

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF INTERTAN CANADA LTD. AND  
TOURMALET CORPORATION

APPLICANTS

**SUBMISSIONS OF THE APPLICANTS  
(In Response to Motion of the Monitor Returnable January 14, 2009)**

1. These written submissions set out the position of the Applicants with respect to the relief sought by the Monitor in its Notice of Motion returnable January 14, 2009 and detailed in the Third Report of the Monitor dated January 10, 2009.

***Summary of Applicants' Position***

2. If the relief sought by the Monitor in its Notice of Motion (the "Sixth Charge Relief") is granted it would constitute the entry of an Order which modifies the Initial Order or which otherwise materially adversely affects the effectiveness of the Initial Order without the express written consent of the DIP Lenders. It is the Applicants' understanding that the DIP Lenders do not consent to the Sixth Charge Relief and take the position that the granting of the Sixth Charge Relief would result in an Event of Default under the DIP Facility. InterTAN still requires access to the DIP Facility and is very concerned that access to the DIP Facility will be lost if the Sixth Charge Relief is granted at this time.

3. InterTAN should not be put in a position where an Event of Default will occur under its DIP Facility, days before going concern bids are expected for InterTAN's business. The Court can just as effectively deal with issues inherent in the Sixth Charge Relief that only become "ripe" after proceeds of sale have been realized. Consideration of what should happen with respect to the sixth ranking DIP Lenders' Charge (the "Sixth Charge") set out in paragraph 44 of the Amended and Restated Initial Order, if anything, only becomes relevant after the five

prior ranking charges have been satisfied. This will not happen until the completion of a transaction involving InterTAN's assets.

**Amended and Restated Initial Order, para. 44, Exhibit "D" to the Affidavit of Mark Wong sworn January 12, 2009.**

4. In the circumstances, InterTAN cannot consent to an extension of the December 24, 2008 "Status Quo Order". InterTAN observes that there is no compelling reason for the Court to consider now any of the remaining Sixth Charge Relief as the Canadian stakeholders would be protected if the Court were to order a continuation of the Status Quo Order. In the circumstances, the remainder of the relief sought can be deferred until the completion of a going concern sale or other transaction(s) involving the assets of the Canadian and U.S. estates. By considering the matter at that time, the Court avoids: (i) putting InterTAN's access (and that of the U.S. Debtors) to the DIP Facility in peril; (ii) impacting the allocation negotiations to come concerning certain assets owned by the U.S. Debtors that are used in the operation of InterTAN's business; and (iii) considering the matter "in the abstract" without knowing whether the recovery issue raised by the Monitor with respect to the Sixth Charge has any relevance in this proceeding.

**Order of Justice Morawetz dated December 24, 2008, Appendix "D" to the Third Report of the Monitor.**

***The Amended and Restated Initial Order – Basic Circumstances Have Not Changed***

5. InterTAN sought protection under the *Companies' Creditors Arrangement Act* ("CCAA") on November 10, 2008. This action was taken after InterTAN's ultimate parent company, sole shareholder and other related U.S. entities had filed for Chapter 11 protection in the United States which put InterTAN's sole credit facility in default. At that time, InterTAN also sought approval of the only working capital financing available to it which provided the only basis for the company to continue to operate as a going concern and to seek buyers for its assets in order to save over 3,000 jobs, preserve its supply chain and keep its approximately 770 retail stores operating. No subsequent event has changed the financial and operational realities that were facing InterTAN on November 10, 2008 or that it faces today.

**Affidavit of Mark Wong sworn November 10, 2008.**

6. The provisions of the DIP Facility and the ranking of the various charges in the Initial Order were heavily negotiated with the DIP Lenders prior to the initial hearing and closely tailored to respond to concerns discussed with the proposed Monitor relating to the potential impact of the DIP Facility's terms on Canadian creditors. Moreover, the Canadian Creditor Charge contained in the Initial Order was amended at the time of the adjourned Comeback Hearing on December 5, 2008 by expanding the pool of money potentially available to Canadian creditors in the aftermath of the CCAA proceeding from \$25 million to \$44.3 million, in priority to the guarantee claim held by the DIP Lenders under the DIP Facility as secured by the Sixth Charge. This increase in the Canadian Creditor Charge was a significant accommodation by the DIP Lenders and negotiated by the Applicants for the benefit of the Canadian creditors.

