Court File No.: CV-22-00683820-00CL

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 VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

BOOK OF AUTHORITIES

August 10, 2022

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TO: **SERVICE LIST**

Court File No.: CV-22-00683820-00CL

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 VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

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TAB 1

2010 ONSC 790
Ontario Superior Court of Justice

Sharma v. Timminco Ltd.

2010 CarswellOnt 608, 2010 ONSC 790, [2010] O.J. No. 469, 185 A.C.W.S. (3d) 604

Ravinder Kumar Sharma (Plaintiff) and Timminco Limited, Photon Consulting LLC, Rogol Energy Consulting LLC, Michael Rogol, Dr. Heinz Schimmerlbusch, Robert Dietrich, René Boisvert, Arthur R. Spector, Jack L. Messman, John C. Fox, Michael D. Winfield, Mickey M. Yaksich and John P. Walsh (Defendants)

Perell J.

Heard: January 28, 2010
Judgment: February 3, 2010
Docket: 09-CV-378701CP

Counsel: James Orr, Victoria Paris for Plaintiff
Alan L.W. D'Silva, Daniel S. Murdoch, Lesley Mercer for Timminco Defendants
Brendan van Nicjenhuis for Phelan Defendants

***Perell J.*:**

1 Under the *Class Proceedings Act, 1992*, S.O. 1992, c.5, Ravinder Kumar Sharma brings a proposed class action that involves, among other things, a common law negligent misrepresentation claim against the Timminco Ltd. Defendants and also a statutory misrepresentation claim under Part XXIII.1 of the *Ontario Securities Act.*, R.S.O. 1990, c. C.5. The statutory claim can be brought only with leave, and leave has not yet been obtained.

2 Recently, there was a carriage motion, and Mr. Sharma's lawyers were successful, and a rival class action was stayed. See *Sharma v. Timminco Ltd.*, [2009] O.J. No. 4511 (Ont. S.C.J.). In the carriage motion, Mr. Sharma's lawyers stated that they had information about the insurance coverage available to some of the defendants in their proposed class action.

3 After the carriage motion, notwithstanding having this information, Mr. Sharma's lawyers asked the Timminco Defendants to disclose any insurance policies that provided coverage for the litigation.

4 The request by Mr. Sharma's lawyers was made soon after a press release raised concerns about the financial capability of Timminco Ltd. to continue as a going concern.

5 The Timminco Defendants' lawyers responded that their clients would not agree to produce the policies unless ordered to do so

6 Mr. Sharma now makes a motion for the production from the Timminco Defendants of their insurance policies and related information about coverage conditions.

7 The Timminco Defendants resist the motion, and they have filed a voluminous reply record to rebut any inference that Timminco is in dire financial straits.

8 Normally, insurance policies are disclosed in an affidavit of documents as an aspect of the documentary discovery stage of an action. Under rule 30.03 (1), "a party to an action shall serve on every other party an affidavit of documents disclosing to

the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession control or power."

9 The presence of insurance is not necessarily relevant to any matter in issue, and rule 30.02 (3) addresses the production of insurance policies, as follows:

> 30.02 (3) A party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable,
>
> (a) to satisfy all or part of a judgment in the action; or
>
> (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,
>
> but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

10 Rules 31.06 (4) and (5) address the matter of questions about insurance being asked during oral examinations for discovery. These rules state:

> 31.06 (4) A party may on an examination for discovery obtain disclosure of,
>
> (a) the existence and contents of any insurance policy under which an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment; and
>
> (b) the amount of money available under the policy, and any conditions affecting its availability.
>
> (5) No information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

11 Formerly, the affidavit of documents was delivered within 10 days after the close of pleadings. Rule 30.03 (1) no longer specifies the timing, and instead, rule 29.1 sets out the requirement that the parties prepare a discovery plan. Under rule 29.1.03 (2), "the discovery plan shall be agreed to before the earlier of, (a) 60 days after the close of pleadings or such longer period as the parties may agree to; and (b) attempting to obtain the evidence."

12 The proposed class action is some distance away from the close of pleadings and oral examinations for discovery. There are pending amendments to the statement of claim to add a new proposed representative plaintiff, and there is the yet to be arranged motion for leave under the *Ontario Securities Act* for the statutory misrepresentation claim, which, if granted, will precipitate further amendments to the statement of claim. Further, as in the case at bar, it is not uncommon in class proceedings that the statement of defence is not demanded until after the outcome of the certification motion is determined.

13 Thus, technically speaking, Mr. Sharma's request for the insurance policy information is premature. However, there is precedent that supports the early production of insurance policies. In *Pysznyj v. Orsu Metals Corp.* (May 21, 2009), Doc. London 59650CP (Ont. S.C.J.), Justice Rady ordered insurance policies produced in a proposed class action. Further, it was conceded by the Timminco Defendants that under the court's authority provided by s. 12 of the *Class Proceedings Act, 1992*, the court has the jurisdiction to make an order requiring the production of the insurance policies at this early stage of the proceedings.

14 Although the Timminco Defendants do not say that they would be harmed, prejudiced, or even inconvenienced by the early production of the insurance policies, they submit that the court ought not to make the production order for two reasons.

15 First, the Timminico Defendants submit that the order should be made only in extraordinary circumstances; however, in the case at bar, they submit that given what Mr. Sharma's counsel already knows about the insurance coverage, there are

no extraordinary circumstances. Moreover, the Timminco Defendants submit that an early order for production is unnecessary because Mr. Sharma and his lawyers already have all the information they currently need.

16 Second, the Timminco Defendants submit that it would be contrary to the public policy associated with the proper operation of Part XXIII.1 of the *Ontario Securities Act* to order the production of the insurance information before the leave motion is decided.

17 I disagree with both submissions.

18 I see no basis in principal, precedent, or based on the facts of this case for the conclusion that the early production of the insurance policies must be justified by extraordinary or special circumstances.

19 Although Mr. Sharma's lawyers have some knowledge about the insurance policies, that information is neither comprehensive nor adequate. Requiring disclosure of insurance information encourages the parties to make practical or pragmatic decisions about the likelihood of recovery on the claims, which, in turn, may influence their decisions about prosecuting or attempting to settle the litigation: *Sabatino v. Gunning* (1985), 50 O.R. (2d) 171 (Ont. C.A.); *Pysznyj v. Orsu Metals Corp.*, *supra*. With the patchy information available to them, Mr. Sharma's lawyers would be irresponsible if they provided advice or made a decision based on the current state of information. Similarly, if the availability of insurance coverage were to be a factor in settlement discussions, the current state of information is insufficient.

20 But there is more to Mr. Sharma's request for information about insurance coverage. The information would be relevant to settlement discussions, but it is also relevant to whether it makes sense to prosecute the action. The relationship between the costs of litigation and the collectable amount of recovery is a matter of concern to a plaintiff and to his or her counsel acting under a contingency fee arrangement, and this concern is particularly intense in a proposed class proceeding where the costs and the risks associated with the litigation will be high.

21 Putting aside for the moment, the Timminco Defendant's second reason for refusing to produce the insurance policies and the associated information, in my opinion, it would be productive to order their production.

22 I shall move on to consider the Timminco Defendants' second submission, but, before doing so, it is necessary to address the matter of the relevance, if any, of the defendant's financial circumstances to Mr. Sharma's request for early disclosure of information about insurance policies. In my opinion, the financial health of the defendant is a neutral or irrelevant factor.

23 While information about available insurance coverage might be more interesting in circumstances where a defendant is in poor financial health, the information remains useful and necessary regardless of the defendant's financial health. Thus, I need not and I do not make any finding about the financial health of Timminco Ltd. My opinion, which is independent of the financial status of the Timminco Defendants, is that there were good reasons for Mr. Sharma's lawyers to request early production of the insurance policies and apart from the public policy argument, to which I will turn next, there is no reason to refuse ordering the disclosure of the information now.

24 The Timminco Defendants relied on the uncontested evidence of Mr. Thomas Allen to submit that early disclosure of insurance policies is inconsistent with the Legislature's intentions about the pursuit of a statutory misrepresentation claim under Part XXIII.1 of the *Ontario Securities Act.* Mr. Allen, who is a lawyer with a very admirable reputation in the investment industry and in the legal profession as securities and corporate law lawyer, was the chair of a renowned committee of the Toronto Stock Exchange that did the pioneering work that eventually led to the Ontario Government enacting Part XXIII.1 of the *Act*. The Committee's work is commonly referred to as the "Allen Report." See TSE Committee on Corporate Disclosure, *Responsible Corporate Disclosure: A Search for Balance*, Final Report (Toronto: Toronto Stock Exchange, 1997).

25 Mr. Sharma objected to the admission of Mr. Allen's evidence on the grounds that it was not proper opinion evidence. Since, as I will shortly explain, I do not think Mr. Allen's evidence, which is largely argument, helps the Timminco Defendants or harms Mr. Sharma, I am not going to rule on his objection, and I will simply address Mr. Allen's evidence on its merits.

26 As I understand Mr. Allen's evidence or argument, it is as follows. The Allen Committee was of the view that introducing a statutory misrepresentation claim would be desirable to regulate the secondary market in securities in Canada. However, observing problems in the United States about such claims, the Committee was concerned about exposing corporations and their directors and officers to speculative and extortionate class actions known as "strike suits," and this concern weighed against recommending that a statutory claim be introduced in Canada. A strike suit is a class proceeding where the merits of the claim are not apparent but the nature of the claim and targeted transaction is such that a sizeable settlement can be achieved with some degree of probability because the defendant is confronted with the unpalatable choice of a very expensive court battle or the payment of significant settlements irrespective of the underlying merits of the lawsuit: *Epstein v. First Marathon Inc. / Société First Marathon Inc.*, [2000] O.J. No. 452 (Ont. S.C.J.). However, notwithstanding its concerns about strike suits, the Allen Committee decided to recommend the introduction of a statutory claim because the Canadian litigation environment was different than in the United States, in part, because in Canada, discovery comes after the close of pleadings, and thus, unlike the United States, Canada does not have liberal discovery rules that would facilitate strike suits.

27 Mr. Allen acknowledged that his committee did not, in particular, consider the timing of the disclosure of insurance policies. However, it was his opinion that a requirement that insurance policies and policy limits be disclosed before the leave motion and the close of pleadings might motivate the prosecution of actions based on insurance proceeds and not the merits and this would encourage strike suits and be inconsistent with the policy underpinning the statutory misrepresentation claim.

28 With respect, I do not see how the disclosure of insurance policies encourages strike suits, nor do I see how disclosure of insurance would have any adverse impact on the statutory regime.

29 In *Ainslie v. CV Technologies Inc.* (2008), 93 O.R. (3d) 200 (Ont. S.C.J.) at paras. 10-15, Justice Lax reviewed the legislative history to Part XXIII.1 of the Act, including the Allen Committee Report, and she concluded that the purpose of the leave motion (which was not suggested by the Allen Committee) was to prevent strike suits.

30 The statutory leave test under s. 138.8 of the Act, which Justice Van Rensburg discusses in considerable depth in *Silver v. Imax Corp.*, [2009] O.J. No. 5573 (Ont. S.C.J.), provides that the court shall grant leave only where it is satisfied that (a) the action is brought in good faith, and (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff. Thus the test for leave probes the merits of the proposed action.

31 The presence or absence of insurance, however, is usually irrelevant to the merits of a lawsuit. It is precisely because of this irrelevancy that it was necessary to add rules 30.02 (3) and 31.06 (4) to the Rules of Civil Procedure to provide for the disclosure of insurance policies. The disclosure of insurance policies will not assist Mr. Sharma in obtaining leave to prosecute an action under Part XXIII.1 of the Act. All the disclosure of information, might do is encourage him to have informed settlement discussions or dissuade him from even seeking leave because of concerns about whether there was a collectable financial recovery.

32 In *Ainslie v. CV Technologies Inc.*, *supra*, Justice Lax stated that the essence of the leave motion was that the putative plaintiff was required to demonstrate the propriety of his or her claim before the defendant was required to respond. I agree with Justice Lax, but I note that the disclosure of the insurance policies will not assist Mr. Sharma in obtaining leave because the presence or absence of insurance is irrelevant to the propriety of his claim.

33 In *Ainslie v. CV Technologies Inc.*, Justice Lax stated that there is no onus on the proposed defendants to assist the plaintiff in securing evidence upon which to base an action under Part XXIII.1. Again I agree, but I point out again that the disclosure of insurance does not provide evidence upon which to base an action under Part XXIII.1 of the Act.

34 In *Silver v. Imax Corp.*, *supra*, Justice Van Resburg confirmed that there is no discovery of the defendant before the leave motion. I agree, but the purpose of precluding discovery before the leave motion is to preclude the putative plaintiff from "fishing for facts" that would support what was a speculative lawsuit of the strike suit type. Asking for disclosure of insurance information, however, is not fishing for facts but rather provides information for entirely different purposes.

35 Once again, with due respect to Mr. Allen's argument, it seems unlikely to me that a litigant would be encouraged to advance a baseless lawsuit for which leave is required because he or she might obtain early disclosure of the proposed defendant's insurance policies. Contrary to Mr. Allen's argument, in the context of misrepresentation claims, the stimulant is not the possible presence of insurance but the stimulant for the strike suit is the presence of a plaintiff suffering a loss, a scapegoat defendant, and the plaintiff rushing to the courthouse without considering the merits of the claim.

36 Put shortly, admitting the evidence of the public policy argument, I am not convinced by it, and I conclude that Mr. Sharma's motion should be granted, and therefore, the Timminco Defendants are ordered to produce the information that should be produced under rules 30.02 (3) and 31.06 (4).

37 If the parties cannot agree on the matter of costs, they may make submissions in writing beginning with Mr. Sharma within 20 days of the release of these Reasons for Decision followed by the Timminco Defendants' submissions within a further 20 days.

38 Order accordingly.

Motion granted.

TAB 2

2009 CarswellOnt 8839
Ontario Superior Court of Justice

Pysznyj v. Orsu Metals Corp.

2009 CarswellOnt 8839, 203 A.C.W.S. (3d) 263, 95 C.P.C. (6th) 122

Roman Pysznyj and Orsu Metals Corporation (f.k.a.) European Minerals Corporation), William G. Kennedy and James Cole

H.A. Rady J.

Heard: May 15, 2009
Judgment: May 21, 2009
Docket: London 59650CP

Counsel: Michael Robb, for Plaintiff
Ward Branch, for Defendants

***H.A. Rady J.*:**

The Motion

1 The plaintiff moves for disclosure and production of any policy of insurance that the defendants have, which may be responsive to this claim. The claim is a proposed class proceeding which alleges that certain financial statements of the corporate defendant were false or materially misleading. The plaintiff seeks damages for negligent and fraudulent misrepresentation, negligence and conspiracy as well as relief under the *Securities Act*.

2 The plaintiff relies on Rule 30.02(3) of the *Rules of Civil Procedure* and s. 12 of the *Class Proceedings Act.* Rule 30.02(3) provides as follows:

> (3) A party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable,
>
> (a) to satisfy all or part of a judgment in the action; or
>
> (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,
>
> but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

3 Rule 30 deals with the discovery of documents. Rule 30.02 speaks to the issue of what must be produced and Rule 30.03 addresses (among other things) the timing of production.

4 Section 12 of the *Class Proceedings Act*, provides:

> The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

5 The defendants resist the motion on the basis that production is made in the context of the discovery mechanisms in the Rules, which are only triggered by the close of pleadings. Pleadings in this case have not yet closed, the defendants not having

delivered their statement of defence, consistent with the practice that has developed in class proceedings. Statements of defence are customarily delivered after certification. Similarly, documentary and oral discovery occur after certification.

6 The defendants submit that s. 12 of the *Class Proceedings Act* does not permit such an order.

Analysis

7 Assuming without deciding that the defendants are correct that the obligation to produce or disclosure of an insurance policy arises during the discovery process, I would nevertheless order its disclosure and production now, pursuant to the broad discretion conferred by s. 12.

8 In actions other than class proceedings, a statement of defence is required within 20 days of service of the statement of claim where the defendant is served in Ontario. The time limit is longer where the defendant is served elsewhere. Documentary and oral discovery rights arise on the close of pleadings. In particular, parties are required to deliver their affidavits of documents within 10 days of the close of proceedings.

9 This ensures the timely disclosure of relevant documents as well as any responsive insurance policy (which is inadmissible in evidence unless relevant to an issue). The disclosure of an insurance policy may well affect litigation strategy and therefore its early disclosure seems a sensible proposition.

10 By virtue of what amounts to a judge sanctioned exception to the Rules in class proceedings, the delivery of a statement of defence and discovery are postponed until after certification. See *Mangan v. Inco Ltd.*, [1996] O.J. No. 2655 (Ont. Gen. Div.); *Caputo v. Imperial Tobacco Ltd.*, [1997] O.J. No. 2576 (Ont. Gen. Div.).

11 There is good reason for this procedure. The statement of defence and discovery process may very well be influenced by the reasons given for certification. Moreover, the practice is intended to streamline and simplify matters so that the parties do not become bogged down or sidetracked by production and discovery issues before certification.

12 It seems to me that the disclosure of an insurance policy would not needlessly complicate matters or divert the parties from proceeding to a certification hearing in a timely way. Indeed, it might simplify proceedings because a plaintiff may well conclude that it does not wish to pursue the litigation because the prospect of recovery is not good in the absence of available insurance. The time and expense of pursuing certification would therefore be avoided.

13 Moreover, it does not seem fair that defendants in class proceedings are excused from compliance with the Rules with respect to the delivery of a defence but can nevertheless rely on the Rules to avoid the obligation to make timely disclosure of an insurance policy.

14 As a result, I would order the defendants to disclose to the plaintiff whether it has a responsive insurance policy and to produce it, if requested.

15 I will receive brief written submissions on costs within 20 days, if the parties are unable to agree.

Motion granted.

TAB 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,[1]	)	Case No. 22-10943 (MEW)
Debtors.	)	(Jointly Administered)

ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code, (b) approving the form and manner of notice, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, entered February 1, 2012; and that this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors'

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (N/A); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. Subject to the exceptions to the automatic stay contained in Bankruptcy Code section 362(b)[3] and the right of any party in interest to seek relief from the automatic stay in accordance with Bankruptcy Code section 362(d), all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any non-U.S. jurisdiction (including any division, department, agency, instrumentality or service thereof, and all those acting on their behalf), are hereby stayed, restrained and enjoined from:

(a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' chapter 11 cases;

(b) enforcing, against the Debtors or against property of their estates, a judgment or order obtained before the commencement of the Debtors' chapter 11 cases;

(c) taking any action, whether inside or outside the United States, to obtain possession of property of the Debtors' estates, wherever located or to exercise control over property of the estates or interfere in any way with the

[3] The text of Bankruptcy Code section 362 is attached hereto as **Exhibit A**.

conduct by the Debtors of their business, including, without limitation, attempts to arrest, seize or reclaim any assets in which the Debtors have legal or equitable interests;

(d) taking any action to create, perfect, or enforce any lien against the property of the Debtors' estates;

(e) taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases;

(f) offsetting any debt owing to the Debtors that arose before the commencement of the Debtors' chapter 11 cases against any claim against the Debtors; and

(g) commencing or continuing any proceeding before the United States Tax Court concerning the Debtors, subject to the exceptions set forth in provisions of 11 U.S.C. § 362(b).

3. Pursuant to sections 362 and 365[4] of the Bankruptcy Code, notwithstanding a provision in a contract or lease or any applicable law, all persons are hereby stayed, restrained, and enjoined from terminating or modifying any and all contracts and leases to which the Debtors are party or signatory, at any time after the commencement of these cases because of a provision in such contract or lease that is conditioned on the (a) insolvency or financial condition of the Debtors at any time before the closing of these cases, or (b) commencement of these cases under the Bankruptcy Code. Accordingly, all such persons are required to continue to perform their obligations under such leases and contracts during the postpetition period.

4. Pursuant to section 525[5] of the Bankruptcy Code, all foreign or domestic governmental units and other regulatory authorities and all those acting on their behalf are stayed, restrained, prohibited, and enjoined from: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors or the Debtors'

[4] The text of Bankruptcy Code section 365 is attached hereto as **Exhibit B**.

[5] The text of Bankruptcy Code section 525 is attached hereto as **Exhibit C**.

affiliates on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases; (b) placing conditions upon such a grant to the Debtors or the Debtors' affiliates on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases; (c) discriminating against the Debtors or the Debtors' affiliates on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases; or (d) interfering in any way with any and all property of the Debtors' estates wherever located.

5. The form of Notice, substantially in the form attached as **Exhibit 1** hereto, is approved. The Debtors are authorized to serve the Notice upon creditors, governmental units or other regulatory authorities, and/or interested parties wherever located.

6. Nothing in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors in possession, of any executory contract or unexpired lease.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. For the avoidance of doubt, this Order confirms, but does not enlarge, the provisions or modify the protections of the Bankruptcy Code,

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: New York, New York
July 8, 2022

/s/ **Michael E. Wiles**
THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Form of Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,[1]	)	Case No. 22-10943 (MEW)
Debtors.	)	(Jointly Administered)

NOTICE OF ENTRY OF AN ORDER RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO* PROTECTIONS OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on July 5, 2022, the above-captioned debtors and debtors in possession (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"). The Debtors' chapter 11 cases are pending before the Honorable Judge Michael E. Wiles, United States Bankruptcy Judge, and are being jointly administered under the lead case *In re Voyager Digital Holdings, Inc., et. al.*, Case No. 22-10943 (MEW).

PLEASE TAKE FURTHER NOTICE that pursuant to section 362(a) of the Bankruptcy Code, the Debtors' filing of their respective voluntary petitions operates as a self-effectuating, statutory stay or injunction, applicable to all entities and protecting the Debtors from, among other things: (a) the commencement or continuation of a judicial, administrative, or other action or proceeding against the Debtors (i) that was or could have been commenced before the commencement of the Debtors' cases; or (ii) to recover a claim against the Debtors that arose

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (N/A); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

before the commencement of the Debtors' cases; (b) the enforcement, against the Debtors or against any property of the Debtors' bankruptcy estates, of a judgment obtained before the commencement of the Debtors' cases; or (c) any act to obtain possession of property of or from the Debtors' bankruptcy estates, or to exercise control over property of the Debtors' bankruptcy estates.[2]

PLEASE TAKE FURTHER NOTICE that pursuant to the *Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and* Ipso Facto *Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief* (the "Order") [Docket No. [__]], entered on [____], 2022, and attached hereto as **Exhibit A**, all persons wherever located (including individuals, partnerships, corporations, and other entities and all those acting on their behalf), persons party to a contract or agreement with the Debtors, governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any foreign country (including any division, department, agency, instrumentality or service thereof, and all those acting on their behalf), are hereby put on notice that they are subject to the Order and must comply with its terms and provisions.

PLEASE TAKE FURTHER NOTICE that any entity that seeks to assert claims or interests against, seek or assert causes of action or other legal or equitable remedies against, or otherwise exercise any rights in law or equity against the Debtors or their estates must do so in front of the Court pursuant to the Order, the Bankruptcy Code, and applicable law.

[2] Nothing herein shall constitute a waiver of the right to assert any claims, counterclaims, defenses, rights of setoff or recoupment or any other claims of the Debtors against any party to the above-captioned cases. The Debtors expressly reserve the right to contest any claims which may be asserted against the Debtors.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, any governmental agency, department, division or subdivision, or any similar governing authority is prohibited from, among other things: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases as set forth more particularly in the Order.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, parties to contracts or agreements with the Debtors are prohibited from terminating such contracts or agreements because of a Debtor's bankruptcy filing—except as permitted by the Court under applicable law.

PLEASE TAKE FURTHER NOTICE that pursuant to sections 105(a) and 362(k) of the Bankruptcy Code and Rule 9020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), among other applicable substantive law and rules of procedure, any person or governmental unit seeking to assert its rights or obtain relief outside of the processes set forth in the Order, the Bankruptcy Code, and applicable law may be subject to proceedings in front of the Court for failure to comply with the Order and applicable law—including contempt proceedings resulting in fines, sanctions, and punitive damages against the entity and its assets inside the United States.

PLEASE TAKE FURTHER NOTICE that additional information regarding the Debtors' chapter 11 cases, including copies of pleadings filed therein, may be obtained by (a) reviewing the publicly available docket of the Debtors' chapter 11 cases at http://www.nysb.uscourts.gov/ (PACER login and password required), (b) accessing the Debtors'

publicly available website providing information regarding these chapter 11 cases, located online at http://stretto.com/voyager, or (c) contacting the following proposed counsel for the Debtors.

Dated: July [●], 2022
New York, New York

/s/

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Bankruptcy Code Section 362

§ 362. Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding-

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub.L. 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681886]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of--

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a

part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer--

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property--

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property

or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of--

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue;

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act); and (29) under subsection (a)(1) of this section, of any action by--

(A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or

(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors, if--

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be

a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the

petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that--

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless--

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended--

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable

damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.
(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
(2) the party opposing such relief has the burden of proof on all other issues.

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--
    (A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and
    (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.
(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.
(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.
(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)--

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)

(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)

(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied--

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)--

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)

(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor--

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply--

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if--

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

Exhibit B

Bankruptcy Code Section 365

§ 365. Executory contracts and unexpired leases

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to--

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance--

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(1)

(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.

(d)

(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3)

(A) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for

performance shall not be extended beyond such 60-day period, except as provided in subparagraph (B). This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of nonresidential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic until the earlier of--

(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; or

(ii) the date on which the lease is assumed or rejected under this section.

(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).

(4)

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(i) the date that is 210 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)

(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 210-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

(5) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of

subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(e)

(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on--

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(A)

(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)

(1) Except as provided in subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if--

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated

or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease-

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title--

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112, 1208, or 1307 of this title--

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

(h)

(1)

(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and--

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any

provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

(D) In this paragraph, "lessee" includes any successor, assign, or mortgagee permitted under the terms of such lease.

(2)

(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and--

(i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

(ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(i)

(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

(2) If such purchaser remains in possession--

(A) such purchaser shall continue to make all payments due under such contract, but may,1 offset against such payments any damages occurring after the date of the rejection of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and

(B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the

debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property shall include any rental agreement to use real property.

(n)

(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect--

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for--

(i) the duration of such contract; and

(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract--

(A) the trustee shall allow the licensee to exercise such rights;

(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

(C) the licensee shall be deemed to waive--

(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual

property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract or any agreement supplementary to such contract--

(i) perform such contract; or

(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

(o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.

(p)

(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

(2)

(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

Exhibit C

Bankruptcy Code Section 525

§ 525. Protection Against Discriminatory Treatment

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt--

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(c)

(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a student grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

TAB 4

2015 BCSC 1199
British Columbia Supreme Court

Credit Suisse AG v. Great Basin Gold Ltd.

2015 CarswellBC 1953, 2015 BCSC 1199, [2015] B.C.W.L.D. 5426, 256 A.C.W.S. (3d) 590, 27 C.B.R. (6th) 32

Credit Suisse AG, Petitioner and Great Basin Gold Ltd., Respondent

Fitzpatrick J.

Heard: June 9, 2015
Judgment: July 10, 2015
Docket: Vancouver S134749

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P. Rubin for Credit Suisse AG

***Fitzpatrick J.*:**

Introduction

1 This application concerns the scope of a stay of proceedings ordered by the court arising from the granting of a receivership order as against the respondent, Great Basin Gold Ltd. ("Great Basin").

2 The issue is whether the proper interpretation of the stay provision is such that it includes a stay of proceedings in favour of the former directors and officers of Great Basin.

3 Linden Advisors LP, Crystalline Management Inc. and Wolverine Asset Management, LLC (collectively, the "Applicant Creditors"), had previously commenced an action against Great Basin's directors and officers and the issue of the stay has been recently raised. The Applicant Creditors now seek clarification concerning the proper interpretation of the receivership order, namely, whether the stay prevents them from continuing with their action, save with leave of the court.

Background Facts

The Insolvency Proceedings

4 On September 19, 2012, Great Basin applied for and was granted creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*"). Despite the filing having taken place in Vancouver, British Columbia, Great Basin's gold-mining operations, through its subsidiaries, were principally located elsewhere. Various properties were held around the world, but the principal assets were gold mines in Nevada and South Africa.

5 On the filing date, I granted an initial order, as is typically granted in *CCAA* proceedings (the "Initial Order"). I remained seized of the *CCAA* proceedings and would issue all of the court orders in those proceedings and in the later receivership proceedings as discussed in these reasons.

6 The Initial Order imposed a stay of proceedings against or in respect of Great Basin or affecting the "Business" and "Property" of Great Basin:

> 15. Until and including October 19, 2012 or such later date as this Court may order (the "Stay Period"), no action, suit or proceeding in any court or tribunal (each, a "Proceeding") against or in respect of [Great Basin] or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of [Great Basin] and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of [Great Basin] or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

7 "Property" was defined in the Initial Order as "current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof". Great Basin was ordered to continue to carry on its business in the ordinary course (defined as the "Business").

8 In addition, the Initial Order provided for a stay of proceedings as against the directors and officers of Great Basin in respect of pre-filing matters:

> 22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of [Great Basin] with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of [Great Basin] whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of a such obligations, until a compromise or arrangement in respect of [Great Basin], if one is filed, is sanctioned by this Court or is refused by the creditors of [Great Basin] or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of [Great Basin] that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

9 By June 28, 2013, the *CCAA* proceedings had run their course with sales of the major gold-mining assets having been concluded or substantially underway. On that date, this Court granted an order terminating the *CCAA* proceedings at the request of Great Basin and with the support of its largest secured creditor, the petitioner Credit Suisse AG (the "Termination Order"). The Termination Order specifically provided that the stays of proceedings as set out above in paragraphs 15 and 22 of the Initial Order were terminated and set aside.

10 Concurrent with the termination of the *CCAA* proceedings, on June 28, 2013, Credit Suisse AG applied to the Court and was granted an order (the "Receivership Order"), appointing a receiver over the "Property" of Great Basin, who was defined as the "Debtor".

11 The definition of "Property" in the Receivership Order was different than that found in the Initial Order. The term was defined as "all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof." This definition of "Property" was consistent with the wording of the model receivership order published on the Court's website, and also consistent with the language found in s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, which is the statutory authority for the appointment of the receiver.

12 The central issue on this application arises from the terms of the Receivership Order which imposed a stay of proceedings against or "in respect of" Great Basin and the Property, as defined:

> 12. No Proceedings against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration

of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

13 Under the Receivership Order, FTI Consulting Canada Inc. was appointed receiver and manager (the "Receiver").

14 The evidence at the June 28, 2013 hearing - at which time the Termination Order and the Receivership Order were granted - referred to the following relevant circumstances:

a) the stay of proceedings under the Initial Order was set to expire on June 30, 2013;

b) no extension of the *CCAA* proceedings was being sought by Great Basin as there was no prospect for a restructuring of Great Basin and there was no on-going business being conducted by Great Basin. As such, there was no need to continue the *CCAA* proceedings and incur the cost of doing so;

c) the remaining directors and officers of Great Basin were set to resign on the earlier of June 30, 2013 or the date on which the *CCAA* proceedings were terminated. This was tied to the expiry of the then-existing insurance policy in place for the directors and officers of Great Basin; and

d) it was considered necessary that a receiver be appointed to complete the remaining matters that were outstanding in the *CCAA* proceedings. Those matters included causing Great Basin's subsidiaries in other jurisdictions to finalize the sales of the principal gold-mining assets through insolvency proceedings in those jurisdictions. Specifically:

i. in May 2013, the Hollister gold mine in Nevada had been sold through insolvency proceedings commenced under chapter 11 of the *United States Bankruptcy Code*, 11 U.S.C. and it was anticipated that certain administrative matters needed to be finalized to conclude those proceedings; and

ii. the sales process of the Burnstone mine in South Africa was underway at the time pursuant to business rescue proceedings commenced in South Africa. Those sale proceedings had not been completed, and it was contemplated that a sale would require later transactions to be completed by Great Basin and certain Cayman Islands subsidiaries.

15 Paragraph 23 of the Initial Order provided that Great Basin indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers on account of legal defence costs after the commencement of the *CCAA* proceedings. As security for this obligation, the directors and officers were granted a "Directors' Charge" as against Great Basin's "Property" (as defined in the Initial Order) limited to $500,000. The Director's Charge was granted priority behind the "Administration Charge" but ahead of the "DIP Lenders' Charge" for the interim financing.

16 Pursuant to paragraph 22 of the Termination Order, the Directors' Charge continued to attach to the "Property" as defined in the Initial Order. The priorities of the various court-ordered charges were further addressed in the Receivership Order, but the Directors' Charge remained second in priority only behind the Administration Charge.

Action Brought by the Applicant Creditors

17 On August 14, 2014, the Applicant Creditors commenced an action in this Court against the former directors and officers of Great Basin (the "Action"). In essence, the Applicant Creditors allege that various public disclosures, including financial statements, prospectuses and press releases made by Great Basin contained misrepresentations and omissions. The Applicant Creditors allege that the directors and officers breached their common-law, statutory and fiduciary duties and obligations owed to certain stakeholders of Great Basin, including the Applicant Creditors. They seek damages in the amount of $40 million plus interest.

18 As counsel for the directors and officers point out, there is some emphasis in the Action on the disclosure in a November 2009 prospectus issued by Great Basin for certain unsecured convertible debentures in which the Applicant Creditors invested. There are also allegations concerning the public disclosure made before and after that offering.

19 In addition, on January 9, 2015, Credit Suisse AG commenced a claim against some directors and officers of Great Basin in the Second Judicial District Court of the State of Nevada. Similar to the action commenced by the Applicant Creditors, Credit Suisse AG alleges that the officers and directors misrepresented certain matters relating to Great Basin, which Credit Suisse AG relied upon in granting significant loans to Great Basin, both prior to and after the *CCAA* proceedings began. Credit Suisse AG also alleges that the officers and directors "recklessly mismanaged" Great Basin's subsidiaries.

20 In May 2015, counsel for the officers and directors advised counsel for the Applicant Creditors of their position that the Applicant Creditors had filed the Action in violation of the stay of proceedings granted per paragraph 12 of the Receivership Order. Among other things, the directors and officers asserted that, given the allegations about public disclosures made by Great Basin, and the indemnities that Great Basin gave to each of the officers and directors, the stay applied. Counsel for the officers and directors therefore took the position that the Receivership Order stayed the Action unless and until written consent was obtained from the Receiver or leave was obtained from this Court.

21 Initially, there was some issue about why the matter of the stay was only being raised some time following the commencement of the Action in August 2014. However, counsel for the officers and directors advised that the Receivership Order had only recently come to their attention in May 2015, which explanation I accept. In my view, nothing arises from any delay in bringing forward the issue as the matter can be addressed on its merits.

22 Certain of the defendants in the Action, being officers and directors appointed prior to the *CCAA* proceedings, intend to file response material denying any wrongdoing. Specifically, they contend that the acts that are the subject of the Action are "the acts of [Great Basin] and not the acts of the [officers and directors]". In addition, they propose to file a counterclaim alleging that the Action is in breach of the trust indenture by which the Applicant Creditors invested in Great Basin. That trust indenture provided that there would be no recourse against certain persons, including directors and officers.

23 Other defendants in the Action, being directors and officers appointed after the *CCAA* proceedings began, also intend to file response material. They also contend that the representations and conduct that are the subject of the Action were "representations made by or conduct of [Great Basin], not these Defendants personally". They also propose to file a counterclaim alleging that the Action is in breach of the trust indenture by which the Applicant Creditors invested in Great Basin.

The Issue

24 The Applicant Creditors dispute the interpretation of paragraph 12 of the Receivership Order advanced by the directors and officers that they require leave of the court in order to proceed with the Action. Nevertheless, in order to clarify the matter, the Applicant Creditors now bring this application for a declaration that the stay of proceedings does not operate to stay the Action and that no leave is required.

25 The Receiver has indicated that it takes no position in respect of this application so, obviously, no consent to bring the Action is forthcoming to obviate the issue.

Discussion

26 The parties agree that the Receivership Order is to be interpreted in accordance with the approach as set out in *Yu v. Jordan*, 2012 BCCA 367 (B.C. C.A.):

> [53] In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

27 All of the aspects leading to and including the granting of the Receivership Order - the pleadings, relevant circumstances and language of the order itself - are considerably interrelated in this case. In my view, all aspects support the conclusion that the Receivership Order did not stay the Action against the directors and officers.

(i) Pleadings

28 The pleadings that are relevant here include the backdrop of the *CCAA* proceedings, the terms of the Initial Order and, later still, the Receivership Order and the Termination Order.

29 In the *CCAA* context, imposing a stay of proceedings is generally seen as a critical component of the relief sought by the debtor company in preserving the *status quo* while a company attempts to restructure. The need for a stay of proceedings against creditors of the debtor company seems evident enough; however, it is also well-recognized that a stay of proceedings against third parties could, in some cases and, indeed, often does, equally assist in achieving the objectives of the *CCAA*.

30 In addition, the need to cast a large net in terms of protecting the debtor's ownership and management of its assets pending reorganization is generally seen as justifying the typical broad definition of "Property", as is found in the Initial Order.

31 Early cases tended to rely on inherent jurisdiction as the jurisdictional basis for a stay as against third parties. In that regard, the comments of Tysoe J. (as he then was) in *Woodward's Ltd., Re* (1993), 79 B.C.L.R. (2d) 257 at 268 (S.C.) are instructive in that such a stay must be important to the reorganization process and the court must weigh the relative prejudice arising from the stay:

> Hence, it is my view that the inherent jurisdiction of the Court can be invoked for the purpose of imposing stays of proceedings against third parties. However, it is a power that should be used cautiously. In *Westar* Macdonald J. relied upon the Court's inherent jurisdiction to create a charge against Westar's assets because he was of the view that Westar would have no chance of completing a successful reorganization if he did not create the charge. I do not think that it is a prerequisite to the Court exercising its inherent jurisdiction that the insolvent company will not be able to complete a reorganization unless the inherent jurisdiction is exercised. But I do think that the exercise of the inherent jurisdiction must be shown to be important to the reorganization process.
>
> In deciding whether to exercise its inherent jurisdiction the Court should weigh the interests of the insolvent company against the interests of the parties who will be affected by the exercise of the inherent jurisdiction. If, in relative terms, the prejudice to the affected party is greater than the benefit that will be achieved by the insolvent company, the Court should decline to exercise its inherent jurisdiction. The threshold of prejudice will be much lower than the threshold required to persuade the Court that it should not exercise its discretion under s. 11 of the CCAA to grant or continue a stay that is prejudicial to a creditor of the insolvent company (or other party affected by the stay).
>
> [Emphasis added.]

32 Stays of proceedings in favour of former or current directors and officers of a debtor company in *CCAA* proceedings were and are common. Such a stay is seen as consistent in achieving the policy objective of furthering the debtor company's restructuring efforts. A stay of proceedings in favour of officers and directors affords some protection to those individuals, in that it acts as an inducement to remain involved in the restructuring, which is benefited by the directors' and officers' knowledge and expertise. Other benefits include avoiding the allocation of time and resources to defend such proceedings at the expense of and detriment to the restructuring itself.

33 In 2005, the *CCAA* was amended to provide the court with express statutory authority to stay proceedings against directors and officers with respect to pre-filing matters:

> 11.03(1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the

payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

34 It can be seen that the provision in the Initial Order staying actions against the directors and officers (paragraph 22) substantially tracks the language of s. 11.03(1).

35 The rationale of the court in *Re Woodward's* continues to be applied in *CCAA* proceedings and, in particular, to the consideration as to whether stays in favour of officers and directors will be continued or lifted.

36 In *Nortel Networks Corp., Re* (2009), 57 C.B.R. (5th) 232 (Ont. S.C.J. [Commercial List]), at 239 , Morawetz J. upheld a stay of proceedings in favour of certain directors and employees of Nortel:

> In my view, the Nortel restructuring is at a critical stage and the energies and activities of the Board should be directed towards the restructuring. I accept the argument of Mr. Barnes on this point. To permit the ERISA Litigation to continue at that time would, in my view, result in a significant distraction and diversion of resources at a time when that can be least afforded. It is necessary in considering whether to lift the stay, to weigh the interests of the Applicants against the interests of those who will be affected by the stay. Where the benefits to be achieved by the applicant outweighs the prejudice to affected parties, a stay will be granted. (See: *Woodwards Limited (Re)* (1993) 17 C.B.R. (3d) 236 (B.C.S.C.).)

37 Importantly, the court in *Re Nortel* emphasized that the stay was intended only as a postponement of the claims being brought or continued: *Nortel* at 239. The postponement aspect is consistent with s. 11.03(1) of the *CCAA* and paragraph 22 of the Initial Order, which contemplate the continuation of the stay until such time as a compromise or arrangement is either accepted or refused by the creditors and the court.

38 As Dewar J. stated in *Puratone Corp., Re*, 2013 MBQB 171 (Man. Q.B.), whether the stay will be lifted or continued is to be considered in the context of the nature and timing of the *CCAA* process before the court: para. 15. In that case, the court noted that the *CCAA* proceedings did not result in a restructuring but, rather, a liquidation of the assets with proceeds to be distributed. As such, the court, in considering relative prejudice, found that the balance of convenience favoured lifting the stay to allow the action against Puratone and the directors and officers to proceed "sooner rather than later": para. 38.

39 It is in this context that the Termination Order and Receivership Order must be considered. In a situation similar to that in *Re Puratone*, by June 2013, much of the policy objectives underlying the stay in favour of Great Basin's directors and officers in the Initial Order had been spent. The receivership presented a sea change of sorts in the sense that a pure liquidation of the remaining assets was the focus and, importantly, the remaining liquidation efforts were to be handled by the Receiver and not by the directors and officers of Great Basin. In that regard, the focus of the Receivership Order was to protect the activities of the Receiver and the assets under its administration. The stay of proceedings found in paragraph 12 of the Receivership Order accomplished that, in part, along with the stay of proceedings in paragraph 13, and the specific stay as against the Receiver in paragraph 11.

40 It is not unheard of that *CCAA* proceedings simply segue into receivership proceedings with little regard to or change in the relief granted in court orders in terms of the effect of those orders on third parties. However, a receivership is a fundamentally different type of proceeding and the objectives to be achieved in each type of proceeding must be considered in terms of how third parties are to be affected. That is not to say that a stay of proceedings against third parties will never be appropriate in a receivership; rather, the court must be cognizant, as was stated in *Re Woodward's*, that the stay power should be used cautiously, and there must be some cogent reason underlying the interference with the rights of those third parties in either a *CCAA* or receivership proceeding.

41 That brings me more specifically to the Termination Order which must be considered alongside the Receivership Order. What can be gleaned from both these orders, when considered in the context of the Initial Order, is that counsel did what was expected of them, in that they carefully considered what relief was appropriate going forward, with or without amendment, and what relief should be terminated. This was the substance of the hearing on June 28, 2013 when the two orders were granted.

42 It is significant that paragraph 15 of the Initial Order contained a broader stay protection for Great Basin than the stay in the Receivership Order since it provided for a stay "against or in respect of [Great Basin] or the Monitor, or affecting *the Business* or the Property" [emphasis added]. Even with this broader stay protection, the Initial Order contained a separate stay of proceedings against directors and officers at paragraph 22, which supports the interpretation that the broader stay did not provide this protection to the officers and directors.

43 In contrast, the Receivership Order included more limited stay protection for Great Basin's Property, which need only have been acquired for or used in relation to its business. It did not, as did the Initial Order, refer to the stay of proceeding in relation to any action that might affect Great Basin's "Business". This is understandable since it was expected that Great Basin would continue its "Business" in the *CCAA* proceedings: Initial Order at para. 4. This is also consistent with the evidence at the June 28, 2013 hearing that Great Basin had ceased to conduct any business by the time of the receivership.

44 Finally, it cannot be ignored that there was neither an application for nor an order for a separate stay of proceedings against the directors and officers in the Receivership Order as there was in the Initial Order. To the opposite effect, that provision was specifically terminated by the Termination Order. I agree with the Applicant Creditors that this change must be given some meaning. The directors and officers assert that they were not represented by counsel at the June 28, 2013 hearing. However, it must be inferred that they were well-aware of the protections afforded to them by reason of the *CCAA* proceedings (including the specific stay and the granting of the Directors' Charge), and that they either were or could have been, with some due diligence, aware of how matters were to be transitioned to the receivership.

45 At the very least, their knowledge of the expiry of the director and officer insurance policy, coupled with their resignations at the same time, would have highlighted to them that changes were afoot in terms of their participation in the proceedings and the protections that they had enjoyed to that time.

(ii) Language of the Receivership Order

46 It is clear enough that the Receivership Order does not include any express language imposing a stay of proceedings in favour of Great Basin's directors and officers. This is in contrast to paragraph 22 of the Initial Order.

47 Counsel for the directors and officers rely on the wording of paragraph 12 of the Receivership Order in arguing that there is a stay of proceedings "in respect of" both Great Basin and the Property, as defined. They contend that this wording is broad enough to include the Action now commenced by the Applicant Creditors.

48 In *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743 (S.C.C.), at 751, Major J. discussed the Court's earlier consideration of the phrase "in respect of":

> [A plain] reading is supported by Dickson J.'s interpretation of almost identical language in *Nowegijick v. The Queen* [1983] 1 S.C.R. 29, at p. 39:
>
> > The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters. [Emphasis added.]

49 The extent of the scope of that phrase was, however, tempered by the later comments of the Court in *Sarvanis v. Canada*, 2002 SCC 28 (S.C.C.):

> [22] It is fair to say, at the minimum, that the phrase "in respect of" signals an intent to convey a broad set of connections. The phrase is not, however, of infinite reach. Although I do not depart from Dickson J.'s view that "in respect of" is among the widest possible phrases that can be used to express connection between two legislative facts or circumstances, the inquiry is not concluded merely on the basis that the phrase is very broad.

Further, the Court in *Sarvanis* discussed that the phrase "in respect of" must be considered by "looking to the context in which the words are found": see paras. 23-26.

50 What then is the connection between the terms of the Receivership Order, being Great Basin and its Property, and the Action?

51 Firstly, the directors and officers argue that the Action is "in respect of" Great Basin because the allegations concern the corporate actions of Great Basin, specifically as to the issuance of the 2009 prospectus by which the misrepresentations were said, at least in part, to have been made. As I have outlined above, the substance of the defences raised in the Action is that the directors and officers were acting in the course of their duties in those capacities and that, therefore, any misrepresentations are the misrepresentations of Great Basin and not of the directors and officers personally.

52 Specifically, the officers and directors contend that the officer and director defendants in the Action could easily be replaced by simply naming Great Basin as a defendant given the causes of action advanced. While that may be true, one might wonder about the utility of doing so since the Applicant Creditors obviously have a more direct cause of action against Great Basin given the creditor/debtor relationship that currently exists.

53 The reality is that Great Basin is not named as a defendant in the Action even though it could have been.

54 Further, I appreciate that the officers and directors have substantive defences to the Action. Those defences include that the directors and officers were only acting in the course of their duties and that they acted in a manner consistent with what the law requires. Negligence claims will be met with the contention that the business judgment rule applies; allegations of breach of fiduciary and statutory duties will be met with the contention that their duties are owed to Great Basin, not to the Applicant Creditors as creditors, or that the claims are statute-barred.

55 Even so, a plain reading of the pleadings in the Action supports the view that the allegation is that the directors and officers are *personally* liable for the actions or omissions by each of them. Accordingly, while many of the factual circumstances upon which those allegations are made involve Great Basin, that does not mean that the Action is "in respect of" Great Basin.

56 As the Applicant Creditors contend, if the language "in respect of" a corporate debtor is to be interpreted so broadly to encompass such claims against its directors and officers arising from their actions in that capacity, then a separate stay of proceedings against directors and officers (as was granted in the Initial Order) would never be required.

57 The argument of the directors and officers is also not assisted by the circumstances of the trust indenture issued by Great Basin that provided that there would be no recourse or personal liability against others, including directors and officers. Again, that document may form an important plank of the directors' and officers' defence against personal liability, but the fact that Great Basin issued that trust indenture does not mean that there is an inextricable connection between Great Basin and the Action.

58 Secondly, the directors and officers argue that their claim is "in respect of" Great Basin's Property, as defined in the Receivership Order. I would observe at the outset that the definition of Property in the Receivership Order is considerably narrower than that found in the Initial Order. As I will discuss below, that is an important factor in many aspects, including in interpreting the scope of the stay of proceedings imposed in both the *CCAA* and receivership proceedings.

59 The directors and officers also argue that this claim is "in respect of" Great Basin's Property arising from the circumstances of the indemnity agreement that Great Basin executed in favour of the directors and officers. However, if the Applicant Creditors are successful in the Action, they will recover judgment against the directors and officers personally, not against Great Basin to the extent that it may recover from its Property. At best, the indemnity agreement forms an independent contractual basis upon which the directors and officers might seek recovery from Great Basin. I agree that a third-party action by the directors and officers against Great Basin would obviously engage the stay of proceedings found in the Receivership Order. It seems clear enough why no such claim has been advanced, given that the directors and officers would in any event be unlikely to recover any judgment obtained given the substantial losses of even the secured creditors.

60 The directors and officers argue that the Action is "in respect of" Great Basin's Property since the Directors' Charge was continued over the Property by the terms of the Termination Order and the Receivership Order. This represents a more substantial connection between the Action and Great Basin's Property than the above arguments, but is answered by the same points raised in relation to the indemnity. Again, this is an independent claim that might be advanced by the directors and officers against Great Basin and the Property. The fact that the directors and officers might in the future advance claims against the Property secured by the Directors' Charge, does not change the characterization of the claims of the Applicant Creditors which are not against Great Basin's Property.

61 In these circumstances, I cannot discern any connection or relationship between the relief sought in the Action and Great Basin and the Property, as defined in the Receivership Order. A plain reading of the Receivership Order evidences that the stay of proceedings was intended to maintain order in the realization proceedings that were then to be conducted by the Receiver in liquidating the assets of Great Basin. No issues are raised in the Action that directly affect the process by which that liquidation is to be accomplished by the Receiver.

(iii) Applicable Circumstances

62 Much of what I have discussed above includes the particular circumstances that were in existence leading up to the June 2013 hearing when the relief sought was granted in the Receivership Order.

63 To summarize, the *CCAA* proceedings had ceased to serve any purpose in that no restructuring was on the horizon. The only activities being conducted at the end were the sales of the gold-mining assets, and it was argued before the court that the proper person to conduct those later activities was a receiver. In that vein, the directors and officers were set to depart the scene in that their services were no longer required.

64 Indeed, upon the court order appointing the Receiver, the powers of the directors and officers ceased: see *Business Corporations Act*, S.B.C. 2002, c. 57, s. 105.

