

Court File No. CV-21-00669445-00CL

**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 COMPROMISE OR  
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**TRANSCRIPT BRIEF  
CROSS-EXAMINATION OF DENNIS MARK MCEWAN  
HELD OCTOBER 12, 2021**

Date: October 14, 2021

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<b>TAB #</b>	<b>Document</b>
A.	Transcript of the cross-examination of Dennis Mark McEwan held October 12, 2021
B.	Undertakings and under advisements chart
C.	Letter from the Applicant's counsel dated October 12, 2021
D.	Letter to the Applicant's counsel dated October 12, 2021

# TAB A



# **In the Matter of a Plan of Compromise or Arrangement of McEwan Enterprises Inc**

DENNIS MCEWAN  
on Tuesday, October 12, 2021



77 King Street West, Suite 2020  
Toronto, Ontario M5K 1A1

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<p style="text-align: right;">Page 1</p> <p>Court File No. CV-21-00669445-00CL</p> <p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>(COMMERCIAL LIST)</p> <p>IN THE MATTER OF THE COMPANIES' CREDITORS</p> <p>ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS</p> <p>AMENDED</p> <p>AND IN THE MATTER OF A PLAN OF COMPROMISE OR</p> <p>ARRANGEMENT OF MCEWAN ENTERPRISES INC.</p> <p>-----</p> <p>--- This is the Cross-examination of DENNIS</p> <p>MARK MCEWAN upon his affidavit sworn on 1st</p> <p>October 2021, taken via Neesons, a Veritext</p> <p>Company's virtual platform, on the 12th day of</p> <p>October, 2021.</p> <p>-----</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: right;">PAGE</p> <p>WITNESS: DENNIS MARK MCEWAN</p> <p>Cross-Examination by: Mr. Graff.....6</p> <p>Re-Examination by: Mr. Ruby.....29</p> <p>The following list of undertakings, advisements</p> <p>and refusals is meant as a guide only for the</p> <p>assistance of counsel and no other purpose.</p> <p style="text-align: center;">INDEX OF UNDERTAKINGS</p> <p>The questions/requests undertaken are noted by</p> <p>U/T and appear on the following page/line: None.</p> <p style="text-align: center;">INDEX OF ADVISEMENTS</p> <p>The questions/requests taken under advisement</p> <p>are noted by a U/A and appear on the following</p> <p>page/line: 12/19; 22/19; 27/24.</p> <p style="text-align: center;">INDEX OF REFUSALS</p> <p>The questions/requests refused are noted by R/F</p> <p>and appear on the following page/line: 18/6;</p> <p>18/17; 18/24; 19/15; 19/24; 23/15; 25/19; 27/11;</p> <p>29/3.</p>
<p style="text-align: right;">Page 2</p> <p>(All via virtual platform)</p> <p>A P P E A R A N C E S:</p> <p>Peter Ruby Esq., for the Applicant</p> <p>Robert Chadwick Esq.,</p> <p>Caroline Descours, Esq.</p> <p>Trish Barrett, Esq.</p> <p>Steve Graff, Esq., for First Capital</p> <p>Damien Lu, Esq., Holdings(Ontario)</p> <p>Corporation</p> <p>Also present:</p> <p>Greg Karpel,</p> <p>Representative of Monitor</p> <p>Sean Zweig,</p> <p>Counsel for Monitor, Alvarez &amp; Canada Inc.</p> <p>Kip Aneja,</p> <p>CFO of McEwan Enterprises Inc.</p> <p>Chathura Wirithamulla,</p> <p>McEwan Enterprises, Finance.</p> <p>Reported by: Leila Heckert, CVR, RCP-M</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">INDEX OF EXHIBITS</p> <p>NO./DESCRIPTION</p> <p style="text-align: right;">PAGE</p> <p>None.</p>