**Affidavit of Mark Wong sworn November 10, 2008, at para 8.**

**Amended and Restated Initial Order, para 44.**

***The Applicants and its Stakeholders have Received Substantial Benefits from the DIP Facility***

7. The DIP Facility approved by the Court did not require the DIP Lenders to first look to the assets of the U.S. Debtors prior to receiving value from the guarantee granted by InterTAN and the Sixth Charge granted by the Court to secure that guarantee. The DIP Lenders have relied upon the provisions of the DIP Facility and the Amended and Restated Initial Order in their dealings with InterTAN and in their other commercial dealings with third parties subsequent to the making of the Amended and Restated Initial Order.

**Affidavit of Mark Wong sworn November 10, 2008, Exhibit "K".**

8. InterTAN borrowed and the DIP Lenders lent tens of millions of dollars to InterTAN (and hundreds of millions of dollars to the U.S. Debtors) pursuant to the terms of and in reliance on the Amended and Restated Initial Order authorizing the DIP Facility. InterTAN and its stakeholders have enjoyed significant benefits from the DIP Facility which allowed InterTAN to continue its operations during the crucial holiday sales period, maintain employment of its employees (including seasonal employees), preserve its supply chain, keep its store locations in operation and pursue a going-concern sale process that has attracted significant interest in the business for the benefit of all of InterTAN's stakeholders.

**Second Report of the Monitor dated December 3, 2008, at para 24.**

**Third Report of the Monitor, at para 21 and 27.**

***InterTAN Continues to Require the DIP Facility***

9. As set out in its cash flows projections until the end of March, 2009, InterTAN anticipates needing the continued support of the DIP Lenders for this proceeding and continued access to the DIP Facility in order to continue operations and to allow the continuation of the going-concern sale process. Substantial borrowings under the DIP Facility are projected throughout the proposed extension period and are estimated to be up to approximately \$21.5 million during the weeks of March 5 and April 8, 2009.

**Affidavit of Mark Wong dated January 12, 2009, at para 9.**

**Cash Flow Projections, Exhibit "E" to the Affidavit of Mark Wong sworn January 12, 2009.**

***InterTAN and the U.S. Debtors Will Be in Default Under the DIP Facility if the Sixth Charge Relief is Granted***

10. If the requested modifications to the charges created by the Amended and Restated Initial Order are considered at this juncture of the proceeding and granted by the Court over the objections of the DIP Lenders, InterTAN and the U.S. Debtors will be in default under the terms of the DIP Facility. In that event, InterTAN is very concerned that it will not have access to the necessary financing to carry on business in its current form or complete a going concern sale of its business to maximize enterprise value for all stakeholders.

***Subrogation Rights Available***

11. The pursuit of the order sought by the Monitor at this time to defer recovery by the DIP Lenders under InterTAN's guarantee and the Sixth Charge until after they obtain all net proceeds of realization from the sale of the US Debtors' assets imperils InterTAN and appears to ignore the fact that if the DIP Lenders do recover on InterTAN's guarantee first, InterTAN will be subrogated to the position of the DIP Lenders and become entitled to participate in the U.S. estate. As such, the Monitor's pursuit of this issue appears to relate more to the timing of recovery for the DIP Lenders and the Canadian creditors than anything else.

*Allocation Negotiation to Come*

12. As the Court is aware, the going concern sales process being pursued by InterTAN includes the prospect of a sale of assets owned by one or more U.S. Debtors from which InterTAN derives benefits: a) intellectual property (including the name under which InterTAN trades and is branded); and b) the shares of Circuit City Global Sourcing (a global sourcing business administered by InterTAN and on which it relies to deal with InterTAN's Asian supplier network). If a going concern sale of InterTAN's business can be accomplished (and InterTAN remains confident in that respect), there will need to be a negotiation regarding the allocation of value in respect of the purchase price payable as between the U.S. Debtors' and InterTAN's estates. InterTAN observes that amending the terms of the Amended and Restated Initial Order in the manner contemplated by the Sixth Charge Relief, at this time, is likely to have a material impact on the substantive negotiations to follow on the allocation of value between the U.S. Debtors' and InterTAN's estates.

Respectfully submitted this 13<sup>th</sup> day of January 2009.

Osler, Hoskin & Harcourt LLP, per J. Luke

OSLER, HOSKIN & HARCOURT LLP  
Counsel for the Applicants

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

Court File No: 08-CL-7841

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*Ontario*  
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COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUBMISSIONS OF THE APPLICANTS**

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