65 In that sense, the rationale behind continuing the stay of proceedings in favour of the directors and officers evaporated. There remained no useful purpose in continuing the stay in their favour. The matter of prejudice was not particularly argued before the court on June 28, 2013. However, in the main, the court would have intuitively recognized that a third party having a claim against the directors and officers would be prejudiced by the continuation of the stay and no corresponding prejudice was asserted by the directors and officers in terms of discontinuing the stay.

66 To put it another way, no evidence was presented upon which the court could have exercised its discretion in terms of continuing the extraordinary remedy of preventing actions being brought against Great Basin's directors and officers in the changed circumstances at play in June 2013.

67 The directors and officers place considerable reliance on the reasoning and results found in *Sutherland v. Reeves*, 2014 BCCA 222 (B.C. C.A.). The court in that case had appointed a receiver, not to liquidate assets to pay debt, but to wind down the business and affairs of Tangerine, a limited partnership. Mr. Sutherland and Mr. Reeves, the main participants in the limited partnership, had substantial disputes concerning Tangerine's affairs. A stay of proceedings was imposed "in respect of" Tangerine and its property (as defined). Later still, Mr. Sutherland filed an action against Mr. Reeves alleging fraud in relation to the cancellation of shares in the general partner company and termination of a management services agreement. The Court of Appeal found that the interpretation of the stay of proceedings found in the receivership order should have prevented the filing of the later action.

68 While the analysis of the Court of Appeal is of some assistance on this application, I consider that the unique circumstances found in *Sutherland* do not support a similar result here in that they provided an entirely different context in which to interpret a very different receivership order.

69 Firstly, the definition of "Property" in the receivership order in *Sutherland* was stated by the court to be "undeniably broad" in that it referred to the "business, affairs, undertaking and assets" of Tangerine, which appears to have been operating as a business: para. 35. This expansive definition was clearly intended to encompass the entire business activities of Tangerine which had become dysfunctional by reason of the relationship of Mr. Sutherland and Mr. Reeves. The broader terms of "business" and "affairs" at issue in *Sutherland* are not found in the Receivership Order, consistent with the lack of business activity of Great Basin and the intention to simply liquidate assets to pay debt.

70 Secondly, it was evident that, although Mr. Sutherland had not named Tangerine as a defendant in his later action, his allegations were, in substance, about the infighting that had led to the receivership order in the first instance. Further, the relief sought included that relating to the shareholdings in Tangerine. The court found that Mr. Sutherland's action inherently involved the affairs and business of Tangerine, or was "in respect of" Tangerine: para. 36.

71 Thirdly, the Court also found that Mr. Sutherland was obviously trying to do indirectly what he had been prevented from doing directly. His later action was the same as had been previously pled even before the receivership order and, as such, the order was characterized to capture such allegations: para. 37.

72 What can be inferred from the decision in *Sutherland* is that the court was attempting to bring order to a complex corporate situation which was chaotic and hamstrung by fighting between the parties. Mr. Sutherland was attempting to thwart that objective and his action had the potential to negatively affect the efforts of the receiver in dealing with the assets and business. In that sense, the objective behind the receivership order was more akin to the situation addressed by the Initial Order. Here, by the time of the Receivership Order, order had been achieved and the overall objective was to empower the Receiver, not the directors and officers, to continue the liquidation process.

73 What does resonate from the decision in *Sutherland*, but by way of distinction, is the court's conclusion that Mr. Sutherland's later action threatened to disturb the receivership process: para. 48. In contrast, there was no evidence at the time of the hearing on June 28, 2013 that the stay of proceedings in favour of the officers and directors was needed to protect the receivership process.

74 On a final note, the court in *Sutherland* noted that Mr. Sutherland was only being prevented from bringing his action until the end of the receivership process: para. 50. By that time, the salutary effect of the stay would have been achieved and there would have been no longer any need to prejudice Mr. Sutherland by its terms.

75 Similarly, here, the salutary effect of the stay in favour of Great Basin's directors and officers ended upon the granting of the Receivership Order.

Conclusion

76 I declare that the stay of proceedings in paragraph 12 of the Receivership Order does not apply to the Action for the above reasons. The Applicant Creditors are awarded their costs of the application as against the directors and officers on Scale B.

Application granted.

TAB 5

2009 CarswellOnt 4806
Ontario Superior Court of Justice [Commercial List]

Nortel Networks Corp., Re

2009 CarswellOnt 4806, 179 A.C.W.S. (3d) 801, 57 C.B.R. (5th) 232, 76 C.C.P.B. 307

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 NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION (Applicants)

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

Morawetz J.

Heard: June 16, 2009
Judgment: August 18, 2009
Docket: 09-CL-7950

Counsel: Alan Merskey for Nortel Networks Corp. et al
Lyndon Barnes, Adam Hirsh for Board of Directors of Nortel Networks Corporation, Nortel Networks Limited
Leanne Williams for Flextronics Inc.
J. Pasquariello for Monitor, Ernst & Young Inc.
B. Wadsworth for CAW-Canada
Thomas McRae for Recently Severed Calgary Employees
A. McKinnon for Former Employees
Mary Arzoymanidis for Bell Canada
Alex MacFarlane for Unsecured Creditors' Committee
Gavin Finlayson for Noteholders
Tina Lie for Superintendent of Financial Services of Ontario
Steven Graff, Ian Aversa for Current and Former Employees

***Morawetz J.*:**

1 This endorsement relates to two motions.

2 The first is brought by the Applicants for an order extending the stay contained at paragraphs 14 - 15 and 19 of the Amended and Restated Initial Order (the "Initial Order") to the individual defendants (the "Named Defendants") in the action commenced in the United States District Court, Middle District of Tennessee, Nashville District (the "ERISA Litigation").

3 The second is brought by the current and former employees of Nortel Networks Inc. ("NNI") who are or were participants in the long-term investment plan sponsored by NNI (the "Moving Parties") for an order, if necessary, lifting the stay of proceedings provided for in the Initial Order for the purpose of allowing the Moving Parties to continue with the ERISA Litigation.

4 For the following reasons, the motion of the Applicants is granted and the motion of the Moving Parties is dismissed.

Background

5 The motion of the Applicants is supported by the Board of Directors of Nortel Networks Corp. ("NNC") and Nortel Networks Ltd. ("NNL"), the Monitor, the Unsecured Creditors' Committee and the Bondholders.

6 The ERISA Litigation involves the alleged breach by the Named Defendants of their statutory duties under the *Employee Retirement Income Security Act, 1974* ("ERISA") regarding the management of NNI's defined contribution retirement plan (the "Plan"). It is alleged that, among others, the Named Defendants breached their duty by imprudently offering NNC stock for investment in the Plan.

7 The ERISA Litigation is currently at the discovery stage, which entails a review and production of millions of pages of electronic documents and numerous depositions. The ERISA Litigation plaintiffs are entitled to conduct up to 60 depositions.

8 Counsel to the Moving Parties explained that the defendants in ERISA cases are typically the individuals who managed the plan, being the "fiduciaries" in the language of ERISA. The fiduciaries may include the corporate entity itself, senior management employees, human resources employees and/or other personnel, entities or persons outside the company, or any combination of same. Counsel submits that under ERISA, the status of an individual as a fiduciary depends on the plan documents and the actual management and practice relating to the plan, not an individual's official corporate status as an officer and/or director of the plan's sponsor.

9 Although the intent of the ERISA action may be aimed at the individuals in their capacity as independent ERISA fiduciaries, it seems to me that the Second Amended Complaint ("SAC") as filed in the action has a much broader impact.

10 At paragraph 15 of his factum, Mr. Barnes makes the following submission:

> It is simply untenable to suggest that the D&O Defendants [referred to herein as the "Named Defendants"] are only being sued in their capacity as independent ERISA fiduciaries. This claim is belied by the Plaintiff's own pleadings. The Second Amended Consolidated Class Action Complaint ("SAC") repeatedly asserts claims against the Named Defendants that specifically relate to the obligations of the company, where the defendants are alleged to be liable in their capacities as directors or officers. For example, the Plaintiffs allege that Nortel "necessarily acts through its Board of Directors, officers and employees", and assert that the "directors-fiduciaries act on behalf of [Nortel]". The SAC further claims that the Named Defendants are liable as "co-fiduciaries" alongside the company. It is inescapable that some of the claims for which the plaintiffs seek to recover against the individual Named Defendants relate to obligations of Nortel, because, as is evident from multiple allegations in the SAC, Nortel can only act derivatively through its directors and officers.

11 Mr. Barnes cites references to the SAC at page 5, paragraph 14; page 6, paragraph 19; pages 24, 52, 54 and paragraphs 50 - 109, 114; and pages 26 and 35 and paragraphs 58 and 66.

12 Mr. Barnes goes on to submit that as a result, the allegations in the ERISA Litigation against the Named Defendants and the allegations against the corporate defendants are invariably intertwined, raising several identical questions of fact and law.

13 Mr. Barnes also made reference to paragraph 147 of the SAC which sets out the additional theory of liability against some of the Defendants and alleges in the alternative that the said defendants are liable as non-fiduciaries who knowingly participated in the fiduciary breaches of the other Plan fiduciaries described herein, for which said Defendants are liable pursuant to ERISA.

14 Although the ERISA Litigation may be aimed at the Named Defendants in their capacities as "fiduciaries" it seems to me that this distinction is somewhat blurred such that it is arguable that the Named Defendants only have fiduciary status under ERISA as a consequence of their position as directors or officers of the company.

15 The Moving Parties concede that the ERISA Litigation against NNI, NNC and NNL is stayed as a result of the Chapter 11 proceeding, the Initial Order, and the Chapter 15 proceedings. The Moving Parties seek to continue the action as against the Named Defendants and carry on with the discovery process.

16 The Moving Parties stated intention in continuing with the ERISA Litigation is to pursue insurance proceeds. The Moving Parties have filed evidence of an offer to settle made within the limits of the applicable policies but the offer has not been accepted.

17 The Moving Parties take the position that the ERISA Litigation is not stayed as against the Named Defendants pursuant to the stay because the Named Defendants are "not being sued in their capacity as officers and directors of the two Canadian corporations, but in their capacities as fiduciaries of an American 401(k) Plan". The Applicants take the position that it is, however, as a result of their employment by the Applicants that the Named Defendants had any capacity as fiduciaries for an American 401(k) Plan.

18 The Moving Parties take the position that a continuation of the ERISA Litigation will have a minimal effect on the Applicants because, among other things:

(a) the documentary discovery can be managed by the lawyers without the extensive involvement of any Nortel personnel;

(b) the bulk of documentary discovery issues have been worked out;

(c) they will accommodate individual defendants involved in the restructuring efforts by scheduling the remaining steps in the ERISA Litigation so that they are not distracted from the restructuring efforts; and

(d) they will agree that any determination or adjudication shall be without prejudice to the Canadian applicants in the claims process.

19 The Applicants take the position that they do not wish to be drawn into the conflict over the insurance proceeds as this would result in prejudice to their restructuring efforts. At this time, the Applicants are at a critical stage of their restructuring and submit that their efforts should be directed towards the restructuring.

20 Mr. Barnes submits that, if the ERISA Litigation is allowed to continue, it will detract significant attention and resources from Nortel's restructuring. The Moving Parties are seeking continued discovery of millions of pages of electronic documents in the company's possession and are expected to conduct dozens depositions. Mr. Barnes further submits it is simply not the case that continued litigation has a minimal effect on the company as negotiating a discovery agreement and collecting and providing the documents in question requires considerable time and resources in preparing past and current directors and officers for the depositions which will necessitate significant attention and focus for management and the board. In addition, he submits that addressing the strategic issues raised by the litigation, including the prospect of settlement, requires the attention of management and the board. Further, as the questions of fact and law at issue in the ERISA Litigation are practically identical as between the corporate defendants and the D&O Defendants, he submits there is a serious risk of the record being tainted if the action proceeds without the Applicants' participation, which could have corresponding effects on any claims process.

21 It is also necessary to take into account the effect of a stay of the ERISA Litigation on the Moving Parties.

22 As counsel to the Applicants points out, the Moving Parties have also stated that their primary interest in continuing the ERISA Litigation is to pursue an insurance policy issued by Chubb. The Moving Parties have noted that the insurance proceeds are a "wasting policy", starting at U.S. $30 million and declining for defence costs.

23 Counsel to the Applicants submits that in the event that the stay continues, few defence costs will be incurred against the insurance proceeds and the Moving Parties will maintain the value of their within limits offer.

24 Further, as Mr. Barnes points out, staying the entire ERISA Litigation would not significantly harm the Moving Parties as it does not preclude their action, but merely postpones it.

Analysis

25 Section 11.5 of the CCAA authorizes the court to make an order under the CCAA to provide for a stay of proceedings against directors. Section 11.5(1) states:

> 11.5(1) An order made under section 11 may provide that no person may commence or continue any action against a director of the debtor company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company where directors are under any law liable within their capacity as directors for the payment of such obligations, unless a compromise or arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

26 Section 19 of the Initial Order provides as follows:

> THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, unless a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicant or this Court (the "D&O" stay).

27 It is also argued by both counsel to the Applicants and the Board that this statutory power is augmented by the court's inherent jurisdiction to grant a stay in appropriate circumstances. (See: *SNV Group Ltd., Re*, [2001] B.C.J. No. 2497 (B.C. S.C.).) Counsel to the Applicants and the Board also submit that the CCAA is remedial legislation to be construed liberally and in these circumstances, it should be recognized that the purpose of the stay is to provide a debtor with its opportunity to negotiate with its creditors without having to devote time and scarce resources to defending legal actions against it. It is further submitted that given that a company can only act through its management and board, by extension, the purpose of the stay provision is to provide management and the board with the opportunity to negotiate with creditors and other stakeholders without having to devote precious time, resources and energy to defending against legal actions.

28 Mr. Barnes submits that the ERISA Litigation falls squarely within the terms of the D&O Stay as it is a claim against former and current directors and officers under a U.S. statute that arose prior to the date of filing. Further, the Named Defendants are only exposed to this liability as a consequence of their position with the company.

29 It is on this last point that Mr. Graff, on behalf of the Moving Parties, takes issue. He submits that the litigation is not stayed against the individual defendants because they are not being sued in their capacities as officers and directors of two Canadian corporations, but in their capacities as fiduciaries of an American 401(k) Plan. As such, he submits that the stay ought not to extend to the ERISA Litigation. He submits that the named defendants' liability is not a derivative of the Applicants' liability, if any, as a fiduciary. He further submits that the corporate defendants have claimed in the ERISA Litigation that the corporate entities are not fiduciaries at all and need not even have been named in the ERISA Litigation.

30 Mr. Graff further submits that the Applicants' submission and the Board's submission is flawed and that following the reasoning of the Court of Appeal in *Morneau Sobeco Ltd. Partnership v. Aon Consulting Inc.* (2008), 40 C.B.R. (5th) 172 (Ont. C.A.), the fact that the management of the Plan has always been performed by the Applicants' employees, officers and directors is moot. Mr. Graff submits that the *Morneau* case is on "all fours" with this case.

31 With respect, I do not find that the *Morneau* case is on "all fours" with this case. Mr. Graff submits that in *Morneau*, the Court of Appeal opined on the applicable legal questions: When are directors and officers not directors and officers?

32 In my view, while the Court of Appeal may have commented on the issue referenced by Mr. Graff, it was not in a context which is similar to that being faced on this motion. In *Morneau*, the Court of Appeal was faced with an interpretation issue arising out of the scope and terms of a release. The consequences of an interpretation against Morneau would have resulted in a bar of the claim. This distinction between *Morneau* and the case at bar is, in my view, significant.

33 The *Morneau* case can also be distinguished on the basis that Gillese J.A. was examining a release and, in particular, how far that release went. That is not an issue that is before me. There is no determination that is being made on this motion that will affect the ultimate outcome of the ERISA Litigation. There is no issue that a denial of the stay will result in the action being barred. Rather, the effect of the stay would be merely to postpone the ERISA Litigation.

34 This is not a Rule 21 motion and accordingly, the pleadings do not have to be reviewed on the basis as to whether it is "plain, obvious and beyond doubt" that the claim could not succeed. In this case, there is no "bright line" in the pleadings. As I have noted above, the allegations against the Named Defendants are not restricted to the defendants acting in their capacity as fiduciaries. In expanding the scope of the litigation to include broad allegations as against the directors, the Moving Parties have brought the ERISA Litigation, in my view, within the terms of the D&O Stay.

35 Having determined that the ERISA Litigation falls within the terms of the D&O Stay, the second issue to consider is whether the stay should be lifted so as to permit the ERISA Litigation to continue at this time.

36 In my view, the Nortel restructuring is at a critical stage and the energies and activities of the Board should be directed towards the restructuring. I accept the argument of Mr. Barnes on this point. To permit the ERISA Litigation to continue at that time would, in my view, result in a significant distraction and diversion of resources at a time when that can be least afforded. It is necessary in considering whether to lift the stay, to weigh the interests of the Applicants against the interests of those who will be affected by the stay. Where the benefits to be achieved by the applicant outweighs the prejudice to affected parties, a stay will be granted. (See: *Woodward's Ltd., Re* (1993), 17 C.B.R. (3d) 236 (B.C. S.C.).)

37 I also note the comments of Blair J. (as he then was) in *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 (Ont. Gen. Div.) at paragraph 24 where he stated:

> In making these orders, I see no prejudice to the Campeau plaintiffs. The processing of their action is not being precluded, but merely postponed. Their claims may, indeed, be addressed more expeditiously than might have otherwise been the case, as they may be dealt with - at least for the purposes of that proceeding in the CCAA proceeding itself.

38 The prejudice to be suffered by the Moving Parties in the ERISA Litigation is a postponement of the claim. In view of the fact that the ERISA Litigation was commenced in 2001, I have not been persuaded that a further postponement for a relatively short period of time will be unduly prejudicial to the Moving Parties.

Disposition

39 Under the circumstances, I have concluded that the D&O Stay under the Initial Order does cover the D&O Defendants in the ERISA Litigation and that it is not appropriate to lift the stay at this time.

40 It is recognized that the ERISA Litigation will proceed at some point. The plaintiffs in the ERISA Litigation are at liberty to have this matter reviewed in 120 days.

41 To the extend that I have erred in determining that the ERISA Litigation is not the type of action directly contemplated by the D&O Stay, I would exercise this Court's inherent power to stay the proceedings against non-parties to achieve the same result.

Motion by applicants granted; motion by moving parties dismissed.

TAB 6

2016 ONSC 5429
Ontario Superior Court of Justice [Commercial List]

Pacific Exploration & Production Corp., Re

2016 CarswellOnt 13733, 2016 ONSC 5429, 270 A.C.W.S. (3d) 243, 40 C.B.R. (6th) 64

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PACIFIC EXPLORATION & PRODUCTION CORPORATION, PACIFIC E&P HOLDINGS CORP., META PETROLEUM CORP., PACIFIC STRATUS INTERNATIONAL ENERGY LTD., PACIFIC STRATUS ENERGY COLOMBIA CORP., PACIFIC STRATUS ENERGY S.A., PACIFIC OFF SHORE PERU S.R.L., PACIIFC RUBIALES GUATEMALA S.A., PACIFIC GUATEMALA ENERGY CORP., PRE-PSIE COÖPERATIF U.A., PETROMINERALES COLOMBIA CORP., and GRUPO C&C ENERGIA (BARBADOS) LTD. (Applicants)

Hainey J.

Heard: August 23, 2016
Judgment: August 29, 2016
Docket: CV-16-11363-00CL

Counsel: Tony Reyes, Virginie Gauthier, Alexander Schmitt, Orestes Pasparakis, for Applicants
John Finnigan, Rebecca Kennedy, for Monitor, PricewaterhouseCoopers Inc.
Scott Bomhof, Lily Coodin, for Bank of America (Agent), for certain Bank Lenders
Brendan O'Neill, Celia Rhea, Ryan Baulke, for Ad Hoc Committee
Timothy Pinos, Joseph Bellissimo, for Shareholder Consortium
Jennifer Whincup, for BNY Mellon
Michael Rotsztain, for Wilmington Trust, N.A. & Bank Syndicate
Caitlin Fell, Andy Kent, for Plan Sponsor, Catalyst Capital Group Inc.
Mark Gelowitz, for Independent Committee
John Salmas, for Blackhill Advisors, CRO George Michailopoulos, unrepresented shareholder

Subject: Civil Practice and Procedure; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.i "Fair and reasonable"
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.iii Creditor approval
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Corporate debtors formed plan of compromise and arrangement and restructuring for corporation and its subsidiaries — Plan involved reducing corporation's indebtedness by $5.1 billion and annual interest by $258 million, and maintaining operation as going concern — Debtors brought motion for order sanctioning plan of compromise and arrangement and extending stay period — Motion granted — Plan was supported by approximately 98 per cent of creditors — Debtors had acted in good faith and with due diligence and had strictly complied with requirements of Companies' Creditors Arrangement Act and court orders — Plan was fair and reasonable because it represented reasonable and fair balancing of interests of all parties in light of other commercial alternatives available — Plan was in public interest as it continued corporation and subsidiaries as going-concern thereby preserving employment for thousands of people and generating economic activity in many local communities — Approval was granted for third-party releases, stay for non-applicant parties and extension of stay period.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — Creditor approval

Corporate debtors formed plan of compromise and arrangement and restructuring for corporation and its subsidiaries — Plan involved reducing corporation's indebtedness by $5.1 billion and annual interest by $258 million, and maintaining operation as going concern — Debtors brought motion for order sanctioning plan of compromise and arrangement and extending stay period — Motion granted — Plan was supported by approximately 98 per cent of creditors — Debtors had acted in good faith and with due diligence and had strictly complied with requirements of Companies' Creditors Arrangement Act and court orders — Plan was fair and reasonable because it represented reasonable and fair balancing of interests of all parties in light of other commercial alternatives available — Plan was in public interest as it continued corporation and subsidiaries as going-concern thereby preserving employment for thousands of people and generating economic activity in many local communities — Approval was granted for third-party releases, stay for non-applicant parties and extension of stay period.

Table of Authorities

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 6 — considered

s. 11 — considered

s. 22 — considered

MOTION by corporate debtors for order sanctioning plan of compromise and arrangement and order extending stay period.

***Hainey J.*:**

Background

1 The applicants seek an order (the "Plan Sanction Order") [1] :

(a) sanctioning the applicants' Plan of Compromise and Arrangement dated June 27, 2016, as amended to August 17, 2016 (the "Plan") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*"); and

(b) extending the Stay Period to and including October 31, 2016.

2 According to the applicants, the Plan and the restructuring of Pacific Exploration & Production Corporation ("Pacific") and its subsidiaries ("Pacific Group") to be implemented thereby (the "Restructuring Transaction") results from significant efforts by the applicants to achieve a resolution of their financial condition. If implemented, the Restructuring Transaction will reduce Pacific's indebtedness by approximately US $5.1 billion, reduce its annual interest expense by approximately US $258 million and leave the US $250 million of Exit Notes as the only long-term debt in Pacific's capital structure other than facilities to support letters of credit or oil and gas hedging. The Plan will maintain Pacific Group as a going concern for the benefit of all stakeholders, preserving employment and economic activity in the many communities in which it operates.

3 The applicants and their boards of directors believe that the Restructuring Transaction achieves the best possible outcome for the Pacific Group and its stakeholders in the circumstances and achieves results that are not attainable under any other scenario.

4 The Plan is supported by the Catalyst Capital Group Inc., the Plan Sponsor, the Ad Hoc Committee, the Consenting Lenders, the other parties to the Support Agreement (who together with the Ad Hoc Committee and supporting Bank Lenders, hold approximately 84% by value of all Bank Claims and Noteholder Claims) and the Monitor.

5 At a creditors' meeting held on August 17, 2016, the Plan was approved by 98.4% (by number) and 97.2% (by dollar value) of Affected Creditors voting in person or by proxy at the meeting.

6 The Monitor supports the sanctioning of the Plan and believes it is fair and reasonable and that it represents the best option available to the Pacific Group and the Affected Creditors.

7 For these reasons the applicants submit that the Plan should be sanctioned pursuant to s. 6 of the *CCAA*.

Adjournment Request

8 On August 16, 2016, one week before the scheduled hearing of this motion, a group of stakeholders (the "Shareholder Consortium") put forward a recapitalization and refinancing proposal (the "Alternative Proposal") which the Shareholder Consortium submits provides the applicants and its stakeholders with a superior alternative to the Plan sought to be sanctioned on this motion.

9 The applicants disagree that the Alternative Proposal is superior to the Plan and have formally rejected it.

10 The Shareholder Consortium requested that I adjourn the motion to permit further consideration of the Alternative Proposal.

11 The applicants and all other interested parties and stakeholders appearing on the motion strongly opposed the adjournment request and characterized it as a "last minute effort to de-rail the Restructuring Transaction".

12 I agree with this characterization of the Alternative Proposal. There was a process in place to obtain proposals that contained a clear timetable for the submission of proposals which the Shareholder Consortium was well aware of. This last minute Alternative Proposal ignores the timelines that have been in place for many months. Further, the Alternative Proposal has been considered and rejected by the applicants. The adjournment request is denied because I am satisfied that the Plan, which results from extraordinary efforts by the applicants and the other interested parties to arrive at the best result for the Pacific Group and its stakeholders, should not be de-railed at this late stage of the process by the Shareholder Consortium's Alternative Proposal.

Issues

13 I must decide the following issues:

a) Should the Plan be sanctioned?

b) Should the third party releases be approved?

c) Should there be a stay of proceedings in favour of the other Non-Applicant parties?

d) Should the Stay Period be extended to October 31, 2016?

Should the Plan be sanctioned?

14 Section 6 of the *CCAA* provides that a compromise or arrangement is binding on a debtor company and all of its creditors if a majority in number, representing two-thirds in value of the creditors present and voting at a meeting of creditors, approve the compromise or arrangement and the compromise or arrangement has been sanctioned by the court.

15 Pacific's Affected Creditors, in both number and value, voted in favour of the Plan thereby satisfying the first requirement of s. 6 of the *CCAA*. The Monitor has confirmed that 98.4% in number and 97.2% in value of the Affected Creditors voted in favour of the Plan.

16 As the voting requirement under s. 6 of the *CCAA* has been satisfied, I must determine whether to approve and sanction the Plan.

17 The criteria I must consider in determining whether to sanction a *CCAA* plan are as follows:

a) There must be strict compliance with all statutory requirements;

b) All materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorized by the *CCAA*; and

c) The plan must be fair and reasonable.

18 I am satisfied on the record before me that there has been strict compliance with the statutory requirements of the *CCAA*.

19 I am also satisfied that throughout the course of these proceedings the applicants have acted in good faith and with due diligence and they have strictly complied with the requirements of the *CCAA* and the orders of this Court. This is confirmed in the reports of the Monitor.

20 I have concluded that the Plan is fair and reasonable because it represents a reasonable and fair balancing of the interests of all parties in light of the other commercial alternatives available. In assessing the Plan's fairness and reasonableness I am guided by the objectives of the *CCAA* which are "to enable compromises to be made for the common benefit of the creditors and of the company, particularly to keep a company in financial difficulties alive and out of the hands of liquidators". Reorganization, if commercially feasible, is in most cases preferable to liquidation.

21 The factors that I have considered in concluding that the Plan is fair and reasonable include the following:

a) The claims were properly classified pursuant to s. 22 of the *CCAA*;

b) The Plan received overwhelming support from the applicants' creditors;

c) The Monitor is of the view that the applicants' creditors would be worse off if the Plan is not sanctioned;

d) The Plan appears to be the best alternative available under the current circumstances;

e) There is no oppression of the rights of the applicants' creditors under the Plan;

f) Since the applicants' creditors are not being paid in full there is no unfairness to the applicants' shareholders. Their treatment is consistent with the provisions of the *CCAA*;

g) The Plan is in the public interest as it continues the Pacific Group as a going-concern thereby preserving employment for thousands of people and generating economic activity in the many local communities in which it operates.

22 For all of these reasons I am satisfied that the Plan should be sanctioned.

Should the third party releases be approved?

23 It is well established that courts have jurisdiction to sanction plans pursuant to the *CCAA* that contain releases in favour of third parties. Courts will generally approve third party releases in the context of plans of arrangement where the releases are rationally tied to the resolution of the debtor's claims and will benefit creditors generally. I am satisfied in this case that the third party releases should be approved. In arriving at this conclusion I have considered the following factors:

a) Whether the parties to be released from claims are necessary to the Restructuring Transaction;

b) Whether the claims released are rationally connected to the purpose of the Plan and necessary for it to succeed;

c) Whether the Plan would fail without the releases;

d) Whether the third parties being released contributed in a tangible and realistic way to the Plan;

e) Whether the releases benefit the debtors as well as the creditors generally;

f) Whether the creditors who voted on the Plan had knowledge of the nature and effect of the releases; and

g) Whether the releases are fair and reasonable and not overly broad.

24 The releases were negotiated as part of the overall framework of the compromises contained in the Plan. They facilitate the successful completion of the Plan and the Restructuring Transaction. The releases are a significant part of the various compromises that were required to achieve the Plan and are a necessary element of the global consensual restructuring of the applicants. The releases are therefore rationally related to the purpose of the Plan and are necessary for the successful restructuring of the applicants. They were also well-publicized and there does not appear to be any objections to them.

25 For these reasons the third party releases are approved.

Should there be a stay of proceedings of the other Non-Applicant parties?

26 Section 11 of the *CCAA* provides the court with authority to impose a stay of proceedings with respect to non-applicant parties. In determining whether to grant the Non-Applicant Stay requested I must be satisfied that it is fair and reasonable in the circumstances. I am satisfied that I should grant the Non-Applicant Stay for the following reasons:

a) A significant portion of the value of the Pacific Group is held in the Non-Applicants and their business and operations are significantly intertwined and integrated with those of the applicants.

b) The exercise of the rights stayed by the Non-Applicant Stay which arise out of the applicants' insolvency or the implementation of the Plan would have a negative impact on the applicants' ability to restructure, potentially jeopardizing the success of the Plan and the continuance of the Pacific Group;

c) The granting of the Non-Applicant Stay is a condition of the Plan. If the applicants are prevented from concluding a successful restructuring with their creditors, the economic harm would be far-reaching and significant;

d) Failure of the Plan would be even more harmful to customers, suppliers, landlords and other counterparties whose rights would otherwise be stayed under the Non-Applicant Stay; and

e) If the Plan is approved, the applicants will continue to operate for the benefit of all of their stakeholders, and their stakeholders will retain all of their remedies in the event of future breaches by the applicants or breaches that are not related to the released claims.

27 For these reasons the Non-Applicant Stay is granted.

Should the stay period be extended to October 31, 2016?

28 The applicants have requested an extension of the stay period until and including October 31, 2016. The applicants anticipate that this extension will give them sufficient time to complete all of the transactions, documents and steps required to implement the Plan and to emerge successfully from these *CCAA* proceedings.

29 I am satisfied that under the circumstances the stay extension requested is appropriate. I am prepared to grant the requested stay extension for the following reasons:

a) The applicants have made substantial progress towards completion of the Restructuring Transaction;

b) The applicants require the ongoing benefit of the stay proceedings in order to complete the *CCAA* proceedings including the implementation of the Plan;

c) The applicants intend to implement the Plan as expeditiously as possible;

d) The requested extension is not overly lengthy and avoids the additional time and expense that would be incurred if the applicants are required to return to court in the interim;

e) The applicants' cash flow forecast projects that they will have access to all necessary financing during the extended stay period;

f) The applicants have acted in good faith and with due diligence towards the completion of the Restructuring Transaction and the implementation of the Plan; and

g) The Monitor, the Ad Hoc Committee, the steering committee of Bank Lenders and the Plan Sponsor all support the requested stay extension.

30 A stay is therefore granted up to and including October 31, 2016.

Conclusion

31 For the reasons outlined above the applicants' motion is granted.

32 It should be noted that the parties to the Restructuring Support Agreement reserve whatever rights they may have under that agreement following the sanction of the Plan. Nothing contained in the orders granted today, or s. 6.3 (a) of the Indemnity Agreement approved thereby, is a determination of what those rights may be.

Motion granted.

Footnotes

1 I have used the same defined terms in my reasons for judgment as are contained in the applicants' factum.

TAB 7

2013 ONSC 5461
Ontario Superior Court of Justice [Commercial List]

Tamerlane Ventures Inc., Re

2013 CarswellOnt 12213, 2013 ONSC 5461, 232 A.C.W.S. (3d) 32, 6 C.B.R. (6th) 328

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of a Plan of Compromise or Arrangement of Tamerlane Ventures Inc. and Pine Point Holding Corp.

Newbould J.

Heard: August 23, 2013
Judgment: August 28, 2013
Docket: CV-13-10228-00CL

Counsel: S. Richard Orzy, Derek J. Bell, Sean H. Zweig for Applicants
Robert J. Chadwick, Logan Willis for Proposed Monitor, Duff & Phelps Canada Restructuring Inc.
Joseph Bellissimo for Renvest Mercantile Bankcorp Inc.

Subject: Insolvency; Contracts; Corporate and Commercial
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.2 Initial application
XIX.2.b Grant of stay
XIX.2.b.viii Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Miscellaneous
Terms of order — T Inc. and its subsidiaries were engaged in mining activity in Canada and Peru — T Inc. defaulted on loan from secured lender — Parties negotiated consensual filing under Companies' Creditors Arrangement Act (CCAA), under which secured lender agreed to provide DIP financing and to forbear from exercising its rights — DIP loan was to mature approximately four months after date application at bar was heard — Order drafted by parties contained clause preventing extension of stay beyond maturity date of DIP loan unless secured debt and DIP loan were repaid or secured lender and monitor consented (original sunset clause) — T Inc. and one of its subsidiaries brought application for initial order and stay under s. 11 of CCAA — Application granted — There was no doubt that applicants were insolvent and qualified for filing under CCAA and obtaining stay — It was appropriate that stay extend to T Inc.'s American subsidiary, which had guaranteed secured loans, and to T Inc.'s Peruvian subsidiary, which held valuable mining property — Courts have inherent jurisdiction to impose stays against non-applicant third parties where it is important to reorganization and restructuring process, and where it is just and reasonable to do so — Proposed sale and solicitation process and its terms were appropriate, and it was approved — Proposed charges of $300,000 for monitor, its counsel and applicants' counsel, $300,000 for financial advisor and $45,000 for directors were reasonable and were approved — DIP facility and charge was supported by factors listed in s. 11.2(4) of CCAA — At court's direction, parties modified original sunset clause by adding clause that order was subject in all respects to discretion of court — Original sunset clause removed discretion of court to do what it considered appropriate, and counsel were unable to provide any case in which such order had been made.
Table of Authorities
Cases considered by *Newbould J.*:
Bank of Montreal v. Carnival National Leasing Ltd. (2011), 74 C.B.R. (5th) 300, 2011 ONSC 1007, 2011 CarswellOnt 896 (Ont. S.C.J.) — referred to

Canwest Publishing Inc./Publications Canwest Inc., Re (2010), 63 C.B.R. (5th) 115, 2010 CarswellOnt 212, 2010 ONSC 222 (Ont. S.C.J. [Commercial List]) — referred to
Cinram International Inc., Re (2012), 91 C.B.R. (5th) 46, 2012 CarswellOnt 8413, 2012 ONSC 3767 (Ont. S.C.J. [Commercial List]) — considered
Crystallex International Corp., Re (2012), 2012 CarswellOnt 7329, 2012 ONCA 404, 91 C.B.R. (5th) 207, 293 O.A.C. 102, 4 B.L.R. (5th) 1 (Ont. C.A.) — referred to
Lehndorff General Partner Ltd., Re (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275, 1993 CarswellOnt 183 (Ont. Gen. Div. [Commercial List]) — referred to
Sino-Forest Corp., Re (2012), 2012 CarswellOnt 4117, 2012 ONSC 2063 (Ont. S.C.J. [Commercial List]) — considered
SkyLink Aviation Inc., Re (2013), 2013 CarswellOnt 2785, 2013 ONSC 1500 (Ont. S.C.J. [Commercial List]) — considered
Ted Leroy Trucking Ltd., Re (2010), *(*sub nom. *Century Services Inc. v. Canada (A.G.))* [2010] 3 S.C.R. 379, [2010] G.S.T.C. 186, 12 B.C.L.R. (5th) 1, *(*sub nom. *Century Services Inc. v. A.G. of Canada)* 2011 G.T.C. 2006 (Eng.), *(*sub nom. *Century Services Inc. v. A.G. of Canada)* 2011 D.T.C. 5006 (Eng.), *(*sub nom. *Leroy (Ted) Trucking Ltd., Re)* 503 W.A.C. 1, *(*sub nom. *Leroy (Ted) Trucking Ltd., Re)* 296 B.C.A.C. 1, 2010 SCC 60, 2010 CarswellBC 3419, 2010 CarswellBC 3420, 409 N.R. 201, *(*sub nom. *Ted LeRoy Trucking Ltd., Re)* 326 D.L.R. (4th) 577, 72 C.B.R. (5th) 170, [2011] 2 W.W.R. 383 (S.C.C.) — considered

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 11 — considered

s. 11.2(4) [en. 2005, c. 47, s. 128] — considered
Personal Property Security Act, R.S.O. 1990, c. P.10
s. 63 — considered

APPLICATION by insolvent corporations for initial order and stay under s. 11 of *Companies' Creditors Arrangement Act*.

***Newbould J.*:**

1 The applicants applied on August 23, 2013 for protection under the CCAA, at which time an Initial Order was granted containing several provisions. These are my reasons for the granting of the order.

Tamerlane business

2 At the time of the application, Tamerlane Ventures Inc. ("Tamerlane") was a publicly traded company whose shares were listed and posted for trading on the TSX Venture Exchange. Tamerlane and its subsidiaries (collectively, the "Tamerlane Group"), including Pine Point Holding Corp. ("Tamerlane Pine Point"), Tamerlane Ventures USA Inc. ("Tamerlane USA") and Tamerlane Ventures Peru SAC ("Tamerlane Peru") are engaged in the acquisition, exploration and development of base metal projects in Canada and Peru.

3 The applicants' flagship property is the Pine Point Property, a project located near Hay River in the South Slave Lake area of the Northwest Territories of Canada. It at one time was an operating mine. The applicants firmly believe that there is substantial value in the Pine Point Property and have completed a NI 43-101 Technical Report which shows 10.9 million tonnes of measured and indicated resources in the "R-190" zinc-lead deposit. The project has been determined to be feasible and licences have been obtained to put the first deposit into production. All of the expensive infrastructure, such as roads, power lines and railheads, are already in place, minimizing the capital cost necessary to commence operations. The applicants only need to raise the financing necessary to be able to exploit the value of the project, a task made more difficult by, among other things, the problems experienced generally in the mining sector thus far in 2013.

4 The Tamerlane Group's other significant assets are the Los Pinos mining concessions south of Lima in Peru, which host a historic copper resource. The Tamerlane Group acquired the Los Pinos assets in 2007 through one of its subsidiaries, Tamerlane Peru, and it currently holds the mining concessions through another of its subsidiaries, Tamerlane Minera.

5 The Los Pinos deposit is a 790 hectare porphyry (a type of igneous rock) copper deposit. Originally investigated in the 1990s when the price of copper was a quarter of its price today, Los Pinos has historically been viewed as a valuable property. With rising copper prices, it is now viewed as being even more valuable.

6 The exploration and development activities have been generally carried out by employees of Tamerlane USA. The applicants' management team consists of four individuals who are employees of Tamerlane USA, which provides management services by contract to the applicants.

7 As at March 31, 2013 the Tamerlane Group had total consolidated assets with a net book value of $24,814,433. The assets included consolidated current assets of $2,007,406, and consolidated non-current assets with a net book value of $22,807,027. Non-current assets included primarily the investment in the Pine Point property of $20,729,551 and the Los Pinos property of $1,314,936.

8 Tamerlane has obtained valuations of Los Pinos and the Pine Point Property. The Los Pinos valuation was completed in May 2013 and indicates a preliminary valuation of $12 to $15 million using a 0.3% copper cut-off grade, or $17 to $21 million using a 0.2% copper cut-off grade. The Pine Point valuation was completed in July 2013 and indicates a valuation of $30 to $56 million based on market comparables, with a value as high as $229 million considering precedent transactions.

Secured and unsecured debt

9 Pursuant to a credit agreement between Tamerlane and Global Resource Fund, a fund managed by Renvest Mercantile Bancorp Inc. ("Global Resource Fund" or "secured lender") made as of December 16, 2010, as amended by a first amending agreement dated June 30, 2011 and a second amending agreement dated July 29, 2011, Tamerlane became indebted to the Secured Lender for USD $10,000,000. The secured indebtedness under the credit agreement is guaranteed by both Tamerlane Pine Point and Tamerlane USA, and each of Tamerlane, Tamerlane Pine Point and Tamerlane USA has executed a general security agreement in favour of the secured lender in respect of the secured debt.

10 The only other secured creditors are the applicants' counsel, the Monitor and the Monitor's counsel in respect of the fees and disbursements owing to each.

11 The applicants' unsecured creditors are principally trade creditors. Collectively, the applicants' accounts payable were approximately CAD $850,000 as at August 13, 2013, in addition to accrued professional fees in connection with issues related to the secured debt and this proceeding.

Events leading to filing

12 Given that the Tamerlane Group is in the exploration stage with its assets, it does not yet generate cash flow from operations. Accordingly, its only potential source of cash is from financing activities, which have been problematic in light of the current market for junior mining companies.

13 It was contemplated when the credit agreement with Global Resource Fund was entered into that the take-out financing would be in the form of construction financing for Pine Point. However Tamerlane was unsuccessful in arranging that. Tamerlane was successful in late 2012 in arranging a small flow-through financing from a director and in early 2013 a share issuance for $1.7 million dollars. Negotiations with various parties for to raise more funds by debt or asset sales have so far been unsuccessful.

14 As a result of liquidity constraints facing Tamerlane in the fall of 2012, it failed to make regularly scheduled monthly interest payments in respect of the secured debt beginning on September 25, 2012 and failed to repay the principal balance

on the maturity date of October 16, 2012, each of which was an event of default under the credit agreement with the secured lender Global Resource Fund.

15 Tamerlane and Global Resource Fund then entered into a forbearance agreement made as of December 31, 2012 in which Tamerlane agreed to make certain payments to Global Resource Fund, including a $1,500,000 principal repayment on March 31, 2013. As a result of liquidity constraints, Tamerlane was unable to make the March 31 payment, an event of default under the credit and forbearance agreements. On May 24, 2013, Tamerlane failed to make the May interest payment, and on May 29, 2013, the applicants received a letter from Global Resource Fund's counsel enclosing a NITES notice under the BIA and a notice of intention to dispose of collateral pursuant to section 63 of the PPSA. The total secured debt was $11,631,948.90.

16 On June 10, 2013, Global Resource Fund and Tamerlane entered into an amendment to the forbearance agreement pursuant to which Global Resource Fund withdrew its statutory notices and agreed to capitalize the May interest payment in exchange for Tamerlane agreeing to pay certain fees to the Global Resource Fund that were capitalized and resuming making cash interest payments to the Secured Lender with the June 25, 2013 interest payment. Tamerlane was unable to make the July 25 payment, which resulted in an event of default under the credit and forbearance amendment agreements.

17 On July 26, 2013, Global Resource Fund served a new NITES notice and a notice of intention to dispose of collateral pursuant to section 63 the PPSA, at which time the total of the secured debt was $12,100,254.26.

18 Thereafter the parties negotiated a consensual CCAA filing, under which Global Resource Fund has agreed to provide DIP financing and to forbear from exercising its rights until January 7, 2014. The terms of the stay of proceedings and DIP financing are unusual, to be discussed.

Discussion

19 There is no doubt that the applicants are insolvent and qualify for filing under the CCAA and obtaining a stay of proceedings. I am satisfied from the record, including the report from the proposed Monitor, that an Initial Order and a stay under section 11 of the CCAA should be made.

20 The applicants request that the stay apply to Tamerlane USA and Tamerlane Peru, non-parties to this application. The business operations of the applicants, Tamerlane USA and Tamerlane Peru are intertwined, and the request to extend the stay of proceedings to Tamerlane USA and Tamerlane Peru is to maintain stability and value during the CCAA process.

21 Courts have an inherent jurisdiction to impose stays of proceedings against non-applicant third parties where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so. See Farley J. in *Lehndorff General Partner Ltd., Re* (1993), 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]) and Pepall J. (as she then was) in *Canwest Publishing Inc./Publications Canwest Inc., Re* (2010), 63 C.B.R. (5th) 115 (Ont. S.C.J. [Commercial List]). Recently Morawetz J. has made such orders in *Cinram International Inc., Re*, 2012 ONSC 3767 (Ont. S.C.J. [Commercial List]), *Sino-Forest Corp., Re*, 2012 ONSC 2063 (Ont. S.C.J. [Commercial List]) and *SkyLink Aviation Inc., Re*, 2013 ONSC 1500 (Ont. S.C.J. [Commercial List]). I am satisfied that it is appropriate that the stay of proceedings extend to Tamerlane USA, which has guaranteed the secured loans and to Tamerlane Peru, which holds the valuable Los Pinos assets in Peru.

22 Under the Initial Order, PricewaterhouseCoopers Corporate Finance Inc. is to be appointed a financial advisor. PWC is under the oversight of the Monitor to implement a Sale and Solicitation Process, under which PWC will seek to identify one or more financiers or purchasers of, and/or investors in, the key entities that comprise the Tamerlane Group. The SISP will include broad marketing to all potential financiers, purchasers and investors and will consider offers for proposed financing to repay the secured debt, an investment in the applicants' business and/or a purchase of some or all of the applicants' assets. The proposed Monitor supports the SIST and is of the view that it is in the interests of the applicants' stakeholders. The SISP and its terms are appropriate and it is approved.

23 The Initial Order contains provisions for an administration charge for the Monitor, its counsel and for counsel to the applicants in the amount of $300,000, a financial advisor charge of $300,000, a directors' charge of $45,000 to the extent the

directors are not covered under their D&O policy and a subordinated administration charge subordinated to the secured loans and the proposed DIP charge for expenses not covered by the administration and financial advisor charges. These charges appear reasonable and the proposed Monitor is of the same view. They are approved.

DIP facility and charge

24 The applicants' principal use of cash during these proceedings will consist of the payment of ongoing, but minimized, day-to-day operational expenses, such as regular remuneration for those individuals providing services to the applicants, office related expenses, and professional fees and disbursements in connection with these *CCAA* proceedings. The applicants will require additional borrowing to do this. It is apparent that given the lack of alternate financing, any restructuring will not be possible without DIP financing.

25 The DIP lender is Global Resource Fund, the secured lender to the applicants. The DIP loan is for a net $1,017,500 with simple 12% interest. It is to mature on January 7, 2014, by which time it is anticipated that the SISP process will have resulted in a successful raising of funds to repay the secured loan and the DIP facility.

26 Section 11.2(4) of the CCAA lists factors, among other things, that the court is to consider when a request for a DIP financing charge is made. A review of those factors in this case supports the DIP facility and charge. The facility is required to continue during the CCAA process, the assets are sufficient to support the charge, the secured lender supports the applicants' management remaining in possession of the business, albeit with PWC being engaged to run the SISP, the loan is a fraction of the applicants' total assets and the proposed Monitor is of the view that the DIP facility and charge are fair and reasonable. The one factor that gives me pause is the first listed in section 11.2(4), being the period during which the applicants are expected to be subject to the CCAA proceedings. That involves the sunset clause, to which I now turn.

Sunset clause

27 During the negotiations leading to this consensual CCAA application, Global Resource Fund, the secured lender, expressed a willingness to negotiate with the applicants but firmly stated that as a key term of consenting to any CCAA initial order, it required (i) a fixed "sunset date" of January 7, 2014 for the CCAA proceeding beyond which stay extensions could not be sought without the its consent and the consent of the Monitor unless both the outstanding secured debt and the DIP loan had been repaid in full, and (ii) a provision in the initial order directing that a receiver selected by Global Resource Fund would be appointed after that date.

28 The Initial Order as drafted contains language preventing the applicants from seeking or obtaining any extension of the stay period beyond January 7, 2014 unless it has repaid the outstanding secured debt and the DIP loan or received the consent of Global Resource Fund and the Monitor, and that immediately following January 7, 2013 (i) the CCAA proceedings shall terminate, (ii) the Monitor shall be discharged, (iii) the Initial Order (with some exceptions) shall be of no force and effect and (iv) a receiver selected by Global Resource Fund shall be appointed.

29 Ms. Kent, the executive chair and CFO of Tamerlane, has sworn in her affidavit that Global Resource Fund insisted on these terms and that given the financial circumstances of the applicants, there were significant cost-savings and other benefits to them and all of the stakeholders for this proceeding to be consensual rather than contentious. Accordingly, the directors of the applicants exercised their business judgment to agree to the terms. The proposed Monitor states its understanding as well is that the consent of Global Resource Fund to these CCAA proceedings is conditional on these terms.

30 Section 11 of the CCAA authorizes a court to make any order "that it considers appropriate in the circumstances." In considering what may be appropriate, Deschamps J. stated in *Ted Leroy Trucking Ltd., Re*, [2010] 3 S.C.R. 379 (S.C.C.):

> 70. ...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.

31 There is no doubt that CCAA proceedings can be terminated when the prospects of a restructuring are at an end. In *Century Services*, Deschamps J. recognized this in stating:

> 71. It is well established that efforts to reorganize under the CCAA can be terminated and the stay of proceedings against the debtor lifted if the reorganization is "doomed to failure" (see *Chef Ready*, at p. 88; *Philip's Manufacturing Ltd., Re* (1992), 9 C.B.R. (3d) 25 (B.C.C.A.), at paras. 6-7). However, when an order is sought that does realistically advance the CCAA's purposes, the ability to make it is within the discretion of a CCAA court.

32 The fact that the board of directors of the applicants exercised their business judgment in agreeing to the terms imposed by Global Resource Fund in order to achieve a consensual outcome is a factor I can and do take into account, with the caution that in the case of interim financing, the court must make an independent determination, and arrive at an appropriate order, having regard to the factors in s. 11.2(4). The court may consider, but not defer to or be fettered by, the recommendation of the board. See *Crystallex International Corp., Re* (2012), 91 C.B.R. (5th) 207 (Ont. C.A.) at para 85.

33 It is apparent from looking at the history of the matter that Global Resource Fund had every intention of exercising its rights under its security to apply to court to have a receiver appointed, and with the passage of time during which there were defaults, including defaults in forbearance agreements, the result would likely have been inevitable. See *Bank of Montreal v. Carnival National Leasing Ltd.* (2011), 74 C.B.R. (5th) 300 (Ont. S.C.J.) and the authorities therein discussed. Thus it is understandable that the directors agreed to the terms required by Global Resource Fund. If Global Resource Fund had refused to fund the DIP facility or had refused to agree to any further extension for payment of the secured loan, the prospects of financing the payout of Global Resource Fund through a SISP process would in all likelihood not been available to the applicants or its stakeholders.