<p>Page 5</p> <p>1 -- Upon commencing at 9:15 A.M.</p> <p>2 REPORTER'S NOTE: Whereupon the</p> <p>3 following was read to all participants:</p> <p>4 THE REPORTER: Counsel, as you all</p> <p>5 know, because we are using a virtual connection,</p> <p>6 everyone is going to have to be more conscious</p> <p>7 than ever of not speaking over each other.</p> <p>8 If I cannot hear the end of a question</p> <p>9 or the beginning of an answer, you are going to</p> <p>10 have a very poor record.</p> <p>11 If I have to consistently interrupt</p> <p>12 because I cannot hear or understand something</p> <p>13 that is said, you will not have a good</p> <p>14 examination flow.</p> <p>15 If there is an objection, I must be</p> <p>16 able to hear it and know who is objecting.</p> <p>17 If I do have to interrupt, please be</p> <p>18 patient and understand my goal is to provide you</p> <p>19 with a perfect record of these proceedings.</p> <p>20 Please move your papers and/or legal</p> <p>21 pads away from your laptop and/or phone so there</p> <p>22 is no ambient noise.</p> <p>23 From time to time we've noticed the</p> <p>24 audio can be affected, and if so, we may need to</p> <p>25 stop the proceedings and wait a moment for the</p>	<p>Page 7</p> <p>1 difference is that as with the undertakings and</p> <p>2 the answers to questions provided apply, and</p> <p>3 then the only issue that I think we concur that</p> <p>4 would not be the same is the refusals, and so</p> <p>5 the questions that were refused at that point in</p> <p>6 time, I think you've indicated may or may not be</p> <p>7 refused at this particular time. Is that all a</p> <p>8 fair summary?</p> <p>9 MR. CHADWICK: So I'd phrase it a</p> <p>10 little bit differently, and I think there's one</p> <p>11 element that you probably inadvertently left</p> <p>12 out. So our position is that we have no</p> <p>13 objection to your using the transcript from last</p> <p>14 week for the purpose of the sale approval</p> <p>15 motion, same as applies to the answers to</p> <p>16 undertakings and the answers provided in respect</p> <p>17 of questions taken under advisement together</p> <p>18 with the supplementary answers were provided in</p> <p>19 the same chart where Mr. McEwan added a few</p> <p>20 thoughts, and it's all contained in the same</p> <p>21 document that you received at the same time, and</p> <p>22 with respect to the refusals, our position is we</p> <p>23 refused on the basis of what was relevant to the</p> <p>24 initial application, we weren't doing it in</p> <p>25 respect of the approval motion because you said</p>
<p>Page 6</p> <p>1 audio to improve, either by reconnecting or</p> <p>2 asking that everyone use the conference call</p> <p>3 number if you're using computer audio.</p> <p>4 Would the witness please identify</p> <p>5 himself and spell your first and last name?</p> <p>6 THE WITNESS: DENNIS MARK MCEWAN.</p> <p>7 THE REPORTER: Our witness today is</p> <p>8 DENNIS MARK MCEWAN. If there are any questions</p> <p>9 about the witness' identity, would counsel</p> <p>10 please advise on the record now?</p> <p>11 (No objections.)</p> <p>12 THE REPORTER: Hearing no objection,</p> <p>13 counsel, are you ready for me to affirm the</p> <p>14 witness?</p> <p>15 DENNIS MARK MCEWAN: AFFIRMED.</p> <p>16 CROSS-EXAMINATION BY MR. GRAFF:</p> <p>17 Q. Does it make sense, even though I</p> <p>18 think we understand each other, Peter, just</p> <p>19 insofar as what our plan is. So for the record,</p> <p>20 I think what we've agreed is that the transcript</p> <p>21 that arose from the examination conducted on</p> <p>22 Mr. McEwan's affidavit of September 27th would</p> <p>23 stand as a transcript of this examination as</p> <p>24 well, obviously for the purpose of avoiding</p> <p>25 unnecessary redundancy, and that the only</p>	<p>Page 8</p> <p>1 you weren't cross-examining in respect of the</p> <p>2 approval motion, and so you should feel free to</p> <p>3 ask different questions or the same questions</p> <p>4 that we refused and we'll deal with them one at</p> <p>5 a time.</p> <p>6 MR. GRAFF: Perfect. That's great. I</p> <p>7 think we are ad idem. Thank you for that,</p> <p>8 Mr. Ruby.</p> <p>9 BY MR. GRAFF:</p> <p>10 Q. Mr. McEwan, I don't think I'll be</p> <p>11 very long with you today, and I know you have</p> <p>12 other things you'd rather be dealing with, so</p> <p>13 let me get right into it. And you have affirmed</p> <p>14 today. You confirm that the evidence you are</p> <p>15 giving is the truth, the whole truth; is that</p> <p>16 correct?</p> <p>17 A. That is correct, yes.</p> <p>18 Q. Thank you. And as you heard us</p> <p>19 doing our lawyer talk, today's examination is on</p> <p>20 your affidavit sworn on October 1st, 2021, and I</p> <p>21 don't know that you have that handy. I may or</p> <p>22 may not refer to it, so, if necessary, we can</p> <p>23 pull it up if you do not have it handy.</p> <p>24 Let me start by asking you, sir, when</p> <p>25 was it that you first engaged or met with</p>

