will be accessible to and may be reviewed only by the Monitor, the Applicant, any Director or Officer named in the applicable D&O Proof of Claim or D&O Indemnity Proof of Claim and each of their respective counsel, or as otherwise ordered by the Court ("**Designated Persons**") or consented to by the Claimant, acting reasonably; and

(c) any Designated Person may provide Confidential Information to other interested stakeholders (who shall have provided non-disclosure undertakings or agreements) on not less than 3 Business Days' notice to the Claimant. If such Claimant objects to such disclosure, the Claimant and the relevant Designated Person shall attempt to settle any objection, failing which, either party may seek direction from the Court.

31. THIS COURT ORDERS that the Monitor (in consultation with the Applicant and the Directors and Officers named in the D&O Proof of Claim, as applicable), subject to the terms of this Order, shall review all Proofs of Claim and D&O Proofs of Claim filed, and at any time:

(a) may request additional information from a purported Claimant;

(b) may request that a purported Claimant file a revised Proof of Claim or D&O Proof of Claim, as applicable;

(c) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, attempt to resolve and settle any issue arising in a Proof of Claim or D&O Proof of Claim or in respect of a purported Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim, then the disputed portion of such purported D&O Claim may not be resolved or settled without such Director or Officer's consent or further order of the Court;

(d) may, with the consent of the Applicant and any Person whose liability may be affected or further order of the Court, accept (in whole or in part) the amount and/or Status of any Claim or D&O Claim, provided that if a Director or Officer disputes all or any portion of a purported D&O Claim against such Director or Officer, then the disputed portion of such purported D&O Claim may not be accepted without such Director or Officer's consent or further order of the Court; and

(e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported Claim or D&O Claim.

32. THIS COURT ORDERS that where a Claim or D&O Claim has been accepted by the Monitor in accordance with this Order, such Claim or D&O Claim shall constitute such Claimant's Proven Claim. The acceptance of any Claim or D&O Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person as against any Subsidiary.

33. THIS COURT ORDERS that where a purported Claim or D&O Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the purported Claimant a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

34. THIS COURT ORDERS that where a purported Claim or D&O Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or disallowed purported Claim or D&O Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

REVIEW OF D&O INDEMNITY PROOFS OF CLAIM

35. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all D&O Indemnity Proofs of Claim filed, and at any time:

(a) may request additional information from a Director of Officer;

(b) may request that a Director or Officer file a revised D&O Indemnity Proof of Claim;

(c) may attempt to resolve and settle any issue arising in a D&O Indemnity Proof of Claim or in respect of a purported D&O Indemnity Claim;

(d) may accept (in whole or in part) the amount and/or Status of any D&O Indemnity Claim; and

(e) may by notice in writing revise or disallow (in whole or in part) the amount and/or Status of any purported D&O Indemnity Claim.

36. THIS COURT ORDERS that where a D&O Indemnity Claim has been accepted by the Monitor in accordance with this Order, such D&O Indemnity Claim shall constitute such Director or Officer's Proven Claim. The acceptance of any D&O Indemnity Claim or other determination of same in accordance with this Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person, save and except in the context of the CCAA Proceedings, and, for greater certainty, shall not constitute an admission of any fact, thing, liability, or quantum or Status of any claim by any Person as against any Subsidiary.

37. THIS COURT ORDERS that where a purported D&O Indemnity Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the Director or Officer a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

38. THIS COURT ORDERS that where a purported D&O Indemnity Claim has been revised or disallowed (in whole or in part, and whether as to amount and/or as to Status), the revised or

disallowed purported D&O Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 42 to 45 hereof or as otherwise ordered by the Court.

39. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order, in respect of any Claim, D&O Claim or D&O Indemnity Claim that exceeds $1 million, the Monitor and the Applicant shall not accept, admit, settle, resolve, value (for any purpose), revise or reject such Claim, D&O Claim or D&O Indemnity Claim ~~without the consent of the Ad Hoc Noteholders or~~ without Order of the Court.

DISPUTE NOTICE

40. THIS COURT ORDERS that a purported Claimant who intends to dispute a Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor as soon as reasonably possible but in any event such that such Dispute Notice shall be received by the Monitor on the day that is fourteen (14) days after such purported Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 50 of this Order. The filing of a Dispute Notice with the Monitor within the fourteen (14) day period specified in this paragraph shall constitute an application to have the amount or Status of such claim determined as set out in paragraphs 42 to 45 of this Order.

41. THIS COURT ORDERS that where a purported Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the time period provided therefor in this Order, the amount and Status of such purported Claimant's purported Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and Status, if any, shall constitute such purported Claimant's Proven Claim, and the balance of such purported Claimant's purported Claim, D&O Claim, or D&O Indemnity Claim, if any, shall be forever barred and extinguished.

RESOLUTION OF CLAIMS, D&O CLAIMS AND D&O INDEMNITY CLAIMS

42. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Monitor, in accordance with paragraph 31(c), shall attempt to resolve and settle the purported Claim or D&O Claim with the purported Claimant.

43. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a D&O Indemnity Claim to the Monitor, the Monitor, in accordance with paragraph 35(c), shall attempt to resolve and settle the purported D&O Indemnity Claim with the Director or Officer.

44. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor, the Applicant and the applicable Claimant, the Monitor shall seek direction from the Court, on the correct process for resolution of the dispute. Without limitation, the foregoing includes any dispute arising as to whether a Claim is or is not an "equity claim" as defined in the CCAA.

45. THIS COURT ORDERS that any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding.

NOTICE OF TRANSFEREES

46. THIS COURT ORDERS that neither the Monitor nor the Applicant shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor and the Applicant, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, D&O Claim or D&O Indemnity Claim. Any such transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim, and such Claim, D&O Claim or D&O Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

47. THIS COURT ORDERS that if the holder of a Claim, D&O Claim or D&O Indemnity Claim has transferred or assigned the whole of such Claim, D&O Claim or D&O Indemnity Claim to more than one Person or part of such Claim, D&O Claim or D&O Indemnity Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim, D&O

Claim or D&O Indemnity Claim and such Claim, D&O Claim or D&O Indemnity Claim shall continue to constitute and be dealt with as a single Claim, D&O Claim or D&O Indemnity Claim notwithstanding such transfer or assignment, and the Monitor and the Applicant shall in each such case not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to send notice to and to otherwise deal with such Claim, D&O Claim or D&O Indemnity Claim only as a whole and then only to and with the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim. Provided that a transfer or assignment of the Claim, D&O Claim or D&O Indemnity Claim has taken place in accordance with paragraph 46 of this Order and the Monitor has acknowledged in writing such transfer or assignment, the Person last holding such Claim, D&O Claim or D&O Indemnity Claim in whole as the Claimant in respect of such Claim, D&O Claim or D&O Indemnity Claim may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, D&O Claim or D&O Indemnity Claim, but only as a whole, shall be with a specified Person and, in such event, such Claimant, transferee or assignee of the Claim, D&O Claim or D&O Indemnity Claim shall be bound by any notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim by or with respect to such Person in accordance with this Order.

48. THIS COURT ORDERS that the transferee or assignee of any Claim, D&O Claim or D&O Indemnity Claim (i) shall take the Claim, D&O Claim or D&O Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, D&O Claim or D&O Indemnity Claim, and subject to the rights of the Applicant or Director or Officer against any such transferor or assignor, including any rights of set-off which the Applicant, Director or Officers had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, D&O Claim or D&O Indemnity Claim to reduce any amount owing by the transferee or assignee to the Applicant, Director or Officer, whether by way of set off, application, merger, consolidation or otherwise.

DIRECTIONS

49. THIS COURT ORDERS that the Monitor, the Applicant and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor and the Applicant may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, and any letters, notices or other documents to Claimants, purported Claimants, Directors or Officers, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Applicant or set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim. Any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 6:00 p.m. on a Business Day, on such Business Day, and if delivered after 6:00 p.m. or other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 50, Notices of Revision or Disallowance shall be sent only by (i) facsimile to a number that has been provided in writing by the purported Claimant, Director or Officer, or (ii) courier.

51. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, D&O Proofs of Claims, D&O Indemnity Proofs of Claim and Notices of Dispute) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery or electronic or digital transmission addressed to:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of a normal business hours, the next Business Day.