34 What is unusual in the proposed Initial Order is that the discretion of the court on January 7, 2014 to do what it considers appropriate is removed. Counsel have been unable to provide any case in which such an order has been made. I did not think it appropriate for such an order to be made. At my direction, the parties agreed to add a clause that the order was subject in all respects to the discretion of the Court. With that change, I approved the Initial Order.

Application granted.

End of Document

TAB 8

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 9TH
	)	
MR. JUSTICE HAINEY	)	DAY OF APRIL, 2020

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on March 31, 2020 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Guyatt sworn March 31, 2020 and the Exhibits thereto (the "**Guyatt Affidavit**"), the affidavit of Greg Guyatt sworn April 6, 2020 and the Exhibits thereto (the "**Second Guyatt Affidavit**"), the consent of Ernst & Young Inc. ("**EYI**") to act as the Monitor (in such capacity, the "**Monitor**"), the Pre-Filing Report of EYI in its capacity as the proposed Monitor dated March 31, 2020, and the First Report of the Monitor dated April 8, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of Trevor Courtis sworn April 7, 2020.

AMENDING AND RESTATING INITIAL ORDER

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application, the Application Record and the Supplementary Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that each of the Applicants' existing depository and disbursement banks (collectively, the "**Banks**") is authorized to debit the applicable Applicant's accounts in the ordinary course of business without the need for further order of this Court for: (i) all cheques drawn on the applicable Applicant's accounts which are cashed at such Bank's counters or exchanged for cashier's cheques by the payees thereof prior to the date of this Order; (ii) all cheques or other items deposited in one of the Applicant's accounts with such Bank prior to the date of this Order which have been dishonoured or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent an Applicant was responsible for such items prior to the date of this Order; and (iii) all undisputed pre-filing amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

8. **THIS COURT ORDERS** that any of the Banks may rely on the representations of the applicable Applicant with respect to whether any cheques or other payment order drawn or issued by the applicable Applicant prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the applicable Applicant as provided for herein.

9. **THIS COURT ORDERS** that (i) those certain existing deposit agreements between the Applicants and the Banks shall continue to govern the post-filing cash management relationship between the Applicants and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, (ii) either any of the Applicants, with the consent of the Monitor, or the Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, and (iii) all control agreements in existence prior to the date of this Order shall apply.

10. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

(a) all outstanding and future wages, salaries, contract amounts, amounts payable pursuant to the CannTrust Capital Appreciation Plan (whether accrued prior to, on or after the Initial Filing Date), employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the Initial Filing Date to employees or contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, or retained by employees or officers of the Applicants that the Applicants have agreed to reimburse, in respect of these proceedings, at their standard rates and charges; and

(c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date by third party suppliers if in the opinion of the Applicants the supplier is critical to the Business, ongoing operations of the Applicants, or preservation of the Property and the payment is required to ensure ongoing supply.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the

Applicants in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) expenses required to ensure compliance with any governmental or regulatory rules, orders or directions; and

(c) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

12. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes and all federal excise taxes and duties (collectively, "**Sales & Excise Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales & Excise Taxes are accrued or collected after the Initial Filing Date, or where such Sales & Excise Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears), or, at the election of the applicable Applicant, at such intervals as such Rent is usually paid pursuant to the applicable lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding $500,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and

(c) pursue all avenues of refinancing or selling their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or sale,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

16. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claims to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

18. **THIS COURT ORDERS** that from the Initial Filing Date until and including July 5, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property (including, for greater certainty, any process or steps or other rights and remedies under or relating to any class action proceeding against any of the Applicants or in respect of the Property), except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

19. **THIS COURT ORDERS** that during the Stay Period, none of the Pending Litigation (as defined in the Guyatt Affidavit) or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"), except with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicants or any of the Other Defendants that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any

business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

22. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Cannabis Coffee and Tea Pod Company Ltd., Cannatrek Ltd., Elmcliffe Investments [No. 2] Inc. and O Cannabis We Stand on Guard For Thee Corporation (each, an "**Affected Party**", and collectively, the "**Affected Parties**") arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the "**Cross-Default Matters**"), are hereby stayed and suspended except with the written consent of the relevant Applicants, the relevant Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and any of the Affected Parties whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of an Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of

such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. **THIS COURT ORDERS** that the Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the current and future directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $3.55 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 57 and 59 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

30. **THIS COURT ORDERS** that EYI is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) review and approve Intercompany Advances (as defined below);

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;

(e) advise the Applicants in its development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

(g) assist the Applicants, to the extent required by the Applicants, in connection with any sale and investment solicitation process conducted by the Applicants;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of (i) any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without

limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), or (ii) any of the Property, the administration and control of which is subject to the provisions of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including without limitation, the *Cannabis Act* (Canada), the *Cannabis Regulations* (Canada) the *Controlled Drugs and Substances Act* (Canada), the *Excise Tax Act* (Canada), the *Cannabis Control Act* (Ontario), or other such applicable federal or provincial legislation ("**Cannabis Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation or Cannabis Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation or the Cannabis Legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

APPROVAL OF CHIEF RESTRUCTURING OFFICER ENGAGEMENT

36. **THIS COURT ORDERS** that the agreement dated as of March 27, 2020 pursuant to which the Applicants have engaged FTI Consulting Canada Inc. ("**FTI**") to act as Chief

Restructuring Officer ("**CRO**") and provide certain financial advisory and consulting services to the Applicants, a copy of which is attached as Exhibit "G" to the Guyatt Affidavit (the "**CRO Engagement Letter**"), the execution of the CRO Engagement Letter by the Applicants, *nunc pro tunc*, and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

37. **THIS COURT ORDERS** that the CRO shall not be or be deemed to be a director, *de facto* director or employee of the Applicants.

38. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of (i) any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to the Environmental Legislation, (ii) any of the Property, the administration and control of which is subject to the provisions of the Cannabis Legislation; however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO shall be entitled to the benefits and protections in relation to the Applicants and such Property as are provided to a monitor under Section 11.8(3) of the CCAA, provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation or Cannabis Legislation.

39. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

40. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave.

41. **THIS COURT ORDERS** that the obligations of the Applicant to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicants.

APPROVAL OF FINANCIAL ADVISOR ENGAGEMENT

42. **THIS COURT ORDERS** that the agreement dated as of April 3, 2020 pursuant to which the Applicants have engaged Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") to assist the Applicants in a review of strategic alternatives, a copy of which is attached as Exhibit "D" to the Second Guyatt Affidavit (the "**Financial Advisor Engagement Letter**"), the execution of the Financial Advisor Engagement Letter by the Applicants, *nunc pro tunc*, and the appointment of the Financial Advisor pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

43. **THIS COURT ORDERS** that the Financial Advisor shall not be or be deemed to be a director, *de facto* director or employee of the Applicants.

44. **THIS COURT ORDERS** that the Financial Advisor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the Financial Advisor.

45. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Financial Advisor, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the Financial Advisor or with leave of this Court on notice to the Applicant, the Monitor and the Financial Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Financial Advisor at least seven (7) days prior to the return date of any such motion for leave.

46. **THIS COURT ORDERS** that the obligations of the Applicant to the Financial Advisor pursuant to the Financial Advisor Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

ADMINISTRATION CHARGE

47. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and in the case of the CRO in accordance with the CRO Engagement Letter, and in the case of the Financial Advisor in accordance with the Financial Advisor Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the CRO, the Financial Advisor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, the CRO and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

48. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

49. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.4 million, as security for their professional fees and disbursements incurred at their standard rates and charges, and in the case of the CRO in accordance with the CRO Engagement Letter, both before and after the Initial Filing Date in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 57 and 59 hereof.

TRANSACTION FEE CHARGE

50. THIS COURT ORDERS that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Transaction Fee Charge**") on the Property, as security for the Transaction Fee (as defined the Financial Advisor Engagement Letter). The Transaction Fee Charge shall have the priority set out in paragraphs 57 and 59 hereof.

INTERCOMPANY FINANCING

51. **THIS COURT ORDERS** that CannTrust Holdings Inc. (the "**Intercompany Lender**") is authorized to loan to each of CannTrust Inc., Elmcliffe Investments Inc. and CTI Holdings (Osoyoos) Inc. (each, an "**Intercompany Borrower**"), and each Intercompany Borrower is authorized to borrow, repay and re-borrow, such amounts from time to time as the Intercompany Borrower, with the approval of the Monitor, considers necessary or desirable on a revolving basis to fund its ongoing expenditures and to pay such other amounts as are permitted by the terms of this Order (the "**Intercompany Advances**"), on terms consistent with existing arrangements or past practice or otherwise approved by the Monitor.

52. **THIS COURT ORDERS** that the Intercompany Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Charge**") on all of the Property of each Intercompany Borrower, as security for the Intercompany Advances made to such Intercompany Borrower, which Intercompany Charge shall not secure an obligation that exists before the Initial Filing Date. The Intercompany Charge shall have the priority set out in paragraphs 57 and 59 hereof.

53. **THIS COURT ORDERS AND DECLARES** that the Intercompany Lender shall be treated as unaffected and may not be compromised in any Plan or any proposal filed under the BIA in respect of the Applicants, with respect to any Intercompany Advances made on or after the Initial Filing Date.

KERP AND KERP CHARGE

54. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described and defined in the Second Guyatt Affidavit, for the benefit of the Key Employees (as defined in the Second Guyatt Affidavit) is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms and conditions of the KERP.

55. **THIS COURT ORDERS** that the Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.4 million to secure amounts owing to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 57 and 59 hereof.

56. **THIS COURT ORDERS** that the unredacted version of the KERP, a copy of which is attached as Confidential Exhibit "B" to the Second Guyatt Affidavit, shall be and is hereby sealed, kept confidential, and shall not form part of the public record unless otherwise ordered by the Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

57. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge and the Intercompany Charge (the "**Charges**"), as among them with respect to any Property to which they apply, shall be as follows:

First – Administration Charge (to the maximum amount of $1.4 million);

Second – Directors' Charge (to the maximum amount of $3.55 million);

Third – KERP Charge (to the maximum amount of $1.4 million);

Fourth – Transaction Fee Charge;

Fifth – Intercompany Charge.

58. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

59. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

60. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

61. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

62. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

RELIEF FROM REPORTING OBLIGATIONS

63. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses in relation to any filings, disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities**

Filings") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada or the United States, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario) and comparable statutes enacted by other provinces of Canada, the *Securities Act of 1933* (United States) and the *Securities Exchange Act of 1934* (United States) and comparable statutes enacted by individual states of the United States, the TSX Company Manual and other rules, regulations and policies of the Toronto Stock Exchange, and the NYSE Listed Company Manual and other rules, regulations and policies of the New York Stock Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

64. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, the Monitor (and its directors, officers, employees and representatives), nor the CRO shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions.

SERVICE AND NOTICE

65. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

66. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.ey.com/ca/canntrust.

67. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

68. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

69. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

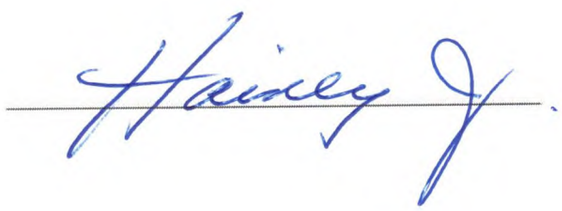
70. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms 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 Applicants and to the Monitor, as an officer of this 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

71. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that CannTrust Holdings Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in the United States and any other jurisdiction outside Canada.

72. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

73. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



TAB 9

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 8th
	)	
JUSTICE MORAWETZ	)	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

ORDER

(Third Party Stay)

THIS MOTION, made by Sino-Forest Corporation (the "Applicant") for an order addressing the scope of the stay of proceedings herein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicant's Notice of Motion and the materials summarized in Schedule "A" to the factum dated May 7, 2012, filed on behalf of the Monitor, as amended, including the affidavit of W. Judson Martin sworn April 23, 2012 (the "**Judson Affidavit**"), and on hearing the submissions of counsel for FTI Consulting Canada Inc. in its capacity as monitor (the "**Monitor**"), in the presence of counsel for the Applicant, the Applicant's directors and officers named as defendants (the "**Directors**") in the Ontario Class Action (as defined in the Judson Affidavit), Ernst & Young LLP, the plaintiffs in the Ontario Class Action, the underwriters named as defendants in the Ontario Class Action (the "**Underwriters**") and BDO Limited 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 AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

THIRD PARTY STAY AND TOLLING AGREEMENT

2. **THIS COURT ORDERS** that no Proceeding (as defined in the initial order granted by this Court on March 30, 2012 (as the same may be amended from time to time, the "**Initial Order**")) against or in respect of the Applicant, the Business or the Property (each as defined in the Initial Order), including without limitation the Ontario Class Action and any litigation in which the Applicant and the Directors, or any of them, are defendants, shall be commenced or continued as against any other party to such Proceeding or between or amongst such other parties (cross-claims and third party claims if any), until and including the expiration of the Stay Period (as defined in the Initial Order and as the same may be extended from time to time), provided that, notwithstanding the foregoing and anything to the contrary in the Initial Order, there shall be no stay of any Proceeding against Pöyry (Beijing) Consulting Co. Limited and/or any affiliate, any other Pöyry entity, representative or agent.

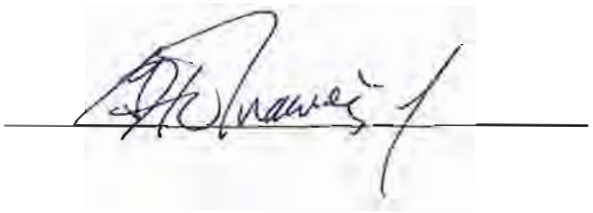
3. **THIS COURT ORDERS** that the Applicant is authorized to enter into agreements among the plaintiffs and defendants in the Ontario Class Action and in the action styled as Guining Liu v. Sino-Forest Corporation et al., bearing (Quebec) Court File No. 200-06-000132-111 (the "**Quebec Class Action**"), providing for, among other things, the tolling of certain limitation periods, as it sees fit, subject to the Monitor's approval.

MISCELLANEOUS

4. **THIS COURT ORDERS** that this order is subject to any further order of the court on a motion of any party, and is without prejudice to the right of the parties in the Ontario Class Action to move or vary this order on or after September 1, 2012.

5. **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.



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TAB 10

2019 NSSC 65
Nova Scotia Supreme Court

Quadriga Fintech Solutions Corp. (Re)

2019 CarswellNS 101, 2019 NSSC 65, 302 A.C.W.S. (3d) 21, 67 C.B.R. (6th) 272

The Application of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange (collectively referred to as the "Companies" and the "Applicant"), for relief under the Companies' Creditors Arrangement Act

Michael J. Wood J.

Heard: February 14, 2019
Judgment: February 19, 2019
Docket: HFX484742

Counsel: Maurice Chiasson, Q.C., Sara Scott, for Applicants
Elizabeth Pillon, Lee Nicholson, Sharon Hamilton, for Monitor
Raj Sahni, Ben Durnford, John Stringer, Jeremy Dacks, Evan Thomas, Robert Purdy, Q.C., Michael Scott, for An informal committee of users of the Quadriga platform
Gregory Azeff, Gavin MacDonald, for Parham Pakjou
Brendan O'Neill, for Goodmans LLP

***Michael J. Wood J.*:**

1 On February 5, 2019, the Court granted the application of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. ("the Applicants") for an initial order and stay under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("*CCAA*"). Ernest & Young Inc. was appointed as Monitor.

2 The Applicants operated a platform to facilitate the purchase and sale of cryptocurrencies. As set out in the materials filed in support of the initial application, users of the platform are owed approximately $250,000,000. The total number of users was estimated to be 115,000.

3 The sole officer and director of the Applicants passed away in December 2018 and, as of the end of January 2019, the majority of the Applicants' cryptocurrency assets had not been located. The resulting insolvency lead to the granting of the initial order on February 5, 2019.

4 The Court has received competing motions by or on behalf of users of the Applicants' platform. They all seek essentially the same relief, which is:

1. appointment of a representative creditors committee of users;

2. appointment of representative legal counsel to act on behalf of affected users on the instructions of the representative committee; and

3. providing access to the existing administrative charge over the assets of the Applicants to secure payment of the reasonable fees and disbursements of the representative counsel.

5 Appointment of representative counsel and stakeholder representative committees are not unusual in complex *CCAA* proceedings. The authority for doing so is found in s. 11 of the Act which reads as follows:

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.

6 As stated in *Nortel Networks Corp., Re* [2009 CarswellOnt 3028 (Ont. S.C.J. [Commercial List])], 2009 ONSC 3028, the Court has a wide discretion to appoint representatives under this provision. It is usually done where the affected group of stakeholders is large and, without representation, most members would be unable to effectively participate in the *CCAA* proceeding. Representative counsel can make the proceeding more efficient and cost effective for all parties by providing a clear mechanism for communicating with the stakeholders and avoiding a multiplicity of potentially conflicting retainers.

7 In *Fraser Papers Inc., Re* [2009 CarswellOnt 6169 (Ont. S.C.J. [Commercial List])], 2009 ONSC 6169, the Court described why it was prepared to appoint representative counsel for retirees and employees:

> 19 The objective of my order is to help those who are otherwise unrepresented but to do so in an efficient and cost effective manner and without imposing an undue burden on insolvent entities struggling to restructure. ...

8 In *Nortel Networks*, the Court appointed representative counsel for employees and retirees because that vulnerable group had little means to pursue a claim in the complex *CCAA* proceedings. The Court described the benefit of such an order as follows:

> 13 ... In addition, the granting of a representation order would provide a social benefit by assisting former employees and that representative counsel would provide a reliable resource for former employees for information about the process. The appointment of representative counsel would also have the benefit of streamlining and introducing efficiency to the process for all parties involved in Nortel's insolvency.

9 There are two primary rationales given for the appointment of representatives and representative counsel in *CCAA* proceedings. The first is to provide effective communication with stakeholders and ensure that their interests are brought to the attention of the Court and other *CCAA* participants. The second is to bring increased efficiency and cost effectiveness to the proceeding as a whole. This latter objective can be attained by streamlining notification to stakeholders through their representatives and eliminating the need for multiple counsel to be retained by individual stakeholders to represent their interests. The following judicial comments illustrate these principles:

> 53 ... It seems to me that the primary emphasis should be placed on ensuring that the arguments of employees are placed before the court in the most time efficient and cost effective way possible. In my view, this can be accomplished by the appointment of a single representative counsel, knowledgeable and experienced in all facets of employee claims.
>
> (*Nortel Networks*)
>
> 24 ... It would be of considerable benefit to both the Applicants and the Salaried Employees and Retirees to have Representatives and representative counsel who could interact with the Applicants and represent the interests of the Salaried Employees and Retirees. In that regard, I accept their evidence that they are a vulnerable group and there is no other counsel available to represent their interests. Furthermore, a multiplicity of legal retainers is to be discouraged. In my view, it is a false economy to watch and wait. Indeed the time taken by counsel preparing for and arguing this motion is just one such example. The appointment of the Representatives and representative counsel would facilitate the administration of the proceedings and information flow and provide for efficiency.
>
> (*Re Canwest Publishing Inc.*, 2010 ONSC 1328)
>
> 38 Second, the contemplated representation will enhance the efficiency of the proceedings under the CCAA in a number of ways. It will assist in the communication of the rights of this stakeholder group on an on-going basis during the restructuring

process. It will also provide an efficient and cost-effective means of ensuring that the interests of this stakeholder group are brought to the attention of the Court. In addition, it will establish a leadership group who will be able to organize a process for obtaining the advice and directions of this group on specific issues in the restructuring as required.

(*Re U.S. Steel Canada Inc.*, 2014 ONSC 6145)

10 Representatives and representative counsel should not have an open-ended retainer to undertake any inquiry or investigation they may wish, particularly where the fees are to be paid out of the assets of the applicant company. The appointment is specifically for purposes of the *CCAA* proceeding and to ensure that the stakeholders' interests are effectively taken into account by the decision makers. In some cases there are specific limitations placed on the scope of the representative counsel appointment. For example, in *Canwest Publishing Inc. / Publications Canwest Inc., Re* [2010 CarswellOnt 1344 (Ont. S.C.J. [Commercial List])] the funding approved for representative counsel excluded any investigation of claims against the corporate directors of the applicant company.

11 In cases, such as here, where there are competing applications for appointment of representatives, the Court must evaluate the proposals to determine which will best achieve the objectives described above. In *Fraser Papers* the Court considered factors such as proposed breadth of representation, the extent of counsel's mandate to act, their legal expertise, jurisdiction of practice, facility in French and English and estimated costs (see para. 12).

12 In this case all counsel are members of local and national law firms, with extensive insolvency experience. Each has been contacted by a significant number of users who support their appointment as representative counsel. All seek to be appointed on behalf of all affected users. In my view, what will determine who should be appointed as representative counsel is the manner in which they propose to approach their role and how that accords with the objectives of effective communication and efficiency.

13 The role of representative counsel will differ depending upon the nature of the applicant company and the characteristics of the group of stakeholders to be represented. For example, acting on behalf of employees and retirees for large manufacturers such as Fraser Papers or U.S. Steel, would be very different than the affected users in this case. The Applicants have no physical office, no employees and the trading platform was run by one individual who engaged a handful of third party contractors. The business is currently suspended, and may never resume, although that remains to be determined. The biggest task for the Monitor will be to locate and recover the Applicants' assets.

14 There are more than 100,000 affected users. They range from small creditors who are owed $100, to others who are owed many millions. Privacy is a great concern and many users do not wish to be publicly identified in any fashion. If the affidavits filed in support of the representation motions are indicative, a number of users profess to have technical expertise in cryptocurrencies and are interested in offering their services to the Monitor to assist in the asset investigation process.

15 Perhaps because of the nature of the cryptocurrency world, there has apparently been a great deal of discussion in various social media and online forums about the Applicants and their difficulties. The affidavits filed in this proceeding, refer to speculation about what may have happened with the Applicants' assets.

16 All of this leads me to conclude that the most important role for representative counsel is to provide accurate information and advice about the *CCAA* proceeding to all users, and to ensure that their legitimate interests are taken into account throughout the proceeding. It is not to undertake their own investigation with respect to the Applicants and their assets, that is the responsibility of the court appointed Monitor, who is required to provide written reports on the results of their work.

Nature of the Motions

17 The three motions were brought on behalf of affected users and supported by individual affidavits. I will identify the motions by the law firms they nominate to act as representative counsel.

Bennett Jones/McInnes Cooper

18 Bennett Jones would act as lead counsel and McInnes Cooper as local counsel to the committee of affected users, the members of which are to be identified by representative counsel. The committee and counsel were proposed to act as a "check and balance" on the companies activities and provide a mechanism to "develop restructuring alternatives and solutions".

19 The initial brief filed in support of the motion describes the role of representative counsel as follows:

> 34. The participation of the Representative Counsel will be critical to ensure that the interests of the Affected Users are represented in the Companies' *CCAA* proceedings, and as described previously, will facilitate the restructuring of the Companies under the *CCAA*. As descried in the Robertson Affidavit, there are several complex factual, legal and financial issues that must be addressed in order to successfully restructure the business of the Companies. The knowledge and the essential legal services provided by the proposed Representative Counsel and other professionals that are the beneficiaries of the Administration Charge will be necessary in order to, among other things, properly investigate the operation and current state of Companies' assets, verify relevant legal and financial information, adequately represent (without an unwarranted duplication of roles) the interests of the Affected Users, and otherwise navigate these *CCAA* proceedings to completion.

Miller Thomson/Cox & Palmer

20 The motion proposes to appoint Miller Thomson as lead counsel with Cox & Palmer as local counsel, to represent the proposed representative committee of users. The membership of that committee would include the moving party, Mr. Pakjou and additional members selected by him and representative counsel.

21 The motion brief proposes that representative counsel perform the following functions:

- managing communications with users;
- acting as user liaison for the Monitor;
- advocating for user interests before the Court;
- identify potential conflicting interest amongst users; and
- advocating for user privacy.

22 With respect to the fees of representative counsel, the brief says:

> 30. The Moving Party proposes that Representative Counsel Fees be subject to approval by this Honourable Court, having regard to the reasonableness of same in the performance of the mandate prescribed by this Honourable Court. As such, it is respectfully submitted that the most effective manner in which to minimize Representative Counsel Fees will be for this Honourable Court to carefully prescribe the duties and responsibilities of representative counsel in an Order.

Osler, Hoskin & Harcourt/Patterson Law

23 Osler, Hoskin & Harcourt LLP would be lead counsel with Patterson Law as local counsel acting on behalf of a representative committee of users. That committee would be composed of the three users who filed affidavits in the motion and two others selected by them in consultation with the Applicants and the Monitor.

24 The initial brief describes their proposed approach to the case as follows:

> 30(d) <u>Approach to Case</u>
>
> (i) The proposed committee members emphasize the importance of communication with Affected Users to dispel misinformation, reduce anxiety, and permit the proceedings to advance in an orderly and efficient manner. They have

identified communication channels most likely to reach the Affected Users, and Osler and Patterson have the resources to ensure that accurate information is disseminated effectively and that Affected Users can easily communicate their views. This emphasis on communication, combined with the committee's and Osler's knowledge of cryptocurrency and blockchain technology, would assist the Monitor in communicating complex technical information to a disparate group of individuals.

(ii) The proposed committee members have considerable technical expertise and relationships that may be of assistance to the Monitor and the Applicants. There are many others who wish to help. The proposed committee and its representative counsel can organize and focus any such assistance to ensure it is provided efficiently.

Positions of the Parties

Bennett Jones/McInnes Cooper

25 At the hearing counsel indicated that they were supported by 181 users, whose claims totaled approximately $22,000,000. Both firms have significant *CCAA* experience and have already been working to advance the interests of the affected users, including appearing at the initial hearing.

26 They have experience in communicating with diverse groups of stakeholders and disagree with the approach of some other counsel who suggest that applications such as Reddit and Telegram, should be used to provide information to users. They propose to use web sites and third party communication firms as they have in other large insolvencies.

27 Counsel suggests that members of the users committee be identified by representative counsel in consultation with the Monitor.

28 They agree with avoiding duplication of work already being done by the Monitor. It would not be their role to act as an "armchair quarterback" overlooking the Monitor's activities. They do not think it is appropriate to have an initial cap on fees of representative counsel because the scope of work is uncertain and the costs of returning to amend the cap in the future would not be warranted. Representative counsel has accountability to the Court and members of the user group.

Miller Thomson/Cox & Palmer

29 This group has the support of 252 creditors with claims of approximately $15,000,000. They believe that representative counsel should be selected based upon a role that reflects efficiency, collaboration and cost effectiveness.

30 The two firms both have extensive insolvency experience and will divide work based upon expertise with Cox & Palmer taking the lead on civil procedure and court appearances, and Miller Thomson on project management, communication and cryptocurrencies. The work would be organized to minimize the number of lawyers and Toronto counsel would only appear in court in Halifax if their expertise were required.

31 Counsel observed that all of the professional fees being incurred were likely coming out of funds that would otherwise be available to the affected users and as a result should be minimized to the extent possible.

32 Their communication plan includes, posting information in chat rooms and on social media. The rationale is that users are already discussing the Quadriga issue in those places, and it is important to have accurate information available to them. With respect to fees, they propose specific limits on the scope of representative counsel's mandate and an initial cap on fees of $250,000 with an ongoing budget process.

Osler, Hoskin & Harcourt/Patterson Law

33 Osler, Hoskin & Harcourt would be the lead firm, with Patterson Law providing local input with respect to civil procedure and litigation in Nova Scotia. Osler has significant experience in legal issues related to cryptocurrency and blockchains. They are supported by 134 users with claims in excess of $19,000,000.

34 Their approach would be complimentary to, and not duplicative of, the work done by the Monitor, recognizing that the users would ultimately be responsible for the expenses. They would have no objection to a defined mandate for representative counsel, nor a cap on fees with the ability to seek modification. With the firm's existing expertise in technical issues, there would be no need to incur costs in familiarizing themselves with those matters.

35 They believe communication through social media is necessary because that is the location where members of the users group can be found. They would use their experience in communicating with large investor groups in other cases.

Goodmans LLP

36 Goodmans did not bring forward a motion, although Mr. O'Neill, on their behalf, provided written submissions and appeared at the hearing. He proposed a mechanism whereby the representative committee be established by the Court and Monitor after soliciting expressions of interest in membership. That committee should then have the responsibility of selecting representative counsel. The theory is that the users ought to have a say in which law firm will represent them.

The Applicants

37 Mr. Chiasson emphasized the importance of having representative counsel appointed quickly and prior to the comeback hearing on March 5, 2019. He believed it was important to have input from the affected users in that process and advocated for immediate appointment of the representative committee using the individuals who had filed affidavits in support of the three motions before the Court. That committee could then have input into the selection of representative counsel.

38 The Applicants' also emphasized the financial considerations and in particular, the importance of limiting expenses, which will ultimately be borne by users. They advocate a restriction on the scope of the representative counsel's mandate.

The Monitor

39 Ms. Pillon pointed out that a number of firms had contacted her prior to the initial application, expressing interest in appointment as representative counsel. She asked them to delay those motions in order to allow the Applicants to bring the initial application before the Court. For this reason she did not believe there should be any consideration given to the fact that Bennett Jones/McInnes Cooper had been in attendance on February 5, 2019, seeking to be appointed as representative counsel and the other firms were not.

40 The Monitor emphasized the importance of having a representative committee that reflects the diversity of users and that it may take some time to determine what this would require. They were not opposed to appointing a preliminary committee with the possibility of substitution of members at a future point in time. That preliminary group could make recommendations about representative counsel.

41 The Monitor is concerned with ensuring that there is no duplication of work between representative counsel and counsel to the Monitor and Applicants. For this reason they recommend that consideration be given to a limited scope of mandate in the appointment order. It was suggested that there should be a cap on representative counsel fees of $100,000 to be applied to work going forward, but not in relation to the preparation of the appointment motion. The amount of the cap could be revisited as the *CCAA* process unfolds.

Analysis

42 All counsel acknowledged that the three proposed counsel groups are well qualified and have the necessary experience to carry out the mandate of representative counsel. They each have the support of many users with millions of dollars in outstanding claims.

43 This *CCAA* proceeding is unique in the sense that there is no operating business of any significant size in terms of physical assets, employees, third party suppliers or secured creditors. There is, however, a very large group of diverse users who have

no access to many millions of dollars in assets which they had given to the Applicants. The anecdotal evidence at the hearing is that many people are extremely upset, angry and concerned about dishonest and fraudulent activity. There are reports of death threats being made to people associated with the Applicants. All parties agree that this user group needs representation as soon as possible. That representation will give them accurate information and the knowledge that their interests are being properly represented throughout this process.

44 Another unusual feature is that the only creditors of any significance are the users. The one secured creditor agreed to advance $300,000 in order to get the *CCAA* process underway. The plan is to repay the money as soon as assets become available. The lack of any secured creditors means that the users' money is effectively funding all of the professional fees being incurred. It is extremely important to manage those, in order to maximize recovery for the users. This requires a commitment on all parties to have this issue front and centre while, at the same time, not compromising on the work necessary to advance the interests of the users and recover assets for their benefit.

45 In my view, the criteria to be used in assessing which of the groups should be representative counsel, is somewhat subjective. It requires a consideration of their approach to the issues of efficiency, communication and cost effectiveness. I am satisfied that the submissions of counsel have allowed me to gain insight into the approaches which each group proposes to undertake. There are strengths and weaknesses in each and legitimate debates about which communication strategies might be most effective in the circumstances.

46 A number of counsel suggested that the final selection of representative counsel should be deferred until the users committee is in place so that they can offer their opinion on the issue. Competing with that philosophy is the sense of urgency conveyed by all in having the committee and counsel appointed as soon as possible. I am not satisfied that delaying selection of representative counsel until the committee is in place is reasonable. I agree with the Monitor that the committee needs to reflect the diversity of the user group and should only be appointed after soliciting expressions of interest from the users. I also believe that having input from representative counsel on behalf of the users would be important in the selection of committee members. That decision should not be left to the Monitor and the Court alone.

47 There are three legal teams, who are obviously qualified and capable of doing the work who are supported by many users, and I am not sure on what basis members of the representative committee could chose among them. It is unrealistic to think that these individuals would have a real appreciation of the issues of efficiency and cost effectiveness in a *CCAA* proceeding. At a minimum, it would seem that they would have to be educated about these matters before they could engage in a meaningful consideration of the somewhat subtle differences between the competing firms.

48 When I consider all of these factors I believe it is in the best interests of all of the users that the issue of representative counsel be decided now and that I am in the best position to do so. Any of the proposed counsel teams have the capability of performing the work required.

49 Having assessed all of the information provided on the motions and considering the issues of efficiency, communication and cost effectiveness I believe that the Miller Thomson/Cox & Palmer team is the best choice, and I would appoint them as representative counsel. My reasons for selecting them are as follows:

1. Both the local and national firms have extensive insolvency and *CCAA* experience. Miller Thomson has additional depth in certain areas, including larger *CCAA* proceedings and cryptocurrency.

2. The relationship between the two firms has been thought out carefully with a view to minimizing costs. Cox & Palmer will deal with their areas of expertise, including local litigation practice and court appearances. Miller Thomson will provide expertise in dealing with large creditor groups and cryptocurrency technology.

3. The communication strategy proposed is reasonable, including the idea that some presence in social media and online discussion groups is necessary in order to reach the user group members.

4. The understanding of the financial implications for users has permeated their submissions from the beginning. They propose a limited initial mandate and a cap on counsel fees in recognition of the reality that it is the users who will ultimately be paying.

5. They recognize the efficiency to be gained by working collaboratively with the Monitor and demonstrated this by respecting the request that they defer their motion for appointment as representative counsel until after the initial order was dealt with.

50 Many of these same factors apply to one or more of the other legal teams, however, on balance, the combination of all of these characteristics in the Miller Thomson/Cox & Palmer presentation, makes them the best choice.

Appointment of Representative Committee

51 With the selection of representative counsel, the appointment of members of the representative committee should proceed expeditiously. The Monitor suggested that notice be given inviting expressions of interest for membership to the user group and that, once received, the Monitor and representative counsel could review these with the view to making a recommendation on membership to the Court. I agree with that procedure, and would direct that it commence without delay.

Conclusion

52 Having selected representative counsel and given directions for appointment of the representative committee, the formal order reflecting these decisions can be finalized. I would expect that representative counsel, the Monitor and the Applicants should be able to come to an agreement on most, if not all, of the terms of the order which could then be presented to the Court for consideration. In the event that there remains some disagreement between the parties, those matters can be dealt with by the Court at or before the comeback hearing on March 5, 2019.

Order accordingly.

TAB 11

Court File No. CV-21-00661458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 14th
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF OCTOBER, 2021

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT (ONTARIO), R.S.O. 1990, C. S. 5, AS AMENDED

REPRESENTATIVE COUNSEL APPOINTMENT ORDER

THIS MOTION made by PricewaterhouseCoopers Inc. ("**PwC**"), in its capacity as receiver and manager, without security, of all of the assets, undertakings, and properties (collectively, the "**Property**") of each of the Respondents (in such capacity, the "**Receiver**") for an Order appointing Bennett Jones LLP as representative counsel for the Unitholders (as defined below) with the exception of the Opt-Out Unitholders (as defined below) (the "**Representative Counsel**"), was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the motion record of the Receiver and the Direction of Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 27, 2021, directing that Bennett Jones LLP be appointed as Representative Counsel, and on hearing the submissions of counsel for the Receiver, Representative Counsel and those other parties listed on the

counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger, sworn October 13, 2021:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record of the Receiver is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

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

(a) "**Appointment Date**" means September 27, 2021;

(b) "**Bridging Funds**" means Bridging Income Fund LP, Bridging Mid-Market Debt Fund LP, Bridging Income RSP Fund, Bridging Mid-Market Debt RSP Fund**,** Bridging Private Debt Institutional LP, Bridging Real Estate Lending Fund LP, Bridging SMA 1 LP, Bridging Infrastructure Fund LP, Bridging Indigenous Impact Fund, Bridging Fern Alternative Credit Fund, Bridging SMA 2 LP and Bridging Private Debt Institutional RSP Fund;

(c) "**Opt-Out Unitholders**" has the meaning ascribed in paragraph 14;

(d) "**Receivership Proceedings**" means these proceedings commenced by an application by the Ontario Securities Commission under section 129 of the *Securities Act* (Ontario) R.S.O. 1990, c. S.5, as amended, and pursuant to Orders of the Court dated April 30, 2021, May 3, 2021 and May 15, 2021, pursuant to which PwC was appointed as the Receiver;

(e) "**SISP**" means the sale and investment solicitation process conducted by the Receiver, which was approved pursuant to the SISP Order;

(f) "**SISP Order**" means the Order of the Court dated August 6, 2021;

(g) "**Unitholders**" means all persons (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable law), who directly or indirectly hold a legal or beneficial interest in one or more units in one or more of the Bridging Funds, excluding individual investment advisors, any employee, director or officer of Bridging Finance Inc. and its subsidiaries or affiliates, and any employees, directors or officers of any corporation, partnership or other entity that marketed and/or sold units in any Bridging Fund.

REPRESENTATIVE COUNSEL

3. **THIS COURT ORDERS** that Bennett Jones LLP be and hereby is appointed as Representative Counsel for all Unitholders, with the exception of Opt-Out Unitholders. The mandate of Representative Counsel (the "**Mandate**") shall be to represent the Unitholders (with the exception of Opt-Out Unitholders) in connection with these Receivership Proceedings including, among other things:

(a) assessing sale, investment, and/or hybrid proposals received during Phase 2 of the SISP and providing feedback to the Receiver;

(b) assessing interfund allocation issues which may arise as a result of the Receiver's reports on these transfers, including the identification and potential resolution of conflicts which may arise between the Bridging Funds and the merits of any interfund claims which may arise;

(c) analyzing claims that Unitholders may have, directly or indirectly, against the Respondents, its current and former officers and directors, and third parties, arising out of the operation of the Respondents' business, including the operation of the Bridging Funds; and

(d) all actions and matters reasonably arising out of or in connection with the foregoing.

4. **THIS COURT ORDERS** that Representative Counsel shall be at liberty to identify additional matters that should be addressed by the Mandate, and be and hereby is authorized to provide future additions to the Mandate subject to written consent of the Receiver or Order of this Court.

5. **THIS COURT ORDERS** that Representative Counsel is permitted, but not required, to consult with the Committees (as such term is defined in the Order of this Court dated June 22, 2021).

6. **THIS COURT ORDERS** that the Receiver shall provide to Representative Counsel, without charge, the following information, documents and data (the "**Information**") in machine-readable format as soon as possible after the granting of this Order, for the purposes of enabling Representative Counsel to carry out its Mandate in accordance with this Order:

(a) the names, last known addresses, and last known telephone numbers and e-mail addresses (if any) of the Unitholders; and

(b) upon request of Representative Counsel, such documents and data as Representative Counsel deems necessary or desirable in order to carry out its Mandate;

and that, in doing so, the Receiver is not required to obtain express consent from such Unitholders authorizing disclosure of the Information to Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act,* S.C. 2000, c. 5 ("**Personal Information Protection Act**"), this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of the individual Unitholders.

7. **THIS COURT ORDERS** that the Receiver is authorized to provide to Representative Counsel and its Advisors (as defined below) access to the secure data room established for the SISP and to disclose to Representative Counsel and its Advisors (each, a "**Recipient**") all Borrower Information (as defined in the SISP Approval Order). Each Recipient to whom Borrower Information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to performance of the Mandate and, upon termination of the Mandate, such Recipient shall return all such Borrower Information to the Receiver or alternatively destroy such Borrower Information and provide confirmation of its destruction if so requested by the Receiver.

8. **THIS COURT ORDERS** that, in connection with the permitted disclosure of Borrower Information or otherwise in connection with the SISP, pursuant to section 7(3)(c) of the Personal Information Protection Act, the Receiver is hereby authorized to disclose personal information of identifiable individuals ("**Personal Information**") to each Recipient. Each Recipient to whom Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit

the use of such Personal Information to performance of the Mandate and, upon termination of the Mandate, such Recipient shall return all such Personal Information to the Receiver or alternatively destroy such Personal Information and provide confirmation of its destruction if so requested by the Receiver.

9. **THIS COURT ORDERS** that Representative Counsel be and hereby is authorized to retain such financial and other advisors and assistants as may be reasonably necessary or advisable in connection with the Mandate ("**Advisors**") provided that no expenses in connection with such retentions shall exceed $100,000 without the written consent of the Receiver or Order of this Court.

10. **THIS COURT ORDERS** all reasonable professional fees and disbursements that may be incurred on or after the Appointment Date by Representative Counsel and its Advisors retained pursuant to paragraph 9 above, if any, shall be paid by the Receiver on a bi-weekly basis, forthwith upon the rendering of accounts to the Receiver and such fees and disbursements shall be secured by the Receiver's Charge (as such term is defined in the Order of this Court dated April 30, 2021). In the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

11. **THIS COURT ORDERS** that Representative Counsel be and hereby is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

12. **THIS COURT ORDERS** that neither the appointment of Representative Counsel nor any actions or steps taken by Representative Counsel shall be deemed to constitute Representative Counsel or any Unitholder as having taken or maintained any control or possession of or over any of the Property (as defined in the Orders of this Court dated April 30, 2021 and May 3, 2021) or having assumed management or control of any of the Respondents or the Property.

NOTICE AND OPT-OUT PROCEDURE

13. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached hereto as **Schedule "A"** shall be:

(a) sent by the Receiver to the Unitholders within 10 days of the date of this Order by email (if known) or by regular mail; and

(b) posted by the Receiver to the Receiver's website.

14. **THIS COURT ORDERS** that any Unitholder who does not wish to be represented by Representative Counsel in these Receivership Proceedings shall, by no later than 5:00 p.m. (ET) on November 15, 2021, notify the Receiver and Representative Counsel, in writing (including by email) by way of the form attached at **Schedule "B"**, that they are opting out of representation by Representative Counsel (an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of Representative Counsel and shall represent themselves or be represented by any counsel that they may retain exclusively at their own expense in these Receivership Proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph 14, "**Opt-Out Unitholders**").

PROTECTIONS AND AUTHORITY TO SEEK ADVICE AND DIRECTIONS

15. **THIS COURT ORDERS** that Representative Counsel shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order from and after the Appointment Date save and except for any gross negligence or willful misconduct on its part.

16. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court on notice to the Receiver for advice and directions in the discharge or variation of the Mandate.

17. **THIS COURT ORDERS** that no action or other proceeding may be commenced against Representative Counsel with respect to performance of the Mandate without leave of the Court on seven days' notice to Representative Counsel.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver, Representative Counsel 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 Receiver, as an officer of this Court and to

Representative Counsel, as may be necessary or desirable to give effect to this Order or to assist the Receiver, Representative Counsel and their respective agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that the Receiver, its counsel, and Representative Counsel may serve or distribute this Order and any related materials, including, without limitation, the notice of the appointment of Representative Counsel set out at Schedule "A" hereto, by forwarding true copies thereof by email or regular mail to the Unitholders, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and the notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

APPROVAL OF ACTIVITIES OF THE RECEIVER

20. **THIS COURT ORDERS** that the Eighth Report of the Receiver dated October 7, 2021, and the activities, decisions and conduct of the Receiver as set out therein, are hereby authorized and approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

Chief Justice G.B. Morawetz

Schedule "A"

Court File No. CV-21-00661458-00CL

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT (ONTARIO), R.S.O. 1990, C. S. 5, AS AMENDED

NOTICE TO UNITHOLDERS

Following an application by the Ontario Securities Commission under section 129 of the *Securities Act* (Ontario) R.S.O. 1990, c. S.5, as amended, and pursuant to Orders of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 30, 2021, May 3, 2021 and May 15, 2021, PricewaterhouseCoopers Inc. ("**PwC**") was appointed as receiver and manager, without security, of all of the assets, undertakings, and properties of the Respondents (the "**Receivership Proceedings**").

TAKE NOTICE THAT, pursuant to the Representative Counsel Appointment Order of the Court dated October [•], 2021 (the "**Order**"), Bennett Jones LLP was appointed as representative counsel (in such capacity, "**Representative Counsel**") of the following:

> all persons (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable law), who directly or indirectly hold legal or beneficial interest in units in one or more of the investment vehicles offered by Bridging Finance Inc., its subsidiaries or affiliates (the "**Bridging Funds**"), excluding individual investment advisors, any employee, director or officer of Bridging Finance Inc. and its subsidiaries or affiliates, or any employees, directors or officers of a corporation or partnership that marketed and/or sold units in any Bridging Fund, who do not opt-out of representation in accordance with paragraph 14 of the Order.

IF YOU DO NOT WISH TO BE REPRESENTED in the Receivership Proceedings by Representative Counsel, you must, by no later than 5:00 p.m. (ET) on November 15, 2021, provide notice in writing (including by email) to the Receiver and Representative Counsel in accordance with paragraph 14 of the Order.

PricewaterhouseCoopers Inc., in its capacity as Receiver
PwC Tower
18 York Street

Suite 2600
Toronto, ON M5J 0B2
Attention: Gregory Prince and Michael McTaggart

Email: ca_bridgingfinance@pwc.com

Bennett Jones LLP, in its capacity as Representative Counsel
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4
Attention: Thomas Gray

Email: GrayT@bennettjones.com

Schedule "B"

Court File No. CV-21-00661458-00CL

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT (ONTARIO), R.S.O. 1990, C. S. 5, AS AMENDED

OPT-OUT LETTER

PricewaterhouseCoopers Inc., in its capacity as Receiver
PwC Tower
18 York Street
Suite 2600
Toronto, ON M5J 0B2
Attention: Gregory Prince and Michael McTaggart

Email: ca_bridgingfinance@pwc.com

Bennett Jones LLP, in its capacity as Representative Counsel
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4
Attention: Thomas Gray

Email: GrayT@bennettjones.com

I am a Unitholder as defined in the Representative Counsel Appointment Order of the Ontario Superior Court of Justice (Commercial List) dated October [•], 2021 (the "**Order**").

Pursuant to paragraph 14 of the Order, Unitholders who do not wish Bennett Jones LLP to act as their Representative Counsel in the Receivership Proceedings (each as defined in the Order) may opt out.

I hereby provide written notice that I do not wish to be bound by the Order and will be represented as an independent individual party at my own expense to the extent I wish to appear in the Receivership Proceedings.

If the Unitholder is an individual, please execute below:

_____ _____

Date Signature

If the Unitholder is a corporation, please execute below:

_____ _____

Date Name of Corporation

Per:

_____

Name

_____

Title

_____

I/We have authority to bind the corporation

Contact Information:

Name (please print):

Address: _____

_____

_____

_____

Telephone: _____

Email: _____

Please use the space below to identify the specific fund(s) you are invested in, the number of units held in each fund, and whether you are a beneficial holder of the units.

_____

_____

_____

_____

_____

_____

Court File No.: CV-21-00661458-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF *THE SECURITIES ACT* (Ontario), R.S.O. 1990, c.S.5, AS AMENTED

ONTARIO SECURITIES COMMISSION
Applicant

- and -

BRIDGING FINANCE INC., et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto, Ontario

REPRESENTATIVE COUNSEL APPOINTMENT ORDER

THORNTON GROUT FINNIGAN LLP
Barristers and Solicitors
3200 – 100 Wellington Street West
Toronto, ON M5K 1K7

John L. Finnigan (LSO# 24040L)
Email: jfinnigan@tgf.ca

Grant B. Moffat (LSO# 32380L)
Email: gmoffat@tgf.ca

Adam Driedger (LSO# 77296F)
Email: adriedger@tgf.ca

Lawyers for the Receiver

TAB 12

Court File No.: CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 21st
	)	
MR. JUSTICE HAINEY	)	DAY OF MARCH, 2019
	)	

IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE, R.R.O. 1990, REG. 194, AS AMENDED

AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF ADELAIDE STREET LOFTS INC.

ORDER

THIS APPLICATION, made by the Applicant, Hi-Rise Capital Ltd. ("**Hi-Rise**"), for advice and directions and an Order appointing representative counsel pursuant to section 60 of the *Trustee Act*, R.S.O. 1990, c. T.23, as amended and Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicant, including the Affidavit of Noor Al-Awqati sworn March 19, 2019, and on hearing the submissions of the lawyer(s) for each of the Applicant, the Superintendent of Financial Services, prospective Representative Counsel, Adelaide Street Lofts Inc. (the "**Borrower**"), Teresa Simonelli and Tony Simonelli and other investors represented by Guardian Legal Consultants (as set out on the counsel slip), Alexander Simonelli (appearing in person), Nicholas Verni (appearing in person), and Nick Tsakonacos (appearing in person) no one else appearing,

SERVICE

1. **THIS COURT ORDERS** that all parties entitled to notice of this Application have been served with the Notice of Application, and that service of the Notice of Application

is hereby abridged and validated such that this Application is properly returnable today, and further service of the Notice of Application is hereby dispensed with.

APPOINTMENT OF REPRESENTATIVE COUNSEL

2. **THIS COURT ORDERS** that Miller Thomson LLP is hereby appointed as representative counsel to represent the interests of all persons (hereafter, all persons that have not delivered an Opt-Out Notice (defined below) shall be referred to as the "**Investors**") that have invested funds in syndicated mortgage investments ("**SMI**") in respect of the proposed development known as the "Adelaide Street Lofts" (the "**Project**") at the property known municipally as 263 Adelaide Street West, Toronto, Ontario (the "**Property**").

3. **THIS COURT ORDERS** that any individual holding an SMI who does not wish to be represented by the Representative Counsel and does not wish to be bound by the actions of Representative Counsel shall notify the Representative Counsel in writing by facsimile, email to sdecaria@millerthomson.com (Attention: Stephanie De Caria), courier or delivery, substantially in the form attached as **Schedule "A"** hereto (the "**Opt-Out Notice**"), and shall thereafter not be so represented and shall not be bound by the actions of the Representative Counsel and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in respect of his or her SMI (any such Investor who delivers an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Investor**") and any Opt-Out Investor who wishes to receive notice of subsequent steps in this proceeding shall deliver a Notice of Appearance.

4. **THIS COURT ORDERS** that the Representative Counsel shall represent all Investors in connection with the negotiation and implementation of a settlement with respect to their investments in the SMI and the Project, and shall subject to the terms of the Official Committee Protocol be entitled to advocate, act, and negotiate on behalf of the Investors in this regard, provided that the Representative Counsel shall not be permitted to (i) bind investors to any settlement agreement or proposed distribution relating to the Property without approval by the investors and the Court; or (ii) commence or continue any proceedings against Hi Rise, its affiliates or principals, on

behalf of any of the Investors or any group of Investors, and for greater certainty, Representative Counsel's mandate shall not include initiating proceedings or providing advice with respect to the commencement of litigation but may include advising Investors with respect to the existence of alternative courses of action.