Page 9		Page 11	
1	Goodmans concerning the filing or restructuring	1	it out there, my understanding of the answer
2	possibilities that McEwan Enterprises might have	2	just given by Mr. McEwan is that originally the
3	to consider?	3	engagement was for a consideration of the First
4	A. I would say approximately 60 days	4	Capital lease and perhaps where the negotiations
5	ago, you know, all initial conversations with	5	might go with that. And I'm assuming at some
6	First Capital were with myself, and then	6	point in time thereafter, the nature of the
7	subsequently with Bill Gregson. And when we	7	mandate that you engaged Goodmans for changed
8	weren't getting anywhere, we brought Goodman on	8	from being just a consideration of beliefs to
9	for counsel.	9	the possibility of a restructuring transaction.
10 4	Q. Can you do your best to look as	10	MR. RUBY: I think, Mr. Graff, when
11	to when that initial engagement took place, when	11	you go back and read the transcript, you will
12	those initial communications took place?	12	find that that wasn't Mr. McEwan's evidence.
13	A. I would have to reference back	13	MR. GRAFF: Okay.
14	and get that for you.	14	MR. CHADWICK: And maybe I can help
15 5	Q. Yes, if you could, that would be	15	you, Mr. Graff. I want to try to be efficient
16	helpful.	16	and helpful to you, I also want to be factually
17	MR. CHADWICK: Mr. Graff, just to help	17	correct.
18	you. Maybe I'll be able to do that while we do	18	MR. GRAFF: Yes.
19	our examination, I can go back and check and	19	MR. CHADWICK: As is outlined in the
20	give you a more specific --	20	materials, the company engaged counsel to review
21	MR. GRAFF: Yes. Sure. That would be	21	all the strategic alternatives, and so we were
22	helpful.	22	engaged to deal with the company, the situation
23	BY MR. GRAFF:	23	the company was facing, and to discuss strategic
24 6	Q. And I'm not asking you for the	24	alternatives which include, as you would know,
25	specific advice that was given, but the way that	25	includes financing, and it includes whether you
Page 10		Page 12	
1	you just characterized it, your initial	1	would run a sales process or a third party sales
2	communications really were to address the	2	process or not, and includes equity, it includes
3	ongoing negotiation or impasse, perhaps, as	3	with how you deal with a broad nature of
4	between First Capital and McEwan, correct,	4	stakeholders. This was not limited to First
5	concerning a go-forward lease arrangement; is	5	Capital. This was limited to making sure that
6	that fair?	6	the company could look at its strategic
7	A. Are you talking prior to engaging	7	alternatives.
8	Goodman?	8	MR. GRAFF: Okay.
9 7	Q. No. When you first engaged	9	BY MR. GRAFF:
10	Goodmans, was that the purpose, was to consider	10 8	Q. And maybe you can tell me, sir,
11	the negotiation on the lease with First Capital?	11	also, when you had your first communication or
12	MR. CHADWICK: I think you are asking	12	when your counsel had first communications with
13	him for a legal --	13	the Monitor?
14	MR. RUBY: Yes, so --	14	MR. RUBY: We will take that under
15	MR. GRAFF: No. I'm just asking him	15	advisement, unless you know, Mr. McEwan, sitting
16	what the purpose of his engagement of Goodmans	16	here.
17	was at first instance. That's it.	17	THE WITNESS: I don't know the exact
18	MR. RUBY: I don't think you are	18	date.
19	entitled to that. That's privileged. We will	19	U/A MR. GRAFF: We'll take it under
20	give you the date when he engaged us.	20	advisement.
21	MR. GRAFF: Okay. Maybe if you could	21	MR. CHADWICK: And again, as my
22	also consider providing me with information as	22	earlier comment, Mr. Graff, we can probably get
23	to what that mandate was for, and then I guess,	23	you that date before we're done here today.
24	I understand if you have to refuse it, refuse	24	MR. GRAFF: Sure. Perfect. That's
25	it. We can deal with it. But let me just put	25	great.

Page 13					Page 15				
1	BY MR. GRAFF:				1	accessories. Is that all fair, those are all			
2 9	Q. Now, I know we've had some				2	included in there, right?			
3	discussions about this from our earlier				3	A. That's correct, yes.			
4	examination. I just want to make sure I'm				4	MR. CHADWICK: Just to help you on			
5	understanding it correctly.				5	your earlier comment, again, trying to be			
6	The impression that I have is that you				6	efficient. As you know, and we dealt with this			
7	consider all supplies to the business to be				7	before the court, all of the payments require			
8	critical lenders; is that correct?				8	the consent of the Monitor, and the Monitor is			
9	A. That is correct.				9	reviewing and those payments with the company.			
10 10	Q. And accordingly, the fact that				10	Mr. McEwan is not involved in the day-to-day			
11	you considered them that, you had been paying				11	review of each of the supplier payments. There			
12	all the obligations to those suppliers that				12	is a finance department at the company that has			
13	arose prior to the date of the filing; is that				13	been dealing with the Monitor directly in			
14	right?				14	connection with that. And if there's any			
15	A. That is correct.				15	questions, I'm sure the Monitor could answer			
16 11	Q. And when those payments are being				16	firsthand for you.			
17	made, are they being reviewed by the Monitor,				17	BY MR. GRAFF:			
18	the pre-filing payments, so the obligations --				18 15	Q. Mr. McEwan, are you aware of			
19	sorry, let me be clear.				19	whether any amount owing for an obligation that			
20	The obligations that arose prior to				20	accrued prior to the 28th of September was not			
21	your filing on September 28th, whenever you're				21	paid or has not been paid? I know your evidence			
22	making a payment in respect of those amounts, do				22	is that they've all been paid, but do you know			
23	you or one of your staff go to the Monitor and				23	of any that have not been?			
24	ask for confirmation about the payment?				24	A. Not to my knowledge, no.			
25	A. I would have to defer to counsel				25	MR. CHADWICK: And sorry to keep			
Page 14					Page 16				
1	on that.				1	interrupting, Mr. Graff, the evidence is that			
2 12	Q. I want to understand that				2	they have not all been paid, that they will be			
3	process. And, sir, I take it that the reason				3	paid in the ordinary course. And so although			
4	why all of these obligations are considered to				4	some of those are still outstanding depending,			
5	be critical, including the pre-filing ones, is				5	some of them may have 60-day terms, some of them			
6	because the intent was to continue to do				6	may have 45-day terms. And so the intention is			
7	business with those same suppliers after the				7	that they will be paid in the normal course. I			
8	transaction is consummated; is that right?				8	would be surprised that everybody is paid as it			
9	A. That would be correct. These are				9	exists today, but the intention is that it's			
10	long-standing relationships I had with				10	been very clear that they will be paid in the			
11	suppliers, and they're very important to me and				11	ordinary course.			
12	the (inaudible) --				12	MR. GRAFF: Understood. Thanks,			
13 13	Q. I understand.				13	Mr. Chadwick. Thank you, sir.			
14	MR. RUBY: Sorry. Mr. McEwan, I don't				14	BY MR. GRAFF:			
15	know if your last comment came through. You				15 16	Q. Now, going to some of the			
16	said "and" something.				16	questions that I asked you that were refused			
17	THE WITNESS: And they're very				17	from your last examination. Are you aware of			
18	important to the company, and they're very				18	any business plans that have been prepared for			
19	valuable long-standing relationships.				19	the year 2021 or for the year 2022?			
20	BY MR. GRAFF:				20	A. No, I am not.			
21 14	Q. Understood. Thank you. I know				21 17	Q. Would that be something that you			
22	that I'm going to sound like a simpleton when I				22	would be involved in?			
23	make this comment, but that would be food				23	A. Yes, it would.			
24	suppliers, linen suppliers, obviously suppliers				24 18	Q. So you are confirming for me that			
25	of grocery type items and grocery packing				25	there is no such initiative or effort to prepare			