52. THIS COURT ORDERS that if during any period during which notices or other communications are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

53. THIS COURT ORDERS that in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amended claims procedure.

MISCELLANEOUS

54. THIS COURT ORDERS that notwithstanding any other provision of this Order, the solicitation of Proofs of Claim, D&O Proofs of Claim and D&O Indemnity Proofs of Claim and the filing by a Person of any Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim shall not, for that reason only, grant any Person any standing in the CCAA Proceedings or rights under the Plan.

55. THIS COURT ORDERS that the rights of the Ontario Plaintiffs and the Quebec Plaintiffs granted pursuant to paragraphs 27 and 28 of this Order are limited to filing a single Proof of

quantification, (47)

Claim and, if applicable, a single D&O Proof in respect of each of the National Class and the Quebec Class in these proceedings, and not for any other purpose. Without limiting the generality of the foregoing, the filing of any Proof of Claim or D&O Proof of Claim by the Ontario Plaintiffs or the Quebec Plaintiffs pursuant to this Order:

(a) is not an admission or recognition of their right to represent the Class for any other purpose, including with respect to settlement or voting in these proceedings, the Ontario Class Action or the Quebec Class Action; and

(b) is without prejudice to the right of the Ontario Plaintiffs and the Quebec Plaintiffs or their counsel to seek an order granting them rights of representation in these proceedings, the Ontario Class Action or the Quebec Class Action.

56. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, D&O Claims, D&O Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, D&O Claims, D&O Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan and the class or classes of creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further Order of the Court.

57. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other persons under any existing Director and Officers or other insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicant's insurance and any Director's and/or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors and/or Officers or other persons, whether such recourse or payment is sought directly by the Person asserting a Claim or a D&O Claim from the insurer or derivatively through the Director or Officer or Applicant; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law.

58. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Barbados, the British Virgin Islands, Cayman Islands, Hong Kong, the People's Republic of China or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

MAY 14 2012

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SCHEDULE "A"

NOTICE OF REVISION OR DISALLOWANCE

For Persons that have asserted Claims against Sino-Forest Corporation, D&O Claims against the Directors or Officers of Sino-Forest Corporation or D&O Indemnity Claims against Sino-Forest Corporation

Claim Reference Number: _____

TO: _____
(Name of purported claimant)

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court of Justice dated May 8, 2012 (the "Claims Procedure Order"). **All dollar values contained herein are in Canadian dollars unless otherwise noted.**

Pursuant to 31 of the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, D&O Claim or D&O Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		**Amount allowed by Monitor**
	(original currency amount)	**(in Canadian dollars)**	**(in Canadian dollars)**
A. Prefiling Claim	$	$	$
B. Restructuring Claim	$	$	$
C. Secured Claim	$	$	$
D. D&O Claim	$	$	$
E. D&O Indemnity Claim	$	$	$
F. Total Claim	$	$	$

Reasons for Revision or Disallowance:

_____

_____

_____

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is fourteen (14) days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 50 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day. The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED at Toronto, this day of , 2012.

FTI Consulting Canada Inc., solely in its capacity as Court-appointed Monitor of Sino-Forest Corporation and not in its personal or corporate capacity

Per: Greg Watson / Jodi Porepa

SCHEDULE "B"

DISPUTE NOTICE

With respect to Sino-Forest Corporation

Claim Reference Number: _____

1. **Particulars of Claimant:**

Full Legal Name of claimant (include trade name, if different):

_____

_____

(the "Claimant")

Full Mailing Address of the Claimant:

_____

_____

Other Contract Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

2. **Particulars of original Claimant from whom you acquired the Claim, D&O Claim or D&O Indemnity Claim:**

Have you acquired this purported Claim, D&O Claim or D&O Indemnity Claim by assignment?

Yes: ☐ No: ☐

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. **Dispute of Revision or Disallowance of Claim, D&O Claim or D&O Indemnity Claim, as the case may be:**

For the purposes of the Claims Procedure Order only (and without prejudice to the terms of any plan of arrangement or compromise), claims in a foreign currency will be converted to Canadian dollars at the exchange rates set out in the Claims Procedure Order.

The Claimant hereby disagrees with the value of its Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as follows:

	Amount allowed by Monitor: (Notice of Revision or Disallowance) (in Canadian dollars)	**Amount claimed by Claimant: (in Canadian Dollars)**
A. Prefiling Claim	$	$
B. Restructuring Claim	$	$
C. Secured Claim	$	$
D. D&O Claim	$	$
E. D&O Indemnity Claim	$	$
F. Total Claim	$	$

REASON(S) FOR THE DISPUTE:

_____

_____

_____

_____

SERVICE OF DISPUTE NOTICES

If you intend to dispute a Notice of Revision or Disallowance, you must, by no later than the date that is fourteen (14) days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 50 of the Claims Procedure Order), deliver to the Monitor this Dispute Notice by registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

DATED this _____ day of _____, 2012.

Name of Claimant: _____

_____
Witness

Per: _____
Name:
Title:
(please print)

SCHEDULE "C"

NOTICE TO CLAIMANTS
AGAINST SINO-FOREST CORPORATION
(hereinafter referred to as the "Applicant")

RE: NOTICE OF CLAIMS PROCEDURE FOR THE APPLICANT PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (the "CCAA")

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made on May 8, 2012 (the "Claims Procedure Order"). Pursuant to the Claims Procedure Order, Proof of Claim Document Packages will be sent to claimants by mail, on or before May 15, 2012, if those claimants are known to the Applicant. Claimants may also obtain the Claims Procedure Order and a Proof of Claim Document Package from the website of the Monitor at http://cfcanada.fticonsulting.com/sfc, or by contacting the Monitor by telephone (416-649-8094).

Proofs of Claim (including D&O Proofs of Claim) must be submitted to the Monitor for any claim against the Applicant, whether unliquidated, contingent or otherwise, or a claim against any current or former officer or director of the Applicant, in each case where the claim (i) arose prior to March 30, 2012, or (ii) arose on or after March 30, 2012 as a result of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation. Please consult the Proof of Claim Document Package for more details.

Completed Proofs of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern Time) on the applicable claims bar date, as set out in the Claims Procedure Order. It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the applicable claims bar date.

Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those claimants who do not need to file a Proof of Claim are individual noteholders in respect of Claims relating solely to the debt evidenced by their notes and persons whose Claims form the subject matter of the Ontario Class Action or the Quebec Class Action. Please consult the Claims Procedure Order for additional details.

CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED at Toronto this • day of •, 2012.

SCHEDULE "D"

PROOF OF CLAIM AGAINST SINO-FOREST CORPORATION

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant _____ Name of Contact _____

Address _____ Title _____

_____ Phone # _____

_____ Fax # _____

City _____ Prov / State ____ e-mail _____

Postal/Zip code _____

2. Assignee, if claim has been assigned

Full Legal Name of Assignee _____ Name of Contact _____

Address _____ Phone # _____

_____ Fax # _____

City _____ Prov / State ____ e-mail _____

Postal/Zip code _____

3a. Amount of Claim

The Applicant or Director or Officer was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Prefiling Claim	Restructuring Claim	Secured Claim
_____	_____	☐	☐	☐
_____	_____	☐	☐	☐
_____	_____	☐	☐	☐
_____	_____	☐	☐	☐
_____	_____	☐	☐	☐

3b. Claim against Subsidiaries

If you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, check the box below, list the Subsidiaries against whom you assert your claim, and provide particulars of your claim against such Subsidiaries.

☐ I/we have a claim against one or more Subsidiary

Name(s) of Subsidiaries	Currency	Original Currency Amount	Amount of Claim
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim.

5. Certification

I hereby certify that:

1. I am the Claimant, or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. Complete documentation in support of this claim is attached.

Name _____

Title _____

Dated at _____

Signature _____

this _____ day of _____ 2012

Witness _____

6. Filing of Claim

This Proof of Claim **must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012,** by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

An electronic version of this form is available at http://cfcanada.fticonsulting.com/sfc.