5. **THIS COURT ORDERS** that Representative Counsel be and it is hereby authorized to retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary or advisable in connection with its duties as Representative Counsel.

6. **THIS COURT ORDERS** that the Representative Counsel be and it is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order and fulfill its mandate hereunder.

TERMINATION OF EXISTING ADVISORY COMMITTEE

7. **THIS COURT ORDERS** that the Engagement Letter dated September 6, 2018, including the Terms of Reference attached as Schedule "A" thereto (the "**Engagement Letter**"), be and it is hereby terminated, provided that nothing contained herein shall terminate the requirement that outstanding fees and disbursements thereunder be paid.

8. **THIS COURT ORDERS** that the respective roles of the Advisory Committee and Communication Designate (as such terms are defined in the Engagement Letter) be and they are hereby terminated.

9. **THIS COURT ORDERS** that the Communication Designate shall forthwith provide to Representative Counsel all security credentials in respect of the Designated Email (as such term is defined in the Engagement Letter).

APPOINTMENT OF OFFICIAL COMMITTEE

10. **THIS COURT ORDERS** that Representative Counsel shall take steps to establish an Official Committee of Investors (the "**Official Committee**") substantially in accordance with the process and procedure described in the attached **Schedule "B"** ("**Official Committee Establishment Process**").

11. **THIS COURT ORDERS** that the Official Committee shall operate substantially in accordance with the protocol described in the attached **Schedule "C"** (the "**Official Committee Protocol**").

12. **THIS COURT ORDERS** that the Representative Counsel shall consult with and rely upon the advice, information, and instructions received from the Official Committee in carrying out the mandate of Representative Counsel without further communications with or instructions from the Investors, except as may be ordered otherwise by this Court.

13. **THIS COURT ORDERS** that in respect of any decision made by the Official Committee (a "**Committee Decision**"), the will of the majority of the members of the Official Committee will govern provided, however, that prior to acting upon any Committee Decision, Representative Counsel may seek advice and direction of the Court pursuant to paragraph 22 hereof.

14. **THIS COURT ORDERS** that, in circumstances where a member of the Official Committee has a conflict of interest with the interests of other investors respect to any issue being considered or decision being made by the Official Committee, such member shall recuse himself or herself from such matter and have no involvement in it.

15. **THIS COURT ORDERS** that the Representative Counsel shall not be obliged to seek or follow the instructions or directions of individual Investors but will take instruction from the Official Committee..

INVESTOR INFORMATION

16. **THIS COURT ORDERS** that Hi-Rise is hereby authorized and directed to provide to Representative Counsel the following information, documents and data (collectively, the "**Information**") in machine-readable format as soon as possible after the granting of this Order, without charge, for the purposes of enabling Representative Counsel to carry out its mandate in accordance with this Order:

(a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Investors; and

(b) upon request of the Representative Counsel, such documents and data as the Representative Counsel deems necessary or desirable in order to carry out its mandate as Representative Counsel

and, in so doing, Hi-Rise is not required to obtain express consent from such Investors authorizing disclosure of the Information to the Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of the individual Investors.

FEES OF COUNSEL

which amount shall exclude disbursements incurred by Representative Counsel

17. **THIS COURT ORDERS** that the Representative Counsel shall be paid by the Borrower its reasonable fees ~~and disbursements~~ consisting of fees and disbursements from and after the date of this order incurred in its capacity as Representative Counsel ("**Post-Appointment Fees**"), up to a maximum amount of $250,000 or as may otherwise be ordered by this Court. The Borrower shall make payment on account of the Representative Counsel's fees and disbursements on a monthly basis, forthwith upon rendering its accounts to the Borrower for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Official Committee and/or Investors. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination. Representative Counsel shall also obtain approval of its fees and disbursements from the Court on notice to the Official Committee.

its Post-Appointment Fees

18. **THIS COURT ORDERS** that the Representative Counsel is hereby granted a charge (the "**Rep Counsel Charge**") on the Property, as security for the Post-Appointment Fees and that the Rep Counsel Charge shall form an unregistered charge on the Property in priority to the existing $60 million mortgage registered in the name of Hi-Rise Capital Ltd. and Community Trust Company as Instrument Numbers AT3522463, AT3586925, AT3946856, AT4420428, AT4505545, AT4529978, AT4572550, AT4527861, and AT4664798 (the "**Hi-Rise Mortgage**"), but subordinate to the $16,414,000 mortgage in favour of Meridian Credit Union Limited registered as

Instrument Number AT4862974 ("**Meridian Mortgage**"), and that Rep Counsel Charge will be subject to a cap of $250,000. No person shall register or cause to be registered the Rep Counsel Charge on title to the Property.

19. **THIS COURT ORDERS** that the motion by Representative Counsel for a charge for its fees prior to the date its appointment and by counsel for Hi-Rise seeking a charge for its fees incurred in respect of this Application both shall be heard before me on April 4, 2019.

20. **THIS COURT ORDERS** that the reasonable cost of Advisors engaged by Representative Counsel shall be paid by the Borrower. Any dispute over Advisor costs will be submitted to the Court for resolution.

21. **THIS COURT ORDERS** that the payments made by the Borrower pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

GENERAL

22. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and it is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Representative Counsel, which shall be brought on notice to Hi-Rise and the Official Committee, the Financial Services Commission of Ontario ("**FSCO**") and any person who has filed a Notice of Appearance (including the Opt-Out Investors) unless this Court orders otherwise.

23. **THIS COURT ORDERS** that the Representative Counsel and the Official Committee shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders, save and except for liability arising out of gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that any document, notice or other communication required to be delivered to Representative Counsel under this Order shall be in writing, and will be sufficiently delivered only if delivered to

Miller Thomson LLP, in its capacity as Representative Counsel
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1

Facsimile: 416-595-8695
Email: sdecaria@millerthomson.com and gazeff@millerthomson.com

Attention: Gregory Azeff & Stephanie De Caria

25. **THIS COURT ORDERS** that the Representative Counsel shall as soon as possible establish a website and/or online portal (the **"Website"**) for the dissemination of information and documents to the Investors, and shall provide notice to Investors of material developments in this Application via email where an email address is available and via regular mail where appropriate and advisable.

POWERS OF HI-RISE CAPITAL LTD.

26. **THIS COURT ORDERS** that the issue of whether Hi-Rise has the power under loan participation agreements (each, an "**LPA**") and mortgage administration agreements (each, a "**MAA**") that it entered into with investors in the Project and at law grant to a discharge of the Hi-Rise Mortgage despite the fact that the proceeds received from the disposition of a transaction relating to the Property (the "**Transaction**") may be insufficient to pay in full amounts owing under the Hi-Rise Mortgage will be determined by motion before me on April 4, 2019.

INVESTOR AND COURT APPROVAL

27. **THIS COURT ORDERS** that Hi-Rise is permitted to call, hold and conduct a meeting (the "**Meeting**") of all investors in the Project, including Opt-Out Investors, to be held at a location, date and time to be determined by Hi-Rise, in order for the investors

to consider and, if determined advisable, pass a resolution approving the Transaction and the distribution of proceeds therefrom (the "**Distribution**").

28. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, Hi-Rise shall send notice of the location, date and time of the Meeting to investors at least ten days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by the method authorized by paragraph 32 of this order.

29. **THIS COURT ORDERS** that accidental failure by Hi-Rise to give notice of the Meeting to one or more of the investors, or any failure to give such notice as a result of events beyond the reasonable control of Hi-Rise, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such failure is brought to the attention of Hi-Rise, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

30. **THIS COURT ORDERS** that Hi-Rise shall permit voting at the Meeting either in person or by proxy.

31. **THIS COURT ORDERS** that if at the Meeting a majority in number of the investors representing two-thirds in value present and voting either in person or by proxy cast votes in favour of the proposed Transaction and Distribution, Hi-Rise may proceed to bring a motion to this court, on a date to be fixed, for

(a) final approval of the Transaction and Distribution;

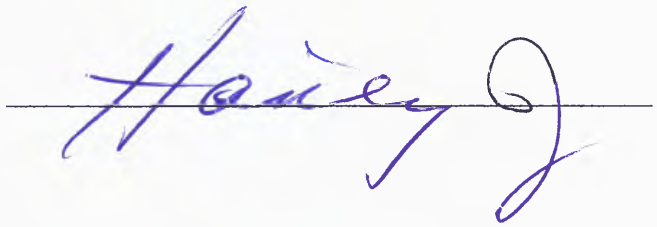
(b) further directions to pursuant to section 60 of the *Trustee Act* as are appropriate to permit it to carry out its role in a manner consistent with the LPA and MAA and its duties at law; and

(c) approval of the conduct and fees of Representative Counsel.

NOTICE TO INVESTORS

32. Hi-Rise or Representative Counsel shall mail a copy of this Order to the last known address of each investor within 10 days of the date of this Order or where an

Investor's email address is known, the Order may instead be sent by email. Representative Counsel shall also post a copy of this Order on the Website.



Schedule "A"

OPT-OUT NOTICE

Miller Thomson LLP, in its capacity as Representative Counsel
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1

Facsimile: 416-595-8695
Email: sdecaria@millerthomson.com

Attention: Stephanie De Caria

I/we, _____, are Investor(s) in a Hi-Rise Capital Ltd. mortgage registered against titled to the property municipally known as 263 Adelaide Street West. [***Please ensure to insert the name, names or corporate entity that appear on your investment documents***].

Under paragraph 3 of the Order of the Honourable Justice Hainey dated March 21, 2019 (the "**Order**"), Investors who do not wish Miller Thomson LLP to act as their representative counsel may opt out.

I/we hereby notify Miller Thomson LLP that I/we do not wish to be represented by the Representative Counsel and do not wish to be bound by the actions of Representative Counsel and will instead either represent myself or retain my own, individual counsel at my own expense, with respect to the SMI in relation to Adelaide Street Lofts Inc. and the property known municipally as 263 Adelaide St. W., Toronto, Ontario.

I also understand that if I wish to receive notice of subsequent steps in the court proceedings relating to this property, I or my counsel must serve and file a Notice of Appearance.

If the Investor(s) is an individual, please execute below:

_____	_____
Date	Signature
_____	_____
Date	Signature

If the Investor is a corporation, please execute below:

)
)
)
)
)
)
)
)

_____
[insert corporation name above]

Per: _____

Name: Name

Title: Title

I/We have the authority to bind the corporation

Schedule "B"

Official Committee Establishment Process

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage ("**SMI**"), administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Project**") and the proposed development known as the "Adelaide Street Lofts". Pursuant to the Order, Representative Counsel was directed to appoint the Official Committee of Investors (the "**Official Committee**") in accordance with this Official Committee Establishment Process. The Official Committee is expected to consist of five Investors.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order. All references to a singular word herein shall include the plural, and all references to a plural word herein shall include the singular.

Pursuant to the Order, the Representative Counsel shall, among other things, consult with and take instructions from the Official Committee in respect of the SMI and the Project.

This protocol sets out the procedure and process for the establishment of the Official Committee.

Establishment of the Official Committee

1. As soon as reasonably practicable, Representative Counsel will deliver a communication calling for applications ("**Call for Official Committee Applications**") to Investors by mail and by email where an email address is available. Representative Counsel shall also post on the Website (as defined in the Order) a copy of the Call for Official Committee Applications.

2. The deadline to submit an application pursuant to the Call for Official Committee Applications will be 5:00 p.m. EST on ~~March 29~~ April 1, 2019 (the "**Applications Deadline**"), or such later date as Representative Counsel may deem reasonably practicable. Investors wishing to act as a member of the Official Committee (each, an "**Official Committee Applicant**") shall submit their application by the Applications Deadline. Applications submitted past the Applications Deadline will not be reviewed by Representative Counsel.

3. In order to serve as a member of the Official Committee, the Official Committee Applicant must be an Investor that holds an SMI. If the SMI is held through a corporate entity, the Official Committee Applicant must be a director of the corporation in order to be a member of the Official Committee.

4. An Official Committee Applicant must not have a conflict of interest with the interests of other investors.

5. Representative Counsel will review applications submitted by the Applications Deadline and will create a short list (the "**Short List**") of no more than 20 candidates who should be extended invitations for an interview. As soon as reasonably practicable, the interviews will be conducted by teleconference by Representative Counsel (the "**Interviews**"). For consistency in evaluating each Official Committee Applicant,

(a) all of the interviews will follow the same structure and will be approximately the same length (about half an hour); and

(b) substantially similar questions will be posed to each interviewee.

6. Following the Interviews, Representative Counsel will select seven Official Committee Applicants (the "**Short List Candidates**") who, in Representative Counsel's judgment, are the best candidates to serve as either (i) a member of the Official Committee (a "**Member**") or (ii) an alternate Member should any of the Members resign or be removed from the Official Committee (an "**Alternate**"). From the Short List Candidates, Representative Counsel will select five Members and two Alternates. In determining the Short List Candidates, Representative Counsel reserves the right to consider, among other factors: (i) experience with governance or the mortgage industry; (ii) education; (iii) answers to interview questions; (iv) the amount of the Official Committee Applicant's SMI.

7. As soon as reasonably practicable, Representative Counsel will submit the Short List Candidates to the Court for approval, along with each of their applications. A summary of each Member and Alternate and their respective qualifications will also be submitted to the Court.

Schedule "C"

Official Committee Protocol

Pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 21, 2019 (the "**Order**") Miller Thomson LLP was appointed to represent all individuals and/or entities ("**Investors**") that hold an interest in a syndicated mortgage ("**SMI**"), administered by Hi-Rise Capital Ltd. ("**Hi-Rise**"), in respect of the property municipally known as 263 Adelaide Street West, Toronto, Ontario (the "**Project**") and the proposed development known as the "Adelaide Street Lofts".

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order. All references to a singular word herein shall include the plural, and all references to a plural word herein shall include the singular.

This protocol sets out the terms governing the Official Committee established by Representative Counsel pursuant to the Official Committee Establishment Process, as approved by the Order. All Investors that have been accepted by Representative Counsel to serve as a member of the Official Committee (each, a "**Member**") shall be bound by the terms of this protocol.

This protocol is effective as at the date of the Order.

The Official Committee and Representative Counsel shall be governed by the following Official Committee Protocol:

1. **Definitions:** Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Order.

2. **Resignations:** A Member may resign from the Official Committee at any time by notifying Representative Counsel and the other Members, by email. If a Member is incapacitated or deceased, such Member shall be deemed to have resigned from the Official Committee effective immediately.

3. **Expulsions**: Any Member may be expelled from the Official Committee for cause by Representative Counsel or by order of the Court. For greater certainty, "for cause" includes but is not limited to: (a) if a Member is unreasonably disruptive to or interferes with the ability of the Official Committee or Representative Counsel to conduct its affairs or fulfill their duties; (b) if a Member is abusive (verbal or otherwise) towards Representative Counsel or any Member; (c) if a Member fails to attend either (i) two (2) consecutive meetings without a valid reason (as determined by Representative Counsel in its sole discretion) or (ii) three (3) meetings whether or not a valid reason is provided; (d) if a Member commits any act or engages in any conduct that, in Representative Counsel's opinion, may bring the reputation or credibility of the Official Committee into dispute; (e) if in Representative Counsel's opinion, an irreconcilable conflict of interest arises between a Member and the Official Committee; or, (f) if, for any reason, a Member is unable to reasonably fulfil his/her duties as a Committee Member.

4. **Role of the Official Committee:** The role of the Official Committee is to consult with and provide instructions to Representative Counsel, in accordance with the terms of this protocol, with respect to matters related to the SMI and the Project.

5. **Multiple Views**: It is recognized and understood that Members may have divided opinions and differing recommendations, and accordingly, consensus on feedback regarding any potential resolution of matters related to the SMI and Project may not be achievable. In such circumstances, the will of the majority of the Members will govern. In making decisions and taking steps, Representative Counsel may also seek the advice and direction of the Court if necessary.

6. **Good Faith**: For the purposes of participation in the Official Committee, each Member agrees that he or she will participate in good faith, and will have appropriate regard for the legitimate interests of all Investors.

7. **No liability**: No Member shall incur any liability to any party arising solely from such Members' participation in the Official Committee or as a result of any suggestion or feedback or instructions such Member may provide to Representative Counsel.

8. **Compensation**: No Member shall receive compensation for serving as a Member of the Consecutive Committee.

9. **Chair**: Representative Counsel shall be the chair of the meetings of the Official Committee.

10. **Calling Meetings**: Representative Counsel, at the request of a Member or at its own instance, may call meetings of the Official Committee on reasonable advance written notice to the Members, which notice shall be made by e-mail. Meetings may be convened in person, at the offices of Miller Thomson LLP, or by telephone conference call.

11. **Quorum**: While it is encouraged that all Members participate in meetings, a meeting may be held without all of the Members present provided that at least three (3) Members are present in person or by telephone.

12. **Minutes**: Representative Counsel shall act as secretary of the meetings of the Official Committee and shall keep minutes of the meetings. Where issues of disagreement among Members arise, the minutes will reflect such disagreements. Such minutes shall be confidential and shared with Members only. Minutes are for administrative record keeping purposes only and are not intended to be binding or conclusive in any way. The minutes will record attendance, significant issues discussed and the results of votes taken by the Official Committee

13. **Additional Rules and Guidelines**: Representative Counsel may adopt in its sole discretion, such reasonable procedural rules and guidelines regarding the governing of Official Committee meetings. Notwithstanding any provision in this Protocol and subject to the terms of the Order, Representative Counsel may, in its sole discretion, apply to

the Court for advice and direction on any matter, including, without limitation, with respect to instruction received from the Official Committee.

HI-RISE CAPITAL LTD.
Applicant

SUPERINTENDENT OF FINANCIAL SERVICES *et. al.*
Respondents

Court File No. CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, Hi-Rise Capital Ltd.

Court File No.: CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY THE 15th
	)	
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2019

IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE, R.R.O. 1990, REG. 194, AS AMENDED

AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF ADELAIDE STREET LOFTS INC.

ORDER

THIS MOTION, made by Miller Thomson LLP, in its capacity Court-appointed Representative Counsel in this proceeding (in such capacity, "**Representative Counsel**"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario,

ON READING the Notice of Motion and the First Report of Representative Counsel dated April 9, 2019 (the "**First Report**"), and on hearing the submissions of Representative Counsel and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as it appears from the Affidavit of Shallon Garrafa sworn April 10, 2019, filed,

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and Motion Record is hereby abridged and validated, such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that the activities and conduct of Representative Counsel, as disclosed in the First Report, be and are hereby approved.

3. **THIS COURT ORDERS** that the Official Committee (as defined in the First Report) be and is hereby constituted.

4. **THIS COURT ORDERS** that the Short List Candidates (as defined in the First Report) in respect of the Official Committee, be and are hereby approved.

5. **THIS COURT ORDERS** that the Official Committee members shall not disclose any information or communication that Representative Counsel advises is confidential or privileged.

6. **THIS COURT ORDERS** that the Official Committee members shall be required to advise Representative Counsel forthwith of any communication he or she receives from Investors (as defined in the First Report) or any other persons.

7. **THIS COURT ORDERS** that Confidential Appendix "1" to the First Report, be and is hereby sealed, pending further Order of the Court.

Hainey J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
APR 15 2019
PER / PAR: [redacted]

HI-RISE CAPITAL LTD. Applicant	and	SUPERINTENDENT OF FINANCIAL SERVICES et. al. Respondents	Court File No.: CV-19-616261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(April 15, 2019)

MILLER THOMSON LLP
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Court-appointed Representative Counsel

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
Cash	2EARJ	2EARJA4	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EARR	2EARRA6	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EARW	2EARWA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EARX	2EARXR1	-	$ -	1,048	$ 10,480	-	$ -	$ 10,480	0.02%
LIRA	2EARX	2EARXT4	5,380	$ 26,900	1,920	$ 19,200	-	$ -	$ 46,100	0.10%
Cash	2EARY	2EARYA7	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EARZ	2EARZA6	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAS0	2EAS0A0	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAS0	2EAS0R3	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
Cash	2EAS1	2EAS1A9	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAS3	2EAS3A7	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EASH	2EASHA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EASJ	2EASJA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EASJ	2EASJR2	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
RRSP	2EASL	2EASLR0	-	$ -	2,511	$ 25,110	-	$ -	$ 25,110	0.05%
LIRA	2EASL	2EASLT3	-	$ -	545	$ 5,450	-	$ -	$ 5,450	0.01%
Cash	2EASP	2EASPA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EASQ	2EASQA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EASX	2EASXA3	-	$ -	2,128	$ 21,280	-	$ -	$ 21,280	0.05%
TFSA	2EASX	2EASXI6	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
RRSP	2EASX	2EASXR6	-	$ -	3,864	$ 38,640	-	$ -	$ 38,640	0.08%
Cash	2EASZ	2EASZA1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAT0	2EAT0A8	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAT1	2EAT1A7	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EATY	2EATYA0	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAU0	2EAU0A6	3,200	$ 16,000	4,169	$ 41,690	-	$ -	$ 57,690	0.12%
Cash	2EAU6	2EAU6A0	18,000	$ 90,000	-	$ -	-	$ -	$ 90,000	0.19%
TFSA	2EAU6	2EAU6I3	-	$ -	1,229	$ 12,290	-	$ -	$ 12,290	0.03%
RRSP	2EAUB	2EAUBR7	-	$ -	4,767	$ 47,670	-	$ -	$ 47,670	0.10%
Cash	2EAUJ	2EAUJA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUM	2EAUMA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUN	2EAUNA1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUS	2EAUSA4	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUT	2EAUTA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUX	2EAUXA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUY	2EAUYA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAUZ	2EAUZA7	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAV2	2EAV2A1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAV3	2EAV3A0	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAV4	2EAV4A9	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAV5	2EAV5A8	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EAV5	2EAV5I1	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
Cash	2EAV8	2EAV8A5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAVB	2EAVBA1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAVG	2EAVGA6	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAVH	2EAVHA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAVJ	2EAVJA2	-	$ -	5,500	$ 55,000	-	$ -	$ 55,000	0.12%
Cash	2EAVL	2EAVLA0	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EAVY	2EAVYI8	-	$ -	720	$ 7,200	-	$ -	$ 7,200	0.02%
LIRA	2EAVY	2EAVYT1	-	$ -	350	$ 3,500	-	$ -	$ 3,500	0.01%
RRSP	2EAW3	2EAW3R1	-	$ -	2,500	$ 25,000	-	$ -	$ 25,000	0.05%
RRSP	2EAW7	2EAW7R7	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
RRSP	2EAW8	2EAW8R6	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
Cash	2EAW9	2EAW9A2	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
Cash	2EAWL	2EAWLA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAWM	2EAWMR0	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EAWP	2EAWPR7	-	$ -	1,900	$ 19,000	-	$ -	$ 19,000	0.04%
LIRA	2EAWP	2EAWPT0	-	$ -	250	$ 2,500	-	$ -	$ 2,500	0.01%
Cash	2EAWR	2EAWRA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAWS	2EAWSA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EAWS	2EAWSI2	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
Cash	2EAWV	2EAWVA6	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EAWW	2EAWWI8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EAWZ	2EAWZR5	-	$ -	450	$ 4,500	-	$ -	$ 4,500	0.01%
LIRA	2EAWZ	2EAWZT8	-	$ -	550	$ 5,500	-	$ -	$ 5,500	0.01%
TFSA	2EAX0	2EAX0I2	1,600	$ 8,000	800	$ 8,000	-	$ -	$ 16,000	0.03%
RRSP	2EAX0	2EAX0R2	5,200	$ 26,000	2,800	$ 28,000	-	$ -	$ 54,000	0.12%
TFSA	2EAX2	2EAX2I0	-	$ -	1,450	$ 14,500	-	$ -	$ 14,500	0.03%
RRIF	2EAX3	2EAX3V7	-	$ -	2,940	$ 29,400	-	$ -	$ 29,400	0.06%
TFSA	2EAX6	2EAX6I6	-	$ -	350	$ 3,500	-	$ -	$ 3,500	0.01%
SRRIF	2EAX6	2EAX6W2	-	$ -	3,750	$ 37,500	-	$ -	$ 37,500	0.08%
Cash	2EAX8	2EAX8A1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAX9	2EAX9A0	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAXA	2EAXAR1	-	$ -	490	$ 4,900	-	$ -	$ 4,900	0.01%
Cash	2EAXB	2EAXBA7	-	$ -	-	$ -	-	$ -	$ -	0.00%
SRRIF	2EAXJ	2EAXJW7	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
RRIF	2EAXL	2EAXLV7	-	$ -	700	$ 7,000	-	$ -	$ 7,000	0.01%
RRIF	2EAXM	2EAXMV6	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
Cash	2EAXP	2EAXPA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAXS	2EAXSR0	-	$ -	1,200	$ 12,000	-	$ -	$ 12,000	0.03%
SPRSP	2EAXT	2EAXTS4	-	$ -	800	$ 8,000	-	$ -	$ 8,000	0.02%
SPRSP	2EAXU	2EAXUS3	-	$ -	6,000	$ 60,000	-	$ -	$ 60,000	0.13%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
RRSP	2EAXV	2EAXVR7	-	$ -	1,600	$ 16,000	-	$ -	$ 16,000	0.03%
LIRA	2EAXV	2EAXVT0	-	$ -	1,400	$ 14,000	-	$ -	$ 14,000	0.03%
RRSP	2EAXW	2EAXWR6	-	$ -	4,400	$ 44,000	-	$ -	$ 44,000	0.09%
Cash	2EAXX	2EAXXA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EAXZ	2EAXZI3	-	$ -	5,790	$ 57,900	-	$ -	$ 57,900	0.12%
Cash	2EAY2	2EAY2A5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAY3	2EAY3A4	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAY3	2EAY3R7	-	$ -	6,000	$ 60,000	-	$ -	$ 60,000	0.13%
RRSP	2EAYA	2EAYAR9	4,000	$ 20,000	6,621	$ 66,210	-	$ -	$ 86,210	0.18%
RRSP	2EAYG	2EAYGR3	-	$ -	1,900	$ 19,000	-	$ -	$ 19,000	0.04%
Margin	2EAYJ	2EAYJE7	20,000	$ 100,000	-	$ -	-	$ -	$ 100,000	0.21%
RRSP	2EAYL	2EAYLR7	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
SPRSP	2EAYM	2EAYMS1	-	$ -	1,300	$ 13,000	-	$ -	$ 13,000	0.03%
Cash	2EAYQ	2EAYQA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAYQ	2EAYQR2	-	$ -	2,073	$ 20,730	-	$ -	$ 20,730	0.04%
TFSA	2EAYU	2EAYUI6	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
LIF_Prov	2EAYU	2EAYUX0	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
LIRA	2EAZ3	2EAZ3T8	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
LIRA	2EAZ9	2EAZ9T2	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
TFSA	2EAZD	2EAZDI4	-	$ -	4,213	$ 42,130	-	$ -	$ 42,130	0.09%
RRIF	2EAZD	2EAZDV2	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
SPRSP	2EAZF	2EAZFS7	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
Cash	2EAZH	2EAZHA7	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EAZQ	2EAZQR0	-	$ -	740	$ 7,400	-	$ -	$ 7,400	0.02%
SPRSP	2EAZQ	2EAZQS5	-	$ -	8,382	$ 83,820	-	$ -	$ 83,820	0.18%
Cash	2EAZT	2EAZTA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EAZX	2EAZXA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
RLIF_Fed	2EB1A	2EB1AY5	-	$ -	2,700	$ 27,000	-	$ -	$ 27,000	0.06%
Cash	2EB1B	2EB1BA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EB1E	2EB1ER9	-	$ -	6,134	$ 61,340	-	$ -	$ 61,340	0.13%
LIRA	2EB1E	2EB1ET2	-	$ -	1,714	$ 17,140	-	$ -	$ 17,140	0.04%
Cash	2EB1M	2EB1MA7	1,000	$ 5,000	200	$ 2,000	-	$ -	$ 7,000	0.01%
LIRA	2EB2A	2EB2AT4	10,000	$ 50,000	-	$ -	-	$ -	$ 50,000	0.11%
SPRSP	2EB2B	2EB2BS5	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EB2J	2EB2JR1	7,000	$ 35,000	-	$ -	-	$ -	$ 35,000	0.07%
RRIF	2EB2K	2EB2KV8	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
Cash	2EB2P	2EB2PA2	20,000	$ 100,000	-	$ -	-	$ -	$ 100,000	0.21%
TFSA	2EB2S	2EB2SI0	15,543	$ 77,715	507	$ 5,070	-	$ -	$ 82,785	0.18%
Cash	2EB2T	2EB2TA6	20,000	$ 100,000	-	$ -	-	$ -	$ 100,000	0.21%
TFSA	2EB2V	2EB2VI7	10,000	$ 50,000	-	$ -	-	$ -	$ 50,000	0.11%
TFSA	2EB2Z	2EB2ZI3	-	$ -	1,100	$ 11,000	-	$ -	$ 11,000	0.02%
RRSP	2EB2Z	2EB2ZR3	-	$ -	700	$ 7,000	-	$ -	$ 7,000	0.01%
Cash	2EB3C	2EB3CA4	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EB3D	2EB3DR6	-	$ -	600	$ 6,000	-	$ -	$ 6,000	0.01%
RRSP	2EB3G	2EB3GR3	-	$ -	2,474	$ 24,740	-	$ -	$ 24,740	0.05%
Cash	2EB3K	2EB3KA5	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
Cash	2EB3M	2EB3MA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EB3Q	2EB3QR2	-	$ -	4,550	$ 45,500	-	$ -	$ 45,500	0.10%
TFSA	2EBA1	2EBA1I3	-	$ -	210	$ 2,100	-	$ -	$ 2,100	0.00%
RRIF	2EBA1	2EBA1V1	-	$ -	4,200	$ 42,000	-	$ -	$ 42,000	0.09%
LIRA	2EBA7	2EBA7T0	-	$ -	8,000	$ 80,000	-	$ -	$ 80,000	0.17%
Cash	2EBA8	2EBA8A3	1,310	$ 6,550	-	$ -	-	$ -	$ 6,550	0.01%
Cash	2EBAD	2EBADA7	80,000	$ 400,000	3,000	$ 30,000	-	$ -	$ 430,000	0.92%
TFSA	2EBAE	2EBAEI9	-	$ -	1,030	$ 10,300	-	$ -	$ 10,300	0.02%
Cash	2EBAF	2EBAFA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBAH	2EBAHA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
LIRA	2EBAJ	2EBAJT6	-	$ -	4,349	$ 43,490	-	$ -	$ 43,490	0.09%
Cash	2EBAK	2EBAKA9	3,000	$ 15,000	-	$ -	-	$ -	$ 15,000	0.03%
Cash	2EBAP	2EBAPA4	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBAR	2EBARA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBAT	2EBATA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBAT	2EBATI1	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EBAT	2EBATR1	-	$ -	6,479	$ 64,790	-	$ -	$ 64,790	0.14%
RRSP	2EBAW	2EBAWR8	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
RRSP	2EBAX	2EBAXR7	-	$ -	1,900	$ 19,000	-	$ -	$ 19,000	0.04%
SPRSP	2EBAX	2EBAXS2	-	$ -	1,600	$ 16,000	-	$ -	$ 16,000	0.03%
RRSP	2EBAZ	2EBAZR5	-	$ -	3,200	$ 32,000	-	$ -	$ 32,000	0.07%
RRSP	2EBB0	2EBB0R2	3,200	$ 16,000	3,313	$ 33,130	-	$ -	$ 49,130	0.10%
Cash	2EBB4	2EBB4A5	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
Cash	2EBB6	2EBB6A3	30,000	$ 150,000	900	$ 9,000	-	$ -	$ 159,000	0.34%
RRSP	2EBB6	2EBB6R6	-	$ -	2,100	$ 21,000	-	$ -	$ 21,000	0.04%
Cash	2EBB9	2EBB9A0	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBBD	2EBBDA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBBE	2EBBEA4	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBBF	2EBBFI6	-	$ -	680	$ 6,800	-	$ -	$ 6,800	0.01%
Cash	2EBBG	2EBBGA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBBS	2EBBSA7	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EBBV	2EBBVR7	1,120	$ 5,600	-	$ -	-	$ -	$ 5,600	0.01%
Cash	2EBBW	2EBBWA3	-	$ -	4,573	$ 45,730	-	$ -	$ 45,730	0.10%
TFSA	2EBBW	2EBBWI6	-	$ -	2,934	$ 29,340	-	$ -	$ 29,340	0.06%
RRSP	2EBBW	2EBBWR6	-	$ -	2,143	$ 21,430	-	$ -	$ 21,430	0.05%
Cash	2EBC4	2EBC4A3	14,866	$ 74,330	25,490	$ 254,900	-	$ -	$ 329,230	0.70%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
Cash	2EBCB	2EBCBA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBCM	2EBCMA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRIF	2EBCW	2EBCWV2	-	$ -	7,280	$ 72,800	-	$ -	$ 72,800	0.16%
RRSP	2EBD1	2EBD1R7	-	$ -	2,870	$ 28,700	-	$ -	$ 28,700	0.06%
LIRA	2EBD1	2EBD1T0	-	$ -	880	$ 8,800	-	$ -	$ 8,800	0.02%
RRSP	2EBD7	2EBD7R1	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
Cash	2EBD8	2EBD8A7	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBDB	2EBDBA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBDG	2EBDGI1	1,000	$ 5,000	463	$ 4,630	-	$ -	$ 9,630	0.02%
Cash	2EBDH	2EBDHA7	-	$ -	40,227	$ 402,270	-	$ -	$ 402,270	0.86%
TFSA	2EBDH	2EBDHI0	-	$ -	6,350	$ 63,500	-	$ -	$ 63,500	0.14%
Cash	2EBDU	2EBDUA1	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
Cash	2EBDW	2EBDWA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBDZ	2EBDZA6	-	$ -	-	$ -	-	$ -	$ -	0.00%
LIRA	2EBE0	2EBE0T8	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
LIF_Fed	2EBE1	2EBE1Y6	4,000	$ 20,000	-	$ -	-	$ -	$ 20,000	0.04%
Cash	2EBE2	2EBE2A0	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBE6	2EBE6A6	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBE8	2EBE8A4	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EBE8	2EBE8R7	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
LIRA	2EBE8	2EBE8T0	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
TFSA	2EBEA	2EBEAI4	-	$ -	537	$ 5,370	-	$ -	$ 5,370	0.01%
RRSP	2EBEA	2EBEAR4	-	$ -	374	$ 3,740	-	$ -	$ 3,740	0.01%
LRSP	2EBEC	2EBECU3	-	$ -	2,350	$ 23,500	-	$ -	$ 23,500	0.05%
TFSA	2EBEP	2EBEPI8	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
RRIF	2EBEP	2EBEPV6	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EBER	2EBERV4	4,000	$ 20,000	-	$ -	-	$ -	$ 20,000	0.04%
Cash	2EBEU	2EBEUA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBEY	2EBEYI7	-	$ -	3,400	$ 34,000	-	$ -	$ 34,000	0.07%
Cash	2EBF7	2EBF7A3	2,000	$ 10,000	-	$ -	-	$ -	$ 10,000	0.02%
RRIF	2EBFJ	2EBFJV0	-	$ -	4,227	$ 42,270	-	$ -	$ 42,270	0.09%
LIF_Prov	2EBFJ	2EBFJX6	-	$ -	5,240	$ 52,400	-	$ -	$ 52,400	0.11%
Cash	2EBFL	2EBFLA7	-	$ -	1,491	$ 14,910	-	$ -	$ 14,910	0.03%
Cash	2EBFQ	2EBFQA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
SPRSP	2EBFR	2EBFRS9	-	$ -	3,300	$ 33,000	-	$ -	$ 33,000	0.07%
Cash	2EBFS	2EBFSA8	-	$ -	-	$ -	-	$ -	$ -	0.00%
LIRA	2EBFS	2EBFST4	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
Cash	2EBFX	2EBFXA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBFY	2EBFYA2	-	$ -	-	$ -	-	$ -	$ -	0.00%
LIRA	2EBFZ	2EBFZT7	1,200	$ 6,000	-	$ -	-	$ -	$ 6,000	0.01%
TFSA	2EBG0	2EBG0I1	-	$ -	2,250	$ 22,500	-	$ -	$ 22,500	0.05%
Cash	2EBG1	2EBG1A7	-	$ -	3,300	$ 33,000	-	$ -	$ 33,000	0.07%
TFSA	2EBG1	2EBG1I0	-	$ -	1,700	$ 17,000	-	$ -	$ 17,000	0.04%
SPRSP	2EBG3	2EBG3S3	-	$ -	4,200	$ 42,000	-	$ -	$ 42,000	0.09%
Cash	2EBG6	2EBG6A2	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
Cash	2EBG8	2EBG8A0	-	$ -	8,650	$ 86,500	-	$ -	$ 86,500	0.18%
TFSA	2EBG8	2EBG8I3	-	$ -	1,350	$ 13,500	-	$ -	$ 13,500	0.03%
TFSA	2EBGB	2EBGBI9	8,400	$ 42,000	1,500	$ 15,000	-	$ -	$ 57,000	0.12%
TFSA	2EBGC	2EBGCI8	-	$ -	1,100	$ 11,000	-	$ -	$ 11,000	0.02%
Cash	2EBGL	2EBGLA5	-	$ -	1,650	$ 16,500	-	$ -	$ 16,500	0.04%
TFSA	2EBGL	2EBGLI8	-	$ -	6,350	$ 63,500	-	$ -	$ 63,500	0.14%
RRSP	2EBGL	2EBGLR8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
Cash	2EBGN	2EBGNA3	3,000	$ 15,000	-	$ -	-	$ -	$ 15,000	0.03%
RRSP	2EBGP	2EBGPR4	-	$ -	900	$ 9,000	-	$ -	$ 9,000	0.02%
LRSP	2EBGP	2EBGPU5	-	$ -	9,100	$ 91,000	-	$ -	$ 91,000	0.19%
TFSA	2EBGQ	2EBGQI3	-	$ -	3,519	$ 35,190	-	$ -	$ 35,190	0.08%
Cash	2EBGR	2EBGRA9	81,410	$ 407,050	4,445	$ 44,450	-	$ -	$ 451,500	0.96%
Cash	2EBGS	2EBGSA6	-	$ -	72,307	$ 723,070	-	$ -	$ 723,070	1.54%
LIRA	2EBGZ	2EBGZT5	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
Cash	2EBH8	2EBH8A8	-	$ -	700	$ 7,000	-	$ -	$ 7,000	0.01%
SRRIF	2EBHL	2EBHLW2	4,800	$ 24,000	-	$ -	-	$ -	$ 24,000	0.05%
LIF_Prov	2EBHO	2EBHOX7	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
Cash	2EBHP	2EBHPA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBHR	2EBHRI0	-	$ -	730	$ 7,300	-	$ -	$ 7,300	0.02%
Cash	2EBHU	2EBHUA2	4,000	$ 20,000	2,000	$ 20,000	-	$ -	$ 40,000	0.09%
Cash	2EBHW	2EBHWA0	-	$ -	-	$ -	-	$ -	$ -	0.00%
LIF_Prov	2EBIB	2EBIBX9	9,122	$ 45,610	113	$ 1,130	-	$ -	$ 46,740	0.10%
Cash	2EBJ0	2EBJ0A1	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
Cash	2EBJ2	2EBJ2A9	-	$ -	58,650	$ 586,500	-	$ -	$ 586,500	1.25%
Cash	2EBJ3	2EBJ3A8	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
Cash	2EBJ4	2EBJ4A7	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
Cash	2EBJ5	2EBJ5A6	-	$ -	550	$ 5,500	-	$ -	$ 5,500	0.01%
Cash	2EBJ8	2EBJ8A3	-	$ -	6,050	$ 60,500	-	$ -	$ 60,500	0.13%
TFSA	2EBJ8	2EBJ8I6	-	$ -	3,850	$ 38,500	-	$ -	$ 38,500	0.08%
Cash	2EBJA	2EBJAA0	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBJB	2EBJBA9	-	$ -	-	$ -	-	$ -	$ -	0.00%
RRSP	2EBJG	2EBJGR7	3,000	$ 15,000	-	$ -	-	$ -	$ 15,000	0.03%
Cash	2EBJM	2EBJMA7	40,000	$ 200,000	-	$ -	-	$ -	$ 200,000	0.43%
LIF_Prov	2EBJN	2EBJNX3	5,000	$ 25,000	-	$ -	-	$ -	$ 25,000	0.05%
Cash	2EBJQ	2EBJQA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBJR	2EBJRA2	-	$ -	800	$ 8,000	-	$ -	$ 8,000	0.02%
Cash	2EBJU	2EBJUA7	-	$ -	3,700	$ 37,000	-	$ -	$ 37,000	0.08%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
Cash	2EBJV	2EBJVA6	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRIF	2EBJV	2EBJVV7	-	$ -	2,473	$ 24,730	-	$ -	$ 24,730	0.05%
RRIF	2EBJW	2EBJWV6	-	$ -	1,087	$ 10,870	-	$ -	$ 10,870	0.02%
RRSP	2EBJX	2EBJXR7	-	$ -	1,399	$ 13,990	-	$ -	$ 13,990	0.03%
Cash	2EBKD	2EBKDA5	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBKD	2EBKDI8	-	$ -	3,100	$ 31,000	-	$ -	$ 31,000	0.07%
LIRA	2EBKE	2EBKET0	-	$ -	1,625	$ 16,250	-	$ -	$ 16,250	0.03%
Cash	2EBKF	2EBKFA3	-	$ -	-	$ -	-	$ -	$ -	0.00%
TFSA	2EBKF	2EBKFI6	-	$ -	2,500	$ 25,000	-	$ -	$ 25,000	0.05%
Cash	2EBKG	2EBKGA2	-	$ -	7,833	$ 78,330	-	$ -	$ 78,330	0.17%
Cash	2EBKM	2EBKMA5	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
RRIF	2EBKN	2EBKNV5	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
TFSA	2EBKP	2EBKPI5	-	$ -	6,350	$ 63,500	-	$ -	$ 63,500	0.14%
Cash	2EBLW	2EBLWA1	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBMA	2EBMAA4	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
Cash	2EBMB	2EBMBA3	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
TFSA	2EBMC	2EBMCI5	-	$ -	1,077	$ 10,770	-	$ -	$ 10,770	0.02%
RRIF	2EBMC	2EBMCV3	-	$ -	3,941	$ 39,410	-	$ -	$ 39,410	0.08%
Cash	2EBME	2EBMEA0	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EBMH	2EBMHV8	-	$ -	1,880	$ 18,800	-	$ -	$ 18,800	0.04%
Cash	2EBMJ	2EBMJA4	-	$ -	2,200	$ 22,000	-	$ -	$ 22,000	0.05%
Cash	2EBMK	2EBMKA3	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EBMM	2EBMMR4	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
LIRA	2EBMP	2EBMPT4	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
Cash	2EBMR	2EBMRA6	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
TFSA	2EPBD	2EPBDI3	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EBIA	2EBIAR6	3,118	$ 15,590	190	$ 1,900	-	$ -	$ 17,490	0.04%
TFSA	2EA2J	2EA2JI2	11,500	$ 57,500	405	$ 4,050	-	$ -	$ 61,550	0.13%
RRIF	2EA0G	2EA0GV8	10,000	$ 50,000	5,580	$ 55,800	-	$ -	$ 105,800	0.23%
RRSP	2EA8C	2EA8CR7	-	$ -	11,372	$ 113,720	-	$ -	$ 113,720	0.24%
Cash	2EBG0	2EBG0A8	-	$ -	7,750	$ 77,500	-	$ -	$ 77,500	0.17%
Cash	2EA6P	2EA6PA4	89,560	$ 447,800	3,052	$ 30,520	-	$ -	$ 478,320	1.02%
LIRA	2EA8T	2EA8TT0	-	$ -	807	$ 8,070	-	$ -	$ 8,070	0.02%
RRSP	2EA92	2EA92R6	-	$ -	5,057	$ 50,570	-	$ -	$ 50,570	0.11%
TFSA	2EB3C	2EB3CI7	-	$ -	8,857	$ 88,570	-	$ -	$ 88,570	0.19%
Cash	2EB2S	2EB2SA7	4,333	$ 21,665	206	$ 2,060	-	$ -	$ 23,725	0.05%
TFSA	2EACC	2EACCI8	3,176	$ 15,880	-	$ -	-	$ -	$ 15,880	0.03%
Cash	2EA3F	2EA3FA2	-	$ -	100,000	$ 1,000,000	-	$ -	$ 1,000,000	2.13%
Cash	2EA8J	2EA8JA6	-	$ -	20,000	$ 200,000	-	$ -	$ 200,000	0.43%
LIRA	2EAMH	2EAMHT4	-	$ -	6,364	$ 63,640	-	$ -	$ 63,640	0.14%
RRSP	2EBJE	2EBJER9	3,860	$ 19,300	-	$ -	-	$ -	$ 19,300	0.04%
RRSP	2EAY7	2EAY7R3	600	$ 3,000	480	$ 4,800	-	$ -	$ 7,800	0.02%
TFSA	2EA3S	2EA3SI9	-	$ -	7,755	$ 77,550	-	$ -	$ 77,550	0.17%
TFSA	2EA86	2EA86I4	-	$ -	6,371	$ 63,710	-	$ -	$ 63,710	0.14%
TFSA	2EA6C	2EA6CI1	-	$ -	4,912	$ 49,120	-	$ -	$ 49,120	0.10%
RRIF	2EBIB	2EBIBV3	66,536	$ 332,680	832	$ 8,320	-	$ -	$ 341,000	0.73%
RRIF	2EA2P	2EA2PV4	6,920	$ 34,600	-	$ -	-	$ -	$ 34,600	0.07%
Cash	2EA2C	2EA2CA7	16,000	$ 80,000	426	$ 4,260	-	$ -	$ 84,260	0.18%
RRSP	2EA00	2EA00R7	1,162	$ 5,810	-	$ -	-	$ -	$ 5,810	0.01%
RRIF	2EAZH	2EAZHV8	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EA59	2EA59R7	-	$ -	5,342	$ 53,420	-	$ -	$ 53,420	0.11%
Cash	2EA5W	2EA5WA7	-	$ -	39,617	$ 396,170	-	$ -	$ 396,170	0.85%
TFSA	2EBC1	2EBC1I9	1,170	$ 5,850	78	$ 780	-	$ -	$ 6,630	0.01%
LIRA	2EBH3	2EBH3T9	-	$ -	1,300	$ 13,000	-	$ -	$ 13,000	0.03%
RRSP	2EAYE	2EAYER5	2,800	$ 14,000	-	$ -	-	$ -	$ 14,000	0.03%
RRIF	2EAVC	2EAVCV1	-	$ -	600	$ 6,000	-	$ -	$ 6,000	0.01%
LIF_Prov	2EBEJ	2EBEJX8	4,100	$ 20,500	1,750	$ 17,500	-	$ -	$ 38,000	0.08%
TFSA	2EAVC	2EAVCI3	-	$ -	2,400	$ 24,000	-	$ -	$ 24,000	0.05%
RRSP	2EAA4	2EAA4R1	-	$ -	2,590	$ 25,900	-	$ -	$ 25,900	0.06%
TFSA	2EBAF	2EBAFI8	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EBC1	2EBC1R9	1,000	$ 5,000	551	$ 5,510	-	$ -	$ 10,510	0.02%
TFSA	2EBE6	2EBE6I9	-	$ -	5,230	$ 52,300	-	$ -	$ 52,300	0.11%
RRSP	2EAZP	2EAZPR1	-	$ -	7,769	$ 77,690	-	$ -	$ 77,690	0.17%
SPRSP	2EBFY	2EBFYS0	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRIF	2EA36	2EA36V3	-	$ -	6,000	$ 60,000	-	$ -	$ 60,000	0.13%
RRSP	2EAUZ	2EAUZR0	-	$ -	3,018	$ 30,180	-	$ -	$ 30,180	0.06%
Cash	2EAVQ	2EAVQA5	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
Cash	2EA9E	2EA9EA0	-	$ -	3,650	$ 36,500	-	$ -	$ 36,500	0.08%
RRSP	2EA91	2EA91R7	-	$ -	3,590	$ 35,900	-	$ -	$ 35,900	0.08%
RRSP	2EACW	2EACWR5	3,154	$ 15,770	4,110	$ 41,100	-	$ -	$ 56,870	0.12%
LIRA	2EA0Y	2EA0YT2	2,400	$ 12,000	300	$ 3,000	-	$ -	$ 15,000	0.03%
TFSA	2EAY6	2EAY6I4	-	$ -	720	$ 7,200	-	$ -	$ 7,200	0.02%
SPRSP	2EAWE	2EAWES4	-	$ -	1,200	$ 12,000	-	$ -	$ 12,000	0.03%
SPRSP	2EBH8	2EBH8S6	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
LIF_Fed	2EAWA	2EAWAY5	-	$ -	2,250	$ 22,500	-	$ -	$ 22,500	0.05%
RRSP	2EAF1	2EAF1R3	-	$ -	4,974	$ 49,740	-	$ -	$ 49,740	0.11%
TFSA	2EA1L	2EA1LI2	3,000	$ 15,000	644	$ 6,440	-	$ -	$ 21,440	0.05%
RRSP	2EB1K	2EB1KR2	-	$ -	600	$ 6,000	-	$ -	$ 6,000	0.01%
TFSA	2EBA8	2EBA8I6	3,934	$ 19,670	-	$ -	-	$ -	$ 19,670	0.04%
TFSA	2EA23	2EA23I0	-	$ -	3,093	$ 30,930	-	$ -	$ 30,930	0.07%
RRSP	2EAV5	2EAV5R1	-	$ -	1,700	$ 17,000	-	$ -	$ 17,000	0.04%
TFSA	2EA9E	2EA9EI3	-	$ -	6,350	$ 63,500	-	$ -	$ 63,500	0.14%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
Cash	2EAW1	2EAW1A0	4,000	$ 20,000	7,000	$ 70,000	-	$ -	$ 90,000	0.19%
Cash	2EA84	2EA84A3	-	$ -	5,400	$ 54,000	-	$ -	$ 54,000	0.12%
RRSP	2EBFV	2EBFVR8	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
TFSA	2EAXJ	2EAXJI1	-	$ -	1,400	$ 14,000	-	$ -	$ 14,000	0.03%
RRSP	2EAWY	2EAWYR6	-	$ -	1,400	$ 14,000	-	$ -	$ 14,000	0.03%
Cash	2EB2Z	2EB2ZA0	-	$ -	4,200	$ 42,000	-	$ -	$ 42,000	0.09%
RRSP	2EAU6	2EAU6R3	2,000	$ 10,000	8,708	$ 87,080	-	$ -	$ 97,080	0.21%
RRSP	2EBDW	2EBDWR2	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EPAX	2EPAXR2	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
LIRA	2EA8W	2EA8WT7	-	$ -	8,325	$ 83,250	-	$ -	$ 83,250	0.18%
TFSA	2EBHV	2EBHVI4	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
SPRSP	2EAQT	2EAQTS2	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
TFSA	2EBMJ	2EBMJI7	-	$ -	200	$ 2,000	-	$ -	$ 2,000	0.00%
Cash	2EA5Z	2EA5ZA4	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
TFSA	2EA1S	2EA1SI3	10,992	$ 54,960	1,587	$ 15,870	-	$ -	$ 70,830	0.15%
RRSP	2EAHM	2EAHMR6	2,000	$ 10,000	-	$ -	-	$ -	$ 10,000	0.02%
TFSA	2EA1U	2EA1UI1	10,952	$ 54,760	1,585	$ 15,850	-	$ -	$ 70,610	0.15%
RRSP	2EA31	2EA31R0	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EA5D	2EA5DV0	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
Cash	2EABC	2EABCA7	488	$ 2,440	6,073	$ 60,730	-	$ -	$ 63,170	0.13%
RRSP	2EA6D	2EA6DR0	-	$ -	8,930	$ 89,300	-	$ -	$ 89,300	0.19%
TFSA	2EPA0	2EPA0I9	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EA6T	2EA6TR1	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
TFSA	2EA04	2EA04I3	-	$ -	4,428	$ 44,280	-	$ -	$ 44,280	0.09%
Cash	2EA6M	2EA6MA7	20,000	$ 100,000	7,045	$ 70,450	-	$ -	$ 170,450	0.36%
RRIF	2EBEJ	2EBEJV2	15,900	$ 79,500	750	$ 7,500	-	$ -	$ 87,000	0.19%
Margin	2EBCZ	2EBCZE9	20,000	$ 100,000	22,457	$ 224,570	-	$ -	$ 324,570	0.69%
RRSP	2EA25	2EA25R8	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EBFL	2EBFLR0	5,600	$ 28,000	4,536	$ 45,360	-	$ -	$ 73,360	0.16%
RRSP	2EA8X	2EA8XR3	-	$ -	11,233	$ 112,330	-	$ -	$ 112,330	0.24%
RRSP	2EPAK	2EPAKR7	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EBMN	2EBMNR3	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
LIRA	2EA49	2EA49T3	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRIF	2EAVM	2EAVMV0	-	$ -	4,100	$ 41,000	-	$ -	$ 41,000	0.09%
TFSA	2EBB4	2EBB4I8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
LIRA	2EA43	2EA43T9	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EAWX	2EAWXR7	-	$ -	100	$ 1,000	-	$ -	$ 1,000	0.00%
Cash	2EAMN	2EAMNA1	1,680	$ 8,400	-	$ -	-	$ -	$ 8,400	0.02%
Cash	2EAWQ	2EAWQA3	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
SPRSP	2EAXF	2EAXFS1	-	$ -	2,600	$ 26,000	-	$ -	$ 26,000	0.06%
RRIF	2EAXK	2EAXKV8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
SPRSP	2EAWX	2EAWXS2	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
RRSP	2EA1B	2EA1BR3	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
Cash	2EBHV	2EBHVA1	2,000	$ 10,000	-	$ -	-	$ -	$ 10,000	0.02%
Cash	2EBB1	2EBB1A8	9,400	$ 47,000	6,861	$ 68,610	-	$ -	$ 115,610	0.25%
TFSA	2EA5A	2EA5AI5	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EAG8	2EAG8R4	2,000	$ 10,000	-	$ -	-	$ -	$ 10,000	0.02%
RRSP	2EAY6	2EAY6R4	-	$ -	2,880	$ 28,800	-	$ -	$ 28,800	0.06%
SRRIF	2EAVL	2EAVLW9	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
TFSA	2EBHK	2EBHKI7	3,200	$ 16,000	-	$ -	-	$ -	$ 16,000	0.03%
RRSP	2EBDV	2EBDVR3	15,600	$ 78,000	-	$ -	-	$ -	$ 78,000	0.17%
RRIF	2EBAF	2EBAFV6	-	$ -	3,670	$ 36,700	-	$ -	$ 36,700	0.08%
LIRA	2EA8X	2EA8XT6	-	$ -	14,279	$ 142,790	-	$ -	$ 142,790	0.30%
RRSP	2EBEN	2EBENR0	-	$ -	290	$ 2,900	-	$ -	$ 2,900	0.01%
RRSP	2EAWF	2EAWFR8	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
SPRSP	2EBC1	2EBC1S4	2,652	$ 13,260	6,368	$ 63,680	-	$ -	$ 76,940	0.16%
RRSP	2EAQB	2EAQBR8	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
TFSA	2EB1K	2EB1KI2	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
TFSA	2EBDR	2EBDRI9	740	$ 3,700	-	$ -	-	$ -	$ 3,700	0.01%
TFSA	2EAWF	2EAWFI8	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
RRSP	2EBFX	2EBFXR6	-	$ -	2,500	$ 25,000	-	$ -	$ 25,000	0.05%
RRSP	2EA47	2EA47R2	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
LIRA	2EARS	2EARST9	260	$ 1,300	2,247	$ 22,470	-	$ -	$ 23,770	0.05%
RRSP	2EA5A	2EA5AR5	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EBHO	2EBHOV1	3,000	$ 15,000	2,500	$ 25,000	-	$ -	$ 40,000	0.09%
TFSA	2EAWD	2EAWDI0	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EA7S	2EA7SR0	-	$ -	750	$ 7,500	-	$ -	$ 7,500	0.02%
LIF_Prov	2EAVM	2EAVMX6	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
TFSA	2EBJ7	2EBJ7I7	-	$ -	6,350	$ 63,500	-	$ -	$ 63,500	0.14%
RRSP	2EAV7	2EAV7R9	-	$ -	180	$ 1,800	-	$ -	$ 1,800	0.00%
RRSP	2EAA7	2EAA7R8	-	$ -	17,200	$ 172,000	-	$ -	$ 172,000	0.37%
RRIF	2EBAK	2EBAKV0	1,080	$ 5,400	-	$ -	-	$ -	$ 5,400	0.01%
Cash	2EANL	2EANLA0	2,000	$ 10,000	1,000	$ 10,000	-	$ -	$ 20,000	0.04%
Cash	2EA9G	2EA9GA8	-	$ -	35,000	$ 350,000	-	$ -	$ 350,000	0.75%
LIRA	2EPAY	2EPAYT4	-	$ -	975	$ 9,750	-	$ -	$ 9,750	0.02%
RRIF	2EASF	2EASFV5	12,290	$ 61,450	8,747	$ 87,470	-	$ -	$ 148,920	0.32%
RRIF	2EBHL	2EBHLV4	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRIF	2EAHU	2EAHUV4	-	$ -	1,200	$ 12,000	-	$ -	$ 12,000	0.03%
RRSP	2EAX1	2EAX1R1	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
Cash	2EAF9	2EAF9A2	-	$ -	-	$ -	-	$ -	$ -	0.00%
Cash	2EBIC	2EBICA1	2,000	$ 10,000	-	$ -	-	$ -	$ 10,000	0.02%
TFSA	2EAX1	2EAX1I1	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
RRSP	2EAQU	2EAQUR6	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
RRSP	2EAH4	2EAH4R6	8,000	$ 40,000	3,500	$ 35,000	-	$ -	$ 75,000	0.16%
RRSP	2EBJS	2EBJSR2	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
RRIF	2EAFT	2EAFTW7	-	$ -	4,300	$ 43,000	-	$ -	$ 43,000	0.09%
TFSA	2EAVM	2EAVMI2	-	$ -	200	$ 2,000	-	$ -	$ 2,000	0.00%
RRIF	2EBAE	2EBAEV7	-	$ -	450	$ 4,500	-	$ -	$ 4,500	0.01%
RRSP	2EAFX	2EAFXR7	5,400	$ 27,000	-	$ -	-	$ -	$ 27,000	0.06%
RRSP	2EBEG	2EBEGR8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
TFSA	2EBG4	2EBG4I7	-	$ -	5,200	$ 52,000	-	$ -	$ 52,000	0.11%
RRSP	2EAXE	2EAXER7	-	$ -	900	$ 9,000	-	$ -	$ 9,000	0.02%
Cash	2EBD3	2EBD3A2	-	$ -	6,200	$ 62,000	-	$ -	$ 62,000	0.13%
Margin	2EA0Z	2EA0ZE6	-	$ -	4,500	$ 45,000	-	$ -	$ 45,000	0.10%
SPRSP	2EAHV	2EAHVS0	-	$ -	200	$ 2,000	-	$ -	$ 2,000	0.00%
LIF_Prov	2EADG	2EADGX6	4,000	$ 20,000	1,800	$ 18,000	-	$ -	$ 38,000	0.08%
Cash	2EAYN	2EAYNA2	-	$ -	1,820	$ 18,200	-	$ -	$ 18,200	0.04%
TFSA	2EAQ4	2EAQ4I6	-	$ -	700	$ 7,000	-	$ -	$ 7,000	0.01%
Cash	2EA67	2EA67A4	-	$ -	266	$ 2,660	-	$ -	$ 2,660	0.01%
LIRA	2EBKJ	2EBKJT4	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EAWA	2EAWAV1	-	$ -	1,250	$ 12,500	-	$ -	$ 12,500	0.03%
RRIF	2EBH2	2EBH2V5	-	$ -	1,800	$ 18,000	-	$ -	$ 18,000	0.04%
TFSA	2EBAK	2EBAKI2	920	$ 4,600	-	$ -	-	$ -	$ 4,600	0.01%
RRIF	2EABC	2EABCV8	3,106	$ 15,530	3,059	$ 30,590	-	$ -	$ 46,120	0.10%
LIRA	2EA9L	2EA9LT8	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRIF	2EBB1	2EBB1V9	10,600	$ 53,000	2,304	$ 23,040	-	$ -	$ 76,040	0.16%
Cash	2EBD9	2EBD9A6	15,400	$ 77,000	14,367	$ 143,670	-	$ -	$ 220,670	0.47%
Cash	2EBC8	2EBC8A9	-	$ -	5,589	$ 55,890	-	$ -	$ 55,890	0.12%
TFSA	2EAYN	2EAYNI5	-	$ -	1,140	$ 11,400	-	$ -	$ 11,400	0.02%
RRSP	2EBBF	2EBBFR6	-	$ -	1,620	$ 16,200	-	$ -	$ 16,200	0.03%
RRIF	2EA4H	2EA4HV9	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
SPRSP	2EBGC	2EBGCS3	-	$ -	2,400	$ 24,000	-	$ -	$ 24,000	0.05%
TFSA	2EAYS	2EAYSI8	4,000	$ 20,000	-	$ -	-	$ -	$ 20,000	0.04%
RRSP	2EAZJ	2EAZJR7	8,024	$ 40,120	20,286	$ 202,860	-	$ -	$ 242,980	0.52%
Cash	2EA6U	2EA6UA7	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
SPRSP	2EAV3	2EAV3S8	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EAWQ	2EAWQR6	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EBKM	2EBKMR8	-	$ -	24,700	$ 247,000	-	$ -	$ 247,000	0.53%
SPRSP	2EBMP	2EBMPS6	-	$ -	1,600	$ 16,000	-	$ -	$ 16,000	0.03%
RRIF	2EA0X	2EA0XV8	-	$ -	1,229	$ 12,290	-	$ -	$ 12,290	0.03%
TFSA	2EA7S	2EA7SI0	-	$ -	750	$ 7,500	-	$ -	$ 7,500	0.02%
RRIF	2EAFE	2EAFEV7	-	$ -	4,800	$ 48,000	-	$ -	$ 48,000	0.10%
RRSP	2EAVY	2EAVYR8	-	$ -	2,230	$ 22,300	-	$ -	$ 22,300	0.05%
RRSP	2EAX8	2EAX8R4	-	$ -	490	$ 4,900	-	$ -	$ 4,900	0.01%
RRSP	2EABD	2EABDR9	-	$ -	8,916	$ 89,160	-	$ -	$ 89,160	0.19%
RRSP	2EAWE	2EAWER9	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
SPRSP	2EAY7	2EAY7S8	1,400	$ 7,000	720	$ 7,200	-	$ -	$ 14,200	0.03%
SPRSP	2EAV7	2EAV7S4	-	$ -	2,820	$ 28,200	-	$ -	$ 28,200	0.06%
TFSA	2EBH8	2EBH8I1	-	$ -	1,200	$ 12,000	-	$ -	$ 12,000	0.03%
LIRA	2EPA5	2EPA5T7	200	$ 1,000	200	$ 2,000	-	$ -	$ 3,000	0.01%
TFSA	2EA4E	2EA4EI4	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
TFSA	2EBHL	2EBHLI6	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRIF	2EA1X	2EA1XV6	-	$ -	1,493	$ 14,930	-	$ -	$ 14,930	0.03%
RRSP	2EAQ7	2EAQ7R3	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EBHW	2EBHWR3	-	$ -	4,310	$ 43,100	-	$ -	$ 43,100	0.09%
RRSP	2EAV8	2EAV8R8	-	$ -	4,830	$ 48,300	-	$ -	$ 48,300	0.10%
Cash	2EAVT	2EAVTA0	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
LIRA	2EBB6	2EBB6T9	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
LIRA	2EAWB	2EAWBT5	-	$ -	1,300	$ 13,000	-	$ -	$ 13,000	0.03%
Cash	2EBH4	2EBH4A2	303,000	$ 1,515,000	15,800	$ 158,000	-	$ -	$ 1,673,000	3.57%
RRSP	2EAXQ	2EAXQR4	4,584	$ 22,920	5,386	$ 53,860	-	$ -	$ 76,780	0.16%
SRRIF	2EBH6	2EBH6W9	2,000	$ 10,000	1,000	$ 10,000	-	$ -	$ 20,000	0.04%
RRIF	2EBB4	2EBB4V6	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRIF	2EAQ3	2EAQ3V5	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
Cash	2EA13	2EA13A9	-	$ -	17,400	$ 174,000	-	$ -	$ 174,000	0.37%
TFSA	2EB3M	2EB3MI6	-	$ -	50	$ 500	-	$ -	$ 500	0.00%
RRIF	2EAYS	2EAYSV6	16,000	$ 80,000	-	$ -	-	$ -	$ 80,000	0.17%
LIRA	2EABE	2EABET1	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRSP	2EAWW	2EAWWR8	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EPAY	2EPAYR1	-	$ -	115	$ 1,150	-	$ -	$ 1,150	0.00%
TFSA	2EA2N	2EA2NI8	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
RRSP	2EAYN	2EAYNR5	-	$ -	3,040	$ 30,400	-	$ -	$ 30,400	0.06%
Cash	2EA5A	2EA5AA2	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
RRIF	2EASM	2EASMV7	5,600	$ 28,000	-	$ -	-	$ -	$ 28,000	0.06%
TFSA	2EA7L	2EA7LI9	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EBG7	2EBG7V2	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
SPRSP	2EBEN	2EBENS5	-	$ -	1,800	$ 18,000	-	$ -	$ 18,000	0.04%
LIRA	2EB2F	2EB2FT9	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EAVW	2EAVWR0	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
Cash	2EAVX	2EAVXA6	-	$ -	17,500	$ 175,000	-	$ -	$ 175,000	0.37%
RRSP	2EAV2	2EAV2R4	-	$ -	400	$ 4,000	-	$ -	$ 4,000	0.01%
RRSP	2EBHX	2EBHXR2	-	$ -	1,700	$ 17,000	-	$ -	$ 17,000	0.04%
TFSA	2EA7K	2EA7KI0	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EBHZ	2EBHZV8	2,000	$ 10,000	1,000	$ 10,000	-	$ -	$ 20,000	0.04%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
LIRA	2EAV8	2EAV8T1	-	$ -	2,470	$ 24,700	-	$ -	$ 24,700	0.05%
Cash	2EALT	2EALTA5	60,000	$ 300,000	-	$ -	-	$ -	$ 300,000	0.64%
RRSP	2EBH3	2EBH3R6	2,000	$ 10,000	2,200	$ 22,000	-	$ -	$ 32,000	0.07%
RRSP	2EAQ4	2EAQ4R6	-	$ -	4,300	$ 43,000	-	$ -	$ 43,000	0.09%
LIRA	2EAZ0	2EAZ0T1	-	$ -	11,000	$ 110,000	-	$ -	$ 110,000	0.23%
RRSP	2EBEY	2EBEYR7	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EBHV	2EBHVR4	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
RRIF	2EA5E	2EA5EV9	-	$ -	500	$ 5,000	-	$ -	$ 5,000	0.01%
TFSA	2EAHU	2EAHUI6	-	$ -	800	$ 8,000	-	$ -	$ 8,000	0.02%
RRSP	2EBEO	2EBEOR9	-	$ -	1,050	$ 10,500	-	$ -	$ 10,500	0.02%
TFSA	2EAHV	2EAHVI5	-	$ -	1,500	$ 15,000	-	$ -	$ 15,000	0.03%
SPRSP	2EA1B	2EA1BS8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
LRSP	2EAX9	2EAX9U4	-	$ -	1,320	$ 13,200	-	$ -	$ 13,200	0.03%
LIF_Prov	2EBHW	2EBHWX7	-	$ -	1,612	$ 16,120	-	$ -	$ 16,120	0.03%
LIF_Prov	2EBG7	2EBG7X8	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRIF	2EAPG	2EAPGV3	-	$ -	2,200	$ 22,000	-	$ -	$ 22,000	0.05%
TFSA	2EBHG	2EBHGI2	-	$ -	1,410	$ 14,100	-	$ -	$ 14,100	0.03%
TFSA	2EBD3	2EBD3I5	-	$ -	3,800	$ 38,000	-	$ -	$ 38,000	0.08%
Cash	2EATB	2EATBA6	20,000	$ 100,000	10,000	$ 100,000	-	$ -	$ 200,000	0.43%
Cash	2EATE	2EATEA3	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EAVX	2EAVXR9	-	$ -	1,000	$ 10,000	-	$ -	$ 10,000	0.02%
SPRSP	2EBG4	2EBG4S2	-	$ -	2,300	$ 23,000	-	$ -	$ 23,000	0.05%
LIRA	2EAWQ	2EAWQT9	-	$ -	300	$ 3,000	-	$ -	$ 3,000	0.01%
TFSA	2EBG3	2EBG3I8	-	$ -	3,300	$ 33,000	-	$ -	$ 33,000	0.07%
LRSP	2EBCX	2EBCXU4	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
TFSA	2EAWQ	2EAWQI6	-	$ -	1,700	$ 17,000	-	$ -	$ 17,000	0.04%
RRSP	2EAV3	2EAV3R3	-	$ -	800	$ 8,000	-	$ -	$ 8,000	0.02%
RRIF	2EBHN	2EBHNV2	2,000	$ 10,000	500	$ 5,000	-	$ -	$ 15,000	0.03%
SPRSP	2EB3A	2EB3AS4	-	$ -	9,000	$ 90,000	-	$ -	$ 90,000	0.19%
SPRSP	2EAK0	2EAK0S8	-	$ -	6,000	$ 60,000	-	$ -	$ 60,000	0.13%
LIRA	2EAXA	2EAXAT4	-	$ -	3,510	$ 35,100	-	$ -	$ 35,100	0.07%
SPRSP	2EA09	2EA09S3	1,600	$ 8,000	250	$ 2,500	-	$ -	$ 10,500	0.02%
LIRA	2EAXQ	2EAXQT7	8,326	$ 41,630	6,328	$ 63,280	-	$ -	$ 104,910	0.22%
RRSP	2EARS	2EARSR6	10,232	$ 51,160	7,062	$ 70,620	-	$ -	$ 121,780	0.26%
LIF_Prov	2EAVP	2EAVPX3	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EAX9	2EAX9R3	-	$ -	680	$ 6,800	-	$ -	$ 6,800	0.01%
RRIF	2EBMD	2EBMDV2	-	$ -	5,000	$ 50,000	-	$ -	$ 50,000	0.11%
RRSP	2EA7Y	2EA7YR4	-	$ -	20,000	$ 200,000	-	$ -	$ 200,000	0.43%
Cash	2EBHZ	2EBHZA7	4,000	$ 20,000	1,500	$ 15,000	-	$ -	$ 35,000	0.07%
RRIF	2EAXP	2EAXPV3	-	$ -	7,000	$ 70,000	-	$ -	$ 70,000	0.15%
LIF_Prov	2EBH7	2EBH7X6	2,000	$ 10,000	1,000	$ 10,000	-	$ -	$ 20,000	0.04%
Cash	2EBKK	2EBKKA7	-	$ -	10,000	$ 100,000	-	$ -	$ 100,000	0.21%
RRIF	2EBEF	2EBEFV7	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
Cash	2EAHZ	2EAHZA8	20,000	$ 100,000	10,000	$ 100,000	-	$ -	$ 200,000	0.43%
RRSP	2EAKW	2EAKWR7	-	$ -	3,000	$ 30,000	-	$ -	$ 30,000	0.06%
RRSP	2EBBR	2EBBRR3	9,992	$ 49,960	9,305	$ 93,050	-	$ -	$ 143,010	0.31%
TFSA	2EPAY	2EPAYI1	-	$ -	120	$ 1,200	-	$ -	$ 1,200	0.00%
LIRA	2EBHT	2EBHTT9	29,300	$ 146,500	23,148	$ 231,480	-	$ -	$ 377,980	0.81%
TFSA	2EA0Z	2EA0ZI8	-	$ -	2,000	$ 20,000	-	$ -	$ 20,000	0.04%
RRSP	2EAC9	2EAC9R2	20,000	$ 100,000	5,565	$ 55,650	-	$ -	$ 155,650	0.33%
TFSA	2EA67	2EA67I7	-	$ -	734	$ 7,340	-	$ -	$ 7,340	0.02%
RRSP	2EBCH	2EBCHR2	-	$ -	4,000	$ 40,000	-	$ -	$ 40,000	0.09%
Cash	2EAZE	2EAZEA0	20,000	$ 100,000	23,408	$ 234,080	10,000	$ 100,000	$ 434,080	0.93%
LIRA	2EAQU	2EAQUT9	-	$ -	2,200	$ 22,000	-	-	$ 22,000	0.05%
Cash	2EA4N	2EA4NA1	-	$ -	10,000	$ 100,000	-	-	$ 100,000	0.21%
RRSP	2EAZN	2EAZNR3	-	$ -	2,000	$ 20,000	-	-	$ 20,000	0.04%
RRIF	2EADG	2EADGV0	16,000	$ 80,000	2,200	$ 22,000	-	-	$ 102,000	0.22%
RRSP	2EAU1	2EAU1R8	-	$ -	6,000	$ 60,000	-	-	$ 60,000	0.13%
Cash	2EBKP	2EBKPA2	-	$ -	3,650	$ 36,500	-	-	$ 36,500	0.08%
Cash	2EBHG	2EBHGA9	-	$ -	3,673	$ 36,730	-	-	$ 36,730	0.08%
Cash	2EAG9	2EAG9A0	-	$ -	6,733	$ 67,330	-	-	$ 67,330	0.14%
RRSP	2EBC9	2EBC9R1	16,000	$ 80,000	-	$ -	-	-	$ 80,000	0.17%
Margin	2EBFP	2EBFPE4	-	$ -	15,000	$ 150,000	-	-	$ 150,000	0.32%
LIF_Prov	2EAG7	2EAG7X9	20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
SPRSP	2EAZM	2EAZMS9	-	$ -	500	$ 5,000	-	-	$ 5,000	0.01%
Cash	2EA95	2EA95A0	-	$ -	4,990	$ 49,900	-	-	$ 49,900	0.11%
RRIF	2EB2C	2EB2CV7	3,000	$ 15,000	2,000	$ 20,000	-	-	$ 35,000	0.07%
RRSP	2EBJR	2EBJRR5	-	$ -	5,200	$ 52,000	-	-	$ 52,000	0.11%
LRSP	2EA8Y	2EA8YU3	-	$ -	10,000	$ 100,000	-	-	$ 100,000	0.21%
RRSP	2EASZ	2EASZR4	-	$ -	2,089	$ 20,890	-	-	$ 20,890	0.04%
RRSP	2EAYF	2EAYFR4	-	$ -	1,000	$ 10,000	-	-	$ 10,000	0.02%
Cash	2EAPG	2EAPGA2	-	$ -	20,800	$ 208,000	-	-	$ 208,000	0.44%
RRSP	2EAV4	2EAV4R2	-	$ -	1,200	$ 12,000	-	-	$ 12,000	0.03%
Cash	2EBID	2EBIDA0	-	$ -	8,000	$ 80,000	-	-	$ 80,000	0.17%
RRSP	2EA0Y	2EA0YR9	-	$ -	10,000	$ 100,000	-	-	$ 100,000	0.21%
RRIF	2EA6K	2EA6KV0	-	$ -	10,000	$ 100,000	-	-	$ 100,000	0.21%
RRIF	2EBH5	2EBH5V2	-	$ -	1,000	$ 10,000	-	-	$ 10,000	0.02%
Cash	2EBE5	2EBE5A7	-	$ -	20,000	$ 200,000	-	-	$ 200,000	0.43%
RRSP	2EA0Z	2EA0ZR8	2,000	$ 10,000	4,000	$ 40,000	-	-	$ 50,000	0.11%
RRSP	2EAWB	2EAWBR2	-	$ -	8,700	$ 87,000	-	-	$ 87,000	0.19%
Cash	2EAS7	2EAS7A3	-	$ -	5,000	$ 50,000	-	-	$ 50,000	0.11%
RRIF	2EAJ8	2EAJ8V5	2,000	$ 10,000	-	$ -	-	-	$ 10,000	0.02%