Page 17					Page 19				
1	those plans at all happening within Mark McEwan				1	26	Q.	And I guess, does the refusal -	
2	Enterprises organization, correct, because you				2			just to make this more simple - does the refusal	
3	would --				3			relate to any management, employment, or other	
4	A. At that time, the answer is yes,				4			compensation arrangement to which Mr. McEwan or	
5	to that.				5			a holding company to which he is -- of which he	
6	19 Q. And what about now, are there				6			is the controller, is that the same answer to	
7	efforts that are now being made to develop				7			request for any compensation arrangement with	
8	projections and plans for the latter part of				8			any of those entities?	
9	2021 and 2022?				9		MR. RUBY:	Yes. Same --	
10	A. Nothing -- nothing formal. We're				10		BY MR. GRAFF:		
11	looking to stabilize the company at this point				11	27	Q.	I didn't articulate that well.	
12	in time.				12			But you are still refusing production of any	
13	20 Q. Is anything in writing?				13			employment or management or other compensation	
14	A. Nothing in writing.				14			arrangements?	
15	21 Q. And I am assuming the same answer				15	R/F	MR. RUBY:	Well, with Mr. McEwan or	
16	goes with respect to projected cash flows that				16			personal holding company, yes.	
17	you are not aware of any that have been prepared				17		BY MR. GRAFF:		
18	in respect of the latter part of 2021 or for the				18	28	Q.	And does the same go with any	
19	year 2022; is that right?				19			party related to Mr. McEwan, whether it be his	
20	A. That is correct.				20			son, Eric, or his wife, Roxanne?	
21	22 Q. And I'm assuming those wouldn't				21		MR. RUBY:	If you ask about family	
22	be done for you by Fairfax or any related				22			members?	
23	Fairfax entity, correct?				23		MR. GRAFF:	Yes.	
24	A. That is correct. We would do				24	R/F	MR. RUBY:	Same basis. It's not	
25	that internally.				25			relevant, confidential, and personal	
Page 18					Page 20				
1	23 Q. Thank you. For what relevance it				1			information.	
2	has, I think I had asked you for the contract				2		MR. CHADWICK:	And to assist you,	
3	relating to the Good Food arrangement and that				3			Mr. Graff, as we understand it, there is that	
4	had been refused.				4			information, we have relied to the Monitor as to	
5	Is that available to be produced?				5			the compensation of Mark McEwan and his son who	
6	R/F MR. RUBY:	No.			6			is involved in the business, Eric, so that	
7	MR. GRAFF:	Sorry. Was it was a no?			7			information has been provided to the Monitor so	
8	MR. RUBY:	No.			8			they can make sure that it is, kind of, market,	
9	BY MR. GRAFF:				9			and any concerns and my understanding is that	
10	24 Q. And on our last examination, I				10			they will deal with those issues either directly	
11	did ask you, Mr. McEwan, about various				11			with you or your client because you raised it,	
12	compensation arrangements.				12			or they'll address in the Monitor's report. But	
13	Could I ask you to produce a copy of				13			that information has been available, as you can	
14	the employment agreement that was originally				14			appreciate, is sensitive but we want to make	
15	part of the shareholders' agreement from August				15			sure that everyone has the right information	
16	12th, 2015?				16			with respect to the motion.	
17	R/F MR. RUBY:	So that's refused. It's			17		MR. RUBY:	And you'll remember,	
18	not relevant. It's confidential and it also				18			Mr. Graff, that in fact in KSV's affidavit that	
19	involves personal information.				19			you delivered last night, it quotes from answers	
20	BY MR. GRAFF:				20			provided by the Monitor to your client --	
21	25 Q. Okay. So even if we were to				21		MR. GRAFF:	I'm aware.	
22	arrange for it to be produced on a confidential				22		MR. RUBY:	-- about that compensation	
23	basis, it still a refusal?				23			being market, so that's --	
24	R/F MR. RUBY:	Correct.			24		MR. GRAFF:	Yes.	
25	BY MR. GRAFF:				25		MR. RUBY:	-- obviously known to your	