SCHEDULE "D-2"

PROOF OF CLAIM AGAINST DIRECTORS OR OFFICERS OF SINO-FOREST CORPORATION

This form is to be used only by Claimants asserting a claim against any director and/or officers of Sino-Forest Corporation, and NOT for claims against Sino-Forest Corporation itself. For claims against Sino-Forest Corporation, please use the form titled "Proof of Claim Against Sino-Forest Corporation", which is available on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

1. Original Claimant Identification (the "Claimant")

Legal Name of Claimant _____ Name of Contact _____

Address _____ Title _____

_____ _____ Phone # _____

_____ Fax # _____

City _____ Prov / State ____ e-mail _____

Postal/Zip code _____

2. Assignee, if D&O Claim has been assigned

Full Legal Name of Assignee _____ Name of Contact _____

Address _____ Phone # _____

_____ Fax # _____

City _____ Prov / State ____ e-mail _____

Postal/Zip code _____

3. Amount of D&O Claim

The Director or Officer was and still is indebted to the Claimant as follows:

☐ I/we have a claim against a Director(s) and/or Officer(s)

Name(s) of Director(s) and/or Officer(s)	Currency	Original Currency Amount	Amount of Claim

4. Documentation

Provide all particulars of the D&O Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the D&O Claim.

5. Certification

I hereby certify that:

1. I am the Claimant, or authorized representative of the Claimant.

2. I have knowledge of all the circumstances connected with this D&O Claim.
3. Complete documentation in support of this D&O Claim is attached.

Name _____

Title _____

Dated at _____

Signature _____

this _____ day of _____ 2012

Witness _____

6. Filing of D&O Claim

This Proof of Claim **must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012,** by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

An electronic version of this form is available at http://cfcanada.fticonsulting.com/sfc

SCHEDULE "E"

GUIDE TO COMPLETING THE PROOF OF CLAIM FOR CLAIMS AGAINST SINO-FOREST CORPORATION

This Guide has been prepared to assist Claimants in filling out the Proof of Claim with respect to Sino-Forest Corporation (the "Applicant"). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at http://cfcanada.fticonsulting.com/sfc or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on May 8, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

SECTION 1 - ORIGINAL CLAIMANT

4. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Applicant.

5. The Claimant shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.

6. The full legal name of the Claimant must be provided.

7. If the Claimant operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

8. If the Claim has been assigned or transferred to another party, Section 2 must also be completed.

9. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

10. Certain Claimants are exempted from the requirement to file a Proof of Claim. Among those claimants who do not need to file a Proof of Claim are individual noteholders in respect of Claims relating solely to the debt evidenced by their notes. Please consult the Claims Procedure Order for details with respect to these and other exemptions.

SECTION 2 - ASSIGNEE

11. If the Claimant has assigned or otherwise transferred its Claim, then Section 2 must be completed.

12. The full legal name of the Assignee must be provided.

13. If the Assignee operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

14. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3A - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR

15. Indicate the amount the Applicant was and still is indebted to the Claimant.

Currency, Original Currency Amount

16. The amount of the Claim must be provided in the currency in which it arose.

17. Indicate the appropriate currency in the Currency column.

18. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

19. Claims denominated in a currency other than Canadian dollars will be converted into Canadian dollars in accordance with the Claims Procedure Order.

Unsecured Prefiling Claim

20. Check this box ONLY if the Claim recorded on that line is an unsecured prefiling claim.

Restructuring Claim

21. Check this box ONLY if the amount of the Claim against the Applicant arose out of the restructuring, termination, repudiation or disclaimer of a lease, contract, or other agreement or obligation on or after March 30, 2012.

Secured Claim

Check this box ONLY if the Claim recorded on that line is a secured claim.

SECTION 3B - CLAIM AGAINST SUBSIDIARIES

22. Check this box ONLY if you have or intend to make a claim against one or more Subsidiaries which is based in whole or in part on facts, underlying transactions, causes of action or events relating to a claim made against the Applicant above, and list the Subsidiaries against whom you assert your claim.

SECTION 4 - DOCUMENTATION

23. Attach to the claim form all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or breach(es) giving rise to the Claim.

SECTION 5 - CERTIFICATION

24. The person signing the Proof of Claim should:

(a) be the Claimant, or authorized representative of the Claimant.

(b) have knowledge of all the circumstances connected with this Claim.

(c) have a witness to its certification.

25. By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Applicant.

SECTION 6 - FILING OF CLAIM

26. This Proof of Claim must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012. Proofs of Claim should be sent by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

Failure to file your Proof of Claim so that it is received by the Monitor by 5:00 p.m., on the applicable claims bar date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these proceedings.

SCHEDULE "E-2"

GUIDE TO COMPLETING THE PROOF OF CLAIM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF SINO-FOREST CORPORATION

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim against any Directors or Officers of Sino-Forest Corporation (the "Applicant"). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at http://cfcanada.fticonsulting.com/sfc or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim is to be used only by Claimants asserting a claim against a director and/or officer of Sino-Forest Corporation, and NOT for claims against Sino-Forest Corporation itself. For claims against Sino-Forest Corporation, please use the form titled "Proof of Claim Against Sino-Forest Corporation", which is available on the Monitor's website at http://cfcanada.fticonsulting.com/sfc.

Additional copies of the D&O Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on May 8, 2012 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

SECTION 1 - ORIGINAL CLAIMANT

27. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against any Directors or Officers of the Applicant.

28. The Claimant shall include any and all D&O Claims it asserts in a single D&O Proof of Claim.

29. The full legal name of the Claimant must be provided.

30. If the Claimant operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

31. If the D&O Claim has been assigned or transferred to another party, Section 2 must also be completed.

32. Unless the D&O Claim is assigned or transferred, all future correspondence, notices, etc. regarding the D&O Claim will be directed to the address and contact indicated in this section.

SECTION 2 - ASSIGNEE

33. If the Claimant has assigned or otherwise transferred its D&O Claim, then Section 2 must be completed.

34. The full legal name of the Assignee must be provided.

35. If the Assignee operates under a different name, or names, please indicate this in a separate schedule in the supporting documentation.

36. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the D&O Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DIRECTOR OR OFFICER

37. Indicate the amount the Director or Officer is claimed to be indebted to the Claimant and provide all other request details.

Currency, Original Currency Amount

38. The amount of the D&O Claim must be provided in the currency in which it arose.

39. Indicate the appropriate currency in the Currency column.

40. If the D&O Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

41. D&O Claims denominated in a currency other than Canadian dollars will be converted into Canadian dollars in accordance with the Claims Procedure Order.

SECTION 4 - DOCUMENTATION

42. Attach to the claim form all particulars of the D&O Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or breach(es) giving rise to the D&O Claim.

SECTION 5 - CERTIFICATION

43. The person signing the D&O Proof of Claim should:

(a) be the Claimant, or authorized representative of the Claimant.

(b) have knowledge of all the circumstances connected with this D&O Claim.

(c) have a witness to its certification.

44. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Directors and Officers identified therein.

SECTION 6 - FILING OF CLAIM

45. The D&O Proof of Claim must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern Time) on June 20, 2012. D&O Proofs of Claim should be sent by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8
Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

Failure to file your D&O Proof of Claim so that it is received by the Monitor by 5:00 p.m., on the applicable claims bar date will result in your claim being barred and you will be prevented from making or enforcing a D&O Claim against the any directors or officers of the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a D&O claimant in these proceedings.

SCHEDULE "F"

D&O INDEMNITY PROOF OF CLAIM
SINO-FOREST CORPORATION

1. Director and /or Officer Particulars (the "Indemnitee")

Legal Name of Indemnitee _____

Address _____ Phone # _____

_____ Fax # _____

_____

City _____ Prov / State ____ e-mail _____

Postal/Zip code _____

2. Indemnification Claim

Position(s) Held _____

Dates Position(s) Held: From _____ to _____

Reference Number of Proof of Claim with respect to which this D&O Indemnity Claim is made _____

Particulars of and basis for D&O Indemnity Claim _____

_____

_____

_____

(Provide all particulars of the D&O Indemnity Claim, including all supporting documentation)

3 Filing of Claim

This D&O Indemnity Proof of Claim and supporting documentation are to be returned to the Monitor within ten Business Days of the date of deemed receipt by the Director or Officer of the Proof of Claim by registered mail, courier, personal delivery or electronic or digital transmission at the following address:

FTI Consulting Canada Inc.
Court-appointed Monitor of Sino-Forest Corporation
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jodi Porepa
Telephone: (416) 649-8094
E-mail: sfc@fticonsulting.com

Failure to file your D&O Indemnity Proof of Claim in accordance with the Claims Procedure Order will result in your D&O Indemnity Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Indemnity Claim against the Applicant.

Dated at _____, this _____ day of _____, 2012.