Account Type Desc	Client No	Acct No	PFL Shares net of Gifted	PFL Cost @$5 per share	FHH Shares net of Gifted	FHH Cost @$10 per share	Pace Capital Partners LP	Pace Capital Partners LP Cost @$10	Total Cost	% (Total Cost / $46m)
Cash	2EA1M	2EA1MA8	60,000	$ 300,000	-	$ -	-	-	$ 300,000	0.64%
RRSP	2EAG2	2EAG2R0	-	$ -	9,198	$ 91,980	-	-	$ 91,980	0.20%
RRIF	2EA4X	2EA4XV0	-	$ -	1,500	$ 15,000	-	-	$ 15,000	0.03%
RRSP	2EBNT	2EBNTR2	3,600	$ 18,000	1,500	$ 15,000	-	-	$ 33,000	0.07%
PRIF	2EAUF	2EAUFV1	-	$ -	2,000	$ 20,000	-	-	$ 20,000	0.04%
Cash	2EATL	2EATLA5	-	$ -	15,000	$ 150,000	-	-	$ 150,000	0.32%
Cash	2EBKB	2EBKBA7	-	$ -	10,000	$ 100,000	-	-	$ 100,000	0.21%
Cash	2EA7Y	2EA7YA1	-	$ -	20,000	$ 200,000	-	-	$ 200,000	0.43%
RRSP	2EAP9	2EAP9R3	10,000	$ 50,000	3,800	$ 38,000	-	-	$ 88,000	0.19%
LRSP	2EA0Z	2EA0ZU9	4,000	$ 20,000	6,500	$ 65,000	-	-	$ 85,000	0.18%
Cash	2EBHD	2EBHDA2	20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
Cash	2EA2G	2EA2GA3	20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
RRSP	2EBH8	2EBH8R1	3,000	$ 15,000	2,000	$ 20,000	-	-	$ 35,000	0.07%
RRSP	2EAVQ	2EAVQR8	6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
LRSP	2EAWN	2EAWNU0	-	$ -	5,000	$ 50,000	-	-	$ 50,000	0.11%
RRSP	2EBFP	2EBFPR6	-	$ -	5,000	$ 50,000	-	-	$ 50,000	0.11%
Margin	2EBD4	2EBD4L7	-	$ -	15,000	$ 150,000	-	-	$ 150,000	0.32%
RRSP	2EBHG	2EBHGR2	-	$ -	10,445	$ 104,450	-	-	$ 104,450	0.22%
RRSP	2EBET	2EBETR2	-	$ -	2,000	$ 20,000	-	-	$ 20,000	0.04%
Cash	2EBC0	2EBC0A7	10,000	$ 50,000	4,000	$ 40,000	-	-	$ 90,000	0.19%
Margin	2EBNY	2EBNYE5	2,000	$ 10,000	2,000	$ 20,000	-	-	$ 30,000	0.06%
RRSP	2EANJ	2EANJR5	-	$ -	100	$ 1,000	-	-	$ 1,000	0.00%
RRSP	2EAA8	2EAA8R7	-	$ -	32,800	$ 328,000	-	-	$ 328,000	0.70%
Cash	2EA3J	2EA3JA7	-	$ -	8,680	$ 86,800	-	-	$ 86,800	0.19%
RRSP	2EBNX	2EBNXR8	5,000	$ 25,000	2,000	$ 20,000	-	-	$ 45,000	0.10%
Cash	2EAJ5	2EAJ5A7	40,000	$ 200,000	40,000	$ 400,000	-	-	$ 600,000	1.28%
Cash	2EAYS	2EAYSA5	-	$ -	50,000	$ 500,000	-	-	$ 500,000	1.07%
Cash	2EBHE	2EBHEA1	-	$ -	24,000	$ 240,000	-	-	$ 240,000	0.51%
Cashlike	U1001		3,100	$ 15,500	-	$ -	-	-	$ 15,500	0.03%
Cashlike	U1002		52,000	$ 260,000	-	$ -	-	-	$ 260,000	0.55%
Cashlike	U1003		400	$ 2,000	-	$ -	-	-	$ 2,000	0.00%
Cashlike	U1004		20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
Cashlike	U1005		5,200	$ 26,000	-	$ -	-	-	$ 26,000	0.06%
Cashlike	U1006		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1007		1,000	$ 5,000	-	$ -	-	-	$ 5,000	0.01%
Cashlike	U1008		30,000	$ 150,000	-	$ -	-	-	$ 150,000	0.32%
Cashlike	U1009		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1010		2,222	$ 11,110	838	$ 8,380	-	-	$ 19,490	0.04%
Cashlike	U1011		-	$ -	3,516	$ 35,160	-	-	$ 35,160	0.08%
Cashlike	U1012		40,000	$ 200,000	-	$ -	-	-	$ 200,000	0.43%
Cashlike	U1013		1,700	$ 8,500	-	$ -	-	-	$ 8,500	0.02%
Cashlike	U1014		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1015		2,000	$ 10,000	-	$ -	-	-	$ 10,000	0.02%
Cashlike	U1016		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1017		80,000	$ 400,000	-	$ -	-	-	$ 400,000	0.85%
Cashlike	U1018		60,000	$ 300,000	-	$ -	-	-	$ 300,000	0.64%
Cashlike	U1019		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1020		6,000	$ 30,000	-	$ -	-	-	$ 30,000	0.06%
Cashlike	U1021		14,000	$ 70,000	-	$ -	-	-	$ 70,000	0.15%
Cashlike	U1022		86,000	$ 430,000	-	$ -	-	-	$ 430,000	0.92%
Cashlike	U1023		2,000	$ 10,000	-	$ -	-	-	$ 10,000	0.02%
Cashlike	U1024		350	$ 1,750	-	$ -	-	-	$ 1,750	0.00%
Cashlike	U1025		28,000	$ 140,000	-	$ -	-	-	$ 140,000	0.30%
Cashlike	U1026		14,476	$ 72,380	-	$ -	-	-	$ 72,380	0.15%
Cashlike	U1027		4,000	$ 20,000	-	$ -	-	-	$ 20,000	0.04%
Cashlike	U1028		15,000	$ 75,000	-	$ -	-	-	$ 75,000	0.16%
Cashlike	U1029		20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
Cashlike	U1030		20,000	$ 100,000	-	$ -	-	-	$ 100,000	0.21%
Cashlike	U1031		22,000	$ 110,000	-	$ -	-	-	$ 110,000	0.23%
Cashlike	U1032		40,000	$ 200,000	-	$ -	-	-	$ 200,000	0.43%
Cashlike	U1033		40,000	$ 200,000	-	$ -	-	-	$ 200,000	0.43%
Cashlike	U1034		60,000	$ 300,000	-	$ -	-	-	$ 300,000	0.64%
Cashlike	U1035		27,000	$ 135,000	-	$ -	-	-	$ 135,000	0.29%
Cashlike	U1036		1,152	$ 5,760	-	$ -	-	-	$ 5,760	0.01%
Cashlike	U1037		12,000	$ 60,000	-	$ -	-	-	$ 60,000	0.13%
Cashlike	U1038		-	$ -	2,000	$ 20,000	-	-	$ 20,000	0.04%
			3,068,636	$ 15,343,180	3,141,342	$ 31,413,420	10,000	$ 100,000	$ 46,856,600	100%

PFL Total Invested	$ 15,343,180
FHH Total Invested	$ 31,413,420
PCP LP Total Invested	$ 100,000
Total Invested	$ 46,856,600

APPENDIX "C"

DRAFT COMPLETION CERTIFICATE

WHEREAS

A. Pursuant to an order made in these proceedings dated August 6, 2020, as amended by further order dated March 2, 2021, and clarified by order of this court dated July 8, 2021, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") was appointed as representative counsel ("**Representative Counsel**") to certain the investors (the "**Investor Claimants**");

B. Pursuant to an Order of this Court dated October 18, 2021, (the "**Allocation Order**"), Paliare Roland was directed to transfer certain funds (the "**Settlement Funds**") to Industrial Alliance, Insurance and Financial Services Inc. (the "**Distribution Agent**") for further allocation and distribution to the Investor Claimants in accordance with the terms of the Allocation Order.

NOW THEREFORE Representative Counsel hereby certifies that the Settlement Funds have been transferred to the Distribution Agent.

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP solely in its capacity as Representative Counsel to the Investor Claimants and not in its personal capacity

Per: _____

TAB 13

2006 CarswellOnt 4929
Ontario Superior Court of Justice [Commercial List]

Muscletech Research & Development Inc., Re

2006 CarswellOnt 4929, [2006] O.J. No. 3300, 150 A.C.W.S. (3d) 534, 25 C.B.R. (5th) 218, 33 C.P.C. (6th) 131

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended

In the Matter of Muscletech Research and Development Inc. and Those Entities Listed on Schedule "A" Hereto

Mesbur J.

Heard: July 31, 2006
Judgment: August 16, 2006 *
Docket: 06-CL-6241

Counsel: Fred Myers, David Bish for Applicants
Kevin P McElcheran for Representative Plaintiffs
James H. Grout, Kyla Mahar for Krys Osborne, on behalf of herself and all other similarly situated Calfornia consumers
Derrick Tay for Iovate Health & Sciences, DIP Lender
Jeff Carhart for Ad hoc Tort Claimants Committee
Natasha MacParland for Monitor, RSM Richter Inc.

***Mesbur J.*:**

Nature of the motions:

1 These motions raise the question of whether plaintiffs in uncertified class actions may file claims in the claims process in this CCAA proceeding on behalf of themselves and all other similarly situated plaintiffs. The applicant, the Monitor, the DIP lender and the Ad Hoc Tort Claimants Committee all take the position that claims filed in this manner are a nullity, and should be forever barred.

2 Mr. McElcheran, on behalf of four plaintiffs in four yet-uncertified US class actions, and Mr. Grout and Ms. Mahar for a plaintiff in a yet-uncertified class action in California all are of the view that there is jurisdiction under the CCAA to permit such representative claims, and either the claims should be permitted, or alternatively, the stay of proceedings imposed by the CCAA should be lifted to allow them to proceed to certification motions in the United States for their respective actions. I will refer to Mr. McElcheran's clients as the "Representative Plaintiffs", and Mr. Grout's clients as the "California Consumers".

Some history:

3 The applicants, whom I will refer to collectively as "Muscletech", are comprised of the applicant, Muscletech, and its various subsidiaries and related companies listed in Schedule "A". Muscletech is a Canadian company. Historically, it was in the business of the manufacture and sale of dietary supplements. Some of these supplements contained the chemical ephedra, while others contained what have been referred to as prohormones. Muscletech was not alone in selling supplements containing these compounds. A number of American companies did so as well. Because of problems surrounding the compounds, Muscletech's products have ceased to contain them since 2002. Nevertheless, there was significant litigation, particularly in various states in the United States, brought by the consumers of these products, against both Muscletech and other companies.

4 The litigation is essentially of two kinds. The ephedra litigation primarily concerns those consumers of products containing ephedra who allege they have suffered physical damages as a result of using these products. The parties here refer to that

litigation as the Products Liability litigation. The prohormone litigation has been brought by consumers of products containing prohormone who allege either that the product failed to produce the promised increased muscle mass, or alternatively, produced the promised increased muscle mass, but in doing so, must have contained a controlled substance, namely anabolic steroids. In the first instance, the prohormone consumers complain of being the victims of false and misleading advertising. In the second, they complain of being illegally sold a controlled substance.

5 For the purposes of this motion, there are several of these lawsuits that are important. First, there is the group of four yet to be certified class actions relating to prohormone claims. These have been described as the Hannon Claim, the Hochberg Claim, the Rodriguez Claim and the Guzman Claim, or collectively, the Representative Plaintiffs' Claims.

6 The Hannon Claim was commenced in the State of Florida. The Hochberg and Rodriguez claims were commenced in New York State, and the Guzman claim was commenced in California. Using the multi-district litigation (MDL) provisions available in the United States, all four proceedings have been moved to the United States District Court for the Southern District of New York (the "U.S. District Court") in New York City, to be managed, along with all the other related ephedra litigation by Justice Rakoff of that court. As I have said, I will refer to these four claims as the "Representative Plaintiffs' Claims", and to the plaintiffs in them as the "Representative Plaintiffs".

7 In addition to the Representative Plaintiffs' Claims, there is a further yet-to-be-certified class action in the United States that is germane to this motion. It has been described as the California Consumers' Claim. Unlike the Representative Plaintiffs' Claims, the California Consumers' Claim is an ephedra claim, seeking damages for personal injuries. I refer to this action as the "California Consumers' Claim", and its plaintiffs as the "California Consumers". The California Consumers participated on the motion simply to support the Representative Plaintiffs' position; they seek no relief themselves.

8 In January 2006, Muscletech sought and was granted CCAA protection in this court. The initial stay has been extended throughout the proceedings to August 11, 2006.[1] As the applicants' factum puts it, seeking CCAA protection was done "principally as a means of achieving a global resolution of the large number of product liability and other lawsuits" against the applicants and others. These lawsuits relate to the products that Muscletech and others sold.

9 Once the initial order was granted, the Monitor commenced ancillary proceedings in the USA under Chapter 15 of the U.S. Bankruptcy Code. These proceedings are before the U.S. District Court as well. As a result of these ancillary proceedings, there is a similar stay in the U.S.

10 At the same time, the Monitor also applied for a Temporary Restraining Order and Preliminary Injunction (TRO/PI Application) in the U.S. District Court, to prohibit anyone commencing or continuing any products liability actions. The TRO/PI application was granted. That application is referred to as the "Adversary Proceeding" under Chapter 15 of the U.S. Bankruptcy Code.

11 On February 8, 2006, an Ad Hoc committee of products liability claimants sought and was granted representative status in this CCAA proceeding. On March 3, 2006, this court made a Call for Claims order. American counsel for both the Representative Plaintiffs and the California Consumers were served with the motion and draft order in relation to the Call for Claims order, just as they have been served throughout these CCAA proceedings. Although many interested parties made submissions concerning the terms of the order both before the hearing and at the hearing itself, counsel for the Representative Plaintiffs and California Consumers did not. They took no steps, as did the Ad Hoc Committee, to obtain representative status, or direction as to how they might put forward their claims.

12 As I have mentioned, Muscletech sought and obtained an order in the USA bankruptcy court, recognizing and enforcing the Ontario CCAA order, including its automatic stay. The Call for Claims order was similarly recognized and approved by Judge Rakoff in the U.S. District Court on March 22, 2006. Judge Rakoff is managing all the ephedra litigation, as well as the motions to recognize and enforce orders made here under these CCAA proceedings, and the Adversary Proceeding as well.

13 The Call for Claims order established a process for calling for what were defined as both "claims" and "product liability claims". The object of the order was to identify everyone with any kind of claim against Muscletech, its affiliates, and some defined Third Parties. The process envisions "a person" completing a proof of claim, with particulars of the claim, and sending it to the Monitor.[2] In this way, the Monitor could identify what Mr. Tay for the DIP lender has called the "total universe of potential claims". The Call for Claims order does not set the process for deciding on the validity of any of the claims. Its purpose is simply to identify them.

14 The Call for Claims order set out comprehensive definitions of what constitutes both types of claims, as well as an elaborate method of giving broad notice to anyone who might have a claim. In this case, the order required the Monitor to send a package containing a proof of claim and other necessary information to all known creditors of Muscletech. It also required that the Monitor file these documents and the Call for Claims order electronically on the U.S. District Court's website in all three pieces of litigation there. These are described in the Call for Claims order as the "U.S. Chapter 15 Proceedings", the "U.S. Chapter 15 Adversary Proceedings" and the "U.S. MDL Proceedings". The order required the Monitor to publish notices to creditors in the national edition of the *Globe and Mail* newspaper, the *Wall Street Journal*, and *USA Today*. The Monitor was also required to post copies of the documents and Call for Claims order on the Monitor's website. The Monitor did all these things.

15 All proofs of claim were to be filed by May 8, 2006. This date was defined in the order as the Claims Bar date. Any creditor who has not filed a proof of claim by that date is forever barred from making or enforcing any claim, and is not entitled to participate as a creditor in the CCAA proceedings, or to vote at any meeting of creditors. Prior to the Claims Bar date, the members of the Ad Hoc Tort Claimants Committee filed individual proofs of claim. The California Consumers also filed individual proofs of claim.

16 On May 8, the Representative Plaintiffs, (that is, Hannon, Hochberg, Rodriguez and Guzman), filed proofs of claim, claiming to do so on their own behalves, and "on behalf of all other similarly situated persons". Unlike the Representative Plaintiffs, the California Consumers filed individual proofs of claim. Even though they have done so, they support the Representative Plaintiffs' position on this motion.

17 The monitor received some 33 ephedra claims, both from the California Consumers individually, and from others, including the members of the Ad Hoc Tort Committee. The only prohormone claims the monitor has received are from the Representative Plaintiffs. No other individual claims relating to prohormones have been filed.

18 After the claims bar date, this court made a Claims Resolution order. That order, dated June 8, 2006 provided, among other things, for a method for the monitor to review proofs of claim, accept or reject them, and for a claims resolution process for resolving disputed claims. The Claims Resolution order is subject to an earlier Mediation Order, which provided for mediation of ephedra claims. Of the 33 ephedra claims filed, 30 have already been settled through the mediation process. The mediation process is part of a larger mediation process in New York, in the context of the much broader ephedra litigation that Judge Rakoff is managing. This litigation is referred to as the MDL, or multi-district litigation, in the U.S.

19 No one has appealed the Call for Claims order. No one moved to vary its terms, prior to the claims bar date. No one has appealed the Claims Resolution order. None of the Representative Plaintiffs have taken any steps in the United States (where their class actions are pending), to lift the stay of proceedings there to permit their actions to proceed to certification.

The parties and their positions:

20 On these motions the applicants take the position that the proofs of claims by the Representative Plaintiffs are a nullity, since there is no provision in either the CCAA or any of the court orders that permit these claims to be made either as representative claims, or class action claims. They say that to allow these claims would unreasonably delay the CCAA process, and would undermine the process that has already been established, which all stakeholders rely on.

21 The DIP lender supports the applicants' position. The DIP lender takes the position that if the proposed claims were allowed, there is a potential for significant prejudice to the DIP lender who is funding the process, and will ultimately fund any

plan of compromise. The DIP lender has already settled with a significant number of other tort claimants (albeit ephedra, as opposed to prohormone claimants). The DIP lender says it reached its settlement on the basis of a particular "known universe" of claims. It suggests that allowing these indeterminate claims, and claimants, at this late date, would prejudice its position.

22 The Ad Hoc Committee of Tort Claimants supports the applicants as well. The Committee takes the position that even before the Call for Claims order was made, it was able to obtain an order allowing it to participate as a Committee in the CCAA process and obtain what is called representative status in the proceedings. It says that if the Ad Hoc Committee was able to do so within the CCAA process, these other proposed claimants could, and should have done the same. Since the other proposed claimants did not, and took no steps to appeal the Call for Claims order, and indeed, declined to participate in the motion in which its terms were set, they should be barred from doing so at this late date.

23 The Monitor also supports the applicants' position, saying the CCAA process gave the Representative Plaintiffs adequate opportunity to file individual claims. The forms were readily accessible in plain English. The Products Liability claimants, that is, the members of the Ad Hoc Committee, were able to put individual claims forward in the CCAA process and the Representative Plaintiffs had the same opportunity to participate in exactly the same way. Lastly, the Monitor says that the CCAA process is far more economic than the lengthy process of certification of class actions, particularly in the USA, where certification would have to take place. To allow this new process to be overlaid on the existing CCAA process would be cumbersome, excessively expensive and time consuming.

24 All those opposing the Representative Plaintiffs' Claims and California Consumers suggests that the real motivation for putting these claims forward is to obtain and secure payment of significant legal fees for the lawyers involved, rather than to reap any meaningful benefits for any class participants. I need not comment on what is essentially a bald allegation. I mention it only to make the record of the parties' positions complete.

25 Both the Representative Plaintiffs and the California Consumers take a contrary view. They say their clients' claims should not be defeated on what they describe as essentially procedural grounds. They suggest that fairness requires that they be permitted to file in this way. They say the current CCAA process is not so far advanced that there would be undue prejudice to any of the other stakeholders, if their proofs of claims were allowed to be filed as representative claims.

The law and analysis:

26 The first question to consider is whether the CCAA permits representative claims, or class action claims. The next issue is whether this particular CCAA process adequately protected the interests of this potential group of claimants. Lastly, given the inherent jurisdiction of the court, I must also address whether this case might be an appropriate case to exercise my discretion and permit the Representative Plaintiffs' Claims to proceed in some fashion at this time.

Does the CCAA permit representative claims?

27 The CCAA neither expressly permits nor forbids representative claims. The CCAA defines "claim" in s. 12(1). It says that for the purposes of the CCAA, "claim" means "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*." Thus, to determine what a CCAA "claim" is, one must turn to the *Bankruptcy and Insolvency Act*, and the definition of debts "provable in bankruptcy".

28 Section 121(1) of the BIA deals with "claims provable", and says:

> All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason on any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

29 The BIA has a mechanism to determine whether a contingent or unliquidated claim is a provable claim. The mechanism is found in section 135(1.1), which provides:

> The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

30 A determination under s. 135(1.1) is "final and conclusive", unless within a thirty day period after the trustee serves a notice of disallowance, the person to whom the notice of disallowance was sent appeals the trustee's decision.

31 Section 124 of the BIA deals with the proof of claims. First, it provides in subsection (1) that creditors shall prove claims. It says: "Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made." The section goes on, in subsection (3) to deal with who may make proof of claims. The subsection says: "The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person authorized, it shall state his authority and means of knowledge."

32 The term "creditor" is not specifically defined in the CCAA. The applicants therefore point to the definition of "creditor" in the Call for Claims order itself. There, creditor is defined as "any *Person* having a Claim or a Product Liability Claim" [emphasis added]

33 From the interplay of the sections of the CCAA and the BIA, together with the definition in the Call for Claims order, the applicants infer that only individual creditors may make claims, unless they have authorized someone else to do so on their behalf. Since there is no question the Representative Plaintiffs' Claims have not been authorized by the group of people whom they purport to represent, they have no authority to do so, and the applicants say these claims must therefore be declared a nullity, at least to the extent that they purport to advance claims for other than Hannon, Hochberg, Rodriquez and Guzman personally.

34 While this interpretation may be technically correct, it is also clear that representative orders of some kind have been used in other CCAA proceedings [3], and even in this case. [4] In addition, there have been cases in which a stay has been lifted in order to permit a potential class proceeding to file certification materials, [5] while in other cases, a motion to lift the stay for that purpose and to file a class claim have been denied. [6] As yet, however, there are no examples in Canada where a class proof of claim has been specifically permitted. [7]

35 It is noteworthy here, that even though Farley J made an order granting a "representation and ancillary order regarding funding" to the Ad Hoc Committee in this proceeding, there was no order permitting "representative" claims to be filed; each member of the committee filed an individual proof claim with the monitor.

36 From this I conclude that while it is possible at least to have a limited representation order in CCAA proceedings, it is by no means clear that representation orders have been extended to permit a "representative" proof of claim to be filed. Canadian courts have not yet permitted a filing of a proof of claim by a plaintiff in an uncertified class proceeding on behalf of itself and other members of the class. At best, our courts have at least once lifted a stay to permit the filing of certification materials. Any steps beyond that would be the subject of a further motion. [8] In the case of *Re Air Canada*, however, there was no suggestion that certification motions were going to be made in a foreign jurisdiction, as would be the case here.

37 While a representative claim may therefore be possible, the next question is whether this is a proper case to either permit this kind of "representative" claim, without the necessity of the individual members of the class filing claims, or whether the stay should be lifted to permit certification motions to proceed in the United States. This involves a discussion first of whether the orders here gave adequate protection to this potential group or groups of creditors, and second, whether this might be an appropriate case for the court to exercise its discretion and grant the relief the Representative Plaintiffs seek.

Did the CCAA process adequately protect the interests of these potential claimants?

38 When I consider the CCAA process here, I am drawn inescapably to the conclusion that it adequately protected the interests of these potential claimants, had they availed themselves of the process as other claimants did.

39 The Ad Hoc committee obtained a representation order, and participates on that basis, although its members filed individual proofs of claim. Even the California Consumers filed individual claims. If the members of the Representative Plaintiff's proposed class had wished to file proofs of claim, they had as much notice and opportunity to do so as anyone else. This is particularly so since the required notices were published not only in two American nation-wide newspapers, but also in three locations on the U.S. District Court's website. Not a single "similarly situated" person, other than Hannon, Hochberg, Rodriguez and Guzman filed a proof of claim. They easily could have. They did not. I cannot conclude that the absence of additional claims implies the process was somehow unfair or flawed. To the contrary, the absence of even a single additional claim suggests there may be no other claimants at all. The process adequately protected the interests of these potential claimants. They simply chose not to utilize that process.

Should the court exercise its discretion?

40 While the court clearly has a broad discretion in CCAA matters [9] , I am not persuaded that this is a proper case to exercise that discretion either to allow the representative claims as they are, or to lift the stay to permit certification motions to proceed.

41 First, representative claims *per se*, have not been recognized in Canadian jurisprudence in the context of CCAA proceedings. It is clear that rule 10 of the *Rules of Civil Procedure* permits the court to "appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served."