Page 21		Page 23	
1	client.	1	BY MR. GRAFF:
2	MR. GRAFF: Yes. Understood.	2 33	Q. Yes. And, obviously, it goes
3	BY MR. GRAFF:	3	without saying, I'm only looking for any
4 29	Q. And, I guess, the same request	4	material amendment, verbal or otherwise that may
5	applies to any arrangement that may exist	5	have changed the understanding of the
6	between yourself, Mr. McEwan, a holding company	6	arrangement. And I haven't gone back to the
7	or any party related to you with the partnership	7	shareholders' agreement to look at what all the
8	that manages the ONE Restaurant?	8	exhibits were, or the attachments were to it. I
9	MR. RUBY: Sorry. I'm not --	9	know we've talked about the employment
10	MR. CHADWICK: Mr. Graff, I think if	10	agreement, I think I had asked you to produce
11	you asked the witness whether there is any	11	the other exhibits or attachments to that
12	agreement with the partnership and compensation	12	agreement.
13	to himself, then he can answer that question.	13	Can those now be produced or is that
14	MR. GRAFF: Sure. I was just trying	14	still refused?
15	to expedite it because, again, it was a refusal	15	R/F MR. RUBY: No. It's refused, but on a
16	from last time.	16	slightly different basis for the purposes of
17	BY MR. GRAFF:	17	this upcoming motion, the shareholders'
18 30	Q. But, Mr. McEwan, do you or	18	agreement isn't actually relevant at all.
19	anybody with whom you are related have any kind	19	BY MR. GRAFF:
20	of compensation arrangement with the partnership	20 34	Q. Okay. As it relates to
21	of the ONE Restaurant?	21	shareholders -- I think we've lost Mr. -- oh,
22	A. Nothing other than the original	22	no. Mr. McEwan's still there. There he is.
23	agreement we had that we signed back in '07.	23	MR. RUBY: And, Mr. Graff, just to be
24 31	Q. And has that agreement -- that	24	clear, the question about the shareholders'
25	agreement, I assume, can be produced or has been	25	agreement is the shareholders' agreement for
Page 22		Page 24	
1	produced to the Monitor; is that correct?	1	McEwan Enterprises, that's what you are asking
2	MR. CHADWICK: I have to go back and	2	about?
3	check on that. But if it hadn't provided to the	3	MR. GRAFF: Yes.
4	Monitor. We didn't provide it to the Monitor.	4	MR. RUBY: Okay. Thank you.
5	It's their co-owner's agreement.	5	MR. GRAFF: Yes. Sorry. I'm looking
6	MR. GRAFF: And the same goes for the	6	at, obviously, the charts that were prepared and
7	co-owner's agreement as well, of course.	7	I'm not elaborating on the specific docs,
8	MR. CHADWICK: It's the same.	8	because I think we've discussed them
9	MR. RUBY: It's the same.	9	sufficiently in these documents. But if you
10	BY MR. GRAFF:	10	need me to clarify what I'm referring to, please
11 32	Q. Oh, it is the same document,	11	make that request, for sure.
12	okay. So we'd like to see a copy of that. If	12	MR. RUBY: Thank you.
13	your answer is no, but it's been provided to the	13	BY MR. GRAFF:
14	Monitor, that's fine. And we'd also like to see	14 35	Q. In terms of the capitalization of
15	any amendments to that agreement that are in	15	McEwan Enterprises, Mr. McEwan, can you tell me
16	writing, or an understanding of any amendments	16	what consideration was paid by you for the
17	that have been made verbally, if that can be	17	issuance of shares in McEwan Enterprises?
18	provided.	18	MR. RUBY: Sorry. Maybe you can help
19	U/A MR. RUBY: We'll take that under	19	me understand how that's relevant to the
20	advisement. We will have to go and look.	20	proposed transaction motion?
21	MR. GRAFF: Okay. Thanks.	21	MR. GRAFF: Well, I'm just trying to
22	MR. RUBY: And just to be clear, I'm	22	understand the capital structure, what was paid
23	not sure about what verbal amendments would be,	23	by each of Mr. McEwan and Fairfax for the shares
24	but we will go back to the transcript and we'll	24	of McEwan Enterprises, and similarly whether
25	try and sort that out.	25	those contributions have -- are continued to be