Per: _____
Name

Signature: _____ (Former Director and/or Officer)

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 OR COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court File No. CV-12-9667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert W. Staley (LSUC #27115J)
Kevin Zych (LSUC #33129T)
Derek J. Bell (LSUC #43420J)
Jonathan Bell (LSUC #55457P)
Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant

TAB 6

Court File No. 08-CL-7841

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 10th DAY
	)	
JUSTICE MORAWETZ	)	OF FEBRUARY, 2009

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 INTERTAN CANADA LTD. AND TOURMALET CORPORATION

ORDER
(Pre-Filing Claims Process)

THIS MOTION made by InterTAN Canada Ltd. and Tourmalet Corporation ("the Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order approving a Claims Process with respect to claims against the Applicants that existed as at November 10, 2008, and which have not been cured during the filing period (the "Pre-Filing Claims Process") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Mark Wong sworn February 5, 2009 and the Exhibits thereto, the Fourth Report of Alvarez & Marsal Canada ULC in its capacity as Court-appointed monitor of the Applicants (the "Monitor") and on hearing the submissions of counsel for the Applicants, the Monitor, Bank of America N.A. (Canadian Branch) in its capacity as a lender and Canadian agent, and such other counsel as were present, no one else appearing although duly served as set out in the Affidavit of Gillian Scott dated February 6, 2009 .

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged and that the motion is properly returnable today and service on any interested party other than those parties served is hereby dispensed with.

CLAIMS PROCESS

Notice of Claims

2. THIS COURT ORDERS that the Applicants shall cause a Proof of Claim and Instruction Letter, substantially in the form attached hereto as Schedule "A", and a copy of this Order (the "Claims Package") to be sent to each known creditor who has a Pre-Filing Claim (as defined herein) at the last recorded address as set out in the books and records of the Applicants, by prepaid mail on or before February 13, 2009.

3. THIS COURT ORDERS that the Applicants shall cause a notice, substantially in the form attached hereto as Schedule "B" (the "Notice to Creditors"), to be placed in the Globe and Mail (National Edition) and La Presse (the French language translation thereof) prior to February 13, 2009.

4. THIS COURT ORDERS that the Monitor shall cause the Notice to Creditors and the Claims Package to be posted on the Monitor's Website from February 13, 2009 until the Claims Bar Date (as defined herein).

5. THIS COURT ORDERS that the Applicants or the Monitor shall send a copy of the Claims Package to any person requesting such material, as soon as practicable.

Proofs of Claim

6. THIS COURT ORDERS that any person and/or entity asserting a Pre-Filing Claim against one or both of the Applicants shall set out its aggregate Pre-Filing Claim in a Proof of Claim, substantially in the form attached as Schedule "A", and deliver the Proof of Claim to the Applicants at the address set forth in paragraph 13(a) hereof so that it is

received no later than 5:00 p.m. (Toronto time) on March 16, 2009 (the "Claims Bar Date"). A "Pre-Filing Claim" means any right of a person and/or entity against one or both of the Applicants, in connection with any indebtedness, liability or obligation of any kind whatsoever and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, by guarantee, surety, or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim made or asserted against any one or both of the Applicants through any affiliate, associate or related person as such terms are defined in the *Business Corporations Act*, R.S.O. 1990, c. B-16, as amended, or any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, together with any other claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, which, in each of the foregoing cases, shall have existed and arose as at November 10, 2008 and which have not been paid or settled after November 10, 2008. For greater certainty, the following parties shall not be required to file a Proof of Claim under this Pre-Filing Claims Process:

(a) The DIP Lenders (as defined in the Amended and Restated Initial Order);

(b) The Applicants' U.S. debtor affiliates;

(c) Customers with gift cards, store credits or with ongoing warranty programs;

(d) Employees who continued to be employed by the Applicants after November 10, 2008; and

(e) Joint Venture Managers in respect of deposits provided to InterTAN pursuant to joint venture agreements.

7. THIS COURT ORDERS that any person and/or entity who does not deliver a Proof of Claim in respect of a Pre-Filing Claim by the Claims Bar Date in accordance with paragraph 6 hereof, or such later date as the Applicants, the Monitor and such person and/or entity may agree, shall be forever barred from asserting such Pre-Filing Claim against either of the Applicants and the Pre-Filing Claim shall be forever extinguished.

Determination of Pre-Filing Claims

8. THIS COURT ORDERS that the Applicants and the Monitor may review each Proof of Claim received by the Claims Bar Date.

9. THIS COURT ORDERS that any further proceedings in respect to this Pre-Filing Claims Process shall be subject to further order of the Court, provided that the Applicants and the Monitor are hereby authorized to attempt to reconcile any discrepancies between Proofs of Claim filed and the books and records of the Applicants.

Notice of Transferees

10. THIS COURT ORDERS that if, after the earlier of: (a) the date of filing a Proof of Claim; and (b) March 16, 2009; the holder of a Pre-Filing Claim, or any subsequent holder of a Pre-Filing Claim who has been acknowledged by the Applicants in respect of such Pre-Filing Claim, transfers or assigns a Pre-Filing Claim to another person, neither the Applicants nor the Monitor shall be obligated to give notice to or to otherwise deal with the transferee or assignee of the Pre-Filing Claim as the creditor in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, have been delivered to the Applicants. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such Pre-Filing Claim, and shall be bound by notices given and steps taken in respect of such Pre-Filing Claim in accordance with the provisions of this Order.

11. THIS COURT ORDERS that if, after the earlier of: (a) the date of filing a Proof of Claim; and (b) March 16, 2009; the holder of a Pre-Filing Claim, or any subsequent holder of the whole of a Pre-Filing Claim who has been acknowledged by the Applicants in respect of such Pre-Filing Claim, transfers or assigns the whole of such Pre-Filing Claim to more than one Person or part of such Pre-Filing Claim to another Person or Persons, such transfer or assignment shall not create a separate Pre-Filing Claim and such Pre-Filing Claim shall continue to constitute and be dealt with as a single Pre-Filing

Claim notwithstanding such transfer or assignment. Neither the Applicants nor the Monitor shall, in each such case, be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Pre-Filing Claim only as a whole and then only to and with the person last holding such Pre-Filing Claim, provided such creditor may, by notice in writing delivered to the Applicants, direct that subsequent dealings in respect of such Pre-Filing Claim, but only as a whole, shall be with a specified person and in such event, such person shall be bound by any notices given or steps taken in respect of such Pre-Filing Claim with such person in accordance with the provision of this Order.

GENERAL PROVISIONS

12. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, the Amended and Restated Initial Order dated November 10, 2008 and the Sale Process Order dated December 5, 2008, shall assist the Applicants in connection with the administration of the Pre-Filing Claims Process provided for herein, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Order.

13. THIS COURT ORDERS that any notice or communication required to be delivered pursuant to the terms of this Pre-Filing Claims Process Order shall be in writing and may be delivered by facsimile transmission, personal delivery, courier or prepaid mail addressed to the respective parties as follows:

(a) If to one or both of the Applicants, to:
InterTAN Canada Ltd. and/or
Tourmalet Corporation
c/o Alvarez & Marsal Canada ULC
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2000
P.O. Box 22
Toronto, ON M5J 2J1

Attention: Mr. Stephen Moore
Telephone: 416-847-5167
Facsimile: 416-847-5201

(b) If to a creditor or a claimant, to the last recorded address appearing in the books of the Applicants, or in any Proof of Claim filed.

14. THIS COURT ORDERS that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the five (5) business day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (Toronto time) on a business day, when received, if received after 5:00 p.m. (Toronto time) on a business day or at any time on a non-business day, on the next following business day, and in the case of a notice mailed as aforesaid, on the fourth business day following the date on which such notice or other communication is mailed.

JUSTICE MORAWETZ

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 10 2009

PER / PAR:

SCHEDULE "A"

PROOF OF CLAIM OF INTERTAN CANADA LTD.
AND TOURMALET CORPORATION
(hereinafter referred to as the "Applicants")

Please read the enclosed Instruction Letter carefully prior to completing this Proof of Claim.

A. – Particulars of Claimant

1. Full Legal Name of Claimant _____ (the "Claimant").

(Full legal name should be the name of the original Claimant of the Applicants, regardless of whether an assignment of a Pre-Filing Claim, or a portion thereof, has occurred prior to or following November 10, 2008.)