42 Rule 10, however, is generally used in estates and trusts cases, or as what has been described as the "simplified procedure" version of proceedings under the *Class Proceedings Act*, particularly in pension fund disputes. [10] I was referred to no case in which the rule was specifically used in CCAA proceedings to permit the filing of a representative or class claim. I do not see rule 10 as useful in these CCAA proceedings, which has created its own process and procedures. Here, a structure was established by court order, on notice to the very parties who now wish to alter the process fundamentally, after all stakeholders have relied on the structure that was established.

43 Changing and increasing the landscape of claimants after the settlement of 30 of the ephedra claims after the claims bar date could cause prejudice to the eventual success of the CCAA process. Simply put, all the arguments made by the Representative Plaintiffs and California Consumers should have been made before Farley J when the Call for Claims order was made, or earlier motions should have been made to deal with these issues before the Call for Claims order was even made.

44 The process gave adequate opportunity for anyone with a claim to file a proof of claim. The forms were accessible, in plain English. The products liability claimants all managed to make individual claims, even though they might have been involved in class actions. No other prohormone claimants have filed a proof of claim. 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 here. I decline to exercise my discretion in these circumstances.

Disposition:

45 The applicants' motion is therefore granted, and the representative plaintiffs' motion is dismissed. To be clear, the "representative" claims are to be considered as individual claims for each of Hannon, Hochberg, Rodriguez and Guzman. As the parties have agreed, there will be no order as to costs.

SCHEDULE "A"

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Formulations Ltd.

MT Canadian Supplement Trademark Ltd.

Mt Foreign Supplement Trademark Ltd.

MC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Ltd. (f/k/a NEW HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

Motion granted.

Footnotes

* Additional reasons at *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 5484, 25 C.B.R. (5th) 229 (Ont. S.C.J. [Commercial List]).

1 Since hearing this motion, I have granted an order extending the stay to November 10 of this year. Judge Rakoff has made a similar order in the corresponding US litigation.

2 See "Notice to Creditors Re: Notice of Call for Claims and Product Liability Claims", Schedule "E" to the call for claims order.

3 See, for example, *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1999), 12 C.B.R. (4th) 194 (Ont. S.C.J. [Commercial List]). See also the order of Blair J. in *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge* dated July 29, 1998, in which he appointed representative counsel for various groups of claimants. It is noteworthy, however, that he did not provide for the filing of representative proofs of claim in the order.

4 See the reasons of Farley J. dated February 6, 2006 at paragraph 8, in which he says: "I understand that later this week the Ad Hoc Committee will be requesting a representation and ancillary order incorporating a joint funding agreement. [Note: as this is being typed up February 8th, I would note that I have just granted such an order.]" Again, nothing in the order permitted a representative *claim* to be filed.

5 *Re Air Canada*, Court File # 03-CL-4932. Endorsement of Farley J dated September 24, 2003.

6 *Re Canadian Red Cross*, *supra*

7 *Re Canadian Red Cross*, note 2, above, at page 197

8 *Re Air Canada*, note 5, above at paragraph 18.

9 The *CCAA* has been described as having a "broad remedial purpose", and cases have stated the Act should be given a large and liberal interpretation. See Holden & Morawetz *The 2006 Annotated Bankruptcy and Insolvency Act*, [Carswell, 2006] pp 1163-64, and these cases referred to there.

10 See *Overview* to rule 10, Killeen, Morton and James, *Ontario Superior Court Practice*

TAB 14

2009 CarswellOnt 3028
Ontario Superior Court of Justice [Commercial List]

Nortel Networks Corp., Re

2009 CarswellOnt 3028, [2009] O.J. No. 2166, 177 A.C.W.S. (3d) 634, 53 C.B.R. (5th) 196, 75 C.C.P.B. 206

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 NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION (Applicants)

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

Morawetz J.

Heard: April 20, 2009

Judgment: May 27, 2009 *

Docket: 09-CL-7950

Counsel: Janice Payne, Steven Levitt, Arthur O. Jacques for Steering Committee of Recently Severed Canadian Nortel Employees
Barry Wadsworth for CAW-Canada, George Borosh, Debra Connor
Lyndon Barnes, Adam Hirsh for Board of Directors of Nortel Networks Corporation, Nortel Networks Limited
Alan Mersky, Derrick Tay for Applicants
Henry Juroviesky, Eli Karp, Kevin Caspersz, Aaron Hershtal for Steering Committee for the Nortel Terminated Canadian Employees Owed Termination and Severance Pay
M. Starnino for Superintendent of Financial Services or Administrator of the Pension Benefits Gurantee Fund
Leanne Williams for Flextronics Telecom Systems Ltd.
Jay Carfagnini, Chris Armstrong for Monitor, Ernst & Young Inc.
Gail Misra for Communication, Energy and Paperworkers Union of Canada
J. Davis-Sydor for Brookfield Lepage Johnson Controls Facility Management Services
Mark Zigler, S. Philpott for Certain Former Employees of Nortel
G.H. Finlayson for Informal Nortel Noteholders Group
A. Kauffman for Export Development Canada
Alex MacFarlane for Unsecured Creditors' Committee (U.S.)

***Morawetz J.*:**

1 On May 20, 2009, I released an endorsement appointing Koskie Minsky as representative counsel with reasons to follow. The reasons are as follows.

2 This endorsement addresses five motions in which various parties seek to be appointed as representative counsel for various factions of Nortel's current and former employees (Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation are collectively referred to as the "Applicants" or "Nortel").

3 The proposed representative counsel are:

(i) Koskie Minsky LLP ("KM") who is seeking to represent all former employees, including pensioners, of the Applicants or any person claiming an interest under or on behalf of such former employees or pensioners and surviving spouses in respect of a pension from the Applicants. Approximately 2,000 people have retained KM.

(ii) Nelligan O'Brien Payne LLP and Shibley Righton LLP (collectively "NS") who are seeking to be co-counsel to represent all former non-unionized employees, terminated either prior to or after the CCAA filing date, to whom the Applicants owe severance and/or pay in lieu of reasonable notice. In addition, in a separate motion, NS seeks to be appointed as co-counsel to the continuing employees of Nortel. Approximately 460 people have retained NS and a further 106 have retained Macleod Dixon LLP, who has agreed to work with NS.

(iii) Juroviesky and Ricci LLP ("J&R") who is seeking to represent terminated employees or any person claiming an interest under or on behalf of former employees. At the time that this motion was heard approximately 120 people had retained J&R. A subsequent affidavit was filed indicating that this number had increased to 186.

(iv) Mr. Lewis Gottheil, in-house legal counsel for the National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW") who is seeking to represent all retirees of the Applicants who were formerly members of one of the CAW locals when they were employees. Approximately 600 people have retained Mr. Gottheil or the CAW.

4 At the outset, it is noted that all parties who seek representation orders have submitted ample evidence that establishes that the legal counsel that they seek to be appointed as representative counsel are well respected members of the profession.

5 Nortel filed for CCAA protection on January 14, 2009 (the "Filing Date"). At the Filing Date, Nortel employed approximately 6,000 employees and had approximately 11,700 retirees or their spouses receiving pension and/or benefits from retirement plans sponsored by the Applicants.

6 The Monitor reports that the Applicants have continued to honour substantially all of the obligations to active employees. However, the Applicants acknowledge that upon commencement of the CCAA proceedings, they ceased making almost all payments to former employees of amounts that would constitute unsecured claims. Included in those amounts were payments to a number of former employees for termination and severance, as well as amounts under various retirement and retirement transition programs.

7 The Monitor is of the view that it is appropriate that there be representative counsel in light of the large number of former employees of the Applicants. The Monitor is of the view that former employee claims may require a combination of legal, financial, actuarial and advisory resources in order to be advanced and that representative counsel can efficiently co-ordinate such assistance for this large number of individuals.

8 The Monitor has reported that the Applicants' financial position is under pressure. The Monitor is of the view that the financial burden of multiple representative counsel would further increase this pressure.

9 These motions give rise to the following issues:

(i) when is it appropriate for the court to make a representation and funding order?

(ii) given the completing claims for representation rights, who should be appointed as representative counsel?

Issue 1 - Representative Counsel and Funding Orders

10 The court has authority under Rule 10.01 of the *Rules of Civil Procedure* to appoint representative counsel where persons with an interest in an estate cannot be readily ascertained, found or served.

11 Alternatively, Rule 12.07 provides the court with the authority to appoint a representative defendant where numerous persons have the same interests.

12 In addition, the court has a wide discretion pursuant to s. 11 of the CCAA to appoint representatives on behalf of a group of employees in CCAA proceedings and to order legal and other professional expenses of such representatives to be paid from the estate of the debtor applicant.

13 In the KM factum, it is submitted that employees and retirees are a vulnerable group of creditors in an insolvency because they have little means to pursue a claim in complex CCAA proceedings or other related insolvency proceedings. It was further submitted that the former employees of Nortel have little means to pursue their claims in respect of pension, termination, severance, retirement payments and other benefit claims and that the former employees would benefit from an order appointing representative counsel. In addition, the granting of a representation order would provide a social benefit by assisting former employees and that representative counsel would provide a reliable resource for former employees for information about the process. The appointment of representative counsel would also have the benefit of streamlining and introducing efficiency to the process for all parties involved in Nortel's insolvency.

14 I am in agreement with these general submissions.

15 The benefits of representative counsel have also been recognized by both Nortel and by the Monitor. Nortel consents to the appointment of KM as the single representative counsel for all former employees. Nortel opposes the appointment of any additional representatives. The Monitor supports the Applicants' recommendation that KM be appointed as representative counsel. No party is opposed to the appointment of representative counsel.

16 In the circumstances of this case, I am satisfied that it is appropriate to exercise discretion pursuant to s. 11 of the CCAA to make a Rule 10 representation order.

Issue 2 - Who Should be Appointed as Representative Counsel?

17 The second issue to consider is who to appoint as representative counsel. On this issue, there are divergent views. The differences primarily centre around whether there are inherent conflicts in the positions of various categories of former employees.

18 The motion to appoint KM was brought by Messrs. Sproule, Archibald and Campbell (the "Koskie Representatives"). The Koskie Representatives seek a representation order to appoint KM as representative counsel for all former employees in Nortel's insolvency proceedings, except:

> (a) any former chief executive officer or chairman of the board of directors, any non-employee members of the board of directors, or such former employees or officers that are subject to investigation and charges by the Ontario Securities Commission or the United States Securities and Exchange Commission:
>
> (b) any former unionized employees who are represented by their former union pursuant to a Court approved representation order; and
>
> (c) any former employee who chooses to represent himself or herself as an independent individual party to these proceedings.

19 Ms. Paula Klein and Ms. Joanne Reid, on behalf of the Recently Severed Canadian Nortel Employees ("RSCNE"), seek a representation order to appoint NS as counsel in respect of all former Nortel Canadian non-unionized employees to whom Nortel owes termination and severance pay (the "RSCNE Group").

20 Mr. Kent Felske and Mr. Dany Sylvain, on behalf of the Nortel Continuing Canadian Employees ("NCCE") seek a representative order to appoint NS as counsel in respect of all current Canadian non-unionized Nortel employees (the "NCCE Group").

21 J&R, on behalf of the Steering Committee (Mr. Michael McCorkle, Mr. Harvey Stein and Ms. Marie Lunney) for Nortel Terminated Canadian Employees ("NTCEC") owed termination and severance pay seek a representation order to appoint J&R in respect of any claim of any terminated employee arising out of the insolvency of Nortel for:

(a) unpaid termination pay;

(b) unpaid severance pay;

(c) unpaid expense reimbursements; and

(d) amounts and benefits payable pursuant to employment contracts between the Employees and Nortel

22 Mr. George Borosh and/or Ms. Debra Connor seek a representation order to represent all retirees of the Applicants who were formerly represented by the CAW (the "Retirees") or, alternatively, an order authorizing the CAW to represent the Retirees.

23 The former employees of Nortel have an interest in Nortel's CCAA proceedings in respect of their pension and employee benefit plans and in respect of severance, termination pay, retirement allowances and other amounts that the former employees consider are owed in respect of applicable contractual obligations and employment standards legislation.

24 Most former employees and survivors of former employees have basic entitlement to receive payment from the Nortel Networks Limited Managerial and Non-negotiated Pension Plan (the "Pension Plan") or from the corresponding pension plan for unionized employees.

25 Certain former employees may also be entitled to receive payment from Nortel Networks Excess Plan (the "Excess Plan") in addition to their entitlement to the Pension Plan. The Excess Plan is a non-registered retirement plan which provides benefits to plan members in excess of those permitted under the registered Pension Plan in accordance with the *Income Tax Act*.

26 Certain former employees who held executive positions may also be entitled to receive payment from the Supplementary Executive Retirement Plan ("SERP") in addition to their entitlement to the Pension Plan. The SERP is a non-registered plan.

27 As of Nortel's last formal valuation dated December 31, 2006, the Pension Plan was funded at a level of 86% on a wind-up basis. As a result of declining equity markets, it is anticipated that the Pension Plan funding levels have declined since the date of the formal valuation and that Nortel anticipates that its Pension Plan funding requirements in 2009 will increase in a very substantial and material matter.

28 At this time, Nortel continues to fund the deficit in the Pension Plan and makes payment of all current service costs associated with the benefits; however, as KM points out in its factum, there is no requirement in the Initial Order compelling Nortel to continue making those payments.

29 Many retirees and former employees of Nortel are entitled to receive health and medical benefits and other benefits such as group life insurance (the "Health Care Plan"), some of which are funded through the Nortel Networks' Health and Welfare Trust (the "HWT").

30 Many former employees are entitled to a payment in respect of the Transitional Retirement Allowance ("TRA"), a payment which provides supplemental retirement benefits for those who at the time of their retirement elect to receive such payment. Some 442 non-union retirees have ceased to receive this benefit as a result of the CCAA proceedings.

31 Former employees who have been recently terminated from Nortel are owed termination pay and severance pay. There were 277 non-union former employees owed termination pay and severance pay at the Filing Date.

32 Certain former unionized employees also have certain entitlements including:

(a) Voluntary Retirement Option ("VRO");

(b) Retirement Allowance Payment ("RAP"); and

(c) Layoff and Severance Payments

33 The Initial Order permitted Nortel to cease making payments to its former employees in respect of certain amounts owing to them and effective January 14, 2009, Nortel has ceased payment of the following:

(a) all supplementary pensions which were paid from sources other than the Registered Pension Plan, including payments in respect of the Excess Plan and the SERP;

(b) all TRA agreements where amounts were still owing to the affected former employees as at January 14, 2009;

(c) all RAP agreements where amounts were still owing to the affected former employees as at January 14, 2009;

(d) all severance and termination agreements where amounts were still owing to the affected former employees as at January 14, 2009; and

(e) all retention bonuses where amounts were still owing to affected former employees as at January 14, 2009.

34 The representatives seeking the appointment of KM are members of the Nortel Retiree and Former Employee Protection Committee ("NRPC"), a national-based group of over 2,000 former employees. Its stated mandate is to defend and protect pensions, severance, termination and retirement payments and other benefits. In the KM factum, it is stated that since its inception, the NRPC has taken steps to organize across the country and it has assembled subcommittees in major centres. The NRPC consists of 20 individuals who it claims represent all different regions and interests and that they participate in weekly teleconference meetings with legal counsel to ensure that all former employees' concerns are appropriately addressed.

35 At paragraph 49 of the KM factum, counsel submits that NRPC members are a cross-section of all former employees and include a variety of interests, including those who have an interest in and/or are entitled to:

(a) the basic Pension Plan as a deferred member or a member entitled to transfer value;

(b) the Health Care Plan;

(c) the Pension Plan and Health Care Plan as a survivor of a former employee;

(d) Supplementary Retirement Benefits from the Excess Plan and the SERP plans;

(e) severance and termination pay ; and

(f) TRA payments.

36 The representatives submit that they are well suited to represent all former employees in Nortel's CCAA proceedings in respect of all of their interests. The record (Affidavit of Mr. D. Sproule) references the considerable experience of KM in representing employee groups in large-scale restructurings.

37 With respect to the allegations of a conflict of interest as between the various employee groups (as described below), the position of the representatives seeking the appointment of KM is that all former employees have unsecured claims against Nortel in its CCAA proceedings and that there is no priority among claims in respect of Nortel's assets. Further, they submit that a number of former employees seeking severance and termination pay also have other interests, including the Pension Plan,

TRA payments and the supplementary pension payments and that it would unjust and inefficient to force these individuals to hire individual counsel or to have separate counsel for separate claims.

38 Finally, they submit that there is no guarantee as to whether Nortel will emerge from the CCAA, whether it will file for bankruptcy or whether a receiver will be appointed or indeed whether even a plan of compromise will be filed. They submit that there is no actual conflict of interest at this time and that the court need not be concerned with hypothetical scenarios which may never materialize. Finally, they submit that in the unlikely event of a serious conflict in the group, such matters can be brought to the attention of the court by the representatives and their counsel on a *ex parte* basis for resolution.

39 The terminated employee groups seeking a representation order for both NS and J&R submit that separate representative counsel appointments are necessary to address the conflict between the pension group and the employee group as the two groups have separate legal, procedural, and equitable interests that will inevitably conflict during the CCAA process.

40 They submit that the pensioners under the Pension Plan are continuing to receive the full amount of the pension from the Pension Plan and as such they are not creditors of Nortel. Counsel submits that the interest of pensioners is in continuing to receive to receive their full pension and survivor benefits from the Pension Plan for the remainder of their lives and the lives of surviving spouses.

41 In the NS factum at paragraphs 44 - 58, the argument is put forward as to why the former employees to whom Nortel owes severance and termination pay should be represented separately from the pensioners. The thrust of the argument is that future events may dictate the response of the affected parties. At paragraph 51 of the factum, it is submitted that generally, the recently severed employees' primary interest is to obtain the fastest possible payout of the greatest amount of severance and/or pay in lieu of notice in order to alleviate the financial hardships they are currently experiencing. The interests of pensioners, on the other hand, is to maintain the status quo, in which they continue to receive full pension benefits as long as possible. The submission emphasizes that issues facing the pensioner group and the non-pensioner group are profoundly divergent as full monthly benefit payments for the pensioner group have continued to date while non-pensioners are receiving 86% of their lump sums on termination of employment, in accordance with the most recently filed valuation report.

42 The motion submitted by the NTCEC takes the distinction one step further. The NTCEC is opposed to the motion of NS. NS wishes to represent both the RSCNE and the NCCE. The NTCEC believes that the terminated employees who are owed unpaid wages, termination pay and/or severance should comprise their own distinct and individual class.

43 The NTCEC seek payment and fulfillment of Nortel's obligations to pay one or several of the following:

(a) TRA;

(b) 2008 bonuses; and

(c) amendments to the Nortel Pension Plan

44 Counsel to NTCEC submits that the most glaring and obvious difference between the NCCE and the NTCEC, is that NCCE are still employed and have a continuing relationship with Nortel and have a source of employment income and may only have a contingent claim. The submission goes on to suggest that, if the NCCE is granted a representation order in these proceedings, they will seek to recover the full value of their TRA claim from Nortel during the negotiation process notwithstanding that one's claim for TRA does not crystallize until retirement or termination. On the other hand, the terminated employees, represented by the NTCEC and RSCNE are also claiming lost TRA benefits and that claim has crystallized because their employment with Nortel has ceased. Counsel further submits that the contingent claim of the NCCE for TRA is distinct and separate with the crystallized claim of the NTCEC and RSCNE for TRA.

45 Counsel to NTCEC further submits that there are difficulties with the claim of NCCE which is seeking financial redress in the CCAA proceedings for damages stemming from certain changes to the Nortel Networks Limited Managerial and Non-negotiated Pension Plan effective June 1, 2008 and Nortel's decision to decrease retirees benefits. Counsel submits that, even if

the NCCE claims relating to the Pension Plan amendment are quantifiable, they are so dissimilar to the claims of the RSCNE and NTCEC, that the current and former Nortel employees cannot be viewed as a single group of creditors with common interests in these proceedings, thus necessitating distinct legal representation for each group of creditors.

46 Counsel further argues that NTCEC's sole mandate is to maximize recovery of unpaid wages, termination and severance pay which, those terminated employees as a result of Nortel's CCAA filing, have lost their employment income, termination pay and/or severance pay which would otherwise be protected by statute or common law.

47 KM, on behalf of the Koskie Representatives, responded to the concerns raised by NS and by J&R in its reply factum.

48 KM submits that the conflict of interest is artificial. KM submits that all members of the Pension Plan who are owed pensions face reductions on the potential wind-up of the Pension Plan due to serious under-funding and that temporarily maintaining of status quo monthly payments at 100%, although required by statute, does not avoid future reductions due to under-funding which offset any alleged overpayments. They submit that all pension members, whether they can withdraw 86% of their funds now and transfer them a locked-in vehicle or receive them later in the form of potentially reduced pensions, face a loss and are thus creditors of Nortel for the pension shortfalls.

49 KM also states that the submission of the RSCNE that non-pensioners may put pressure on Nortel to reduce monthly payments on pensioners ignores the *Ontario Pension Benefits Act* and its applicability in conjunction with the CCAA. It further submits that issues regarding the reduction of pensions and the transfers of commuted values are not dealt with through the CCAA proceedings, but through the Superintendent of Financial Services and the Plan Administrator in their administration and application of the PBA. KM concludes that the Nortel Pension Plans are not applicants in this matter nor is there a conflict given the application of the provisions of the PBA as detailed in the factum at paragraphs 11 - 21.

50 KM further submits that over 1,500 former employees have claims in respect of other employment and retirement related benefits such as the Excess Plan, the SERP, the TRA and other benefit allowances which are claims that have "crystallized" and are payable now. Additionally, they submit that 11,000 members of the Pension Plan are entitled to benefits from the Pensioner Health Care Plan which is not pre-funded, resulting in significant claims in Nortel's CCAA proceedings for lost health care benefits.

51 Finally, in addition to the lack of any genuine conflict of interest between former employees who are pensioners and those who are non-pensioners, there is significant overlap in interest between such individuals and a number of the former employees seeking severance and termination pay have the same or similar interests in other benefit payments, including the Pension Plan, Health Care Plan, TRA, SERP and Excess Plan payments. As well, former employees who have an interest in the Pension Plan also may be entitled to severance and termination pay.

52 With respect to the motions of NS and J&R, I have not been persuaded that there is a real and direct conflict of interest. Claims under the Pension Plan, to the extent that it is funded, are not affected by the CCAA proceedings. To the extent that there is a deficiency in funding, such claims are unsecured claims against Nortel. In a sense, deficiency claims are not dissimilar from other employee benefit claims.

53 To the extent that there may be potentially a divergence of interest as between pension-based claims and terminated-employee claims, these distinctions are, at this time, hypothetical. At this stage of the proceeding, there has been no attempt by Nortel to propose a creditor classification, let alone a plan of arrangement to its creditors. It seems to me that the primary emphasis should be placed on ensuring that the arguments of employees are placed before the court in the most time efficient and cost effective way possible. In my view, this can be accomplished by the appointment of a single representative counsel, knowledgeable and experienced in all facets of employee claims.

54 It is conceivable that there will be differences of opinion between employees at some point in the future, but if such differences of opinion or conflict arise, I am satisfied that this issue will be recognized by representative counsel and further directions can be provided.

55 A submission was also made to the effect that certain individuals or groups of individuals should not be deprived of their counsel of choice. In my view, the effect of appointing one representative counsel does not, in any way, deprive a party of their ability to be represented by the counsel of their choice. The Notice of Motion of KM provides that any former employee who does not wish to be bound by the representative order may take steps to notify KM of their decision and may thereafter appear as an independent party.

56 In the responding factum at paragraphs 28 - 30, KM submits that each former employee, whether or not entitled to an interest in the Pension Plan, has a common interest in that each one is an unsecured creditor who is owed some form of deferred compensation, being it severance pay, TRA or RAP payments, supplementary pensions, health benefits or benefits under a registered Pension Plan and that classifying former employees as one group of creditors will improve the efficiency and effectiveness of Nortel's CCAA proceedings and will facilitate the reorganization of the company. Further, in the event of a liquidation of Nortel, each former employee will seek to recover deferred compensation claims as an unsecured creditor. Thus, fragmentation of the group is undesirable. Further, all former employees also have a common legal position as unsecured creditors of Nortel in that their claims all arise out of the terms and conditions of their employment and regardless of the form of payment, unpaid severance pay and termination pay, unpaid health benefits, unpaid supplementary pension benefits and other unpaid retirement benefits are all remuneration of some form arising from former employment with Nortel.

57 The submission on behalf of KM concludes that funds in a pension plan can also be described as deferred wages. An employer who creates a pension plan agrees to provide benefits to retiring employees as a form of compensation to that employee. An underfunded pension plan reflects the employer's failure to pay the deferred wages owing to former employees.

58 In its factum, the CAW submits that the two proposed representative individuals are members of the Nortel Pension Plan applicable to unionized employees. Both individuals are former unionized employees of Nortel and were members of the CAW. Counsel submits that naming them as representatives on behalf of all retirees of Nortel who were members of the CAW will not result in a conflict with any other member of the group.

59 Counsel to the CAW also stated that in the event that the requested representation order is not granted, those 600 individuals who have retained Mr. Lewis Gottheil will still be represented by him, and the other similarly situated individuals might possibly be represented by other counsel. The retainer specifically provides that no individual who retains Mr. Gottheil shall be charged any fees nor be responsible for costs or penalties. It further provides that the retainer may be discontinued by the individual or by counsel in accordance with applicable rules.

60 Counsel further submits that the 600 members of the group for which the representation order is being sought have already retained counsel of their choice, that being Mr. Lewis Gottheil of the CAW. However, if the requested representative order is not granted, there will still be a group of 600 individual members of the Pension Plan who are represented by Mr. Gottheil. As a result, counsel acknowledges there is little to no difference that will result from granting the requested representation order in this case, except that all retirees formerly represented by the union will have one counsel, as opposed to two or several counsel if the order is not granted.

61 In view of this acknowledgement, it seems to me that there is no advantage to be gained by granting the CAW representative status. There will be no increased efficiencies, no simplification of the process, nor any real practical benefit to be gained by such an order.

62 Notwithstanding that creditor classification has yet to be proposed in this CCAA proceeding, it is useful, in my view, to make reference to some of the principles of classification. In *Stelco Inc., Re*, the Ontario Court of Appeal noted that the classification of creditors in the CCAA proceeding is to be determined based on the "commonality of interest" test. In *Stelco Inc., Re*, the Court of Appeal upheld the reasoning of Paperny J. (as she then was) in *Canadian Airlines Corp., Re* and articulated the following factors to be considered in the assessment of the "commonality of interest".

In summary, the case has established the following principles applicable to assessing commonality of interest:

1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;

2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.

3. The commonality of interests are to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if possible.

4. In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches that would potentially jeopardize viable plans.

5. Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan] are irrelevant.

6. The requirement of creditors being able to consult together means being able to assess their legal entitlement *as creditors* before or after the plan in a similar manner.

Stelco Inc., Re (2005), 15 C.B.R. (5th) 307 (Ont. C.A.), paras 21-23; *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 12 (Alta. Q.B.), para 31.

63 I have concluded that, at this point in the proceedings, the former employees have a "commonality of interest" and that this process can be best served by the appointment of one representative counsel.

64 As to which counsel should be appointed, all firms have established their credentials. However, KM is, in my view, the logical choice. They have indicated a willingness to act on behalf of all former employees. The choice of KM is based on the broad mandate they have received from the employees, their experience in representing groups of retirees and employees in large scale restructurings and speciality practice in the areas of pension, benefits, labour and employment, restructuring and insolvency law, as well as my decision that the process can be best served by having one firm put forth the arguments on behalf of all employees as opposed to subdividing the employee group.

65 The motion of Messrs. Sproule, Archibald and Campbell is granted and Koskie Minsky LLP is appointed as Representative Counsel. This representation order is also to cover the fees and disbursements of Koskie Minsky.

66 The motions to appoint Nelligan O'Brien Payne and Shibley Righton, Juroviesky and Ricci, and the CAW as representative counsel are dismissed.

67 I would ask that counsel prepare a form of order for my consideration.

Order accordingly.

Footnotes

* Additional reasons at *Nortel Networks Corp., Re* (2009), 2009 CarswellOnt 3530 (Ont. S.C.J. [Commercial List]).

TAB 15

2008 CarswellOnt 6284
Ontario Superior Court of Justice [Commercial List]

Grace Canada Inc., Re

2008 CarswellOnt 6284, [2008] O.J. No. 4208, 170 A.C.W.S. (3d) 692, 50 C.B.R. (5th) 25

IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF GRACE CANADA, INC.

Morawetz J.

Heard: September 30, 2008
Judgment: October 23, 2008
Docket: 01-CL-4081

Counsel: Derrick C. Tay, Orestes Pasparakis, Jennifer Stam for Grace Canada Inc.
Keith J. Ferbers for Raven Thundersky
Alexander Rose for Sealed Air (Canada)
Michel Bélanger, David Thompson, Matthew G. Moloci for CDN ZAI Claimants
Jacqueline Dais-Visca, Carmela Maiorino for Attorney General of Canada

Subject: Insolvency; Civil Practice and Procedure
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues
Faced with product liability suits U.S. parent of applicant G Inc. filed for Chapter 11 re-organization — G Inc. spun off subsidiary SA and provided SA with indemnities relating to asbestos liabilities arising from attic insulation — G Inc commenced proceedings under Act seeking ancillary relief to facilitate and coordinate U.S. proceedings in Canada — Several proposed class actions were commenced in Canada and by court order were enjoined and brought within restructuring process — Representative counsel were appointed to represent claimants in restructuring — Minutes of settlement were reached settling all Canadian claims — Minutes contained provisions for relief in favour of SA and Crown — Crown objected to language of release removing claim over for contribution and indemnity — Minutes were submitted for court approval — The minutes were approved — Representative counsel had been given broad powers by court order to negotiate on behalf of Canadian claimants so had authority to enter the minutes of settlement — Court had power to approve material agreements including settlement agreements before filing of any plan of compromise or arrangement — SA had contributed to settlement funds — Release not only necessary and essential but fair — Crown's release also necessary otherwise G Inc. could become indirectly liable through contribution and indemnity claims — Minutes released any claims for which Crown had right of contribution or indemnity — Since company released from claims Crown had no need to claim over — Minutes were to be approved or rejected as whole — Approval of minutes fair and reasonable especially given that company could have defended on limitation period and that U.S. bankruptcy court had determined that attic insulation did not pose unreasonable risk — Court awarded compensation to representative counsel, claims administrator and qualified expert in amount of $3,250,000.
Table of Authorities
Cases considered by *Morawetz J.*:

Association des consommateurs pour la qualité dans la construction v. Canada (Attorney General) (2005), 2005 CarswellQue 10587 (C.S. Que.) — referred to
ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 2008 CarswellOnt 3523, 43 C.B.R. (5th) 269, 47 B.L.R. (4th) 74 (Ont. S.C.J. [Commercial List]) — referred to
ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 2008 ONCA 587, 2008 CarswellOnt 4811, (sub nom. *Metcalfe & Mansfield Alternative Investments II Corp., Re)* 240 O.A.C. 245, (sub nom. *Metcalfe & Mansfield Alternative Investments II Corp., Re)* 296 D.L.R. (4th) 135, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123 (Ont. C.A.) — referred to
ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 2008 CarswellOnt 5432, 2008 CarswellOnt 5433 (S.C.C.) — referred to
Calpine Canada Energy Ltd., Re (2007), 2007 CarswellAlta 1050, 2007 ABQB 504, 35 C.B.R. (5th) 1, 415 A.R. 196, 33 B.L.R. (4th) 68 (Alta. Q.B.) — considered
Calpine Canada Energy Ltd., Re (2007), 35 C.B.R. (5th) 27, 410 W.A.C. 25, 417 A.R. 25, 2007 ABCA 266, 2007 CarswellAlta 1097, 80 Alta. L.R. (4th) 60, 33 B.L.R. (4th) 94 (Alta. C.A. [In Chambers]) — referred to
Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re (1998), 1998 CarswellOnt 3346, 5 C.B.R. (4th) 299, 72 O.T.C. 99 (Ont. Gen. Div. [Commercial List]) — considered
Muscletech Research & Development Inc., Re (2007), 30 C.B.R. (5th) 59, 2007 CarswellOnt 1029 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982
Chapter 11 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 18.6(3) [en. 1997, c. 12, s. 125] — considered

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

MOTION to seek approval of minutes of settlement.

***Morawetz J.*:**

1 Grace Canada Inc. ("Grace Canada" and with the U.S. debtors, "Grace") bring this motion to seek approval of the Minutes of Settlement ("the Minutes") in respect of claims against Grace relating to the manufacture and sale of Zonolite Attic Insulation ("ZAI") in Canada (the "CDN ZAI Claims").

2 Under the Minutes, Grace agrees to:

(a) fund a broad multimedia notice programme across Canada;

(b) establish a trust with $6.5 million for the payment of Canada ZAI property damage claims; and

(c) channel any Canadian ZAI personal injury claims to a U.S. asbestos trust which will have in excess of US$1.5 billion in funding.

3 In consideration, Grace would be discharged of any liability in connection with CDN ZAI Claims.

4 Although there was no direct opposition to the terms of the Minutes as being fair and reasonable, certain parties proposed amendments to the form of order sought by Grace.

5 Grace submits that the Minutes ought to be approved in the form submitted. Counsel submitted that Grace's significant settlement contribution is manifestly fair and reasonable, given Grace's defences to CDN ZAI Claims and, in particular, the judicial determination by the U.S. Bankruptcy Court (the "U.S. Court") that ZAI does not pose an unreasonable risk of harm.

6 Further, counsel to Grace submits that the Minutes are an important step towards the successful reorganization of Grace and with this settlement, these insolvency proceedings, which were filed in April 2001, are nearing completion.

7 W. R. Grace & Co. and its 61 subsidiaries (the "U.S. Debtors") have filed a joint Chapter 11 plan of reorganization (the "Plan") with the U.S. Court and expect to commence a confirmation hearing for the Plan in early 2009. The Plan incorporates the terms of the settlement before this Court and if confirmed, sees Grace emerging from Chapter 11 protection in 2009.

8 The chain of events that resulted in the Minutes began in 1963 with Grace's purchase of the assets of the Zonolite Company ("Zonolite"). Zonolite mined and processed vermiculite from a mine near Libby, Montana (the "Libby Mine"). Vermiculite is an insulator which apparently has no known toxic properties. However, the vermiculite ore from the Libby Mine contained impurities, including asbestiform minerals.

9 One of the products made from the U.S. Debtors' vermiculite was ZAI. ZAI was installed in attics of homes. Some ZAI contained trace amounts of asbestos.

10 In addition, 40 years ago the U.S. Debtors manufactured a product known as monokote-3 ("MK-3") which had chrysotile asbestos added during the manufacturing process.

11 Grace stopped manufacturing MK-3 in Canada by 1975 and ceased production of ZAI in 1984 and closed the Libby Mine in 1990.

12 By the 1970s, the U.S. Debtors began to be named in asbestos-related lawsuits. These included both asbestos-related personal injury claims ("PI Claims") and property damage claims relating to ZAI.

13 Due to a rise in the number of PI Claims in 2000 and 2001, the U.S. Debtors filed for protection under Chapter 11 of the *United States Bankruptcy Code* on April 2, 2001.

14 Grace Canada was incorporated in 1997. According to the affidavit of Mr. Finke, it had no direct involvement in any historic use of asbestos.

15 Rather, Grace's historic business operations in Canada were undertaken by a company now known as Sealed Air (Canada) Co./CIE ("Sealed Air Canada"). Sealed Air Canada is the successor to the Canadian companies with past involvement in the sale and distribution of ZAI and asbestos containing products such as MK-3.

16 Sealed Air Canada was spun-off from Grace in 1998 and as part of the transaction, Grace Canada and the U.S. Debtors provided certain indemnities to Sealed Air Canada and its parent, Sealed Air Corporation, relating to historic asbestos liabilities.

17 On April 4, 2001, two days after the Chapter 11 proceedings had been commenced, Grace Canada commenced these proceedings. The Canadian CCAA proceedings were commenced seeking ancillary relief to facilitate and coordinate the U.S. proceedings in Canada. An initial order was granted by this Court pursuant to s.18.6(4) of the CCAA (the "Initial Order").

18 By 2005, despite the Initial Order, 10 proposed class actions (the "Proposed Class Actions") were commenced across Canada in relation to the manufacture, distribution and sale of ZAI. Grace Canada, some of the U.S. Debtors and Sealed Air Canada were named as defendants, as was the Attorney General of Canada (the "Crown").

19 The allegations in the Proposed Class Actions include both ZAI PI Claims as well as damages for the cost of removing ZAI from homes across Canada ("CDN ZAI PD Claims").

20 On November 14, 2005, an order was issued (the "November 14 th Order") enjoining the Proposed Class Actions against the U.S. Debtors, Sealed Air Canada and the Crown.

21 As a result, the Proposed Class Actions were brought within the overall restructuring process.

22 By order of February 8, 2006 (the "Representation Order"), Lauzon Bélanger S.E.N.C. ("Lauzon") and Scarfone Hawkins LLP ("Scarfone") (jointly, "Representative Counsel") were appointed to act as the single representative on behalf of all of the holders of Canadian ZAI Claims ("CDN ZAI Claimants") to advocate their interests in the restructuring process.

23 No one has taken issue with the authority of the Representative Counsel to represent all CDN ZAI Claimants in the U.S. Court, this Court or at any of the mediations. The Representation Order provided that Representative Counsel would, among other things, have authority to negotiate a settlement with Grace.

24 After a long history of negotiations, on June 2, 2008, Grace, Representative Counsel and the Crown announced to the U.S. Court that they had reached an agreement in principle that remained subject to the Crown's acceptance. The Crown was not able to obtain firm instructions on whether to participate in the settlement.

25 On September 2, 2008, Grace and Representative Counsel signed the Minutes resolving all CDN ZAI Claims against Grace and Sealed Air Canada.

26 On April 7, 2008, the U.S. Debtors reached an agreement effectively settling all present and future PI Claims (the "PI Settlement") and under this agreement, the U.S. Debtors agreed to pay into trust various assets, including US$250 million, warrants to acquire common stock, proceeds of insurance, certain litigation and deferred payments and it estimates that the total value of the settlement is in excess of US$1.5 billion. Sealed Air Canada is making a contribution to the settlement in excess of $500 million, plus 18 million shares of stock.

27 On September 21, 2008, the U.S. Debtors filed their draft Plan with the U.S. Court and confirmation hearings are scheduled for early in 2009.

28 The Minutes contemplate a settlement of all CDN ZAI Claims, both personal injury ("CDN ZAI PI Claims") and property damage, on the following terms:

> (a) Grace agrees to provide in its Plan for the creation of a separate class of CDN ZAI PD Claims and to establish the CDN ZAI PD Claims Fund, which shall make payments in respect of CDN ZAI Claims;
>
> (b) on the effective date of Grace's Plan, Grace will contribute $6,500,000 through a U.S. PD Trust to the CDN ZAI PD Claims Fund;
>
> (c) Grace's Plan provides that any holder of a CDN ZAI PI Claim ("CDN ZAI PI Claimant") shall be entitled to file his or her claim with the Asbestos Personal Injury Trust to be created for all PI Claims and funded in accordance with the US$1.5 billion PI Settlement;
>
> (d) Representative Counsel shall vote, on behalf of CDN ZAI Claimants, in favour of the Plan incorporating the settlement; and
>
> (e) Representative Counsel shall be entitled to bring a fee application within the U.S. proceedings and any such payments received would reduce the amount otherwise payable to Representative Counsel under the Settlement.

In addition, Grace has agreed to fund a broad based media notice programme across Canada and an extended claims bar procedure for CDN ZAI PD Claims and Grace has also agreed to give direct notice to any known claimant.

29 Under the Minutes, the bar date for CDN ZAI PD Claims is not less than 180 days from substantial completion of the CDN ZAI Claims Notice Program. The period for filing ZAI PD Claims in the U.S. is considerably shorter and Grace has scheduled a motion with the U.S. Court on October 20, 2008 to approve the CDN ZAI PD Claims bar date. Grace has indicated that if granted, recognition of the U.S. order will be sought from this Court. There will be no bar date for CDN ZAI PI Claims.

30 Grace has indicated that it has contemplated that monies will be distributed out of the CDN ZAI PD Claims Fund based on a claimant's ability to prove that his or her property contained ZAI and that monies were expended to contain or remove ZAI from the property. Based on proof of ZAI in the home and the remediation measures taken by a claimant, that claimant may recover $300 or $600 per property.

31 The issues for consideration were stated by counsel to Grace as follows:

(a) Does Representative Counsel have the authority to enter into the Minutes on behalf of all CDN ZAI Claimants?

(b) Does the CCAA Court have the jurisdiction to approve the Minutes, including the relief in favour of Sealed Air Canada and the Crown?

(c) Are the Minutes fair and reasonable? In particular, is their prejudice to the key constituencies?

32 The Representation Order is clear. It gives Representative Counsel broad powers, including the ability to negotiate on behalf of CDN ZAI Claimants. No party has objected to or taken issue with the Representation Order or with the authority of Representative Counsel to represent all CDN ZAI Claims.

33 I am satisfied that Lauzon and Scarfone have the authority, as Representative Counsel, to enter the Minutes of Settlement on behalf of all CDN ZAI Claimants.

34 I am also satisfied that the CCAA Court may approve material agreements, including settlement agreements, before the filing of any plan of compromise or arrangement. See *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1998), 5 C.B.R. (4th) 299 (Ont. Gen. Div. [Commercial List]) and *Calpine Canada Energy Ltd., Re* (2007), 35 C.B.R. (5th) 1 (Alta. Q.B.), leave to appeal denied (2007), 35 C.B.R. (5th) 27 (Alta. C.A. [In Chambers]).

35 It is noted that, in this case, the Plan will be voted on by creditors in the U.S. proceedings.

36 With respect to relief in favour of Sealed Air, Grace has agreed to indemnify Sealed Air Canada for certain liabilities in connection with ZAI. As part of the settlement, Grace seeks to ensure that the release of the CDN ZAI Claims includes a release for the benefit of Sealed Air Canada.

37 Counsel submits that such release is not only necessary and essential, but also fair given Sealed Air Canada's contribution to the PI Settlement under the Plan in excess of $500 million. I am satisfied that, in these circumstances, the release for the benefit of Sealed Air Canada is fair and reasonable.

38 The Minutes also provide a limited release in favour of the Crown. Pursuant to the Minutes, the Crown's claims for contribution and indemnity against Grace (being CDN ZAI Claims) are released. Counsel submits that the corollary is that the Crown is relieved of any joint liability it shares with Grace for CDN ZAI Claims.

39 Counsel to Grace again submits that such a release of the Crown is necessary. Otherwise, Grace could become indirectly liable through contribution and indemnity claims.

40 Counsel for Grace submits that, in certain circumstances, this Court has ordered third party releases where they are necessary and connected to a resolution of the debtor's claims, will benefit creditors generally, and are not overly broad or offensive to public policy. (See: *Muscletech Research & Development Inc., Re* (2007), 30 C.B.R. (5th) 59 (Ont. S.C.J. [Commercial List]) and *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 43 C.B.R. (5th) 269 (Ont. S.C.J. [Commercial List]), aff'd. 2008 ONCA 587 (Ont. C.A.) ("Metcalfe"), leave to appeal to S.C.C. denied. [2008 CarswellOnt 5432 (S.C.C.)])

41 Subsections 18.6(3) and (4) of the CCAA, allow the Ontario Court to make orders with respect to foreign insolvency proceedings, on such terms and conditions as the Court considers appropriate.

42 In assessing whether to grant its approval, the Court has to consider whether the Minutes are fair and reasonable in all of the circumstances.

43 It is the submission of Grace that the Minutes are fair and reasonable, and that resolutions of the CDN ZAI Claims in particular do not prejudice the Crown, CDN ZAI PD Claimants or, CDN ZAI PI Claimants.

44 Grace also submits that, given the strong defences which it believes are available, the Minutes provide a substantial compromise by Grace, considering the circumstances in which it believes it has no liability for CDN ZAI Claims.

45 Early in the insolvency proceedings, the U.S. Court held a hearing to determine, as a threshold scientific issue, whether the presence of ZAI in a home created an unreasonable risk of harm. The opinion of the U.S. Court was filed as part of the record. Grace states that the U.S. Court came to the conclusion that ZAI did not pose an unreasonable risk of harm. The background and conclusions of the U.S. Court have been summarized at paragraphs 72 to 85 of the Grace factum.

46 I have been persuaded by and accept these submissions.

47 In addition, even if ZAI had been found to pose an unreasonable risk of harm, Grace submits that it still has a complete defence to any claims under Canadian law for the reasons set out at paragraphs 86 to 97 of the factum.

48 Further, the passage of time is such that Grace submits that many cases would be dismissed outright based on the expiry of the limitation period.

49 With respect to the issue of prejudice to the Crown, on the one hand, the Crown has asserted claims against Grace. The Crown has estimated that over 2,000 homes located on military bases have been remediated to contain vermiculite attic insulation or ZAI from homes built by the Canadian military. Under the Settlement, the Crown, as a CDN ZAI Claimant, would receive $300 per unit for the sealing of ZAI. Based on the Crown's records, the Crown would potentially have a claim against the Fund for up to $660,000 and if it chose to pursue this claim, the Crown would recover approximately 50% of its remediation expenditures.

50 On the other hand, the Crown is also a defendant in the Proposed Class Actions. Through the Minutes, the Crown will release its CDN ZAI Claims against Grace, but at the same time, counsel to Grace submits that the Crown is effectively released from any joint liability it may share with Grace. Grace submits that the Crown will be relieved from all CDN ZAI Claims except those for which it is severally responsible.

51 It is with respect to the release language that the Crown takes exception.

52 The Crown acknowledges that Representative Counsel has the authority to negotiate on behalf of ZAI Claimants. However, the Crown disputes the authority of Representative Counsel to purport to negotiate away the Crown's Chapter 11 "claim over" for contribution and indemnity.

53 The Crown supports the approval of the Settlement insofar as it purports to resolve all of Grace's liability with respect to CDN ZAI PD and PI Claims, provided that the approval order expressly recognizes that the Crown's protective "claim over" for contribution and indemnity against Grace is unimpaired by the Settlement and provided that the Approval Order expressly allows the Crown to third party Grace in ZAI related actions where the Crown is sued on a several basis.

54 Counsel to the Crown submits that to interpret the authority of Representative Counsel to have the power to release the Crown's "claim over" against Grace while they simultaneously reserve the right to pursue the claims against the Crown would conflict with the clear direction in the Representation Order. They submit that CCAA Representative Counsel does not represent the Crown's interest with respect to the contribution and indemnity claim, and would be in conflict of interest with respect to the members of the group it represents if it attempted to do so. They further submit that it has always been the position of the Crown that all ZAI related damages give rise to a contribution and indemnity claims against Grace and that no independent

claim lies against the Crown; hence, the Crown has and will continue to assert a contribution and indemnity claim against Grace for the totality of the damages.

55 At the hearing, the argument of the Crown was presented without the benefit of a factum. I requested and received a factum from the Crown which was then responded to by counsel to Grace and by Representative Counsel.

56 In my view, the response of Grace is a complete answer to the Crown's submissions. Counsel to Grace notes that the Crown purports to support the Order sought on the proviso that its contribution and indemnity claims against Grace are unimpaired. However, the Minutes do impair the Crown's contribution claims, and with the Order, the Crown will have no claims for contribution and indemnity against Grace.

57 It is Grace's position that Representative Counsel has the authority to resolve and release all CDN ZAI Claims, including Crown claims for contribution and indemnity. Further, in any event, there is no prejudice to the Crown as pursuant to the Minutes, CDN ZAI Claimants have agreed that they cannot pursue the Crown for claims for which Grace is ultimately responsible. Consequently, the Crown has no contribution claims to assert against Grace. Simply put, as submitted by counsel to Grace, there is nothing left.

58 The Representation Order applies to all claims "arising out of or in any way connected to damages or loss suffered, directly or indirectly, from the manufacture, sale or distribution of Zonolite attic insulation products in Canada".

59 It seems to me that the wording of the Representation Order is clear. Representative Counsel have the authority to resolve and release all CDN ZAI Claims, including Crown claims for contribution and indemnity.

60 With respect to the Release itself, the Minutes release any claims or causes of action for which the Crown has a right of contribution and indemnity. As submitted by counsel to Grace, Representative Counsel may not pursue the Crown in respect of claims for which Grace is ultimately liable.

61 Paragraph 13(b)(iii) of the Minutes provides for a release of:

> ...any claims or causes of action asserted against the Grace Parties as a result of the Canadian ZAI Claims advanced by CCAA Representative Counsel against the Crown as a result of which the Crown is or may become entitled to contribution or indemnity from the Grace Parties.

62 I accept the submission of counsel to Grace that the purpose of this provision is to protect Grace from indirect claims through the Crown. Since any claim for which Grace is ultimately liable cannot be pursued, the Crown has no need nor any ability to "claim over" against Grace.

63 The Crown also relied on an order of November 7, 2005 of Chaput J. of the Québec Superior Court in the [*Association des consommateurs pour la qualité dans la construction v. Canada (Attorney General)*, 2005 CarswellQue 10587 (C.S. Que.)] case which was one of the Proposed Class Actions. The Crown relied on the order of Chaput J. to argue that all claims against the Crown flow through Grace and that Grace is therefore ultimately responsible for any Crown liability.

64 I agree with the position being taken by Grace to the effect that this argument is misplaced. It was made quite clear at this hearing that the scope of any remaining Crown liability will need to be addressed at a future hearing.

65 Submissions were also made by counsel on behalf of Ms. Thundersky.

66 Counsel pointed out certain concerns and suggested that it was appropriate to alter the proposed form of order.

67 The first concern raised related to the issue of preservation of claims against the Crown and counsel submitted that paragraph 13(b)(iv) creates some ambiguity in this area. In my view, paragraph 13(b)(iv) of the Minutes is clear. The concluding words read as follows:

> For greater certainty, nothing contained in these Minutes shall serve to discharge, extinguish or release Canadian ZAI Claims asserted against the Crown and which claims seek to establish and apportion independent and/or several liability against the Crown.

68 I do not share counsel's concern. The issue does not require clarification. In my view, this paragraph is not ambiguous.

69 Counsel to Ms. Thundersky also raises concern that the draft order provides that all of the legal actions in Canada be "permanently stayed" until all of the actions have formally removed the Grace Parties as defendants which would not occur until the Effective Date of any approved Plan of Reorganization. In my view, this is not a significant concern. This Court retains jurisdiction over the matters before it in these proceedings and to the extent that further direction is required, the appropriate motion can be brought before me.