<p>Page 25</p> <p>1 reflected as equity contributions.</p> <p>2 MR. RUBY: All right, Mr. McEwan, can</p> <p>3 you --</p> <p>4 BY MR. GRAFF:</p> <p>5 36 Q. To the best of your knowledge, do</p> <p>6 you know whether you specifically paid for</p> <p>7 shares that were issued to you in the capital</p> <p>8 McEwan Enterprises?</p> <p>9 A. I did not specifically pay for</p> <p>10 shares. They're allocated to me.</p> <p>11 37 Q. Thank you. And I understand at</p> <p>12 as it relates to Fairfax that there were certain</p> <p>13 payments made by them for the shares of McEwan</p> <p>14 Enterprises that they currently hold; is that</p> <p>15 correct?</p> <p>16 A. That is correct.</p> <p>17 38 Q. And do you know what those</p> <p>18 amounts were?</p> <p>19 R/F MR. CHADWICK: I think we refused that</p> <p>20 previously.</p> <p>21 MR. GRAFF: I'm not sure whether you</p> <p>22 refused it, or I may not have even asked it.</p> <p>23 MR. CHADWICK: No. You did ask it.</p> <p>24 Maybe you asked it in different words, but the</p> <p>25 consideration, the number of shares as it</p>	<p>Page 27</p> <p>1 record, but to the extent that there are</p> <p>2 specific questions that you or your client or</p> <p>3 KSV require, you will see the form of</p> <p>4 confidentiality agreement contemplates both</p> <p>5 advisors, professional advice only and</p> <p>6 principals and it contemplates that that</p> <p>7 information would not be made public.</p> <p>8 MR. GRAFF: Understood. It's not so</p> <p>9 much a refusal as much as a confidentiality</p> <p>10 issue.</p> <p>11 R/F MR. RUBY: No. From a formal point of</p> <p>12 view, it's a refusal. But we are willing to</p> <p>13 provide things that you are not entitled to in</p> <p>14 an appropriate way that protects the information</p> <p>15 and safeguards the interest of the company while</p> <p>16 giving you some transparency.</p> <p>17 BY MR. GRAFF:</p> <p>18 40 Q. Okay. I had asked you previously</p> <p>19 about the production of a directors and officers</p> <p>20 insurance policy, and I believe that was</p> <p>21 refused.</p> <p>22 Is that something that can now be</p> <p>23 provided?</p> <p>24 U/A MR. RUBY: I'd have to admit, I don't</p> <p>25 think I've turned my mind to that one since the</p>
<p>Page 26</p> <p>1 relates to the acquisition, we said that it was</p> <p>2 not relevant.</p> <p>3 MR. GRAFF: And is that still your</p> <p>4 position?</p> <p>5 MR. RUBY: Yes.</p> <p>6 BY MR. GRAFF:</p> <p>7 39 Q. I think I also asked for the,</p> <p>8 what I call nonconsolidated financial statements</p> <p>9 for each individual separate operation that</p> <p>10 forms part of McEwan Enterprises for the years</p> <p>11 2019, 2020 and 2021. Is that an undertaking you</p> <p>12 are now prepared to provide?</p> <p>13 MR. RUBY: So we provided the Yonge</p> <p>14 and Bloor unconsolidated figures. For the</p> <p>15 balance, your client is still not entitled to</p> <p>16 it, but we are prepared to have an off-line</p> <p>17 discussion after your client signed an NDA, and</p> <p>18 we provided a form of NDA and are just waiting</p> <p>19 for comments from you. So we think you're not</p> <p>20 entitled to it, but we are open to a discussion</p> <p>21 under a confi.</p> <p>22 MR. GRAFF: Okay.</p> <p>23 MR. CHADWICK: As we talked to you</p> <p>24 about before, Mr. Graff, that's the kind of</p> <p>25 information that we would not want on the public</p>	<p>Page 28</p> <p>1 last time. So maybe we'll take that one under</p> <p>2 advisement.</p> <p>3 BY MR. GRAFF:</p> <p>4 41 Q. Sure. Thank you. And I believe</p> <p>5 on the last examination, I had asked you for a</p> <p>6 copy of any agreement that had been completed</p> <p>7 with Cadillac Fairview.</p> <p>8 Has an agreement of that nature now</p> <p>9 been concluded with Cadillac Fairview?</p> <p>10 MR. RUBY: I think that's a question</p> <p>11 for Mr. McEwan.</p> <p>12 BY MR. GRAFF:</p> <p>13 42 Q. Yes, that is --</p> <p>14 A. We are still in negotiation with</p> <p>15 Cadillac Fairview. Nothing has been papered at</p> <p>16 this time. But discussions are still in</p> <p>17 process.</p> <p>18 43 Q. Do you expect the draft of an</p> <p>19 agreement to be exchanged shortly?</p> <p>20 A. We have a call with them this</p> <p>21 week, and hopefully things will progress.</p> <p>22 44 Q. Just give me one minute if I may.</p> <p>23 I think in the prior exam, I had also asked for</p> <p>24 copies of the lease agreement for Cadillac</p> <p>25 Fairview to be produced and that was refused.</p>