2. Full Mailing Address of Claimant (the original Claimant, not the Assignee):

_____
_____
_____
_____

3. Telephone Number: _____

Facsimile Number:

_____

Attention (Contact Person):

_____

4. Has the Claim been sold or assigned by the Claimant to another party?

Yes: [ ]

No: [ ]

B. – Particulars of Assignee(s) (If any):

1. Full Legal Name of Assignee(s): _____

(If a portion of the Pre-Filing Claim has been assigned, insert full legal name of assignee(s) of Claim. If there is more than one assignee, please attach a separate sheet with the required information.)

2. Full Mailing Address of the Assignee(s):

_____

_____

_____

3. Telephone Number of Assignee(s): _____

Facsimile Number of Assignee(s): _____

Attention (Contact Person):

_____

C. – Proof of Claim:

I, _____ [name of Claimant or Representative of Claimant], of _____ (City, Province) do hereby certify:

(a) that I *[tick one]*

[__] am the Claimant of one or both of the Applicants; OR

[__] am _____ *(state position or title)* of _____ *(name of Claimant)*

(b) that I have knowledge of all of the circumstances connected with the Claim referred to below;

(c) the Claimant asserts its claim against:

InterTAN Canada Ltd. [_]

Tourmalet Corporation [_]

(d) The Applicant(s) was/were and still is/are indebted to the Claimant as follows:

(i) PRE-FILING CLAIM EXISTING AND ARISING ON OR BEFORE NOVEMBER 10, 2008

$_____ [insert $ value of Claim] CAD

(Note: Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as of November 10, 2008. Exchange rate conversions on such date were US $1 = CDN $1.1942).

D. – Nature of Pre-Filing Claim:

[_] A. UNSECURED CLAIM of $_____. That in respect of this debt, I do not hold any assets of the debtor as security and *(Check appropriate description)*

[_] Regarding the amount of $_____, I do not claim a right to priority.

[_] Regarding the amount of $_____, I claim a right to priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or would claim such a priority if this Proof of Claim was being filed in accordance with that Act.

(Set out on an attached sheet details to support priority claim.)

[_] B. SECURED CLAIM OF $_____. That in respect of this debt, I hold assets of the debtor valued at $ _____ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

E. – Particulars of Pre-Filing Claim:

Other than as already set out herein, the Particulars of the undersigned's total Pre-Filing Claim are attached.

(Provide all particulars of the Pre-Filing Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Pre-Filing Claim, name of any guarantor which has guaranteed the Pre-Filing Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Applicant to the Claimant and estimated value of such security).

F. – Filing of Claim:

This Proof of Claim must be received by the Monitor no later than 5:00 p.m. (Toronto time) on Monday March 16, 2009, by facsimile transmission, personal delivery, courier or prepaid mail at the following address:

InterTAN Canada Ltd. and/or
Tourmalet Corporation
c/o Alvarez & Marsal Canada ULC, Court-Appointed Monitor
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2000
P.O. Box 22
Toronto, ON M5J 2J1

Attention: Mr. Stephen Moore
Telephone: 416-847-5167
Facsimile: 416-847-5201

Failure to file your Proof of Claim as directed by 5:00 p.m. (Toronto time) on Monday March 16, 2009 will result in your Claim being barred and you will be prohibited from making or enforcing a Claim against the Applicants.

Dated at _____ this _____ day of _____, 2009.

Per: _____ *[Name of Claimant]*

INSTRUCTION LETTER
INTERTAN CANADA LTD. AND TOURMALET CORPORATION
(hereinafter referred to as the "Applicants")

PRE-FILING CLAIMS PROCESS

By order (the "Pre-Filing Claims Process Order") of the Honourable Mr. Justice Morawetz dated February 10, 2009 under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), the Applicants have been authorized to conduct a pre-filing claims process (the "Pre-Filing Claims Process").

This letter provides general instructions for responding to or completing the Proof of Claim. For your information, there is currently no proposed plan under the CCAA. Defined terms, which are not defined herein, shall have the meaning ascribed thereto in the Pre-Filing Claims Process Order.

The Pre-Filing Claim Process is intended for any Person with any claims of any kind or nature whatsoever, against any or all of the Applicants existing and arising as at November 10, 2008. Please review the Pre-Filing Claims Process Order for the complete definition of a Pre-Filing Claim.

If you have any questions regarding the Pre-Filing Claims Process, please contact the Court-appointed Monitor at the address provided below.

All notices and enquiries with respect to the Pre-Filing Claims Process should be addressed to:

InterTAN Canada Ltd. and/or
Tourmalet Corporation
c/o Alvarez & Marsal Canada, ULC, Court-Appointed Monitor
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2000
P.O. Box 22
Toronto, ON M5J 2J1

Attention: Mr. Stephen Moore
Telephone: 416-847-5167
Facsimile: 416-847-5201

FOR CREDITORS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Pre-Filing Claim against any or all of the Applicants you must file a Proof of Claim form with the Monitor. Pre-Filing Claims relating to amounts owing to the Applicants as of November 10, 2008 and which have not been cured during the filing period, must be received by 5:00 p.m. (Toronto time) on Monday March 16, 2009 unless the Monitor and the Applicants agree in writing or the Court orders that the Proof of Claim be accepted after that date.

Additional Proof of Claim forms can be obtained by contacting the Monitor at the telephone and fax numbers indicated above and providing the particulars as to your name, address, facsimile number, email address and contact person. Once the Monitor has this information, you will receive, as soon as practicable, additional proof of claim forms.

SCHEDULE "B"

NOTICE TO CREDITORS OF
INTERTAN CANADA LTD. AND TOURMALET CORPORATION
(hereinafter referred to as the "Applicants")

RE: NOTICE OF PRE-FILING CLAIMS PROCESS FOR THE APPLICANTS PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (THE "CCAA")

PLEASE TAKE NOTICE that this notice is being published pursuant to an order of the Honourable Mr. Justice Morawetz of the Superior Court of Justice of Ontario dated February 10, 2009 (the "Order"). Any person who believes that it has a claim against one or both of the Applicants which existed and arose as at November 10, 2008 should send a Proof of Claim to the Applicants c/o Alvarez & Marsal Canada ULC, in its capacity as the Court-appointed Monitor of the Applicants, to be received by **5:00 p.m.** ***(Toronto Time)*** **on Monday March 16, 2009** ***(the "Claims Bar Date").***

PRE-FILING CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

Claimants who require a Proof of Claim form should contact the Applicants, c/o Alvarez & Marsal Canada ULC, in its capacity as the Court-appointed Monitor of the Applicants **(Telephone: 416-847-5167 and Fax: 416-847-5201)**, to obtain a Claims Package.

Dated at _____ this ____ day of _____, 2009.

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 INTERTAN CANADA LTD. AND TOURMALET CORPORATION

Court File No: 08-CL-7841

APPLICANTS

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

(Pre-Filing Claims Process)

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Edward Sellers (LSUC #30110F)
Tel: (416) 862-5959

Jeremy Dacks (LSUC #41851R)
Tel: (416) 862-4923

Marc Wasserman (LSUC #44066M)
Tel: (416) 862-4908

Lawyers for the Applicants

F# 1113457

TAB 7

Case Name:

Worldspan Marine Inc. (Re)

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF the Canada Business Corporations Act, R.S.C. 1985, c. C-44, and the Business Corporations Act, S.B.C. 2002, c. 57
AND IN THE MATTER OF Worldspan Marine Inc., Crescent Custom Yachts Inc., Queenship Marine Industries Ltd., 27222 Developments Ltd., and Composite FRP Products Ltd., Petitioners

[2011] B.C.J. No. 2467

2011 BCSC 1758

86 C.B.R. (5th) 119

211 A.C.W.S. (3d) 557

2011 CarswellBC 3667

Docket: S113550

Registry: Vancouver

British Columbia Supreme Court
Vancouver, British Columbia

P.J. Pearlman J.

Heard: December 16, 2011.
Judgment: December 21, 2011.

(54 paras.)