70 The third concern raised by counsel to Ms. Thundersky was with respect to the Asbestos PI Fund to be established in the U.S. process. Concerns were raised with respect to the uncertainty surrounding when and in what manner the eligibility criteria for the fund would be established. Counsel to Grace advised that Mr. Ferbers would have the opportunity to provide comment during the Plan process on this issue. I expect that this should be sufficient to alleviate any concerns but, if not, further direction can be sought from this Court.

71 Finally, concern was also raised with respect to the absence of a personal injury notice program. Counsel to Grace advised that this issue would be communicated to those involved in the U.S. Plan. In the circumstances, this would appear to be a pragmatic response to the concern raised by counsel to Ms. Thundersky.

72 Counsel to Ms. Thundersky acknowledged that it was difficult to propose a resolution which stayed within the four corners of the Minutes, but that Ms. Thundersky did wish to bring the foregoing concerns to the attention of the parties and the Court in the hopes that they could be taken into account.

73 Counsel to Grace and Representative Counsel are aware of these issues and will take them into account.

74 I indicated at the hearing that I was inclined to either approve the Minutes or to reject them. The Minutes are the product of extensive negotiation between the Representative Counsel and the Grace Parties. I am of the view that it is not appropriate for me to examine and evaluate the Minutes on a line-by-line basis, nor to amend or alter the agreement as reached between Representative Counsel and the Grace Parties.

75 In my view, to accept the submissions of the Crown and Ms. Thundersky would leave the Court in the position of having to reject the Minutes and refuse to approve the Settlement. Having considered all of the circumstances, I do not consider this to be an appropriate outcome.

76 I have been satisfied that the Minutes are fair and reasonable. The Minutes have been agreed to by Representative Counsel. In my view, the Minutes do not prejudice the interests of the Crown. I am also of the view that there is no prejudice to the ZAI PD Claimants who will have access to a significant fund to assist with their remediation costs. Their alternative is more litigation which, at the end of the day, would have a very uncertain outcome. I am also of the view that there is no prejudice to the ZAI PI Claimants who will have the opportunity to make a claim to the asbestos trust in the U.S. I am satisfied that the ZAI PI Claimants will be receiving treatment that is fair and equal with other PI Claimants. Further, it is noted that counsel to Grace advised that the Thundersky family are the only known ZAI PI Claimants. Their alternative is the continuation of a claim that on its face, would appear to have been statute barred in 1994.

77 I also accept the conclusions as put forth by counsel to Grace. This Settlement provides CDN ZAI PD Claimants with clear recourse to the CDN ZAI PD Claims Fund and CDN ZAI PI Claimants with recourse to the Asbestos Personal Injury Trust in situations where it is Grace's view that the Canadian claims have little or no value.

78 I am also satisfied that third party releases are, in the circumstances of this case, directly connected to the resolution of the debtor's claims and are necessary. The third party releases are not, in my view, overly broad nor offensive to public policy.

79 Counsel to Grace also submitted that Representative Counsel have been continuously active and diligent in both the U.S. and Canadian proceedings and Grace is of the view that it is appropriate that a portion of the funds paid under the settlement go towards compensation of Representative Counsel's fees. I accept this submission and specifically note that the Minutes provide for specified payments to Representative Counsel, a Claims Administrator and a qualified expert to assist in the claims process, in a total amount of approximately CDN$3,250,000.

80 In conclusion, the Minutes, in my view, represent an important component of the Plan. They provide a mechanism for the resolution of CDN ZAI Claims without the uncertainty and delay associated with ongoing litigation.

81 The Minutes are approved and an order shall issue in the form requested, as amended.

Order accordingly.

TAB 16

Court File No. CV-20-00641059-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 6TH
	)	
JUSTICE HAINEY	)	DAY OF AUGUST, 2020

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS AMENDED

AND IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C., 1985, C. C-44, AS AMENDED

AND IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARTNER LIMITED

Applicants

ORDER

THIS MOTION made by Ernst & Young Inc. in its capacity as court appointed liquidator of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited (the "**PSC Liquidator**", and together with MNP Ltd. in its capacity as court appointed liquidator of First Hamilton Holdings Inc., First Hamilton Financial Services Inc., First Hamilton Capital Inc., First Hamilton General Partner 2 Inc. and First Hamilton Mortgage Brokers Inc. (the "**FHH Liquidator**"), the "**Court Appointed Liquidators**") for an order appointing Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") as representative counsel for the investors described in Schedule "A" hereto (the "**Investor Claimants**") in these proceedings was heard this day via Zoom conference at Toronto, Ontario,

ON READING the Motion Records of the Court Appointed Liquidators, and on hearing the submissions of counsel for: the Court Appointed Liquidators; Pace Savings & Credit Union Ltd. (the "**Credit Union**"); Financial Services Regulatory Authority of Ontario; Surinder Sawrup, Aman Sawrup, and Saira Ahmad; Laurentian Bank Securities Limited ("**LBS**"); and such other counsel as were present; no one else appearing although duly served, as appears from the Affidavit of Service of Amy Casella sworn July 31, 2020,

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that Paliare Roland be and is hereby appointed to represent the Investor Claimants in these proceedings (the "**Representative Counsel**"), in respect of their Investor Claims (as defined in Schedule "A") provided that the scope of that representation may be amended at the request of Representative Counsel, following consultation with the Court Appointed Liquidators, upon further motion to this Court on notice to the Court Appointed Liquidators, the Credit Union and such others as this Court may direct.

3. **THIS COURT ORDERS** that Representative Counsel shall represent the interests of the Investor Claimants without any obligation to consult with or seek instructions from individual Investor Claimants, provided however, that Representative Counsel, acting in consultation with the Court Appointed Liquidators, shall establish a committee of Investors (the "**Representative Committee**") on such terms as may agreed to by the Court Appointed Liquidators or established by further order of this Court.

4. **THIS COURT ORDERS** that, subject to the exclusive right of the Credit Union to present a settlement proposal as set out in paragraph 14 hereof, Representative Counsel be and is hereby permitted, but not directed, to take and to perform, for and on behalf of the Investor Claimants, all steps and all acts necessary or desirable to represent the interests of the Investor Claimants in these proceedings ("**Representative Counsel Mandate**") including, without limitation:

a. developing a process, in consultation with the Court Appointed Liquidators, for the investigation, identification, advancement and resolution of valid and provable Investor Claims;

b. addressing the Investor Claims, as part of these proceedings or in such related or consequential proceedings as may be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation;

c. reporting to and responding to inquiries from the members of the Representative Committee and individual Investor Claimants; and

d. performing such other actions as approved by this Court.

5. **THIS COURT ORDERS** that the Court Appointed Liquidators shall forthwith provide to the Representative Counsel, subject to mutually satisfactory confidentiality arrangements, or by further order of this Court, without charge, the following information, documents and data in their possession (the "**Information**") to be used only for the purpose of the Representative Counsel Mandate:

a. the names, last known addresses and last known telephone numbers and e-mail addresses, and other contact information of the Investor Claimants; and

b. upon request of the Representative Counsel, such documents and data as may be reasonably relevant to issues affecting the Investor Claimants, subject to the agreement of the Court Appointed Liquidators or further order of this Court.

6. **THIS COURT ORDERS** that, within 10 days of the making of this order, Representative Counsel shall provide notice of this order to each of the Investor Claimants through a communication in form and content satisfactory to Representative Counsel, the Court Appointed Liquidators and the Credit Union, or as

may be further directed by this Court (the "**Notice**"), to be delivered in the following manner:

a. publication on the website maintained by the Court Appointed Liquidators in connection with these proceedings;

b. publication of the Notice in the Globe and Mail within 10 calendar days of the making of this order;

c. by regular mail sent to the last known address of each Investor Claimant; and,

d. where possible by email sent to the last known email address of the Investor Claimant,

and such Notice shall be deemed to be effective on the later of the date of publication or the date the Notice was sent, as applicable.

7. **THIS COURT ORDERS** that an Investor Claimant who prefers not to take the benefit of Representative Counsel may opt out of such representation by completing the Opt-Out Notice in the form of Schedule B to this order (the "**Opt-Out Notice**") and delivering it to Representative Counsel by email to the address indicated on the Opt-Out Notice such that it is received by no later than 11:59 p.m. (Eastern Daylight Time) on September 16, 2020, and Representative Counsel shall provide a copy of all Opt-Out Notices that it receives to each of the Court Appointed Liquidators.

8. **THIS COURT ORDERS** that an Investor Claimant who delivers an Opt-Out Notice (a "**Self-Represented Investor Claimant**") shall not have the benefit of Representative Counsel, and Representative Counsel shall have no obligation to report to, respond to inquiries from, or otherwise take any account of the interests of any Self-Represented Investor Claimant For greater certainty, nothing in this order obliges any party to deal with any Self-Represented Investor Claimant or precludes the compromise of the claims of a Self-Represented Investor Claimant in the ordinary course, by operation of applicable law.

9. **THIS COURT ORDERS** that the fees and expenses of Representative Counsel shall be paid out of the funds recovered for the Investor Claimants (if any) pursuant to or by virtue of this appointment, in accordance with terms to be agreed with the members of the Representative Committee and approved by this Court in the ordinary course, or, in the absence of an agreement, as directed by further order of this Court, having regard to the resources invested, risk assumed and results achieved by Representative Counsel, together with such other considerations as this Court determines to be relevant.

10. **THIS COURT ORDERS** that Representative Counsel and members of the Representative Committee shall not be liable for any act or omission in respect of their appointment or fulfillment of their duties in respect of the provisions of this Order, other than for gross negligence or wilful misconduct. No action or other proceedings shall be commenced against Representative Counsel or members of the Representative Committee in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court on at least 21 days' notice to Representative Counsel and upon further order in respect of security for costs of the Representative Counsel and the members of the Representative Committee in connection with any such action or proceeding, to be given by the plaintiff on a substantial indemnity basis.

11. **THIS COURT ORDERS** that "**Tolled Claims**" shall mean any and all actions, suits, claims, causes of action, demands, or grievances, whether in Canada or elsewhere, whether known or unknown, which an Investor Claimant may bring against any of the Applicants, or any related persons or entities, including the Credit Union, or against LBS, or any of its related entities, in respect of the Preference Shares (as defined in Schedule A), but shall not include proceedings of the kind described in s. 11.1(2) of the *Companies' Creditors Arrangement Act*.

12. **THIS COURT ORDERS** that until Representative Counsel has completed the Representative Counsel Mandate or until this Court otherwise directs (the "**Stay Period**"), no proceeding or enforcement process in respect of Tolled Claims (each, a

"**Proceeding**") shall be commenced or continued in any Court or tribunal against or in respect of the Applicants, or any of their related entities, including the Credit Union, or against LBS, or any of its related entities, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or their related entities, including the Credit Union, or against LBS, or any of its related entities, are hereby stayed and suspended pending further Order of this Court. .

13. **THIS COURT ORDERS** that to the extent that any statute of limitations or other notice or limitation period (or any other time period of similar effect) whether statutory, equitable, contractual or otherwise, under Canadian law, or any other applicable law, (a "**Limitation Period**") in connection with a Tolled Claim expires on or after the date of this Order (the "**Effective Date**") such Limitation Period shall be and is hereby tolled such that it ceases to continue running as of the Effective Date and, for greater certainty, that all time elapsing on or after the Effective Date shall not be counted in determining any such Limitation Period.

14. **THIS COURT ORDERS** that until October 15, 2020 or such later date as may be agreed by Representative Counsel and the Court Appointed Liquidators or ordered by this Court (the "**Exclusivity Period**"), the Credit Union shall have the exclusive authority to seek, design and present a settlement and/or settlement package in respect of direct and indirect Investor Claims (including Claims Over and Third Party Claims) against the Credit Union and/or its officers and directors in respect of the Preference Shares, for consideration by Representative Counsel and the Court Appointed Liquidators.

15. **THIS COURT ORDERS** that Representative Counsel may move before this Court to terminate their appointment, or for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and notice of such motion shall be given to the Applicants, the Court Appointed Liquidators, and other interested persons, provided that this court retains its jurisdiction to dispense with such notice where appropriate.

SCHEDULE "A"

Definition of Investor Claimants

"**Investor Claimants**" means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants and any related persons or organizations (collectively "**Defendants**") in respect of:

(i) the purchase PACE Financial Limited's Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares; and,

(ii) the purchase of equivalent investments in FHH as well as FHH warrants (collectively, with (i) the "**Preference Shares**").

in Canada, or anywhere else in the world, including without limitation claims for contribution or indemnity, personal injury or tort damage, restitutionary recovery, non-pecuniary damages, pure economic loss, or claims for recovery grounded in Ontario Securities legislation (the "**Investor Claims**").

The Investor Claimants shall exclude all Defendants, insiders or securities brokers involved in the sale of the Preference Shares.

SCHEDULE "B"

OPT-OUT LETTER

TO: PaceInvestorClaimantOptOut@paliareroland.com

RE: CLAIMS AGAINST PACE SECURITIES CORP., PACE FINANCIAL LIMITED, FIRST HAMILTON HOLDINGS INC., et al.

My Name is: _____

My telephone number is:_____

My email address is:_____

I am an Investor Claimant as defined in the Representation Order of Mr. Justice Hainey dated July ♦, 2020 (the "Order").

In accordance with paragraph ♦ of the Order, I am hereby notifying you that I prefer not to take the benefit of Representative Counsel, as defined in the Order

I acknowledge that as a result of my having delivered this notice, Representative Counsel shall have no obligation to report to me, to respond to inquiries from me, or otherwise take any account of my interests.

I also acknowledge that nothing in the Order: (a) obliges any party to deal with me or my claims by virtue of my having delivered this notice; or, (b) precludes the compromise of my claims in the ordinary course, by operation of applicable law.

Date:

_____ _____

Signature of Witness Signature of Investor Claimant

Name:

Address:

Telephone Number:

Court File No. CV-20-00641059-00CL

IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARNER LIMITED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for Ernst & Young Inc., in its capacity as Liquidator of the estate and effects of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited

TAB 17

2015 CarswellOnt 6975
Ontario Superior Court of Justice [Commercial List]

Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.

2015 CarswellOnt 6975, 253 A.C.W.S. (3d) 763

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

In the Matter of a Plan of Comprise or Arrangement of Sino-Forest Corporation

The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, The Trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario, Sjunde Ap-Fonden, David Grant, Robert Wong, Davis New York Venture Fund, Inc. and Davis Selected Advisers L.P., Plaintiffs and Sino-Forest Corporation, Ernst & Young LLP, BDO Limited (formerly known as BDO McCabe Lo Limited), Allen T.Y. Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, James P. Bowland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Poyry (Beijing) Consulting Company Limited, Credit Suisse Securities (Canada), Inc., TD Securities Inc., Dundee Securities Corporation, RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd., Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated (successor by merger to Banc of America Securities LLC) Proceeding under the Class Proceedings Act, 1992, Defendants

Morawetz R.S.J.

Judgment: May 11, 2015
Docket: CV-12-9667-00CL, CV-11-431153-00CP

Counsel: Counsel — not provided

***Morawetz R.S.J.*:**

1 *THIS MOTION*, made by the Ad Hoc Committee of Purchasers of the Applicant's Securities, including the plaintiffs in the action commenced against Sino-Forest Corporation (the "Applicant" or "Sino-Forest", which term shall include all affiliate and subsidiary corporations or business organizations in whatever form and all their predecessor and successor corporations or business organizations in whatever form) in the Ontario Superior Court of Justice, bearing (Toronto) Court File No, CV-11-431153-00CP (the "Ontario Plaintiffs" and the "Action", respectively) in their own and proposed representative capacities, for an order giving effect to the Dealers Release and the Dealers Settlement, and as provided for in section 11.2 of the Plan of Compromise and Reorganization of the Applicant under the Companies' Creditors Arrangement Act ("CCAA") dated December 3, 2012 (the "Plan"), such Plan having been approved by this Honourable Court by Order dated December 10, 2012 (the "Sanction Order"), was heard on May 11, 2015, at the Court House, 393 University Avenue, Toronto, Ontario;

2 *WHEREAS* the Ontario Plaintiffs and Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Ltd., RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC (the "Dealers", as more particularly defined in Appendix "A") entered into Minutes of Settlement dated December 22, 2014;

3 *AND WHEREAS* this Honourable Court issued the Sanction Order approving the Plan containing the framework and providing for the implementation of a Named Third Party Defendant Settlement and a Named Third Party Defendant Release pursuant to Section 11.2 of the Plan;

4 *AND WHEREAS* the Dealers are Named Third Party Defendants pursuant to the Plan;

5 *AND WHEREAS* the Ontario Plaintiffs and the Dealers wish to effect a settlement pursuant to section 11.2 of the Plan;

6 *AND WHEREAS* this Honourable Court approved the form of notice to Securities Claimants and others of this Motion, and the plan for distribution of such notice to Securities Claimants and others potentially affected by the relief sought therein (the "Notice Program") by Order dated January 29, 2015 *Labourer's Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.*, 2015 CarswellOnt 1308 (Ont. S.C.J.) (the "Notice Order");

7 *ON READING* the Ontario Plaintiffs' Motion Record seeking settlement approval of a settlement between the Dealers and the Ontario Plaintiffs ("Dealers' Settlement"), including the affidavits of Charles Wright and the exhibits thereto, the affidavit Stephen Goudge, the affidavit of Garth Myers and the exhibits thereto, and the affidavit of Heather Palmer and the exhibits thereto; on the Court's granting its approval of the Dealers' Settlement; and on hearing the submissions of counsel:

Notice and Definitions

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1. *THIS COURT ORDERS* that capitalized terms not otherwise defined in this order shall have the meanings attributed to those terms in *Appendix "A"*.

2. *THIS COURT FINDS* that all applicable parties have adhered to and acted in accordance with the Notice Order and that the procedures provided in the Notice Order have provided good and sufficient notice of the hearing of this Motion and that all Persons shall be and are hereby forever barred from objecting to the Dealers Settlement and the Dealers Release.

Representation

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3. *THIS COURT ORDERS* that the Ontario Plaintiffs are hereby recognized and appointed as representatives on behalf of the Securities Claimants in these insolvency proceedings in respect of the Applicant (the "CCAA Proceedings") and in the Action, including for the purposes of and as contemplated by section 11.2 of the Plan, and more particularly the Dealers Settlement and the Dealers Release.

4. *THIS COURT ORDERS* that Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP are hereby recognized and appointed as counsel for the Securities Claimants for all purposes in these proceedings and as contemplated by section 11.2 of the Plan, and more particularly the Dealers Settlement and the Dealers Release ("CCAA Representative Counsel").

5. *THIS COURT ORDERS* that the steps taken by CCAA Representative Counsel pursuant to the Orders of this Court dated May 8, 2012 (the "Claims Procedure Order") and July 25, 2012 (the "Mediation Order") are hereby approved, authorized and validated as of the date thereof and that CCAA Representative Counsel is and was authorized to negotiate and support the Plan on behalf of the Securities Claimants, to negotiate the Dealers Settlement, to bring this motion before this Honourable Court to approve the Dealers Settlement and the Dealers Release and to take any other necessary steps to effectuate and implement the Dealers Settlement and the Dealers Release, including bringing this Motion and any other necessary motion before the court, and as contemplated by section 11.2 of the Plan.

Compliance with Section 11.2 of the Plan

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6. *THIS COURT ORDERS* that this Order (the "the Dealers Settlement Order") is a Named Third Party Defendant Settlement Order for the purpose of and as contemplated by Section 11.2 of the Plan.

7. *THIS COURT ORDERS* that the Dealers Settlement is a Named Third Party Defendant Settlement for the purpose of and as contemplated by Section 11.2 of the Plan.

8. *THIS COURT ORDERS* that the Dealers Release is a Named Third Party Defendant Release for the purpose of and as contemplated by Section 11.2 of the Plan.

Approval of the Settlement & Release

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9. *THIS COURT ORDERS* that the Dealers Settlement and the Dealers Release are fair and reasonable in all the circumstances and for the purposes of the proceedings under both the CCAA and the *Class Proceedings Act, 1992*.

10. *THIS COURT ORDERS* that the Dealers Settlement and the Dealers Release be and hereby are approved for all purposes and as contemplated by section 11.2 of the Plan and paragraph 41 of the Sanction Order and shall be implemented in accordance with their terms, this Order, the Plan and the Sanction Order.

11. *THIS COURT ORDERS* that this Order, the Dealers Settlement and the Dealers Release are binding upon each and every Person or entity having a Dealers Claim against the Dealers, including those Persons who are under disability, and any requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedures* are dispensed with.

Release and Discharge

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12. *THIS COURT ORDERS* that upon satisfaction of all the conditions specified in section 11.2(b) of the Plan, the Monitor shall deliver to the Dealers the Monitor's Dealers Settlement Certificate substantially in the form attached hereto as Appendix "B". The Monitor shall thereafter file the Monitor's Dealers Settlement Certificate with the Court.

13. *THIS COURT ORDERS* that pursuant to the provisions of section 11.2(c) of the Plan, on the Dealers Settlement Date:

(a) any and all of the Dealers Claims shall be, by virtue of this order, with no need or requirement for any further order, fully, finally, irrevocably, forever and for all purposes compromised, released, discharged, cancelled, barred and deemed satisfied and extinguished as against the Dealers in accordance with section 11.2(c) of the Plan;

(b) the Dealers Release shall be binding according to its terms on any Person;

(c) section 7.3 of the Plan shall apply to the Dealers and the Dealers Claims *mutatis mutandis*;

(d) none of the parties in the Action or other Class Actions or any other actions in which the Dealers Claims have been or could have been asserted shall be permitted to claim from any of the other defendants that portion of any damages, restitutionary award or disgorgement of profits that corresponds with the liability of the Dealers proven at trial or otherwise as may be agreed, that is subject of the Dealers Settlement ("the Dealers Proportionate Liability"); and

(e) the Action shall be dismissed against the Dealers.

14. *THIS COURT ORDERS* that nothing in this order shall fetter the discretion of any court to determine the Dealers Proportionate Liability at the trial or other disposition of an action (including the Action or the other Class Actions), whether or not the Dealers appears at the trial or other disposition and the Dealers Proportionate Liability shall be determined as if the Dealers were a party to the action and any determination by a court in respect of the Dealers Proportionate Liability shall only apply in that action or actions to the proportionate liability of the remaining defendants in those proceedings and shall not be binding on the Dealers for any purpose whatsoever and shall not constitute a finding against the Dealers for any purpose in any other proceeding.

Use of the Settlement Fund

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15. *THIS COURT ORDERS* that, save and except for the payment of legal fees, disbursements, administrative expenses and taxes approved by this Court, the Class Settlement Fund shall be held by the Ontario Plaintiffs in the Settlement Trust until such later date that the Ontario Plaintiffs have a Plan of Allocation approved by this Court whereby those funds will be distributed to Securities Claimants. Any process for allocation and distribution will be established by CCAA Representative Counsel and approved by further order of this Court (the "Claims and Distribution Protocol"). The Plan of Allocation shall allocate CDN $22,500,000 of the Class Settlement Fund to share purchasers and CDN $10,000,000 to note purchasers, with accrued interest divided among share and note purchasers on a pro rata basis.

16. *THIS COURT ORDERS* that notwithstanding paragraph 15 above, the following Securities Claimants shall not be entitled to any allocation or distribution of the Class Settlement Fund: the Litigation Trust, any Person or entity that is a named defendant to any of the Class Actions, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of the following Persons: Allen T.Y. Chan a.k.a. Talc Yuen Chan, W. Judson Martin, Kai Kit Poon, David J. Horsley, William E. Ardell, James P. Boland, James M.E. Hyde, Edmund Mak, Simon Murray, Peter Wang, Garry J. West, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung. For greater certainty, the Dealers Release shall apply to the Securities Claimants described above.

Recognition, Enforcement and Further Assistance

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17. *THIS COURT ORDERS* that this Court shall retain an ongoing supervisory role for the purposes of implementing, administering and enforcing the Dealers Settlement and the Dealers Release and matters related to the Settlement Trust including any disputes about the allocation of the Class Settlement Fund from the Settlement Trust. Any disputes arising with respect to the performance or effect of, or any other aspect of, the Dealers Settlement and the Dealers Release shall be determined by this Court, and that, except with leave of this Court first obtained, no Person or party shall commence or continue any proceeding or enforcement process in any other court or tribunal, with respect to the performance or effect of, or any other aspect of the Dealers Settlement and the Dealers Release.

18. *THIS COURT ORDERS* that each of the Applicant, the Monitor, CCAA Representative Counsel and the Dealers shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this order, or any further order as may be contemplated by Section 11.2 of the Plan or be otherwise required, and or assistance in carrying out the terms of such orders. Any actions previously taken in accordance with this paragraph 18 are hereby ratified by this Court.

19. *THIS COURT HEREBY REQUESTS* the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States or elsewhere, to give effect to this order and to assist the Applicant, the Monitor, the CCAA Representative Counsel and the Dealers 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, the Monitor, the CCAA Representative Counsel and the Dealers as may be necessary or desirable to give effect to this order, to grant representative status to the Applicant, the Monitor, the CCAA Representative Counsel and the Dealers in any foreign proceeding, or to assist the Applicant, the Monitor, the CCAA Representative Counsel and the Dealers and their respective agents in carrying out the terms of this Order.

Motion granted.

Appendix "A" — Defined Terms

"Action" means the Ontario Superior Court of Justice action bearing Toronto court file number CV-11-431153-00CP.

"Causes of Action" has the meaning ascribed to it in the Plan.

"CCAA" means the *Companies' Creditors Arrangement Act*, RSC, 1985, c. C-36.

"Claims" has the meaning ascribed to it in the Minutes of Settlement.

"Class Actions" has the meaning ascribed to it in the Plan.

"Class Settlement Fund" has the meaning ascribed to it in the Dealers Settlement.

"Dealers" means Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Ltd., RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC. "Dealers" includes all parent, affiliate and subsidiary corporations or business organizations in whatever form and all their predecessor and successor corporations or business organizations in whatever form.

"Dealers Claims" means any and all demands, Claims, actions, Causes of Action (as defined in the Plan), counterclaims, cross claims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances (as defined in the Plan), and other amounts sought to be recovered on account of any claim, indebtedness, liability, obligation, demand or cause of action of whatever nature that any Person (as defined in the Plan), including any Person (as defined in the Plan) who may have a claim for contribution and/or indemnity against or from them, and including without limitation, all present and former officers or Directors of Sino-Forest, Newco (as defined in the Plan), Newco II (as defined in the Plan), Ernst & Young (as defined in the Plan), BDO Ltd., Poyry (Beijing) Consulting Company Limited (and its affiliates), the Noteholders (as defined in the Plan), any past, present or future holder of any direct or indirect equity interest in the SFC Companies (as defined in the Plan), any past, present or future direct or indirect security holder of the SFC Companies (as defined in the Plan), any indirect or direct security holder of Newco (as defined in the Plan) or Newco II (as defined in the Plan), the Trustees (as defined in the Plan), the Transfer Agent (as defined in the Plan), the Monitor (as defined in the Plan), and each and every present and former affiliate, partner, director, officer, associate, employee, servant, agent, contractor, insurer, heir and/or assign of each of the foregoing who may or could (at any time, past, present or future) be entitled to assert against the Dealers, and each and every present and former partner, director, officer, associate, employee, servant, agent, advisor, consultant contractor, insurer, heir and/or assign of each of Dealers, whether known or unknown, matured or unmatured, direct or derivative, foreseen or unforeseen, suspected or unsuspected, contingent, existing or hereafter arising, based on whole or in part on any act or omission, transaction, conduct, dealing or other occurrence existing or taking place on, prior to or after the date of this Release, relating to or arising out of or in connection with the SFC Companies (as defined by the Plan), the SFC Business (as defined by the Plan) and any and all other acts and omissions of the Dealers relating to the SFC Companies (as defined by the Plan) or the SFC Business (as defined by the Plan). Dealers Claims include, without limitation:

1. All Claims or Causes of Action (as defined in the Plan) arising from any acts or omissions of the Dealers, including in respect of, but not limited to any statutory or common law duties they may have owed, in connection with any share offering, debt offering or other offering, or any secondary market or other sale or trading of Securities and any statement in any of Sino-Forest's disclosure, including without limitation any document released to the public or filed on SEDAR;

2. All Claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced in any or all of the Class Actions (as defined by the Plan), including any and all claims of fraud;

3. All Claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced in any or all actions commenced in all jurisdictions as of the date of this Release;

4. All Noteholder Claims (as defined by the Plan), Litigation Trust Claims (as defined by the Plan), or any Claim by or on behalf of Sino-Forest or the SFC Companies (as defined in the Plan) or present, former or future holders of Securities of Sino-Forest regardless of who asserts such claims; and

5. All Claims or Causes of Action (as defined by the Plan) advanced or which could have been advanced by all present and former directors, officers or employees of Sino-Forest, and any and all agents, representatives, consultants, advisors, auditors or counsel to Sino-Forest, including for contribution, indemnity, damages, equitable relief or other monetary recovery.

"Dealers Release" means the Named Third Party Defendant Release described at section 11.2(c) of the Plan as applied to the Dealers Claims.

"Dealers Settlement" means the settlement as reflected in the Minutes of Settlement executed on December 22, 2014 between the Dealers and the Ontario Plaintiffs.

"Dealers Settlement Date" means the date that the Monitor's Dealers Settlement Certificate is delivered to the Dealers.

"Eligible Third Party Defendant" has the meaning ascribed to it in the Plan.

"Monitor's Dealers Settlement Certificate" is the Monitor's Named Third Party Certificate contemplated at section 11.2(b) of the Plan, applicable and with respect to the Dealers Settlement.

"Monitor's Named Third Party Settlement Certificate" has the meaning ascribed to it in the Plan.

"Named Third Party Defendant" has the meaning ascribed to it in the Plan.

"Named Third Party Defendant Settlement" has the meaning ascribed to it in the Plan.

"Named Third Party Defendant Settlement Order" has the meaning ascribed to it in the Plan.

"Named Third Party Defendant Release" has the meaning ascribed to it in the Plan.

"Person" has the meaning ascribed to it in the Plan.

"Securities" means common shares, notes or other securities defined in the *Securities Act*, RSO 1990, c. S.5, as amended, or that are securities at law.

"Securities Claimants" means all Person and entities, wherever they may reside, who acquired any Securities of Sino-Forest including Securities acquired in the primary, secondary, and over-the-counter markets.

"Settlement Trust" has the meaning ascribed to it in the Dealers Settlement.

Appendix "B" — Monitor's Dealers Settlement Certificate

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

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 COMPRISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court File No.: CV-11-431153-00CP

BETWEEN:

Ontario Superior Court of Justice

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT WONG Plaintiffs - and - SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON MARTIN, KAI KIT POON, DAVID J. THE DEALERS, WILLIAM E. ARDELL, JAMES P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER WANG, GARRY J. WEST, POYRY (BEIJING) CONSULTING COMPANY LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS CANADA INC., CREDIT SUISSE SECURITIES (USA) LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of America Securities LLC) Proceeding under the *Class Proceedings Act, 1992* Defendants

All capitalized, terms not otherwise defined herein shall have the meanings ascribed to them in the Order of the Court dated • (the "Dealers Settlement Order") which, among other things, approved the Dealers Settlement and the Dealers Release.

Pursuant to section 11.2 of the Plan and paragraph • of the Dealers Settlement Order, FTI Consulting Canada Inc. (the "Monitor") in its capacity as Court-appointed Monitor of SFC delivers to the Dealers this certificate and hereby certifies that:

(a) each of the parties to the Dealers Settlement has confirmed that all conditions precedent thereto have been satisfied or waived;

(b) all settlement funds have been paid and received; and

(c) immediately upon the delivery of this Monitor's Dealers Settlement Certificate, the Dealers Release will be in full force and effect in accordance with the Plan.

DATED at Toronto this • day of • 2015

FTI CONSULTING CANADA INC., solely in its capacity as Monitor of Sino-Forest Corporation and not in its personal capacity

_____

Name:

Title:

TAB 18

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 29th
	)	
MR. JUSTICE HAINEY	)	OF JANUARY, 2021

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

ORDER

(CCAA Representatives and CCAA Representative Counsel Appointment Order)

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement* Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for, among other things, an order appointing representatives and representative counsel for Securities Claimants (as defined below), was heard this day by way of Zoom judicial video conference due to the COVID-19 pandemic.

ON READING (i) the Notice of Motion of the Applicants dated January 20, 2021, (ii) the affidavit of Greg Guyatt sworn January 20, 2021 (the "**Guyatt Affidavit**") and the exhibits thereto, (iii) the affidavit of Serge Kalloghlian sworn January 20, 2021 and the exhibits thereto, (iv) the affidavit of James W. Johnson sworn January 20, 2021 and the exhibits thereto, and (v) the Sixth Report of Ernst & Young Inc. in its capacity as the monitor of the Applicants (the "**Monitor**") dated January 25, 2021 (the "**Sixth Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and such other counsel as were present as listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Alexander Steele sworn January 27, 2021:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record of the Applicants in support of this motion and the Sixth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that, in addition to the capitalized terms defined elsewhere in this Order, the capitalized terms set out in Schedule "A" have the meanings given to them in that schedule.

APPOINTMENT OF CCAA REPRESENTATIVES AND CCAA REPRESENTATIVE COUNSEL

3. **THIS COURT ORDERS** that, subject to paragraph 7, Dharambir Singh and Patrick Hrusa (the **"CCAA Canadian Representatives"**) are hereby appointed to represent the interests of all Canadian and Non-U.S. Securities Claimants in these proceedings in relation to their Securities Claims and any related claims, including in relation to any negotiations with respect to the settlement of Securities Claims and the prosecution or settlement of any related claims and the development of the CCAA Plan and any related definitive documentation.

4. **THIS COURT ORDERS** that, subject to paragraph 7, Granite Point Master Fund, LP and Granite Point Capital Scorpion Focused Ideas Fund (the **"CCAA U.S. Representatives"**, and collectively with the CCAA Canadian Representatives, the **"CCAA Representatives"**) are hereby appointed to represent the interests of the U.S. Securities Claimants in these proceedings in relation to their Securities Claims and any related claims, including in relation to any negotiations with respect to the settlement of Securities Claims and the prosecution or settlement of any related claims and the development of the CCAA Plan and any related definitive documentation.

5. **THIS COURT ORDERS** that, subject to paragraph 7, A. Dimitri Lascaris Law Professional Corporation, Henein Hutchinson LLP, Kalloghlian Myers LLP and

Strosberg Sasso Sutts LLP (**"CCAA Canadian Representative Counsel"**) are hereby appointed as counsel for the Canadian and Non-U.S. Securities Claimants in these proceedings in relation to their Securities Claims and any related claims, and are authorized and directed to take instructions from the CCAA Canadian Representatives, when and to the extent instructions are provided by them on matters from time to time, and otherwise are authorized to act on behalf of the Canadian and Non-U.S. Securities Claimants from time to time in these proceedings in relation to their Securities Claims and any related claims.

6. **THIS COURT ORDERS** that, subject to paragraph 7, Weisz Fell Kour LLP in association with U.S. Class Action counsel Labaton Sucharow LLP, (**"CCAA U.S. Representative Counsel"** and collectively with CCAA Canadian Representative Counsel, **"CCAA Representative Counsel"**) are hereby appointed as counsel for the U.S. Securities Claimants in these proceedings in relation to their Securities Claims and any related claims, and are authorized and directed to take instructions from the CCAA U.S. Representatives, when and to the extent instructions are provided by them on matters from time to time, and otherwise are authorized to act on behalf of the U.S. Securities Claimants from time to time in these proceedings in relation to their Securities Claims and any related claims.

7. **THIS COURT ORDERS** that: Zola Finance Holdings Ltd and Igor Gimelshtein; 1604070 Alberta Ltd., Jeff Dyck, and Diran Avedian; and Shmuel Farhi and their respective counsel are not subject to paragraphs 3, 4, 5, and 6 of this Order (collectively, together with any other person who this Court orders is not subject to paragraphs 3, 4, 5, or 6 of this Order, the **"Excluded Securities Claimants"**).

8. **THIS COURT ORDERS** that, without limiting the scope of the authorizations granted in paragraphs 3, 4, 5, 6 and 9:

   (a) the CCAA Representatives and CCAA Representative Counsel shall be at liberty to consult with each other, the Monitor and its counsel, the Applicants and their counsel, and other stakeholders and their respective counsel, including in relation to any negotiations with respect to the

settlement of Securities Claims and the prosecution or settlement of any related claims and the development of the CCAA Plan and any related definitive documentation;

(b) the CCAA Representatives and CCAA Representative Counsel shall be at liberty to consult with and obtain input from Securities Claimants in relation to their activities in their respective roles under this Order;

(c) the CCAA Representatives and CCAA Representative Counsel, in their respective capacities as such, shall be at liberty to enter into one or more non-disclosure agreements with the Applicants in relation to confidential information of, or relating to, the Applicants or relating to the Securities Claims;

(d) the CCAA Representatives and CCAA Representative Counsel, in their capacities as such, shall be at liberty to agree to become parties to, and be bound by, the Restructuring Support Agreement (provided that nothing in this Order constitutes approval of the Restructuring Support Agreement or the transactions contemplated thereby); and

(e) the CCAA Representatives and CCAA Representative Counsel shall be at liberty to apply to this Court, on notice to the Monitor and the Applicants, for advice and directions at such times as they may so require.

9. **THIS COURT ORDERS** that the CCAA Representatives and CCAA Representative Counsel are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any other court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental hereto.

NOTICE PROCEDURE

10. **THIS COURT ORDERS** that each of the Applicants and CCAA Representative Counsel are authorized and directed to provide to the Monitor without delay and without charge, the names, last known addresses and last known e-mail addresses (if any) of all Securities Claimants of which they are specifically aware currently or from whom they have received written notice, including the plaintiffs named in any of the Actions ("**Known Securities Claimants**"), and the Applicants and CCAA Representative Counsel are hereby permitted to do so pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended.

11. **THIS COURT ORDERS** that the Monitor shall not disclose the names of any Securities Claimants or Known Securities Claimants, other than to the Applicants, without prior written notice from CCAA Representative Counsel.

12. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided as follows:

(a) notice in substantially the form set out in Schedule "B" hereto (the "**Notice**") shall be published by the Applicants in *The Globe and Mail* (National Edition) and the Wall Street Journal on at least one occasion within five (5) Business Days of the date of this Order;

(b) the Applicants shall issue a press release consisting of, or that includes, the Notice, in form and content satisfactory to the Monitor, and make a corresponding filing on SEDAR, within five (5) Business Days of the date of this Order;

(c) the Monitor shall send a copy of the Notice to each of the Known Securities Claimants within three (3) Business Days of this Order by email (if known) or by first class mail, addressed to the Known Securities Claimants at the addresses provided by the Applicants and CCAA Representative Counsel pursuant to paragraph 10; and

(d) the Monitor shall post a copy of the Notice to the Monitor's Website.

13. **THIS COURT ORDERS** that treatment of the Securities Claims of the Excluded Securities Claimants pursuant to any CCAA Plan proposed by the Applicants or any further Order of the Court in these proceedings is not changed, limited, or otherwise affected by their status as Excluded Securities Claimants under this Order.

PROTECTIONS

14. **THIS COURT ORDERS** that the CCAA Representatives and CCAA Representative Counsel shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order or any further Order of the Court in these proceedings, save and except for any gross negligence or wilful misconduct on their part.

15. **THIS COURT ORDERS** that the appointment of CCAA Representative Counsel pursuant to this Order shall not prevent any of the individual lawyers from the firms that comprise CCAA Representative Counsel from acting as trustee(s) of any trust established for the benefit of Securities Claimants pursuant to the CCAA Plan.

MISCELLANEOUS

16. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

17. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Applicants, the Monitor, the CCAA Representatives and CCAA Representative Counsel 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

Applicants, the Monitor, the CCAA Representatives and CCAA Representative Counsel as may be necessary or desirable to give effect to this Order, or to assist the Applicants, the Monitor, the CCAA Representatives and CCAA Representative Counsel in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that each of the Applicants, the Monitor, the CCAA Representatives and CCAA Representative Counsel be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

FEB 0 1 2021

PER / PAR:

SCHEDULE "A"

DEFINITIONS

"**Actions**" means the actions and other litigation set out in Schedule "D".

"**Business Day**" means a day other than a Saturday or Sunday on which banks are generally open for business in Toronto, Ontario.

"**Canadian and Non-U.S. Securities Claimants**" means all Persons having Securities Claims, excluding U.S. Securities Claimants.

"**CannTrust Holdings**" means CannTrust Holdings Inc.

"**CCAA Plan**" means the plan of compromise, arrangement and reorganization of the Applicants to be filed in these proceedings to effect, among other things, a settlement of Securities Claims (as such plan may be amended from time to time in accordance with its terms).

"**Claim**" means any right or claim of any Person that may be asserted or made in whole or in part against CannTrust Holdings, 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 such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not such right or claim is executory or anticipatory in nature (including any right or claim in connection with the sale of any securities by CannTrust Holdings or others pursuant to the public distribution of its securities 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, 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 existing 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 *Bankruptcy and Insolvency Act* (Canada) had CannTrust Holdings become bankrupt on the Filing Date.

"**Filing Date**" means March 31, 2020.

"**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status.

"Restructuring Support Agreement" means the restructuring support agreement dated January 18, 2021 between, among others, CannTrust Holdings and CCAA Representative Counsel.

"**Securities Claim**" means:

(i) any Claim against CannTrust Holdings asserted by a plaintiff or putative plaintiff in an Action; and

(ii) any other Claim against CannTrust Holdings that has been or could be asserted by or on behalf of a current or former shareholder of CannTrust Holdings or another Person in relation to the purchase, sale or ownership by such Person (including as a legal, registered or beneficial purchaser, seller or owner) on or before the Filing Date of an equity interest (as defined in the CCAA) in CannTrust Holdings,

other than a Securities-Related Indemnity Claim.

"**Securities Claimants**" means the holders of Securities Claims.

"Securities-Related Indemnity Claim" means any claim of any Person that has been or may be asserted against CannTrust Holdings (whether pursuant to an agreement, under applicable law or otherwise) for indemnity, advancement, contribution, reimbursement, set-off or otherwise, arising from or in connection with any Securities Claim or securities-related claim asserted against such Person or arising from or in connection with any other claim asserted by a co-defendant in an Action against such Person.

"U.S. Securities Claimants" means all Securities Claimants who purchased the publicly traded common shares of CannTrust Holdings on the New York Stock Exchange or on any other U.S. based trading platform.

SCHEDULE "B"

NOTICE

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC. (the "Applicants")

NOTICE OF CCAA REPRESENTATION ORDER

On March 31, 2020, the Applicants commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Ernst & Young Inc. has been appointed as the monitor of the Applicants (the "**Monitor**") by the Court.

On January 29, 2021, the Court issued an order (the "**CCAA Representation Order**") appointing certain representatives and representative counsel, as detailed further below. All capitalized terms used but not defined in this Notice have the meaning given to them in the CCAA Representation Order.

TAKE NOTICE THAT, pursuant to the CCAA Representation Order, subject to certain limited exceptions set out therein:

1. the CCAA Canadian Representatives have been appointed to represent the interests of all Canadian and Non-U.S. Securities Claimants in the CCAA Proceedings in relation to their Securities Claims and any related claims;

2. the CCAA U.S. Representatives have been appointed to represent the interests of the U.S. Securities Claimants in the CCAA Proceedings in relation to their Securities Claims and any related claims;

3. A. Dimitri Lascaris Law Professional Corporation, Henein Hutchinson LLP, Kalloghlian Myers LLP and Strosberg Sasso Sutts LLP ("**CCAA Canadian Representative Counsel**") have been appointed as counsel for the Canadian and Non-U.S. Securities Claimants in the CCAA Proceedings in relation to their Securities Claims and any related claims, and are authorized and directed to take instructions from the CCAA Canadian Representatives;

4. Weisz Fell Kour LLP in association with Labaton Sucharow LLP ("**CCAA U.S. Representative Counsel**" and collectively with CCAA Canadian Representative Counsel, "**CCAA Representative Counsel**") have been appointed as counsel for the U.S. Securities Claimants in the CCAA Proceedings in relation to their

Securities Claims and any related claims, and are authorized and directed to take instructions from the CCAA U.S. Representatives; and

5. the CCAA Representatives and CCAA Representative Counsel are authorized to, among other things, negotiate with respect to the settlement of Securities Claims and the prosecution or settlement of any related claims and the development of the CCAA Plan and any related definitive documentation.

Copies of the CCAA Representation Order and other documents related to the CCAA Proceedings may be obtained from the case website maintained by the Monitor at http://www.ey.com/ca/canntrust.

If you have any questions regarding these matters, you may contact CCAA Canadian Representative Counsel, CCAA U.S. Representative Counsel and/or the Monitor as follows:

CCAA Canadian Representative Counsel:

A. Dimitri Lascaris Law Professional Corporation, Henein Hutchinson LLP, Kalloghlian Myers LLP and Strosberg Sasso Sutts LLP

Email: canntrust@strosbergco.com
Tel: 519-561-6296

CCAA U.S. Representative Counsel:

Weisz Fell Kour LLP

Email: sweisz@wfklaw.ca
Tel: 416-613-8281

Labaton Sucharow LLP

Email: jjohnson@labaton.com
Tel: 212-907-0859

Monitor:

Ernst & Young Inc.
Telephone: 1-855-224-0800 or 416-943-2091
Fax: 416-943-3300
Email: CannTrust.Monitor@ca.ey.com

SCHEDULE "C"

EMAIL ADDRESSES FOR NOTIFICATION OF MONITOR AND CCAA REPRESENTATIVE COUNSEL

The Monitor (Ernst & Young Inc.)	canntrust.monitor@ca.ey.com
A. Dimitri Lascaris Law Professional Corporation	alexander.lascaris@gmail.com
Henein Hutchinson LLP	mhenein@hhllp.ca shutchison@hhllp.ca
Kalloghlian Myers LLP	serge@kalloghlianmyers.com
Strosberg Sasso Sutts LLP	dwingfield@strosbergco.com
Labaton Sucharow LLP Weisz Fell Kour LLP	jjohnson@labaton.com MRogers@labaton.com sweisz@wfklaw.ca skour@wfklaw.ca

SCHEDULE "D"

ACTIONS

Hrusa et al. v. CannTrust Holdings Inc. et al., Court File No. CV-19-00623567-00CP (ON SC)

Webb v. CannTrust Holdings Inc. et al., Court File No. CV-19-1554 (ON SC)

Jeff Dyck v. CannTrust Holdings Inc. et al., Court File No. 217559 (BC SC)

Selanders v. CannTrust Holdings Inc. et al., Court File No. 1910983 (AB QB)

Diran Avedian v. CannTrust Holdings Inc. et al., Court File No. 500-06-001011-192 (QC CS)

Zola Finance Holdings Ltd. v. CannTrust Holdings Inc. et al., Court File No. CV-19-00002329-00CP (ON SC)

In Re: CannTrust Holdings Inc. Securities Litigation, No. 1:19-cv-06396 (JPO)

Alvarado v. CannTrust Holdings Inc. et al., 1:19-cv-6438 (JPO)

Jones v. CannTrust Holdings Inc. et al., 1:19-cv-6883 (JPO)

Justiss v. CannTrust Holdings Inc. et al., 1:19-cv-7164 (JPO)

Huang v. CannTrust Holdings Inc. et al., 1:19-cv-6396 (JPO)

Owens v. CannTrust Holdings Inc. et al., Court File No. 19CV352374 (California Superior Court, Santa Clara County)

TAB 19

COURT FILE NUMBER	1301-04364
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.
DOCUMENT	**REPRESENTATION ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP** Barristers 800, 304 - 8 Avenue SW Calgary, Alberta T2P 1C2 Robert Hawkes, Q.C./Gavin Price Phone: 403 571 1520 Fax: 403 571 1528 File: 11121-019 Max Starnino/Gregory Ko Phone: 416 646 7431 Fax: 416 646 4301 Daniel E.H. Bach/S. Sajjad Nematollahi Phone: 416 362 8334 Fax: 416 362 2610

DATE ON WHICH ORDER WAS PRONOUNCED: May 30, 2013

LOCATION OF HEARING OR TRIAL: Calgary

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mister Justice K. D. Yamauchi

THIS APPLICATION made by Franz Auer, Joanna Goldsmith and Marian Lewis, the putative representative plaintiffs (the "Class Action Plaintiffs") in the actions commenced against Poseidon Concepts Corp. ("Poseidon"), respectively, in the Court of Queen's Bench of Alberta bearing Court File No. 1301-00935 (the "Alberta Class Action"), in the Superior Court of Ontario bearing Court File No. CV-12-46873600CP (the "Ontario Class Action") and in the Superior Court of Quebec bearing Court File No. 500-06-000633-129 (the "Quebec Class Action") (collectively, the "Class Actions"), for an Order appointing the Class Action Plaintiffs as representatives of those persons described in Appendix A hereto (collectively, the "Class Members"), for the purposes of these proceedings and any related or ensuing receivership, bankruptcy or other insolvency proceeding that has or may be brought before this Court in respect of the Applicants (the "Insolvency Proceedings"), was heard this day, on May 30, 2013, at the Court of Queen's Bench of Alberta at the Calgary Court Centre, 601-5th Street SW, City of Calgary, in the Province of Alberta,

UPON READING the Application of the Class Action Plaintiffs; AND UPON HEARING the submissions of counsel for the Class Action Plaintiffs, the Applicants, the Monitor and other parties; **IT IS HEREBY ORDERED THAT**:

1. The Class Action Plaintiffs are hereby appointed as representatives of Class Members in the Insolvency Proceedings, including, without limitation, for the purpose of proving, settling or compromising claims by the Class Members in the Proceedings.

2. Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Siskinds, Demeules, S.E.N.C.R.L., and Paliare Roland Rosenberg Rothstein LLP are hereby appointed as counsel for the Class Members in the Insolvency Proceedings for any issues affecting the Class Members in the Insolvency Proceedings.

3. Notice of the granting of this Order be provided, at the expense of the Class Action Plaintiffs and under such other terms and conditions as to be agreed upon by the Class Action Plaintiffs, the Applicants and the Monitor, to the Class Members by (i) advertisement in the national edition of the Globe and Mail and La Presse; (ii) by press release; (iii) to all Class Members known to the Class Action Plaintiffs or who request it

by e-mail, fax, mail, telephone or otherwise; and (iv) notice posted on Siskinds LLP's website.

4. The Class Action Plaintiffs, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including representing Class Action Plaintiffs in any dealings with any Court, regulatory body and other government ministry, department or agency in connection with these Insolvency Proceedings, and to take all such steps as are necessary or incidental thereto.