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1	Is that something on a confidential basis, at	1	it rather organically through the office.
2	least, that could be made available?	2 48	Q. Thank you. Those are my
3	R/F MR. RUBY: No. It's refused on the	3	questions.
4	basis that it's not relevant.	4	MR. CHADWICK: Mr. Graff, you asked
5	MR. GRAFF: Okay.	5	about the Goodmans engagement letter,
6	MR. RUBY: I should note it's also	6	arrangements. I think we were retained in the
7	confidential.	7	early part of June. I think I just probably
8	MR. GRAFF: From everybody. Okay.	8	quickly look, but I think in the early part of
9	Thanks. Those are my questions, and subject to	9	June that we would have been retained. We were
10	any that arise from my review of the	10	retained to look at all strategic alternatives
11	productions, thanks for your time today,	11	for the company, obviously including debt,
12	Mr. McEwan.	12	equity sales process and otherwise.
13	THE WITNESS: Thank you, Mr. Graff.	13	MR. GRAFF: Okay.
14	MR. CHADWICK: Maybe just before we	14	MR. RUBY: So, Mr. Graff, I know it's
15	break, just see if we have any redirect. Maybe	15	not strictly the correct way to do it, but if
16	we can just take a five-minute break and then	16	you had any formal -- sorry, any follow-up
17	come back.	17	questions on the questions I just asked
18	MR. RUBY: Yes. So if everybody just	18	Mr. McEwan, we'd be --
19	wants to stay logged in but go on mute, and up	19	MR. GRAFF: No.
20	to you whether you turn off your video. We will	20	MR. RUBY: -- happy if you had any --
21	be back in five minutes.	21	MR. GRAFF: Nothing.
22	-- RECESS TAKEN AT 9:45 A.M.	22	MR. RUBY: -- to go ahead.
23	-- RESUME AT 9:51 A.M.	23	MR. GRAFF: Nothing. Thank you.
24	RE-EXAMINATION BY MR. RUBY:	24	MR. RUBY: Okay.
25 45	Q. Mr. McEwan?	25	MR. GRAFF: Great. Thank you,
Page 30		Page 32	
1	A. Yes.	1	Mr. McEwan. Appreciate your time and we will be
2 46	Q. Mr. Graff asked you about	2	back in touch.
3	projections and I just want to make sure that we	3	MR. RUBY: Thank you, Mr. Graff.
4	haven't gotten hung up on any terminology issue.	4	(Whereupon this examination concludes
5	So can you help us by explaining in the ordinary	5	at 9:55 A.M.)
6	course of business, can you describe any	6	
7	financial estimates the company makes about	7	
8	future earnings for staffing, percentage rent or	8	
9	other purposes?	9	
10	A. We constantly monitor it, but we	10	
11	don't have a formal program going forward.	11	
12	Where we have been with the pandemic and the	12	
13	uncertainty of what forward projections would	13	
14	even look like, we try to rely on day-to-day	14	
15	operations and monitoring just percentages of	15	
16	categories and just sensible oversight of the	16	
17	company. Not knowing where we are going is the	17	
18	biggest challenge for us, so we've not done	18	
19	anything in a formal way.	19	
20 47	Q. Okay. I don't want to get stuck	20	
21	on formality. On an informal basis, are there	21	
22	any, let's call it, look-ahead exercises that	22	
23	you do to look ahead at things like finances,	23	
24	traffic, staff planning?	24	
25	A. Not in a formal way. I -- we do	25	

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# TAB B



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

**UNDER ADVISEMENTS GIVEN DURING THE CROSS-EXAMINATION  
OF DENNIS MARK MCEWAN, ON HIS AFFIDAVIT DELIVERED THE 1<sup>st</sup> DAY OF OCTOBER  
2021, CONDUCTED VIA VIDEOCONFERENCE ON OCTOBER 12, 2021**

<b>No.</b>	<b>Q. #</b>	<b>PG. #</b>	<b><u>Under Advisements</u></b>	<b><u>Response</u></b>
1.	8	12	To provide when Mr. McEwan or when Mr. McEwan's counsel first communicated with the Monitor	
2.	32	22	To provide a copy of the compensation arrangement with the partnership of the ONE restaurant, and any material amendments to that agreement in writing or an understanding of any amendments that have been made verbally	
3.	40	27	To provide a copy of the directors and officers insurance policy	Subsequently refused (please see letter at Tab C)

**REFUSALS GIVEN DURING THE CROSS-EXAMINATION  
OF DENNIS MARK MCEWAN, ON HIS AFFIDAVIT DELIVERED THE 1<sup>ST</sup> DAY OF OCTOBER  
2021, CONDUCTED VIA VIDEOCONFERENCE ON OCTOBER 12, 2021**

<b><u>No.</u></b>	<b><u>Q. #</u></b>	<b><u>PG. #</u></b>	<b><u>Refusals</u></b>	<b><u>Response</u></b>
1.	23	18	Refusal re producing the contract relating to the Good Food arrangement	
2.	24 and 25	18	Refusal re producing a copy of the employment agreement that was originally part of the shareholders' agreement from August 12, 2015, even if it were to be produced on a confidential basis	
3.	27	19	Refusal re production of any employment, management or other compensation arrangements to which Mr. McEwan or a holding company of which he is the controller	
4.	28	19	Refusal re production of any employment, management, or other compensation arrangements to which a party is related to Mr. McEwan	
5.	33	23	Refusal re producing exhibits or attachments to the shareholders' agreement	
6.	38	25	Refusal re the consideration paid by Fairfax for the shares of McEwan Enterprises that Fairfax currently holds	
7.	39	27	Refusal re providing a copy of the nonconsolidated financial statements for each individual operation that forms part of McEwan Enterprises for the years 2019, 2020 and 2021	
8.	44	29	Refusal re providing copies of the lease agreement for Cadillac Fairview	