Bankruptcy and insolvency law -- Companies' Creditors Arrangement Act (CCAA) matters -- Compromises and arrangements -- Application by petitioner, Worldspan, for an extension of time to work toward plan of arrangement, allowed -- Worldspan had contracted with Sargeant to construct

a 144-foot custom motor yacht -- Sargeant stopped making payments after dispute arose between parties -- Worldspan alleged Sargeant's failure to pay resulted in its insolvency -- Worldspan needed additional time to market yacht to find another buyer, to explore debtor-in-possession financing to complete construction of yacht, and to resolve priorities among in rem claims against yacht -- Court satisfied Worldspan had acted in good faith and with due diligence -- Restructuring still best option.

Bankruptcy and insolvency law -- Proceedings -- Practice and procedure -- Application by petitioner, Worldspan, for an extension of time to work toward plan of arrangement, allowed -- Worldspan had contracted with Sargeant to construct a 144-foot custom motor yacht -- Sargeant stopped making payments after dispute arose between parties -- Worldspan alleged Sargeant's failure to pay resulted in its insolvency -- Worldspan needed additional time to market yacht to find another buyer, to explore debtor-in-possession financing to complete construction of yacht, and to resolve priorities among in rem claims against yacht -- Court satisfied Worldspan had acted in good faith and with due diligence -- Restructuring still best option.

Application by the petitioner, Worldspan Marine Inc., for an extension of the initial order permitting them additional time to work toward a plan of arrangement. The proceedings had their genesis in a dispute between the Worldspan and one of its creditors, Sargeant. Sargeant had contracted with Worldspan to construct a 144-foot custom motor yacht. Construction on the yacht stopped after a dispute arose as to the cost of the vessel. Sargeant alleged he was being overcharged to offset funds that were being stolen from the company, and stopped making payments on the yacht. Sargeant claimed against Worldspan for the full amount he paid towards the yacht's construction, which amounted to almost $21 million. Worldspan maintained that Sargeant's failure to pay monies due to them resulted in their insolvency and led to its application under the Companies' Creditors Arrangement Act (CCAA). Worldspan argued it needed additional time to work toward a plan of arrangement by continuing the marketing of the yacht for the purpose of finding another buyer, to explore potential debtor-in-possession (DIP) financing to complete construction of the yacht pending a sale, and to resolve priorities among in rem claims against the yacht. Parallel proceedings had been commenced in the Federal Court with respect to the in rem claims against the yacht. The application was supported by the monitor as the best option available to all the creditors and stakeholders, and was either supported or not opposed by all of the creditors besides Sargeant.

HELD: Application allowed. The Court found that an extension of the stay would not materially prejudice any of the creditors or other stakeholders. The petitioners were simultaneously pursuing both the marketing of the yacht and efforts to obtain DIP financing that, if successful, would have enabled them to complete the construction of the yacht. Worldscan could not have finalized a restructuring plan until the yacht was sold and terms were negotiating for completing the yacht. All its creditors, other than Sargeant, shared the view that the best course of action was to have the yacht marketed and sold through an orderly process supervised by the courts. While the CCAA proceedings could not be extended indefinitely, at this stage restructuring was still the best option. The Court was satisfied that Worldspan had acted in good faith and with due diligence in the proceedings.

Statutes, Regulations and Rules Cited:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 11.02(2), s. 11.02(3)(a), s. 11.02(3)(b), s. 36

Counsel:

Counsel for the Petitioners Worldspan Marine Inc., Crescent Custom Yachts Inc., Queenship Marine Industries Ltd., 27222 Developments Ltd. and Composite FRP Products: J.R. Sandrelli and J.D. Schultz.

Counsel for Wolrige Mahon (the "VCO"): K. Jackson and V. Tickle.

Counsel for the Respondent, Harry Sargeant III: K.E. Siddall.

Counsel for Ontrack Systems Ltd.: J. Leathley, Q.C.

Counsel for Mohammed Al-Saleh: D. Rossi.

Counsel for Offshore Interiors Inc., Paynes Marine Group, Restaurant Design and Sales LLC, Arrow Transportation Systems and CCY Holdings Inc.: G. Wharton and P. Mooney.

Counsel for Canada Revenue Agency: N. Beckie.

Counsel for Comerica Bank: J. McLean, Q.C.

Counsel for The Monitor: G. Dabbs.

Reasons for Judgment

P.J. PEARLMAN J.:--

INTRODUCTION

1 On December 16, 2011, on the application of the petitioners, I granted an order confirming and extending the Initial Order and stay pronounced June 6, 2011, and subsequently confirmed and extended to December 16, 2011, by a further 119 days to April 13, 2012. When I made the order, I informed counsel that I would provide written Reasons for Judgment. These are my Reasons.

POSITIONS OF THE PARTIES

2 The petitioners apply for the extension of the Initial Order to April 13, 2012 in order to permit them additional time to work toward a plan of arrangement by continuing the marketing of the Vessel "QE014226C010" (the "Vessel") with Fraser Yachts, to explore potential Debtor In Possession ("DIP") financing to complete construction of the Vessel pending a sale, and to resolve priorities among *in rem* claims against the Vessel.

3 The application of the petitioners for an extension of the Initial Order and stay was either supported, or not opposed, by all of the creditors who have participated in these proceedings, other than the respondent, Harry Sargeant III.

4 The Monitor supports the extension as the best option available to all of the creditors and stakeholders at this time.

5 These proceedings had their genesis in a dispute between the petitioner Worldspan Marine Inc. and Mr. Sargeant. On February 29, 2008, Worldspan entered into a Vessel Construction Agreement with Mr. Sargeant for the construction of the Vessel, a 144-foot custom motor yacht. A dispute arose between Worldspan and Mr. Sargeant concerning the cost of construction. In January 2010 Mr. Sargeant ceased making payments to Worldspan under the Vessel Construction Agreement.

6 The petitioners continued construction until April 2010, by which time the total arrears invoiced to Mr. Sargeant totalled approximately $4.9 million. In April or May 2010, the petitioners ceased construction of the Vessel and the petitioner Queenship laid off 97 employees who were then working on the Vessel. The petitioners maintain that Mr. Sargeant's failure to pay monies due to them under the Vessel Construction Agreement resulted in their insolvency, and led to their application for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ("*CCAA*") in these proceedings.

7 Mr. Sargeant contends that the petitioners overcharged him. He claims against the petitioners, and against the as yet unfinished Vessel for the full amount he paid toward its construction, which totals $20,945,924.05.

8 Mr. Sargeant submits that the petitioners are unable to establish that circumstances exist that make an order extending the Initial Order appropriate, or that they have acted and continue to act in good faith and with due diligence. He says that the petitioners have no prospect of presenting a viable plan of arrangement to their creditors. Mr. Sargeant also contends that the petitioners have shown a lack of good faith by failing to disclose to the Court that the two principals of Worldspan, Mr. Blane, and Mr. Barnett are engaged in a dispute in the United States District Court for the Southern District of Florida where Mr. Barnett is suing Mr. Blane for fraud, breach of fiduciary duty and conversion respecting monies invested in Worldspan.

9 Mr. Sargeant drew the Court's attention to Exhibit 22 to the complaint filed in the United States District Court by Mr. Barnett, which is a demand letter dated June 29, 2011 from Mr. Barnett's Florida counsel to Mr. Blane stating:

> Your fraudulent actions not only caused monetary damage to Mr. Barnett, but also caused tremendous damage to WorldSpan. More specifically, your taking Mr. Barnett's money for your own use deprived the company of much needed capital. Your harm to WorldSpan is further demonstrated by your conspiracy with the former CEO of WorldSpan, Lee Taubeneck, to overcharge a customer in order to offset the funds you were stealing from Mr. Barnett that should have gone to the company. Your deplorable actions directly caused the demise of what could have been a successful and innovative new company" (underlining added)

10 Mr. Sargeant says, and I accept, that he is the customer referred to in the demand letter. He submits that the allegations contained in the complaint and demand letter lend credence to his claim that Worldspan breached the Vessel Construction Agreement by engaging in dishonest business practices, and over-billed him. Further, Mr. Sargeant says that the petitioner's failure to disclose this dispute between the principals of Worldspan, in addition to demonstrating a lack of good faith, reveals an internal division that diminishes the prospects of Worldspan continuing in business.

11 As yet, there has been no judicial determination of the allegations made by Mr. Barnett in his complaint against Mr. Blane.

DISCUSSION AND ANALYSIS

12 On an application for an extension of a stay pursuant to s. 11.02(2) of the *CCAA*, the petitioners must establish that they have met the test set out in s. 11.02(3):

> (a) whether circumstances exist that make the order appropriate; and
> (b) whether the applicant has acted, and is acting, in good faith and with due diligence.