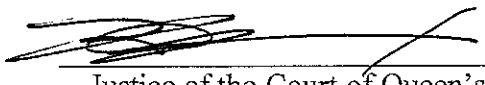
5. Any individual Class Member who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and substantially in the form attached as Appendix B hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in the Insolvency Proceedings.

6. The Class Members bound by this Order specifically exclude the Excluded Persons as described in Appendix A.

7. The Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

8. This order is without prejudice to the Parties' rights with respect to the Class Actions Plaintiffs' motions for certification or authorization of the proposed class actions, and shall not have any evidentiary value on such motions or be considered to be either a binding or persuasive decision in respect of the class definition in the proposed class actions. In addition, this order is without prejudice to the Parties' rights to argue that the class definition should be defined differently in the class actions or to argue that the proposed class actions should not be certified.

9. There shall be no costs to any Party regarding this Order.



Justice of the Court of Queen's Bench of Alberta

APPENDIX A TO REPRESENTATION ORDER
DEFINITION OF CLASS MEMBERS

All persons and entities, wherever they may reside who acquired **Poseidon's Securities** during the **Class Period** by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which includes securities acquired over-the-counter, and all persons and entities who acquired **Poseidon's Securities** during the **Class Period** who are resident of Canada or were resident of Canada at the time of the acquisition, except the **Excluded Persons**.

For the purposes of the foregoing:

"Poseidon" means Poseidon Concepts Corp., its affiliates and subsidiaries.

"Securities" means Poseidon's common shares, notes or other securities defined in the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

"Class Period" means the period on our before February 14, 2013.

"Excluded Persons" means any defendant to the actions commenced in the Court of Queen's Bench of Alberta bearing Court File No. 1301-00935, in the Superior Court of Ontario bearing Court File No. CV-12-46873600CP, or in the Superior Court of Quebec bearing Court File No. 500-06-000633-129, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is a member of the immediate family of the following persons: A. Scott Dawson, Matt MacKenzie, Lyle Michaluk and Harley L. Winger, and National Bank of Canada, National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd., FirstEnergy Capital Corp. (the "Financial Institutions"), and each Financial Institution's past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns.

APPENDIX "B" TO REPRESENTATION ORDER

Court File No. 1301-04364

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.

OPT-OUT LETTER

PricewaterhouseCoopers Canada
Suncor Energy Centre
111 5th Avenue SW, Suite 3100
Calgary, Alberta T2P 5L3

Attention: •
Telephone: 403-509-7500
Fax: 403-781-1825
Email: •

I, _____, am a Class Member, as defined in the Representation Order of Mr. Justice Yamauchi dated • (the "Order").

Under Paragraph 6 of that Order, Class Members who do not wish to be represented by the Class Action Plaintiffs and/or to have Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Siskinds, Demeules, S.E.N.C.R.L., and Paliare Roland Rosenberg Rothstein LLP act as their representative counsel may opt out.

I hereby notify the Monitor that I do not wish to be bound by the Order and will be separately represented to the extent I wish to appear in these proceedings.

_____ _____

Date Name:

TAB 20

CITATION: Cash Store Financial Services (Re), 2014 ONSC 4567
COURT FILE NO.: CV-14-10518-00CL
DATE: 2014-08-26

SUPERIOR COURT OF JUSTICE - ONTARIO

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 THE CASH STORE FINANCIAL SERVICES, THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. doing business as "THE TITLE STORE"

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Jeremy Dacks*, for the Chief Restructuring Officer of the Applicants

Heather Meredith, for the FTI Canada Consulting Canada Inc., Monitor

Robert W. Staley and *Raj S. Sahni* and *Jonathan Bell,* for 0678786 B.C. Ltd.

Alan Merskey and *Orestes Pasparakis*, for Coliseum Capital Partners LP, Coliseum Capital Partners II LP, Blackwell Partners LLC, Alta Fundamental Advisors Master LP and the Ad Hoc Committee of Cash Store Noteholders in their representative capacities as DIP Lenders, First Lien Noteholders and Holders of Senior Secured Notes

Brendan O'Neill, for the Ad Hoc Committee of Cash Store Noteholders

Andrew Hatnay, *James Harnum* and *Adrian Scotchmer*, for Tim Yeoman,

Brett Harrison, for Trimor Annuity Focus LP, No. 5

HEARD: June 16, 2014

ENDORSEMENT

[1] This motion was brought by Mr. Timothy Yeoman, Plaintiff in the class proceeding, *Timothy Yeoman* v. *The Cash Store Financial Services Inc. et al*, Court File No. 7908/12 CP (the "Class Action") for an order appointing him as representative (the "Class Representative") of the Class Members in this CCAA proceeding, and for an order appointing Harrison Pensa LLP as representative counsel to the class members, and Koskie Minsky LLP as agent to Harrison Pensa LLP ("Representative Counsel").

[2] Other than 0678786 B.C. Ltd. ("McCann") and Trimor Annuity Focus LP No. 5 ("Trimor"), no party opposed the motion.

[3] The Statement of Claim was filed on August 1, 2012 in London, Ontario. The Class Action is being managed by Grace J. who has scheduled a motion for certification on September 15, 2014.

[4] On April 14, 2014, Cash Store Financial Services Inc. and other entities obtained protection from their creditors under the *Companies' Creditors Arrangement Act* ("CCAA"). As a result, the Class Action and the certification motion have been stayed pending further order.

[5] The Class Action alleges, *inter alia*, that the Defendants' practice of charging fees for various financial products which are tied to their loan products, as well as interest on those fees, is unlawful and in contravention of the *Ontario Pay Day Loans Act* ("PLA").

[6] In the case of Mr. Yeoman, it is alleged that he engaged in a "Pay Day Loan" transaction offered by Cash Store for a loan of $400 and for a duration of 9 days. Mr. Yeoman claims that he was charged $68.60 in "fees and service charges" and was required to pay $78.72 in interest, for a total cost of borrowing of $147.32.

[7] The Class Action asserts the following causes of action against the Applicants:

a. breach of the PLA;

b. breach of the *Competition Act*;

c. conspiracy; and

d. unjust enrichment.

[8] Mr. Yeoman seeks to represent all customers of Cash Store who entered into similar loan transactions in Ontario. Mr. Yeoman estimates that there are thousands of individual borrowers in the Class. Counsel to Mr. Yeoman submit that damages for the Class Members are estimated at over $50 million, based on publicaly available information.

[9] Counsel for Mr. Yeoman referenced section 6(3) of the PLA which states that the consequence of a breach of the PLA by a lender is that borrowers are only required to repay the principal loan advanced to them and are not required to pay any additional costs of borrowing (i.e., interest and fees) charged by a pay day lender. Accordingly, they alleged that any collections in respect of interest and fees are unlawful under the PLA.

[10] McCann, supported by Trimor, take the position that the relief requested by Mr. Yeoman is a waste of the Court's resources and time. McCann and Trimor (collectively, "Third Party Lenders" and referenced as "TPLs") point out that Mr. Yeoman is an unsecured contingent creditor of the Applicants for an amount less than $150. They argue that Mr. Yeoman's motion is premature. Further, given the approximately $150 million of secured creditor claims that must be satisfied first, they submit these insolvency proceedings have not contemplated any recovery for unsecured creditors let alone unsecured contingent creditors and to permit Mr. Yeoman's motion would prejudice these proceedings and other parties, such as McCann and Trimor, through unnecessary costs, delay and diversion.

[11] The issue to be determined is whether the Court should appoint a representative for the members of the Class Action and Representative Counsel in the CCAA proceeding.

[12] Both parties agree that the Court has the authority to appoint representative counsel. The authority for such an appointment is found under Rules 10.01 and 12.07, as well as s. 11 of the CCAA (see: *Nortel Networks Corporation (Re)*, 2009 Carswell Ont. 3028).

[13] The factors that have been considered by Canadian Courts when issuing representative counsel orders in insolvency proceedings were summarized by Pepall J. (as she then was) in *Canwest Publishing Inc. (Re)*, 2010 Carswell Ont. 1344 (S.C.):

a. the vulnerability and resources of the group sought to be represented;

b. any benefit to the companies under CCAA protection;

c. any social benefit to be derived from representation of the group;

d. the facilitation of the administration of the proceedings and efficiencies;

e. the avoidance of a multiplicity of legal retainers;

f. the balance of convenience and whether it is fair and just, including to the creditors of the estate;

g. whether representative counsel has already been appointed for those who have similar interest to the group seeking representation and who is also prepared to act for the group seeking the order; and

h. the position of others stakeholders and the Monitor.

[14] Pepall J., in *Canwest*, held that it is preferable to grant a representation order early in CCAA proceedings, both for the parties to be represented and for the CCAA Applicants.

[15] Counsel to McCann responds that irrelevant facts, circumstances and equities indicate that the motion should be dismissed. Counsel submits that the representation order is premature, that the proposed Class Action is unlikely to be certified, that the intent of the motion is to protect Class Counsel fees not proposed Class Members and, finally, that the *Canwest* factors fail to support Mr. Yeoman.

[16] Turning first to the *Canwest* factors, I am satisfied that the Class Members are a vulnerable group who individually lack the financial resources to pursue litigation. I accept the argument of counsel to Mr. Yeoman that without a representation order, these individuals will likely not have representation in the CCAA proceeding. It is recognized that the Class Members are an economically vulnerable group. As pointed out by counsel to Mr. Yeoman, pay day lenders are typically used by people of low financial means and the Class Members in this case are thousands of individual who, according to counsel to Mr. Yeoman, have entered into pay day loan transactions with the Applicants and were charged unlawful cost of borrowing in contravention of the PLA. Individually, it is acknowledged that their claims are relatively small,

but collectively, the total of their claims is very significant. In my view, a consideration of the *Canwest* factors favours Mr. Yeoman's position.

[17] I accept the submission of counsel to Mr. Yeoman that it is not cost effective or practical for borrowers to engage in individual actions against the Applicants, which would likely involve a multiplicity of Small Claims Court actions. Counsel to Mr. Yeoman submits that the only practical recourse for such individuals to advance their claims for compensation is through a class proceeding with class counsel advancing their collective claims.

[18] Given the size of each individual claim, I accept the submission that without a representation order, the individual class members will not have representation in the CCAA proceedings.

[19] I also accept that the appointment of representative counsel will benefit the Applicants insofar as they will be able to deal with the adjudication of the Class Action in a consistent and streamlined manner.

[20] I am also satisfied that a representation order will facilitate the administration of the CCAA proceeding and enhance its efficiency. The appointment of representative counsel will avoid the need for the Applicants to deal with a potentially large number of individual unrepresented borrowers advancing individual and possibly inconsistent claims.

[21] Turning now to the arguments raised by counsel to McCann, I cannot accept that the making of a representation order is premature. The CCAA proceedings are ongoing. There is an ongoing sale and investment process being conducted by Rothschild. The sale and investment process will likely be followed by some sort of claims process and a distribution process. The adjudication of the Class Action may have an impact on the CCAA proceedings. In my view, there is no reason to delay the Class Action proceeding.

[22] Counsel to McCann submits that Mr. Yeoman has no legitimate role to play in these proceedings and further, that the appointment of Mr. Yeoman as legal representative of the Class would cause direct and tangible prejudice to these proceedings and interested parties. I have not been persuaded by these submissions. There is an administrative benefit to be realized if proceedings are coordinated and since there is no funding request for Representative Counsel at this time, I question the alleged prejudice. I also note that the Chief Restructuring Officer, the Applicants and the Monitor, the parties having a direct interest in the outcome of this motion, do not oppose the granting of the requested relief.

[23] With respect to the submission that the proposed class action is unlikely to be certified, this is an issue to be addressed by Grace J. in September 2014.

[24] With respect to the argument that the motion is to protect Class Counsel fees not proposed class members, this argument has to be considered with the statement that the moving party is not seeking funding for the cost of Representative Counsel at this time.

[25] Finally, it seems to me that motions of this type are very fact-specific. Counsel to McCann relies on *Muscletech Research and Development Inc. (Re)*, 2006 Carswell Ont. 4929; *Muscletech Research and Development Inc. (Re)*, 2006 Carswell Ont. 7877 and *Re Canadian*

Red Cross Society, 1999 Carswell Ont. 3234. Counsel submits that Mr. Yeoman has failed to cite a single reported decision where a CCAA court considered and granted a contested representation order, for a proposed uncertified class action.

[26] In my view, a complete response to the case law cited by counsel to McCann is contained in the Reply Factum filed by counsel for the Class Action Plaintiffs, at paragraphs 5 – 11. In this case is also important to note that the issue before this Court is whether to grant a representation order. It is not to make a determination as to whether the Class Action should be certified.

[27] In the result, I am satisfied that this is an appropriate matter in which to appoint a class representative and representative counsel. The motion is granted and an order shall issue appointment Mr. Yeoman as the Class Representative of the Class Members in the CCAA proceeding and an order appointing Harrison Pensa LLP as representative counsel to the Class Members and Koskie Minsky LLP as agent to Harrison Pensa LLP ("Representative Counsel").

Morawetz, R.S.J.

Date: August 26, 2014

TAB 21

2010 ONSC 1328
Ontario Superior Court of Justice [Commercial List]

Canwest Publishing Inc. / Publications Canwest Inc., Re

2010 CarswellOnt 1344, 2010 ONSC 1328, [2010] O.J. No. 943, 185 A.C.W.S. (3d) 865, 65 C.B.R. (5th) 152

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC. / PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Pepall J.

Judgment: March 5, 2010
Docket: CV-10-8533-00CL

Counsel: Lyndon Barnes, Alex Cobb for Canwest LP Entities
Maria Konyukhova for Monitor, FTI Consulting Canada Inc.
Hilary Clarke for Bank of Nova Scotia, Administrative Agent for Senior Secured Lenders' Syndicate
Janice Payne, Thomas McRae for Canwest Salaried Employees and Retirees (CSER) Group
M.A. Church for Communications, Energy and Paperworkers' Union
Anthony F. Dale for CAW-Canada
Deborah McPhail for Financial Services Commission of Ontario

***Pepall J.*:**

Reasons for Decision

Relief Requested

1 Russell Mills, Blair MacKenzie, Rejean Saumure and Les Bale (the "Representatives") seek to be appointed as representatives on behalf of former salaried employees and retirees of Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) and Canwest Limited Partnership and the Canwest Global Canadian Newspaper Entities (collectively the "LP Entities") or any person claiming an interest under or on behalf of such salaried employees or retirees including beneficiaries and surviving spouses ("the Salaried Employees and Retirees"). They also seek an order that Nelligan O'Brien Payne LLP and Shibley Righton LLP be appointed in these proceedings to represent the Salaried Employees and Retirees for all matters relating to claims against the LP Entities and any issues affecting them in the proceedings. Amongst other things, it is proposed that all reasonable legal, actuarial and financial expert and advisory fees be paid by the LP Entities.

2 On February 22, 2010, I granted an order on consent of the LP Entities authorizing the Communications, Energy and Paperworker's Union of Canada ("CEP") to continue to represent its current members and to represent former members of bargaining units represented by the union including pensioners, retirees, deferred vested participants and surviving spouses and dependants employed or formerly employed by the LP Entities. That order only extended to unionized members or former members. The within motion focused on non-unionized former employees and retirees although Ms. Payne for the moving parties indicated that the moving parties would be content to include other non-unionized employees as well. There is no overlap between the order granted to CEP and the order requested by the Salaried Employees and Retirees.

Facts

3 On January 8, 2010 the LP Entities obtained an order pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") staying all proceedings and claims against the LP Entities. The order permits but does not require the LP Entities to make payments to employee and retirement benefit plans.

4 There are approximately 66 employees, 45 of whom were non-unionized, whose employment with the LP Entities terminated prior to the Initial Order but who were still owed termination and severance payments. As of the date of the Initial Order, the LP Entities ceased making those payments to those former employees. As many of these former employees were owed termination payments as part of a salary continuance scheme whereby they would continue to accrue pensionable service during a notice period, after the Initial Order, those former employees stopped accruing pensionable service. The Representatives seek an order authorizing them to act for the 45 individuals and for the aforementioned law firms to be appointed as representative counsel.

5 Additionally, seven retirees and two current employees are (or would be) eligible for a pension benefit from Southam Executive Retirement Arrangements ("SERA"). SERA is a non-registered pension plan used to provide supplemental pension benefits to former executives of the LP Entities and their predecessors. These benefits are in excess of those earned under the Canwest Southam Publications Inc. Retirement Plan which benefits are capped as a result of certain provisions of the *Income Tax Act*. As of the date of the Initial Order, the SERA payments ceased also. This impacts beneficiaries and spouses who are eligible for a joint survivorship option. The aggregate benefit obligation related to SERA is approximately $14.4 million. The Representatives also seek to act for these seven retirees and for the aforementioned law firms to be appointed as representative counsel.

6 Since January 8, 2010, the LP Entities have being pursuing the sale and investor solicitation process ("SISP") contemplated by the Initial Order. Throughout the course of the CCAA proceedings, the LP Entities have continued to pay:

> (a) salaries, commissions, bonuses and outstanding employee expenses;
>
> (b) current services and special payments in respect of the active registered pension plan; and
>
> (c) post-employment and post-retirement benefits to former employees who were represented by a union when they were employed by the LP Entities.

7 The LP Entities intend to continue to pay these employee related obligations throughout the course of the CCAA proceedings. Pursuant to the Support Agreement with the LP Secured Lenders, AcquireCo. will assume all of the employee related obligations including existing pension plans (other than supplemental pension plans such as SERA), existing post-retirement and post-employment benefit plans and unpaid severance obligations stayed during the CCAA proceeding. This assumption by AcquireCo. is subject to the LP Secured Lenders' right, acting commercially reasonably and after consultation with the operational management of the LP Entities, to exclude certain specified liabilities.

8 All four proposed Representatives have claims against the LP Entities that are representative of the claims that would be advanced by former employees, namely pension benefits and compensation for involuntary terminations. In addition to the claims against the LP Entities, the proposed Representatives may have claims against the directors of the LP Entities that are currently impacted by the CCAA proceedings.

9 No issue is taken with the proposed Representatives nor with the experience and competence of the proposed law firms, namely Nelligan O'Brien Payne LLP and Shibley Righton LLP, both of whom have jointly acted as court appointed representatives for continuing employees in the Nortel Networks Limited case.

10 Funding by the LP Entities in respect of the representation requested would violate the Support Agreement dated January 8, 2010 between the LP Entities and the LP Administrative Agent. Specifically, section 5.1(j) of the Support Agreement states:

> The LP Entities shall not pay any of the legal, financial or other advisors to any other Person, except as expressly contemplated by the Initial Order or with the consent in writing from the Administrative Agent acting in consultation with the Steering Committee.

11 The LP Administrative Agent does not consent to the funding request at this time.

12 On October 6, 2009, the CMI Entities applied for protection pursuant to the provisions of the CCAA. In that restructuring, the CMI Entities themselves moved to appoint and fund a law firm as representative counsel for former employees and retirees. That order was granted.

13 Counsel were urged by me to ascertain whether there was any possibility of resolving this issue. Some time was spent attempting to do so, however, I was subsequently advised that those efforts were unsuccessful.

Issues

14 The issues on this motion are as follows:

(1) Should the Representatives be appointed?

(2) Should Nelligan O'Brien Payne LLP and Shibley Righton LLP be appointed as representative counsel?

(3) If so, should the request for funding be granted?

Positions of Parties

15 In brief, the moving parties submit that representative counsel should be appointed where vulnerable creditors have little means to pursue a claim in a complex CCAA proceeding; there is a social benefit to be derived from assisting vulnerable creditors; and a benefit would be provided to the overall CCAA process by introducing efficiency for all parties involved. The moving parties submit that all of these principles have been met in this case.

16 The LP Entities oppose the relief requested on the grounds that it is premature. The amounts outstanding to the representative group are prefiling unsecured obligations. Unless a superior offer is received in the SISP that is currently underway, the LP Entities will implement a support transaction with the LP Secured Lenders that does not contemplate any recoveries for unsecured creditors. As such, there is no current need to carry out a claims process. Although a superior offer may materialize in the SISP, the outcome of the SISP is currently unknown.

17 Furthermore, the LP Entities oppose the funding request. The fees will deplete the resources of the Estate without any possible corresponding benefit and the Support Agreement with the LP Secured Lenders does not authorize any such payment.

18 The LP Senior Lenders support the position of the LP Entities.

19 In its third report, the Monitor noted that pursuant to the Support Agreement, the LP Entities are not permitted to pay any of the legal, financial or other advisors absent consent in writing from the LP Administrative Agent which has not been forthcoming. Accordingly, funding of the fees requested would be in contravention of the Support Agreement with the LP Secured Lenders. For those reasons, the Monitor supported the LP Entities refusal to fund.

Discussion

20 No one challenged the court's jurisdiction to make a representation order and such orders have been granted in large CCAA proceedings. Examples include Nortel Networks Corp., Fraser Papers Inc., and Canwest Global Communications Corp. (with respect to the television side of the enterprise). Indeed, a human resources manager at the Ottawa Citizen advised one of the Representatives, Mr. Saumure, that as part of the CCAA process, it was normal practice for the court to appoint a law firm to represent former employees as a group.

21 Factors that have been considered by courts in granting these orders include:

- the vulnerability and resources of the group sought to be represented;

• any benefit to the companies under CCAA protection;

• any social benefit to be derived from representation of the group;

• the facilitation of the administration of the proceedings and efficiency;

• the avoidance of a multiplicity of legal retainers;

• the balance of convenience and whether it is fair and just including to the creditors of the Estate;

• whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and

• the position of other stakeholders and the Monitor.

22 The evidence before me consists of affidavits from three of the four proposed Representatives and a partner with the Nelligan O'Brien Payne LLP law firm, the Monitor's Third Report, and a compendium containing an affidavit of an investment manager for noteholders filed on an earlier occasion in these CCAA proceedings. This evidence addresses most of the aforementioned factors.

23 The primary objection to the relief requested is prematurity. This is reflected in correspondence sent by counsel for the LP Entities to counsel for the Senior Lenders' Administrative Agent. Those opposing the relief requested submit that the moving parties can keep an eye on the Monitor's website and depend on notice to be given by the Monitor in the event that unsecured creditors have any entitlement. Counsel for the LP Entities submitted that counsel for the proposed representatives should reapply to court at the appropriate time and that I should dismiss the motion without prejudice to the moving parties to bring it back on.

24 In my view, this watch and wait suggestion is unhelpful to the needs of the Salaried Employees and Retirees and to the interests of the Applicants. I accept that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them. I also accept that some of them were in the executive ranks of the LP Entities and continue to benefit from payment of some pension benefits. That said, these are all individuals who find themselves in uncertain times facing legal proceedings of significant complexity. The evidence is also to the effect that members of the group have little means to pursue representation and are unable to afford proper legal representation at this time. The Monitor already has very extensive responsibilities as reflected in paragraph 30 and following of the Initial Order and the CCAA itself and it is unrealistic to expect that it can be fully responsive to the needs and demands of all of these many individuals and do so in an efficient and timely manner. Desirably in my view, Canadian courts have not typically appointed an Unsecured Creditors Committee to address the needs of unsecured creditors in large restructurings. It would be of considerable benefit to both the Applicants and the Salaried Employees and Retirees to have Representatives and representative counsel who could interact with the Applicants and represent the interests of the Salaried Employees and Retirees. In that regard, I accept their evidence that they are a vulnerable group and there is no other counsel available to represent their interests. Furthermore, a multiplicity of legal retainers is to be discouraged. In my view, it is a false economy to watch and wait. Indeed the time taken by counsel preparing for and arguing this motion is just one such example. The appointment of the Representatives and representative counsel would facilitate the administration of the proceedings and information flow and provide for efficiency.

25 The second basis for objection is that the LP Entities are not permitted to pay any of the legal, financial or other advisors to any other person except as expressly contemplated by the Initial Order or with consent in writing from the LP Administrative Agent acting in consultation with the Steering Committee. Funding by the LP Entities would be in contravention of the Support Agreement entered into by the LP Entities and the LP Senior Secured Lenders. It was for this reason that the Monitor stated in its Report that it supported the LP Entities' refusal to fund.

26 I accept the evidence before me on the inability of the Salaried Employees and Retirees to afford legal counsel at this time. There are in these circumstances three possible sources of funding: the LP Entities; the Monitor pursuant to paragraph 31 (i) of the Initial Order although quere whether this is in keeping with the intention underlying that provision; or the LP Senior Secured Lenders. It seems to me that having exercised the degree of control that they have, it is certainly arguable that relying on inherent jurisdiction, the court has the power to compel the Senior Secured Lenders to fund or alternatively compel the LP Administrative Agent to consent to funding. By executing agreements such as the Support Agreement, parties cannot oust the jurisdiction of the court.

27 In my view, a source of funding other than the Salaried Employees and Retirees themselves should be identified now. In the CMI Entities' CCAA proceeding, funding was made available for Representative Counsel although I acknowledge that the circumstances here are somewhat different. Staged payments commencing with the sum of $25,000 may be more appropriate. Funding would be prospective in nature and would not extend to investigation of or claims against directors.

28 Counsel are to communicate with one another to ascertain how best to structure the funding and report to me if necessary at a 9:30 appointment on March 22, 2010. If everything is resolved, only the Monitor need report at that time and may do so by e-mail. If not resolved, I propose to make the structuring order on March 22, 2010 on a nunc pro tunc basis. Ottawa counsel may participate by telephone but should alert the Commercial List Office of their proposed mode of participation.

Motion granted.

TAB 22

2009 CarswellOnt 6169
Ontario Superior Court of Justice [Commercial List]

Fraser Papers Inc., Re

2009 CarswellOnt 6169, [2009] O.J. No. 4287, 181 A.C.W.S. (3d) 256

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

IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LTD., FRASER PAPERS LIMITED and FRASER N.H.LLC (collectively, the "Applicants" or "Fraser Papers")

Pepall J.

Judgment: September 17, 2009
Docket: CV-09-8241-OOCL

Counsel: M. Barrack, D.J. Miller for Applicants
R. Chadwick, C. Costa for Monitor
D. Wray, J. Kugler for Communications, Energy and Paper Workers Union of Canada
D. Wray, J. Kugler (Agent) for Pink Larkin
C. Sinclair for United Steelworkers
T. McRae, S. Levitt for Steering Committee of Fraser Papers' Salaried Retirees Committee
M.P. Gottlieb, S. Campbell for Committee for Salaried Employees and Retirees
M. Sims for Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Business of New Brunswick
Chriss Burr for CIT Business Credit Canada Inc.
D. Chernos for Brookfield Asset Management Inc.

***Pepall J.*:**

Relief Requested

1 There are four motions before me that request the appointment of representatives and representative counsel for various groups of unrepresented current and former employees and other beneficiaries of the pension plans and other retirement and benefit plans of the Applicants ("Fraser Papers"). With the exception of the motion of the United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the "USW"), all motions include a request that Fraser Papers pay the fees and disbursements of representative counsel.

2 The motions are brought by the following moving parties:

(a) the USW who seeks to represent its former members. It already represents its current members.

(b) the Communications Energy and Paperworkers Union of Canada (the "CEP") who also seeks to represent its former members. It too already represents its current members.

(c) the Steering Committee of Fraser Papers' Salaried Retirees Committee who request that Nelligan O'Brian Payne LLP and Shibley Righton LLP ("Nelligan/Shibley") be appointed to act for all non-unionized retirees and their successors.

(d) the Committee of Salaried Employees and Retirees who request that Davies Ward Phillips & Vineberg LLP ("Davies") be appointed to act for all unrepresented employees, be they active or retired, and their successors.

3 A third union, the CMAW, did not bring a motion but Mr. Wray, counsel for the CEP, acted as agent for CMAW's counsel, Pink Larkin on these motions. He advised that the CMAW will represent its current members but not its retirees who are approximately 25 in number. [1] These retirees therefore would only be encompassed by the Davies proposed retainer.

Discussion

4 The Applicants employ approximately 2,500 personnel. They are located in Canada and the U.S. A substantial majority is unionized. Of the 2,500, 1,729 employees participate in five defined benefit pension plans. In addition, 3,246 retirees receive benefits from these plans. Fraser Papers maintains certain other plans and benefits including supplementary employee retirement programmes ("SERPs").

5 On June 18, 2009, the Applicants obtained an Initial Order pursuant to the provisions of the *CCAA*. On July 13, 2009, the U.S. Bankruptcy Court for the District of Delaware designated these proceedings as foreign main proceedings pursuant to Chapter 15 of the U.S. Bankruptcy Code.

6 Fraser Papers is insolvent and is under significant financial pressure. Absent the DIP financing, a restructuring would be impossible. The Applicants have not generated positive cash flow from operations for three years. Their largest unsecured claims relate to the pension plans and the SERPs. Their accrued pension benefit obligations in these plans and the SERPs exceed the value of the plan assets by approximately USD $171.5 million as at December 31, 2008.

7 Representative counsel should be appointed in this case and I have jurisdiction to do so. Section 11 of the *CCAA* and the Rules of Civil Procedure provide the Court with broad jurisdiction in this regard. No one challenges either of these propositions. The employees and retirees not otherwise represented are a vulnerable group who require assistance in the restructuring process and it is beneficial that representative counsel be appointed. The balance of convenience favours the granting of such an order and it is in the interests of justice to do so. The real issues are who should be appointed and whether Fraser Papers should fund the proposed representation.

(A) USW and CEP Motions

8 Dealing firstly with the motions brought by the unions, the USW is the exclusive bargaining agent for the unionized employees of the Applicants working in Madawaska, Maine and Berlin- Gorham, New Hampshire. Personnel at these facilities participate in a defined benefit pension plan and a defined contribution pension plan. The U.S. law applicable to pension plans is the *Employee Retirement Income Security Act of 1974* ("ERISA") [2] . The evidence filed by the USW suggests that a labour organization that negotiated a pension plan has a role in legal proceedings involving termination of that plan. If voluntary, consent of the union is required and if involuntary, an order of the bankruptcy court under the appropriate provisions of U.S. bankruptcy law is necessary. The USW has extensive experience representing the rights of employees and retirees in these sorts of proceedings. It is also noteworthy that, although the collective agreements between the USW and the Applicants do not provide for retiree health and life insurance benefits, the U.S. Bankruptcy Code provides that a labour organization is deemed to be the authorized representative of retirees, surviving spouses, and dependents receiving benefits pursuant to its collective bargaining agreements, unless the union opts not to serve as the authorized representative or the bankruptcy court determines that different representation is appropriate.

9 In my view, the USW should be appointed as the representative for its former members who are retired subject to a retiree's ability to opt out of such representation should he or she so desire. The union already has a relationship with the USW retirees. It also has the means with which to communicate quickly with its members and former members. It is familiar with the relevant collective agreements and plans and has experience and a presence in both Canada and the U.S. De facto, the USW is already

the representative of the USW retirees pursuant to the law in the U.S. Lastly, the Monitor and the Applicants support the USW's request to be appointed as representative counsel for its former members. As mentioned, the USW does not seek funding.

10 Although CEP plays no role in Fraser Papers' U.S. operations, with that exception, for similar reasons and in the interests of consistency, the CEP should be appointed as the representative for its former members who are retirees subject to the aforementioned opt out provision. The Monitor and the Applicants are supportive of this position. Counsel for the CEP indicated that while it is unclear as a matter of law that the union is bound to represent former members in circumstances such as those facing Fraser Papers, the CEP would represent them with or without funding. Given Fraser Papers' insolvency, it seems to me that funding by the Applicants should only be provided for the benefit of those who otherwise would have no legal representation. The request for funding by CEP is refused.

(b) Nelligan/Shibley and Davies

11 Turning to the requests of the Steering Committee of Fraser Papers Salaried Retirees Committee which favours the appointment of Nelligan/Shibley and the Committee for Salaried Employees and Retirees which favours Davies, firstly commonality of interest should be considered. In *Nortel Networks Corp., Re*[3], Morawetz J. applied the Court of Appeal's decision in *Stelco Inc., Re*[4] and the decision of *Canadian Airlines Corp., Re*[5] to enumerate the following principles applicable to an assessment of commonality of interest:

> 1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test.
>
> 2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.
>
> 3. The commonality of interests are to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if possible.
>
> 4. In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches that would potentially jeopardize viable plans.
>
> 5. Absent bad faith, the motivations of creditors to approve or disapprove [of the plan] are irrelevant.
>
> 6. The requirement of creditors being able to consult together means being able to assess their legal entitlement *as creditors* before or after the plan in a similar manner.

12 Once commonality of interest has been established, other factors to be considered in the selection of representative counsel include: the proposed breadth of representation; evidence of a mandate to act; legal expertise; jurisdiction of practice; the need for facility in both official languages; and estimated costs.

13 Davies is proposing to represent all unrepresented employees, former employees and their successors. In my view, there is a commonality of interest amongst the members of this group. In essence, they engage unsecured obligations. Arguably those proposed to be represented by the unions could also be included, and indeed absent a change of position by the CMAW, former members of the CMAW will be. That said, for the reasons outlined above, I am satisfied in this case that it is desirable to have the unions act for their members and former members if so willing. Indeed, no one took an opposing position.

14 I am not persuaded that there is a need for separate representation as advocated by the Committee supporting the Nelligan/Shibley retainer. Appointing only Davies avoids excessive fragmentation and duplication and minimizes costs. In addition, no one will be excluded unless he or she so desires. Davies is also the only counsel whose retainer would extend to the CMAW retirees.

15 Davies has already received a broad mandate in that it has close to 700 retainers from employees in each facet of Fraser Papers' operations and from all current and former employee groups. It has the necessary legal expertise and has offices in Toronto, Montreal and New York. It also has the necessary language capability.

16 In contrast, Nelligan/Shibley is only proposing to represent retirees. It has a mandate of approximately 211 retirees. Clearly it has the requisite legal and language expertise but does not have the benefit associated with having offices in as many relevant jurisdictions. One may reasonably conclude from the evidence before me that the proposed fee structure would be less than that advanced by Davies although the scope of the retainer is more limited. Davies' appointment is not diminished because initially they were identified by the Applicants as appropriate counsel unlike Nelligan/Shibley whose group grew organically to use its counsel's terminology. Nor am I persuaded that Davies will be enfeebled as a result of the composition of the Steering Committee or due to past unrelated retainers by Brookfield Asset Management Inc. The Monitor supports the appointment of Davies as do the Applicants and the DIP lenders.

17 In the event that a real as opposed to a hypothetical or speculative conflict arises at some point in the future, parties may seek directions from the Court. As with the unions, the order appointing Davies will allow anyone to opt out of the representation.

18 Unlike the unions, absent funding, Davies would not be expected to serve as representative counsel. Accordingly, funding is ordered to be provided by Fraser Papers. Again, the funding request is supported by the Monitor, the Applicants and the DIP lenders.

19 The objective of my order is to help those who are otherwise unrepresented but to do so in an efficient and cost effective manner and without imposing an undue burden on insolvent entities struggling to restructure. It seems to me that in the future, parties should make every effort to keep the costs associated with contested representation motions in insolvency proceedings to a minimum. In addition, as I indicated in open court, while a successful moving party may expect to recover a good portion of the legal fees associated with such a motion, there is an element of business development involved in these motions which in my view is a cost of doing business and should not be visited upon the insolvent Applicants. I will leave it to the Monitor to address what an appropriate reduction would be and this no doubt will be addressed very briefly in a subsequent Monitor's report.

Summary

20 In summary, the USW, CEP and Davies representation requests are granted. Only the Davies funding request is granted. The motion relating to Nelligan/ Shibley is dismissed. Counsel submitted proposed orders without prejudice to the Applicants to make submissions. Counsel should confer on the appropriate form of orders and then a representative may attend before me at a 9:30 appointment to have them approved and signed.

Footnotes

1 This is contrary to the contents of paragraph 24 of the Monitor's 4th Report but, being more recent, I accept counsel's oral representation as being accurate.

2 29 U.S.C.

3 (Ont. S.C.J. [Commercial List]).

4 (2005), 15 C.B.R. (5th) 307 (Ont. C.A.)

5 (2000), 19 C.B.R. (4th) 12 (Alta. Q.B.).

TAB 23

Court File No. CV-20-00641059-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE
	)	
JUSTICE PENNY	)	19th DAY OF OCTOBER, 2021

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS AMENDED

AND IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C., 1985, C. C-44, AS AMENDED

AND IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARTNER LIMITED

Applicants

ORDER

(ALLOCATION AND DISTRIBUTION OF SETTLEMENT FUNDS)

THIS MOTION made by Paliare Roland Rosenberg Rothstein LLP in its capacity as representative counsel ("**Representative Counsel**") for the Investor Claimants (as defined in the order made in these proceedings dated August 6, 2020 appointing representative counsel, as amended and clarified from time to time (the "**Appointment Order**"), for an order approving the allocation and distribution of the proceeds of the settlement of the claims of the Investor Claimants' in respect of their acquisition of

preference shares of PACE Financial Limited ("**PFL**") and First Hamilton Holdings Inc. ("**FHH**"), and, in the case of 7903197 Canada Inc., in respect of its purchase of Pace Capital Partners Series A Limited Partnership Units (collectively, the "**Preference Shares**"), was heard this day via Zoom conference at Toronto, Ontario.

ON READING the motion record of Representative Counsel, and on hearing the submissions of Representative Counsel and certain Investor Claimants, no one else appearing,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the activities of Representative Counsel as described in and contemplated by the Third Report of Representative Counsel dated September 24, 2021 (the "**Third Report**"), and the Third Report itself, are hereby approved, and without limiting the generality of the foregoing, that Representative Counsel was and is entitled to rely on the records of PACE Securities Corporation ("**PSC**"), PFL, FHH, and PACE Capital Partners Limited Partnership, as provided to Representative Counsel, including for the purpose of the allocation and distribution of funds as set forth herein, subject to any disagreement by an Investor Claimant brought to the attention of Representative Counsel prior to the date of this order, and provided that such reliance by Representative Counsel does not constitute gross negligence or wilful misconduct.

3. **THIS COURT ORDERS AND DIRECTS** that Representative Counsel's fees, disbursements and taxes in respect of its appointment are approved in the aggregate amount of $6,000,000 (collectively, the "**Professional Costs**"), and that the Professional Costs shall be paid out of the settlement fund (the "**Settlement Fund**") generated by the settlement contemplated by the term sheet dated June 24, 2021 and approved by this Court by order dated July 30, 2021 (the "**Settlement**"), between Representative Counsel on behalf of the Investor Claimants, PACE Savings & Credit Union Limited (the "**Credit Union**"), certain individuals and organizations insured by AIG Insurance Company of Canada and certain individual investment advisors represented by their insurers, AXIS Reinsurance Company (Canadian Branch) and Liberty Mutual (together, the "**Settling Parties**").

4. **THIS COURT ORDERS AND DIRECTS** Representative Counsel to transfer the balance of the Settlement Fund remaining after payment of the Professional Costs as set out above (the "**Net Settlement Fund**") to Industrial Alliance, Insurance and Financial Services Inc. (the "**Distribution Agent**"), which shall distribute the Net Settlement Fund to Investor Claimants as set forth herein (the "**Distribution**"), and in connection with the Distribution, this Court declares as follows:

(a) the Preference Shares were held by the Investor Claimants in accounts (the "Investment Accounts") at the Laurentian Bank Securities Limited ("**LBS**");

(b) the Investment Accounts included both registered accounts (such as RRSP, RRIF, TFSA) (the "**Registered Investment Accounts**") and non-

registered accounts, and the Investor Claimants holding registered accounts were annuitants of those Registered Investment Accounts (the "**Annuitants**");

(c) for the purpose of the Registered Investment Accounts, the Preference Shares were "qualified investments" within the meaning of Subsection 146(1) of the *Income Tax Act*;

(d) pursuant to the Settlement and in accordance with this order, the Annuitants are receiving their share of the Net Settlement Fund as compensation for financial losses incurred by them in respect of the Preference Shares directly in another registered account issued by the Distribution Agent.

5. **THIS COURT ORDERS AND DIRECTS** as follows in respect in respect of the Distribution:

(a) Representative Counsel shall send a letter to each Investor Claimant notifying them of the Distribution, substantially in the form appended hereto as Appendix "A", by regular mail to their last known address, and, where an email address is available, by email;

(b) the Distribution Agent shall open one or more accounts in respect of each Investor Claimant corresponding to the Investor Claimant's account(s) at LBS, including with respect to the tax registration status of the account, and shall deposit into each account, a share of the Net Settlement Funds

that is proportionate to the amount paid by the Investor Claimant for the Preference Shares held by the Investor Claimant in the corresponding LBS account as set forth in the schedule attached hereto as Appendix "B" (the "**Investment Schedule**"), relative to the total amount paid by all Investor Claimants for all Preference Shares showing on the Investment Schedule, provided that, with the concurrence of the Liquidator of PSC, the Distribution Agent is entitled, but not required, to amend the Investment Schedule to correct for obvious administrative or clerical errors;

(c) for the purpose of accessing their share of the Net Settlement Funds, an Investor Claimant shall arrange to meet with an agent of the Distribution Agent and shall complete such account opening documentation as the Distribution Agent may reasonably require, and, without limiting the generality of the foregoing, an Investor Claimant who is an Annuitant of a registered account shall sign the appropriate form(s) for the registration of a registered account issued by the Distribution Agent within six months from the date of the deposit of funds into their account by the Distribution Agent, failing which their investment may lose its registered status; and,

(d) pending the execution of the account documentation by the Investor Claimant as described above and the receipt of further instructions from the Investor Claimant, the funds in the Investor Claimants' share of the Net Settlement Funds held in the accounts opened by the Distribution

Agent shall be invested in the Distribution Agent's "High Interest Savings Account" investment product.

6. **THIS COURT ORDERS** that, subject to this order and any further orders of this court, the Investor Claimants' relationship with the Distribution Agent shall be governed by such operating and other agreements as may be settled by them in the ordinary course, provided that Investor Claimants shall not be under any obligation to maintain their account(s) with the Distribution Agent and that the Distribution Agent shall not charge Investor Claimants a fee in respect of the Distribution.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, Representative Counsel, the Liquidator of PSC and LBS are authorized and directed to disclose to the Distribution Agent such information in their possession pertaining to the Investor Claimants and their holdings of Preference Shares that the Distribution Agent may reasonably require for the purpose of effecting the Distribution, including, without limitation, account opening and closing forms, and the Distribution Agent shall maintain and protect the privacy of such information, and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by PSC and LBS.

8. **THIS COURT ORDERS** that prior to the one year anniversary of this order, the Distribution Agent shall report to Representative Counsel in respect of the Distribution, and if any part of the Net Settlement Funds remain unclaimed by Investors Claimants at that time (the "**Unclaimed Funds**"), Representative Counsel shall apply to this court,

without notice or on such further notice as the court may direct, for directions in respect of the distribution of the Unclaimed Funds.

9. **THIS COURT ORDERS** that Representative Counsel, the Distribution Agent and their respective, partners, officers, directors, employees, advisors, agents and representatives, including without limitation, A. Farber & Partners Inc. and Farber Wealth Management Inc., shall not be liable for any act or omission in respect of the distribution of funds pursuant to the provisions of this Order, other than for gross negligence or wilful misconduct; without limiting the generality of the foregoing, Representative Counsel and the Distribution Agent shall not be liable in respect of any adverse tax implications or rulings, arising from or in respect of the Distribution. No action or other proceeding shall be commenced against Representative Counsel or the Distribution Agent in respect of alleged gross negligence or willful misconduct, except with the prior leave of this Court obtained on at least 21 days' notice to Representative Counsel and the Distribution Agent, and upon further order in respect of security of costs of the Representative Counsel and the Distribution Agent in connection with any such action or proceeding to be given by the plaintiff on a substantial indemnity basis.

10. **THIS COURT ORDERS AND DIRECTS** that upon transfer of the Settlement Funds to the Distribution Agent provided herein, Representative Counsel shall file a completion certificate in the form of Appendix "C" to this order (the "**Completion Certificate**"), and Representative Counsel shall thereupon be discharged of its obligations under the Appointment Order, provided, however, that notwithstanding its discharge:

(a) Representative Counsel shall remain Representative Counsel for the performance of such incidental duties as may be required to complete the administration and distribution of the Investor Claims, including, without limitation, dealing with any Unclaimed Funds; and

(b) Representative Counsel shall continue to have the benefit of the provisions of all of the Orders made in this proceeding, including all approvals, protections and stays of proceeding in favour of Paliare Roland Rosenberg Rothstein LLP in its capacity as Representative Counsel, including the ability to apply to this court for advice and direction, as necessary.

11. **THIS COURT ORDERS AND DECLARES** that upon filing the Completion Certificate, Representative Counsel and its partners, employees, agents, advisors and representatives, including, without limitation, A. Farber & Partners Inc., are thereupon released and discharged from any and all liability that they now have or may hereafter have, by any reason of or in any way arising out of their acts or omissions in respect of their appointment, save and except for any gross negligence or wilful misconduct on their part.

Penny J.

APPENDIX "A"

DRAFT LETTER TO INVESTOR CLAIMANTS

October ♦, 2021

VIA MAIL AND EMAIL

TO: The purchasers of preferred shares of PACE Financial Limited and First Hamilton Holdings Inc., and, in one instance, units of Pace Capital Partners LP (the "Investor Claimants")

Dear Sir/Madame:

Re: PACE Securities Corporation ("PSC"); Settlement of Preferred Shares of PACE Financial Limited and First Hamilton Holdings Inc., and, in one instance, units of Pace Capital Partners LP (the "Preferred Shares")

We have previously written to you regarding the court approved a $40 million settlement of claims by holders of the Preferred Shares (the "**Settlement**"). On October 18, 2021, the Ontario Superior Court of Justice (Commercial List) issued the order enclosed herewith (the "**Allocation and Distribution Order**") approving a scheme for the allocation and distribution of the settlement funds (the "**Allocation and Distribution Scheme**"). Capitalized terms used in this letter and not otherwise defined herein have the meaning given to them in the Allocation and Distribution Order.

Provided that nobody appeals the Allocation and Distribution Order, that order will become final on November 17, 2021.[1] Upon that order becoming final, and subject to the receipt of funds from the settling parties, we will be transferring the settlement funds, net of our costs as approved by the court, to the Distribution Agent, who will then attend to the Distribution.

For the purpose of the Distribution, and in an effort to maintain the tax status of investments held in registered accounts (e.g., RRSPs, TFSAs, LIRAs, etc.), the Distribution Agent will be establishing an account structure consistent with that which previously existed at PACE Securities Corporation and Laurentian Bank Securities. To that end, representatives of the Distribution Agent will need to meet with you to complete necessary account opening documentation, and also to verify the identity of the recipient of the funds. **If you have any questions regarding the Distribution or the contents of this letter, and/or to arrange a meeting with representatives of the Distribution Agent, you should contact Farber Wealth Management Inc. at the following dedicated telephone number and email address.**

[1] If an appeal is taken from the Allocation and Distribution Order, then the timelines contemplated herein will be significantly delayed and you will be notified accordingly.

Telephone: ♦

Email: ♦

We wish to emphasize that if you held your Preference Shares in a registered account, you should contact the Distribution Agent's representatives to arrange for the execution of the necessary account opening documentation as soon as possible before December 31, 2021, and in any event no later than six (6) months from the date of the Allocation and Distribution Order. Your failure to do so increases the likelihood that you will be deemed to have received the proceeds of the Settlement into income, and you may incur a material and unintended tax liability as a result. For this reason, the Distribution Agent will be prioritizing meetings with registered account holders.

Pending your meeting with the Distribution Agent's representatives, your funds will be invested in the Distribution Agent's High Interest Savings Account.

The Distribution Agent's representatives will discuss with you and obtain your instructions regarding the treatment of your funds once the account opening documentation has been executed. It is open to you to invest your funds with the Distribution Agent, but we wish to be clear that you are under no obligation to do so. Regardless of whether you invest your funds with the Distribution Agent or not, you will incur no cost in respect of the Distribution Of course, if you elect to invest your funds with the Distribution Agent, your relationship with the Distribution Agent's, including with respect to compensation for future services provided to you, will be governed by their standard agreements.

About the Distribution Agent and its Representative

(i) iA Financial Group

iA Financial Group is one of the largest insurance and wealth management groups in Canada, with operations in the United States. Founded in 1892, it is one of Canada's largest public companies and is listed on the Toronto Stock Exchange under the ticker symbols IAG (common shares) and IAF (preferred shares). IA cover all aspects of the financial planning journey and subscribe to a holistic customer first process. IA are the industry leaders in the segregated investment arena and are now acquiring the greatest volume of new net business on the insurance platform. iA employs over 7700 employees, $5,9 billion in market cap, manages more than $200 billion in client assets and serves over 4 million customers.

(ii) Farber Wealth

Farber Wealth, in collaboration with iA Financial Group<https://ia.ca/individuals> (iA), provides wealth management services to individuals and business owners and their employees, Farber Wealth brings an advisory mindset and a proprietary approach to the

financial wellness process, with the development of customized personal solutions at its core. This planning-centric approach has been developed from their 27+ years of experience in owning, operating, and building highly successful wealth management businesses in multiple countries. Farber Wealth brings a highly credible and well qualified team including CPA's, CFA's, actuaries and CFP designated professionals to meet those very individual needs of their clients. Farber Wealth is part of the Farber Group, which is an independent business advisory firm established in 1979 that provides practical solutions to complex financial and operating problems. Farber<https://farbergroup.com/> operates across Canada with offices in Toronto, Calgary, Edmonton and Vancouver and is part of a global alliance called BTG Global Advisory.

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Encl.

APPENDIX "C"

DRAFT COMPLETION CERTIFICATE

WHEREAS

A. Pursuant to an order made in these proceedings dated August 6, 2020, as amended by further order dated March 2, 2021, and clarified by order of this court dated July 8, 2021, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") was appointed as representative counsel ("**Representative Counsel**") to certain the investors (the "**Investor Claimants**");

B. Pursuant to an Order of this Court dated October 18, 2021, (the "**Allocation Order**"), Paliare Roland was directed to transfer certain funds (the "**Settlement Funds**") to Industrial Alliance, Insurance and Financial Services Inc. (the "**Distribution Agent**") for further allocation and distribution to the Investor Claimants in accordance with the terms of the Allocation Order.

NOW THEREFORE Representative Counsel hereby certifies that the Settlement Funds have been transferred to the Distribution Agent.

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP solely in its capacity as Representative Counsel to the Investor Claimants and not in its personal capacity

Per: _____

Court File No. CV-20-00641059-00CL

IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARNER LIMITED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

(ALLOCATION AND DISTRIBUTION OF SETTLEMENT FUNDS)

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Representative Counsel

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

AND IN THE MATTER OF VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CV-22-00683820-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

BOOK OF AUTHORITIES

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Siskinds LLP as Counsel to the Proposed Class Action Plaintiff and Aird & Berlis LLP as Insolvency Counsel Assisting Siskinds LLP