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**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 MCEWAN ENTERPRISES INC.**

Applicant

Court File No. CV-21-00669445-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
 Proceedings commenced at Toronto

**REFUSALS AND UNDERTAKINGS CHART**

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# TAB C

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October 12, 2021

**Via Email**

Aird & Berlis LLP  
181 Bay Street, Suite 1800  
Toronto, Canada  
M5J 2T9

**Attention: Mr. Steven Graff**

Dear Mr. Graff:

**Re: McEwan Enterprises Inc.  
Court File No. CV-21-00669445-00CL**

We have several matter to address with you before the hearing of the Applicant's transaction approval motion hearing.

1. Today, when you cross-examined Mr. McEwan, you requested the Applicant's D&O insurance policies. We have now considered that request and it is refused because of its irrelevance to the pending motion.
2. It is not clear to us if you are proceeding with any motion with respect to questions refused on the cross-examinations of Mr. McEwan. As we have already advised you, it is not acceptable for such a refusals motion to be heard on October 15 with the transaction approval motion. Also, we prefer not to have the Chief Justice troubled by procedural issues tomorrow and are prepared to not proceed altogether with the booked appointment, including with respect to Mr. Robins, if your client determines not to move on the refusals. Please let us know today your position. If the parties are not going to proceed tomorrow, it would be best to let the court office know today before 4:30pm so the Chief Justice is quickly made aware we will not be drawing on his time.
3. You served the affidavit of Mr. Kofman last night. It is replete with inadmissible, uninformed and unreliable opinions. We ask that your client voluntarily withdraw it so that the parties' and Court's time need not be spent dealing with this document. Please advise today of your position. If you do not withdraw that affidavit or otherwise inform us that you will not be relying on it, we will request that the Court deal with its flaws at the October 15 hearing.

4. We have asked you several times about an agreed timetable for this matter and you have not responded. Please get back to us about both agreeing to serving on October 13 our respective factums for the transaction approval motion.

Finally, we are advised that the timing of the hearing on October 15, 2021 will be 9:00-10:30am, a 45 minute break, and then 11:15am-1:15pm.

Yours truly,

**Goodmans LLP**



Peter Ruby

Copy: J. Nemers and D. Liu, Aird & Berlis  
R. Chadwick and C. Descours, Goodmans  
S. Zweig, Bennett Jones  
J. Nevsky and G. Karpel, Alvarez and Marsal

7206608

# TAB D





Steven L. Graff  
Direct: 416.865.7726  
E-mail: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

October 12, 2021

**BY EMAIL**

**Mr. Peter Ruby**  
Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 3S7

Dear Mr. Ruby:

**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  
McEwan Enterprises Inc.  
Court File No.: CV-21-00669445-00CL  
Our File No.: 164277**

---

Thank you for your letter of today's date, to which we respond as follows:

With respect to items 1 and 2 of your letter, we agree that undertakings and refusals motions on the Commercial List ought to be avoided if at all possible, and that counsel are encouraged by the Court to resolve such motions. Accordingly, we will agree that, in lieu of the parties moving on refusals, the Chief Justice should be permitted to draw the appropriate adverse inferences at the substantive motion should His Honour be of the view that certain refused questions/productions ought to have been answered/produced.

We trust you agree with this reasonable approach, and as you are no longer seeking to examine Mr. Robins, we trust you will advise the Court prior to 4 p.m. today that tomorrow's attendance should be vacated. To the extent you do not agree with this approach, please advise us before 4 p.m. today, as unfortunately that will mean that we should be appearing before His Honour to address this matter.

With respect to item 3 of your letter, we disagree that Mr. Kofman's affidavit is improper, or that any portion of it ought to be struck or withdrawn. We agree that any submissions with respect to it may be made at the October 15 hearing.

With respect to item 4 of your letter, we are agreeable to receiving the Monitor's Report in respect of your motion and the factum in support of your motion by no later than tomorrow (October 13). Should we wish to file a supplemental factum after receiving these materials, we will do so promptly, and, in any event, by no later than the following day.

Page 2

Yours truly,

**AIRD & BERLIS LLP**

Per



Steven L. Graff  
SG\cj

c.c.    Jeremy Nemers & Damian Lu – Aird & Berlis LLP  
         Robert J. Chadwick & Caroline Descours – Goodmans LLP  
         Sean Zweig – Bennett Jones LLP  
         Josh Nevsky & Greg Karpel – Alvarez & Marsal Holdings, LLC

AIRD BERLIS

**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 MCEWAN ENTERPRISES INC.**

Applicant

Court File No. CV-21-00669445-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
 Proceedings commenced at Toronto

**TRANSCRIPT BRIEF**

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