13 In considering whether "circumstances exist that make the order appropriate", the court must be satisfied that an extension of the Initial Order and stay will further the purposes of the *CCAA*.

14 In *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379 at para. 70, Deschamps J., for the Court, stated:

> ... Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

15 A frequently cited statement of the purpose of the *CCAA* is found in *Chef Ready Foods Ltd. v. Hongkong Bank of Canada* (1990), 51 B.C.L.R. (2d) 84, [1990] B.C.J. No. 2384 at p. 3 where the Court of Appeal held:

> The purpose of the C.C.A.A. is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business. It is available to any company incorporated in Canada with assets or business activities in Canada that is not a bank, a railway company, a telegraph company, an insurance company, a trust company, or a loan company. When a company has recourse to the C.C.A.A. the court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure. Obviously time is critical. Equally obviously, if the attempt at compromise or arrangement is to have any prospect of success there must be a means of holding the creditors at bay, hence the powers vested in the court under s. 11.

16 In *Pacific National Lease Holding Corp. (Re)*, [1992] B.C.J. No. 3070 (S.C.) Brenner J. (as he then was) summarized the applicable principles at para. 26:

(1) The purpose of the C.C.A.A. is to allow an insolvent company a reasonable period of time to reorganize its affairs and prepare and file a plan for its continued operation subject to the requisite approval of the creditors and the Court.
(2) The C.C.A.A. is intended to serve not only the company's creditors but also a broad constituency which includes the shareholders and the employees.
(3) During the stay period the Act is intended to prevent manoeuvres for positioning amongst the creditors of the company.
(4) The function of the Court during the stay period is to play a supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure.
(5) The status quo does not mean preservation of the relative pre-debt status of each creditor. Since the companies under C.C.A.A. orders continue to operate and having regard to the broad constituency of interests the Act is intended to serve, preservation of the status quo is not intended to create a rigid freeze of relative pre-stay positions.
(6) The Court has a broad discretion to apply these principles to the facts of a particular case.

17 In *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327, the Court of Appeal set aside the extension of a stay granted to the debtor property development company. There, the Court held that the *CCAA* was not intended to accommodate a non-consensual stay of creditors' rights while a debtor company attempted to carry out a restructuring plan that did not involve an arrangement or compromise on which the creditors could vote. At para. 26, Tysoe J.A., for the Court said this:

> In my opinion, the ability of the court to grant or continue a stay under s. 11 is not a free standing remedy that the court may grant whenever an insolvent company wishes to undertake a "restructuring", a term with a broad meaning including such things as refinancings, capital injections and asset sales and other downsizing. Rather, s. 11 is ancillary to the fundamental purpose of the *CCAA*, and a stay of proceedings freezing the rights of creditors should only be granted in furtherance of the *CCAA*'s fundamental purpose.

18 At para. 32, Tysoe J.A. queried whether the court should grant a stay under the *CCAA* to permit a sale, winding up or liquidation without requiring the matter to be voted upon by the creditors if the plan or arrangement intended to be made by the debtor company simply proposed that the net proceeds from the sale, winding up or liquidation be distributed to its creditors.

19 In *Cliffs Over Maple Bay Investments Ltd.* at para. 38, the court held:

> ... What the Debtor Company was endeavouring to accomplish in this case was to freeze the rights of all of its creditors while it undertook its restructuring plan without giving the creditors an opportunity to vote on the plan. The *CCAA* was not intended, in my view, to accommodate a non-consensual stay of creditors' rights while a debtor company attempts to carry out a restructuring plan that does not involve an arrangement or compromise upon which the creditors may vote.

20 As counsel for the petitioners submitted, *Cliffs Over Maple Bay Investments Ltd.* was decided before the current s. 36 of the *CCAA* came into force. That section permits the court to authorize the sale of a debtor's assets outside the ordinary course of business without a vote by the creditors.

21 Nonetheless, *Cliffs Over Maple Bay Investments Ltd.* is authority for the proposition that a stay, or an extension of a stay should only be granted in furtherance of the *CCAA*'s fundamental purpose of facilitating a plan of arrangement between the debtor companies and their creditors.

22 Other factors to be considered on an application for an extension of a stay include the debtor's progress during the previous stay period toward a restructuring; whether creditors will be prejudiced if the court grants the extension; and the comparative prejudice to the debtor, creditors and other stakeholders in not granting the extension: *Federal Gypsum Co. (Re)*, 2007 NSSC 347, 40 C.B.R. (5th) 80 at paras. 24-29.

23 The good faith requirement includes observance of reasonable commercial standards of fair dealings in the *CCAA* proceedings , the absence of intent to defraud, and a duty of honesty to the court and to the stakeholders directly affected by the *CCAA* process: *Re San Francisco Gifts Ltd.*, 2005 ABQB 91 at paras. 14-17.

Whether circumstances exist that make an extension appropriate

24 The petitioners seek the extension to April 13, 2012 in order to allow a reasonable period of time to continue their efforts to restructure and to develop a plan of arrangement.

25 There are particular circumstances which have protracted these proceedings. Those circumstances include the following:

(a) Initially, Mr. Sargeant expressed an interest in funding the completion of the Vessel as a Crescent brand yacht at Worldspan shipyards. On July 22, 2011, on the application of Mr. Sargeant, the Court appointed an independent Vessel Construction Officer to prepare an analysis of the cost of completing the Vessel to Mr. Sargeant's specifications. The Vessel Construction Officer delivered his completion cost analysis on October 31, 2011.

(b) The Vessel was arrested in proceedings in the Federal Court of Canada brought by Offshore Interiors Inc., a creditor and a maritime lien claimant. As a result, The Federal Court, while recognizing the jurisdiction of this Court in the *CCAA* proceedings, has exercised its jurisdiction over the vessel. There are proceedings underway in the Federal Court for the determination of *in rem* claims against the Vessel. Because this Court has jurisdiction in the CCAA proceedings, and the Federal Court exercises its maritime law jurisdiction over the Vessel, there have been applications in both Courts with respect to the marketing of the Vessel.

(c) The Vessel, which is the principal asset of the petitioner Worldspan, is a partially completed custom built super yacht for which there is a limited market.

26 All of these factors have extended the time reasonably required for the petitioners to proceed with their restructuring, and to prepare a plan of arrangement.

27 On September 19, 2011, when this court confirmed and extended the Initial Order to December 16, 2011, it also authorized the petitioners to commence marketing the Vessel unless Mr. Sargeant paid $4 million into his solicitor's trust account on or before September 29, 2011.

28 Mr. Sargeant failed to pay the $4 million into trust with his solicitors, and subsequently made known his intention not to fund the completion of the Vessel by the petitioners.

29 On October 7, 2011, the Federal Court also made an order authorizing the petitioners to market the Vessel and to retain a leading international yacht broker, Fraser Yachts, to market the Vessel for an initial term of six months, expiring on April 7, 2012. Fraser Yachts has listed the Vessel for sale at $18.9 million, and is endeavouring to find a buyer. Although its efforts have attracted little interest to date, Fraser Yachts have expressed confidence that they will be able to find a buyer for the Vessel during the prime yacht buying season, which runs from February through July. Fraser Yachts and the Monitor have advised that process may take up to 9 months.

30 On November 10, 2011, this Court, on the application of the petitioners, made an order authorizing and approving the sale of their shipyard located at 27222 Lougheed Highway, with a leaseback of sufficient space to enable the petitioners to complete the construction of the Vessel, should they find a buyer who wishes to have the Vessel completed as a Crescent yacht at its current location. The sale and leaseback of the shipyard has now completed.

31 Both this Court and the Federal Court have made orders regarding the filing of claims by creditors against the petitioners and the filing of *in rem* claims in the Federal Court against the Vessel.

32 The determination of the *in rem* claims against the Vessel is proceeding in the Federal Court.

33 After dismissing the *in rem* claims of various creditors, the Federal Court has determined that the creditors having *in rem* claims against the Vessel are:

Sargeant	$20,945.924.05
Capri Insurance Services	$45,573.63
Cascade Raider	$64,460.02
Arrow Transportation and CCY	$50,000.00

Offshore Interiors Inc.	$659,011.85
Continental Hardwood Co.	$15,614.99
Paynes Marine Group	$35,833.17
Restaurant Design and Sales LLC	$254,383.28

34 The petitioner, Worldspan's, *in rem* claim in the amount of $6,643,082.59 was dismissed by the Federal Court and is currently subject to an appeal to be heard January 9, 2012.

35 In addition, Comerica Bank has asserted an *in rem* claim against the Vessel for $9,429,913.86, representing the amount it advanced toward the construction of the Vessel. Mr. Mohammed Al-Saleh, a judgment creditor of certain companies controlled by Mr. Sargeant has also asserted an *in rem* claim against the Vessel in the amount of $28,800,000.

36 The Federal Court will determine the validity of the outstanding *in rem* claims, and the priorities amongst the *in rem* claims against the Vessel.

37 The petitioners, in addition to seeking a buyer for the Vessel through Fraser Yachts are also currently in discussions with potential DIP lenders for a DIP facility for approximately $10 million that would be used to complete construction of the Vessel in the shipyard they now lease. Fraser Yachts has estimated that the value of the Vessel, if completed as a Crescent brand yacht at the petitioners' facility would be $28.5 million. If the petitioners are able to negotiate a DIP facility, resumption of construction of the Vessel would likely assist their marketing efforts, would permit the petitioners to resume operations, to generate cash flow and to re-hire workers. However, the petitioners anticipate that at least 90 days will be required to obtain a DIP facility, to review the cost of completing the Vessel, to assemble workers and trades, and to bring an application for DIP financing in both this Court and the Federal Court.

38 An extension of the stay will not materially prejudice any of the creditors or other stakeholders. This case is distinguishable from *Cliffs Over Maple Bay Investments Ltd.*, where the debtor was using the *CCAA* proceedings to freeze creditors' rights in order to prevent them from realizing against the property. Here, the petitioners are simultaneously pursuing both the marketing of the Vessel and efforts to obtain DIP financing that, if successful, would enable them to complete the construction of the Vessel at their rented facility. While they do so, a court supervised process for the sale of the Vessel is underway.

39 Mr. Sargeant also relies on *Encore Developments Ltd. (Re)*, 2009 BCSC 13, in support of his submission that the Court should refuse to extend the stay. There, two secure creditors applied

successfully to set aside an Initial Order and stay granted *ex parte* to the debtor real estate development company. The debtor had obtained the Initial Order on the basis that it had sufficient equity in its real estate projects to fund the completion of the remaining projects. In reality, the debtor company had no equity in the projects, and at the time of the application the debtor company had no active business that required the protection of a *CCAA* stay. Here, when the petitioners applied for and obtained the Initial Order, they continued to employ a skeleton workforce at their facility. Their principal asset, aside from the shipyard, was the partially constructed Vessel. All parties recognized that the *CCAA* proceedings afforded an opportunity for the completion of the Vessel as a custom Crescent brand yacht, which represented the best way of maximizing the return on the Vessel. On the hearing of this application, all of the creditors, other than Mr. Sargeant share the view that the Vessel should be marketed and sold through and orderly process supervised by this Court and the Federal Court.

40 I share the view of the Monitor that in the particular circumstances of this case the petitioners cannot finalize a restructuring plan until the Vessel is sold and terms are negotiated for completing the Vessel either at Worldspan's rented facility, or elsewhere. In addition, before the creditors will be in a position to vote on a plan, the amounts and priorities of the creditors' claims, including the *in rem* claims against the Vessel, will need to be determined. The process for determining the *in rem* claims and their priorities is currently underway in the Federal Court.

41 The Monitor has recommended the Court grant the extension sought by the petitioners. The Monitor has raised one concern, which relates to the petitioners' current inability to fund ongoing operating costs, insurance, and professional fees incurred in the continuation of the *CCAA* proceedings. At this stage, the landlord has deferred rent for the shipyard for six months until May 2012. At present, the petitioners are not conducting any operations which generate cash flow. Since the last come back hearing in September, the petitioners were able to negotiate an arrangement whereby Mr. Sargeant paid for insurance coverage on the Vessel. It remains to be seen whether Mr. Sargeant, Comerica Bank, or some other party will pay the insurance for the Vessel which comes up for renewal in January, 2012.

42 Since the sale of the shipyard lands and premises, the petitioners have no assets other than the Vessel capable of protecting an Administration Charge. The Monitor has suggested that the petitioners apply to the Federal Court for an Administration Charge against the Vessel. Whether the petitioners do so is of course a matter for them to determine.

43 The petitioners will need to make arrangements for the continuing payment of their legal fees and the Monitor's fees and disbursements.

44 The *CCAA* proceedings cannot be extended indefinitely. However, at this stage, a *CCAA* restructuring still offers the best option for all of the stakeholders. Mr. Sargeant wants the stay lifted so that he may apply for the appointment of Receiver and exercise his remedies against the Vessel. Any application by Mr. Sargeant for the appointment of a Receiver would be resisted by the other creditors who want the Vessel to continue to be marketed under the Court supervised process now underway.

45 There is still the prospect that through the *CCAA* process the Vessel may be completed by the petitioners either as a result of their finding a buyer who wishes to have the Vessel completed at its present location, or by negotiating DIP financing that enables them to resume construction of the

Vessel. Both the marine surveyor engaged by Comerica Bank and Fraser Yachts have opined that finishing construction of the Vessel elsewhere would likely significantly reduce its value.

46 I am satisfied that there is a reasonable possibility that the petitioners, working with Fraser Yachts, will be able to find a purchaser for the Vessel before April 13, 2012, or that alternatively they will be able to negotiate DIP financing and then proceed with construction. I find there remains a reasonable prospect that the petitioners will be able to present a plan of arrangement to their creditors. I am satisfied that it is their intention to do so. Accordingly, I find that circumstances do exist at this time that make the extension order appropriate.

Good faith and due diligence

47 Since the last extension order granted on September 19, 2011, the petitioners have acted diligently by completing the sale of the shipyard and thereby reducing their overheads; by proceeding with the marketing of the Vessel pursuant to orders of this Court and the Federal Court; and by embarking upon negotiations for possible DIP financing, all in furtherance of their restructuring.

48 Notwithstanding the dispute between Mr. Barnett and Mr. Blane, which resulted in the commencement of litigation in the State of Florida at or about the same time this Court made its Initial Order in the *CCAA* proceedings, the petitioners have been able to take significant steps in the restructuring process, including the sale of the shipyard and leaseback of a portion of that facility, and the applications in both this Court and the Federal Court for orders for the marketing of the Vessel. The dispute between Mr. Barnett and his former partner, Mr. Blane has not prevented the petitioners from acting diligently in these proceedings. Nor am I persuaded on the evidence adduced on this application that dispute would preclude the petitioners from carrying on their business of designing and constructing custom yachts, in the event of a successful restructuring.

49 While the allegations of misconduct, fraud and misappropriation of funds made by Mr. Barnett against Mr. Blane are serious, at this stage they are no more than allegations. They have not yet been adjudicated. The allegations, which are as yet unproven, do not involve dishonesty, bad faith, of fraud by the debtor companies in their dealings with stakeholders in the course of the *CCAA* process.

50 In my view, the failure of the petitioners to disclose the dispute between Mr. Barnett and Mr. Blane does not constitute bad faith in the *CCAA* proceedings or warrant the exercise of the Court's discretion against an extension of the stay.

51 This case is distinguishable from *Re San Francisco Gifts Ltd.*, where the debtor company had pleaded guilty to 9 counts of copyright infringement, and had received a large fine for doing so.

52 In *Re San Francisco Gifts Ltd.*, at paras 30 to 32, the Alberta Court of Queen's Bench acknowledged that a debtor company's business practices may be so offensive as to warrant refusal of a stay extension on public policy grounds. However, the court declined to do so where the debtor company was acting in good faith and with due diligence in working toward presenting a plan of arrangement to its creditors.

53 The good faith requirement of s. 11.02(3) is concerned primarily with good faith by the debtor in the *CCAA* proceedings. I am satisfied that the petitioners have acted in good faith and with due diligence in these proceedings.

Conclusion

54 The petitioners have met the onus of establishing that circumstances exist that make the extension order appropriate and that they have acted and are acting in good faith and with due diligence. Accordingly, the extension of the Initial Order and stay to April 13, 2012 is granted on the terms pronounced on December 16, 2011.

P.J. PEARLMAN J.

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